

Governance Committee Agenda

14 October 2020 at 7pm

Remote meeting

Membership

Councillor H. Ayres (Chair)
Councillor N.M. Walsh (Vice-Chair)

and Councillors

R.H. Ambor, K. Bentley, N.A. Dudley, D.G. Jones and I. Wright

Parish Council Representatives

Councillor V. Chiswell (Great Baddow Parish Council)
Councillor P.S. Jackson (Great Waltham Parish Council)
Councillor J. Saltmarsh (Woodham Ferrers and Bicknacre Parish Council)

Local people are welcome to attend this meeting, where your elected Councillors take decisions affecting YOU and your City. There will also be an opportunity to ask your Councillors questions or make a statement. These have to be submitted in advance and details are on the agenda page. If you would like to find out more, please telephone Daniel Bird in the Democracy Team on Chelmsford (01245) 606523 email Daniel.bird@chelmsford.gov.uk,

Governance Committee

14 October 2020

AGENDA

1. Apologies for Absence

2. Minutes

To consider the minutes of the meeting held on 17 June 2020

3. Declaration of Interests

All Members are reminded that they must disclose any interests they know they have in items of business on the meeting's agenda and that they must do so at this point on the agenda or as soon as they become aware of the interest. If the interest is a Disclosable Pecuniary Interest they are also obliged to notify the Monitoring Officer within 28 days of the meeting.

4. Public Question Time

Any member of the public may ask a question or make a statement at this point in the meeting. Each person has two minutes and a maximum of 15 minutes is allotted to public questions/statements, which must be about matters for which the Committee is responsible.

The Chair may disallow a question if it is offensive, substantially the same as another question or requires disclosure of exempt or confidential information. If the question cannot be answered at the meeting a written response will be provided after the meeting.

Any member of the public who wishes to submit a question or statement to this meeting should email it to committees@chelmsford.gov.uk 24 hours before the start time of the meeting. All valid questions and statements will be published with the agenda on the website at least six hours before the start time and will be responded to at the meeting. Those who have submitted a valid question or statement will be entitled to put it in person at the meeting, provided they have indicated that they wish to do so and have submitted an email address to which an invitation to join the meeting and participate in it can be sent.

5. Chair's Announcements
6. Monitoring Officer Report
7. Senior Responsible Officer's Report in relation to the Council's RIPA arrangements
8. Report from the Council's Constitutional Working Group in relation to changes recommended to the Council's Constitution
9. Annual Whistleblowing Report
10. Complaints to the Local Government and Social Care Ombudsman – Annual Review
11. Best Practice Recommendations from Committee on Standards in Public Life Update Report
12. Work Programme
13. Urgent Business

To consider any other matter which, in the opinion of the Chair, should be considered by reason of special circumstances (to be specified) as a matter of urgency.

MINUTES

of the

GOVERNANCE COMMITTEE

held on 17 June 2020 at 7.20pm

Present:

Councillor H. Ayres (Chair)

Councillors R.H. Ambor, K. Bentley, N.A. Dudley, D.G. Jones, A. Sosin and I. Wright

1. **Apologies for Absence and Substitutions**

Apologies for absence were received from Cllr Walsh, Cllr Sosin was her substitute.

2. **Minutes**

The minutes of the meeting held on 11 March 2020 were agreed as a correct record and signed by the Chair.

3. **Declaration of Interests**

All Members were reminded to declare any Disclosable Pecuniary interests or other registerable interests where appropriate in any items of business on the meeting's agenda. None were made.

4. **Public Question Time**

No questions were asked or statements made.

5. **Chairs Announcements**

No announcements were made.

6. **Monitoring Officer Report**

The Committee received a report updating them on progress with standards regime issues. It was noted by the Committee that a complaint had been received and resolved informally as detailed in the appendix to the report. Members also heard that a RIPA inspection had just been completed and the result along with an updated policy, would be available at the next meeting. The Committee also heard that work had been ongoing, regarding the model code of conduct and that further information would be circulated once available. It was also noted that the new model code would apply to all tiers of local government.

RESOLVED that;

1. The report be noted and;
2. The current statistical information as to complaints made be published on the Councils website.

(7.21pm to 7.28pm)

7. Pre-Hearing Procedure

The Committee received a report consulting them on the content of a proposed pre-hearing questionnaire. It was noted that this was to be used in the event of a standards hearing being scheduled for determination.

In response to a question from a member, it was noted that the questionnaire would help set out the hearing and necessary changes could still be made after submission.

RESOLVED that the content of the pre-hearing questionnaire be approved.

(7.28pm to 7.35pm)

8. Annual Report of the Committee

The Committee considered a report on the operation of the Standards Regime at the Council in 2019/20. The submission of this report was not a statutory requirement, but it had been recognised as good practice and in line with the Council's overall governance arrangements for Full Council to receive such a document.

RECOMMENDED TO COUNCIL that the Governance Committee's Annual Report on the operation of the Standards Regime for 2019/20 be approved for subsequent publication.

(7.36pm to 7.38pm)

9. Declarations of Interests

The Committee considered a report providing them with an overview as to what interests had been declared by members in 2019/20. The Committee agreed that this would be a useful annual report and therefore agreed to add it to the work programme.

