




Brighton & Hove  
City Council

# Audit & Standards Committee

Title:	<b>Audit &amp; Standards Committee</b>
Date:	<b>12 March 2019</b>
Time:	<b>4.00pm</b>
Venue	<b>Council Chamber, Hove Town Hall</b>
Members:	<b>Committee Members:</b> Miller (Chair), Gilbey (Group Spokesperson), Sykes (Group Spokesperson), Cobb, Greenbaum, Lewry, Platts and Robins <b>Independent Members:</b> Diane Bushell and Dr David Horne
Contact:	<b>Kat Hoare</b> Democratic Services Officer 01273 291064 kat.hoare@brighton-hove.gov.uk
	<b>The Town Hall has facilities for wheelchair users, including lifts and toilets</b>
	<b>Infra-red hearing aids are available for use during the meeting. If you require any further information or assistance, please contact the receptionist on arrival.</b>
	<b>FIRE / EMERGENCY EVACUATION PROCEDURE</b>  If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by council staff. It is vital that you follow their instructions: <ul style="list-style-type: none"><li>• You should proceed calmly; do not run and do not use the lifts;</li><li>• Do not stop to collect personal belongings;</li><li>• Once you are outside, please do not wait immediately next to the building, but move some distance away and await further instructions; and</li><li>• Do not re-enter the building until told that it is safe to do so.</li></ul>

AGENDA

PART ONE

Page

54 PROCEDURAL BUSINESS

- (a) **Declaration of Substitutes:** Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) **Declarations of Interest:**
- (a) Disclosable pecuniary interests;
  - (b) Any other interests required to be registered under the local code;
  - (c) Any other general interest as a result of which a decision on the matter might reasonably be regarded as affecting you or a partner more than a majority of other people or businesses in the ward/s affected by the decision.

In each case, you need to declare

- (i) the item on the agenda the interest relates to;
- (ii) the nature of the interest; and
- (iii) whether it is a disclosable pecuniary interest or some other interest.

If unsure, Members should seek advice from the committee lawyer or administrator preferably before the meeting.

- (c) **Exclusion of Press and Public:** To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

**NOTE:** *Any item appearing in Part Two of the Agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.*

*A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls.*

55 MINUTES

7 - 22

To consider the minutes of the meeting held on 08 January 2019 (copy attached).

Contact Officer: Kat Hoare

Tel: 01273 291064

56 CHAIR'S COMMUNICATIONS

## AUDIT & STANDARDS COMMITTEE

### 57 CALL OVER

- (a) Items 60 - 68 will be read out at the meeting and Members invited to reserve the items for consideration.
- (b) Those items not reserved will be taken as having been received and the reports' recommendations agreed.

### 58 PUBLIC INVOLVEMENT

To consider the following matters raised by members of the public:

- (a) **Petitions:** to receive any petitions presented to the full council or at the meeting itself;
- (b) **Written Questions:** to receive any questions submitted by the due date of 12 noon on the Wednesday 6<sup>th</sup> March 2019.
- (c) **Deputations:** to receive any deputations submitted by the due date of 12 noon on the Wednesday 6<sup>th</sup> March 2019.

### 59 MEMBER INVOLVEMENT

To consider the following matters raised by councillors:

- (a) **Petitions:** to receive any petitions submitted to the full Council or at the meeting itself;
- (b) **Written Questions:** to consider any written questions;
- (c) **Letters:** to consider any letters;
- (d) **Notices of Motion:** to consider any Notices of Motion referred from Council or submitted directly to the Committee.

### 60 STRATEGIC RISK FOCUS: SR24, SR29, SR15 AND SR31 23 - 50

Contact Officer: Jackie Algar Tel: 01273 291273  
Ward Affected: All Wards

### 61 ANNUAL SURVEILLANCE REPORT 2018 51 - 90

Contact Officer: Jo Player Tel: 01273 292488  
Ward Affected: All Wards

### 62 ROUGH SLEEPING STATISTICS 91 - 100

Contact Officer: Mark Dallen Tel: 01273 291314  
Ward Affected: All Wards

## AUDIT & STANDARDS COMMITTEE

**63 INTERNAL AUDIT AND COUNTER FRAUD PROGRESS REPORT Q3 2018/19 101 - 118**

Contact Officer: Mark Dallen Tel: 01273 291314  
Ward Affected: All Wards

**64 INTERNAL AUDIT STRATEGY AND ANNUAL AUDIT PLAN 2019/20 119 - 142**

Contact Officer: Mark Dallen Tel: 01273 291314  
Ward Affected: All Wards

**65 EXTERNAL AUDIT PLAN 2018/19 143 - 162**

Contact Officer: Nigel Manvell Tel: 01273 293104  
Ward Affected: All Wards

**66 STANDARDS UPDATE 163 - 166**

Contact Officer: Victoria Simpson Tel: 01273 294687  
Ward Affected: All Wards

**67 REVIEW OF THE CODE OF CONDUCT FOR EMPLOYEES 167 - 192**

Contact Officer: Victoria Simpson Tel: 01273 294687  
Ward Affected: All Wards

**68 REVIEW OF PARTS OF THE CONSTITUTION 193 - 226**

Contact Officer: Victoria Simpson Tel: 01273 294687  
Ward Affected: All Wards

**69 ITEMS REFERRED FOR COUNCIL**

To consider items to be submitted to the 28<sup>th</sup> March 2019 Council meeting for information.

*In accordance with Procedure Rule 24.3a, the Committee may determine that any item is to be included in its report to Council. In addition, any Group may specify one further item to be included by notifying the Chief Executive no later than 10am on the eighth working day before the Council meeting at which the report is to be made, or if the Committee meeting take place after this deadline, immediately at the conclusion of the Committee meeting*

**70 ITEMS FOR THE NEXT MEETING**

**PART TWO**

There are no Part Two Items or Part Two Minutes in this Agenda

## AUDIT & STANDARDS COMMITTEE

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fourth working day before the meeting.

Agendas and minutes are published on the council's website [www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk). Agendas are available to view five working days prior to the meeting date.

Electronic agendas can also be accessed through our meetings app available through [www.moderngov.co.uk](http://www.moderngov.co.uk)

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

### FURTHER INFORMATION

For further details and general enquiries about this meeting contact Kat Hoare, (01273 291064, email [kat.hoare@brighton-hove.gov.uk](mailto:kat.hoare@brighton-hove.gov.uk)) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk)

### WEBCASTING NOTICE

This meeting may be filmed for live or subsequent broadcast via the Council's website. At the start of the meeting the Chair will confirm if all or part of the meeting is being filmed. You should be aware that the Council is a Data Controller under the Data Protection Act 1988. Data collected during this web cast will be retained in accordance with the Council's published policy.

### ACCESS NOTICE

The lift cannot be used in an emergency. Evac Chairs are available for self-transfer and you are requested to inform Reception prior to going up to the Public Gallery. **For your own safety please do not go beyond the Ground Floor if you are unable to use the stairs.**

Please inform staff on Reception if this affects you so that you can be directed to the Council Chamber where you can watch the meeting or if you need to take part in the proceedings e.g. because you have submitted a public question.

Date of Publication - Monday, 4 March 2019



**BRIGHTON & HOVE CITY COUNCIL**

**AUDIT & STANDARDS COMMITTEE**

**4.00pm 8 JANUARY 2019**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Miller (Chair) Gilbey (Group Spokesperson), Sykes (Group Spokesperson), Janio, Lewry, Phillips, Platts and Robins

**Independent Members present:** Diane Bushell and Dr David Horne

**PART ONE**

**37 PROCEDURAL BUSINESS**

**a Declarations of substitutes**

37.1 Councillor Janio was present as substitute for Councillor Cobb and Councillor Phillips was present as a substitute for Councillor Greenbaum.

**b Declarations of interests**

37.2 There were none.

**c Exclusion of the press and public**

37.3 In accordance with Section 100A of the Local Government Act 1972 ("the Act"), the Committee considered whether the public should be excluded from the meeting during consideration of any item of business on the grounds that it is likely in view of the business to be transacted or the nature of the proceedings, that if members of the public were present during it, there would be disclosure to them of confidential information as defined in Section 100A (3) of the Act.

37.4 **RESOLVED** - That the public were excluded from the meeting from items listed on Part 2 of the agenda.

**38 MINUTES AND ACTION LOG**

38.1 Councillor Sykes requested the following three amendments to the Minutes of the last meeting:

1. 27.3 SR13 should be amended to SR30

2. 27.4 should be deleted

3. 29.6 “community involvement” should be amended to: “community correspondence”

38.2 Dr Horne stated that regarding Item 27, he had not seen the report which had been promised on the implications of Brexit. The Executive Director, Finance & Resources confirmed that this report had been brought forward to the PRG committee and that he would circulate it by email after the meeting and that this should be added to the Action Log.

38.3 **RESOLVED** – That the Chair be authorised to sign the minutes of the meeting held on 18 September 2018 as a correct record, with the above three amendments.

### **39 CHAIR'S COMMUNICATIONS**

39.1 The Chair welcomed Darren Wells from Grant Thornton - the new external auditors to the meeting. He also confirmed that Diane Bushell was stepping down from her role as Co-optee for the Audit & Standards Committee after a four year term. He praised her for all her hard work and there was a round of applause in thanks. The Chair also confirmed that he had been asked to accept a late item – a letter from Councillor Nemeth, which he was minded to consider under Item 42 with the letter included in the addendum papers.

### **40 CALL OVER**

40.1 The following items on the agenda were reserved for discussion:

Item 44 – Strategic Risk Focus: SR30, SR23, SR21 and SR26

Item 45 – Internal Audit & Counter Fraud Progress Report 2018

Item 46 – External Audit Progress Report January 2019

Item 49 – Oversight and Co-ordination of Key Council Policies and Strategies

Item 50 – Cash Collection – Company Administration Update

### **41 PUBLIC INVOLVEMENT**

41.1 There was no public involvement.

### **42 MEMBER INVOLVEMENT**

42.1 The Chair invited Councillor Nemeth to introduce his letter that had been accepted as a late item and was printed on page 5 of the Addendum.

42.2 Councillor Nemeth apologised for the lateness of the letter and stated that Councillors Mears and Taylor were supporting this letter which requested an urgent report to be brought to the Committee for the next meeting in March in order to get full clarification on the Council's rough sleeping figures. He explained that two different counting methods had been used in the Council's figures which had appeared to reduce. However this may have led to a misrepresentation of the numbers of rough sleeping in the City.



- 42.3 There was a short discussion on the item and Councillor Sykes stated that he was very sympathetic to this issue and confirmed that Audit & Standards Committee was a forum where figures could be checked and that it should not therefore be a significant task to verify this information. Councillor Gilbey questioned whether a new count would add to the confusion on figures and the Chair clarified that they were only requesting a verification of the figures and methods of counting – not a new survey. The Chair asked the internal auditors whether this task was clear and workable within the time frame and the Chief Internal Auditor and the Executive Director, Finance & Resources confirmed that they would discuss this.
- 42.4 **RESOLVED:** That the Council would request an urgent report that would be brought to the March Audit & Standards Committee in order to clarify the rough sleeping statistics used by the Council and the methods used to arrive at these figures.

### 43 ITEMS REFERRED FOR COUNCIL

- 43.1 There were no items to be referred to Full Council for information.

### 44 STRATEGIC RISK FOCUS: SR30, SR23, SR21 AND SR26

- 44.1 The Committee considered a report of the Executive Lead Officer, Strategy, Governance & Law that provided detail on the actions taken and future actions to manage each strategic risk.
- 44.2 The Risk Management Lead introduced the report and confirmed that the last Executive Leadership Team (ELT) meeting was on the 21<sup>st</sup> November 2018 and she highlighted three main points:
1. There were now a total of 17 strategic risks with one new risk SR34 related to Our People's Promise.
  2. SR20 - the risk related to the inability to integrate Health & Adult Social Care was now the most significant increased risk score.
  3. Following a Management Task Review across the Council ELT confirmed that there would be no change to how strategic risk was calculated. However the Risk Management Lead confirmed that now she would be facilitating and minuting all the Directorate Risk Reviews as requested by the ELT and that these would replace use of the CAMMS risk software for Directorate Risks.
- 44.3 Councillor Sykes noted the significant increase in risk scores regarding SR20 'Inability to Integrate health and adult social care at local level and deliver timely and appropriate interventions; and asked if there was an officer present who could speak on this matter.

#### **SR20 - Geoff Raw – Chief Executive**

- 44.4 The Chief Executive spoke about this risk regarding Adult Social Care referring to the "graph of doom" which had been presented three or four years previously by the Local Government Association (LGA) and had identified the long term financial pressures on the service, in dealing with the rising ageing population. He stated that he had received a provisional long term Government settlement which would be presented to Budget

Council and he also confirmed that there had been a Government consultation and a Fair Funding Review and that a Green paper on the future of social care was also expected. Meanwhile, he also confirmed that the £1.2 million budget from the local authority may initially appear to be a significant sum, but gave an example that if a patient's recovery was delayed and they might have to spend three years in care, then the extra funding would only cover the residential care required for ten people. So he confirmed that funding remained a challenging issue.

- 44.5 Councillor Robins asked for an explanation on how any risk and its impact were linked and gave an example of SR20 where the risk rose and yet the impact was the same. The Risk Management Lead answered that it was quite possible that the impact remained the same although the likelihood may increase. She also confirmed that the impact related to the previous risk score and she stated that for the next meeting she could add the previous risk score to this table to clarify this.
- 44.6 The Chief Executive gave an explanation on the difference between impact and risk by giving the background to this. He stated that dealing with the cost of Adult Social Care is currently one of the biggest challenges for a Local Authority - which meant, if this was not addressed, it would affect ongoing viability of the council. He then confirmed that 18 months ago the Council tried to engage with the Clinical Working Group on integrating health and social care this issue and confirmed that some working groups had not performed as well as they had hoped and therefore the likelihood of things being difficult had increased. He confirmed that he hoped to double the efforts on this issue over the next year in order to reduce risk.
- 44.7 Councillor Janio asked how the focus on individual risks was re-assessed throughout the year and whether they were still classed as local risks. The Chief Executive replied that there would be revisions in certain circumstances. For instance the council would take any extra national funding from a Fair Funding Review or a Green paper into account, in terms of impact on risk.

#### **SR21 Larissa Reed – Executive Director, Neighbourhoods, Communities & Housing**

- 44.8 The Executive Director, Neighbourhoods, Communities & Housing summarised this housing risk by confirming the causes and existing controls that had been put in place which included allocation polices, procurement of temporary accommodation, and bringing back the use of long term empty properties.
- 44.9 Councillor Sykes questioned firstly the risk action regarding Government meetings from 30<sup>th</sup> March 2018 – 30%, and secondly the narrative on page 9 around negotiating with developers development resources which did not appear to respond to the 80% risk given. The Executive Director, Neighbourhoods, Communities & Housing replied that regarding the first question, she had met with Homes England and had also consulted with Government as a member of ARCH and that she was putting in a bid for Government funding in order to respond to the fast pace of change. She also stated that the 30% stated was in fact closer to 60 – 70% due to the changes in timing of these different funding meetings.

- 44.10 The Head of Housing Strategy, Property & Investment stated that the Housing Committee had agreed extra Revenue resources which enabled this further funding. He also confirmed that the Council was reviewing its approach in order to give more options to purchase housing and that through the Housing and New Homes Committee they were looking at new resources to explore planning and enable existing sites.
- 44.11 Councillor Janio asked if student housing could be used to offset strategic housing targets, thus allowing family homes to be released and he also asked if the report on this would come back to Audit & Standards or the Housing and New Homes Committee. The Executive Director, Economy, Environment & Culture confirmed that student housing could be used to offset housing targets and that this could be reported back to either the Housing and New Homes Committee or Tourism Development and Culture Committee (TDC).
- 44.12 The Chair queried the types of housing risk in the 3 key questions referred to on page 26. The Executive Director, Neighbourhoods, Communities & Housing confirmed that all forms of housing were included but that the report focussed on the types of housing that the Council have control over. She confirmed that in future reports they could add additional forms of housing to the table.

**SR26 – Larissa Reed - Executive Director, Neighbourhoods, Communities & Housing**

- 44.13 The Executive Director, Neighbourhoods, Communities & Housing introduced this risk around strengthening the relationship with citizens in the way that the Council worked. She stated that there was a first and second line of defence and that the council was winning with this approach, citing the Communities Fund and Neighbourhood Development Plans as examples of increased involvement.
- 44.14 Councillor Sykes asked two questions, the first regarding maintaining trust with citizens as mentioned on page 16 and whether the lack of improvement in Cityclean was not a way of improving trust with citizens. Secondly, he queried whether the figure of 2,000 people who received the e-newsletter as stated on page 17 was very small and how this compared to other authorities. The Executive Director, Neighbourhoods, Communities & Housing answered that they were looking into the best way of communicating to citizens such as the Housing In magazine, which was currently produced in hard copy only that tenants were now asking for via email. She confirmed that tenants used this together with the council website and social media to gain information and as a transactional tool. She also stated that her team had worked with other councils and that this was a problem that was a struggle for all councils and that people generally received too many emails and therefore looked instead at sections of the website or social media aimed at their part of the city. Therefore they were currently listening to people and the methods of communications were constantly under review.
- 44.15 Councillor Sykes stated that the council needed to present itself in a credible way. The Executive Director, Economy, Environment & Culture replied that in relation to Cityclean, the Council was aware that significant details were going to the 22<sup>nd</sup> January ETS Committee meeting and that the council needed to be honest and focussed on a progress of this report.

- 44.16 The Chair stated that it must be difficult to control communication separately by Directorate across the whole council and asked if this risk should be owned by all the different Executive Directorates, or if not, by whom. The Executive Director, Neighbourhoods, Communities & Housing replied that each Directorate had a corporate responsibility for the customer and confirmed that although she liaised with colleagues, she still held personal responsibility for her Directorate. She also stated that every time she asked for help from her ELT colleagues, she was always given 100% support.
- 44.17 Councillor Robins stated that he appreciated the difficulty in communicating with citizens and that this conscious effort to encourage the use of the council website may be worth commenting further on. The Executive Director, Neighbourhoods, Communities & Housing confirmed that the old website was difficult to navigate and had since been changed by focussing on what customers use, such as highlighting the more specific link for Brighton & Hove Parking permits – not just the council home page. She summarised that the website communication should be simple and without fuss in order to get key, relevant messages across.
- 44.18 Councillor Gilbey asked whether the round of sessions for the Full Council Hub mentioned on page 46 would be expanded. The Executive Director, Neighbourhoods, Communities & Housing replied that the council wanted to test and challenge this in certain areas and confirmed that the council needed to identify the next key places to go with the Action Plan for their own area. She confirmed that the council needed to ensure that it had the resources ready to deliver these actions.

**SR23 – Nick Hibberd - Executive Director, Economy, Environment & Culture**

- 44.19 The Executive Director, Economy, Environment & Culture introduced this risk, confirming that he had previously spoken to the Committee on the subject of the high importance of the Seafront to the city. He stated that it was a key part of our transport infrastructure and would naturally deteriorate over time due to use. He confirmed that this risk originated from a Cross Party Strategic Delivery Board that took place in 2014, and whose findings concluded that significant investment was required in order to ensure that the Seafront was successful. The Executive Director, Economy, Environment & Culture highlighted that this had been worked at over the last couple of years and three lines of defence had been highlighted on page 22 of the plan. He highlighted the progression of projects in Shoreham and Black Rock, and investment in the i360 and Shelter Hall in Brighton. He also highlighted the importance of the A259 road which had been given a 120 year life and included the seafront arches along the lower promenade. The second line of defence had been the Seafront plan from 2016 established in 2009 with an investment plan that followed the detailed eastern seafront including the regeneration from the Pier to Black Rock. The Tourism Development and Culture (TD&C) Committee had been receiving updates including a major project update on this project. He also confirmed that reports had gone to the Greater Brighton Economic Board which had designated the Government funding for this. He also highlighted the recent outcome of a series of investment internal audit reviews which had just been finalised after Christmas 2018. From the review there were short recommendations on how the Council could strengthen its position on this and reflect the Annual Report. He confirmed that they would start work on these recommendations in January 2019 and that major projects were reflected in this strategic risk and that in order to ensure this, the Investment Progress group were meeting on a regular basis.

- 44.20 Councillor Janio stated that he felt the whole of the Seafront should include areas such as Hove and Portslade and the Chair added that the Marina and King Alfred's areas were not mentioned either. The Executive Director, Economy, Environment & Culture confirmed that the seafront did include the whole of the city including all of these areas and that the progress of the work was about prioritisation.
- 44.21 Councillor Sykes noted the point on page 3, Risk Action 25 there had been an issue in recruiting a Project Manager and that this was also a problem for SR21 as stated on page 12. He asked whether there was a problem with recruitment and what the Council were doing to address this. The Executive Director, Economy, Environment & Culture answered that there had been some recruitment problems, but not in this area where they had appointed three project managers and all staff were excellent. He added that they had been waiting on funding from the HLF bid, which was not successful, since there was not enough funding to go around and therefore since the December news of the unsuccessful bid, they were now progressing with crowdfunding for the Arches project. The Chair enquired whether this was the second failed bid for the Arches project and The Executive Director, Economy, Environment & Culture confirmed that it was and that the next opportunity to bid was in March 2019. He confirmed that it was a normal situation to keep applying for the HLF funding until it was successful and that they were also looking at alternative plans and opportunities for grant funding for the Arches.
- 44.22 Councillor Janio commented that the risk assessments were done well and that it was a good job in comparison with some other councils.
- 44.23 Councillor Phillips asked whether the Shelter Hall project was currently on track and The Executive Director, Economy, Environment & Culture confirmed that it was on track, despite some previously escalating costs, since they were now working to budget within the revised timescale and that the concrete structure was now underway. The Chair asked whether there should be a separate risk action regarding the delivery of the Waterfront & other major seafront projects and the Executive Director, Economy, Environment & Culture stated that they would reflect the risks within this better and that the work to start preparing the development strategies was now on track but that they would continue to monitor the situation.

### **SR30 – Geoff Raw, Chief Executive**

- 44.24 The Chief Executive highlighted a number of issues that caused concern on this risk and confirmed that since the council were currently in an ambiguous era due to Brexit, the approach the council was taking was for a worst case scenario. He stated that, at present the Council had certain ways of dealing with these risks and that, coming up to the Budget Council meeting, members and officers were working with partners through policy committees and ELT meetings as well as two monthly private executive meetings in order to help keep the city working. He added that they also had forums such as the Brighton & Hove City Management Board to reach out to other parts of the city.
- 44.25 The Chair asked how the individual elements of this broad risk were assessed and whether the council owned that risk. The Chief Executive replied that when there had been a critical incident such as the Shoreham air crash, the Sussex Resilience forum

had taken this on, so that there was a structured approach for an emergency situation. Where there was an issue arising over a longer period of time such as seafront disrepair, the best way to deal with this was being addressed in order to ensure the system of governance. He gave the example of the current situation in France where there had been a lot of civil disorder, and in order to prevent a similar situation, then establishing good systems of governance was key. He also confirmed that Brexit was an issue and by taking advice from the Government and discussing this with partners across the region, where areas could be affected by any changes in legislation.

44.26 Councillor Gilbey asked if the Police had been involved with this process and the Chief Executive replied gave some examples of police collaboration such as the City Management Board where the Police and Ambulance services had been involved and there had been representation from the Crime Commissioner.

44.27 **RESOLVED:** That the Committee:

1. Noted the streamlining of the risk management process as agreed at ELT on 21 November 2018.
2. Noted the changes to the council's SRR.
3. Noted Appendix 1 for details of SR30; SR23; SR21; and SR26.
4. Noted Appendix 2: Information on the council's risk management process relative to Strategic Risks (SRs); and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks.
5. Having considered Appendix 1 and any clarification and/or comments from the officers, the Committee did not decide to make any recommendations to any other council body.

#### **45 INTERNAL AUDIT AND COUNTER FRAUD PROGRESS REPORT.**

45.1 The Audit Manager summarised the report for the second quarter of the year up to September 2018. He stated there were ten finalised reports, half of which gave an outcome of reasonable assurance and four reports with partial assurance. The report also contained information on counter fraud activities.

45.2 Ms Bushell asked about disaster recovery and wanted reassurance that the business continuity planning would be addressed. She also asked about the date of the last internal audit and who was responsible for this. The Audit Manager replied that 2017 was the date of the last report following a previous critical business continuity audit and that there was also a recent IT disaster recovery audit containing a number of continuity actions with a March 2019 deadline. He explained that business continuity fell under the Executive Director, Neighbourhoods, Communities & Housing area. The Executive Director, Finance & Resources confirmed that although this came under the Executive Director, Neighbourhoods, Communities & Housing area, the Committee had discussed previously that the area of IT & D had not been robust and that they had now enlisted better expertise through the Orbis partnership, and therefore hopefully by March 2019

they would get some reassurance on this issue. He also confirmed that the Council had a lot of different IT systems including life support systems within Housing and Social Care and they were hopeful that this would be improved soon since the level of cyber threat due to criminal elements was increasing.

- 45.3 Ms Bushell asked about the action tracking mentioned in the report on page 73 and how this was currently being addressed and whether it was possible for the Committee to have a “deep dive” – detailed audit investigation in what is occurring with Seaside Homes. The Audit Manager replied that it was a long term agreement and since some aspects did not work for the council in financial terms on a long term basis there was a real need to resolve these issues over the next twenty years. He also confirmed that pieces of work had already been carried out on this issue over a number of years and that Housing were now reviewing these arrangements. He added that Seaside Homes was an independent company which the Council could influence through elected members, but not dictate to. He added that this was an important fix but not one that could be completed in a couple of weeks. The Executive Director, Finance & Resources confirmed that finance officers had recently been supporting the Housing department in establishing stronger links between Seaside Homes and the council. He confirmed that both sides were currently locked into the constraints of the original financial and legal arrangements set up of for 499 homes that they were set up with. He confirmed that new methods of working with the council and also with councillors were being established in order to improve the situation which was now more positive than when the audit had been completed. The Chair added that there may be historic issues which may have an impact on revenue and thus a “deep dive” or detailed audit investigation into Seaside Homes was required. Councillor Janio agreed with this, as did the Executive Director, Finance & Resources and he confirmed that this action should be added to the Action Log, but that the timing of the deep dive would need to be considered further.
- 45.4 Ms Bushell asked for assurance on the issue stated on page 75. The Chief Internal Auditor replied that there was a distinction between audit days and delivery of audits within the audit plan and that this had been a relevant point since they had experienced issues with long term sick absence and had been able to manage this better due to the more recent introduction of Orbis. He added that if these sickness absences had occurred two years ago, there would have been a severe impact on the delivery of the BHCC audit plan, as there was no resilience at that time, but now they had been able to bring resources in from across Orbis.
- 45.5 Councillor Sykes remarked on the wide cost parameters of the local delivery vehicle stated on page 66 of the report and asked about whether there had been a national policy change in this area and what lessons could be learned for new contracts that would be set up in the future. The Audit Manager replied that the costs for the LDV project had been identified as a risk and any project should normally have a risk register and that with hindsight, financial arrangements should have been set up differently. He added that there may have been optimism bias on the issue but that there now had to be a pause before going ahead in the future. On the issue of the Orbis Budget Management Audit, the Chief Internal Auditor explained that whilst the review did only conclude partial assurance, there was clear evidence that the Finance service were tackling this issue and introducing improved arrangements. It was further explained that the audit was carried out relatively early in the partnership and transition issues were

believed to be a contributing factor. The Chief Internal Audit also confirmed that a follow up review would be carried out in 2019/20 to provide assurance that appropriate actions have been taken to improve controls.

45.6 Councillor Gilbey queried the minimal assurance of the Brighton Centre and asked whether it was the database that was incorrect or just bad reporting of staff overtime. The Audit Manager replied that it was a mixture of both since the unique work shift patterns of the staff plus the paper forms and rota systems added to the problem that the database had not calculated the payments correctly and thus the whole process had not worked effectively. He confirmed that he had been given full assurance that this had all been corrected now. In answer to the Chair's query on the likelihood of a follow up, the Audit Manager confirmed there would be a follow-up report on this matter either now or in the last quarter of 2018/19 or in the new financial year 2019 / 2020.

45.7 **RESOLVED:** That the Committee noted the report.

#### **46 EXTERNAL AUDIT PROGRESS REPORT JANUARY 2019**

46.1 The Chair welcomed Darren Wells from Grant Thornton to introduce their first progress report. Mr Wells gave a brief summary of the report and stated that their purpose was to set up a timeline and summarise the council's current audit position, so that Grant Wells could become fully conversant with the Council and its financial environment. He confirmed that the outcome of the current risk assessment work would be brought to the next March 2019 meeting.

46.2 In answer to the Chair's query on which wider items applied to Brighton & Hove so far, Mr Wells replied that one issue was financial sustainability and that they were planning to introduce a financial resilience index since 15% of local authorities were currently moving towards a tipping point which was a cause for concern.

46.3 The Executive Director, Finance & Resources stated that he felt the report was a useful source of information and a good summary of how the council could progress in a unified way and he suggested that this report should be forwarded to all councillors. It was confirmed as an action that this should be circulated to all councillors and added to the Action Log.

46.4 **RESOLVED:** That the Committee noted the report.

#### **47 STANDARDS UPDATE**

47.1 **RESOLVED:** That the Committee noted the report.

#### **48 REVIEW OF THE CODE OF CONDUCT FOR MEMBERS**

48.1 **RESOLVED:** That the Committee agreed for an informally constituted cross-party group of members to generate proposed revisions to the Code of Conduct for Members for a future meeting of this Committee to consider. If those revisions were approved, they may then be recommended for full Council approval.



**49 OVERSIGHT AND CO-ORDINATION OF KEY COUNCIL POLICIES AND STRATEGIES**

- 49.1 The Executive Lead Officer, Strategy, Governance & Law and the Senior Policy Partnership & Scrutiny Officer introduced this report and stating that it was being presented to this Committee as part of ensuring the risk assessments and performance monitoring was including the relevant policy issues and risk required legally. They confirmed that they also had optional strategies to adhere to, whilst the other part of the work was performed by the council's legal team. They confirmed that they had created a worksheet for each directorate and were now looking at which partners the council should work with in order to ensure the relevance of each one. They confirmed that there was also a policy grid which informs and prepares the council for major events. These grids had not yet been included with the report at this early stage.
- 49.2 Councillor Sykes asked about whether the sustainability strategy followed up on that from Full Council Action Plan from 2015 – p. 11 – 17. The Senior Policy Partnership & Scrutiny Officer said they would have to check and reply on this after the meeting.
- 49.3 Councillor Janio commented on the 322 elements on the list and queried whether there were other committees that may be better place to present this to and he asked which Committee the review should be taken to. In reply, the Executive Lead Officer, Strategy, Governance & Law replied that these were required to be reviewed within each directorate and its working group, however, they often received conflicting advice and thus a mechanism was required to review this every year.
- 49.4 The Chair stated that he understood that policies that had already been allocated to Full Council required review, however he queried how often policies that were not currently being presented to Full Council should be reviewed? The Executive Lead Officer, Strategy, Governance & Law replied that when policies were initially developed, they were looked at in totals – not in isolation and that therefore now a more detailed and accurate review was required. The Senior Policy Partnership & Scrutiny Officer suggested that from the beginning of the new electoral cycle in May 2019 may be a good time to start afresh and ask the new Council what it requires at that time.
- 49.5 The Chair asked how long these plans should last, since the timescales did not seem to fit with the current political cycle. The Executive Lead Officer, Strategy, Governance & Law replied that there were no set rules and some by law had to be reviewed annually and some every four years. Councillor Janio stated that since there was already a lot of pressure on officers to produce reports for many committees, he agreed that it would be a good idea to review these policies after May 2019.
- 49.6 **RESOLVED:** That the Committee noted the report.

**50 CASH COLLECTION - COMPANY ADMINISTRATION UPDATE**

- 50.1 The Deputy Chief Finance Officer introduced the report which set out actions that the administrators of Coin Co International had already taken and also suggested possible options that were open to the council and other creditors in the future.
- 50.2 Councillor Sykes asked what additional safeguards had been put in place now to prevent this happening again. The Deputy Chief Finance Officer answered that a report had come to this Committee in this regard and now more regular checks were being made and a new process for assessing financial health of companies had been put in place.
- 50.3 The Chair asked Councillor Janio to propose the amendment to this Report.
- 50.4 Councillor Janio proposed the following amendment to the Recommendation:
- “That the Audit & Standards committee *request officers seek external counsel advice on the likelihood of success of any claim brought against all or any of the parties outlined in this report. This advice should be reported on (with copies of this full advice) back to the next Audit and Standards Committee, as a Part 2 item if appropriate, with a recommendation from officers as to the next steps. The instructions to Counsel should be drafted by the Executive Lead – Strategy Governance & Law following consultation with the Chair and lead members of this committee prior to them being asked for their opinion.*”**
- 50.5 Councillor Lewry seconded the amendment.
- 50.6 Councillor Janio outlined the reasons behind the amendment, stating that they were asking for external advice on this matter. He stated that the report did not mention how any money that may be received from any potential action would be distributed and he was unclear whether ownership of this money would be the council's or whether it would belong to the company. Therefore he felt that they required specialised external legal advice on this matter and had requested this in the amendment. He understood that this would have a cost implication and wanted to confirm whether it was certain that a criminal case could not be pursued against the company and also that it was possible to recover money.
- 50.7 Councillor Robins agreed that there was obviously a cost involved in legal counsel and whether this was around £10,000 or £50,000; he felt there was a high cost of chasing the money and why should the Committee ignore the legal advice given by the council on this.
- 50.8 The Chair replied that £3.2 million was the current final amount owed to the council in the report and he then explained why he felt it would be prudent to request specialist external legal investigation to get advice on £3.2 million of tax payers' money. He stated that after the company's thirty years of trading there should be an element of assurance and diligence that every possible avenue had been explored. He asked that if the council were to take advice on this matter, as stated under paragraph 4.4 on page 166, the report did not outline why “there are serious concerns” about this matter. He also asked whether Santander would have first call on any claim, and that if the council were suing them, would the council have the last refusal on any money claimed? He also queried whether some of this item which was being discussed in Part One of the meeting should be in Part Two.

- 50.09 To clarify, the Deputy Chief Finance Officer stated that the total company turnover would be far greater than £300,000 and was probably in the millions of pounds. He confirmed that administrators had already spent four years investigating claims in many countries and the UK and that they had great concerns about the success of any further recoveries or potential claims. He stated that the company's directors had already been through a court process including other claims that had already been brought but that detailed information was unknown to us, due to confidentiality. He confirmed that having settled one claim on a loan of £200k to a secured creditor, Santander, the primary secured creditor, had not fully recovered their £1.6m debt as yet. He confirmed that if the council were to bring any legal action, there may be risks for the council but any discussion of potential risks would need to be in Part Two as this may affect other unsecured creditors. Regarding taking action against the auditors, it was confirmed that the council would have to demonstrate that they had had a duty of care to the creditor (the council) but that this did not appear to exist in this case.
- 50.10 Simon Court, Senior Solicitor, Housing & Litigation team was introduced by the Deputy Chief Finance Officer as supporting him in this case. The Senior Solicitor stated that the team had recruited the assistance of a lawyer who had relevant specialist background and had the benefit of discussions with a specialist lawyer from Isadore Goldman Sachs to investigate this matter. He stated that the primary problem was the lack of information on the case. He stated that Counsel would be confronted with the same problem (i.e. lack of knowledge) and believed Counsel would require more information which we don't. It could possibly be very expensive to research and obtain the necessary information including applications to the courts. He also confirmed that the auditors in this case could not be sued for a third party debt and that the Directors of the company had already been sued for breach of duty and therefore it was unlikely that the administrators or the council would be able to take the matter any further. He confirmed that, if required, he would need to speak about the other actions stated within a Part Two discussion.
- 50.11 Councillor Platts asked about the cost of underwriting this case and how the council could be liable for this. The Deputy Chief Finance Officer replied that due to the recoveries and settlements already achieved by the administrators and the uncertainty of achieving further recoveries, they would not pursue further action without the council providing indemnity to ensure their costs would be covered. Councillor Platts continued to ask whether in the case of liquidation of a company, the accountants always received their money first. The Deputy Chief Finance Officer replied that this was correct. The Senior Solicitor, Housing & Litigation added that the council would have to appoint a Joint Liquidator since the existing administrator had unrecovered costs outstanding of £300,000 and, as stated, we would have to indemnify any proposed joint liquidator and that this would have serious cost implications. The Senior Solicitor confirmed that initial counsel fees would be £8 - £10,000.
- 50.12 Councillor Platts stated that since CCI had caused the loss of money originally, letting this go was an equally uncomfortable situation for the council.
- 50.13 Councillor Sykes stated that he understood the motivation for the Amendment but had now been dissuaded, since he was impressed by the officers' presentation and felt that even if there was a claim made, the council had to consider the high Counsel costs and also the costs in Officer time that this would create, so he did not want to support the amendment.

- 50.14 The Chair stated that he respectfully disagreed with Councillor Sykes' conclusion, since he felt the cost of £8 – £10,000 in order to chase the possibility of gaining £3.2 million in order to get clarification on this issue and find out what the next steps could be, such as possibly making a claim against the Bank, were valid.
- 50.15 Councillor Robins questioned whether it was the Chair's role to disagree with a member's opinion on this matter.
- 50.16 Councillor Janio stated that £3.2 million was a large sum for the council and queried whether Santander had pushed for their claim, as they were dealing in much larger figures. He also asked that if there was a criminal action that could be taken, then local recovery would not be part of the liquidator's fraud action. He felt it was difficult to distinguish the difference between fraud debt and criminal debt and that we would have to go to Counsel before we knew this. He also stated that residents knew that the council had lost this money and that we would be letting people down if we did not try to gain more information on this. The Executive Director, Finance & Resources answered that the real issue was that spending the money initially would not increase the validity of any findings.
- 50.17 The Senior Solicitor, Housing & Litigation stated that it was a question of balancing financial risk and that because no guarantees could be offered on this matter it was a high risk to the council. The Deputy Chief Finance Officer added that within the early updates into the investigation the National Crime Agency (NCA) had investigated the Directors but had found no criminal case to answer.
- 50.18 In answer to Councillor Robins question on whether this Committee had the power to spend this amount of money, the Legal Adviser confirmed that there was an issue since this item had not been budgeted for.
- 50.19 The Committee voted on the amendment and it was not agreed. Therefore the existing recommendations of the Report were noted.
- 50.20 **RESOLVED:** That the Committee noted the report.

## 51 ITEMS FOR THE NEXT MEETING

- 51.1 There were none.

## 52 PART TWO MINUTES

- 52.1 **RESOLVED** – That the Part Two minutes of the meeting held on 18 September 2018 were approved and signed as a correct record.

## 53 PART TWO PROCEEDINGS

- 53.1 **RESOLVED** – That the Part 2 Items remain exempt from disclosure from the press and public.

The meeting concluded at 6.45pm

Signed

Chair

Dated this

day of





- 2.2 Note Appendix 1 for details of SR24, SR29, SR15, and SR31.
- 2.3 Note Appendix 2: Information on the council's risk management process relative to Strategic Risks (SRs); and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks.
- 2.4 Having considered Appendix 1 and any clarification and/or comments from the officers, the Committee makes any recommendations it considers appropriate to the relevant council body.

### 3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The SRR details the current prioritised risks which may affect the achievement of the council's Corporate Plan purpose, including in relation to its work with other organisations across the city. It is reviewed and agreed by ELT quarterly after DMT reviews which include discussions of their individual Directorate Risk Lists which influence Directorate service activity through delivery of Directorate Plans.
- 3.2 Appendix 2 is intended to provide information on the council's risk management process relative to Strategic Risks (SRs) and is attached as a separate appendix in order to provide background reference and enable Members to focus on the changes to the SRR and any changes to the risk management process by the ELT.
- 3.3 Summary of changes to the SRR as a result of the ELT review on 6 February 2019.









The SRR is a public document which is supported by data collected on CAMMS Risk, a module of CAMMS Strategy. A detailed report is provided at Appendix 2 but below is Table 1 showing the current 18 Strategic Risks (17 previous risks plus one new risk, SR35) in the highest Revised Risk order as agreed after DMT Risk Review sessions in January 2019.











Note that:











- (i) 16 of the existing SRs there were no changes to risk scores.
- (ii) for SR32 'Sub-standard health & safety measures lead to personal injury of staff or residents, financial losses and reputational damage' the risk scores were changed to reflect the active work that has been undertaken and the arrangements for ongoing work to meet new requirements.
- (iii) a new risk SR35 was added to the SRR by ELT: 'Unable to manage serious risks and opportunities resulting from the impact of Brexit on the local and regional society and economy'
- (iv) changes to risk titles relate to SR18 and SR20 are shown in italics in Table 1.









### Table 1 Strategic Risks



Risk Nos.	Risk Title	Initial Risk Score Likelihood (L) x Impact (I) & Direction of Travel (DOT)	Revised Risk Score Likelihood (L) x Impact (I) & DOT	Committee & Chair	Lead Member	Risk Owner
SR20	<i>Inability to integrate health and social care services at local level to the agreed timescales (was 'Inability to integrate health and social care systems at a local level and deliver timely and appropriate interventions')</i>	5 x 4 ◀▶  RED	4 x 4 ◀▶  RED	Health & Wellbeing Board – Cllr. Barford	Cllr. Moonan	Executive Director, Health & Adult Social Care
SR2	Council is not financially sustainable	5 x 4 ◀▶  RED	4 x 4 ◀▶  RED	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources
SR33	Not providing adequate housing and support for people with significant and complex needs	4 x 4 ◀▶  RED	3 x 4 ◀▶  AMBER	Health & Wellbeing Board – Cllr. Barford Housing & New Homes Committee – Cllr. Hill	Cllr. Moonan	Executive Director, Health & Adult Social Care
SR18	<i>Organisation is unable to deliver its functions in a modern and efficient way due to lack of appropriate technology (was 'Service outcomes are sub-optimal due to the lack of appropriate tools for the organisation to manage its functions')</i>	4 x 4 ◀▶  RED	3 x 4 ◀▶  AMBER	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources

Risk Nos.	Risk Title	Initial Risk Score Likelihood (L) x Impact (I) & Direction of Travel (DOT)	Revised Risk Score Likelihood (L) x Impact (I) & DOT	Committee & Chair	Lead Member	Risk Owner
SR10	Corporate Information Assets are inadequately controlled and vulnerable to cyber attack	4 x 4 ◀▶  RED	4 x 3 ◀▶  AMBER	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources
SR35	Unable to manage serious risks and opportunities resulting from the impact of Brexit on the local and regional society and economy	4 x 4 NEW  RED	4 x 3 NEW  AMBER	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Lead Officer, Strategy, Governance & Law
SR13	Not keeping Vulnerable Adults Safe from harm and abuse	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Health & Wellbeing Board – Cllr. Moonan	Cllr. Moonan	Executive Director, Health & Adult Social Care
SR21	Unable to manage housing pressures and deliver new housing supply	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Housing & New Homes Committee - Cllr. Hill	Cllr. Hill	Executive Director, Neighbourhoods, Communities & Housing
SR25	The lack of organisational capacity leads to sub-optimal service outcomes, financial losses, and reputational damage	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources

Risk Nos.	Risk Title	Initial Risk Score Likelihood (L) x Impact (I) & Direction of Travel (DOT)	Revised Risk Score Likelihood (L) x Impact (I) & DOT	Committee & Chair	Lead Member	Risk Owner
SR24	The impact of Welfare Reform increases need and demand for services	4 x 3 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources
SR23	Unable to develop an effective Investment Strategy for the Seafront	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Environment, Transport & Sustainability Committee – Cllr. Mitchell Tourism & Development & Culture Committee – Cllr. Robins	Cllr. Alan Robins	Executive Director, Economy, Environment & Culture
SR26	Not strengthening the council's relationship with citizens	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Neighbourhoods, Inclusion, Communities & Equalities Committee – Cllr. Daniel	Community Safety – Cllr. Marsh	Executive Director, Neighbourhoods, Communities & Housing
SR29	Ineffective contract management leads to sub-optimal service outcomes, financial losses, and reputational damage	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources
SR30	Not fulfilling the expectations of residents, businesses, government and the wider community that Brighton & Hove City Council will lead the city well and be stronger in an uncertain environment	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Chief Executive

Risk Nos.	Risk Title	Initial Risk Score Likelihood (L) x Impact (I) & Direction of Travel (DOT)	Revised Risk Score Likelihood (L) x Impact (I) & DOT	Committee & Chair	Lead Member	Risk Owner
SR32	Sub-standard health & safety measures lead to personal injury of staff or residents, financial losses and reputational damage	3 x 4 ▲  AMBER  Note previous risk score was 2 x 5	2 x 4 ▼  AMBER  Note previous risk score was 2 x 5	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources
SR31	Greater liability on the council's budget due to budgetary pressures on schools	3 x 4 ◄►  AMBER	2 x 3 ◄►  YELLOW	Children, Young People & Skills Committee - Cllr. Hamilton	Cllr. Hamilton	Executive Director, Families, Children & Learning
SR34	Ambitions to improve offer for staff which have been stated in Our People Promise may not be realised	3 x 4 ◄►  AMBER	2 x 3 ◄►  YELLOW	Policy, Resources & Growth Committee - Cllr. Yates	Cllr. Hamilton	Executive Director, Finance & Resources
SR15	Not keeping Children Safe from harm and abuse	3 x 3 ◄►  AMBER	2 x 3 ◄►  YELLOW	Children, Young People & Skills Committee – Cllr. Hamilton	Cllr. Hamilton	Executive Director, Families, Children & Learning

#### 4. FINANCIAL & OTHER IMPLICATIONS

##### Financial Implications

- 4.1 For each Strategic Risk there is detail of the actions already in place ('Existing Controls') or work to be done as part of business or project plans ('Risk Actions') to address the strategic risk. Potentially these may have significant financial implications for the authority either directly or indirectly. The associated financial

risks are considered during the Targeted Budget Management process and the development of the Medium Term Financial Strategy.

*Finance Officer Consulted: James Hengeveld*

*Date: 11/02/2019*

### **Legal Implications**

- 4.2 Members of this Committee are entitled to any information, data and other evidence which enables them to reach an informed view regarding to whether the council's Strategic Risks are being adequately managed. The Committee may make recommendations based on its conclusions.
- 4.3 The individual Strategic Risks which are focused on in this Report may potentially have legal implications. Where those implications are of a direct nature, they are noted in the Report or in the appendices to it.

*Lawyer Consulted:*

*Victoria Simpson*

*Date: 13/12/2019*

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Appendix 1: Strategic Risk Focus report: SR24, SR29, SR15 and SR31.
2. Appendix 2: Information on the council's risk management process relative to Strategic Risks (SRs) and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks.

### **Documents in Members' Rooms**

1. None.

### **Background Documents**

1. None.



# **Brighton & Hove City Council**

## Appendix 1

Strategic Risk Focus: SR24, SR29, SR15 and SR31

*Print Date: 27-Feb-2019*

### Initial Rating

LIKELIHOOD	IMPACT				
	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	0	0	0	0	0
Likely (4)	0	0	1	0	0
Possible (3)	0	0	1	2	0
Unlikely (2)	0	0	0	0	0
Almost Impossible (1)	0	0	0	0	0

### Revised Rating

LIKELIHOOD	IMPACT				
	Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
Almost Certain (5)	0	0	0	0	0
Likely (4)	0	0	0	0	0
Possible (3)	0	0	2	0	0
Unlikely (2)	0	0	2	0	0
Almost Impossible (1)	0	0	0	0	0

1 - 3
Low
Monitor periodically

4 - 7
Moderate
Monitor if the risk levels increase

8 - 14
Significant
Review and ensure effective controls

15 - 25
High
Immediate action required & need to escalate to the management level above



Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR24	<b>The impact of Welfare Reform increases need and demand for services</b>	Executive Director of Finance & Resources Welfare Reform Programme Manager Revenues & Benefits Manager	BHCC Strategic Risk	06/02/19	Threat	Treat	Amber L4 x I3	Amber L3 x I3		Revised: Uncertain

Causes

Introduction of Universal Credit during 2015/16 with extended roll out during 2016 and thereafter. Implications for staffing levels within services; rent collection; council tax collection, and pressures on social services and homeless services.

In Brighton and Hove, Housing Benefit claimants are gradually moving across to Universal Credit (UC), where there is a new claim or a change of circumstances. A migration of remaining cases will occur between 2019 and 2023.

Potential Consequence(s)

Increased service pressures on housing and social services.

Decreased rent and Council Tax collection.

Existing Controls

#### First Line of Defence: Management Actions

1. Our Welfare Rights and Welfare Reform teams monitor welfare changes and coordinate a corporate response to them
2. Ongoing meetings have been held with Department for Works Pensions (DWP) about change to Universal Credit (UC)
3. We commissioned budgeting and digital support from the third sector using DWP funding to support UC claimants. The DWP has now announced that funding for this will be withdrawn from 1 April 2019, and in its place a new contract will be introduced directly between DWP and CAB, which will not directly involve Local Authorities.
3. Information is provided to inform housing and children's services colleagues re changes to benefit cap policy and impact on funding of temporary accommodation. Analysis of impact of the changes to the benefit cap in 2016 has been done and strategy to minimise the impact of these changes has been in place from November 2016.
4. Council Tax Reduction (CTR) policy changes are out for public consultation and a decision will be made in December's Full Council meeting. The proposed change is intended to partially mitigate impact of UC changes on local CTR administration.
5. Provide caseworking support directly to customers most significantly affected by the changes (specifically the benefit cap).
6. Regular links maintained with advice and voluntary sector so impacts on citizens can be judged.
7. Modelling of specific policies being undertaken to assess the impact on customers in terms of numbers and change.
8. Feeding into other relevant council work streams, eg library service leading digital inclusion including for Universal Credit claimants, actions around the City Employment Support Plan and the communities prospectus from 2017.
9. Detailed risk register for Welfare Reform reviewed quarterly and logged with Senior Responsible Officer.

#### Second Line of Defence Corporate Oversight:

Corporate oversight at cross service Universal Credit programme board and accountable to Corporate Modernisation Development Board.

Regular reports to Leadership Board.

Executive Leadership Team (ELT) Full Council, PR&G, and the NICE Committee are all focused on this risk.

#### Third Line of Defence Independent Assurance:

Internal Audit - Audit has taken place over the end of 2017/beginning of 2018. Final report issued Feb 2018 Substantial Assurance. 2018/19 . Welfare Reform (Substantial Assurance).

Reason for Uncertainty of Effectiveness of Controls: It is not possible to project accurately the number of families who may require extra assistance from the council, either in terms of housing need or increased demand for other services. Previous experience suggests that some claimants find a way to close income gaps, but the position is not fully understood.

<b>Risk Action</b>	<b>Responsible Officer</b>	<b>Progress %</b>	<b>Due Date</b>	<b>Start Date</b>	<b>End Date</b>
Benefit cap - casework support programme to support people affected by the benefit cap	Revenues & Benefits Manager	70	31/03/19	01/06/15	31/03/19

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p><b>Comments:</b> • Team helps people who have been Benefit capped to find work/access training and support / claim relevant benefits and assistance in order to come off the Benefit Cap</p> <ul style="list-style-type: none"> <li>• Work is ongoing and likely to continue beyond the risk end date of 31/03/19. There are greater challenges in identifying Universal Credit claimants who have been Benefit Capped. We do not have access to lists of those who have been capped.</li> <li>• JobcentrePlus work coach embedded within Bencap team - joint working to resolve cases</li> <li>• Discretionary Payment scheme supports people to pay their rent in the short term, while we support them to come off the benefit cap or find work</li> <li>• Team is building links with local Jobcentres so that Universal Credit cases can be referred over to the council for support, if they are benefit capped.</li> </ul> <p>Discretionary Housing Payment funding for 18/19 was set by government at £836,667. This is a reduction from £1,132,756 in 17/18. There is additional HRA contingency funding to top up the fund by an additional £75,000.</p> <p>Funding for the team has historically been confirmed only on a year-to-year basis, although part of the function is now mainstreamed into the Revenues and Benefits structure. To continue the function as it is now, we will need to secure additional funding as part of the budget setting process. Head of Service and Revs and Bens managers are starting to look at proposals for the future of welfare reform funding.</p> <p>Work will continue throughout 19-20, so the risk end date has been extended to 31/03/20. The percentage has been reduced slightly because we have less control in the LA over our caseload than we used to. The DWP does not provide us with lists of people on UC who have been benefit capped, so it is harder for us to identify them.</p>					
Keep relevant staff and stakeholders up to date with information as it becomes available	Revenues & Benefits Manager	75	31/03/20	01/06/15	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p><b>Comments:</b> Programme governance in place (Senior level, operational level, City Wide Partners level) and meetings are to be rebooted in early2019, alongside an overall review of our welfare strategy for the next four years. Members briefed as appropriate through various channels.</p> <ul style="list-style-type: none"> <li>• Strong links set up between services via <ul style="list-style-type: none"> <li>o Welfare Reform Front Line Workers forum</li> <li>o Welfare Reform City Wide group (cross-service and partners, including members of the CVS, Registered Social Landlords and representation from the Private Rented Sector)</li> <li>o Welfare Reform Welfare Reform strategy group (cross-service)</li> <li>o DWP partnership meetings</li> </ul> </li> <li>• Information and issues shared by and between many sources, including; <ul style="list-style-type: none"> <li>o Welfare rights team and Bencap / welfare reform team</li> <li>o Money Advice and CAB, operating a support contract for digital access and budgeting advice</li> <li>o Digital Brighton and Hove</li> <li>o DWP partnership manager, Jobcentre managers and work coaches</li> <li>o Council services, including Family Information Service, Housing Options, Housing Income Management, Trailblazer, Adult Social Care, Housing Benefits</li> </ul> </li> <li>• DWP hosted a Complex Needs Stakeholders forum, attended by council services and advice / support workers from the Community and Voluntary Sector, alongside DWP colleagues. Ongoing, the local Jobcentre plans to refine the format so that it can deliver a more focussed response to specific issues.</li> <li>• A new DWP 3rd party escalation route was introduced in June 2018. This is intended partly for complex case resolution, but also to highlight potential policy issues for consideration by the central Universal Credit project in the DWP. Advice agencies and Local Authority colleagues are encouraged to put example cases through this escalation route, via our DWP partnership manager.</li> <li>• An update report on Universal Credit went to the NICE committee on 2 July 2018, highlighting current strategic risks and the corporate / partnership response</li> </ul> <p>Risk end date extended, because the government timetable for welfare reform (specifically UC) has extended. Work will continue throughout2019-20 and beyond.</p>					
Prepare for Universal Credit (UC)	Revenues & Benefits Manager	70	31/03/20	04/05/15	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p><b>Comments:</b> • Universal Credit is now rolled out in Brighton and Hove for new claims for working age people. Existing Housing Benefit claims are gradually being ended, as and when a person makes a new claim for UC, or has a change of circumstances. As at November 2018, around 8500 claimants are on UC across Brighton and Hove, around 1800 of whom have had their Housing Benefit stopped, most of whom now have housing costs paid as part of their UC claim.</p> <ul style="list-style-type: none"> <li>• The changeover to UC will continue gradually, with more cases moving over from Housing Benefit naturally over the coming months and possibly longer</li> <li>• The government intends to migrate remaining cases in bulk, between 2019 and 2023. The exact timetable for this has not been published and we will likely not know until at least April 2019.</li> <li>• Migration legislation is still pending in Parliament. However, the government has signalled that only 10,000 cases will be “Managed migrated” in 2019. It’s unlikely that Brighton and Hove will be affected.</li> <li>• Ultimately, some cases are to remain on Housing Benefit, such as pension age, temporary accommodation and supported accommodation. A further migration may happen at a later date after 2023 but we do not have information about that.</li> <li>• The UC project in Brighton and Hove maintains a monitoring brief, and links up services strategically inside the council, in the Community and Voluntary Sector and with other interested parties in the city (for example landlords in the private sector and Registered Social Housing). We also link up officers on the front line, for example via the Front Line Workers Forum</li> <li>• We have advanced DWP joint working embedded in our Benefit Cap / Welfare Reform team, and as an ongoing outcome of the Housing Trailblazer project. And at a strategic level we co-ordinate with our DWP partnership manager, alongside the CVS to monitor our response to UC, and to identify issues of local or national significance.</li> <li>• We are part of a Complex Needs Stakeholder forum hosted by the DWP to identify ways of assisting people who have difficulty accessing UC.</li> </ul> <p>Risk end date extended to 31/03/20, because the government timetable has slipped and managed migration of UC will not happen in 2019, possibly not in 2020.</p>					
Provide policy options and author reports to give members options on policy issues e.g. Council Tax Reduction	Revenues & Benefits Manager	70	31/03/20	01/04/15	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p><b>Comments:</b></p> <ul style="list-style-type: none"> <li>• Full council approved a change to the Council Tax Reduction scheme with effect 1 April 2019, whereby small changes of entitlement will not give rise to a change in CTR. This is designed to prevent new amended Council Tax bills going out every month, due to Universal Credit fluctuations.</li> <li>• NICE committee reviewed the impact of Universal Credit in July 2018</li> <li>• We are currently considering our ongoing Welfare strategy and will present options in due course</li> </ul> <p>We are starting to profile other options to simplify Council Tax Reduction further.</p>					

Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR29	<b>Ineffective contract management leads to sub-optimal service outcomes, financial losses, and reputational damage.</b>	Executive Director of Finance & Resources Procurement Strategy Manager	BHCC Strategic Risk, Contractual / Competitive	06/02/19	Threat	Treat	Amber L3 x I4	Amber L3 x I3		Revised: Adequate

Causes

Link to Corporate Plan: Outcome ' A modern council: Providing open civic leadership and effective public services'

- Historical sub-optimal contract specification due to:
  - Initial failure to identify options for delivery, including reverting to 'what we've always done.'
  - Lack of willingness to test existing suppliers against the market.
  - Significant reduction in resources in 'back office' functions and services reducing capability to effectively manage.
  - Lack of commercial skills and contract management skills / expertise throughout the authority combined with treating Contract Management as an 'add-on' to normal duties.
  - Failure by management to recognise the importance of an effective contract Management team.
  - Lack of willingness to hold 'difficult conversations' with suppliers.
  - Low levels of senior engagement with suppliers.
  - Poor understanding of markets and delivery models.
  - Lack of corporate oversight of contracting and commissioning.
  - Ongoing resource pressures in Procurement means this risk still exists. As demand increases, the reducing ability of the Procurement and Contract Performance to plan rather than react may mean that contracts 'fall through the net'.

Potential Consequence(s)

• Investigations in to current contracts (44 completed, 82 in progress) have identified up to 80% are potentially delivering poor Value for Money (VfM), inefficiencies, inconsistent levels of management and failure to . Major concerns remain in the following areas:

- Health & Adult Social Care: this has been the main focus of the Contract Performance Team in the last financial year.

- City Clean / City Services (incorporating Highways, Transport, Environment etc): a large number of contracts have been identified as lacking in effective Contract Management.

- Housing Maintenance: as the contract is winding down it is anticipated that the service will attract less investment from the existing provider. This will need to be managed to ensure we maintain value for money. Additional investigations are necessary in to other contracts, such as, Lift Maintenance, Gas maintenance and other services

• Legal challenge from suppliers / service users.

• Reputational damage for the council - both the administration and officers.

• Poor outcomes or failure of services and associated impact on service users.

• Diversion of scarce resources to resolve issues, currently resolution is only being performed by a small number of Contract Managers and through intervention of the Contract Performance Team.

#### Existing Controls

##### First Line of Defence: Management Controls

- Utilise procurement function to ensure that appropriate and legally robust commercial delivery options are chosen and robust contracts are in place.
- Robust contract Key Performance Indicators (KPIs) in place so that contract performance and risks are understood.

##### Second Line of Defence: Corporate Oversight

- Well-resourced corporate contract performance management oversight function to train and challenge contract managers and commissioners.
- Progress reviewed by Corporate Modernisation Delivery Board (CMDDB), Members Oversight Group and Members Procurement Advisory Board (PAB)
- Audit & Standards Committee Strategic Risk Focus Item reviewed this risk in March 2018 and in March 2019

##### Third Line of Defence - Independent Assurance

• Internal audits during 2017/18 were Strategic Construction Contract (Substantial Assurance), Contract Waivers (Substantial Assurance) and Lift Maintenance Contract (Substantial Assurance).

2016/17 audits were Waivers (Limited Assurance), Housing Electrical Works (Limited Assurance).



2015/16 audits were Corporate Procurement (Reasonable Assurance), Gas Servicing (Reasonable Assurance), Housing Repairs & Maintenance (No Assurance), Financial Appraisals (Limited Assurance).



Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Full Council approval for £1.2m investment in Contract Management resources approved on 23 Feb 2017 at Budget Council. This has provided 9.5 fte resources including legal support to ensure the set up of a Contract Management 'Centre of Expertise'.</p> <p><b>Comments:</b> - Recruited extra staff.            - Created a pipeline for all material contracts that allows us to plan procurement activity at the right times to take the cashable savings.            - Worked with Orbis colleagues to identify risks around weak markets.            - Risk-rated all material contracts to identify where there are problems, including with contract management.            - Worked through material Adult Social Care contracts.            Ongoing activity now includes:            - Using a pipeline and RAG ratings to deliver:            - Regular management information to Procurement Advisory Board (PAB) and ELT on how contracts are performing. (start date Sept2019)            - Specific interventions where extra support is required (e.g. CityClean, care homes, Mears).            - Training for contract managers who need support. To date training has been provided to Housing, IT&amp;D, Leisure Services and Health and Adult Social Care. This remains an ongoing action            - Create a network of contract managers to ensure that best practice and even an element of competitiveness to do well emerges. Orbis have created an online contract management community, all relevant B&amp;HCC staff have been invited to join.            - Split further our savings plans between cashable and cost containment – social care markets in particular are very fragile and costs are rising, so we are doing well to stand still.</p>	Executive Director of Finance & Resources	65	29/03/19	07/04/17	29/03/19

41

## Risk Details

Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR15	<b>Not keeping children safe from harm and abuse</b>	Executive Director Families, Children & Learning Service Manager – Directorate Policy and Business Support	BHCC Strategic Risk, Legislative	06/02/19	Threat	Treat	 Amber L3 x I3	 Yellow L2 x I3		Revised: Uncertain

### Causes

Link to Corporate Plan: Priority Children & Young People: Safeguard children and young people and reduce the rate of re-referral

Keeping vulnerable children safe from harm and abuse is a legal responsibility of the Council. Legislation requires all local authorities to act in accordance with national guidance (Working Together) to ensure robust safeguarding practice. This includes the responsibility to ensure an effective Local Safeguarding Children Board (LSCB) which oversees work locally and in partnership with Police, Health and social care providers. The numbers of children in care and those on Child Protection Plans are higher than in similar authorities. The number of children and young people (CYP) who are vulnerable to exploitation is also of concern.

### Potential Consequence(s)

The complexity of circumstances for many children presents a constant state of risk which demands informed and reflective professional judgement, and often urgent and decisive action, by all agencies using agreed thresholds and procedures. Such complexity inevitably presents a high degree of risk. Children subject to abuse, exploitation and/or neglect are unlikely to achieve and maintain a satisfactory level of health or development, or their health and development will be significantly impaired. In some circumstances, abuse and neglect may lead to a child's death.

### Existing Controls

First Line of Defence: Management Controls

1. Robust quality assurance processes embedded and reported quarterly to Directorate Performance Board and onto the Corporate Safeguarding Board twice a year
2. Single access point ('Front Door for Families') for support and safeguarding issues relating to children operated from May2017. The service is managed by one manager with responsibility for and oversight of both the Multi-Agency Safeguarding Hub (MASH) which launched from Sept 14 and early help

referrals to provide robust risk assessments and information sharing between partner agencies.

3. LSCB Work Plan established with strong leadership by the Independent Chair with aligned LSCB sub-group work plans

4. Serious Case, Local Management and Child Death Reviews identify learning and action for improvement

5. The directorate has full engagement with the LSCB

6. There is a strong focus on working with CYP at risk of being missing from care, home and education

7. The local Troubled Families programme targets support to the most vulnerable families

8. Continuous professional development (CPD) and training opportunities offered by the LSCB and good multi agency take up of training; and in house CPD offer

9. In line with the Government's Prevent Strategy, work with the Police, Statutory Partners, Third Sector Organisations and Communities to reduce radicalisation

10. Threshold document, agreed by all agencies and reviewed regularly

11. Relationship based model of practice operating from Oct 2015 for social work teams, with Pods in place to provide stability to service users

13. Performance management across children's social work enables a more informed view on current activity and planning for future service changes

14. Adolescent Vulnerability Risk Meetings held fortnightly to consider individual cases where it is considered there is a higher risk of exploitation

#### Second Line of Defence: Corporate Oversight

1. Early Help system redesigned in 2017 and new structure in place

2. Quality Assurance within the city and also across key agencies monitored by the LSCB sub group

3. Corporate Parenting Board meets quarterly with opportunity for cross-party members, including Heads of Service, Assistant Directors and the ED FCL, to receive information on children in care

4. Reports delivered to LSCB following robust auditing of multi-agency case files and safeguarding practice

5. Annual Practice Week now developed where senior leaders meet with front line staff to discuss individual cases, picking up best practice examples of positive impact plus discussing any barriers faced by both workers and families

6. Council appointed VVE co-ordinator who reports regularly to the Community Partnership.

#### Third Line of Defence: Independent Assurance

1. Ofsted inspected our social work arrangements in July 2018 and an action plan has developed to take forward recommendations, recently completed and final sign off agreed at CYPs committee in September 2018. The overall judgement was 'Good'.

2. The audit of Front Door for Families in August 2018 gave us Reasonable Assurance. Our work on Care Leavers in December 2018 gave us Partial Assurance. The audits of Nursery Services and Supported Accommodation (which reviewed the Council's arrangements to provide accommodation for young people) both gave Reasonable assurance.

7. Corporate Safeguarding Board meets six monthly.

Reason for Uncertainty in Effectiveness of Controls: Despite efforts there are no guarantees that there will not be incidents.

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
Continue to provide the family coaching offer from the Integrated Team Around the Family & Young People (ITFYP) to the most vulnerable families.	SFSC Policy and Relationship Manager	90	31/03/20	01/04/19	31/03/20
<b>Comments:</b> Continue to provide the family coaching offer from the ITFYP to the most vulnerable families.					
High quality social work is provided to ensure that Children & Young People (CYP) are effectively safeguarded	Assistant Director - Children's Safeguarding and Care	75	31/03/19	01/04/16	31/03/19
<b>Comments:</b> Progress to date: The Ofsted Inspection of Local Authority Children's Services (ILACS) in July 2018 provided an overall judgement of Good social work provision being provided for children and families. Quality assurance activity in Q2 18/19 indicates that in 76% of audited cases, outcomes for the child were good and sustainable with only 2% of cases showing limited evidence of good outcomes being achieved. Relationship based practice continues to be embedded within the service with the introduction of Partners in Change workers (adult mental health & substance misuse) to work alongside the Pods in November 2018. Consultation has just begun on the development of Partners in Change Hub to further support the delivery of social work across the City. The social work workforce is now fully staffed, and we have not had any agency social workers in post since September 2017. This has provided continuity and consistency for children and their families and further supported relationship based social work.					
The LSCB will continue to monitor safeguarding delivery across all agencies in the city to ensure effective safeguarding is in place.	Executive Director Families, Children & Learning	75	31/03/20	01/04/19	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p><b>Comments:</b> The LSCB currently meets quarterly, and the Business Plan is monitored and updated, overseen by LSCB Business Manager and progress currently monitored by an Independent Chair, and this is currently on track.</p> <p>An annual programme of multi-agency thematic auditing to test the effectiveness of local safeguarding arrangements is in place and on track, with learning from audit activity fed into the LSCB learning and development offer and cascaded across the safeguarding partnership. A multi-agency audit examining the effectiveness of responses to children (and their families) where concerns have been reported in respect of domestic abuse was undertaken in Q3 18.19. A multi-agency audit looking at recognition and responses to children living with mental health issues is being completed during 2019, with feedback going to the LSCB Monitoring &amp; Evaluation Subcommittee initially before being presented to the LSCB) (Quality Assurance Programme Manager, LSCB).</p>					

Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR31	<b>Greater liability on the council's budget due to budgetary pressures on schools</b>	Executive Director Families, Children & Learning Assistant Director Education & Skills Service Manager – Directorate Policy and Business Support	BHCC Strategic Risk	06/02/19	Threat	Treat	Amber L3 x I4	Yellow L2 x I3		Revised: Adequate

#### Causes

Link to Corporate Plan: Outcome ' A modern council: Providing open civic leadership and effective public services'

Schools budgets carry forwards at the end of 2017/18 were £2.003m, an increase of £0.710m from £1.293m carried forward into 2017/18. It is anticipated that licensed deficits for schools will be in the region of £1.4m (70% of schools budgets).

#### Potential Consequence(s)

- 1.If the level of licensed deficits in the current year is still required by schools which already have Licensed Deficit agreements continuing into the next year then the council may not be able to license any new deficits under the current scheme
- 2 Inequality between schools and impact on relationship between the majority of schools and the council
- 3 Increased council support to assist schools to improve procurement options, work collaboratively and manage workforce better
- 4 If a school is unable to provide sustainable strategies in order to balance their budgets, Finance will have to apply tougher sanctions e.g. removal of a school's delegated financial powers
- 5 If educational performance requires a school which is already in deficit to transition to academy status, the DfE policy is that the council will fund the deficit from its core budget and recover the monies from the academy trust and the council will not receive monies until the DfE is satisfied that the amount is a true reflection of what is owed and both parties agree
- 6 Schools may decide not to 'buy-back' services from existing council support services, reducing workforce

#### Existing Controls

#### First line of Defence - Management Controls

1. Annual meeting between Executive Director FCL and Executive Director F&R where budgets are scrutinised and challenged by the Directors to minimise the level of deficits required and ensure best use of public money. The scheme for financing schools, currently allows 40% of the carry forward balance to be used for licensed deficit agreements
2. School budget plans for 2018/19 were signed off, with the exception of one school, by the ED F&R and ED FCL in July 2018
3. Schools' finance team monitor the budget position for each school
4. Schools' finance team hold regular finance meetings with schools in licensed deficit, with a process introduced in spring 2017 to address any issues of financial concern. The School's finance team support for schools continues
5. Council's budget 'Targeted Budget Management' (TBM) process includes school budget reports, reported quarterly.

#### Second Line of Defence - Corporate Oversight

1. For schools in deficit, a Strategy Board has been established with the prime focus upon the school's management of its budget.
2. The position for schools will be reported to Families, Children and Learning Directorate Management Team (DMT) as part of the TBM reporting process.
3. Under the Scheme for Financing Schools, the Local Authority (LA) can issue a Notice of Concern where the school has failed to comply with any provisions of the scheme, or where actions need to be taken to safeguard the financial position of the local authority or the school
4. Dedicated Schools Grant (DSG) is reported to Policy, Resources & Growth Committee (PR&G)
5. Executive Leadership Team (ELT) are advised on issues related to Schools Balances and the Department for Education policy on deficit balance, e.g. report 21/6/17 which included a recommendation to suspend the governing body's right to a delegated budget for reasons of financial mismanagement after giving the governing body notice of the suspension and if appropriate corrective action is not taken
6. Regular discussion and reporting school budget position via annual outturn report each June at Policy, Resources & Growth Committee (PRG).

#### Third Line of Defence - Independent Assurance

Internal Audit has a year by year plan for audits at schools prioritised by those where financial risks are higher, a programme is in place to ensure that all schools in the city are on the audit programme over the next few years.

Internal Audit has a year by year plan for audits at schools prioritised by those where financial risks are higher, a programme is in place to ensure that all schools in the city are on the audit programme over the next few years. Where limited assurance has been given more targeted support is given to that school to help implement recommendations.

Internal Audit – In 18/19 seven schools reviews of control environment in school and provide financial scrutiny were carried out. The Assurance options given were Partial (1), Reasonable (5) and one remains in progress.

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
Continue to work closely with school to maintain effective budget management and limit the potential cost to the LA's budget	Assistant Director Education & Skills	80	31/07/19	26/06/17	31/07/19
<b>Comments:</b> The pattern of spending is monitored routinely via monthly TBM reports to FCL Directorate Management Team to show overall position on school balances.					
Work with schools re. number of spare school places available in the city and the impact these have on school budgets.	Assistant Director Education & Skills	60	31/12/19	26/06/17	31/12/19
<b>Comments:</b> Admissions arrangements for 19/20 have been agreed by Children, Young People and Skills committee in January 2019.. There are continuing discussions with primary headteachers about addressing the continued surplus supply of places. A school organisation plan will be reported to the Children, Young People and Skills committee in January 2019.					



Appendix 2: Information on the council’s risk management process relative to Strategic Risks (SRs); and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks.

1.0 Across the council there are a number of risk registers which prioritise risks consistently by assigning risk scores 1-5 to the likelihood (denoted by ‘L’) of the risk occurring, and the potential impact (denoted by ‘I’) if it should occur. These L and I scores are multiplied; the higher the result of L x I, the greater the risk e.g. L4xI4 which denotes a Likelihood score of 4 (Likely) x Impact score of 4 (Major).

		IMPACT				
		Insignificant (1)	Minor (2)	Moderate (3)	Major (4)	Catastrophic (5)
LIKELIHOOD	Almost Certain (5)	0	0	0	0	0
	Likely (4)	0	0	0	1	0
	Possible (3)	0	0	0	1	1
	Unlikely (2)	0	0	0	0	1
	Almost Impossible (1)	0	0	0	0	0

2.0 A colour coded system, similar to the traffic light system, is used to distinguish risks that require intervention. Red risks are the highest, followed by Amber risks and then Yellow, and then Green.

3.0 The Strategic Risk Register (SRR) records Red and Amber risks. Each strategic risk has a unique identifying number and is prefixed by ‘SR’ representing that it is a strategic risk.

4.0 Each risk is scored twice with an Initial (‘Now’) level of risk and a Revised (Future) risk score:

- a) Initial Risk Score reflects the Existing Controls under the ‘Three Lines of Defence’ methodology which is good practice and helps to establish the First Line – Management Controls; Second Line – Corporate Oversight; and Third Line – Independent Assurance and the currency and value of each control in managing the risk. Therefore the Initial Risk Score represents the ‘as is’/ ‘now’ position for the risk, taking account of existing controls.
- b) The Revised Risk Score focuses on the application of time and expenditure to future reduce the likelihood or impact of each risk and is based on the assumption that any future Risk Actions, as detailed in risk registers, will have been delivered to timescale and will have the desired impact.
- c) Where initial and revised scores are the same – the Risk Owners were asked to consider the 4Ts of Risk Treatments (Treat/Tolerate/Terminate/Transfer) and change the scoring or remove all future risk actions/move them to existing control. This is on the understanding that the risk action should either reduce the likelihood

and/or reduce the impact – if none of this is true, there will not be any reason to undertake the action.

## **Suggested questions for Members to ask Risk Owners and officers on Strategic Risks**

The Audit & Standards Committee has a role to monitor and form an opinion on the effectiveness of risk management and internal control. As part of discharging this role the Committee focuses on at least two Strategic Risks at each of their meetings.

The Committee invite the Risk Owners of Strategic Risks to attend Committee and answer their questions based on a CAMMS Risk report appended to each report. In the CAMMS Risk report, the Risk Owner:

1. Describes the risks, the cause and potential consequences, the officers involved and provides an **Initial Risk Score** which takes account of the existing controls in place to mitigate the risk.
2. Existing Controls are set out using the Three Lines of Defence model:
  - 1<sup>st</sup> line: management controls
  - 2<sup>nd</sup> line: corporate oversight
  - 3<sup>rd</sup> line: independent assurance

in order that Members can identify where the assurance comes from, and how frequently it is reviewed and in the case of the 3<sup>rd</sup> line if audits or inspections have happened, when did it happen, what the results were. Risk Owners ensure that existing controls continue to operate effectively.

3. (Future) Risk Actions then are detailed and allocated to individuals with percentage achieved against target dates, with commentary on the current position. This provides the **Revised Risk Score** which is based on the assumption that all the risks actions have been successfully delivered.

The Risk Owners of Strategic Risks will always be an Executive Leadership Team (ELT) officer, and they may bring other officers who are more closely connected to the mitigating work.

Three questions are suggested to be explored by the A&S Committee:

1. Is the Risk Description appropriately defined? Does the Committee understand the cause and potential consequences?
2. Is the Committee reassured that each (future) Risk Action either reduces the impact or likelihood of the risk? Are members reassured that risk actions are actually being delivered?
3. In respect of the Revised Risk Score does the Committee feel comfortable with Risk Owner's assessment? This represents the risk level that the organisation is prepared to accept.

<b>Subject:</b>	<b>Annual Surveillance Report 2018</b>		
<b>Date of Meeting:</b>	<b>12 March 2019</b>		
<b>Report of:</b>	<b>Executive Director for Finance and Resources</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Jo Player</b>	<b>Tel: 29-2488</b>
	<b>Email:</b>	<b>Jo.player@brighton-hove.gcsx.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The purpose of this report is appraise Committee of the activities that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Committee in January 2018.
- 1.2 The report also informs Committee of the outcome of the recent audit of the Council's surveillance activity by the Investigatory Powers Commissioner's Office in November 2018.
- 1.3 The report also introduces a revised Policy and Guidance document that reflects the findings of the Surveillance Commissioner during her audit in November 2018

**2. RECOMMENDATIONS:**

- 2.1 That the continued use of covert surveillance be approved as an enforcement tool to prevent and detect crime and disorder investigated by its officers, providing the activity is in line with the Council's Policy and Guidance and the necessity and proportionality rules are stringently applied.
- 2.2 That the surveillance activity undertaken by the authority since the report to Committee in January 2018 as set out in paragraph 3.3 is noted.
- 2.3 That the continued use of the amended Policy and Guidance document as set out in Appendix 1 be approved.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert surveillance techniques by Public authorities, including local authorities. RIPA was enacted as part of a suite of legislation flowing from the Human Rights Act 1997. RIPA requires that when public authorities need to use covert techniques to obtain information about someone, they do it in a way that is necessary and compatible with human rights.

- 3.2 RIPA regulates the interception of communications, directed and intrusive surveillance and the use of covert human intelligence sources (informants). Local authorities may only carry out directed surveillance, access certain communications data and use informants.
- 3.3 The Council has carried out no surveillance activity since the last report to Committee in January 2018.
- 3.4 The Protection of Freedoms Act was enacted in November 2012. Since then, approval must be sought from a Magistrate when local authorities wish to conduct surveillance activity, access communications data and use informants. This is in addition to the authorisation by an Authorising Officer who meets the criteria regarding their position within the authority.
- 3.5 In addition to seeking the approval of a Magistrate, all applications must meet the Serious Offence test. This stipulates that any directed surveillance is restricted to the investigation of offences that carry a custodial sentence of six months or more. The only offence where this will not apply is in regard to the investigation of underage sales of tobacco or alcohol.
- 3.6 In November 2018 the Investigatory Powers Commissioner's Office (previously the Office of the Surveillance Commissioner) audited the authority's use of RIPA in the last three years since the previous audit in 2015. Recommendations made in 2015 to revise the Policy document had been carried out and training for new authorising officers had been undertaken.
- 3.7 The inspector recommended that the Policy and Guidance document was further updated, to reflect the new Codes of Practice in relation to social media and that refresher training is given to all authorising officers. This was agreed as appropriate by council officers and is in the process of being arranged.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The only alternative is to curtail the use of RIPA but this is not considered an appropriate step.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 There has been no consultation in the compilation of this report as it is a requirement of the Code of Practice pursuant to section 71 of RIPA that elected members review the authority's use of RIPA and set the policy once a year.

#### **6. CONCLUSION**

- 6.1 It is essential that officers are able to use the RIPA powers where necessary and within the threshold set out in the Protection of Freedoms Act 2012, but only after excluding all other methods of enforcement. An authorisation will only be given by the relevant 'Authorising Officer' following vetting by the 'Gatekeeper' therefore it is unlikely that the powers will be abused. There is now the additional safeguard of judicial sign off.

6.2 The implementation of the Annual review has made the whole process transparent and demonstrates to the public that the correct procedures are followed.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

7.1 There are no financial implications arising from this report. Any covert surveillance undertaken needs to be met from within current budget resources.

*Finance Officer Consulted: Michael Bentley*

*Date: 30/01/19*

### Legal Implications:

7.2 The statutory law is clearly set out above along with the restrictions around it. Breach of the legislation would result in enforcement action against the local authority and the individuals involved. There are no other legal implications.

*Lawyer Consulted: Simon Court  
2019*

*Date: 31<sup>st</sup> January*

### Equalities Implications:

7.3 The proper and consistent application of the RIPA powers should ensure that a person's basic human rights are not interfered with, without justification. Each application will be assessed by the gatekeeper for necessity and proportionality prior to the authorisation by a restricted number of authorising officers. The application will also be signed off by a Magistrate. This process should identify any inconsistencies or disproportionate targeting of minority groups and enable action to be taken to remedy any perceived inequality. However an equality Impact assessment is being written.

### Sustainability Implications:

7.4 There are no sustainability implications

### Any Other Significant Implications:

7.5

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. Policy and Guidance Document version November 2018

### **Documents in Members' Rooms**

- 1.

### **Background Documents**

1. None

Appendix 1

#### **Crime & Disorder Implications:**

- 1.1 If used appropriately, the activities described in this report should enhance our capacity to tackle crime and disorder

#### **Risk and Opportunity Management Implications:**

- 1.2 \_None

#### **Public Health Implications:**

- 1.3 None

#### **Corporate / Citywide Implications:**

- 1.4 Proper application of the powers will help to achieve fair enforcement of the law and help to protect the environment and public from rogue trading and illegal activity.

# **Brighton & Hove City Council**

Corporate Policy & Procedures Document

On

The Regulation of Investigatory Powers Act 2000

(RIPA)

Use of Directed Surveillance  
Use of Covert Human Intelligence Sources  
Accessing Communications Data

**Jo Player**  
**Head of Safer Communities**  
**Telephone: 01273 292488**  
**Fax: 01273 292524**  
**E-mail: [jo.player@brighton-hove.gcsx.gov.uk](mailto:jo.player@brighton-hove.gcsx.gov.uk)**

**Version: January 2019**

## **Contents Page**

**Introduction**

**Corporate Policy Statement**

**Senior Responsible Officer**

**Authorising Officers' Responsibilities**

**General Information**

**What RIPA does and does not do**

**Types of Surveillance**

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

**Covert Surveillance of Social Networking Sites**

**Juvenile Sources and Vulnerable Individuals**

**Accessing Communications Data**

**Authorisation Procedures**

**Grounds for Authorisation**

**Serious Crime and Non RIPA Surveillance**

**Confidential Information**

**Duration**

**Other Agencies**

**Records**

**Consequences of Non Compliance**

**Oversight**

**Appendix 1 List of Authorising Officers**

**Appendix 2 Flow chart outlining process**

**Appendix 3 List of Useful Websites**

**Appendix 4 Guidance for Authorising Officers**

**Appendix 5 Guidance for Applicants**



The Regulation of Regulatory Powers Act 2000 refers to 'Designated Officers'. For ease of understanding and application this document refers to 'Authorising Officers'.

## Introduction

This document is based on the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) and the Home Office's Code of Practices for Directed Surveillance and Covert Human Intelligence Sources (CHIS) and Accessing Communications data. It takes into account the oversight provisions contained in the revised Code of Practice for Covert Surveillance and the revised Code of Practice that deals with Access to communications data that came into force on 6<sup>th</sup> April 2010. Officers should also bear in mind Procedures and Guidance issued by the Office of the Surveillance Commissioner in December 2014, and guidance issued in the revised code of practice in August 2018, when applying for, and authorising applications. This policy and procedures document sets out the means of compliance with, and use of, the Act by The Council. It is based upon the requirements of the Act and the Home Office's Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources, together with the Revised Draft Code of Practice on Accessing Communications Data

The authoritative position on RIPA is the Act itself and any Officer who is unsure about any aspect of this document should contact the Head of Safer Communities or the Head of Law, for advice and assistance.

This document has been approved by elected members and is available from the Head of Safer Communities.

The Head of Safer Communities will maintain the Central Register of all authorisations, reviews, renewals, cancellations and rejections. It is the responsibility of the relevant Authorising Officer to ensure that relevant form is submitted, for inclusion on the register, within 1 week of its completion.

This document will be subject to an annual review by the Head of Safer Communities and will be approved by elected members.

In terms of monitoring e-mails and internet usage, it is important to recognise the interplay and overlap with the Council's Information Technology policies and guidance, the Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000, the Data Protection Act 1998 and its Code Of Practice and the General Data Protection Regulations. RIPA forms should only be used where **relevant** and they will only be **relevant** where the **criteria** listed are fully met.

## Policy Statement

The Council takes its statutory responsibilities seriously and will at all times act in accordance with the law and takes necessary and proportionate action in these types of matters. In that regard the Head of Safer Communities is duly authorised to keep this document up to date and amend, delete, add or substitute relevant provisions, as necessary. For administrative and operational effectiveness, the Head of safer Communities is authorised to add or substitute Authorising Officers with the agreement of the Senior Responsible Officer.

It is this Council's Policy that

- All covert surveillance exercises conducted by the Council should comply with the requirements of RIPA
- An Authorisation will only be valid if initialled by a gatekeeper and signed by an authorising officer.

- Authorising 'Access to Communications data' will be restricted to the Head of Safer Communities. The National Anti Fraud Network will become the Single Point of Contact for purposes of Access to Communications Data.

## **Senior Responsible Officer**

The revised Code of Practice recommends that each public authority appoints a Senior Responsible Officer. This officer will be responsible for the integrity of the process in place within the public authority to authorise directed surveillance; compliance with the relevant Acts and Codes of Practice; engagement with the Commissioners and Inspectors when they conduct their inspections and where necessary overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner.

The Senior Responsible Officer should be a member of the corporate management team and for the purposes of this policy the Executive Director Finance and Resources has been so delegated. It is the responsibility of the Senior Responsible Officer to ensure that all authorising officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of the Surveillance Commissioners. Where an inspection report highlights concerns about the standards of authorising officers, it is the responsibility of the Senior Responsible Officer to ensure these concerns are addressed.

## **Authorising Officers Responsibilities**

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 and the Regulation of Investigatory Powers (Communications Data) Order 2010, specify the seniority of officers who are able to authorise surveillance activity and access to communications data. These are Directors, Head of Service, Service Manager or equivalent.

It is essential that Senior Managers and Authorising Officers take personal responsibility for the effective and efficient operation of this document.

It is the responsibility of the Senior Responsible Officer in conjunction with the Head of Safer Communities to ensure that sufficient numbers of Authorising Officers receive suitable training on RIPA and this document, and that they are competent.

It will be the responsibility of those Authorising Officers to ensure that relevant members of staff are also suitably trained as 'Applicants'.

An authorisation must not be approved until the Authorising Officer is satisfied that the activity proposed is necessary and proportionate.

However it will be the responsibility of the gatekeeper to review any applications prior to submission to the Authorising Officer. They should ensure that the correct form has been used. These are the latest Home Office forms and are available on the HO website and that the applicant has obtained a Unique Reference Number (URN) from the Partnership Support Officer Safer Communities Services. The gatekeeper should also ensure that the form has been correctly completed and contains sufficient detail and information to enable the authorising officer to make an informed decision whether to authorise the application. The gatekeeper should also scrutinise the form to ensure that it complies with the necessity and proportionality requirements before the authorising officer receives the form. A gatekeeper should be a person with sufficient knowledge and understanding of the enforcement activities of the relevant public body, who should vet the applications as outlined above. Once the gatekeeper is satisfied with the application they should initial the form and submit any comments on the application in writing to the Authorising Officer and provide necessary feedback to the applicant. In order that there is consistency with the quality of applications the Head of Safer Communities and Principal Trading Standards Officer will act as gatekeepers for the Council. It should be noted that the Head of Safer Communities will not act as gatekeeper and Authorising Officer on the same application.

- **Necessary** in this context includes consideration as to whether the information sought could be obtained by other less invasive means, and that those methods have been explored and been unsuccessful or could have compromised the investigation. The Authorising Officer must be satisfied that there is necessity to use covert surveillance in the proposed operation. In order to be satisfied there must be an identifiable offence to prevent or detect before an authorisation can be granted on the grounds falling within sec 28(3)(b) and 29(3)(b) of RIPA and ss6(3) and 7(3) of RIP(S)A. The application should identify the **specific offence** being investigated (**including the Act and section**) and the **specific point(s) to prove** that the surveillance is intended to gather evidence about. The applicant must show that the operation is **capable of gathering that evidence** and that such **evidence is likely to prove** that part of the offence.
- Deciding whether the activity is **proportionate** includes balancing the right to privacy against the seriousness of the offence being investigated. Consideration must be given as to whether the activity could be seen as excessive. An authorisation should demonstrate how the Authorising Officer has reached the conclusion that the activity is proportionate to what it seeks to achieve; including an explanation of the reasons why the method, tactic or technique proposed is not disproportionate to what it seeks to achieve. A potential model answer would make it clear that the 4 elements of proportionality had been fully considered.
  1. Balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
  2. Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,
  3. That the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result and,
  4. Evidencing what other methods had been considered and why they were not implemented.

Authorising Officers must pay particular attention to Health & Safety issues that may be raised by any proposed surveillance activity. Approval must not be given until such time as any health and safety issue has been addressed and/or the risks identified are minimised.

Authorising Officers must ensure that staff who report to them follow this document and do not undertake any form of surveillance, or access communications data, without first obtaining the relevant authorisation in compliance with this document.

Authorising Officers must ensure when sending copies of any forms to the Head of Safer Communities for inclusion in the Central Register, that they are sent in **sealed** envelopes and marked **Strictly Private & Confidential**.

## **General Information on RIPA**

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

The European Convention did not make this an absolute right, but a qualified right. Therefore, in certain circumstances, the City Council may interfere in an individual's right as mentioned above, if that interference is:-

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

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a statutory mechanism (i.e. 'in accordance with the law') for authorising **covert surveillance** and the use of a '**covert human intelligence source**' ('**CHIS**') – e.g. undercover agents, and **Accessing Communications data**. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, the RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.

Directly employed Council staff and external agencies working for the City Council are covered by the Act for the time they are working for the City Council. All external agencies must, therefore, comply with RIPA and the work carried out by agencies on the Council's behalf must be properly authorised by an Authorising Officer after scrutiny by a gatekeeper.

A list of officers who may authorise Directed Surveillance is kept by the Head of Safer Communities and the current list is attached at **Appendix 1**. This list will be updated annually. The designated gatekeepers for the Council are the Principal Trading Standards Officer and the Head of Safer Communities. For the purposes of Accessing Communications Data the Designated Persons (Authorised Officers) is the Head of Safer Communities.

If the correct procedures are not followed, evidence may be dis-allowed by the courts, a complaint of mal-administration could be made to the Ombudsman, and/or the Council could be ordered to pay compensation. Such action would not, of course, promote the good reputation of the City Council and will, undoubtedly, be the subject of adverse press and media interest.

A flowchart of the procedures to be followed appears at **Appendix 2**. A list of useful websites is available at **Appendix 3**

## **What RIPA Does and Does Not Do**

### **RIPA does:**

- Requires prior authorisation of directed surveillance
- Prohibits the Council from carrying out intrusive surveillance
- Requires authorisation of the conduct and use of a CHIS
- Require safeguards for the conduct and use of a CHIS
- Requires proper authorisation to obtain communication data
- Prohibits the Council from accessing 'traffic data'

### **RIPA does not:**

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

If the Authorising Officer or any Applicant is in any doubt, they should ask the Head of Safer Communities or the Head of Law before any directed surveillance, CHIS, or Access to Communications is authorised, renewed, cancelled or rejected.

## **Types of Surveillance**

'**Surveillance**' includes

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

**Surveillance can be overt or covert.**

### **Overt Surveillance**

Most surveillance activity will be done overtly, that is, there will be nothing secretive, clandestine or hidden about it. In many cases, officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a Neighbourhood Warden walking through the estate).

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

**The following are NOT normally Directed Surveillance:**

- Activity that is observed as part of normal duties, e.g. by an officer in the course of day-to-day work.
- CCTV cameras (unless they have been directed at the request of investigators) – these are overt or incidental surveillance, and are regulated by the Data Protection Act.

## Covert Surveillance

Covert Surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. (Section 26(9)(a) RIPA) It is about the intention of the surveillance, not about whether they are actually aware of it; it is possible to be covert in Council uniform where, for example, the person is intended to mistake the reason for the officer being there.

RIPA regulates two types of covert surveillance, (Directed Surveillance and Intrusive Surveillance) and the use of Covert Human Intelligence Sources (CHIS).

## Directed Surveillance

Directed Surveillance is surveillance which: -

- Is covert; and
- Is not intrusive surveillance;
- Is not carried out in an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable, e.g. spotting something suspicious and continuing to observe it; and
- It is undertaken for the purpose of a **specific investigation** or **operation** in a manner **likely to obtain private information** about an individual (whether or not that person is specifically targeted for purposes of an investigation).

Private information in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others that s/he comes into contact, or associates, with.

### Examples of Expectations of Privacy:

*Two people are holding a conversation on the street and, even though they are talking together in public, they do not expect their conversation to be overheard and recorded by anyone. They have a 'reasonable expectation of privacy' about the contents of that conversation, even though they are talking in the street. The contents of such a conversation should be considered as private information. A directed surveillance authorisation would therefore be appropriate for a public authority to record or listen to the conversation as part of a specific investigation or operation and otherwise than by way of an immediate response to events. A Surveillance officer intends to record a specific person providing their name and telephone number to a shop assistant, in order to confirm their identity, as part of a criminal investigation. Although the person has disclosed these details in a public place, there is nevertheless a reasonable expectation that the details are not being recorded separately for another purpose. A directed surveillance authorisation*

should therefore be sought.

For the avoidance of doubt, only those officers designated as 'Authorising Officers' for the purpose of RIPA can authorise 'Directed Surveillance' IF, AND ONLY IF, the RIPA authorisation procedures detailed in this document, are followed.

#### **Reconnaissance- Examples**

*Officers wish to drive past a café for the purposes of obtaining a photograph of the exterior. Reconnaissance of this nature is not likely to require a directed surveillance authorisation as no private information about any person is likely to be obtained or recorded. If the officers chanced to see illegal activities taking place, these could be recorded and acted upon as 'an immediate response to events'. If, however, the officers intended to carry out the exercise at a specific time of day, when they expected to see unlawful activity, this would not be reconnaissance but directed surveillance, and an authorisation should be considered. Similarly, if the officers wished to conduct a similar exercise several times, for example to establish a pattern of occupancy of the premises by any person, the accumulation of information is likely to result in the obtaining of private information about that person or persons and a directed surveillance authorisation should be considered*

#### **Intrusive Surveillance**

This is when it: -

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

Only police and other law enforcement agencies can carry out this form of surveillance.

**Council Officers must not carry out intrusive surveillance.**

#### **Notes about 'Intrusive'**



Surveillance is generally 'Intrusive' only if the person is on the same premises or in the same vehicle as the subject(s) of the surveillance. Carrying out surveillance using private residential premises (with the consent of the occupier) as a 'Static Observation Point' does not make that surveillance 'Intrusive'. A device used to enhance your external view of property is almost never an *intrusive* device. A device would only become *intrusive* where it provided a high quality of information from inside the *private residential premises*. A device used to enhance your external view of property is almost never an *intrusive* device. A device would only become *intrusive* where it provided a high quality of information from inside the *private residential premises*. If premises under surveillance are known to be used for legally privileged communications, that surveillance must also be treated as *intrusive*

**Examples :**

*Officers intend to use an empty office to carry out surveillance on a person who lives opposite. As the office is on the 4<sup>th</sup> floor, they wish to use a long lens and binoculars so that they can correctly identify and then photograph their intended subject covertly. This is NOT intrusive surveillance, as the devices do not provide high quality evidence from inside the subject's premises. Officers intend using a surveillance van parked across the street from the subject's house. They could see and identify the subject without binoculars but have realised that, if they use a 500mm lens, as the subject has no net curtains or blinds, they should be able to see documents he is reading. This IS intrusive surveillance, as the evidence gathered is of a high quality, from inside the premises, and is as good as could be provided by an officer or a device being on the premises.*

**Examples of different types of Surveillance**

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

<p><u>Directed</u> (must be RIPA authorised)</p>	<ul style="list-style-type: none"> <li>▪ Officers follow an individual or individuals over a period, to establish whether s/he is working when claiming benefit or off long term sick from employment.</li> <li>▪ Test purchases where the officer has a hidden camera or other recording device to record information that might include information about the private life of a shop-owner, e.g. where s/he is suspected of running his business in an unlawful manner.</li> </ul>
<p><u>Intrusive</u></p>	<ul style="list-style-type: none"> <li>▪ Planting a listening or other device (bug) in a person's home or in their private vehicle.</li> </ul> <p><b>THE COUNCIL CANNOT CARRY OUT THIS ACTIVITY AND FORBIDS ITS OFFICERS FROM CARRYING IT OUT</b></p>

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

### Who is a CHIS?

A Covert Human Intelligence Source (CHIS) is someone who establishes or maintains a personal or other relationship for the covert purpose or facilitating anything falling under the following bullet points;

- Covertly uses such a relationship to obtain information or to provide access to any information to another person or,
- Covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.

RIPA may or may not apply in circumstances where members of the public volunteer information to the Council or to contact numbers set up to receive such information (such as benefit fraud hotlines). It will often depend on how the information was obtained. If an individual has obtained the information in the course of or as a result of a personal or other relationship it may be that they are acting as a CHIS. The contrast is between such a person and one who has merely observed the relevant activity from 'behind his (actual or figurative) net curtains.

A relationship is covert if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of its purpose.

If a person who volunteers information is then asked to obtain further information, it is likely that they would either become a CHIS or that a directed surveillance authorisation should be considered.

<p><b>Examples of a CHIS may include:</b></p> <ul style="list-style-type: none"> <li>• Licensing officers, working with the Police, covertly building a business</li> </ul>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------

relationship with a cab company which is believed to be using unlicensed drivers.

- Food safety officers posing as customers to get information on what is being sold at premises and developing a relationship with the shopkeeper beyond that of supplier and customer

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

Officers must not create or use a CHIS without prior authorisation. If there is any doubt as to whether an individual is acting as a CHIS advice should be sought from the Head of Safer Communities.

- Creating (or “Conduct of”) a CHIS means procuring a person to establish or maintain a relationship with a person so as to secretly obtain and pass on information. The relationship could be a personal or ‘other’ relationship (such as a business relationship) and obtaining the information may be either the only reason for the relationship or be incidental to it. Note that it can also include asking a person to continue a relationship which they set up of their own accord.
- Use of a CHIS includes actions inducing, asking or assisting a person to act as a CHIS and the decision to use a CHIS in the first place.

### **Online Covert Activity**

The growth of the internet, and the extent of the information that is now available online, presents new opportunities for public authorities to view or gather information which may assist them in preventing or detecting crime or carrying out other statutory functions, as well as in understanding and engaging with the public they serve. It is important that public authorities are able to make full and lawful use of this information for their statutory purposes. Much of it can be accessed without the need for RIPA authorisation; use of the internet prior to an investigation should not normally engage privacy considerations. But if the study of an individual’s online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, RIPA authorisations may need to be considered. The following guidance is intended to assist public authorities in identifying when such authorisations may be appropriate. The internet may be used for intelligence gathering and/or as a surveillance tool. Where online monitoring or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for directed surveillance should be considered, as set out elsewhere in this code. Where a person acting on behalf of a public authority is intending to engage with others online without disclosing his or her identity, a CHIS authorisation may be needed (paragraphs 4.10 to 4.16 of the Covert Human Intelligence Sources code of practice provide detail on where a CHIS authorisation may be available for online activity).

In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject(s) knowing that the surveillance is or may be taking place. Use of the internet itself may be considered as adopting a surveillance technique calculated to ensure that the subject is unaware of it, even if



no further steps are taken to conceal the activity. Conversely, where a public authority has taken reasonable steps to inform the public or particular individuals that the surveillance is or may be taking place, the activity may be regarded as overt and a directed surveillance authorisation will not normally be available. As set out below, depending on the nature of the online platform, there may be a reduced expectation of privacy where information relating to a person or group of people is made openly available within the public domain, however in some circumstances privacy implications still apply. This is because the intention when making such information available was not for it to be used for a covert purpose such as investigative activity. This is regardless of whether a user of a website or social media platform has sought to protect such information by restricting its access by activating privacy settings.

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

Whether a public authority interferes with a person's private life includes a consideration of the nature of the public authority's activity in relation to that information. Simple reconnaissance of such sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation should be considered. These considerations apply regardless of when the information was shared online. See above.

**Example 1:** *A police officer undertakes a simple internet search on a name, address or telephone number to find out whether a subject of interest has an online presence. This is unlikely to need an authorisation. However, if having found an individual's social media profile or identity, it is decided to monitor it or extract information from it for retention in a record because it is relevant to an investigation or operation, authorisation should then be considered.*

**Example 2:** *A customs officer makes an initial examination of an individual's online profile to establish whether they are of relevance to an investigation. This is unlikely to need an authorisation. However, if during that visit it is intended to extract and record information to establish a profile including information such as identity, pattern of life, habits, intentions or associations, it may be advisable to have in place an authorisation even for that single visit. (As set out in the following paragraph, the purpose of the visit may be relevant as to whether an authorisation should be sought.)*

**Example 3:** *A public authority undertakes general monitoring of the internet in circumstances where it is not part of a specific, ongoing investigation or operation to identify themes, trends, possible indicators of criminality or other factors that may influence operational strategies or deployment. This activity does not require RIPA authorisation. However, when this activity leads to the discovery of previously unknown subjects of interest, once it is decided to monitor those individuals as part of an on-going operation or investigation, authorisation should be considered.*

20

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

- Whether the investigation or research is directed towards an individual or organisation;
- Whether it is likely to result in obtaining private information about a person or group of people (taking account of the guidance at paragraph 3.6 above);
- Whether it is likely to involve visiting internet sites to build up an intelligence picture or profile;
- Whether the information obtained will be recorded and retained;
- Whether the information is likely to provide an observer with a pattern of lifestyle;
- Whether the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private life;
- Whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);
- Whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties, that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.

Internet searches carried out by a third party on behalf of a public authority, or with the use of a search tool, may still require a directed surveillance authorisation (see paragraph 4.32).

**Example:** *Researchers within a public authority using automated monitoring tools to search for common terminology used online for illegal purposes will not normally require a directed surveillance authorisation. Similarly, general analysis of data by public authorities either directly or through a third party for predictive purposes (e.g. identifying crime hotspots or analysing trends) is not usually directed surveillance.*

It is not unlawful for a member of a public authority to set up a false identity but it is inadvisable for a member of a public authority to do so for a covert purpose without authorisation. Using photographs of other persons without their permission to support the false identity infringes other laws.

## **Juvenile Sources**

Special safeguards apply to the use or conduct of juvenile sources (i.e. under 18 year olds). **On no occasion can a child under 16 years of age be authorised to give information against his or her parents.**

Authorisations for juvenile CHIS must not be granted unless: -

- A risk assessment has been undertaken as part of the application, covering the physical dangers and the psychological aspects of the use of the child
- The risk assessment has been considered by the Authorising Officer and he is satisfied that any risks identified in it have been properly explained; and
- The Authorising Officer has given particular consideration as to whether the child is to be asked to get information from a relative, guardian or any other person who has for the time being taken responsibility for the welfare of the child.

**Only the Chief Executive may authorise the use of Juvenile Sources.**

## **Vulnerable Individuals**

A Vulnerable Individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.

**A Vulnerable Individual will only be authorised to act as a source in the most exceptional of circumstances.**

**Only the Chief Executive may authorise the use of Vulnerable Individuals.**

## **Test Purchases**

Carrying out test purchases will not require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).

By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product (e.g. illegally imported products) will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance. A combined authorisation can be given for a CHIS and also directed surveillance.

Please also see below under 'Serious Crime'

### **Anti-social behaviour activities (e.g. noise, violence, racial harassment etc)**

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

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

Placing a covert stationary or mobile video camera outside a building to record anti social behaviour on residential estates will require prior authorisation.

### **Accessing Communications Data**

Local authority employees will no longer be able to use their powers under relevant legislation and the exemption under the Data Protection Act 1998. The disclosure of communications data by Communication service providers will now only be permitted if a Notice to obtain and disclose (or in certain circumstances an Authorisation for an Officer to obtain it themselves) has been issued by the 'Designated person'.

Authorities are required to nominate Single Point of Contacts (SPOC) and that person(s) must have undertaken accredited training.

'Designated Persons' within the Council is now limited to the Head of Safer Communities.

Local authorities may only access to Customer Data or Service Data. **They cannot access 'traffic data'.**

### **Customer data (Subscriber)**

Customer data is the most basic information about users of communication services.

It includes:-

- The name of the customer
- Addresses for billing, etc.
- Contact telephone numbers
- Abstract personal records provided by the customer (e.g. demographic information or sign up data)
- Account information (bill payment arrangements, bank or credit/debit card details)
- Services subscribed to.



### **Service Data (Service user)**

This relates to the use of the Service Provider services by the customer, and includes:-

- Periods during which the customer used the service
- Information about the provision and use of forwarding and re-direction services
- Itemised records of telephone calls, internet connections, etc
- Connection, disconnect and re-connection
- Provision of conference calls, messaging services, etc
- Records of postal items, etc
- Top-up details for pre-pay mobile phones.

### **Traffic Data**

This is data about the communication. It relates to data generated or acquired by the Service Provider in delivering or fulfilling the service. **Local authorities do not have access to this data.**

### **Authorisation Procedures**

Directed surveillance and the use of a CHIS can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation. **Appendix 2** provides a flow chart of the process to be followed.

### **Authorising Officers**

Directed surveillance and or the use of CHIS can only be authorised by the officers listed in this document attached at appendix 1. Authorising officers should ensure that they undertake at least one refresher training course on RIPA during each calendar year. The list will be kept up to date by the Head of Safer Communities and amended as necessary. The SRO can add, delete or substitute posts to this list as required.

Authorisations under RIPA are separate from delegated authority to act under the Council's Scheme of Delegation and internal departmental Schemes of Management. RIPA authorisations are for specific investigations only, and must be renewed or cancelled once the specific surveillance is complete or about to expire.

Only the Chief Executive can authorise the use of a CHIS who is a juvenile or a vulnerable person or in cases where it is likely that confidential information will be obtained through the use of surveillance.

### **Authorising Officers–Access to Communications data**

The Head of Safer Communities are the 'Designated persons' permitted to authorise the obtaining and disclosing of communications data. The National Anti Fraud Network will be the Single Point of Contact.

## **Training Records**

A certificate of attendance will be given to anyone undertaking training in relation to the use of RIPA. Training will be recorded on their individual learning and development plan.

Single Points of Contact under Part 1 of the Act are required to undertake accredited training. A record will be kept of this training and any updating. This record is kept by NAFN. Designated persons are also required to be suitably trained.

## **Application Forms**

Only the currently approved forms, available on the Home Office website, may be used. Any other forms will be rejected by the gatekeeper/authorising officer. Applications for communications data should be made via the NAFN website. Please contact NAFN for further information on this process – contact details on the Wave.

A gatekeeper role will be undertaken by either the Head of Safer Communities or the Principal Trading Standards Officer who will check that the applications have been completed on the correct forms, have a URN and that they contain sufficient grounds for authorisation. They will provide feedback to the applicant and will initial the forms before being submitted to the authorising officer. The Head of Safer Communities can fulfil both the role as gatekeeper and authorising officer but will not fulfil both roles for an individual application.

## **Grounds for Authorisation**

Directed Surveillance or the Conduct and Use of the CHIS and Access to Communications Data can be authorised by an Authorising Officer where he believes that the authorisation is necessary in the circumstances of the particular case. For local authorities the only ground that authorisation can be granted is;

- For the prevention or detection of crime

## **Serious Crime**

From 1<sup>st</sup> November 2012, the Protection of Freedoms Act introduced an additional requirement for officers seeking to use directed surveillance or CHIS. From this date, with the exception of Trading Standards' work regarding test purchases for alcohol and tobacco, all applications must meet the 'serious crime' threshold. This has been identified as any offence for which the offender could be imprisoned for 6 months or more. An analysis of relevant offences indicates that covert surveillance may therefore be used by, Trading Standards (various offences including doorstep crime and counterfeiting), Waste Enforcement (fly tipping), Fraud against the Council and Child Protection and Adult Safeguarding issues. Where an offence meets the serious crime threshold, the applicant will apply to the Authorising Officer in the normal way via a gatekeeper, but will then need to attend Magistrate's Court to obtain judicial sign off.

## **Non RIPA Surveillance**

This new process will automatically restrict the use of surveillance activity under the RIPA framework by a number of our services as the offences they deal with do not meet the serious crime threshold. RIPA does not grant any powers to carry out surveillance, it simply provides a framework that allows authorities to authorise surveillance in a manner that ensures compliance with the European Convention on Human Rights. Equally, RIPA does not prohibit surveillance from being carried out or require that surveillance may only be carried out following a successful RIPA application.

Whilst it is the intention of this Authority to use RIPA in all circumstances where it is available, for a Local Authority, this is limited to preventing or detecting crime and from 1<sup>st</sup> November 2012 to serious crime. The Authority recognises that there are times when it will be necessary to carry out covert directed surveillance when RIPA is not available to use. Under such circumstances, a RIPA application must be completed and clearly endorsed in red 'NON-RIPA SURVEILLANCE' along the top of the first page. The application must be submitted to a RIPA Authorising Officer in the normal fashion, who must consider it for Necessity and Proportionality in the same fashion as they would a RIPA application. The normal procedure of timescales, reviews and cancellations must be followed. Copies of all authorisations or refusals, the outcome of reviews or renewal applications and eventual cancellation must be notified to the Head of Safer Communities who will keep a separate record of Non-RIPA activities, and monitor their use in the same manner as RIPA authorised activities.

## Assessing the Application Form

Before an Authorising Officer authorises an application, **they must**

Be mindful of this Corporate Policy & Procedures Document

Satisfy themselves that the RIPA authorisation is

- **in accordance with the law,**
- **Necessary** in the circumstances of the particular case on the ground specified above; and
- **Proportionate** to what it seeks to achieve

This means that they must consider

- whether other less invasive methods to obtain the information have been considered. The least intrusive method will normally be considered the most proportionate unless for example it is impractical or would undermine the investigation.
- balance the right of privacy against the seriousness of the offence under investigation. When considering necessity and proportionality, an authorising officer should spell out in terms of the 5 W's, (who, what, why, where, when and how) what specific activity is being sanctioned.
- Take account of the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**Collateral Intrusion**).
- Ensure that measures are taken wherever practicable to avoid or minimise collateral intrusion.
- Set a date for review of the authorisation and review on only that date where appropriate.

- Ensure that the form carries a unique reference number
- Ensure that the applicant has sent a copy to the Head of Safer Communities for inclusion in the Central Register within 1 week of the authorisation.
- Ensure that the application is cancelled when required.

NB the application **MUST** make it clear how the proposed intrusion is necessary and how an absence of this evidence would prejudice the outcome of the investigation. If it does not then the application **SHOULD** be refused. Some guidance on how to complete the form for both authorising officers and applicants is available at **Appendix 4 and Appendix 5**

### **Retention and Destruction of the Product**

Where the product of surveillance could be relevant to pending or future legal proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period. This should be in line with any subsequent review. Attention should be drawn to the requirements of the Code of Practice issued under the Criminal Procedures and Investigations Act 1996. This states that material obtained in the course of a criminal investigation and which may be relevant to the investigation must be recorded and retained.

There is nothing in RIPA 2000 which prevents material obtained from properly authorised surveillance being used in other investigations. However we must be mindful to handle store and destroy material obtained through the use of covert surveillance appropriately. It will be the responsibility of the Authorising Officer to ensure compliance with the appropriate data protection requirements and to ensure that any material is not retained for any longer than is necessary. It will also be the responsibility of the Authorising Officer to ensure that the material is disposed of appropriately.

### **Confidential Material**

Particular care should be taken where the subject of the investigation or operation might reasonably expect a high degree of privacy, or where confidential information is involved.

**Confidential Information** consists of matters subject to legal privilege, confidential personal information or confidential journalistic information. So for example extra care should be taken where through the use of surveillance, it would be possible to obtain knowledge of discussions between a minister of religion and an individual relating to the latter's spiritual welfare, or where matters of medical or journalistic confidentiality, or legal privilege may be involved.

**Where it is likely, through the use of surveillance, that confidential information will be obtained, authorisation can only be granted by Heads of Service or in their absence the Chief Executive.**

**Descriptions of what may constitute legally privileged information are set out in section 98 of Police Act 1997 and further guidance is set out in Paragraphs 3.4-3.9 of the Home Office Code of Practice on Covert Surveillance.**

### **Confidential Personal Information and Confidential Journalistic Information**

Similar considerations to those involving legally privileged information must also be given to authorisations that involve the above. 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. This information can be either written or oral and might include consultations between a doctor and patient or information from a patient's medical records. Spiritual counselling means conversations between an individual and a Minister of Religion acting in an official capacity, where the individual being counselled is seeking or the Minister is imparting forgiveness, absolution or the resolution of conscience with the authority of the Divine Being(s) of their faith.

Confidential journalistic material includes material acquired or created for the purpose 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.

**Further information or guidance regarding Confidential Information can be obtained from the Head of Law or the Head of Safer Communities.**

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

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

- Be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved;
- Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a risk assessment; At all times there will be a person designated to deal with the CHIS on behalf of the authority and for the source's security and welfare. This person should be in at least the position of Head of Service.
- Consider the likely degree of intrusion of all those potentially affected;
- Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained; and
- Ensure **records** contain particulars and are not available except on a need to know basis

Records must be kept that contain the information set out in Statutory Instrument 2000/2725 – The Regulation of Investigatory Powers (Source Records) Regulations 2000. Further guidance on the requirements can be obtained from the Head of Safer Communities.

### **Duration**

The application form **must be reviewed in the time stated and cancelled** once it is no longer needed. The 'authorisation' to conduct the surveillance lasts for a maximum of 3 months for Directed Surveillance and 12 months for a Covert Human Intelligence Source. In respect of a notice or authorisation to obtain communications data the period is one month.

Authorisations can be renewed in writing when the maximum period has expired. The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date, and any collateral intrusion that has occurred.

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

Urgent authorisations, if not ratified by written authorisation, will cease to have effect after 72 hours, beginning from the time when the authorisation was granted.

## **Working with Other Agencies**

If an officer wishes to utilise the CCTV system operated by the Police Directed Surveillance Authorisation must be obtained before an approach is made to the Control Room. If immediate action is required an Authorisation must be obtained within 72 hours of the request being made.

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

When another Enforcement Agency (e.g. Police, HMRC etc): -

Wish to use the City Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures. Before any Officer agrees to allow the City Council's resources to be used for the other agency's purposes, they must obtain a copy of that agency's RIPA form, or written confirmation that a Directed Surveillance Authorisation is in place.

Wish to use the City Council's premises for their own RIPA action, the Officer should, normally, co-operate with the same, unless there is security or other good operational or managerial reasons as to why the City Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the City Council's co-operation in the agent's RIPA operation. In such cases, however, the City Council's own RIPA forms should not be used as the City Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

## **Record Management**

A Central Register of all Authorisation Forms will be maintained and monitored by the Head of safer Communities.

### **Records maintained in the Department**

- A copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- A record of the period over which the surveillance has taken place;
- The frequency of reviews prescribed by the Authorising Officer;
- A record of the result of each review of the authorisation;
- A copy of any renewal of an authorisation, together with supporting
- Documentation submitted when the renewal was requested;
- The date and time when any instruction was given by the Authorising Officer;

- The Unique Reference Number for the authorisation (URN).

### **Central Register maintained by Trading Standards**

Authorising Officers must forward details of each form to Trading Standards for the Central Register, **within 1 week of the authorisation, review, renewal, cancellation or rejection.**

Records will be retained for six years from the ending of the authorisation. The Office of the Surveillance Commissioners (OSC) and the Interception Commissioner can audit/review the City Council's policies and procedures, and individual authorisations.

### **Consequences of Non Compliance**

Where covert surveillance work is being proposed, this Policy and Guidance must be strictly adhered to in order to protect both the Council and individual officers from the following:

- **Inadmissible Evidence and Loss of a Court Case / Employment Tribunal / Internal Disciplinary Hearing** – there is a risk that, if Covert Surveillance and Covert Human Intelligence Sources are not handled properly, the evidence obtained may be held to be inadmissible. Section 78 of the Police and Criminal Evidence Act 1984 allows for evidence that was gathered in a way that affects the fairness of the criminal proceedings to be excluded. The Common Law Rule of Admissibility means that the court may exclude evidence because its prejudicial effect on the person facing the evidence outweighs any probative value the evidence has (probative v prejudicial).
- **Legal Challenge** – as a potential breach of Article 8 of the European Convention on Human Rights, which establishes a “right to respect for private and family life, home and correspondence”, incorporated into English Law by the Human Rights Act (HRA) 1998. This could not only cause embarrassment to the Council but any person aggrieved by the way a local authority carries out Covert Surveillance, as defined by RIPA, can apply to a Tribunal – see section 15.
- **Offence of unlawful disclosure** – disclosing personal data as defined by the DPA that has been gathered as part of a surveillance operation is an offence under Section 55 of the Act. Disclosure can be made but only where the officer disclosing is satisfied that it is necessary for the prevention and detection of crime, or apprehension or prosecution of offenders. Disclosure of personal data must be made where any statutory power or court order requires disclosure.
- **Fine or Imprisonment** – Interception of communications without consent is a criminal offence punishable by fine or up to two years in prison.
- **Censure** – the Office of Surveillance Commissioners conduct regular audits on how local authorities implement RIPA. If it is found that a local authority is not implementing RIPA properly, then this could result in censure.

### **Oversight by Members**

- Elected Members shall have oversight of the Authority's policy and shall review that policy annually.
- The report to members shall be presented to the Elected Members by the SRO. The report must not contain any information that identifies specific persons or operations.

- Alongside this report, the SRO will report details of 'Non-RIPA' surveillance in precisely the same fashion
- Elected Members may not interfere in individual authorisations. Their function is to, with reference to the reports; satisfy themselves that the Authority's policy is robust and that it is being followed by all officers involved in this area. Although it is elected members who are accountable to the public for council actions, it is essential that there should be no possibility of political interference in law enforcement operations.

### **Concluding Remarks**

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

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

Authorising Officers should be suitably competent and must exercise their minds every time they are asked to sign the request. They must never sign or rubber stamp form(s) without thinking about their personal and the City Council's responsibilities.

Any boxes not needed on the Form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same. Great care must also be taken to ensure accurate information is used and is inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.

For further advice and assistance on RIPA, please contact the Head of Safer Communities.

Directed Surveillance/CHIS Forms can be obtained from the Home Office website or from NAFN in relation to Access to Communications Data.





## Appendix 1

### List of Authorised Officers

Post	Name
Head of Safer Communities	Jo Player
Head of Revenues and Benefits	Graham Bourne
Head of Adult Assessment	Brian Doughty
Regulatory Services Manager	Annie Sparks
Regulatory Services Manager	Nick Wilmot

### Designated Person for Approving a Notice in Respect of Access to Communications Data

Head of Safer Communities                      Jo Player

### Single Point of Contact for Accessing Communications Data

National Anti Fraud Network                      NAFN

### Gatekeepers

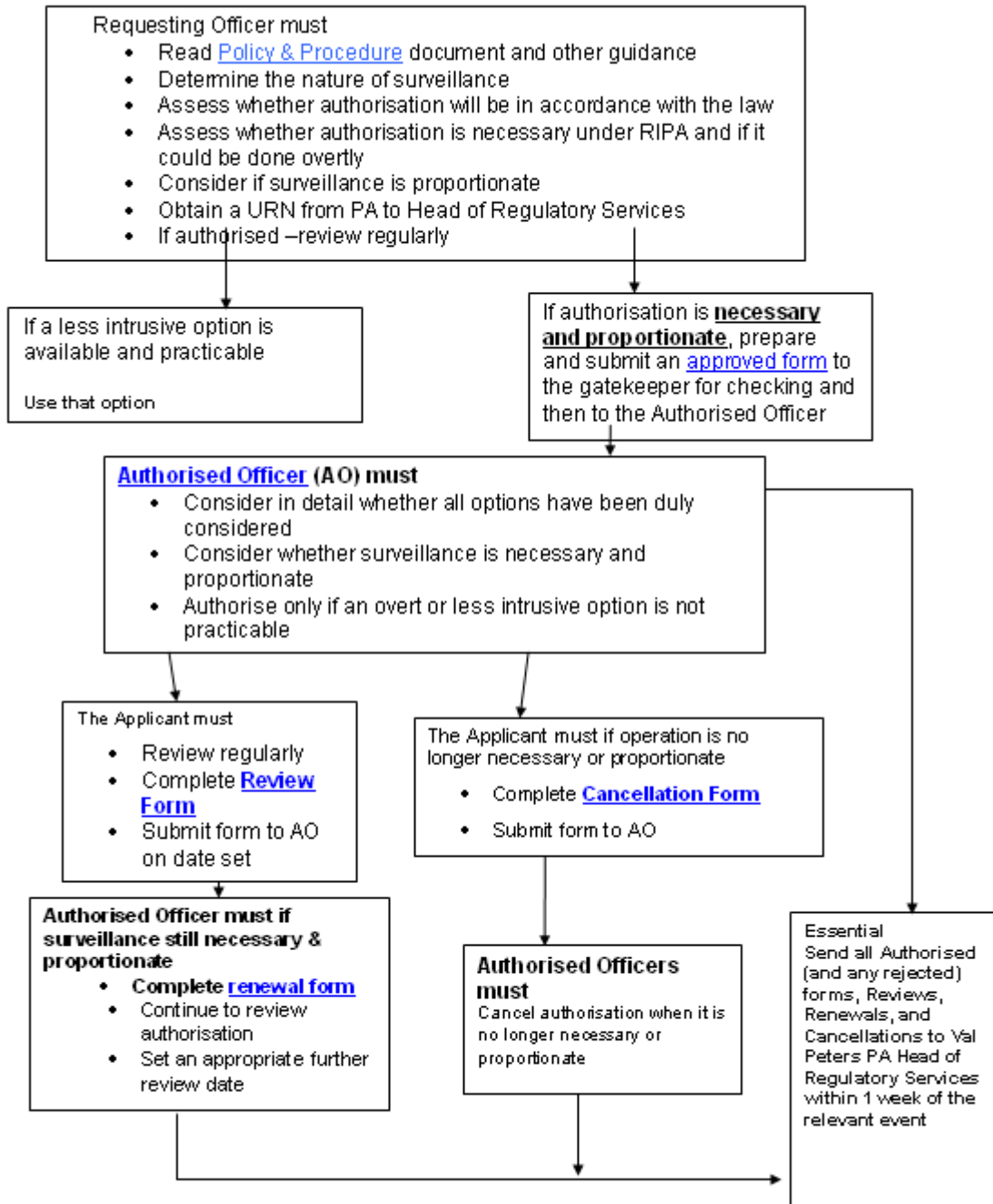
Head of Safer Communities                      Jo Player

Principal Trading Standards Officer                      John Peerless

**Please contact Charlotte Farrell for a URN**

## Appendix 2

### Authorising Directed Surveillance Process



## Appendix 3

### **RIPA Forms, Codes of Practice and Advice**

**The policy requires you to use the most up-to-date versions of forms and codes of practice. Rather than reproduce forms and codes of practice that are subject to change, we have provided links to the currently approved versions. You should access the document you require by following the relevant link.**

- The most up-to-date RIPA forms must always be used. These are available from the Home Office website and may be found by following this link :

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

- The full text of the Codes of Practice are available here :

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

- The Act is available here:

<http://www.legislation.gov.uk/ukpga/2000/23/contents>

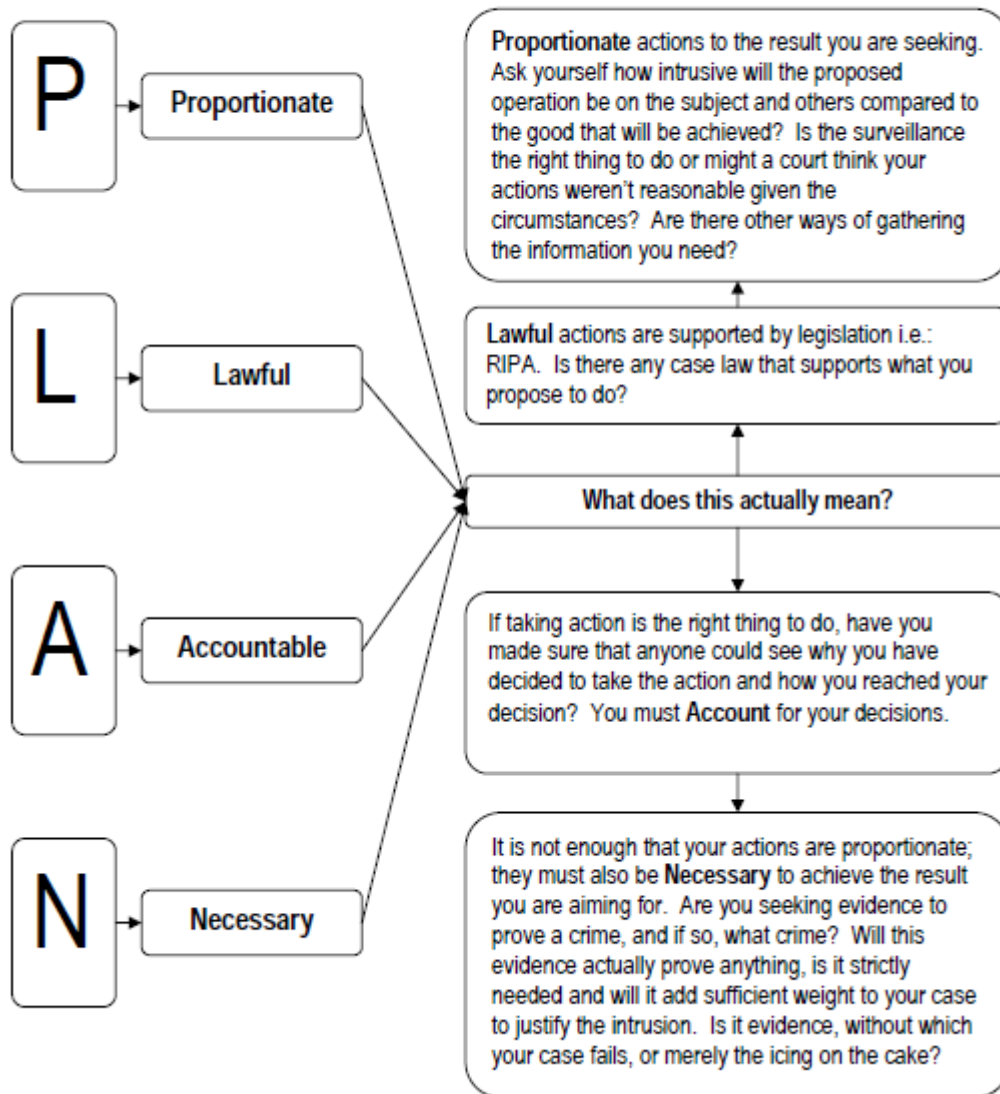
- The Office of Surveillance Commissioners website has some useful information and advice and is available here :

<http://surveillancecommissioners.independent.gov.uk/>

Appendix 4

APPENDIX FOUR

Notes for Guidance for Authorisation – Directed Surveillance



## Authorised Officer's Statement

<b>12. Authorising Officer's Statement. [Spell out the "5 Ws" – Who, What, Where, When, Why and the following box.]</b>	<p>You must start by fully explaining what operation you are authorising. State why the surveillance is necessary to the case, what will be achieved, how it will be carried out, how many people used, what equipment / vehicles / technology you authorise the use of and where the operation will happen.</p> <p>Make sure it is clear <u>exactly</u> what it is that you are authorising.</p>
I hereby authorise directed surveillance defined as follows: [Why is the surveillance necessary directed against, Where and When will it take place, What surveillance activity/equipment/ achieved?]	
<b>13. Explain why you believe the directed surveillance is necessary. [Code paragraph 2.4] Explain why you believe the directed surveillance to be proportionate to what is sought to be achieved by carrying it out. [Code paragraph 2.5]</b>	

Now you must explain your decision. Simply stating that you "agree with the officer who applied for the reasons they gave" is not acceptable. You must give, in your own words, a detailed account of how you came to decide that the operation was necessary and proportionate. Make sure that you review the guidance in section seven and show how the evidence is necessary to the offence, and how the offence is one that it is necessary to investigate. Now ensure that you demonstrate how the officer has shown the need to obtain the evidence to be proportionate, when balanced against the person's expectation of privacy, the privacy of innocent third parties and the seriousness of the offence.

**If you have completed a surveillance authorisation worksheet, go back over this as you should have already stated your reasons there.**

You must explain why you feel it is in the public interest to carry out the action; is it serious, prevalent in the area, an abuse of position, premeditated? Why do you think that the investigation will be prejudiced without surveillance? Are you certain there is no other obvious and less intrusive way of obtaining the information? Does it need to be done? Record everything in this section.

**This section must stand on its own, if you are called to court to justify your authorisation.**

## Authorised Officer's Statement

14. (Confidential Information Authorisation.) Supply detail demonstrating compliance with 3.1 to 3.12		This section is to be completed only by the Senior Authorised Officer if confidential information might be obtained. They should explain why they felt it to be appropriate for the surveillance to be carried out. To comply with the codes, show how further measures, such as more regular reviews and stricter limitations, have been put in place due to the particularly sensitive nature of the operation.
Date of first review		
Programme for subsequent reviews of this authorisation: [Code paragraph 4.22]. Only complete dates after first review are known. If not or inappropriate to set additional review dates then leave		
This should be no more than four weeks from the date of authorisation. If you wish to restrict the length of time an officer may carry out surveillance for, you can use this box to set an early review date.		
Use this box to record dates for review. The normal review period is no longer than every four weeks. It doesn't have to be completed but is useful to do so, especially when a shorter review period is appropriate.		
Name (Print)	Grade / Rank	
Signature	Date and time	
Expiry date and time [ e.g.: authorised on 30 June 2005, 23.59 ]	Expiry date and time [ e.g.: authorised on 1 April 2005 - expires ]	
Finally, write your name, sign the form giving the date and time. You must also record the expiry date. This is always three months, to the minute, from the date that the authorisation was given, no longer, or shorter. The operation can be cancelled before this date if appropriate. (See 7.14 (above) for guidance.)		

### Sections 15 and 16:

These sections relate to oral authorisations that may be granted or renewed only in urgent cases. In the case that an oral authorisation is granted, the AO should record the reasons why they considered the case urgent and why they believed it was not practicable to delay in order for the investigator to complete an application. Urgent oral authorisations last for seventy-two hours from the time of the authorisation. The officer carrying out the surveillance must complete a written application at the earliest opportunity, not necessarily at the end of the seventy-two hours.

## Appendix 5

### The RIPA 1 Form – Guidance Notes on Completion

**Directed Surveillance Unique Reference Number (URN)** (to be supplied by the central monitoring officer).

**Unique reference number.** This must be provided by the Authorising Officer

**PART II OF THE REGULATION OF INVESTIGATORY POWERS ACT (RIPA) 2000**

**APPLICATION FOR AUTHORISATION TO CARRY OUT DIRECTED SURVEILLANCE**

**Public Authority** (including full address)

**What public body do you work for? Record it here**

**Unit/Branch/Division**

**What dept / unit do you work in? Record it here.**

**Full address**

**Full address of your dept / office / building.**

**Contact details**

**Give a phone number, email address and / or fax number to contact you on.**

**Investigation/Operation Name (if applicable)**

**You can give the operation a name if you wish.**

**Investigating Officer (if a person other than the applicant)**

**If the person who is the investigator in the case is someone other than you, record their name here.**

**Details of application:**

1. Give rank or position of authorising officer in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003; No. 3171. In local authorities exact position of the authorising officer should be given. For example, Head of Trading Standards.

**You must give the position of the Authorised Officer who will be reviewing the application. You do not need to give their name. This should be their full job title, rank or position.**

## Page Two

<p>What methods will you use for the surveillance? What are the technical aspects? Who, what, when, where, how long, how many, equipment etc. Mention everything. You will not be authorised to do things you don't mention here.</p>	<p>2. Describe the purpose of the specific operation or investigation.</p>	<p>Enter a summary of the reason for the operation and what you are planning to do. Be brief: what will you do, why are you doing it and what will you get out of it?</p>
	<p>3. Describe in detail the surveillance operation to be authorised and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used.</p>	
	<p>4. The identities, where known, of those to be subject of the directed surveillance.</p> <p>Name:</p> <ul style="list-style-type: none"><li>• Address:</li><li>• DOB:</li><li>• Other information as appropriate:</li></ul>	<p>Who are you intending to gather evidence on? If you do not know the identity of all parties you must describe them as best as you are able.</p>
	<p>5. Explain the information that it is desired to obtain as a result of the directed surveillance.</p>	
	<p>What evidence do you intend to obtain from the surveillance? Specify exactly what you intend to get, how much and what types. This is so a judgement can be made on the weight of the evidence that you will get. Be careful what you write here: when you have achieved these aims the surveillance must stop immediately.</p>	



## Page Three

<p>Specify the offences that you are investigating or preventing. State why the information has to be obtained by surveillance, why do you need it for the reason you specified? How is it essential to the case?</p>	<p><b>6. Identify on which grounds the directed surveillance is necessary under Section 28(3) of RIPA. Delete that are inapplicable. Ensure that you know which of these grounds you are entitled to rely on. (SI 2003 No 3171)</b></p> <ul style="list-style-type: none"><li>• In the interests of national security;</li><li>• For the purpose of preventing or detecting crime or of preventing disorder;</li><li>• In the interests of the economic well-being of the United Kingdom;</li><li>• In the interests of public safety;</li><li>• for the purpose of protecting public health;</li><li>• for the purpose of assessing or collecting any tax, duty, levy or other imposition, contribution or charge payable to a government department;</li></ul> <p><b>7. Explain why this directed surveillance is necessary on the grounds you have identified [Code paragraph 2.4]</b></p> <p><b>8. Supply details of any potential collateral intrusion and why the intrusion is unavoidable. (Bear in mind Code paragraphs 2.6 to 2.10.)</b> Describe precautions you will take to minimise collateral intrusion</p>	<p>Cross out the conditions that do not apply to you. In the case of a local authority, the only one that <i>does</i> is prevention or detecting crime or disorder.</p>
<p>Collateral intrusion is where the operation interferes with the private lives of those not intended to be subject to the surveillance. This could be members of the suspect's family, their partners, colleagues or members of the public. You must identify where there is a risk that you will gather this sort of information. You must take steps to minimise this risk and show that the risk left is unavoidable: what times are you conducting surveillance? Can you avoid catching others on camera? Do you have facilities to remove identifying features? The AO must be satisfied that the need to carry out the operation outweighs this risk.</p>		

## Page Four

This is where you must justify your actions as proportionate. You should have completed a planner and decided that surveillance is necessary and the last resort. Record here what you have done already and what you cannot do as it'll prejudice the investigation. Tell the AO why the need to carry out the action outweighs the suspect's right to privacy. How serious is the matter? How intrusive will the operation be on the suspect and on others? What might happen if you don't carry out surveillance? Why can't you get the information in other ways? What will be achieved by gathering the evidence?

9. Explain why this directed surveillance is proportionate to what it is to be on the subject of surveillance or on others? And why is this surveillance in operational terms or can the evidence be obtained otherwise? (Code paragraph 2.5)

How intrusive might it be by the need for evidence? (Code paragraph 2.6)

10. Confidential information (Code paragraphs 3.1 to 3.12):  
INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL INFORMATION:

Confidential information is *special knowledge* of a person's religious, political or medical life or information of a confidential journalistic nature (journalistic sources). Communications subject to legal privilege are also confidential. If there is a chance that you might gather this sort of information, indicate the risk here. The authorisation can then only be given by the person within your public body designated by the RIPA code of practice for this purpose.

### 11. Applicant's details

Name (print)	Tel No:
Grade/Rank	Date
Signature	

Finish by giving your name, telephone number, job title or rank. Date the form and sign it.

<b>Subject:</b>	<b>Rough Sleeping Statistics</b>		
<b>Date of Meeting:</b>	<b>12 March 2019</b>		
<b>Report of:</b>	<b>Executive Director, Finance &amp; Resources</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Mark Dallen</b>	<b>Tel: 29-1314</b>
	<b>Email:</b>	<b>Mark.Dallen@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 At Audit and Standards Committee on 8 January 2019, Members requested that Internal Audit carry out an investigation into the reliability of the rough sleeping statistics quoted to the NICE Committee (3 December 2018), which stated that the number of rough sleepers in Brighton & Hove had fallen since the last year. The audit report is attached as Annex 1.

**2. RECOMMENDATIONS**

- 2.1 Members are asked to note the report and consider any further action required in response to the issues raised.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 This review is an addition to the approved Internal Audit Plan for 2018/19.

**4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The audit review has concluded that that the rough sleeper statistics stated at the NICE Committee in December 2018 were based on reliable and relevant data.
- 4.2 Both the count methodology used in 2018 and the estimate single night snapshots provide a legitimate way of indicating the number of people sleeping rough and assessing change over time.
- 4.3 The statistic calculated in any one year may be impacted by a number of different factors including the methodology applied and the weather on the date the data was collected.

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

5.1 None.

## **6. CONCLUSION**

6.1 The Committee is asked to note the report.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

7.1 There are no direct financial implications as a result of the recommendations of this report. This additional audit report was provided within existing resources through reprioritisation of the 2018/19 Audit Plan.

*Finance Officer Consulted: James Hengeveld Date: 22/02/19*

### Legal Implications:

7.2 The recommendations of this report are not considered to have any direct legal implications.

*Lawyer Consulted: Victoria Simpson Date: 25/02/19*

### Equalities Implications:

7.3 There are no direct equalities implications.

### Sustainability Implications:

7.4 There are no direct sustainability implications.

## **SUPPORTING DOCUMENTATION**

### **Annexes:**

1. Internal Audit Report – Rough Sleeping Statistics

### **Documents in Members' Rooms**

1. None

### **Background Documents**

1. Internal Audit and Corporate Fraud Strategic Plan 2018/19

Chief Executive and  
Cllr Miller, Chair of the Audit &  
Standards Committee

Date: 8<sup>th</sup> January 2019  
Phone: 01273 291819  
e-mail: robert.nemeth@brighton-hove.gov.uk

Dear Councillor Miller,

**RE: MISREPRESENTATION OF ROUGH-SLEEPING STATISTICS**

We write to request an urgent investigation, with subsequent report, to be brought back to the next Audit & Standards Committee, as part of its responsibility for overseeing and monitoring performance, into the way in which a key piece of rough-sleeping data has been calculated and represented by the Administration.

Statements at a meeting of the Neighbourhoods, Inclusion, Communities & Equalities ('NICE') Committee and by council press release give the impression that the number of rough-sleepers in Brighton & Hove has fallen since last year. However, the stated methodology behind the data collection exercise is clearly in conflict with any such claim being made. We wish to understand if there is more information that has not been released, or if the information is incorrect.

At the meeting of NICE Committee on 3rd December 2018, it was announced by Cllr Clare Moonan, the Administration's spokesman for rough-sleeping that the number of rough-sleepers in Brighton & Hove had significantly dropped. We quote directly:

"The official figure verified by the independent organisation Homeless Link is 64. If you remember the official figure last November was 178. So this represents a significant drop."

The Administration's press release is set out below and, similarly, just two figures are mentioned in a way that could mislead. The only figures that are mentioned are 64 and 178. The following claim is made:

"The number of people rough sleeping in Brighton & Hove is going down."

If the number of rough-sleepers on a given date in November had fallen from 178 in 2017 to 64 in 2018, we would be delighted. However, the data comes from two different collection methods which cannot be compared.

The 2017 figure was collected using the thorough 'estimate' method which sees a number of data sources pulled together to give an estimate of the number of rough-sleepers. The 2018 figure uses the 'count' method. It is simply a count of heads on a certain night and obviously subject to variance depending on weather conditions.

Given that the count was carried out on one of the most dreadful nights of the year, in snowy conditions, it was obviously lower on that particular night. It would be wrong to compare the two.

Brighton & Hove Independent reported the matters as follows (as a demonstration of how confusion arose):

“The city has seen a ‘significant drop’ in rough sleepers over a year if the latest council figures are to be believed.”

Jim Deans of Sussex Homeless Support was highly critical of the exercise and commented as follows:

“At the moment, there are around 140 rough sleepers and many thousand more homeless in temporary or emergency accommodation, vans, caravans, boats or a mate’s floor.”

We are calling for a report to clear up the matter properly to avoid the Council falling into disrepute. We wish to know why it was claimed that the numbers of rough-sleeping had fallen when there does not appear to be any data to support this.

With best wishes

Cllr Robert Nemeth – Opposition Spokesman for NICE

Cllr Mary Mears – Opposition Spokesman for Housing & New Homes

Cllr Nick Taylor – Opposition Spokesman for Health & Wellbeing



# Internal Audit Report

## Rough Sleeping Statistics

Assignment Lead: K. Downes, Principal Internal Auditor

Assignment Manager: M. Dallen, Audit Manager

Prepared for Brighton & Hove City Council

Date: February 2019

**Report Distribution List**

- Audit & Standards Committee \* final only
- Abraham Ghebre-Ghiorghis, Executive Lead Officer - Strategy Governance & Law
- Rob Persey, Executive Director – Health & Adult Social Care
- David Kuenssberg, Executive Director - Finance & Resources
- Andy Witham, Head of Commissioning
- Sue Forrest, Commissioning & Performance Manager
- Alix Macfarlane, Deputy Head of Communications

This audit report is written for the officers named in the distribution list. If you would like to share it with anyone else, please consult the Chief Internal Auditor.

**Brighton & Hove City Council - Internal Audit Key Contact Information**

**Chief Internal Auditor:** Russell Banks, ☎ 01273 481447, ✉ [russell.banks@eastsussex.gov.uk](mailto:russell.banks@eastsussex.gov.uk)

**Audit Manager:** Mark Dallen, ☎ 01273 291314, ✉ [mark.dallen@brighton-hove.gov.uk](mailto:mark.dallen@brighton-hove.gov.uk)

**Anti-Fraud Hotline:** ☎ 01273 291847, ✉ [anti-fraud@brighton-hove.gov.uk](mailto:anti-fraud@brighton-hove.gov.uk)



## 1. Introduction

- 1.1 At Audit and Standards Committee on 8 January 2019, Members requested that Internal Audit carry out an investigation into the reliability of the rough sleeping statistics quoted to the NICE Committee (3 December 2018), which stated that the number of rough sleepers in Brighton & Hove had fallen since the last year. The letter that generated the request is attached at Appendix A.
- 1.2 In 2017 the rough sleeping figure was reported as 178. In 2018 the reported figure was 64.

## 2. Scope and Objectives

- 2.1 Internal Audit reviewed the methodologies used to produce the rough sleeping statistics for 2017 and 2018 and checked to ensure that these had been calculated correctly and in accordance with national definitions. Specifically to;
- Establish whether the statistics used at the NICE Committee in December 2018 were based on reliable and relevant data.
  - To establish whether there were any differences between the methodology underlying the 2017 and 2018 data.

## 3. Summary of Findings

- 3.1 The formal definition of rough sleeping is *“People sleeping, about to bed down (sitting on/in or standing next to their bedding) or actually bedded down in the open air (such as on the streets, in tents, doorways, parks, bus shelters or encampments). People in buildings or other places not designed for habitation (such as stairwells, sheds, car parks, or “bashes”).”* The definition excludes those people in hostels or shelters, people in campsites or other sites used for recreational purposes or organised protest, squatters or Travellers.
- 3.2 Any rough sleeping counts are undertaken late at night to exclude street beggars, and other individuals who do not sleep on the streets (ie: those who have some form of shelter).
- 3.3 There are two available methods to produce the rough sleeping statistic for the Ministry of Housing, Communities and Local Government (MHCLG). These are a) an estimated methodology; or b) a full-count option. In 2017, the estimated methodology was used. Following discussions with the MHCLG, in 2018 the full-count method was used.
- 3.4 The processes followed in both 2017 and 2018 were reviewed, and found to be compliant with national guidance. All rough sleeping returns submitted by local authorities are independently verified and validated by Homeless Link to ensure they are robust. Homeless Link are the national charity for organisations working directly with people who become homeless, and they were in attendance during the estimate (in 2017) and at the full count (in 2018). Homeless Link are funded by MHCLG to provide verification, validation, and guidance to local authorities for the annual rough sleeping street count and evidence-based estimate process.

3.5 In 2017, the official figure of 178 people was calculated using the estimate methodology. This comprised of data submitted from local partners:

- St Mungo’s
- Brighton Housing Trust
- Project Anti-Freeze
- Clock Tower Sanctuary
- Downslink YMCA
- Sussex Police
- Equinox
- St Anne’s Day Centre

The data was collated to provide an agreed figure for one night in November. The council used this estimate method in the previous three years.

3.6 The official 2018 rough sleeping figure for the council is 64 people. This figure was established by pooling one night of research undertaken across the city. Teams of outreach workers and volunteers worked together to make a record of people bedded down in the city after midnight and through the early hours of Wednesday 21 November 2018.

3.7 From a review of the Independent Verifier’s 2018 report, which accompanied the return, it was noted that on the night of the count (the date having been set some six-weeks in advance) that *“there was heavy snowfall, which settled in many places, around 01:30am, the forecast had been for 2 degrees and sleet showers, so this was totally unexpected. Although it didn’t affect the total number, as people in SWEP<sup>1</sup> were already counted, there may have already been some disruption to people’s choice of sleep sites from the sleet or from people finding shelter other than SWEP.”*

3.8 The Independent Verifier’s report also commented that reductions (from 2017’s figure) may *“also be attributed to the NSNO<sup>2</sup> Hub and RSI<sup>3</sup> funded units, and extended outreach team with RSI funded posts.”* It was also noted that the Churches night shelter opened earlier this year than previously.

#### **4. Conclusions**

4.1 Both the counts and estimate single night snapshots provide a way of indicating the number of people sleeping rough and assessing change over time. There is currently no national mechanism for recording every person who sleeps rough across the year. The single night snapshot methodology aims to get as accurate a representation of the number of people sleeping rough as possible, while acknowledging that each process has its limitations.

4.2 We therefore conclude that the rough sleeper statistics stated at the NICE Committee in December 2018 were based on reliable and relevant data.

#### **5. Acknowledgements**

5.1 We would like to thank all staff that provided assistance during the course of this work.

---

<sup>1</sup> SWEP – severe emergency weather protocol

<sup>2</sup> NSNO – no second night out

<sup>3</sup> RSI – rough sleepers initiative





<b>Subject:</b>	<b>Internal Audit Progress Report – Quarter 3 (1 October to 31 December 2018)</b>		
<b>Date of Meeting:</b>	<b>12 March 2019</b>		
<b>Report of:</b>	<b>Executive Director, Finance &amp; Resources</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Mark Dallen</b>	<b>Tel: 29-1314</b>
	<b>Email:</b>	<b>Mark.Dallen@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The purpose of this report is to provide Members with an update on all internal audit and counter fraud activity completed during the quarter, including a summary of all key audit findings. The report also includes details of progress on delivery of the annual audit plan along with an update on the performance of the internal audit service during the period.

**2. RECOMMENDATIONS**

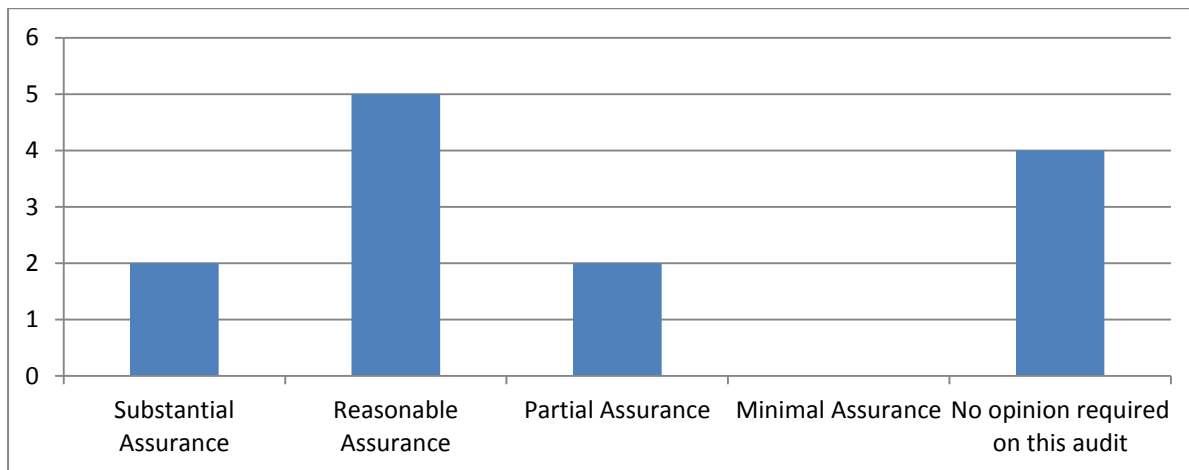
- 2.1 Members are asked to note the report and consider any further action required in response to the issues raised.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The current annual plan for internal audit is contained within the Internal Audit Strategy and Annual Plan 2018/19 which was approved by the Audit and Standards Committee on 28 March 2018.

**4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 Internal Audit is on target to deliver 90% of the approved audit plan as per the key performance indicator. For the year to date, 35 audit reviews have been completed to draft or final report stage.
- 4.2 Key audit findings from final reports issued during Quarter 3 are detailed in Appendix A and the opinions given are summarised in the chart below. There were five reasonable assurance and two partial assurance reports. There were no minimal assurance reports in this quarter.



- 4.3 Formal follow up reviews continue to be carried out for all audits where 'minimal assurance' opinions have been given and for higher risk areas receiving 'partial assurance'.
- 4.4 Appendix A also provides details of counter fraud investigations completed, information on the tracking of high priority actions and progress against our performance targets.

## 5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 None.

## 6. CONCLUSION

- 6.1 The Committee is asked to note the report.

## 7. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 7.1 It is expected that the Internal Audit and Corporate Fraud Plan 2018/19 will be delivered within existing budgetary resources. Progress against the plan and action taken in line with actions support the robustness and resilience of the council's practices and procedures in support of the council's overall financial position.

*Finance Officer Consulted: James Hengeveld Date: 22/02/19*

### Legal Implications:

- 7.2 The Accounts and Audit Regulations 2015, made under the Local Audit and Accountability Act 2014, require the Council to undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards. It is a legitimate part of the Audit and Standards Committee's role to review the level of work completed and planned by internal audit.

*Lawyer Consulted: Victoria Simpson*

*Date: 25/02/19*

Equalities Implications:

7.3 There are no direct equalities implications.

Sustainability Implications:

7.4 There are no direct sustainability implications.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Internal Audit and Counter Fraud Quarter 3 Progress Report 2018/19

**Documents in Members' Rooms**

1. None

**Background Documents**

1. Internal Audit and Corporate Fraud Strategic Plan 2018/19





# Internal Audit and Counter Fraud Quarter 3 Progress Report 2018/19

## CONTENTS

1. Summary of Completed Audits
2. Counter Fraud and Investigation Activities
3. Action Tracking
4. Amendments to the Audit Plan
5. Internal Audit Performance

## 1. Summary of Completed Audits

### Creditors – Reasonable Assurance

- 1.1 The purpose of this audit was to review controls in place to provide assurance that payments to suppliers are accurate, authorised and bona fide. The review included examining reconciliation controls and the protocols for amending standing data. During the period April to August 2018 there were 168,000 creditor transactions totalling £170 million.
- 1.2 The audit found that the majority of controls within the creditors system are working correctly. Data analytics was used and concluded that there was no evidence to suggest orders are being split to circumvent approval controls within the system. BACS payment procedures were found to be operating correctly, as were reconciliations with the general ledger.
- 1.3 Control improvements were agreed in relation to:
  - payments made to creditors for multiple invoices, where there is input into the system via bulk uploads e.g. for electricity;
  - evidencing of a control in the CHAPS payment process.

### Council Tax – Substantial Assurance

- 1.4 The estimated net collectable Council Tax debit for the last financial year (2017/18) was £162.3m. This relates to approximately 130,000 chargeable dwellings across the City.
- 1.5 The audit provided assurance that all taxable properties have been identified and correctly billed, and that collection and recovery processes work effectively. Also that key reconciliations are in place.
- 1.6 The report review included only one low action in relation to improving write-off procedures.

### Housing and Council Tax Benefits – Reasonable Assurance

- 1.7 At the time of audit, projected housing and council tax benefit expenditure for 2018/19 was £134.7m.
- 1.8 The audit was focused on providing assurance that all benefit payments are legitimate and appropriate and that assessments are accurate and timely. It also reviewed the controls relating to overpayments and write-offs, quality assurance arrangements and reconciliations with other key financial systems.

- 1.9 Whilst the majority of key controls were found to be in place, actions for improvement were agreed in relation to:
- monitoring over the percentage of overpayments due to administrative error to make sure DWP thresholds are not breached;
  - investigating and resolving delays in payments being made;
  - carrying out quality assurance work on performance data;
  - Introducing additional checks on some self-employed cases.

### **Wellbeing Project - Substantial Assurance**

- 1.10 The purpose of this report was to summarise the work to date in relation to the Wellbeing Steering Group and associated project and to provide an opinion on progress to date, and its future plans.
- 1.11 The Wellbeing Steering Group was established as part of the Council's People Plan and it is responsible for identifying priorities and outcomes to promote and improve the health and wellbeing of staff. The Group is fulfilling its main aims and objectives. It has brought together priorities from various staff surveys, under the People Promise and developed a number of local campaigns and actions to deliver them.
- 1.12 We concluded that the group comprises a good mix of staff from across the organisation and meets regularly. The role of Public Health colleagues is effective in enabling the group to deliver on its wellbeing agenda and this will continue to be an important part of the work of the group. Governance and accountability of the group is provided by regular reports and updates to the People Promise Project Board, informing the Executive Leadership Team of its work done and any emerging issues requiring corporate support.
- 1.13 One medium priority action was agreed relating to the need to ensure effective reporting and monitoring of all 8 of the sub-groups that have been set up to support different strands of the project.

### **Brighton and Hove Integrated Support Services – Reasonable Assurance**

- 1.14 Brighton & Hove Inclusion Support Service (BHISS) is a multi-disciplinary team, of approximately 100 staff, working with children and young people with special educational needs and disabilities (SEND) and their families. The service works through schools, including Academies and Free schools as well as other educational settings. The budget for the BHIS Service in 2018/19 is £3.5m.

- 1.15 The purpose of the audit was to provide assurance that effective budget management controls were in place alongside appropriate service monitoring arrangements for the delivery of the service to schools.
- 1.16 The audit found that the service has been developing a traded service model in order to provide advice, support and training to schools, whilst also balancing the budget of the service. At the time of our audit, BHISS was consulting with stakeholders to assess the viability of their proposals, part of which are to intended to address the uncertainty created if schools did not have 100% buy back to the service.
- 1.17 Whilst appropriate controls were generally found to be in place, actions for further improvement were agreed in relation to the following:
- implementing service changes to ensure a balanced budget.
  - implementing refinements to the service offer to individual schools to allow tailoring to their individual needs/ requirements.

#### **Seafront Investment Strategy (Strategic Risk number 23) – Reasonable Assurance**

- 1.18 This audit was a review of Strategic Risk 23, the narrative for which reads “Unable to develop an effective Investment Strategy for the Seafront”. The senior risk owner is the Executive Director, Environment, Economy & Communities.
- 1.19 The purpose of the audit was to provide assurance that the controls documented in the strategic risk register against this risk are operating as intended and to identify any gaps in the assurance mapping. Also that the risk is accurately reported in the strategic risk register, and that changes to controls and the mitigation of the risk is promptly captured and communicated.
- 1.20 Overall arrangements for the management and monitoring of this risk are considered effective, including the regular scrutiny of the risk by the Audit and Standards Committee. However, the audit found that there are some areas for improvement captured in two medium priority actions, both of which have been agreed with management. These are:
- The overall risks relating to the Waterfront and King Alfred projects should also be consolidated and monitored under SR23;
  - The work associated with the Madeira Terrace project should also be brought into this risk, including the reports of actions from inspection reports that are not taken forward because of cost or other reasons.

## Street Lighting Procurement – This report does not have an assurance opinion

- 1.21 Following an investigation into the re-procurement of the Council’s Street Lighting contract, an internal control report was produced in order to identify and highlight any control weaknesses which should be addressed, both within this service and for future procurements throughout the Council.
- 1.22 The report highlighted that although controls to manage conflicts of interests were in place, these controls were not complied with during the tender process. Scrutiny of declarations in the register of interests was not effective and management did not recognise the implications of the potential conflicts that had been declared. In such cases, management did not provide sufficient challenge or put adequate mitigations in place.
- 1.23 These shortfalls exposed the Council to a clear reputational risk and created an opportunity for fraud and corruption. To address these control weaknesses, the following actions have been agreed with corporate management:
- Increasing managers and officers awareness of their responsibilities under the Code of Conduct for Employees and under Contract Standing Orders. To include the exclusion of officers from procurement processes when conflicts of interest arise;
  - Providing additional guidance for managers on responding to conflicts of interest;
  - Improving all employees’ awareness of the requirement to protect commercially sensitive information during a procurement process;
  - Reviewing and updating the Council’s Whistleblowing Policy.
  - Reiterating the importance of purchasing controls that ensure that a check is made before payment that goods and services have been satisfactorily delivered.

## Home Care – Partial Assurance

- 1.24 The majority of the council’s home care services are delivered by external providers, with a budget of £8.3million in 2018/19. This is in addition to a smaller in-house service.
- 1.25 The purpose of the audit was to provide assurance that there is effective control over payments to third party providers, including an appropriate reconciliation of payments made to services provided and that data collection processes ensure that the billing of service users is accurate and timely. That the costs of in-house services are effectively controlled and that home care visits are timely and effectively monitored.
- 1.26 The review found that controls over the operation of the in-house service are effective and working effectively consistently. With regard to payments to external providers, a new IT system has caused payments problems which resulted in some payments in advance needing to be made and the service identifying instances of over claiming. In addition, the current provider

agreements do not reflect the new operating processes, thereby weakening contract management. As at TBM 03 (June 2018), there was a forecast overspend of just under £0.5m.

1.27 It is important to note that between the completion of the fieldwork and the finalisation of the audit report significant progress had been made by management with addressing implementation issues with the new IT system.

1.28 The following improvement actions were agreed to strengthen the control environment, all of which will be subject to a follow up by Internal Audit during 2019/20:

- Improving the validation of providers claims, including reasonableness checks and spot checks on providers' roistering schedules;
- Implementing reporting on key performance indicators to validate actual care delivery;
- Completing the reconciliation between the payments previously advanced and the actual hours worked/claimed;
- Redrafting agreements with service providers;
- Improving budget monitoring.

#### **EU Grant - SHINE**

1.29 This is an EU Interreg project that requires grant certification at least once a year. The full title of the project is Sustainable Housing Initiatives in Excluded Neighbourhoods. The total value of the project between 2016 and 2020 is approximately £367,000 (Grant expected £220,000).

1.30 No significant issues were identified in the grant certification.

#### **EU Grant – SOLARISE**

1.31 This is an EU Interreg project that requires grant certification at least once a year. The full title of the project is Solar Adoption Rise In the 2 Seas. The total value of the project between 2018 and 2021 is approximately £525,000 (Grant expected £315,000). This was the first claim on this project.

1.32 No significant issues were identified in the grant certification.

#### **EU Grant – BHCT**

1.33 This is again an EU Interreg project that requires grant certification at least once a year. The full title of the project is BioCultural Heritage Tourism. The total value of the project between 2018 to 2021 is approximately £463,000 (Grant expected £320,000). This was the first claim on this project.

1.34 No significant issues were identified in the grant certification.

### **Bevendean Primary School – Reasonable Assurance**

1.35 An audit of Bevendean Primary School was undertaken in accordance with the standard audit programme. This covers governance arrangements, financial planning, budget monitoring, purchasing, income and payroll. The audit also includes some limited testing on school funds and assets.

1.36 The review concluded reasonable assurance meaning that most controls were in place and operating as expected. Actions were agreed in the following areas:

- Signed Governing Body minutes and supporting information to be made available on site;
- Budget monitoring information to be strengthened;
- Declarations of interest to be obtained from all Governors;
- Agreeing a financial recovery plan to avoid an unmanageable deficit in 2020/21;
- Improving controls over the use of the schools purchasing card and the bank and payroll reconciliation processes;
- Enhancing controls relating to the income reconciliation processes for school trips and banking arrangements;
- Improvements to the school letting processes.

### **Hove Park Secondary School – Partial Assurance**

1.37 An audit of Hove Park Secondary School was undertaken in accordance with the standard audit programme. This covers governance arrangements, financial planning, budget monitoring, purchasing, income and payroll. The audit also includes some limited testing on school funds and assets.

1.38 The review concluded partial assurance meaning that there are weaknesses in the system of control. Actions were agreed in the following areas;

- Improvements to the schools scheme of delegation and declaration of interest processes;
- Improving budget monitoring information;
- Reviewing the 2019/20 budget and agreeing actions to reduce the expected deficit resulting from lower pupil numbers;
- Publishing information on pupil premium spending;
- Improving controls over the authorisation of expense and overtime claims and the review of purchasing card expenditure;

- Improving procurement arrangements and letting processes;
- Arranging for the School Fund to be audited.

## 2. Counter Fraud and Investigation Activities

### Proactive Counter Fraud Work

- 2.1 The Orbis IA structure came into effect from 1st April 2018. The integrated structure was designed to deliver resilience, flexibility and quality, along with specific specialisms.
- 2.2 A key strand of the structure was the formation of a counter fraud team that would deliver specialist fraud resource across the partnership.
- 2.3 Work to date has focussed on the following areas:

Priority	Progress to date
<b>Reactive investigations</b>	<p>The counter fraud team is responsible for assessing and evaluating fraud referrals received by each sovereign partner, and then leading on subsequent investigations. The team have implemented a coordinated approach to assessing and logging referrals and adopted consistent procedures for recording investigations.</p> <p>During the 9-month period to date, there have been several investigations across the partnership which have been resourced through sovereign audit teams supported by advice and direction from the counter fraud team.</p>
<b>NFI Exercise</b>	<p>The counter fraud team have taken on responsibility for the coordination and submission of datasets at each authority. The NFI Key Contacts are members of the counter fraud team to ensure a consistent approach is followed and good practice is shared across all partners.</p> <p>Results from the matching exercise were received in January 2019 and the counter fraud team will liaise with partner authorities to review, prioritise and investigate flagged matches.</p>
<b>Counter Fraud Policies</b>	<p>Each Orbis partner has in place a counter fraud strategy that sets out their commitment to preventing, detecting and deterring fraud. The counter fraud team will review the sovereign strategies and align with best practice to ensure a robust and consistent approach to tackling fraud. As a priority the Anti Money Laundering policies have been reviewed and updated to reflect</p>



	recent changes in legislation.
<b>Fraud Risk Assessments</b>	Fraud risk assessments have been consolidated to ensure that the current fraud threat for the Council has been considered and appropriate mitigating actions identified.
<b>Fraud Response Plans</b>	The Fraud Response Plans take into consideration the fraud risk assessments and emerging trends across the public sector in order to provide a proactive counter fraud programme. These have been reviewed and aligned to deliver an efficient and effective programme of work across the Orbis partners. This will form the basis of planned proactive work for 2019 and include an increased emphasis on data analytics.
<b>Fraud Awareness</b>	The team have been rolling out a programme of fraud awareness workshops to help specific, targeted services identify the risk of fraud and vulnerabilities in their processes and procedures. Workshops have been delivered to several teams across the partners from a mix of services.

2.4 The following areas have been identified as priorities for the last quarter of the year:

- Roll out of proactive programmes and data analytics (shaped by Fraud Response Plans).
- Continue Fraud Awareness Workshops to raise awareness to risk of fraud and promote the counter fraud team.
- Launch of an Orbis-wide Fraud Survey.

### Summary of Completed Investigations

2.5 The outcomes at the end of quarter 3 are as follows: -

- Investigations have resulted in 17 Council properties being returned to the Council's stock making them available for people in genuine housing need (The target for the year is 20).
- Housing Benefits overpayments totalling £18,000 have been identified (year to date) so far as a result of investigations.
- Council tax reduction adjustments of £9,200 have also been identified this year, together with a further £21,000 in relation to Council tax account discounts (SPD's etc.).
- 30 Cases of Blue Badge fraud have been sent for prosecution and 100 people have attended a Community Resolution at the Hove Town Hall with the Police and Blue Badge Investigator for misuse of Blue Badges.
- One Right to Buy application has been stopped following the intervention of the Counter Fraud Team.

- Two concessionary travel passes have been cancelled for the year to date.
- An investigation was conducted following an allegation of irregularities in a contract letting process (Street Lighting). As a result, one member of staff was dismissed on the basis of conduct issues and an internal control report was issued to help avoid future repetition (see paragraphs 1.21 to 1.23 above).
- An investigation was carried out in relation to an alleged cash loss from council premises. Whilst it was not possible to prove the extent of any loss, one member of staff subsequently resigned.
- An allegation of favouritism within the Housing Service was subject to investigation. Whilst no evidence of any irregularity was identified, improvements to the declaration of interest process within the service have been implemented following the findings of the investigation.
- A salary overpayment was investigated in order establish the circumstances and to help ensure appropriate controls are in place to avoid future repetition.

### 3. Action Tracking

- 3.1 All high priority actions agreed with management as part of individual audit reviews are subject to action tracking. As at the end of quarter 3, 100% of high priority actions due had been implemented.

### 4 Amendments to the Audit Plan

- 4.1 In accordance with proper professional practice, the internal audit plan for the year remains under regular review to ensure that the service continues to focus its resources in the highest priority areas based on an assessment of risk. Through discussions with management, the following reviews have been added to the audit plan during the last quarter:
- Street Lighting Procurement – Following a whistleblowing allegation an investigation was carried out into conflict of interest relating to an officer involved with the procurement process. No fraud or irregularity was detected but following the dismissal of the officer concerned in relation to conduct issues, an internal control report was produced, as summarised earlier in this report.
- 4.2 Through the same process, audits could either be removed or deferred from the audit plan and, where appropriate, considered for inclusion in the 2019/20 plan as part of the overall risk assessment completed during the annual audit planning process. At the end of quarter 3 we have identified that due to ongoing long-term sickness absence, two IT & Digital audits need to be removed from this year's audit plan. These are;
- IT&D Project Management;
  - Mobile Device Migration.

4.3 It is intended that both of these audits are deferred, and will therefore being included in the 2019/20 audit plan.

## 5 Internal Audit Performance

5.1 In addition to the annual assessment of internal audit effectiveness against Public Sector Internal Audit Standards (PSIAS), the performance of the service is monitored on an ongoing basis against a set up agreed key performance indicators as set out in the following table:

Aspect of Service	Orbis IA Performance Indicator	Target	RAG Score	Actual Performance
Quality	Annual Audit Plan agreed by Audit Committee	By end April	<b>G</b>	Approved by Audit Committee on 27 March 2018
	Annual Audit Report and Opinion	By end July	<b>G</b>	2018/19 Annual Report and Opinion approved by Audit Committee on 24 July 2018
	Customer Satisfaction Levels	90% satisfied	<b>G</b>	100% as at the end of quarter 1
Productivity and Process Efficiency	Audit Plan – completion to draft report stage	90%	<b>G</b>	On target. 69% of the plan complete as at the end of quarter 3.
Compliance with Professional Standards	Public Sector Internal Audit Standards	Conforms	<b>G</b>	January 2018 – External assessment by the South West Audit Partnership gave an opinion of ‘Generally Conforms’ – the highest of three possible rankings
	Relevant legislation such as the Police and Criminal Evidence Act, Criminal Procedures and Investigations Act	Conforms	<b>G</b>	No evidence of non-compliance identified
Outcome and degree of influence	Implementation of management actions agreed in response to audit findings	95% for high priority agreed actions	<b>G</b>	100% at end of quarter 3.

Aspect of Service	Orbis IA Performance Indicator	Target	RAG Score	Actual Performance
Our staff	Professionally Qualified/Accredited	80%	<b>G</b>	85%

## Audit Opinions and Definitions

Opinion	Definition
<b>Substantial Assurance</b>	Controls are in place and are operating as expected to manage key risks to the achievement of system or service objectives.
<b>Reasonable Assurance</b>	Most controls are in place and are operating as expected to manage key risks to the achievement of system or service objectives.
<b>Partial Assurance</b>	There are weaknesses in the system of control and/or the level of non-compliance is such as to put the achievement of the system or service objectives at risk.
<b>Minimal Assurance</b>	Controls are generally weak or non-existent, leaving the system open to the risk of significant error or fraud. There is a high risk to the ability of the system/service to meet its objectives.



<b>Subject:</b>	<b>Internal Audit Strategy and Annual Audit Plan 2019/20</b>		
<b>Date of Meeting:</b>	<b>12 March 2019</b>		
<b>Report of:</b>	<b>Executive Director of Finance and Resources</b>		
<b>Contact Officer:</b>	<b>Mark Dallen, Audit Manager</b>		
	<b>Name:</b>	<b>Russell Banks, Orbis Chief Internal Auditor</b>	<b>Tel: 01273 291314</b>
	<b>Email:</b>	<a href="mailto:Russell.banks@eastsussex.gov.uk">Russell.banks@eastsussex.gov.uk</a> , <a href="mailto:Mark.dallen@brighton-hove.gov.uk">Mark.dallen@brighton-hove.gov.uk</a> ,	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE/ NOT FOR PUBLICATION****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Members are asked to review the attached draft of the Internal Audit Strategy and Annual Audit Plan for 2019/20.

This includes:

- the proposed programme of internal audit and counter-fraud work for the coming year
- the Internal Audit Charter which sets out the purpose, authority and responsibilities of the Internal Audit function.

**2. RECOMMENDATIONS:**

- 2.1 That the Internal Audit Strategy and Annual Audit Plan for 2019/20 is approved subject to the identification of any areas for further consultation, or the potential addition or deletion of reviews currently included in the plan.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 Regulation 5 of The Accounts and Audit Regulations 2015 requires the Council to 'undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes'. In addition the Public Sector Internal Audit Standards (PSIAS) require "senior management" and "the board"

to approve internal audit activity's plans and resource requirements and the Internal Audit Charter.

- 3.2 For Brighton & Hove, "senior management" is the Executive Leadership Team (ELT) and the "board" is the Audit & Standards Committee.
- 3.3 A copy of the Internal Audit Strategy and Annual Audit Plan for 2019/20 is included as Annex 1.
- 3.4 The development of the annual plan involves extensive consultation place with key stakeholders and horizon scanning is undertaken to ensure audit activity is proactive and future focussed. For 2019/20, the plan composes 1,540 days.
- 3.5 The strategy which accompanies the schedule of audits details the priorities for delivering an effective internal audit and counter fraud service together with details of the quality assurance and performance management arrangements for the coming year.
- 3.6 The Internal Audit Charter describes the purpose, authority and responsibilities on internal audit, its statutory basis and the standards which underpin best practice.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The 2019/20 audit plan will again be delivered in partnership with our colleagues from East Sussex County Council and Surrey County Council as part of Orbis Internal Audit. The service will be delivered by a sovereign team of staff based at Brighton & Hove City Council supplemented by two specialist teams (ICT and Corporate Fraud) who will undertake audit work across the Orbis partnership. There are also resources in place to allow the delivery of IT and other specialist audits if required.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The process of compiling the Internal Audit plan has involved substantial consultations, including with members of ELT, heads of service and other senior management staff.

#### **6. CONCLUSION**

- 6.1 The Internal Audit Strategy and Annual Audit Plan, attached at Annex 1, sets out proposals for maintaining an adequate and effective system of internal audit for 2019/20.

#### **7. FINANCIAL & OTHER IMPLICATIONS:**

Financial Implications:



- 7.1 It is expected that the 2019/20 Internal Audit plan will be delivered within the proposed budgetary resources.
- 7.2 The strategy and plan and action taken in line with recommendations from audits support the robustness and resilience of the council's practices and procedures and support the council's overall financial position.

*Finance Officer Consulted: James Hengeveld*

*Date: 22/02/19*

Legal Implications:

- 7.3 This report sets out the council's plan for conforming with Regulation 5 of the Accounts and Audit Regulations 2015, made under the Local Audit and Accountability Act 2014, which requires the Council to 'undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes.' It is within the delegated authority of the Audit and Standards Committee to approve the Plan.

*Lawyer Consulted:*

*Victoria Simpson Date: 25/02/19*

Equalities Implications:

- 7.4 Not applicable.

Sustainability Implications:

- 7.5 Not applicable

Any Other Significant Implications:

- 7.6 None.

## **SUPPORTING DOCUMENTATION**

### **Annexes:**

1. Internal Audit Strategy and Annual Audit Plan 2019/20

### **Documents in Members' Rooms**

None

### **Background Documents**

None



# Internal Audit Strategy and Annual Audit Plan 2019-2020



## 1. Role of Internal Audit

1.1 The full role and scope of the Council’s Internal Audit Service is set out within the Internal Audit Charter and Terms of Reference, the latest version of which is attached to this Strategy as Appendix B.

1.2 The mission of Internal Audit, as defined by the Chartered Institute of Internal Auditors (CIIA), is to enhance and protect organisational value by providing risk-based and objective assurance, advice and insight. Internal Audit is defined as *“an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.”*

## 2. Risk Assessment and Audit Planning

2.1 Brighton & Hove Council’s Internal Audit Strategy and Annual Audit Plan is updated annually and is based on a number of factors, especially management’s assessment of risk (including that set out within the strategic and departmental risk registers) and our own risk assessment of the Council’s major systems and other auditable areas. This allows us to prioritise those areas to be included within the audit plan on the basis of risk.

2.2 The update of the annual plan for 2019/20 has involved consultation with a range of stakeholders, to ensure that their views on risks and current issues, within individual directorates and corporately, are identified and considered. In order to ensure that the most effective use is made of available resources, to avoid duplication and to minimise service disruption, efforts continue to be made to identify, and where possible, rely upon, other sources of assurance available. The following diagram sets out the various sources of information used to inform our 2018/20 audit planning process:



2.4 In producing the audit plan (which is set out in Appendix A to this report) the following key principles continue to be applied:

- All key financial systems are subject to a cyclical programme of audits covering, as a minimum, compliance against key controls;
- Previous reviews which resulted in ‘minimal assurance’ audit opinions will be subject to a specific follow-up review to assess the effective implementation by management of agreed actions. This will also include a number of previous reviews with a ‘partial assurance’ opinion where deemed necessary or where the area under review is considered to be of a higher risk nature.

2.5 In addition, formal action tracking arrangements are in place to monitor the implementation by management of all individual high risk recommendations, with the results of this work reported to the Audit & Standards Committee on a quarterly basis.

2.6 During the last two years, Surrey County Council, East Sussex County Council and Brighton and Hove City Council have been working together to develop and form the Orbis Partnership, covering a range of business services, including internal audit. This work has resulted in the formation of a single, integrated internal audit service from April 2018, involving three locality based teams supported by two specialist teams in the areas of ICT audit and counter fraud. It is our ambition that this will provide greater resilience and capacity for our partner councils whilst also building on existing high quality services.

### 3. Key Issues

3.1 In times of significant transformation, organisations must both manage change effectively and ensure that core controls remain in place. In order to respond to the continued reduction in financial resources and the increased demand for services, the Council needs to consider some radical changes to its service offer in many areas.

3.2 Internal Audit must therefore be in a position to give an opinion and assurance that covers the control environment in relation to both existing systems and these new developments. It is also essential that this work is undertaken in a flexible and supportive manner, in conjunction with management, to ensure that both risks and opportunities are properly considered. During 2019/20, a number of major organisational initiatives are featured within the audit plan, with the intention that Internal Audit is able to provide proactive advice, support and assurance as these programmes progress. These include:

- Major Capital Projects (Waterfront Project)
- Health and Social Care Integration
- Housing Repairs Contract (Insourcing)

3.3 In recognition that in some cases, sufficient information regarding the full extent of future changes and associated risks may not yet be known, the 2019/20 audit plan includes a proportion of time classified as ‘Emerging Risks’. This approach has been adopted to enable Internal Audit to react appropriately throughout the year as new risks materialise and to ensure that expertise in governance, risk and internal control can be utilised early in the change process.

3.4 In view of the above, Internal Audit will continue to work closely with senior management and Members throughout the year to identify any new risks and to agree how and where audit resources can be utilised to best effect.

3.5 Other priority areas identified for inclusion within the audit plan include:

- Key financial systems
- IT audits covering information governance and information security risk
- Follow-ups on the 2018/19 audits where we gave minimal or partial assurance. These include audits of the Brighton Centre, Royal Pavilion, Housing Allocations, Client Billing and Extra Care Housing.

3.6 The results of all audit work undertaken will be summarised within quarterly update reports along with any common themes and findings arising from our work.

#### 4. Counter Fraud

4.1 Managing the risk of fraud and corruption is the responsibility of management. Internal Audit will, however, be alert in all its work to risks and exposures that could allow fraud or corruption and will investigate allegations of fraud and corruption in line with the Council's Anti-Fraud and Corruption Strategy.

4.2 The Chief Internal Auditor should be informed of all suspected or detected fraud, corruption or irregularity in order to consider the adequacy of the relevant controls and evaluate the implication for their opinion on the control environment.

4.3 In addition, Internal Audit will promote an anti-fraud and corruption culture within the Council to aid the prevention and detection of fraud. Through the work of the Counter Fraud Team, Internal Audit will maintain a fraud risk assessment and deliver a programme of proactive and reactive counter fraud services to help ensure that the Council continues to protect its services from fraud loss.

4.4 Significant resources continue to be provided (250 days) to support the Council's strategy to prevent and address housing tenancy and right to buy fraud. For 2019/20 a key target is to return 20 properties to the Council's stock where the tenant has illegally sublet the property or for other reasons has been found not to hold a legitimate tenancy.

#### 5. Matching Audit Needs to Resources

5.1 The overall aim of the Internal Audit Strategy is to allocate available internal audit resources so as to focus on the highest risk areas and to enable an annual opinion to be given on the adequacy and effectiveness of the Council's framework of governance, risk management and control.

5.2 In addition to this, resources have been allocated to the external bodies for whom Orbis Internal Audit also provide internal audit services, at an appropriate charge. These include Horsham District Council, Elmbridge District Council, East Sussex Fire Authority and the South Downs National Park Authority.

Brighton & Hove City Council

5.3 Internal audit activities will be delivered by a range of staff from across the Orbis Internal Audit Service, maximising the value from a wide range of skills and experience available. In the small number of instances where sufficient expertise is not available from within the team, mainly in highly technical areas, externally provided specialist resources will continue to be utilised.

5.4 The following table summarises the level of audit resources expected to be available for Brighton & Hove in 2019/20 (expressed in days), compared to the equivalent number of planned days in previous years. Whilst the overall level of resource was reduced in 2018/19, as part of the Internal Audit contribution towards planned organisational savings, no further significant reductions have been made for 2019/20. This level of resource is considered to be sufficient to allow Internal Audit to deliver its risk based plan in accordance with professional standards<sup>1</sup> and to enable the Chief Internal Auditor to provide his annual audit opinion. It should also be noted that the impacts of the previous year’s reduction in resources have been mitigated as far as possible through efficiencies and additional resilience offered from the Orbis partnership as explained above.

**Table 1: Annual Internal Audit Plan – Plan Days**

	2016/17	2017/18	2018/19	2019/20
Plan Days	2,020	1,792	1,564	1,540

## 6. Audit Approach

6.1 The approach of Internal Audit is to use risk based reviews, supplemented in some areas by the use of compliance audits and themed reviews. All audits have regard to management’s arrangements for:

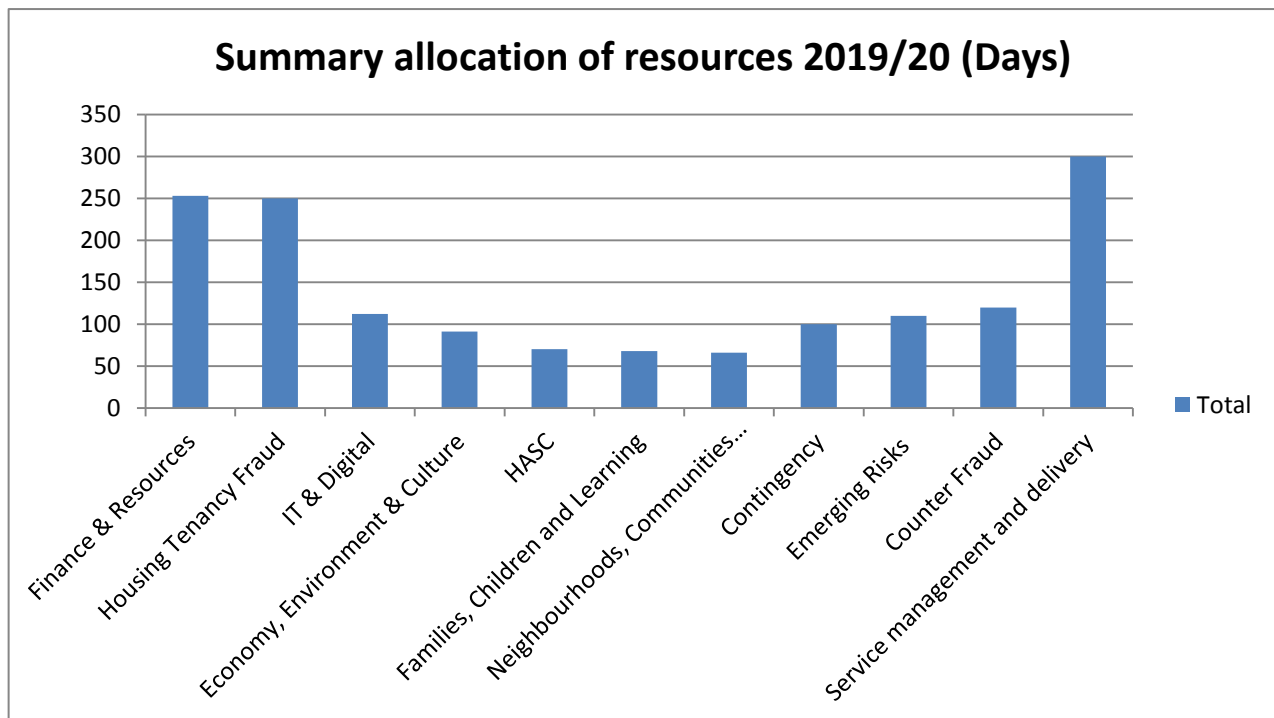
- Achievement of the organisation’s objectives;
- Reliability and integrity of financial and operational information;
- Effectiveness and efficiency of operations and programmes;
- Safeguarding of assets; and
- Compliance with laws, regulations, policies, procedures and contracts.

6.2 In addition to these audits, and the advice on controls given on specific development areas which are separately identified within the plan, there are a number of generic areas where there are increasing demands upon Internal Audit, some of which cannot be planned in advance. For this reason, time is built into the plan to cover the following:

- Contingency – an allowance of days to provide capacity for unplanned work, including special audits and management investigations. This contingency also allows for the completion of work in progress from the 2018/19 plan;
- Advice, Management, Liaison and Planning - an allowance to cover provision of ad hoc advice on risk, audit and control issues, audit planning and annual reporting, ongoing liaison with service management and Members, and audit management time in support of the delivery of all audit work, planned and unplanned.

<sup>1</sup> Public Sector Internal Audit Standards (PSIAS)  
Brighton & Hove City Council

6.3 A summary of the allocation of audit resources (days) across the 2019/20 audit plan is set out in the following chart:



6.4 In delivering this strategy and plan, we will ensure that liaison has taken place with the Council’s external auditors, Grant Thornton, to ensure that the use of audit resources is maximised, duplication of work is avoided, and statutory requirements are met.

## 7. Training and Development

7.1 The effectiveness of the Internal Audit Service depends significantly on the quality, training and experience of its staff. Training needs of individual staff members are identified through a formal performance and development process and are delivered and monitored through on-going management supervision.

7.2 The team is also committed to coaching and mentoring its staff, and to providing opportunities for appropriate professional development. This is reflected in the high proportion of staff holding a professional internal audit or accountancy qualification as well as several new members of the team embarking on new apprenticeship training during 2019/20.

## 8. Quality and Performance

8.1 With effect from 1 April 2013, all of the relevant internal audit standard setting bodies, including CIPFA, adopted a common set of Public Sector Internal Audit Standards (PSIAS). These are based on the Institute of Internal Auditors International Professional Practices Framework and replace the previous Code of Practice for Internal Audit in Local Government.

8.2 Included within the new Standards is the requirement for the organisation to define the terms ‘Board’ and ‘senior management’ in the context of audit activity. This has been set out



within the Internal Audit Charter, which confirms the Audit & Standards Committee's role as the Board.

8.3 The PSIAS require each internal audit service to maintain an ongoing quality assurance and improvement programme based on an annual self-assessment against the Standards, supplemented at least every five years by a full independent external assessment. The outcomes from these assessments, including any improvement actions arising, will be reported to the Audit & Standards Committee, usually as part of the annual internal audit report. For clarity, the Standards specify that the following core principles underpin an effective internal audit service:

- Demonstrates integrity;
- Demonstrates competence and due professional care;
- Is objective and free from undue influence (independent);
- Aligns with the strategies, objectives, and risks of the organisation;
- Is appropriately positioned and adequately resourced;
- Demonstrates quality and continuous improvement;
- Communicates effectively;
- Provides risk-based assurance;
- Is insightful, proactive, and future-focused;
- Promotes organisational improvement.

8.4 In addition, the performance of Orbis Internal Audit continues to be measured against key service targets focussing on service quality, productivity and efficiency, compliance with professional standards, influence and our staff. These are all underpinned by appropriate key performance indicators as set out in Table 2 below.

8.5 At a detailed level each audit assignment is monitored and customer feedback sought. There is also ongoing performance appraisals and supervision for all Internal Audit staff during the year to support them in achieving their personal targets.

8.6 In addition to the individual reports to management for each audit assignment, reports on key audit findings and the delivery of the audit plan are made to the Audit & Standards Committee on a quarterly basis. An Annual Internal Audit Opinion is also produced each year.

8.7 Whilst Orbis Internal Audit liaises closely with other internal audit services through the Sussex and Surrey audit and counter fraud groups, the Home Counties Chief Internal Auditors' Group and the Local Authority Chief Auditors' Network, we are continuing to develop joint working arrangements with other local authority audit teams to help improve resilience and make better use of our collective resources.

**Table 2: Performance Indicators**

Aspect of Service	Orbis IA Performance Indicators	Target
<b>Quality</b>	<ul style="list-style-type: none"> <li>Annual Audit Plan agreed by Audit Committee</li> <li>Annual Audit Report and Opinion</li> <li>Satisfaction levels</li> </ul>	<p>By end April</p> <p>To inform AGS 90% satisfied</p>
<b>Productivity and Process Efficiency</b>	<ul style="list-style-type: none"> <li>Audit Plan – completion to draft report stage by 31 March 2019</li> </ul>	90%
<b>Compliance with Professional Standards</b>	<ul style="list-style-type: none"> <li>Public Sector Internal Audit Standards</li> <li>Relevant legislation such as the Police and Criminal Evidence Act, Criminal Procedures and Investigations Act</li> </ul>	<p>Conforms</p> <p>Conforms</p>
<b>Outcomes and degree of influence</b>	<ul style="list-style-type: none"> <li>Implementation of management actions agreed in response to audit findings</li> </ul>	95% for high priority
<b>Our Staff</b>	<ul style="list-style-type: none"> <li>Professionally Qualified/Accredited</li> </ul>	80%

Russell Banks  
Orbis Chief Internal Auditor

# INTERNAL AUDIT PLAN

## 2019-20



<b>Finance &amp; Resources</b>	
<b>Review Name</b>	<b>Outline Objective</b>
Payroll	To review controls in relation to the staff payment system, including those relating to starters, leavers, temporary and permanent payments, variations of pay, and pre-employment checks.
Creditors	To review the processes and key controls relating to the accounts payable system, including those in place for ensuring the accuracy of vendor details, the processing of invoices, goods receipting and promptness of payments.
Debtors	To review the processes and key controls relating to the accounts receivable system, including those in place for ensuring the accuracy of customer details, completeness, accuracy and timeliness of invoicing, recording and matching payments to invoices, and debt recovery.
Council Tax	To provide assurance that controls over council tax collection are effective. Including billing, collection, recovery and the award of discounts.
NNDR	That controls over business rate collection are effective including billing, collection, recovery and reliefs.
Housing and Council Tax Benefits	Review of HB and Council Tax Reduction controls to ensure that benefits are accurately and promptly paid to those with a legitimate entitlement.
Treasury Management	A review to assess the adequacy of key controls and procedures across the council's Treasury Management arrangements, including cash flow forecasting, segregation of duties, financial investments and use of treasury advisers.
New ePay System	To review the controls for a new payment system which complement the use of procurement cards.
Main Accounting System	To review the processes and key controls relating to the maintenance and operation of the general ledger, including suspense accounts, reconciliations, journals and year end procedures.
Income Collection & Banking	To review the corporate arrangements for the collection and distribution of income, including bank reconciliation processes.
Budget Management	A review of the Council's budget management arrangements, to include an assessment of the extent to which planned savings are being delivered.
Anti-fraud and Corruption	To cover the investigation of fraud and irregularities, as well as proactive work including the National Fraud Initiative (NFI) data matching exercise.
Care Payments	To examine the key controls over care payments including residential, home care and fostering.

# INTERNAL AUDIT PLAN 2019-20



<b>Economy, Environment and Culture</b>	
<b>Review Name</b>	<b>Outline Objective</b>
EU Grant - Shaping Climate change Adaptive PlacEs (SCAPE)	To provide financial scrutiny and certification of the grant in accordance with the EU First Level Controller requirements.
EU Interreg Grant- BCHT	To provide financial scrutiny and certification of the grant in accordance with the EU First Level Controller requirements.
Transport Capital Grants	To check and certify the grant in accordance with the requirements of the Department for Transport.
Brighton Centre	Follow-up on Minimal Assurance 2018/19 audit.
On and Off Street Parking	Annual review of income management of on and off street parking including key reconciliations and income monitoring controls.
City Clean Follow-up	Follow-up on Partial Assurance 2018/19 audit.
Major Capital Projects (Waterfront Project)	To provide ongoing review and assurance on the Waterfront Project, focusing on specific areas of risk to be agreed with management.
Residents Parking Permits	To provide assurance that processes ensure that permit applications are correctly processed and validated, so that they are only available to those residents who are entitled. This review will include a follow-up of actions agreed as part of previous audits.
Royal Pavilion	Follow-up on the 2018/19 Partial Assurance report.

# INTERNAL AUDIT PLAN 2019-20



<b>IT &amp; Digital</b>	
<b>Review Name</b>	<b>Outline Objective</b>
Patch Management	A review of the controls in place to support effective patch management ensuring that patches are tested prior to being applied and that patches are applied in a timely manner.
Cloud Computing	From a sample of applications and systems retained in the cloud, we will review the controls in place to manage the security, access, recovery and deletion of the data.
Network Security	Significant changes to the way the network is secured are planned, with changes beginning to take effect during 2019/20 and changes fully established in 2020/21. This audit will review the current network security arrangements, and will critically evaluate the planned changes.
ICT Compliance Framework	The councils application to the Governments Public Sector Network (PSN) Code of Connection (CoCo) provides significant assurance over the Councils ICT governance arrangements. With the demise of the CoCo PSN assessment, we will review the councils ICT Governance arrangements, where appropriate relying on any other suitable sources of assurance, such as the cybersecurity plus submissions.
Disaster Planning & Recovery	Follow-up on the 2018/19 Partial Assurance Report.
Orbis Data Centre	A review of the Orbis data centre to ensure appropriate controls are in place to prevent unauthorised physical and electronic access (including 3rd party access) to data held within the centre; the audit will also consider the effectiveness of controls to protect the servers from fire, electrical and water damage; and review the adequacy of backup arrangements, to ensure systems and services are not affected in the event of an outage. Where possible we will place reliance on assurances already available.
Cyber Security	The audit will review the Authorities' arrangements for minimising the likelihood of a cyber attack and the arrangements for effectively responding to a cyber attack should one occur.
BACS Payment Arrangements	A review of the Council's BACS payment arrangements, to ensure adequate controls exist to prevent unauthorised amendment of BACS files and subsequent inappropriate payments

# INTERNAL AUDIT PLAN 2019-20



<b>Families, Children and Learning</b>	
<b>Review Name</b>	<b>Outline Objective</b>
EU Grant- Providing Access to Childcare and Employment (PACE)	To provide financial scrutiny and certification of the grant in accordance with the EU First Level Controller requirements.
Employment Support (Incl. Able & Willing)	Follow-up on 2018/19 Partial Assurance report.
Schools	Allocation to include a sample of individual schools, general advice and the communication of guidance and best practice to schools.
Care Leavers	Follow-up on the 2018/19 Partial Assurance Report.

<b>Health &amp; Adult Social Care</b>	
<b>Review Name</b>	<b>Outline Objective</b>
SR20. Inability to integrate health and social care services at a local level and deliver timely and appropriate interventions.	To examine the controls that are in place to mitigate the strategic risk relating to the integration of health and social care.
Extra Care Housing	Follow-up on the 2018/19 Partial Assurance Report.
Public Health	A review of the Public Health Service. To focus on a range of specific contracts, programmes and initiatives. For 2019/20 this will include reviewing the Active Lifestyles programme.
Direct Payments	An audit of direct payments. To focus on whether effective controls are in place, including those which focus on the monitoring of the use of these funds.
Client Billing	Follow-up on the 2018/19 Partial Assurance Report.

# INTERNAL AUDIT PLAN 2019-20



<b>Neighbourhoods, Communities and Housing</b>	
<b>Review Name</b>	<b>Outline Objective</b>
EU Grant - Sustainable Housing Initiatives in Excluded Neighbourhoods (SHINE)	To provide financial scrutiny and certification of the grant in accordance with the EU First Level Controller requirements.
EU Grant - Solar Adoption Rise in the Two Seas (Solarise)	To provide financial scrutiny and certification of the grant in accordance with the EU First Level Controller requirements.
Housing Rents	To provide assurance on the systems and procedures for the billing and collection of housing rents.
Housing Allocations	Follow-up on the 18/19 Partial Assurance report.
Housing Repairs Contract	An allocation of time set aside to provide proactive advice, support and assurance on the arrangements to bring the housing repairs service in house. Specific focus areas will be agreed with management as these arrangements develop.
Housing and Right To Buy	The investigation and prevention of HRA housing fraud, including illegal subletting and the prevention of Right to Buy irregularities.

# INTERNAL AUDIT PLAN 2019-20



<b>Service Management &amp; Delivery</b>	
<b>Review Name</b>	<b>Outline Objective</b>
Audit & Fraud Management	Overall management of all audit and counter fraud activity, including work allocation, work scheduling and Orbis Audit Manager meetings.
Client Support & Advice	Ad hoc advice, guidance and support on risk, internal control and governance matters provided to clients and services throughout the year.
Client Service Liaison	Liaison with clients and departmental management teams throughout the year.
Orbits IA Developments	Audit and corporate fraud service developments, including quality improvement and ensuring compliance with Public Sector Internal Audit Standards.
Organisational Management Support	Attendance and ongoing support to organisational management meetings, e.g. Orbis Customer Board, Information Governance Board, Orbis Customer Board, Corporate Health and Safety meetings.
External Liaison	Liaison with external auditors and other external bodies, including attendance at regional and national audit groups and counter fraud hubs.
Audit Committee and other Member Support	Ongoing liaison with Members on internal audit matters and attending Audit Committee meetings and associated pre-meetings.
Audit and Fraud Reporting	Production of periodic reports to management and the Audit Committee covering results of all audit and anti-fraud activity.
System Development & admin	Development and administration of Audit and Fraud Management systems.
Action Tracking	Ongoing action tracking and reporting of agreed, high risk actions.
Annual Report and Opinion, Annual Governance Statement	Creation of Annual Report and Opinion / Annual Governance Statement.
Strategy & Annual Audit Planning	Development and production of the Internal Audit Strategy and Annual Audit Plan, including consultation with management and Members.



# INTERNAL AUDIT CHARTER

## 1. Introduction

This Charter describes for the Council the purpose, authority and responsibilities of the Internal Audit function in accordance with the UK Public Sector Internal Audit Standards (PSIAS).

The PSIAS require that the Charter must be reviewed periodically and presented to “senior management” and “the board” for approval. For the purposes of this charter “senior management” will be ELT and the board will be the Audit and Standards Committee (described generically in this Charter as the Audit Committee).

The Charter shall be reviewed annually and approved by ELT and the Audit Committee. The Chief Internal Auditor is responsible for applying this Charter and keeping it up to date.

## 2. Internal Audit Purpose

The mission of Internal Audit is to enhance and protect organisational value by providing risk-based and objective assurance, advice and insight.

Internal Audit is defined in the PSIAS as “an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.”

Internal Audit supports the whole Council to deliver economic, efficient and effective services and achieve the Council’s vision, priorities and values.

## 3. Statutory Requirement

Internal Audit is a statutory service in the context of the Accounts and Audit Regulations 2015, which require every local authority to maintain an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes taking into account public sector internal auditing standards or guidance.

These regulations require any officer or Member of the Council to

- make available such documents and records; and
  - supply such information and explanations;
- as are considered necessary by those conducting the audit.

This statutory role is recognised and endorsed within the Council’s Financial Regulations.

In addition, the Council's S151 Officer has a statutory duty under Section 151 of the Local Government Act 1972 to establish a clear framework for the proper administration of the authority's financial affairs. To perform that duty the Section 151 Officer relies, amongst other things, upon the work of Internal Audit in reviewing the operation of systems of internal control and financial management.

#### **4. Internal Audit Responsibilities and Scope**

Annually the Chief Internal Auditor is required to provide to the Audit Committee an overall opinion on the Council's internal control environment, risk management arrangements and governance framework to support the Annual Governance Statement.

Internal Audit is not responsible for control systems. Responsibility for effective internal control and risk management rests with the management of the Council.

Internal Audit activity must be free from interference in determining the scope of activity, performing work and communicating results.

The scope of Internal Audit includes the entire control environment and therefore all of the Council's operations, resources, services and responsibilities in relation to other bodies. In order to identify audit coverage, activities are prioritised based on risk, using a combination of Internal Audit and management risk assessment (as set out within Council risk registers). Extensive consultation also takes place with key stakeholders and horizon scanning is undertaken to ensure audit activity is proactive and future focussed.

Internal audit activity will include an evaluation of the effectiveness of the organisation's risk management arrangements and risk exposures relating to:

- Achievement of the organisation's strategic objectives;
- Reliability and integrity of financial and operational information;
- Efficiency and effectiveness of operations and activities;
- Safeguarding of assets; and
- Compliance with laws, regulations, policies, procedures and contracts

#### **5. Independence**

Internal Audit will remain sufficiently independent of the activities that it audits to enable auditors to perform their duties in a way that allows them to make impartial and effective professional judgements and recommendations. Internal auditors should have no operational responsibilities.

Internal Audit is involved in the determination of its priorities in consultation with those charged with governance. The Chief Internal Auditor has direct access to, and freedom to report in their own name and without fear of favour to, all officers and Members and particularly those charged with governance. This independence is further safeguarded by ensuring that the Chief Internal Auditor's formal appraisal/performance review is not inappropriately influenced by those subject to

audit. This is achieved by ensuring that both the Chief Executive and the Chair of the Audit Committee have the opportunity to contribute to this performance review.

All Internal Audit staff are required to make an annual declaration of interest to ensure that objectivity is not impaired and that any potential conflicts of interest are appropriately managed.

## **6. Appointment and Removal of the Chief Internal Auditor**

The role of Chief Internal Auditor is a shared appointment across the 3 Orbis partner authorities (East Sussex County Council, Surrey County Council and Brighton & Hove City Council).

In order to ensure organisational independence is achieved, all decisions regarding the appointment and removal of the Chief Internal Auditor will be made following appropriate consultation with Member representatives from each of the authorities' audit committees.

## **7. Reporting Lines**

Regardless of line management arrangements, the Chief Internal Auditor has free and unfettered access to report to the S151 Officer; the Monitoring Officer; the Chief Executive; the Audit Committee Chair; the Leader of the Council and the Council's External Auditor.

The Audit Committee will receive reports on a periodic basis – as agreed with the Chair of the Audit Committee – on the results of audit activity and details of Internal Audit performance including progress on delivering the audit plan.

## **8. Fraud & Corruption**

Managing the risk of fraud and corruption is the responsibility of management. Internal Audit will however be alert in all its work to risks and exposures that could allow fraud or corruption and will investigate allegations of fraud and corruption in line with the Council's Anti-Fraud and Corruption Strategy.

The Chief Internal Auditor should be informed of all suspected or detected fraud, corruption or irregularity in order to consider the adequacy of the relevant controls and evaluate the implication for their opinion on the control environment.

Internal Audit will promote an anti-fraud and corruption culture within the Council to aid the prevention and detection of fraud.

## **9. Consultancy Work**

Internal Audit may also provide consultancy services, generally advisory in nature, at the request of the organisation. In such circumstances, appropriate arrangements will be put in place to safeguard the independence of Internal Audit and, where this work is not already included within the approved audit plan and may affect the level of assurance work undertaken; this will be reported to the Audit Committee.

In order to help services to develop greater understanding of audit work and have a point of contact in relation to any support they may need, Internal Audit has put in place a set of service liaison arrangements that provide a specific named contact for each service; and, regular liaison meetings. The arrangements also enable Internal Audit to keep in touch with key developments within services that may impact on its work.

## **10. Resources**

The work of Internal Audit is driven by the annual Internal Audit Plan, which is approved each year by the Audit Committee. The Chief Internal Auditor is responsible for ensuring that Internal Audit resources are sufficient to meet its responsibilities and achieve its objectives.

Internal Audit must be appropriately staffed in terms of numbers, grades, qualifications and experience, having regard to its objectives and to professional standards. Internal Auditors need to be properly trained to fulfil their responsibilities and should maintain their professional competence through an appropriate ongoing development programme.

The Chief Internal Auditor is responsible for appointing Internal Audit staff and will ensure that appointments are made in order to achieve the appropriate mix of qualifications, experience and audit skills. The Chief Internal Auditor may engage the use of external resources where it is considered appropriate, including the use of specialist providers.

## **11. Due Professional Care**

The work of Internal Audit will be performed with due professional care and in accordance with the UK Public Sector Internal Audit Standards (PSIAS), the Accounts and Audit Regulations (2015) and with any other relevant statutory obligations and regulations.

In carrying out their work, Internal Auditors must exercise due professional care by considering:

- The extent of work needed to achieve the required objectives;
- The relative complexity, materiality or significance of matters to which assurance procedures should be applied; and
- The adequacy and effectiveness of governance, risk management and control processes;
- The probability of significant errors, fraud or non-compliance; and
- The cost of assurance in proportion to the potential benefits.

Internal Auditors will also have due regard to the Seven Principles of Public Life – Selflessness; Integrity, Objectivity; Accountability; Openness; Honesty; and Leadership.

## 12. Quality Assurance

The Chief Internal Auditor will control the work of Internal Audit at each level of operation to ensure that a continuously effective level of performance – compliant with the PSIAS is maintained.

*A Quality Assurance Improvement Programme (QAIP) is in place which is designed to provide reasonable assurance to its key stakeholders that Internal Audit:*

- Performs its work in accordance with its charter;
- Operates in an effective and efficient manner; and,
- Is adding value and continually improving the service that it provides.

The QAIP requires an annual review of the effectiveness of the system of Internal Audit to be conducted. Instances of non-conformance with the PSIAS, including the impact of any such non-conformance, must be disclosed to the Audit Committee. Any significant deviations must be considered for inclusion in the council's Annual Governance Statement.

January 2019



<b>Subject:</b>	<b>External Audit Plan 2018/19</b>		
<b>Date of Meeting:</b>	<b>12 March 2019</b>		
<b>Report of:</b>	<b>Executive Director for Finance &amp; Resources</b>		
<b>Contact Officers:</b>	<b>Name:</b>	<b>Nigel Manvell</b>	<b>Tel: 01273 293104</b>
		<b>Darren Wells (Grant Thornton)</b>	<b>Tel: 01293 554120</b>
	<b>Email:</b>	<b>nigel.manvell@brighton-hove.gov.uk</b>	
		<b>darren.j.wells@uk.gt.com</b>	
<b>Ward(s) affected:</b>	<b>(All Wards);</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

1.1 The External Audit Plan 2018/19 sets out how the council's appointed auditor, Grant Thornton, intends to carry out their responsibilities as external auditor for the financial year ending 31 March 2019. The plan covers:

- Identified risks and issues that are expected to impact on the audit;
- Consideration of materiality;
- Arrangements for reviewing Value for Money;
- The anticipated audit fees;
- Assurance regarding the auditor's independence.

1.2 The work plan is designed to provide the council with:

- An audit opinion on whether the council's financial statements give a true and fair view of the financial position as at 31 March 2019 and the income and expenditure account for the year then ended; and
- A statutory conclusion on the council's arrangements to secure economy, efficiency and effectiveness in the use of its resources.

1.3 The report summarises the scope of the audit and the planned approach to reviewing assessed risks.

**2. RECOMMENDATIONS:**

That the Audit & Standards Committee:

2.1 Considers and notifies the external auditor as to whether or not there are any other matters which it considers may impact on the planned audit.

2.2 Notes the External Audit Plan 2018/19.

**3. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 3.1 The planned audit fee for the 2018/19 audit is £122,084 which is as notified by the appointing body, Public Sector Auditor Appointments Ltd (PSAA) and in accordance with the council's budget provision. The report also notes that Grant Thornton will be undertaking other planned grant audits for a fee of £17,000. This is also within existing budget provision.

*Finance Officer Consulted: James Hengeveld*

*Date: 15/02/19*

### Legal Implications:

- 3.2 The Accounts and Audit Regulations 2015, made under the Local Audit and Accountability Act 2014, require the council's accounts for 2018/19 to be approved by Members by 31 July 2019. Under the council's Constitution, the Audit & Standards Committee is charged with this responsibility.
- 3.3 The council's appointed external auditors (Grant Thornton) are required to give assurance that the council's accounts are free from material misstatement and to report significant matters arising from the audit. The auditor will present their findings to this Committee through an Audit Results Report (ARR) in accordance with the statutory timetable.

*Lawyer Consulted:*

*Victoria Simpson*

*Date: 25/02/2019*

### Equalities Implications:

- 3.4 There are no equalities implications arising directly from this report. Information on the audit of the accounts will, as far as possible, be provided in a manner that meets the needs of those requesting information.

### Sustainability Implications:

- 3.5 There are no direct environmental implications arising from this report. However, it is believed that the reputation of the council's financial control framework and its ability to demonstrate sound financial management could have an impact on the willingness of other funding partners to invest in and with the council. This could affect the level of inward investment in respect of projects that contribute towards sustainability. The External Audit Plan provides the framework within which independent assurance and opinion is given on the council's financial statements.

## **SUPPORTING DOCUMENTS:**

### **Appendices:**

External Audit Plan 2018/19 (Grant Thornton)

### **Background Documents:**



None



# External Audit Plan

*Year ending 31 March 2019*

---

Brighton and Hove City Council

12 March 2019



# Contents



Your key Grant Thornton  
team members are:

Darren Wells

Engagement Lead

T: 01293 554120

E: darren.j.wells@uk.gt.com

Andy Conlan

Engagement Manager

T: 02077 282492

E: andy.n.conlan@uk.gt.com

Philip Mundy

In-Charge

T: 01293 554098

E: philip.mundy@uk.gt.com

## Section

1. Introduction & headlines	3
2. Key matters impacting our audit	4
3. Significant risks identified	5-7
4. Other matters	8
5. Materiality	9
8. Value for Money arrangements	10-11
9. Audit logistics, team & fees	12
10. Early Close	13
11. Independence & non-audit services	14

## Appendices

A. Audit Approach	15
-------------------	----

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.

Grant Thornton UK LLP is a limited liability partnership registered in England and Wales: No.OC307742. Registered office: 30 Finsbury Square, London, EC2A 1AG. A list of members is available from our registered office. Grant Thornton UK LLP is authorised and regulated by the Financial Conduct Authority. Grant Thornton UK LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. Services are delivered by the member firms. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.

# Introduction & headlines

## Purpose

This document provides an overview of the planned scope and timing of the statutory audit of Brighton and Hove City Council ('the Authority') for those charged with governance.

## Respective responsibilities

The National Audit Office ('the NAO') has issued a document entitled Code of Audit Practice ('the Code'). This summarises where the responsibilities of auditors begin and end and what is expected from the audited body. Our respective responsibilities are also set out in the Terms of Appointment and Statement of Responsibilities issued by Public Sector Audit Appointments (PSAA), the body responsible for appointing us as auditor of Brighton and Hove City Council. We draw your attention to both of these documents on the [PSAA website](#).

## Scope of our audit

The scope of our audit is set in accordance with the Code and International Standards on Auditing (ISAs) (UK). We are responsible for forming and expressing an opinion on the :

- Authority's financial statements that have been prepared by management with the oversight of those charged with governance (the Audit and Standards Committee); and
- Value for Money arrangements in place at the Authority for securing economy, efficiency and effectiveness in your use of resources.

The audit of the financial statements does not relieve management or the Audit and Standards Committee of your responsibilities. It is the responsibility of the Authority to ensure that proper arrangements are in place for the conduct of its business, and that public money is safeguarded and properly accounted for. We have considered how the Authority is fulfilling these responsibilities.

Our audit approach is based on a thorough understanding of the Authority's business and is risk based. We will be using our new audit methodology and tool, LEAP, for the 2018/19 audit. It will enable us to be more responsive to changes that may occur in your organisation.

## Significant risks

Those risks requiring special audit consideration and procedures to address the likelihood of a material financial statement error have been identified as:

- The revenue cycle includes fraudulent transactions
- Management Override of Controls
- Valuation of Pension Fund Net Liability
- Valuation of Property, Plant, and Equipment

We will communicate significant findings on these areas as well as any other significant matters arising from the audit to you in our Audit Findings (ISA 260) Report.

## Materiality

We have determined planning materiality to be £15.54m for the Authority, which equates to 1.9% of your prior year gross expenditure for the year. We are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance. Clearly trivial has been set at £0.78m.

## Value for Money arrangements

Our risk assessment regarding your arrangements to secure value for money have identified the following VFM significant risks:

- Medium term financial sustainability
- Health and Social Care Integration
- Governance and Decision Making processes on Capital redevelopment projects

## Audit logistics

Our interim visit will take place in February and our final visit will take place in June and July. Our key deliverables are this Audit Plan and our Audit Findings Report. Our audit approach is detailed in Appendix A.

Our fee for the audit will be £122,084 (PY: £158,550) for the Authority, subject to the Authority meeting our requirements set out on page 13.

## Independence

We have complied with the Financial Reporting Council's Ethical Standard and we as a firm, and each covered person, confirm that we are independent and are able to express an objective opinion on the financial statements..

# Key matters impacting our audit

## Factors

### The wider economy and political uncertainty

Local Government funding continues to be stretched with increasing cost pressures and demand from residents. For Brighton and Hove City Council, the authority has achieved a surplus on the provision of services in both previous financial years, and at 31 March 2018 increased usable reserves to £108m from £71.6m at 31 March 2017. You are responding to this challenge in a variety of ways, through identifying efficiencies & new sources of funding, working with partners, and engaging in service redesign.

At month 9, the forecast risk position to General fund budget outturn for 2018/19 is a small £0.4m overspend, but there is reasonable expectation that this could breakeven over the remainder of the year. Of the £12.7m savings target for 2018/19, £10.5m is on track, but £3.4m are not expected to be delivered in year.

The Authority expects to set a balanced budget for 2019/20. This includes a budget gap of £14.2m which is expected to be met by planned savings.

Local elections will take place in May 2019 and these have the potential to affect future services, investment and budgetary plans.

### Changes to the CIPFA 2018/19 Accounting Code

The most significant changes relate to the adoption of:

- IFRS 9 Financial Instruments which impacts on the classification and measurement of financial assets and introduces a new impairment model.
- IFRS 15 Revenue from Contracts with Customers which introduces a five step approach to revenue recognition.

We will discuss the expected impact of these new standards on the 2018/19 financial statements with your finance team and obtain written support as to managements considerations in any judgemental accounting treatments.

### Brexit

You face the challenge of delivering services during significant political uncertainty on a national scale. With the UK due to leave the European Union on 29 March 2019, there will be national and local implications resulting from Brexit that will impact on you, which you will need to plan for.

You will need to review your arrangements and plans to mitigate risks arising from Brexit, including risks in areas such as workforce planning and supply chain analysis, as well as considering the impact on your finances, including investment and borrowing and any potential impact on the valuation of your assets.

## Our response

- We will consider your arrangements for managing and reporting your financial resources as part of our work in reaching our Value for Money conclusion.
- We will consider whether your financial position leads to material uncertainty about the going concern of the Authority and will review related disclosures in the financial statements.
- As this is our first year as your new auditor we expect to carry out more extensive procedures to understand the methods and assumptions that underly your Medium Term Financial Strategy and to understand how the Authority assures itself that the usable reserves are sufficient to secure services going forward.

- We will keep you informed of changes to the financial reporting requirements for 2018/19 through on-going discussions and invitations to our technical update workshops.
- As part of our opinion on your financial statements, we will consider whether your financial statements reflect the financial reporting changes in the 2018/19 CIPFA Code.

- We will consider your arrangements for managing and reporting your financial resources, including your progress on health and social care integration, investments and income generation plans as part of our work in reaching our Value for Money conclusion.
- We will also consider the achievement of identified savings plans, as well as savings achieved in partnership with East Sussex County Council and Surrey County Council as part of our Value for Money conclusion.

# Significant risks identified

Significant risks are defined by ISAs (UK) as risks that, in the judgement of the auditor, require special audit consideration. In identifying risks, audit teams consider the nature of the risk, the potential magnitude of misstatement, and its likelihood. Significant risks are those risks that have a higher risk of material misstatement.

Risk	Reason for risk identification	Key aspects of our proposed response to the risk
<p><b>The revenue cycle includes fraudulent transactions</b></p>	<p>We have considered the rebuttable presumed risk under ISA (UK) 240 that revenue may be misstated due to the improper recognition of revenue.</p> <p>We have rebutted this presumed risk for revenue streams that are derived from Council Tax, Business Rates and Grants on the basis that they are income streams primarily derived from grants or formula based income from central government and tax payers and that opportunities to manipulate the recognition of these income streams is very limited.</p> <p>We have not deemed it appropriate to rebut this presumed risk for fees, charges and other service income as we do not have cumulative audit testing knowledge of these revenues being your new auditor, and the adoption of IFRS15 Revenue from Contracts with Customers could materially affect recognition of this income.</p> <p>We have therefore identified the occurrence and accuracy of these income streams and the existence of associated receivable balances as a significant risk of material misstatement.</p>	<p>For all material income streams where we have not rebutted the presumed risk of revenue recognition we will:</p> <ul style="list-style-type: none"> <li>• evaluate your accounting policy for recognition of income for appropriateness and compliance with LG Code of Practice</li> <li>• update our understanding of your system for accounting for income and evaluate the design of the associated controls</li> <li>• review and sample test income to supporting evidence</li> <li>• evaluate and challenge significant estimates and the judgments made by management</li> </ul>
<p><b>Management over-ride of controls</b></p>	<p>Under ISA (UK) 240 there is a non-rebuttable presumed risk that the risk of management over-ride of controls is present in all entities. The Authority faces external scrutiny of its spending and this could potentially place management under undue pressure in terms of how they report performance.</p> <p>We therefore identified management override of control, in particular journals, management estimates and transactions outside the course of business as a significant risk, which was one of the most significant assessed risks of material misstatement.</p>	<p>We will:</p> <ul style="list-style-type: none"> <li>• evaluate the design effectiveness of management controls over journals</li> <li>• analyse the journals listing and determine the criteria for selecting high risk unusual journals</li> <li>• test unusual journals recorded during the year and after the draft accounts stage for appropriateness and corroboration</li> <li>• gain an understanding of the accounting estimates and critical judgements applied made by management and consider their reasonableness with regard to corroborative evidence</li> <li>• evaluate the rationale for any changes in accounting policies, estimates or significant unusual transactions</li> </ul>

# Significant risks identified (continued)

Risk	Reason for risk identification	Key aspects of our proposed response to the risk
Valuation of land and buildings	<p>The Authority revalues its land and buildings on a five-yearly rolling basis to ensure the carrying value in the Authority financial statements is not materially different from the current value or the fair value (for investment properties and surplus assets) at the financial statements date. This valuation is carried out by the Council's internal valuers, professional valuers and independent property managing consultants contracted by the Council. This valuation represents a significant estimate by management in the financial statements due to the size of the numbers involved (approximately £2 billion at the 31 March 2018 balance sheet date) and the sensitivity of this estimate to changes in key assumptions.</p> <p>Additionally, management will need to ensure the carrying value in the Authority financial statements is not materially different from the current value or the fair value (for investment properties and surplus assets) at the financial statements date, where a rolling programme is used.</p> <p>We therefore identified valuation of land and buildings, particularly revaluations and impairments, as a significant risk, which was one of the most significant assessed risks of material misstatement, and a key audit matter.</p>	<p>We will:</p> <ul style="list-style-type: none"> <li>• evaluate management's processes and assumptions for the calculation of the estimate, the instructions issued to valuation experts and the scope of their work</li> <li>• evaluate the competence, capabilities and objectivity of the valuation expert</li> <li>• write to the valuer to confirm the basis on which the valuation was carried out to ensure that the requirements of the Code are met and discuss this basis where there are any departures from the Code</li> <li>• challenge the information and assumptions used by the valuer to assess completeness and consistency with our understanding</li> <li>• assess how management have challenged the valuations produced internally, by professional valuers and by independent property managing consultants to assure themselves that these represent the materially correct current value</li> <li>• test revaluations made during the year to see if they had been input correctly into the Authority's asset register</li> <li>• evaluate the assumptions made by management for any assets not revalued during the year and how management has satisfied themselves that these are not materially different to current value</li> </ul>

152



# Significant risks identified (continued)

Risk	Reason for risk identification	Key aspects of our proposed response to the risk
<b>Valuation of the pension fund net liability</b>	<p>The Authority's pension fund net liability, as reflected in its balance sheet as the net defined benefit liability, represents a significant estimate in the financial statements.</p> <p>The pension fund net liability is considered a significant estimate due to the size of the numbers involved (approximately £257 million in the Authority's balance sheet at the 31 March 2018) and the sensitivity of the estimate to changes in key assumptions.</p> <p>We therefore identified valuation of the Authority's pension fund net liability as a significant risk, which was one of the most significant assessed risks of material misstatement, and a key audit matter.</p>	<p>We will:</p> <ul style="list-style-type: none"> <li>• update our understanding of the processes and controls put in place by management to ensure that the Authority's pension fund net liability is not materially misstated and evaluate the design of the associated controls;</li> <li>• evaluate the instructions issued by management to their management expert (an actuary) for this estimate and the scope of the actuary's work;</li> <li>• assess the competence, capabilities and objectivity of the actuary who carried out the Authority's pension fund valuation;</li> <li>• assess the accuracy and completeness of the information provided by the Authority to the actuary to estimate the liability;</li> <li>• test the consistency of the pension fund asset and liability and disclosures in the notes to the core financial statements with the actuarial report from the actuary;</li> <li>• undertake procedures to confirm the reasonableness of the actuarial assumptions made by reviewing the report of the consulting actuary (as auditor's expert) and performing any additional procedures suggested within the report; and</li> <li>• obtain assurances from the auditor of East Sussex Pension Fund as to the controls surrounding the validity and accuracy of membership data, contributions data and benefits data sent to the actuary by the pension fund and the fund assets valuation in the pension fund financial statements.</li> </ul>

We will communicate significant findings on these areas as well as any other significant matters arising from the audit to you in our Audit Findings Report in July 2019.

# Other matters

## Other work

In addition to our responsibilities under the Code of Practice, we have a number of other audit responsibilities, as follows:

- We read your Narrative Report and Annual Governance Statement and any other information published alongside your financial statements to check that they are consistent with the financial statements on which we give an opinion and consistent with our knowledge of the Authority.
- We carry out work to satisfy ourselves that disclosures made in your Annual Governance Statement are in line with the guidance issued by CIPFA.
- We carry out work on your consolidation schedules for the Whole of Government Accounts process in accordance with NAO group audit instructions.
- We consider our other duties under legislation and the Code, as and when required, including:
  - Giving electors the opportunity to raise questions about your 2018/19 financial statements, consider and decide upon any objections received in relation to the 2018/19 financial statements;
  - issue of a report in the public interest or written recommendations to the Authority under section 24 of the Act, copied to the Secretary of State.
  - Application to the court for a declaration that an item of account is contrary to law under Section 28 or for a judicial review under Section 31 of the Act; or
  - Issuing an advisory notice under Section 29 of the Act.
- We certify completion of our audit.

## Other material balances and transactions

Under International Standards on Auditing, "irrespective of the assessed risks of material misstatement, the auditor shall design and perform substantive procedures for each material class of transactions, account balance and disclosure". All other material balances and transaction streams will therefore be audited. However, the procedures will not be as extensive as the procedures adopted for the risks identified in this report.

## Going concern

As auditors, we are required to "obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation and presentation of the financial statements and to conclude whether there is a material uncertainty about the Authority's ability to continue as a going concern" (ISA (UK) 570). We will review management's assessment of the going concern assumption and evaluate the disclosures in the financial statements.

# Materiality

## The concept of materiality

The concept of materiality is fundamental to the preparation of the financial statements and the audit process and applies not only to the monetary misstatements but also to disclosure requirements and adherence to acceptable accounting practice and applicable law. Misstatements, including omissions, are considered to be material if they, individually or in the aggregate, could reasonably be expected to influence the economic decisions of users taken on the basis of the financial statements.

## Materiality for planning purposes

We have determined financial statement materiality based on a proportion of the gross expenditure of the Authority for the financial year. In the prior year we used the same benchmark. Materiality at the planning stage of our audit is £15.54m, which equates to 1.9% of your prior year gross expenditure for the year.

We reconsider planning materiality if, during the course of our audit engagement, we become aware of facts and circumstances that would have caused us to make a different determination of planning materiality.

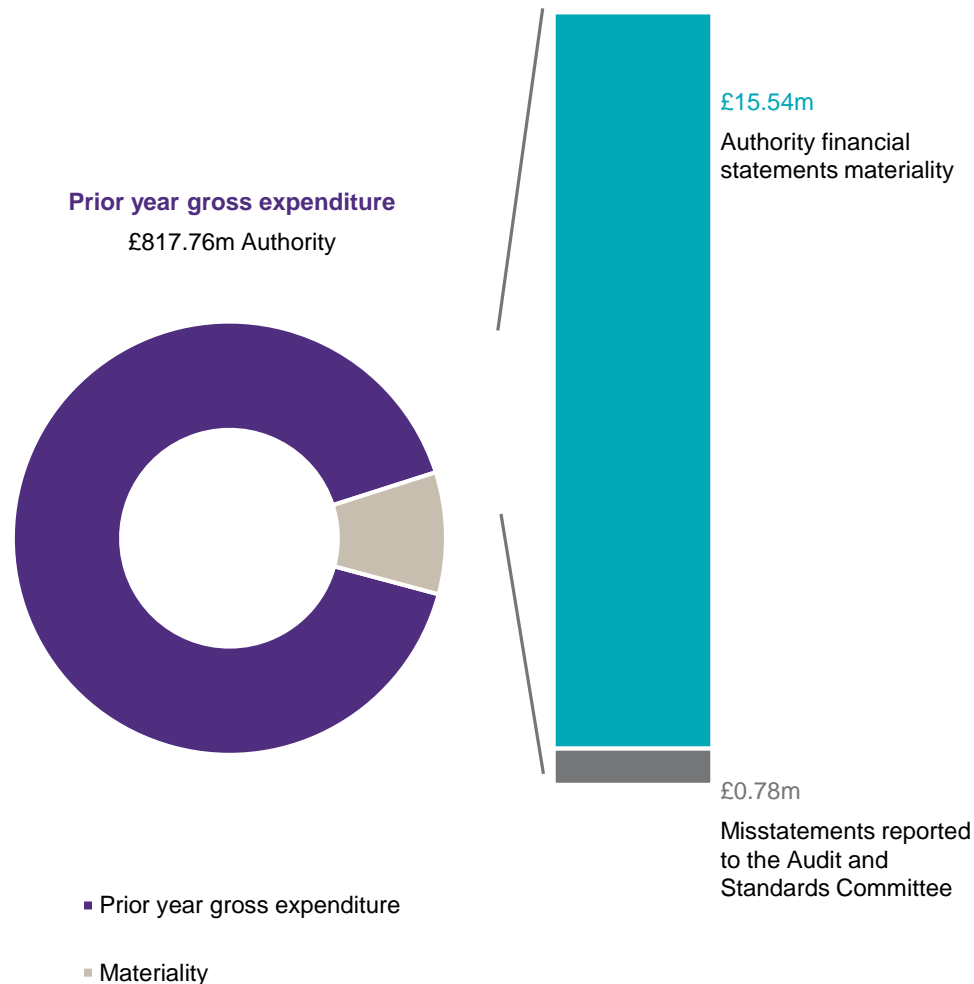
## Matters we will report to the Audit and Standards Committee

Whilst our audit procedures are designed to identify misstatements which are material to our opinion on the financial statements as a whole, we nevertheless report to the Audit and Standards Committee any unadjusted misstatements of lesser amounts to the extent that these are identified by our audit work. Under ISA 260 (UK) 'Communication with those charged with governance', we are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance. ISA 260 (UK) defines 'clearly trivial' as matters that are clearly inconsequential, whether taken individually or in aggregate and whether judged by any quantitative or qualitative criteria. In the context of the Authority, we propose that an individual difference could normally be considered to be clearly trivial if it is less than £0.78m (which equates to 5% of our planning materiality).

If management have corrected material misstatements identified during the course of the audit, we will consider whether those corrections should be communicated to the Audit and Standards Committee to assist it in fulfilling its governance responsibilities.

## Other factors

An item does not necessarily have to be large to be considered to have a material effect on the financial statements. We design our procedures to detect errors in specific accounts at a lower level of precision which we deem to be relevant to stakeholders. Other balances that require special audit attention although not material are Cash, Senior Officers Disclosures, Related Party Transactions Subsequent events and Audit Fees



# Value for Money arrangements

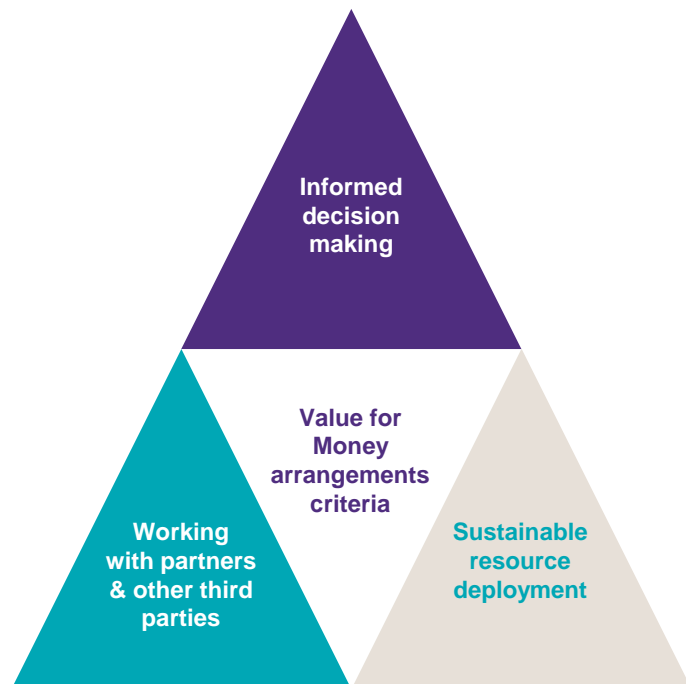
## Background to our VFM approach

The NAO issued its guidance for auditors on Value for Money work in November 2017. The guidance states that for Local Government bodies, auditors are required to give a conclusion on whether the Authority has proper arrangements in place to secure value for money.

The guidance identifies one single criterion for auditors to evaluate:

*"In all significant respects, the audited body takes properly informed decisions and deploys resources to achieve planned and sustainable outcomes for taxpayers and local people."*

This is supported by three sub-criteria, as set out below:



## Significant VFM risks

Those risks requiring audit consideration and procedures to address the likelihood that proper arrangements are not in place at the Authority to deliver value for money.



### Medium term financial sustainability

The Council has a strong track record of delivering a budget underspend at year-end, despite reduced funding from central government. Financial resilience of the Council will depend on its ability to balance its budget without use of reserves.

At month 9 of 2018-19, the forecast risk position to General fund budget outturn for 2018/19 is a small £0.4m overspend, but there is reasonable expectation that this could breakeven over the remainder of the year. Of the £12.7m savings target for 2018/19, £10.5m is on track, but £3.4m are not expected to be delivered in year.

The Authority expects to set a balanced budget for 2019/20. This includes a budget gap of £14.2m which is expected to be met by planned savings. However as noted above, achievement of savings plans is inherently uncertain and risk and this could put overall budget achievement in doubt. There is currently no reasonable estimate that can be made for the impact of the 2020/21 Fair Funding Review and potential changes to Business Rate retention leading to an increased level of medium term budgetary uncertainty from this year forwards.

There is a risk that the Council fails to achieve Economy, Efficiency, and Effectiveness in use of its resources in 2018/19 and beyond as a result of financial pressures.

We will review your Medium Term Financial Plan, including the robustness of assumptions, savings plans and revenue generating schemes. We will discuss your plans and outcomes with management, as well as reviewing how finances were reported to Councillors.

# Value for Money arrangements



## Health and Social Care Integration

To improve health and social care outcomes for the local community and to reduce spiralling costs, particularly relating to social care, it is imperative that the Authority continues to maximise integration with local Trusts, CCGs and other partners.

Failure to secure maximum value from partnership working with the NHS could impact negatively on social care and public health services, leading to worse health outcomes for your residents and also increased current and future costs. There is a risk that the Council fails to achieve Economy, Efficiency, and Effectiveness in working with partners across organisational boundaries. This is currently a red rated risk in the Council's strategic risk register.

In our first year as your auditor, we need to develop an understanding of your arrangements and plans. We will review documentation and speak to officers to understand your significant NHS collaboration initiatives, including but not limited to your role in the Surrey and Sussex Sustainability and Transformation Plan, Better Care Board, and Health and Social Care Integration Board and future plans for closer integration.



## Governance and Decision Making processes for key capital regeneration schemes

Brighton and Hove City Council has several ambitious capital regeneration projects which are in varying stages of planning and development, including the Waterfront Project and the King Alfred redevelopment. These are complex developments involving significant levels of additional borrowing, a complex set of stakeholders and a relatively high level of risk. There is a risk that the Council fails to achieve Economy, Efficiency and Effectiveness in informed decision making.

In our first year, we need to develop an understanding of your governance arrangements to manage risk and delivery. We will review the governance arrangements and decision making processes that the Council has in place around entering into capital investment plans and how the Council continues to reassess the public and financial benefits as the plans evolve.

# Audit logistics, team & fees



## Darren Wells, Engagement Lead

Darren will be the main point of contact for the Chair and the Chief Executive and Board Members. Darren will share his knowledge and experience across the sector providing challenge, sharing good practice, providing pragmatic solutions and acting as a sounding board with Senior Board Members and the Policy and Resources Committee. Darren will ensure our audit is tailored specifically to you and is delivered efficiently. Darren will review all reports and the team's work focussing his time on the key risk areas to your audit.

## Andy Conlan, Audit Manager

Andy will work with the senior members of the finance team ensuring early delivery of testing and agreement of accounting issues on a timely basis. Andy will attend Policy and Resources Committees, undertake reviews of the team's work and draft reports, ensuring they remain clear, concise and understandable to all. Andy will work with Internal Audit to secure efficiencies and avoid duplication.

## Philip Mundy, Audit Incharge

Philip will lead the onsite team and will be the day to day contact for the audit. Philip will monitor the deliverables, manage the query log with your finance team and highlight any significant issues and adjustments to senior management. Philip will undertake the more technical aspects of the audit, coach the junior members of the team and review the teams work.

## Audit fees

The planned audit fees are £122,084 (PY: £158,550) for the financial statements audit completed under the Code, which are inline with the scale fee published by PSAA. In setting your fee, we have assumed that the scope of the audit, and the Authority and its activities, do not significantly change. We also have engaged to complete grant certification work for the Authority for the 2018/19 year with a planned fee of £17,000.

Where additional audit work is required to address risks relating to the application of changes to :

- International Financial Reporting Standard (IFRS) 9 – Financial Instruments and changes to the Authority's recognition and accounting treatment of financial assets and/or liabilities;
- the application of changes to International Financial Reporting Standard (IFRS) 15 – Revenue from contracts with customers and the Authority's recognition and accounting treatment of income from contracts; and
- other audit issues/risks which have not been disclosed to us in our risk assessment.

we will consider the need to charge fees in addition to the audit fee on a case by case basis. Any additional fees will be discussed and agreed with management and would require PSAA approval.

## Our requirements

To ensure the audit is delivered on time and to avoid any additional fees, we have detailed our expectations and requirements in the following section 'Early Close'. If the requirements detailed overleaf are not met, we reserve the right to postpone our audit visit and charge fees to reimburse us for any additional costs incurred.

# Early close

## Meeting the 31 July audit timeframe

In the prior year, the statutory date for publication of audited local government accounts was brought forward to 31 July, across the whole sector. This was a significant challenge for local authorities and auditors alike. For authorities, the time available to prepare the accounts was curtailed, while, as auditors we had a shorter period to complete our work and faced an even more significant peak in our workload than previously.

We have carefully planned how we can make the best use of the resources available to us during the final accounts period. As well as increasing the overall level of resources available to deliver audits, we have focused on:

- bringing forward as much work as possible to interim audits
- starting work on final accounts audits as early as possible, by agreeing which authorities will have accounts prepared significantly before the end of May
- seeking further efficiencies in the way we carry out our audits
- working with you to agree detailed plans to make the audits run smoothly, including early agreement of audit dates, working paper and data requirements and early discussions on potentially contentious items.

We are satisfied that, if all these plans are implemented, we will be able to complete your audit and those of our other local government clients in sufficient time to meet the earlier deadline.

## Client responsibilities

Where individual clients do not deliver to the timetable agreed, we need to ensure that this does not impact on audit quality or absorb a disproportionate amount of time, thereby disadvantaging other clients. We will therefore conduct audits in line with the timetable set out in audit plans (as detailed on page 12). Where the elapsed time to complete an audit exceeds that agreed due to a client not meeting its obligations we will not be able to maintain a team on site. Similarly, where additional resources are needed to complete the audit due to a client not meeting their obligations we are not able to guarantee the delivery of the audit by the statutory deadline. Such audits are unlikely to be re-started until very close to, or after the statutory deadline. In addition, it is highly likely that these audits will incur additional audit fees.

## Our requirements

To minimise the risk of a delayed audit or additional audit fees being incurred, you need to ensure that you:

- produce draft financial statements of good quality by the deadline you have agreed with us, including all notes, the narrative report and the Annual Governance Statement
- ensure that good quality working papers are available at the start of the audit, in accordance with the working paper requirements schedule that we have shared with you
- ensure that the agreed data reports are available to us at the start of the audit and are reconciled to the values in the accounts, in order to facilitate our selection of samples
- ensure that all appropriate staff are available on site throughout (or as otherwise agreed) the planned period of the audit
- respond promptly and adequately to audit queries.

In return, we will ensure that:

- the audit runs smoothly with the minimum disruption to your staff
- you are kept informed of progress through the use of an issues tracker and weekly meetings during the audit
- we are available to discuss issues with you prior to and during your preparation of the financial statements.

---

# Independence & non-audit services

## Auditor independence

Ethical Standards and ISA (UK) 260 require us to give you timely disclosure of all significant facts and matters that may bear upon the integrity, objectivity and independence of the firm or covered persons relating to our independence. We encourage you to contact us to discuss these or any other independence issues with us. We will also discuss with you if we make additional significant judgements surrounding independence matters.

We confirm that there are no significant facts or matters that impact on our independence as auditors that we are required or wish to draw to your attention. We have complied with the Financial Reporting Council's Ethical Standard and we as a firm, and each covered person, confirm that we are independent and are able to express an objective opinion on the financial statements.

We confirm that we have implemented policies and procedures to meet the requirements of the Financial Reporting Council's Ethical Standard and we as a firm, and each covered person, confirm that we are independent and are able to express an objective opinion on the financial statements. Further, we have complied with the requirements of the National Audit Office's Auditor Guidance Note 01 issued in December 2017 and PSAA's Terms of Appointment which set out supplementary guidance on ethical requirements for auditors of local public bodies.

## Other services provided by Grant Thornton

For the purposes of our audit we have made enquiries of all Grant Thornton UK LLP teams providing services to the Authority. No other services have currently been identified.

Any changes and full details of all fees charged for audit related and non-audit related services by Grant Thornton UK LLP and by Grant Thornton International Limited network member Firms will be included in our Audit Findings report at the conclusion of the audit.



# Audit approach

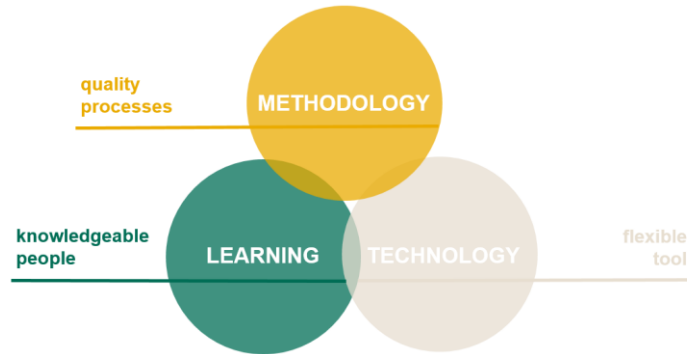
## Use of audit, data interrogation and analytics software

### LEAP



Audit software

- A globally developed ISA-aligned methodology and software tool that aims to re-engineer our audit approach to fundamentally improve quality and efficiency
- LEAP empowers our engagement teams to deliver even higher quality audits, enables our teams to perform cost effective audits which are scalable to any client, enhances the work experience for our people and develops further insights into our clients' businesses
- A cloud-based industry-leading audit tool developed in partnership with Microsoft



### Appian



Business process management

- Clear timeline for account review:
  - disclosure dealing
  - analytical review
- Simple version control
- Allow content team to identify potential risk areas for auditors to focus on

### IDEA



- We use one of the world's leading data interrogation software tools, called 'IDEA' which integrates the latest data analytics techniques into our audit approach
- We have used IDEA since its inception in the 1980's and we were part of the original development team. We still have heavy involvement in both its development and delivery which is further enforced through our chairmanship of the UK IDEA User Group
- In addition to IDEA, we also other tools like ACL and Microsoft SQL server
- Analysing large volumes of data very quickly and easily enables us to identify exceptions which potentially highlight business controls that are not operating effectively

### Inflo



Cloud based software which uses data analytics to identify trends and high risk transactions, generating insights to focus audit work and share with clients.



#### REQUEST & SHARE

- Communicate & transfer documents securely
- Extract data directly from client systems
- Work flow assignment & progress monitoring



#### ASSESS & SCOPE

- Compare balances & visualise trends
- Understand trends and perform more granular risk assessment



#### VERIFY & REVIEW

- Automate sampling requests
- Download automated work papers



#### INTERROGATE & EVALUATE

- Analyse 100% of transactions quickly & easily
- Identify high risk transactions for investigation & testing
- Provide client reports & relevant benchmarking KPIs



#### FOCUS & ASSURE

- Visualise relationships impacting core business cycles
- Analyse 100% of transactions to focus audit on unusual items
- Combine business process analytics with related testing to provide greater audit and process assurance



#### INSIGHTS

- Detailed visualisations to add value to meetings and reports
- Demonstrates own performance and benchmark comparisons



© 2019 Grant Thornton UK LLP. All rights reserved.

'Grant Thornton' refers to the brand under which the Grant Thornton member firms provide assurance, tax and advisory services to their clients and/or refers to one or more member firms, as the context requires.

Grant Thornton UK LLP is a member firm of Grant Thornton International Ltd (GTIL). GTIL and the member firms are not a worldwide partnership. GTIL and each member firm is a separate legal entity. Services are delivered by the member firms. GTIL does not provide services to clients. GTIL and its member firms are not agents of, and do not obligate, one another and are not liable for one another's acts or omissions.

<b>Subject:</b>	<b>Standards Update</b>		
<b>Date of Meeting:</b>	<b>12<sup>th</sup> March 2019</b>		
<b>Report of:</b>	<b>Executive Lead Officer, Strategy, Governance &amp; Law and Monitoring Officer</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Abraham Ghebre-Ghiorghis</b>	<b>Tel:</b> 29-1500
	<b>Email:</b>	<b>Abraham.ghebre-ghiorghis@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

1.1 This report seeks to update Members on a range of Standards-related matters.

**2. RECOMMENDATIONS**

2.1 That this Committee note the information provided in the Report on member complaints and on standards-related matters. The latter includes the approaching end of the tenure of Diane Bushell, who will have served a four year term as one of the Council's two Independent Persons on 25<sup>th</sup> March 2019 and whose contribution the Committee is asked to acknowledge.

2.2 The Committee is further asked to note that a recruitment process is currently underway with the aim of recommending to full Council on 28<sup>th</sup> March 2019 that it approve the appointment of a new Independent Person to exercise the statutory functions of the role in addition to the ongoing incumbent, Dr David Horne.

2.3 That this Committee invite an informally constituted cross-party working group of members to review the detailed recommendations of the Committee on Standards in Public Life referred to in para 4 below, with a view to making such recommendations as it considers appropriate to a future meeting of this Committee.

**3. MEMBER-RELATED COMPLAINTS****Complaints currently outstanding**

3.1 The three complaints referred to in the last Standards Update Report, in January 2019, remain at preliminary assessment stage, as does an additional complaint which has since been received. Steps are underway to progress these complaints, and updates will be provided to this Committee at regular intervals regarding them.

**4. LOCAL GOVERNMENT ETHICAL STANDARDS: A REVIEW BY THE COMMITTEE ON STANDARDS IN PUBLIC LIFE**

- 4.1 The Committee on Standards in Public Life ('CSPL') published its detailed and much-anticipated report on Local Government Ethical Standards on 30 January 2019. The Report followed a consultation process last year in which a cross-party working group of members of this Committee participated by feeding in a detailed written response which was submitted on behalf of this authority.
- 4.2 The CSPL report reviews and assesses the effectiveness of the current Localism Act 2011 framework in ensuring that appropriate standards of conduct are maintained by elected councillors. Whilst supporting the principle of a devolved system for regulating councillor conduct, the authors identify a number of risks and areas of concern which they consider need to be addressed in order to strengthen the locally determined systems in place at local authorities. They consider there to be a need for some additional mechanisms and to that aim make a series of 26 main recommendations. Many of those (such as the power to suspend councillors and the introduction of a right of appeal against such decisions to the Local Government Ombudsman, as well as changes to extend the definition of Disclosable Pecuniary Interests) will require legislative change if accepted by the Government.
- 4.3 However some of the main recommendations and many of the additional 15 best practice recommendations could be incorporated by those authorities which have not already done so relatively easily. Those include a series of recommendations which go to the project of importing into the process as much transparency and accountability as possible, including by taking steps to refresh arrangements regularly and by ensuring that as much relevant information is available to the public as possible, while also reviewing existing arrangements against the suggestion of procedures for addressing conflicts of interest. There are also key recommendations which fall to be considered around the potential for provisions in the Code prohibiting malicious or trivial allegations, and for the role which political groups might play.
- 4.4 Given the detail of the recommendations in the CSPL report, it is suggested that members agree to receive a more detailed consideration of it and the changes it recommends in due course. It is recommended that this be done once the report has been reviewed against this authority's existing arrangements by the members of the informal cross-party member working group which inputted into the CSPL consultation in May 2018.

## **5. THE COUNCIL'S INDEPENDENT PERSONS**

- 5.1 This Committee will be aware of the provisions in the Localism Act 2011 which require local authorities to appoint one or more Independent Person(s) to exercise prescribed standards functions. The appointee must be consulted by the Monitoring Officer when making key decisions in relation to complaints against members, and may be consulted by a member against whom an allegation is made. The appointees also play an important role at this council as non-voting co-optees to this Committee, thereby assisting it in its role of providing scrutiny of the council's governance arrangements.

- 5.2 While the current incumbents are Diane Bushell and David Horne, Diane Bushell's four year term is ending on 26 March 2019. This Committee is asked to note the conscientiousness with which Diane Bushell has discharged her responsibilities in this key role and the contribution she has made in doing so.
- 5.3 The Committee is further asked to note the process which is underway to recruit a successor to Diane Bushell. It is proposed that a new prospective appointee will be recommended to full Council on 28<sup>th</sup> March for appointment by that body, this in accordance with the requirements of the Localism Act 2011.

## **6. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 6.1 The council is obliged under the Localism Act to make arrangements for maintaining high standards of conduct among members and to make arrangements for the investigation of complaints. The current arrangements and the proposals in this report reflect this. No alternative proposals are suggested.

## **7. COMMUNITY ENGAGEMENT & CONSULTATION**

- 7.1 No need to consult with the local community has been identified.

## **8. CONCLUSION**

- 8.1 Members are asked to note the contents of this report, which aims to assist the Committee in discharging its responsibilities for overseeing that high standards of conduct are maintained in a way which is compliant with local requirements.

## **9. FINANCIAL & OTHER IMPLICATIONS**

### Financial Implications:

- 9.1 There are no additional financial implications arising from the recommendation in this report. All activity referred to has been, or will be, met from existing budgets.

Finance Officer Consulted: Nigel Manvell

Date: 20/02/19

### Legal Implications:

- 9.2 These are dealt with in the body of the Report.

Lawyer Consulted: Victoria Simpson

Date: 12/02/19

### Equalities Implications:

- 9.3 There are no equalities implications arising from this Report.

### Sustainability Implications:

- 9.4 There are no sustainability implications arising from this Report.

### Any Other Significant Implications:

- 9.5 None

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

None

### **Documents in Members' Rooms:**

None

### **Background Documents:**

Local Government Ethical Standards: A Review by the Committee on Standards in Public Life: available at <https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life>

Report to full Council on the Appointment of an Independent Person in March 2015: available at [https://present.brighton-hove.gov.uk/Published/C00000117/M00005115/AI00044608/\\$20150206113505\\_007121\\_0029030\\_CommitteeReportTemplate100614newsavedformat.docxA.ps.pdf](https://present.brighton-hove.gov.uk/Published/C00000117/M00005115/AI00044608/$20150206113505_007121_0029030_CommitteeReportTemplate100614newsavedformat.docxA.ps.pdf)

<b>Subject:</b>	<b>Code of Conduct for Employees</b>
<b>Date of Meeting:</b>	<b>12 March 2019 – Audit &amp; Standards Committee 28 March 2019 – Council</b>
<b>Report of:</b>	<b>Executive Lead Officer – Strategy, Governance &amp; Law</b>
<b>Contact Officers:</b>	<b>Victoria Simpson, Senior Lawyer – Corporate Law</b>  <b>Liz Boswell, Lead Consultant – Reward &amp; Policy</b>
<b>Email:</b>	<b>Victoria.simpson@brighton-hove.gov.uk</b>
<b>Ward(s) affected:</b>	<b>All</b>

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The purpose of this report is to seek member approval for an updated version of the council's Code of Conduct for Employees.
- 1.2 These amendments have been made following a review of the above Code. They aim to update the Code to reflect current processes for declaring officer interests and to ensure that the organisation's expectations of officers involved in the process of procuring, managing or administering a contract on behalf of the Council are made as clear and as robust as possible.

**2. RECOMMENDATIONS:**

That the Audit & Standards Committee:

- 2.1 Recommend the council's revised Code of Conduct for Employees set out in Appendix 1 to full Council for approval.

That full Council:

- 2.2 Approve the revised Code of Conduct for Employees set out in Appendix 1 with immediate effect and authorise the Monitoring Officer to publish the revised Code in the Council's Constitution.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The council's Code of Conduct for Employees forms part of the council's Constitution and is a key part of the organisation's corporate governance arrangements. It is periodically reviewed to ensure it remains up-to-date and fit for purpose and was last substantively amended in September 2017.
- 3.2 This most recent review was prompted principally by a recent Internal Audit review, which highlighted a need to improve some of the council's internal control measures which have been put in place to minimise the risk of error and/or fraud.
- 3.3 As a result of that review, prompt action is proposed to reinforce and strengthen relevant sections of the current Code of Conduct for Employees.
- 3.4 The main changes are summarised below:
- more prominent referencing to the council's Contract Standing Orders and Financial Regulations and the likely consequences for employees if they fail to comply with these
  - a strengthening of the provisions relating to tendering for work/services and/or dealing with contractors, particularly with regard to:
    - the requirement for officers to declare any conflicts of interests which may arise where they are involved in the procurement of a council contract
    - the requirement for officers to safeguard any confidential, commercially sensitive and/or personal information they have access to in relation to the procurement, management or administration of a contract
    - the commissioning of work and the authorisation of any transactions relating to a contract
  - minor updates to the Council's processes whereby officers declare interests
  - removal of references to data protection legislation which is no longer in force
- 3.5 The proposed revised Code of Conduct for Employees is attached as Appendix 1.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 There are no alternative options for the Committee to consider. Members of the public are entitled to expect the highest standards of conduct from all employees who work for the council. However, this can only be ensured if the organisation has a Code of Conduct for staff that is relevant and fit for purpose.

#### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The council's recognised trade unions, Unison and GMB, have been consulted with and have had the opportunity to input regarding the proposed changes to the Code.

#### **6. FINANCIAL & OTHER IMPLICATIONS:**



Financial Implications:

- 6.1 It is not expected that the revised Code of Conduct will have any financial implications for the council.

Finance Officer Consulted: Nigel Manvell

Date: 20/02/19

Legal Implications:

- 6.2 The changes to the council's Constitution outlined in this report must first be considered by Audit & Standards Committee (in accordance with the terms of its delegated powers) and then referred to full Council for approval (in accordance with article 13.03 of the Constitution). These requirements are reflected in the recommendations of this report.

Lawyer Consulted: Victoria Simpson

Date: 11/02/2019

Equalities Implications:

- 6.3 There are no specific equalities implications arising from this report.

Sustainability Implications:

- 6.4 None

Any Other Significant Implications:

- 6.5 There are no other significant implications arising from this report.

**SUPPORTING DOCUMENTATION**

**Appendices:**

Appendix 1 – revised Code of Conduct for Employees

**Documents in Members' Rooms**

None

**Background Documents**

None



## CODE OF CONDUCT FOR EMPLOYEES

**Please take time to read this Code and make sure that you understand it. If you are unclear or want to know something specific, talk to your manager or Human Resources.**

### Introduction

You are employed by Brighton & Hove City Council and that means that you are a Local Government Officer. You and the services you provide are paid for by public money and therefore you are accountable to the public for your behaviour, actions and decisions. You must not only behave properly, you should also be seen to behave in a way that is beyond question.

The Council recognises that working in a public service is not easy. Every area is changing and it may be unclear to you what is acceptable and what is not. This Code is intended to explain your responsibilities and your rights as an officer.

As a council officer you are expected to achieve your personal best for our customers and for the city. To ensure that you understand what this means, the council has adopted six values that describe what you should aim to accomplish in the way you carry out your job. These are:

- **Respect:** Embrace diversity with kindness and consideration and recognise the value of everyone
- **Collaboration:** Work together and contribute to the creation of helpful and successful teams and partnerships across the council and beyond
- **Efficiency:** Work in a way that makes the best and most sustainable use of our resources, always looking at alternative ways of getting stuff done and asking, 'How can I improve that?'
- **Openness:** Share and communicate with honesty about our service and self, whenever appropriate. Accept where we have to change in order to improve
- **Creativity:** Have ideas that challenge the 'tried and tested', use evidence of what works, listen to feedback and come up with different solutions
- **Customer Focus:** Adopt our 'Customer Promise' to colleagues, partners, members and customers. We will be easy to reach, be clear and treat you with respect, listen and act to get things done

Formatted: Space After: 0 pt, Line spacing: single

This Code of Conduct and the council's Behaviour Framework underpin these six organisational values by setting out in more detail the standard of behaviour expected of you as an officer whilst you are carrying out your duties. There are other Codes, [Policies and Procedures](#) which are important for you to understand and which you should read alongside this one:

**The Code of Conduct for Member–Officer Relations**

This deals with the relationship between you and Members of the Council (Councillors)

**The Code of Conduct for Members**

A local code setting out standards of conduct and behaviour for Members of the Council

**The Whistleblowing Policy**

This sets out a procedure for you to report actions, wrongdoings or serious failures

**The Complaints Procedure**

A procedure for members of the public to complain about services or actions of the Council

**Counter-Fraud Strategy & Framework**

This sets out the council's commitment to creating a zero tolerance to fraud and maintaining high ethical standards in its administration of public funds. The policies and procedures within the framework set out the roles and responsibilities of staff in countering fraud and how they can report concerns.

**[Contract Standing Orders](#)**

[Contract Standing Orders set out clearly the rules that staff must comply with when buying and supplying goods, works, or services. They are intended to promote good procurement practice, value for money, public accountability, deter corruption and provide protection for staff against allegations of impropriety. These Standing Orders form part of the council's Constitution and may be found on the council's website.](#)

Formatted: Font: (Default) Arial, Bold

**[Financial Regulations](#)**

[Financial Regulations constitute the financial policies and framework for ensuring the council, as a custodian and spender of public money, conducts its affairs in a way that complies with specific statutory provisions, generally accepted accounting principles and professional good practice. The appropriate standards of financial management and control set out in these Regulations apply to all staff and must be complied with. These Financial Regulations form part of the council's Constitution and can be found on the council's website](#)

Formatted: Font: (Default) Arial, Bold

Formatted: Normal (Web), Space After: 7.5 pt

Formatted: Font: (Default) Arial, 12

Formatted: Space After: 0 pt, Line spacing: single

### **Information Governance Policies**

A suite of policies, procedures and processes that govern how the council manages its information so that it complies with its legal, regulatory and operational requirements. They set out employees' personal responsibilities, particularly in relation to the use of ICT and the processing and safeguarding of information, [including key requirements relating to personal data](#).

### **The Social Networking Policy for Employees**

A policy which governs the use of social media in both the work and personal use contexts

**Formatted:** Font: (Default) Arial, Bold

**Formatted:** Font: Bold

**Formatted:** Normal, Indent: Left: 0 cm, First line: 1.25 cm, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tab stops: Not at 1.27 cm

**Formatted:** Space After: 0 pt, Line spacing: single

## Scope

This Code of Conduct applies to you if you are an employee of Brighton & Hove City Council, whether employed on a permanent, temporary or casual basis, or if you are an officer holder. All officers must follow this Code. Deliberate breaches of the Code will be treated as a disciplinary offence [which could result in instant dismissal](#). In some cases a breach of the Code may result in criminal prosecution.

[All officers have a personal responsibility to familiarise themselves with the rules set out in this Code which is referred to in employees' contracts of employment and is available to read in the "Employee Rights & Responsibilities" document on the council's intranet, The Wave. Lack of awareness of the Officers claiming that they were unaware of the requirements of this set out in this Code will not be accepted as by the council as a valid defence in cases where there has been an alleged breach of this Code.](#)

Formatted: Not Highlight

This code contains the following:

Section 1	Basic principles/definitions
Section 2	Political neutrality/activity/restricted posts
Section 3	Council policies and legal requirements
Section 4	Outside commitments/Working Time
Section 5	Directive/declaration of interests <a href="#">Commissioning work</a> /Tendering/dealing with contractors
Section 6	Close personal relationships at work
Section 7	Personal conduct
Section 8	Equality and diversity
Section 9	Corruption, fraud and dishonesty
Section 10	Use of council facilities/resources
Section 11	Information Governance & Use of ICT
Section 12	Reporting of criminal offences
Section 13	Legacies
Section 14	Inventions/patents/copyright etc./conferences
Section 15	Appointing staff/discipline & grievance
Section 16	Gifts
Section 17	Hospitality
Section 18	Sponsorship, giving or receiving
Section 19	Information, openness and confidentiality
Section 20	Financial resources/regulations
Section 21	Role of the Monitoring Officer
Section 22	Raising concerns - <a href="#">Whistleblowing</a>
Section 23	Responding to complaints
Section 24	Useful information

Formatted: Indent: Left: 0 cm, Hanging: 5.08 cm

Formatted: Space After: 0 pt, Line spacing: single

## Basic principles & definitions

1.1 The basic principles on which this Code is built are that:

- you, your family or your friends must not gain financial or other benefits from the decisions or actions you take whilst working for the Council
- you must make decisions which are in the Council's best interests and must award contracts and choose purchases on merit and in accordance with the Council's policies and procedures
- you will not accept money or other benefits from individuals or organisations that may, or may be seen to, influence your decisions
- you ~~must~~should always declare any interests you have outside work that may conflict, or may be perceived by others to conflict, with, relate to your work for the Council. You must always think how your actions would look to the residents of Brighton & Hove. Would they be seen to be in the best interests of the public? Would you be able to explain your role?

1.2 If you are at all uncertain, you should be guided by the key principle that even if your actions, decisions or behaviour are proper, you need to ensure that you are above suspicion and there is no appearance of improper conduct.

1.3 If you are unsure what is expected, you should raise the matter with your manager, Executive Director, the Chief Executive, the Head of Human Resources & Organisational Development, the Council's Monitoring Officer or the Head of Internal Audit. (A list of contact numbers is given at the back of this Code.)

### Definitions

1.4 Throughout this Code there are references to partners, close friends, relatives and close personal relationships.

1.5 All of these are in the context of you having a loyalty to another person that is in conflict with the job or action in which you are involved for the Council.

1.6 There is no formal definition of 'close personal friend' nor is it made clear whether partner includes ex-partners with whom you are still friends.

Formatted: Space After: 0 pt, Line spacing: single

- 1.7 It is your responsibility to act openly, honestly and without bias. You must assess whether a relationship may cause you to act, or be seen to act, inappropriately.
- 1.8 This Code is not an exhaustive or definitive list and is not a substitute for employees applying common sense when determining what is, and what is not, acceptable behaviour.

## **2. Political neutrality**

- 2.1 As an officer you work for the Council as a whole and not just the majority (or leading) group. Although most staff will have very little direct contact with Councillors, some staff will be asked to give advice to individuals or to Committees. This must always be done in a politically neutral way and you must be prepared to explain your advice to all political groups. You should bear in mind that you may be called to account for your advice, for example to an overview and scrutiny committee.
- 2.2 You should also refrain from making political comments in public or on social media.
- 2.3 Once a policy has been approved whether by a Committee or by Full Council, it is a lawful policy of the whole Council and must be adopted by you, regardless of your beliefs. You must not allow your personal or political opinions to interfere with your work. If you believe that a policy is unlawful, you should contact your Executive Director or the Monitoring Officer.
- 2.4 If you are asked by a Councillor to provide assistance on a matter that you feel is clearly political, or which does not have a clear link with the work of the Council, you should seek the advice of your Executive Director or the Monitoring Officer.
- 2.5 If you are asked to attend any meetings of any political group of the Council, you should consult your Executive Director before accepting the invitation.

### **Political activity**

- 2.6 You are not eligible to stand for office as a Councillor of Brighton & Hove City Council, but you may stand for office in another Council providing you are not in a politically restricted post (see paragraph below).

### **Politically restricted posts**

**Formatted:** Space After: 0 pt, Line spacing: single



- 2.7 Some officers, normally those in more senior positions, are in posts where political activity is restricted through the Local Government and Housing Act 1989. This Act prevents them from taking part in certain political activities outside their work. If this applies, you should have been informed in writing, and it may be included in your contract of employment. You should, if this is the case, have been informed of the rules for claiming exemption. If you are not sure about your position, you should contact your manager or Human Resources.
- 2.8 The political activities which are restricted for these officers include:
- standing as a Member of Parliament, Member of the European Parliament or a Councillor in any local authority (other than a Parish Council)
  - holding office in a political party at any level, (except in limited roles concerned only with the internal membership of the party)
  - canvassing at elections
  - speaking in public or publishing any written or artistic work which appears to be intended to influence public support for a political party.
- 2.9 You need to be aware of your position in terms of political activity. If you are not sure whether an activity is subject to 'political activity restrictions', you should seek advice from your Executive Director or Head of Human Resources & Organisational Development, who will consult the Monitoring Officer if necessary.
- 2.10 Violation of the statutory rules is a breach of contract and will render you liable for investigation under the Council's Disciplinary Procedure.

### 3. Council policies and legal requirements

- 3.1 As a Council officer, you have a personal responsibility to make ~~must~~ ensure you are familiar with, and comply with, the legal or statutory requirements of your job. This includes the council's Financial Regulations and Contract Standing Orders. You must work within this framework and generally in such a way as to comply with the Council's policies and procedures at all times. Failure to do so is likely to result in disciplinary action being taken against you, which may in ~~relevant circumstances include including the possibility of instant dismissal. In certain cases, it could also lead to criminal prosecution.~~
- 3.2 All members of the local community, service users and officers have the right to be treated fairly and impartially. As a Council officer you must comply with all Council policies relating to equalities and to the other requirements of the law (see also section 9 of this Code).

**Formatted:** Space After: 0 pt, Line spacing: single

#### **4. Outside commitments/ Working Time Directive and declaration of interests**

- 4.1 Your first work commitment is to the Council. If your job is graded at Scale SO1 (or its equivalent) or above, you should not engage in any other business or take up an additional appointment without written permission from your manager. If you are allowed to undertake work outside the Council, you must not use the Council's facilities for that work.
- 4.2 The Council is required to take all reasonable steps to ensure that workers do not exceed the maximum hours per week. The statutory maximum hours per week [as laid down by the Working Time Directive] is an average of 48 hours over a 17 week period, extended in certain circumstances to a 26 or 52 week period. Whatever your grade or position, the Council has a responsibility to ensure that you do not exceed the statutory maximum hours per week. If you have, at the time of appointment, or subsequently obtain, other employment you should declare this to your immediate manager. Normally, the Council will not seek to prevent you from working more than the statutory maximum but it will want you to confirm, in writing, that this your choice.
- 4.3 In addition to the statutory maximum, if you are above school leaving age but under 18 years and working a total of 4.5 hours per day or more you are required to have a 30 minute break during that time. This applies whether you work only for the Council or for several different employers. If you are a young person with more than one job which adds up to 4.5 hours per day or more you should also inform your manager.
- 4.4 If you are 18 years of age or over, you are entitled to a 20 minute break for every working shift lasting 6 hours or more per day.

#### **Declaration of personal / business interests: conflict of interests**

- 4.5 You must declare to your manager any financial and non-financial interests that you consider could bring you into conflict with the Council's interests. Some examples are given below but these should not be viewed as the only circumstances in which you must declare a conflict of interest.
- 4.6 Conflicts may occur where the Council has entered into (or is considering entering into) a contract in which you, your partner or a relative has a financial interest. You may have a financial interest if, for example, you may:
- receive money or goods
  - have value added to a property

**Formatted:** Space After: 0 pt, Line spacing: single

- benefit from an increase in share value.

- 4.7 If you have shares in a privatised utility, such as British Gas, with which the Council will have dealings, you will not normally need to declare this involvement. It is ultimately a question of degree. You would be expected to declare any large shareholdings you may have in a company coming into contact with the Council.
- 4.8 A conflict of interest may also arise when you have a direct interest in the outcome of a Council decision. If this is the case then in order to protect yourself from any appearance of improper conduct you should declare that interest to inform your manager immediately and formally record that interest on PIER via Employee Self Service. See also section 4.12 of this Code. ~~that you are aware of the situation.~~
- 4.9 Conflicts of interest may occur in a number of circumstances. You should, for example, declare your involvement with an organisation which is grant aided by the Council.
- 4.10 You should also declare any involvement with an organisation or pressure group which may seek to influence the Council's policies.
- 4.11 If you are not sure whether you should declare such an interest and wish to discuss the matter in confidence, the Monitoring Officer or Head of Human Resources & Organisational Development can offer advice.
- 4.12 Although you ~~may~~ can be offered advice about declaring interests, your actions are ~~it is~~ ultimately your responsibility, and you will be held accountable for them. I-if you are not sure, then it is always best to declare an interest. Interests declared electronically interests are held kept on PIER. Declarations of interest made using a paper-based form are kept on the registers of interests held by your Executive Director. It is important to remember that declaring an interest does not imply that you may act improperly, but that it could protect you from claims or the potential appearance of impropriety.

Note 1: Declarations of interest should be made on PIER via Employee Self Service. Employees without an online PIER account should use the paper form on the council's intranet.

Note 2: Some groups of staff are required to make a declaration of interests annually even if it is a nil return. You will be notified if this applies to you.

## 5. Commissioning of Tendering for Work/ Services, and/or Tendering /eDealing with contractors

Formatted: Space After: 0 pt, Line spacing: single

5.1 All officers must follow the Council's Contract Standing Orders and procurement guidance so as to ensure the fair, open and transparent procurement of goods, works and services for the council. ~~OAll orders and contracts must be~~ ~~ust be~~ awarded on merit following ~~by~~ fair competition against other bids, tenders or quotations and following the processes ~~as~~ required by the Council's Contract Standing Orders.

Formatted: Font: (Default) Arial, 12

Formatted: Font: (Default) Arial, 12

Formatted: Not Highlight

~~Orders and contracts must be awarded on merit by fair competition against other tenders and in accordance with the Council's Standing Orders.~~

5.2 At the start of any commissioning/tendering process, you are required to complete an updated Declaration of Interest form and send it to the Procurement team. You should also record it on PIER. You must do this even if you have made a declaration of interests previously or you have no potential conflict of interests to declare. See section 4.12 of this Code.

Formatted: Indent: Left: 0 cm, Hanging: 1.27 cm

5.3 You must not show favouritism to any contractor. You must also make sure that no special favour is shown to:

- your -current or former employers
- , either other officers or their partners, close relatives or associates ~~in awarding contracts.~~
- members of your family, partner, ex-partner(s), friends, close associates -or relatives

Formatted: Normal, Indent: Left: 0 cm, Hanging: 1 cm, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

Formatted: Normal, Bulleted + Level: 1 + Aligned at: 1.9 cm + Indent at: 2.54 cm, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers

5.4 You must safeguard all confidential, commercially sensitive and personal information that you are working with, or have access to, in relation to the procurement, management or administration of internal or external contracts and comply with the requirements of relevant ~~Data Protection~~ legislation including the Data Protection Act 2018 and the General Data Protection Regulation. Under no circumstances must such information be disclosed to any unauthorised party or organisation. This includes members of your family, partner, ex-partner(s), friends, relatives or close associates.

Formatted: Indent: Left: -0.25 cm, Hanging: 1.63 cm, No bullets or numbering

Formatted: Font: (Default) Arial, 12

Formatted: Font: (Default) Arial, 12

Formatted: Font: (Default) Arial, 12

Formatted: Font: (Default) Arial, 12

Formatted: Font: (Default) Arial, 12

Formatted: Font: (Default) Arial, 12

Formatted: Font: (Default) Arial, 12

5.52 If you are involved in any the tendering process whereby works or services are delivered by another party and deal with contractors, you must be clear about the need for the separation of client and contractor roles.

Formatted: Indent: Left: 0 cm, Hanging: 1.27 cm

~~You must also make sure that if you are privy to confidential information on tenders or costs for either internal or external contractors, you do not disclose such information to any unauthorised party or organisation.~~

5.63 If, as part of your job, you are involved with or supervise contractors, and you have any kind of personal or other relationship with a contractor or potential contractor, the law states that you must disclose this relationship. Any such relationships should be disclosed to your

Formatted: Space After: 0 pt, Line spacing: single

manager and recorded as a potential conflict of interest. See section 4.12 of this Code entered in the register of interests.

5.7 If, as part of your job, you are involved in the management, authorisation or administration of a council contract, you must not commission any work or process/authorise any transactions where you have a close personal connection to any beneficiary.

5.8 If you are in any doubt about the application of these rules when buying and supplying goods, works, or services for the council you should seek advice from the Procurement team.

Formatted: Font: (Default) Arial

## **6. Close Personal Relationships at Work**

6.1 This section should be read in conjunction with sections 4 and 16 of this Code.

6.2 A close personal relationship is defined as a:

- close personal friendship (i.e. a relationship going beyond that normally found between work colleagues)
- family relationship
- partner, ex-partner or
- someone with whom you are involved in a romantic/sexual relationship

6.3 The council acknowledges that such relationships can exist, or form, at work. Although in the majority of cases these are unlikely to give rise to any issues, the council recognises that in some cases there is the potential for a conflict of interest to arise. Some of the potential problems that can arise from close personal relationships at work include:

- actual or perceived breaches of confidentiality
- accusations or perceptions of bias, favouritism, prejudice, unprofessionalism or unfairness
- lack of trust and confidence in relation to discussions within a team or with a line manager
- a risk to probity or the divulgence of confidential information
- deterioration in work performance

This is not an exhaustive list.

### Employee responsibilities

Formatted: Space After: 0 pt, Line spacing: single

6.4 As an employee, you have a personal responsibility to declare promptly any personal relationships you have, or form with others, during the course of your employment so that appropriate action can be taken to minimise the risk of potential conflicts of interest arising. You must declare all close personal relationships regardless of whether or not you see a potential conflict of interest arising as a result of your relationship.

6.5 The declaration should be made to your line manager, or if that individual is the person with whom you have the close personal relationship, you should make the declaration to the manager above.

#### Manager responsibilities

6.6 Managers are responsible for reviewing all declarations made by their staff and for taking appropriate action to prevent any problems arising as a result of close personal relationships at work.

6.7 In most cases, it will not be necessary to move one of the employees to another work area unless there are specific circumstances which make such a change appropriate.

6.8 Where the individuals concerned are in a line management relationship, an alternative manager should be nominated to line manage the subordinate employee in all aspects of their employment.

6.9 Alternative management arrangements should also be put in place where a new member of staff is recruited who would normally be managed by, or who will manage, a relative or someone with whom they have a close personal relationship.

6.10 Further information and how to register a relationship is available on the council's intranet, The Wave.

### **7. Personal Conduct**

7.1 You are expected to behave in a professional, friendly and respectful manner in line with the organisation's Values when dealing with colleagues, councillors, service users, contractors or those working for other organisations with whom the council has dealings.

7.2 To help you do this, the council has adopted a Behaviour Framework which sets out the desired behaviours it expects its staff to personally model when carrying out their job. You should familiarise yourself with the framework so that you understand what is expected of you.

### **8. Equality and diversity**

Formatted: Space After: 0 pt, Line spacing: single

- 8.1 The council is committed to increasing equality, opportunities and fairness inside our organisation, across our services and in the city, and to eliminating discrimination.
- 8.2 As an employee, you have both legal duties and personal responsibilities in relation to equality and you are expected to play an active part in making sure the council delivers the desired equality and diversity outcomes set out in its Equality & Inclusion Policy Statement & Strategy.
- 8.3 You are responsible for acquainting yourself with the Equality & Inclusion Policy Statement & Strategy so that you are aware of the council's legal equality duties, its commitments in relation to equality and diversity and what this means in practice for you in your role.
- 8.4 You must treat all colleagues, councillors, service users and residents fairly and with dignity and respect at all times whilst responding positively and appropriately to meet diverse needs.
- 8.5 Similarly, you are also entitled to be treated fairly and with respect by all those with whom you come into contact in your day-to-day work.
- 8.6 If you feel you have been unfairly treated, bullied, harassed or discriminated against by another member of staff, you should refer to the Dignity & Respect at Work Policy and guidance that will explain how you can raise a complaint.
- 8.7 If you experience such behaviour from someone not employed by the council e.g. a service user, resident or member of the public, you should notify your manager immediately so that the incident can be recorded and appropriate action taken.
- 8.8 The council will not tolerate any form of bullying, harassment or discriminatory behaviour carried out by, or against, any member of its staff. Allegations of such behaviour by a member of staff will be investigated under the Disciplinary Procedure and, where substantiated, could lead to instant dismissal. In certain circumstances, it could also lead to criminal proceedings.

## **9. Corruption**

- 9.1 It is important that you are aware that it is a serious criminal offence for you to receive or give any gift, loan, fee, reward or advantage for doing (or not doing) anything or showing favour or disfavour to any person in the course of your work with the Council.

**Formatted:** Space After: 0 pt, Line spacing: single

9.2 Under the Bribery Act 2010 it is an offence to request, agree to receive or accept a financial or other advantage intending that a relevant function or activity should be performed improperly as a result.

## 10. Use of Council facilities

10.1 You should only use Council facilities [such as accommodation, transport, stationery, postal service, ICT etc.] provided by the Council for your use in your duties as an officer to carry out those duties and for no other purpose. In exceptional circumstances your manager may give you permission to use Council facilities but you should always obtain this authority prior to use.

10.2 Telephones, both static and mobile, can be used for short urgent calls, for example in an emergency or to book a doctor's appointment. Telephones should not be used to give or receive personal calls which are not urgent.

10.3 The cost of any personal call made on a Council mobile phone must be repaid, regardless of whether it is within the agreed 'free time'. (To avoid mobile phones becoming a personal taxable benefit, you should repay the cost plus 5 %.)

## 11. Information Governance & Use of ICT

11.1 Information is a critical asset which the council must be able to exploit fully in order to function effectively. It is essential therefore that the confidentiality, availability and integrity of that information is appropriately protected.

11.2 The council has a suite of policies, procedures and processes that govern how it manages its information so that, as an organisation, it can comply with its legal, regulatory and operational requirements.

11.3 You have a personal responsibility to ensure that you make an active contribution towards the council meeting these legal obligations including complying with the Data Protection [Act 2018 and legislation Act 1998 and](#) the General Data Protection Regulations (GDPR) ~~[effective from May 2018]~~ when processing personal data as part of your job.

11.4 You must therefore make sure that you familiarise yourself with, understand and comply with the council's Information Governance Policies and any procedures applicable to your specific job role. This includes undertaking relevant mandatory Information Governance training.

Formatted: Space After: 0 pt, Line spacing: single



11.5 Failure to comply with these policies, procedures and processes is likely to lead to disciplinary action including the possibility of dismissal. In certain circumstances failure to comply with the Data Protection Act ~~2018-1998~~ may result in you being personally liable for non-compliance.

## 12. Reporting of Criminal Offences

12.1 As an employee of the council, you are expected to conduct yourself at all times (inside and outside of work) in a manner that will maintain public confidence in both your personal integrity and in the good reputation of the council.

12.2 In general, what you do outside of work is your personal concern unless your actions would cause a breakdown in the council's employment relationship with you and/or damage the image and reputation of the Council.

12.3 You must inform your manager as soon as possible if you are arrested (even if no action is taken against you) or you are subsequently cautioned or convicted in connection with any offence. This does not include minor driving offences such as fixed-penalty notices for speeding unless:

- driving is a key requirement of your job, for example, you drive a Council vehicle or you drive your own vehicle regularly on Council business
- the conviction results in disqualification from driving

12.4 Disclosing that you have been arrested, cautioned or convicted of a criminal offence does not necessarily mean that disciplinary action will be taken against you. Consideration will be given to the extent to which your conduct:

- affects your suitability to carry out your job
- impacts on work colleagues, customers, contractors/partners with whom the Council works
- the wider impact your conduct has on the Council's valued image and reputation and
- undermines the trust and confidence that the council must have in you as one of its employees.

**Formatted:** Space After: 0 pt, Line spacing: single

12.5 Failing to disclose such information, even where no charges are brought against you, may also lead to disciplinary action under the Council's Disciplinary Procedure.

### **13. Legacies**

13.1 On occasions, members of the public or service users may wish to express their appreciation of the services they have received from a particular member of staff by leaving them money/gifts in their will. This is likely to be more common where employees work closely with and / or care for vulnerable people as a part of their duties.

13.2 Such legacies can give rise to complaints from other potential beneficiaries and to accusations that an employee has taken advantage of the situation to gain personal benefit.

13.3 If a client or member of the public suggests to you that they are considering giving or leaving you money or gifts, you must firmly but politely discourage them from doing so. You should explain the difficulty that this may cause you and that people you meet through your work do not leave you things in their will. You must also report the matter to your manager.

13.4 You must also take great care to ensure that you are never placed in a position where it may appear that you are influencing or advising a member of the public or service user about the content of their will and you must never provide assistance to them in drafting a will or acting as a witness.

13.5 In the event that any gifts or monies are left to you in a will, you must declare the fact to your Head of Service immediately. Under no circumstances must you accept the bequest.

13.6 Failure to comply with these rules is likely to lead to disciplinary action including the possibility of dismissal.

### **14. Inventions / patents / copyright / publication of work / conferences**

14.1 If you have invented or written something at work then as a general rule it belongs to your employer if:

- it has been written/made in the course of your normal duties
- it has been made/written in the course of your duties and might reasonably be expected as part of your duties.

14.2 You must also make sure that you do not breach the copyright held by others and thereby expose the Council to the risk of claims. If you wish

**Formatted:** Space After: 0 pt, Line spacing: single

to copy the work of others you should ensure that you comply with copyright law, seeking advice from your manager if you are unsure.

### **Conferences**

- 14.3 You may be invited to address conferences or make presentations about your area of work. If you are asked to address a conference or make a presentation you must consult your manager before you accept the request, as there may be some occasions when the Council would not wish to be officially associated with the organising body. You must not personally accept fees for such work, but you may accept expenses and/or the ability to attend the full conference. There may be exceptions whereby your own time and resources are being used and you can be paid for the work. You should nonetheless seek your Executive Director's advice before accepting a fee, and should refer to the "Outside commitments/Working Time Directive and declaration of interests" section of this Code (section 4).

### **15. Appointing staff / discipline and grievance**

- 15.1 If you are involved in making appointments you must make sure these are made on merit against an agreed person specification and in accordance with the Council's recruitment policy and procedures.
- 15.2 It is unlawful for you to make an appointment based on anything other than the ability of the candidate to undertake the work. In order to avoid any possible accusation of bias, you must not be involved in an appointment if you are related to an applicant, or have a close personal relationship with them.
- 15.3 It is also important that there is no suggestion of collusion among panel members. You should not be a member of a panel which includes your partner or someone with whom you have a close personal relationship.
- 15.4 You must not canvass on behalf of an applicant.
- 15.5 Similarly, you must not be involved in decisions relating to discipline capability, grievance procedures, pay adjustments or promotion for any other officer who is a relative, partner or close friend.

### **16. Gifts**

- 16.1 You must, at all times, avoid any occasion for suspicion and any appearance of improper conduct. Any gift, reward or benefit offered to you as a Council officer should generally be refused. You should report any offers of expensive gifts to your Head of Service, Executive Director or the Monitoring Officer. Gifts offered to you (whether or not you accept them) are to be recorded by you in the register as follows:-

**Formatted:** Space After: 0 pt, Line spacing: single

(a) If the gift is of a nominal value of £25 or less, you have discretion as to whether or not to record the gift. Thus, for example, you would not normally record being given gifts mentioned in category (a) in paragraph 13.2 below, but it would probably be appropriate to record gifts in categories (b) and (c) even if worth less than £25.

(b) If the gift is of a nominal value of more than £25 you must record it.

Note 1: If your department or team has special rules about accepting / refusing gifts, you must also comply with those rules.

Note 2: The form on which gifts and hospitality should be registered can be found on the Council's intranet.

16.2 Gifts may only be accepted if they are:

(a) small and of modest value or of a promotional or advertising nature, e.g. calendars, diaries, pens and other similar articles (see also below)

(b) small gifts offered during official authorised hospitality, e.g. gifts on the conclusion of any courtesy visit of a type normally given by that organisation

(c) small gifts given by service users or clients. Where appropriate, such gifts should be shared between teams.

16.3 Gifts that are not acceptable must be declined or returned.

16.4 It is very important that any gifts or other promotional material (pens, calendars, diaries) which carry names or logos should not be used or displayed in public areas. This is to avoid unintentional promotion or endorsement of such products or services.

## 17. Hospitality

17.1 You may receive hospitality from other Councils, organisations or individuals as part of your work. You should avoid being personally entertained by those who want, or are likely to want, something from you or the Council. When hospitality is offered, you need to consider how this may be perceived by others. Hospitality must not be accepted from any parties concerned in a contract during the tendering period and even offers to attend small social gatherings such as modest meals, pub drinks etc. should be declined-diplomatically to avoid any accusations of impropriety.

17.2 When considering offers of hospitality you should consider whether:

- the invitation comes from a person(s) or an organisation(s) likely to benefit from the Council

- the [person\(s\) or](#) organisation is seeking a contract with the Council, or already has a contract with the Council
- the hospitality is part of a conference, seminar etc. or is more of a social function
- the scale and location of the hospitality is relative to the event
- the event takes place outside normal working hours
- it is being offered on a frequent basis
- it is being offered just to you or to others as well.

17.3 All offers of hospitality, whether or not accepted, are to be recorded in the register of gifts and hospitality as follows:

(a) You do not need to record any hospitality which is an integral part of a conference or seminar and is being offered to all delegates.

(b) Otherwise, if the hospitality is

- (i) of a nominal value of £25 or less, you have a discretion as to whether or not to record the hospitality. It is suggested that you should record it unless it falls within the three acceptable categories mentioned at paragraph 18.5.1 below;
- (ii) of a nominal value of more than £25 you must record it.

17.4 After consideration, you may wish to decline the hospitality. You may refer to this Code when you decline hospitality, and you should record in the register what was offered and refused by you. If the individual or organisation later comes under investigation, it will be important to know all the offers that were made, not just those accepted.

Note 1: If your department or team has special rules about accepting / refusing hospitality, you must also comply with those rules.

Note 2: The form on which gifts and hospitality should be registered can be found on the Council's intranet.

17.5 Below are some broad guidelines on what is generally acceptable and unacceptable.

#### 17.5.1 **Acceptable**

- modest working refreshments or meals provided that their purpose is to continue the work underway in the meeting
- attendance in an official capacity at functions to which invitations have been sent to other local authorities
- attendance in an official capacity at functions arranged by local public service bodies and other public authorities.

#### 17.5.2 **Unacceptable**

**Formatted:** Space After: 0 pt, Line spacing: single

- holidays or weekends away
- the use of a company flat or suite
- lunch with a developer who is applying for planning permission
- tickets to theatre, concerts or sporting events which are offered to you to influence your decisions in the Council and which you would not attend in an official capacity.

## **18. Sponsorship, giving or receiving**

18.1 When an outside organisation wishes to sponsor activity, or is being asked to sponsor a Council activity, the basic conventions covering acceptance of gifts or hospitality apply. You must take particular care when dealing with suppliers or contractors or potential suppliers or contractors.

18.2 Where the Council wishes to sponsor an event or activity, then you, your partner, spouse or relative must not directly benefit from this sponsorship. If you think you may have some benefit from sponsorship, you must advise your manager before the sponsorship is agreed. This could protect you from potential allegations of favouritism or bias. Similarly, where the Council (through sponsorship, grant aid, financial or other means) gives support in the community, you must make sure that you give impartial advice and that there is no conflict of interest involved.

## **19. Information, openness and confidentiality**

19.1 Brighton & Hove City Council wants to ensure that it operates openly: this means that information should generally be available to the public. However, you should be aware that certain types of information are confidential and must remain confidential (even after you or the person concerned has left employment with the Council). This means that you should take care not to circulate (even to colleagues over and above those you need to tell for reasons connected with your work for the Council) personal or confidential information (especially that which is of a sensitive nature). This restriction includes but is not limited to the following:

- personal information, including but not only, that given in confidence and especially that which is sensitive
- information that might compromise the right of commercial confidentiality
- information that if disclosed might prejudice enforcement action
- information that the Authority is not allowed or required by law to disclose (e.g. under data protection legislation)
- information relating to the prevention, investigation or prosecution of a crime

**Formatted:** Space After: 0 pt, Line spacing: single

- information that is defamatory
- information that appears in the confidential part of committee or council reports – Part 2 papers, often printed on pink paper

This list is not exhaustive

19.2 You should never pass on information, confidential or otherwise, for personal or financial benefit.

19.3 You should ensure that you are clear about the scope of information to which you have access and the constraints and freedoms applicable to your use of it.

19.4 If you are in any doubt about whether information is confidential or not you should consult your line manager or the council's Monitoring Officer.

## **20. Use of financial resources / financial regulations**

20.1 You must make sure that you use the public funds for which you are responsible in a responsible and lawful manner and in accordance with the Council's Contract Standing Orders, Financial Regulations and Counter-Fraud Strategy & Framework. If you feel there is evidence of financial impropriety, fraud or corruption you should contact the Head of Internal Audit immediately.

## **21. The role of the Monitoring Officer**

21.1 The Monitoring Officer is responsible for making sure that Councillors and officers act with propriety and within the law. This person has a statutory responsibility to produce a report to full Council in the event of any possible illegality, maladministration or injustice coming to their attention. The Monitoring Officer in Brighton & Hove City Council is the Executive Lead – Strategy, Governance and Law.

## **22. Raising concerns -Whistleblowing**

22.1 The Council takes any malpractice seriously and is committed to taking action when such practices are drawn to its attention. Examples of malpractice include bribery, fraud, corruption, gross negligence, actions causing risks to public safety and/or acting where capability is impaired by alcohol or drugs. There may be occasions when such practices are hidden or covered up and need to be drawn to the attention of the Council.

**Formatted:** Space After: 0 pt, Line spacing: single

22.2 To make it easier for you to raise your concerns the Council has a procedure which allows you to raise your concern confidentially and, if necessary, outside your department. This is the Whistleblowing Policy and you can find this on the Council's intranet.

22.3 If you feel that you cannot raise your concerns within the Council, then you can contact the charity Public Concern at Work (Tel. 020 404 6609), which is a registered charity independent of Brighton & Hove City Council whose services are free and strictly confidential.

### 23. Responding to complaints

23.1 Brighton & Hove City Council is committed to being open with its service users and to treating their complaints fairly. Information about the Council's complaints procedures is included in the Council's series of leaflets "Complaints, compliments, comments and suggestions" which are available at main Council reception points or from the Council's Standards and Complaints Team. This Team can also give you guidance on how to handle complaints.

### 24. Useful information

24.1 Whistleblowing Policy - available from the Head of Human Resources & Organisational Development or Internal Audit  
Equalities & Inclusion Policy Statement & Strategy - available from the Communities, Equality & Third Sector Team  
Counter-fraud Strategy & Framework - available from Internal Audit  
Contract Standing Orders - available from [Head of Procurement Strategy Manager](#)  
Code of Conduct for Member–Officer Relations – available from the Executive Lead [Officer](#) – Strategy, Governance and Law  
Code of Conduct for Members – available from the Executive Lead [Officer](#) – Strategy, Governance and Law

All these documents are also available on the Wave. Search for **constitution** in the **Library** and click open **Constitution – all documents**

Formatted: Space After: 0 pt, Line spacing: single



<b>Subject:</b>	<b>Review of parts of the Council's Constitution, including the Code of Conduct for Members and related arrangements</b>		
<b>Date of Meeting:</b>	<b>12 March 2019 – Audit &amp; Standards Committee 28 March 2019 – Council</b>		
<b>Report of:</b>	<b>Executive Lead Officer - Strategy Governance &amp; Law</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Abraham Ghebre-Ghiorghis</b>	<b>Tel: 29-1500</b>
	<b>Email:</b>	<b>Abraham.ghebre-ghiorghis@brighton-hove.gov.uk</b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 To comply with its obligations under the Localism Act 2011, the Council first adopted a new Code of Conduct for Members in July 2012. That Code and other parts of the authority's arrangements have since been reviewed and updated so as to ensure that they remain current and relevant as a key element of the council's ongoing commitment to maintaining high standards of conduct.
- 1.2 In January 2019, this Committee determined that a limited review of the Code of Conduct would be appropriate as a means of considering whether to incorporate into the Code an explicit prohibition on breaching certain provisions in the Equality Act 2010. A cross party working group of members was considered to be the best possible means of progressing this, and that group was convened, joined by both of the council's two independent persons. At the same time, it considered proposals to review the other related arrangements referred to in this Report.
- 1.3 This Report places before members the outcome of the work done by the cross party working group to review proposals to update and/or clarify some parts of the existing arrangements in the Code and related documents. This Committee is invited to review the appendices to this Report before referring them to full Council for approval.

**2. RECOMMENDATIONS:**

- 2.1 That **Audit & Standards Committee** refer the draft revised documents appended here at Appendix 1 ( the Code of Conduct for Members), Appendix 2 (the Practice note on Publicity and the Use of Council Resources) and Appendix 3 The Code of Conduct for Member/ Officer Relations to full Council for approval.
- 2.2 That **Full Council** approve the Appendices 1, 2 and 3 referred by Audit & Standards Committee with immediate effect.

- 2.3 That **Full Council** grant delegated authority to the Monitoring Officer to publish the changes in the Council's Constitution and to make any necessary or incidental changes he considers necessary to give effect to them.

### **3. BACKGROUND INFORMATION**

#### **The Code of Conduct for Members**

- 3.1 The proposed changes at Appendix 1 are limited. They seek firstly to make explicit the expectation that members will not act in such a way as to discriminate on the basis of one of the protected characteristics. Secondly they seek to articulate the expectation that members shall 'promote equality in their actions and behaviours'. This new provision was considered by the working group to be a proportionate response both to the Fawcett Society Report (referred to in the last Report on this topic to the Committee) and generally.

#### **The Practice Note on Publicity and the Use of Council Facilities**

- 3.2 The proposals to amend the above Practice Note detailed in Appendix 2 include changes to reflect current usage of available technology, including a greater reliance on email and a lessened recourse to council stationery and landline telephones. In addition, the suggested amends include explicit reference to the council's IT acceptable use policy, which binds all users of the council's IT, and otherwise seeks to clarify the Note so to make it as relevant as possible to the role which members play and the potential issues which may arise.

#### **The Code of Conduct for Member/ Officer Relations**

- 3.3 The proposed changes to the Code of Conduct for Member/ Officer Relations at Appendix 3 aim mainly to update it with specific reference to the GDPR and the Data Protection Act 2018 and to ensure that the framework takes into account current data privacy demands and expectations.

### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 The Council is obliged under the Localism Act to make arrangements for maintaining high standards of conduct among members and to make arrangements for the investigation of complaints. The proposals outlined in this report and in the appended documents have been mooted with this aim in mind. No alternative options are mooted.

### **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 No requirement to consult with the local community has been identified.

### **6. CONCLUSION**

- 6.1 Members are asked to note the contents of this Report and to recommend the suggested amendments in Appendices 1, 2 and 3 to full Council for approval.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

7.1 There are no financial implications arising from this report.

Finance Officer Consulted: Nigel Manvell

Date: 20/02/19

### Legal Implications:

7.2 These are covered in the body of the report

Lawyer Consulted: Victoria Simpson

Date: 12/2/19

### Equalities Implications:

7.3 There are no equalities implications arising from this report

### Sustainability Implications:

7.4 There are no sustainability implications arising from this report

### Any Other Significant Implications:

7.5 None

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

Appendix 1: Code of Conduct for Members – showing proposed amendments as tracked changes

Appendix 2: Practice Note on Publicity and the Use of Council Resources – showing proposed amendments as tracked changes

Appendix 3: The Code of Conduct for Member/ Officer Relations – showing proposed amendments as tracked changes

### **Documents in Members' Rooms:**

**None.**

### **Background Documents:**

**None.**



# CODE OF CONDUCT FOR MEMBERS

## Introduction

This Code of Conduct covers all elected members and co-opted members (together referred to in this Code as 'Member' or 'Members' as appropriate) of Brighton & Hove City Council whenever they are acting as a member or representative of the council or when they claim to act or give the impression of acting as a representative of the council. The Independent Persons who are appointed to the Council's Audit and Standards Committee are also expected to abide by this Code in terms of the standards of behaviour they observe and by voluntarily declaring any interests they have in any matter under discussion at any meeting.

The requirements outlined in this Code regarding the Declaration of Interests at Meetings apply to formal meetings of the Council, its committees and sub committees and its joint committees and sub committees. Members are however encouraged to voluntarily declare at all meetings, both formal and informal, any facts which they consider may be relevant to the perception of their decision-making, this although they are not required to do so.

The Code does not apply when Members are acting or appearing in the perception of a reasonable person to be acting in a purely private capacity.

When carrying out their public role, Members must adhere to the seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty, and leadership, as defined in Appendix B.

This Code of Conduct should be read alongside the Council's corporate values – respect, collaboration, efficiency, openness, creativity, and customer focus, as defined in Appendix C.

[All Members are bound by the requirements of the Equality Act 2010, which amongst other things prohibits discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. In addition, Members are expected to promote equality in their actions and behaviours.](#)

When applying and interpreting this Code of Conduct, Members should have regard to the following policies and documents (as amended from time to time):

- (a) Council Procedure Rules
- (b) Arrangements regarding the Register of Members' Interests
- (c) Practice Note – Use of Council Facilities
- (d) Protocol for Members regarding planning applications
- (e) Code of Conduct for Member/Officer Relations

15.12.2016

- (f) Guidance on use of social media
- (g) Guidance on confidentiality
- (h) Anti-fraud and Corruption Strategy
- (i) Whistleblowing Policy

## Behaviour

- 1.1. Members must behave in such a way that a reasonable person would regard as respectful.
- 1.2. Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
- 1.3. Members must not act in a way which a reasonable person would regard as bullying or intimidatory.
- 1.4. Members must not seek to improperly confer an advantage or disadvantage on any person.
- 1.5. Members must [comply with the Equality Act 2010, both insofar as the prohibition on discrimination on the grounds of a protected characteristic is concerned and generally, and must](#) not do anything which may cause the council to breach any of its equality duties ~~(in particular as set out in the Equality Act 2010)~~.
- 1.6. Members must only use the resources of the council in accordance with [the Practice Note on Publicity and the Use of Council Facilities](#). ~~{insert hyperlink to Practice Note}~~.
- 1.7. Members must not disclose information which is confidential or exempt from publication or where disclosure is prohibited by law.
- 1.8. Members must not refuse or fail to –
  - (i) co-operate with council investigations of any description, including those into alleged breaches of this Code; and/or
  - (ii) provide full access to all material that, in the view of the investigating officer, may be relevant to such an investigation.
- 1.9. Members must respect the impartiality of officers and not act in a way that a reasonable person would regard as bringing an officer's impartiality into question.
- 1.10 When reaching decisions on any matter, Members must have regard to any relevant advice provided to them by the council's—
  - (i) chief finance officer;
  - (ii) monitoring officer; or
  - (iii) chief executive and head of paid servicewhere that officer is acting pursuant to his or her statutory duties.
- 1.11 Where, following a complaint that a Member has breached this Code of Conduct, and the complainant and the Member complained of consent to resolve the matter

15.12.2016

informally by a particular means, the Member must co-operate and comply with the agreed method of resolution.

## Registration of interests

- 2.1. Within 28 days of the Member's election or the co-opted member's appointment (where that is later), Members must notify the Monitoring Officer of their Disclosable Pecuniary Interests which fall within the categories set out in Appendix A. They must also notify the Monitoring Officer of those of their Other Interests which must be entered on the Register of Interests pursuant to para 3.2 of this Code.
- 2.2. Upon the re-election of a Member, or the re-appointment of a co-opted member, Members must within 28 days notify the Monitoring Officer of all of their registrable interests which fall within the categories of Disclosable Pecuniary Interests and Other Interests, defined in Appendix A and para 3.2 below, whether previously registered or not.
- 2.3. Members must notify the Monitoring Officer of any change to their registrable interests and/or of any new registrable interests as defined by Appendix A and para 3.2 within 28 days of becoming aware of the relevant interest.
- 2.4. While members must notify the Monitoring Officer of all of their registrable interests, the Monitoring Officer may agree not to make public any interest which s/he agrees is a 'sensitive interest'. A sensitive interest is one which, if made public, could lead to the Member or a person connected with the Member being made subject to violence or intimidation.
- 2.5. In the interests of being seen to take decisions in an open and transparent manner and in accordance with the principle of Openness which forms one of the Seven Principles of Public Life (see Appendix B), Members may voluntarily provide written notification to the Monitoring Officer of their membership of any private club, society or organisation (and of any subsequent change or addition to their membership).
- 2.6. Similarly members may request that facts be minuted at any meeting where they consider that their circumstances affect their relationship to the issue under debate, although they are not compulsorily required to declare them as Disclosable Pecuniary Interests or Other Interests under this Code.
- 2.7. While members may choose to make voluntary declarations to assist in ensuring transparency, paragraphs 2.5 and 2.6 are not to be read as creating additional obligations on a member to disclose voluntarily any matter which they are not otherwise obliged to declare under the terms of this Code.

## Declaration of interests at meetings

15.12.2016

## **A. Disclosable Pecuniary Interests**

N.B. It is a criminal offence to fail to notify the Monitoring Officer of a disclosable pecuniary interest (as defined in Appendix A), to take part in discussion or votes at meetings, or to take a decision, where you have a Disclosable Pecuniary Interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the Monitoring Officer in connection with the registration and/or declaration of interests.

3.1. Where a matter arises at a meeting of the Council, one of its committees or sub committees (or at a joint committee or sub committee), which relates to an interest in Appendix A, Members—

- (i) must declare their interest;
- (ii) may not participate in a discussion or vote on the matter;
- (iii) must, in accordance with council procedure rule 25.4, leave the room where the meeting is held, while any discussion or voting takes place.

## **B. Other declarable interests, or ‘Other Interests’**

3.2 Members may have an interest in a matter under consideration even where they do not have a Disclosable Pecuniary Interest. These other declarable interests are known as ‘Other Interests’ and may be subject to paras 2.1 to 2.4 inclusive in which case they must be notified:

### **Other Interests which must be notified to the Monitoring Officer:**

- Any body of which the Member is in a position of general control or management, or
- Any gift or hospitality worth more than an estimated value of £50, which the Member has accepted by virtue of his or her office

### **Other Interests which need not be notified (but must be declared):**

- Any interest of a financial nature of the Member, their spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they are civil partners which is not a Disclosable Pecuniary Interest.

3.3 Where a matter arises at a meeting which relates to or affects any Other Interest then (whether or not it is a compulsorily notifiable interest) the Member must declare that interest at the meeting.

3.4 Where the Member has an Other Interest as defined above then they must in addition consider whether a) their interest is affected by the matter under consideration more than

15.12.2016



the interests of the majority of people in the area affected by the matter, and if so, whether  
b) a reasonable member of the public would think the Member's judgement of the public interest would be adversely affected by the interest.

If the answer to a) and b) above is yes then the Member:

- (i) must declare the interest at the relevant time; and
- (ii) may not participate in a discussion or vote on the matter; and
- (iii) must leave the room where the meeting is held while any discussion or voting takes place.

- 3.5 Where the Member has an Other Interest pursuant to para 3.2 but they are permitted to continue participating in decision-making once they have declared it pursuant to para 3.3, then they will have a declarable **non-prejudicial interest**. Where they are not permitted to participate in decision-making either as a result of an Other Interest or because they have a Disclosable Pecuniary Interest then their interest will be a **prejudicial interest**
- 3.6 Where a matter arises at a meeting which relates to a sensitive interest defined under paragraph 2.4, Members are not required to disclose the nature of their interest. However they must nonetheless disclose the fact that they have a Disclosable Pecuniary Interest and must follow the rules regarding non-participation.

### C. Dispensations

- 3.7 On a written request made to the council's Monitoring Officer, preferably in advance of the meeting, the Monitoring Officer may – following consultation, where reasonably practicable, with either one of the Independent Persons or the Chair of Audit & Standards Committee – grant a Member a dispensation to participate in a discussion and/or vote on a matter at a meeting where they would otherwise not be allowed to if the Monitoring Officer believes 1) that the number of Members otherwise prohibited from taking part in the meeting would be so great a proportion of the relevant body as to impede the transaction of the business; or 2) considers that without the dispensation the representation of different political groups would be so upset as to alter the likely outcome of any vote; or 3) considers that it is in the interests of the inhabitants in the council's area to allow the Member to take part; or 4) considers that it is otherwise appropriate to grant a dispensation.
- 3.8 Members are not required to register or declare an interest that is shared with ordinary members of the public living or working in the area (such as the payment of, or liability to pay, council tax, or having bins collected) or that arises simply from being a Member (such as Members' allowances); or where the interest is otherwise de minimis.
- 3.9 Accordingly, no Member will need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax reduction schemes, because it is a decision affecting the generality of the public in the council's area, rather than one or more individual..

3.10 It is at all times the responsibility of each individual member to monitor whether they have any disclosed or as yet undisclosed interests in matters under consideration and to declare these where necessary.

## Appendix A – Disclosable Pecuniary Interests

The interests defined by regulations made under section 30(3) of the Localism Act 2011 are described in the table below.

N.B. Interests listed in this Appendix are those of the Member; or those of their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they are civil partners), where the Member is aware that their partner has the interest.

Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from Brighton & Hove City Council) made or provided in the 12 month period preceding notification of this pecuniary interest in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	<p>Any contract which is made between you or other relevant persons* (or a body in which the relevant person has a beneficial interest**) and the relevant authority –</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p> <p>*A “relevant person” is your spouse or civil partner; a person with whom you are living as husband or wife; or a person with whom you are living as if they were a civil partner.</p> <p>** A “body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the</p>

15.12.2016

relevant person has a beneficial interest

“Director” includes a member of the committee of management of a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014, other than a society registered as a credit union.

See ‘Securities’ below for definition of ‘securities’.

## Land

Any beneficial interest in land which is within the area of the relevant authority.

“Land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income.

## Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

## Corporate tenancies

Any tenancy where (to the member’s knowledge) -  
(a) the landlord is the relevant authority; and  
(b) the tenant is a “body in which the relevant person has a beneficial interest” (see \*\* under ‘Contracts’ for definition) .

## Securities

Any beneficial interest in securities of a body where –

(a) that body (to the member’s knowledge) has a place of business or land in the area of the relevant authority; and

(b) either -

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

\*“Securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of

any description, other than money deposited with a building society.

See 'Land' in left column for definition of 'land'.

## **Appendix B – the Seven Principles of Public Life**

Selflessness	Members should act solely in terms of the public interest.
Integrity	Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity	Members must act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
Accountability	Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
Openness	Members should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.
Honesty	Members should be truthful.
Leadership	Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

## **Appendix C – the Council's Corporate Values**

Respect	Embrace diversity with kindness and consideration, and recognise the value of everyone
Collaboration	Work together to contribute to the creation of effective and

15.12.2016

successful decision making forums, working groups and partnerships across the council and beyond

Efficiency	Work in a way that makes the best and most sustainable use of the council's resources
Openness	Share and communicate with honesty about the council and its decisions and activities
Creativity	Have ideas that challenge the 'tried and tested'; use evidence of what works; listen proactively to feedback from constituents and others
Customer Focus	Do your part to help the council deliver its 'Customer Promise' to colleagues, partners and customers; the council aims to listen, to be easy to reach, to be clear, to treat everyone with respect, and to get things done.



## Appendix 3

### **PART 8.7 CODE OF CONDUCT FOR MEMBER/OFFICER RELATIONS**

#### **1. Introduction**

- (a) An effective and productive working relationship between Members and officers is critical to the successful operation of the Council's business. This code deals with the Member/officer interface in general terms and then refers to the working relationship between Members and Chief Officers, senior officers and other officers who formally advise the Council.
- (b) Excellent working relationships between Members and officers are required both to deliver high quality services to local people and to maintain public confidence in the machinery of local government in Brighton & Hove.
- (c) For the purposes of this Code, Chief Officer means the Chief Executive, the Executive Directors of Finance and Resources, Health and Adult Social Care; , Families, Children and Learning; Economy, Environment and Culture, and Neighbourhoods, Communities and Housing as well as the Monitoring Officer and Executive Lead for Strategy, Governance and Law.
- (d) For the purposes of this Code, Deputy Chief Officer means Officers who report to Chief Officers other than clerical staff.

#### **2. Values**

The manner in which members and officers interact should at all times be consistent with the council's organisational values, which are as follows:

- **Respect:** Embrace diversity with kindness and consideration and recognise the value of everyone. (See also paragraph 3 below)
- **Collaboration:** Work together and contribute to the creation of helpful and successful teams and partnerships across the council and beyond
- **Efficiency:** Work in a way that makes the best and most sustainable use of our resources, always looking at alternative ways of getting stuff done and asking, 'How can I improve that?'
- **Openness:** Share and communicate with honesty about our service and self, whenever appropriate. Accept where we have to change in order to improve

- ***Creativity***: Have ideas that challenge the ‘tried and tested’, use evidence of what works, listen to feedback and come up with different solutions
- ***Customer Focus***: Adopt our ‘Customer Promise’ to colleagues, partners, members and customers. We will be easy to reach, be clear and treat you with respect, listen and act to get things done

### 3. **Mutual Respect and Courtesy**

- (a) Respect is one of the Council’s organisational values. For the effective conduct of the Council’s business there must be mutual respect and courtesy in all meetings and contacts, both formal and informal, between Members and officers. The basic tenets of common courtesy apply in both formal and informal settings. This plays an important part in safeguarding the Council’s reputation and the regard in which it is held by members of the public.
- (b) It is important that both Members and officers remember their respective obligations to enhance the Council’s reputation and do what they can to avoid criticism of Members or officers in public. The quality of the interface between the two is vital in ensuring that the highest ethical standards permeate the Council in both its private and public dealings.
- (c) Members should be aware that officers are constrained in the response they may make to public comment from Members and should not abuse officers in public or through the press nor seek to undermine their position by abuse, rudeness or ridicule. This in no way reduces Members’ proper right and duty to criticise the reports, actions and work of a department or section of the Council where they believe such criticism is merited. If Members believe they have reason to criticise the work of an individual junior officer, the proper approach should be through the senior manager of the section or Chief Officer of the relevant department. Equally where officers feel they have good cause to criticise a Member, an approach by the relevant Chief Officer to that Member’s party whip, group leader or convenor is a sensible first step.

### 4. **Roles and Responsibilities**

- (a) All Members have responsibilities towards the Council, effectively as trustees. No decisions on behalf of the Council can be taken by individual Members in law, but because the Council is organised into political groups certain Members will exert more influence and direction than others, namely the leadership of the largest group and opposition groups. Committee/Sub-Committee Chairs will also exert influence and may provide guidance within the area covered by their Committees/Sub-Committees. The role of Committee/Sub-Committee Chairs is recognised in law for procedural purposes, for



example chairing meetings or exercising a casting vote. Whilst chairs of committees liaise regularly with senior officers on significant matters and may be able to influence Officer decisions by expressing their views, by law they cannot make individual decisions on behalf of the Council. There is therefore no “chair’s decision” as such except on procedural matters regarding the Committee or Sub-Committee they chair.

- (b) Members are responsible to the electorate and may serve until their term of office expires or until it is ended before that, for whatsoever reason. Officers are employed by, and are responsible to, the Council. Their job is to give advice to Members and the Council and to carry out the Council’s work under the direction and control of the Council, its Committees and Sub-Committees and the management of the Chief Executive and the relevant Chief Officers.
- (c) Officers are employed to advise the Council and to implement its decisions. Officer advice must be full and impartial and should include all relevant options. It must not seek to second-guess the decisions of Members, for example by excluding presumed unpalatable options, and must be clear and professional at all times. Members should respect officers’ political neutrality at all times. But Members are entitled to reject officer advice and to give effect to their lawful policies even if these are clearly at variance with the views of officers. It is by this means that the largest group(s) are able to implement the policies for which they regard themselves as responsible to the electorate and the opposition groups are able to challenge them and put forward their own policies.

## **5. Political Activity**

- (a) Senior officers, except those specially exempted, cannot be local authority Members or MPs, nor can they “speak or publish written work for the public at large or to a section of the public with the apparent intention of affecting public support for a political party”. Such officers are nevertheless able to engage in such activity to “such extent as is necessary for the proper performance of their duties”. (Sections 1-2 of the Local Government and Housing Act 1989 and Local Government Officers (Political Restrictions) Regulations 1990.
- (b) Officers are employed by the Council not by Committees/Sub-Committees or individual Members and are subject to the application of the Council’s employment policies and procedures including the Council’s Code of Conduct for Officers.
- (c) National conditions of service provide that officers cannot be required to advise any political group of the Council, either as to the

work of the group or as to the work of the Council. Neither can they be required to attend any meetings of any political group. Nonetheless it is common practice for party groups to give preliminary consideration to matters of Council business and officers may properly be called upon to support and contribute to such deliberations.

- (d) Normally, only the Chief Officer will be expected to attend meetings, write reports or carry out other work relating to Council business (including technical assistance in drafting Notices of Motion) for a party political group. Subject to the Chief Officer's discretion, other senior officers may be invited to attend meetings, provide information, write reports and draft Notices of Motion, or carry out other work relating to Council business for party political groups. However, neither the Chief Officer nor any other officer can be instructed to do so nor can they be instructed to carry out any party political work. This provision covers meetings of or reports to a party political group or meetings designated for one party only. It is, of course, open to any Committee or any Sub-Committee to require reports from Chief Officers on matters within their terms of reference.
- (e) Officers must respect the confidentiality of any party group discussions at which they are present and should not relay the contents of any such discussions to another party group.
- (f) The Council recognises the need for regular liaison on matters affecting the Council between senior officers and the leadership of political groups, and on matters affecting committee functions, between senior officers and Committee/Sub-Committee Chairs and party spokespersons. This is vital to the workings of the Council, especially during times where there is no overall political control. The Chief Executive convenes and chairs meetings of the Leaders Group regularly to discuss matters of common interest.

## **6. Contact between Members and Officers**

- (a) Regular contact between Members and senior officers is necessary to ensure the efficient working of the Council. In this context, it is the responsibility of Chief Officers to identify within each department the senior officers who should have regular contact with Members and this will depend upon the nature of the service they provide and the nature of the Member contact envisaged. However, Members should always bring major concerns about issues affecting a department directly to the attention of the Chief Officer concerned.
- (b) Serious problems can arise if Members bypass appropriate lines of communication to Chief Officers and their senior officers and, for example, deal with more junior members of staff to seek views on

policy issues, non-routine business, or attempt to give instructions to staff. This has the effect of depriving Members of the formal, informed and accountable advice they have a right to expect from Chief Officers. It may also serve to undermine the formal accountability of staff to their line manager.

- (c) However, there are circumstances when Members may need direct contact with relatively junior staff, for example, with junior officers in a Housing District Offices when dealing with constituency casework presented by tenants and the contact is for the purpose of seeking factual information. Approaches by Members to junior officers are proper when casework is detailed and ongoing or matters are routine but, wherever possible, Members should keep Chief Officers informed by copying them (at least initially) into correspondence, e-mails etc., and routing general enquiries through them.

## 7. Information for Members

- (a) It is important that officers keep Members informed both about the major issues concerning the Council and, more specifically, about issues and events affecting the wards which Members represent. Ward Members should be informed about proposals which affect their area whether this concerns the declaration of a surplus property, a new traffic management scheme or a local planning application. Ward Members should also be invited to attend the opening of new Council buildings or road schemes or other similar ceremonies within their wards. It should also be borne in mind that Members who are not Members of a particular Committee/Sub-Committee may be able to attend and speak at meetings of Committees/Sub-Committees with the agreement of the Chair or person presiding at the meeting.
- (b) The [Council has put in place a raft of policies and guidance to ensure that its information is processed securely and in such a way as to ensure that personal data is safeguarded in accordance with the General Data Protection Regulation and associated legislation. The unauthorised disclosure by Members of Council information of a confidential nature by Members](#), which they have gained as Members, ~~when the information is confidential,~~ is likely to be a serious breach of the Members' Code of Conduct (see part 8.1 of The Constitution). Members will have signed a declaration of their intention to abide by the Code of Conduct when they took office. Confidential information should not, therefore, be made available by the Member concerned to the press or public nor should it be passed onto another Member who cannot demonstrate a similar "need to know." There is separate more detailed guidance to Members and Officers regarding confidential information which can be accessed from the Wave.

## 8. Access to Information

- (a) In accordance with the corporate value of openness, the default position of the council on access to information, as regards Members, Officers and, indeed, the public at large, is one of openness and transparency. The other, complementary side to this coin is that information that is genuinely confidential must stay confidential.
- (b) Members have wide-ranging legal rights of access to documents in the possession or under the control of the Council [where they require that information to discharge their role](#) and officers should implement requests for information from Members who need that information for the fulfilment of their duties as a Member.
- (c) Normally, officers will accept that Members do not ask for information without good reason and will not question the Member's "need to know". But in the words of relevant legal case law, a Member has no right to a "roving commission" and "mere curiosity or desire" is not sufficient. Nor, of course, can the Member exercise the right for some improper motive, e.g. to assist someone in litigation with the Council, its staff, suppliers or service users.
- (d) In rare cases therefore a Chief Officer may apply the "need to know" test. The Member will need to show why the information is necessary to fulfil their Council duties. Further guidance on the "need to know" issues is set out in the appendix to this code. Where an officer considers that a Member has not established a "need to know" in support of a request for access to information and refuses to provide the information requested, the officer shall state the reasons for doing so. Where the Member is dissatisfied with the outcome the matter shall be referred to the Monitoring Officer for a decision.
- (e) A Member asking for complex or bulky information should be flexible in his or her demands if compiling and reproducing the documentation [is likely to](#) result in significant cost to a department. The Member will normally be able to view relevant material and to copy individual documents and retain them but may not make use of such information for an improper purpose or one unrelated to the Member's duties.
- (f) Specific guidance on a Member's rights of access to confidential Committee and Sub-committee reports is to be found at paragraph 10 of the Appendix to this code.

- (g) Members are reminded of their duty not to disclose confidential information which they have gained access to as Members (referred to above in paragraph 7(b) this Code). To do so is not only a breach of this code but is also very likely to be a serious breach of the Code of Conduct for Members. If any Member believes that he or she may have justification for disclosing confidential information, he or she must first seek advice from an appropriate officer such as the Monitoring Officer, Chief Finance Officer or Chief Executive.

## 9. Preparation of Officer Reports for Committees/Sub-Committees

- (a) Officer reports to Committees and Sub-Committees should be written by the Chief Officer or other officer authorised by him or her. All sensitive officer reports shall be discussed with the relevant Committee/Sub-Committee Chair at one of the regular meetings held with the Chief Officer.
- (b) However, the draft officer report belongs to the officer concerned and even if the Chair or another Committee/Sub-Committee Member in exceptional circumstances is unhappy with its contents, it should not be amended by them save with the express approval of the Chief Officer. It is for the Chief Officer to determine when a draft officer report should be amended in the light of Members' views, taking advice from the Chief Executive, Monitoring Officer or Chief Finance Officer as appropriate.

## 10. Correspondence by letter and email

- (a) Frequently Members and officers correspond and, where the correspondance does not include any personal data and is not considered to include information of a confidential nature then it may be copied to a restricted pool of people where there is a reasonable basis for doing so, this it is appropriate to regard the correspondence as non-confidential, it may be copied by either the sender or the recipient to others, subject to the provisions of paragraphs 9(b) to (d) below. It is self-evident that all -and to the requirement that correspondence should be courteous and that wide circulation of a communication ~~it~~ should not be employed as a means of administering a public rebuke to a Council officer.
- (b) Officers should not copy correspondence with a Member of one party to a Member of another party without consent. This does not prevent officers or Members copying correspondence to each other about casework across ward or interest group boundaries. Nor does it preclude a Chief Officer from advising a Committee/Sub-Committee Chair in general terms of an issue raised with the Chief Officer in correspondence, or otherwise, with a Member.

- (c) ~~Members and officers must in any case act at all times in a way which is compliant with the General Data Protection Regulation, the Data Protection Act 2018 and with associated legislation. This entails ensuring that all personal data which is processed by councillors, either in their own capacity as data controllers or on the Council's behalf, is processed subject to relevant limitations and safeguards. Members and officers must also act at all times in accordance with the Council's information governance and security policies and procedures, which are available on the Wave, including the IT acceptable use policy. Guidance on confidentiality is available to all Members. treat as confidential any personal information protected from disclosure by the Data Protection Act 1998 unless the disclosure is permitted under the Act or by other legislation.~~
- (e) Members should bear in mind that if they disclose any information which should have been regarded as confidential (including but not only information in reports which is marked exempt or confidential), or if they process personal data other than in accordance with the law, then their conduct may amount to a breach of the Code of Conduct for Members, as mentioned at paragraph 8(g) above, as well as having serious repercussions (both reputational and financial) for the Council. If in doubt regarding whether correspondence contains confidential information, then ~~this is very likely to be a serious breach of the Code of Conduct for Members, as mentioned at paragraph 8(g) above. If in doubt as to the status of the correspondence,~~ the Member should check with the officer concerned before taking any steps to distribute it more widely.
- (f) Members and officers should be aware that their communications with each other on council business are liable to be disclosed where an applicant seeks to exercise their information rights pursuant to the Data Protection Act or the Freedom of Information Act 2000, this unless the communications are covered by legal professional privilege or are otherwise exempt from disclosure. Members and officers are in anyh case asked to be mindful that their communications may find their way into the public domain, and to consider at an early stage whether it is possible to minimise the extent of any personal data they include in their communications, both with each other and generally. ~~, unless such communications are covered by legal professional privilege or otherwise exempt under the provisions of the Freedom of Information Act 2000, may be liable to be disclosed to anyone making a request for information under the Act. Members and officers should only include in emails, for example, material that they would be comfortable to be associated with if it found its way into the public domain.~~

## 11. Undue Pressure

- (a) Members need to be aware that it is easy for officers, particularly junior members of staff, to be overawed and feel at a disadvantage in their dealings with Members. Such feelings can be intensified where Members hold official and/or political office. Therefore, the usual point of contact for Members should be the relevant Chief Officer or Deputy Chief Officer.
- (b) A Member should not request an officer to do anything that she or he is not empowered to do, nor to cease any action which the officer is properly taking or proposes to take, nor to undertake work outside normal duties or outside normal hours, nor to provide information to which the Member is not entitled. Advice on the appropriateness of such requests is available from either the Chief Officer or the Monitoring Officer.
- (c) Similarly, an officer must neither seek to use undue influence on an individual Member to make a decision in their favour nor to raise personal matters to do with their job, nor make claims or allegations about other officers. The Council has formal procedures for consultation, grievance and discipline.

## **12. Familiarity**

- (a) Close personal familiarity between individual Members and officers can damage the principle of mutual respect. It could also, intentionally or accidentally, lead to the passing of confidential information or information which should not properly be passed between them, e.g. personal details. Such familiarity can also cause embarrassment to other Members and/or other officers and even give rise to suspicions of favouritism.
- (b) For the above reasons, it is evident that close personal familiarity should be avoided, and in any event must be declared both by the Member and the officer. Such declarations should be made by the officer to the officer's Chief Officer and by Members to the Chief Executive or Monitoring Officer.

## **13. Officers and Health Overview and Scrutiny**

- (a) In the exercise of its powers to scrutinise health arrangements in the area of the authority, including those partnership arrangements in relation to health and social care to which the authority is itself a party, the Health Overview and Scrutiny Committee may require officers to engage with it to supply information, answer questions or discuss issues. It should consider the seniority of officers approached in order to ensure that more junior officers are not put under undue pressure.
- (b) The Health Overview and Scrutiny Committee should always bear in mind that officers' evidence should, as far as possible, be

confined to questions of fact and explanation relating to policies and decisions.

- (c) As far as possible, officers should avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on the Council's policies and decision makers' actions should always be consistent with the requirement for officers to be politically impartial.

#### **14. Redress and Breach of this Code**

- (a) If a Member has a complaint about a junior or senior officer, it should be raised with the relevant Chief Officer. If the complaint concerns a Chief Officer it should be raised with the Chief Executive as Head of Paid Service. A complaint about the Chief Executive should be raised with the Leader, who will consider whether the issue can be dealt with as part of routine liaison, supervision and appraisal, or should be referred for formal action in accordance with Council procedures and the statutory provisions governing disciplinary action against Local Authority Chief Executives. This does not however preclude a Member from making public, at a Council meeting or in another appropriate way, a concern about the manner in which a Council department has acted, or dealt with a constituent, or a service has performed generally. Nor does it prevent Members at meetings of Committees or Sub-Committees being critical of officer advice or action or of the quality of reports before them. But the manner of such criticism should have regard to the guidance in respect of mutual respect and courtesy at paragraph 2 of this Code.
- (b) If a Member considers that he or she has not been treated with proper respect or courtesy by an officer or that an officer is otherwise in breach of this Code, the Member may raise it with the officer's line manager or Chief Officer without delay if the Member fails to resolve it through direct discussions with the officer. A Member may raise the issue with the Chief Executive, after discussion with the relevant Chief Officer. If the issue still remains unresolved, appropriate disciplinary action may be taken against the officer.
- (c) If an officer has similar concerns about a Member, the officer should raise the matter with his or her line manager or Chief Officer as appropriate without delay, especially if the officer does not feel able to discuss it with the Member concerned. In such circumstances the Chief Officer will take such action as is appropriate either by approaching the individual Member and/or party group leader. The Chief Officer will inform the Chief Executive and the Monitoring Officer if the party group leader or a Committee/Sub-committee Chair becomes involved, or in any other case where that is appropriate.



- (d) If an officer is concerned that another officer is in breach of this Code, or if a Member is concerned that another Member is in breach of this Code, he or she should raise the issue directly with either their line manager or Chief Officer or with their party group leader. Similar redress may be sought as in the previous paragraph.

## **15. Conclusion**

- (a) Mutual understanding, openness and basic respect are the greatest safeguards of the integrity and reputation of the Council, its Members and officers.
- (b) If Members or officers have any concerns about the content of this Code, or wish any interpretation or advice upon its contents, they should contact in the first instance the Monitoring Officer or the Chief Executive.

## **APPENDIX - Access to Information – the “need to know”**

1. The courts have given guidance on the circumstances in which a Member seeking information from an officer can be presumed to have a “need to know”.
2. Members are presumed to have a good reason for access to all written material relating to a function controlled by a Committee on which they serve. Also, a Member of a Committee would have a good reason for access to papers relating to the business of a Sub-Committee of that Committee.
3. A Member with a legitimate concern in a matter in which she or he is representing a constituent or other person or organisation may be able to demonstrate a “need to know” in relation to papers relevant to that matter, even if the Member concerned is not on the relevant Committee/Sub-Committee.
4. However, even where a Member is a Member of a Committee/Sub-Committee and wishes to see papers relating to the work of that Committee or a Sub-Committee of it, there will not be an automatic right of access to papers if the Member’s interest springs from something other than the wish to pursue rights as a Member of that Committee/Sub-Committee.
5. Party leaders may be able to demonstrate a “need to know” in respect of written material relating to all Committees/Sub-Committees.
6. Notwithstanding that the information requested may come within the above categories, an officer may refuse a request to provide the information if she or he has cause to think that the information may have been requested for an improper purpose or is otherwise unreasonable or is of a personally sensitive nature.
7. In this context, the courts have been critical of a request by a Member for details of many contracts, and have ruled that a request for details of a Chief Officer’s attendance at the office amounted to harassment.
8. An officer in judging whether a Member requesting information has a right to it is entitled to know the reasons for wanting it, and in the absence of cogent reasons is entitled to refuse. Where an officer considers that a Member has not established a “need to know” in support of a request for access to information and refuses to provide the information requested, the officer shall state reasons for doing so.
9. Members are entitled to have enough information to be able to perform their functions properly and the Courts will protect this position. Members should however bear in mind that unreasonable requests or pressure for information may amount to a breach of the Code of Conduct for Members.

## 10. Access to Confidential Committee and Sub-Committee Reports

10.1 Members' rights of access to Committee and Sub-Committee reports are set out in paragraph 17 of the Access to Information Procedure Rules. Without prejudice to any rights that Members may have under those rules, this guidance or the law, the following practice and procedure should apply.

- (a) The Council's approach regarding access to Committee or Sub-Committee reports will be guided by the general principles of openness and transparency.
- (b) In the practical application of the principles, the Council will have regard to any legal duty of confidentiality and the need to be able to run its business as a responsible authority.
- (c) As far as possible, and to the extent that it is consistent with legal duties and good practice, the Council will endeavour to put as many of the reports as possible in the public part or, where this is not appropriate, to have an item in the open part that gives the public an indication of the nature of the issue.
- (d) As general rule all Group Leaders will be provided with copies of any part II reports to Committee or Sub-Committee meetings and there will be a presumption in favour Group Leaders having access to part II reports.
- (e) In some cases, the matter under consideration may be such that it is necessary to limit the distribution of reports to Committee Members only or to restrict the copying, distribution, or retention of the reports by Members or Officers.
- (f) In exceptional cases, if the Chief Executive and the Monitoring Officer are of the opinion that significant legal, financial or commercial reasons exist, then the distribution of the reports may be restricted to the person/s making the decision. In coming to such a decision, the Chief Executive and the Monitoring Officer will have regard to the following:
  - Whether the distribution of confidential papers to persons outside the decision-makers would be likely to constitute a breach of any legal duty to which the Council is subject, whether such duty arises from legislation, court order, contractual duty or other express or implied legal obligation;
  - Whether the disclosure of the information would be likely expose the Council to financial loss;

- whether the disclosure of the information would be likely to have a detrimental effect on any commercial negotiations;
  - whether the report includes sensitive personal information the disclosure of which would expose the council to legal or reputational damage;
  - whether the report contains matters relating to labour relations or negotiations with trade unions and the disclosure of such information would be likely to compromise those negotiations.
- (g) steps taken to limit distribution or restrict the manner of use shall be proportionate to the perceived risk. Depending on the Chief Executive and the Monitoring Officer's assessment, any such measures may include, but are not limited to:
- Circulating the report to the decision makers only;
  - Collecting the reports at the conclusion of the meeting;
  - Making arrangements for relevant Members to read the report at a pre-arranged venue and not take the report away;
  - Restricting any copying of the report.
  - Marking reports
- (h) Where a restriction or limitation on distribution is imposed under the above provisions, the Chief Executive or the Monitoring Officer shall inform the Group Leaders.
- (i) The procedure to restrict circulation of reports or the manner of use shall be applied only in exceptional circumstances and the presumption remains that Group Leaders would be entitled see part II reports.
- (j) The above procedures are without prejudice to any right that Members may have to access information and documents under the common law principle of "need to know."

## PART 8.2 -PRACTICE NOTE ON PUBLICITY AND THE USE OF COUNCIL FACILITIES

### 1. Introduction

1.1 This practice note (i) sets out the council's requirements in respect of publicity and the use of council facilities (~~these requirements are shown in italics~~); and (ii) provides guidance for Members of the council (councillors) on how they may meet those requirements ~~their application~~.

1.2 The council's Code of Conduct for Members ~~There are restrictions~~ imposes restrictions ~~on~~ on councillors' use of council facilities, including publicity, ~~under the council's Code of Conduct for Members~~. Any use in breach of the Code may render a councillor liable to sanctions.

### 2. The Code of Conduct for Members

2.1 Paragraphs 1.4 and 1.6 of the Code of Conduct for Members ('the Code') state amongst other things that a Member -

- must not seek to improperly confer an advantage or disadvantage on any person; and
- must only use the resources of the Council in accordance with the Practice Note on Publicity and the Use of Council Facilities

In addition, members are expected to have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

2.2 ~~The duty of councillors' duties~~ is/are not limited to official business coming for consideration before the council or its committees, but extends to councillors' roles as community councillors.

Councillors should not, however, use any facilities provided by the council for private purposes or other business (such as party political publicity) which cannot be justified as being part of their role as a councillor. As noted in para 4.8 below, the Occasional use of a council smartphone or device the telephone in the event of an emergency will not normally be an issue ~~is acceptable, for instance e.g.~~ to notify a childminder that a meeting is running later than anticipated.

### 3. Restrictions on Political Publicity

3.1 The Local Government Act 1986 prohibits Local Authorities from publishing material which, in whole or part, appears to be designed to affect public support for a political party. This prohibition extends to providing financial or other assistance (e.g. making facilities available) to another person to engage in such publicity.

3.2 Local authorities are required by section 4(1) of the 1986 Act to have regard to any code issued under the Act. Under that provision, the government has issued a Code of Recommended Practice on Local Authority Publicity. The Code states that publicity by local authorities should:

- be lawful
- be cost effective
- be objective
- be even-handed
- be appropriate
- have regard to equality and diversity
- be issued with care during periods of heightened sensitivity

3.3 The notes below summarise points to be taken into account in assessing whether publication in a particular case might be seen as “party political”, with particular regard to the publicity about individual councillors, and therefore contrary to the 1986 Act and the Code made under it.

- There is no hard and fast rule as to whether a publication is “party political” or one provided by a member legitimately in his or her role as a councillor. One has to take all relevant considerations into account, including the content and style of the material, the time and circumstances of publication, whether the material refers to a political party or to persons identified with a political party, whether it promotes or opposes a point of view on a question of political controversy which is identifiable as the view of one political party and not of another, and whether the material is part of a campaign, the effect which it appears to be designed to achieve etc. The responsibility is on the councillor concerned to assess the circumstances and avoid using council facilities for anything that may amount to or be perceived as political publicity.
- Publicity about individual councillors may include the contact details, the positions they hold in the council (for example, Chair of a particular committee), and their responsibilities. Publicity may also include information about individual councillors’ proposals, decisions and recommendations only where this is relevant to their position and responsibilities within the council. All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the council, personalisation of issues or personal image making should be avoided.
- Publicity should not be, or liable to misrepresentation as being, party political. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to her/his position and responsibilities within the council, and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating

policies of those of a particular political party or directly attacking policies and opinions of other parties, groups or individuals.

## 4 Use of council facilities

### Accommodation

- 4.1 Meeting rooms provided for use by councillors should be used only for meetings relating directly to the functions of the council. [They \(which includes the executive\) and](#) should not be used for meetings which are primarily related to private or party political business, or election and referendum campaigns, [except where the rules on elections expressly permit it.](#)
- 4.2 The distinction between party business and council business is not always clear. What is clear is that they are not necessarily mutually exclusive. Where a political group discusses a matter coming up for decision before Council or any council committee, this would be council business. On the other hand, where a party group discusses internal constitutional or political issues unrelated to functions of the council, this would be party business. Councillors and officers need to use their judgement in less clear-cut cases or ask for advice from the Monitoring Officer.
- 4.3 It should also be noted that the commercial hire of council buildings (e.g. Brighton Centre or The Dome) for meetings would not be affected by these restrictions.
- [4.4 Special rules apply during the period of heightened sensitivity immediately prior to elections, when dedicated guidance for members and officers is issued. It is recommended that specific advice is sought by members at this time if they are in any way unclear.](#)

### Council [email addresses and](#) stationery

- 4.4 Councillors should only use official council stationery, including compliment slips and headed notepaper, in connection with matters relating to their capacity as a councillor. [The same rule applies to emails sent from a councillor's council email address. Council email addresses must not](#) ~~It should not~~ be used by councillors in connection with their private affairs or in relation to party political business that is not directly related to council functions.
- 4.5 Examples of situations where the use of headed paper [or a council email address](#) would be inappropriate might include the following.
- A letter sent by a councillor in support of his or her child's school admission application.

- A representation letter ~~made sent~~ by a councillor in support of his or her own planning application, or that of someone close to him or her.
- A complaint letter ~~of complaint~~ to a private company about services provided to the councillor in his or her private capacity.
- A letter on a political issue of controversy unconnected with the council's functions.

4.6 Instances such as these could lead to complaints that the councillor was improperly using his or her position as a councillor to influence the outcome of a particular matter (see paragraph 1.4 of the Code of Conduct ~~as~~ referred to above).

#### **IT equipment and services, including Council-supplied devices (Information Technology)**

4.7 Councillors should be aware that the IT equipment and services supplied ~~provided~~ to them are ~~is~~ provided on the understanding that they may only be used in accordance with the council's acceptable use policy, it is ~~is~~ for council business use. They ~~and~~ should not be used in connection with party political business that is not directly related to council functions.

4.8 It is recognised that ~~this may present some practical difficulties where councillors are using personal computers provided for council use at home. It would be unreasonable to expect councillors to use a separate PC for example to reply to an e-mail relating to a personal matter. It is therefore recognised that some limited private use of Council equipment may be council computers may be unavoidable, for instance in situations where an urgent call is needed because a member has been delayed on council business and needs to let family or friends know.~~

4.9 Any use of Council equipment and services is only ~~Such use is therefore~~ permitted subject to the following conditions.

- The IT equipment and related software is at no time ~~not~~ used for any illegal or immoral purpose or any purpose which would be likely to bring the member's office or the council into disrepute.
- Councillors must comply with the Council's acceptable use policy and must act at all times in accordance with any guidance relating to the use of IT, which may be issued by the council from time to time.
- ~~That councillors will pay a monthly fee for the private use of IT equipment, as set by the council from time to time, such fee to be deducted from the monthly allowance paid to councillors.~~

4.10 Councillors should ~~also~~ remember that in any event the Code of Conduct specifically prohibits the use of any ~~the~~ resources (such as IT



equipment) improperly for political purposes, including party political purposes.

### **Officer support**

- 4.11 Staff provided for secretarial, administrative and research support should not be asked to carry out tasks that are related to private or party political business or election and referendum campaigns.

### **Postal services**

- 4.12 Councillors should not use the council's internal/external mail and courier services for the distribution of material that is primarily related to party political business and/or is not directly related to council functions.
- 4.13 For example the use of the internal/external mail and courier services to distribute a leaflet advertising a public rally on central government defence spending organised by a councillor on behalf of his or her political party would be inappropriate.
- 4.14 The use of the internal/external mail to distribute election campaign material is also unacceptable.
- 4.15 There ~~will be~~ are likely to be grey areas when reviewing the primary purpose for which materials are distributed. Councillors are expected to exercise their own judgement as ~~here and ultimately it is a question of judgement as to~~ whether the use of council facilities the service is appropriate or not, and – in this situation as generally - to seek advice if unclear.

### **Telephones**

- ~~4.16 Telephone lines provided for councillors' use including telephone lines installed in councillors' homes should only be used for council business. They should not be used for private (including personal, social or business) calls or for calls relating to party political matters.~~
- ~~4.17 For example, using a council telephone line for telephone canvassing during an election campaign would be inappropriate.~~
- ~~4.18 However it is recognised that the use of a council telephone by a member will be unavoidable on some occasions, for example an urgent call to a partner or child minder to inform them that a meeting is going to over-run. The use of the telephone in such a situation would be acceptable.~~

### **Transportation facilities**

- 4.19 Any parking ~~or bus passes~~ or other transport facilities provided to councillors in their capacity as such should be used only in connection

with council business unless they have already made a contribution to the cost of the facility and/or their use of the facility does not result in any additional cost or loss of income to the council.

## Ward budgets

- 4.20 Where the council is operating a ~~The council has a~~ “ward budget” scheme, whereby ward councillors may use money from the budget to hire meeting rooms, for stationery and other support, any such expenditure must sit within the rules outlined here. Ward budget expenditure is to be. ~~These should be~~ used strictly for the purposes of discharging councillors’ roles as community councillors and in connection with Council business.
- 4.21 More detailed guidelines on Ward Budgets ~~were issued following 18 September 2007 Standards Committee and if councillors require any further guidance in this area they should contact~~ are available from the Head of Democratic Services.

## 5. Conclusion

- 5.1. The above guidelines are intended to help councillors decide when council facilities should and should not be used. They ~~and~~ are intended to help avoid situations where councillors may inadvertently use council facilities inappropriately.
- 5.2. Where there is doubt about whether or not the use of council facilities is appropriate, further guidance and advice may ~~can~~ be sought from the Head of Democratic Services (ext 1006), or from the Monitoring Officer.

:

The Council's information governance policies and procedures are available on the Wave:

<http://wave.brighton-hove.gov.uk/supportingyou/ict/informationgovernance/Pages/InformationGovernancePolicies.aspx>