RESOLVED that an annual report on the declaration of interests be added to the work programme.

(7.39pm to 7.40pm)

10. Work Programme

The Committee received a report informing them of their future work programme. It was noted by the Committee that the targets set in the 2019/20 Annual Governance Statement, were looked at by either the Governance or Audit Committee and the future Corporate Governance group.

RESOLVED that the report be noted.

(7.40pm to 7.43pm)

11. Urgent Business

There were no matters of urgent business to discuss

The meeting closed at 7.44pm.

Chair



Chelmsford City Council Governance Committee

14 October 2020

Monitoring Officers Report

Report by:
Monitoring Officer

Officer Contact:

Lorraine Browne, Legal & Democratic Services Manager & Monitoring Officer,
lorraine.browne@chelmsford.gov.uk, 01245 606560

Purpose

To update members on recent standards complaints & the proposed model Code of Conduct for Members.

Recommendations

1. To note the current statistical information as to complaints made and agree this should be published on the Council's website as set out in the Appendix.
 2. To note the remainder of the report.
-

1. Standards Complaints

- 1.1. The Appendix to this report sets out the latest statistical data related to complaints under the Standards regime. Five new complaints have been received relating to one parish council.
- 1.2. Subject to any questions raised, the Committee is asked to confirm that this information should be published as set out in Recommendation 1.

2. Model Code of Conduct for Members

- 2.1. It was reported to Members at the Governance Committee on 17 June 2020 that the consultation relating to a proposed Model Code of Conduct was taking place over the summer (following a delay due to Covid-19).
- 2.2. Members approved a delegation to the Monitoring Officer in consultation with the Chair of Governance Committee to enable the City Council to respond to the consultation. To enable the Monitoring Officer to respond to the consultation in consultation with the Chair of the Committee, an informal meeting took place with members of the Committee to help formulate the City Council's response to the consultation. Following the meeting the consultation response was submitted by the Monitoring Officer in consultation with the Chair of Governance Committee.
- 2.3. The final version of the new Model Code of Conduct was anticipated during the Autumn of 2020. At the time of writing the report the Model Code has not yet been published. Should there be any further developments before the meeting these will be reported to Governance Committee.

List of appendices:

Appendix 1 – Statistical information regarding complaints made.

Background papers:

Nil

Corporate Implications

Legal/Constitutional: These are set out in the report

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: Complaints are monitored to ensure that there is no disproportionate dissatisfaction by the different equality target groups. This data is considered as part of the assessment process to ensure that there is no discrimination in service delivery.

Health and Safety: None

Digital: None

Other: None

Consultees: None

Relevant Policies and Strategies:

The Councillor Code of Conduct and the adopted Complaints Procedure

Standards Enquiries and Investigations Statistics – Localism Act 2011

5.6.20 TO 2/10/20

Status of Complaint Categories	Total No.	Case No.	City, Parish or Town Councillor	Date Issue First Raised	Alleged Breach or Issue Raised	Current Position
1. No formal complaint	0					
2. No further action required after consultation with one of the Independent Persons	2	3 & 4/20	Parish	July 2020	Similar alleged multiple breaches by two separate complainants against one parish councillor	Decision notices issued 25/9/20 following consultation with Independent Person. In relation to alleged behaviour at a council meeting – determination not in public interest to warrant further action. In relation to how councillor voted – determination that could not have amounted to a breach. In relation to failure declaration of a non- pecuniary interest – Monitoring Officer would provide further guidance to parish council.
3. Not able to legally pursue complaint	2	5 & 6/20	Parish	July 2020	Multiple alleged breaches in respect of two parish councillors	Decision notices issued 25/9/20 following consultation with Independent Person conclusion reached that could not have

Status of Complaint Categories	Total No.	Case No.	City, Parish or Town Councillor	Date Issue First Raised	Alleged Breach or Issue Raised	Current Position
						amounted to breaches of the Code of Conduct
4. Complaint on hold	0					
5. Decision as to appropriate action still awaited	1	7/20	Parish	Sept 2020	Multiple alleged breaches against one parish councillor	MO and IP meeting has taken place. Decision notice being drafted and to be sent to parties once finalised.
6. Complaints being investigated	0					
Total	5					

Formal Complaint Outcomes

	Case No. and Councillor	Committee Date and Decision	Date Issue First Raised	Current Position
Outcome of Investigations				
Other Action				



Chelmsford City Council Governance Committee

14 October 2020

Senior Responsible Officer's report in relation to the Council's RIPA arrangements

Report by:
Senior Responsible Officer

Officer Contact:

Lorraine Browne, Legal & Democratic Services Manager & Monitoring Officer,
lorraine.browne@chelmsford.gov.uk, 01245 606560

Purpose

To update members on the Council's RIPA arrangements and the outcome of a recent inspection by IPCO.

Recommendations

1. To note the outcome of the RIPA inspection and annual update for members.
 2. To recommend the adoption of the changes to the Council's RIPA and Social Media Policies.
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1. RIPA inspection

- 1.1. Members will be aware that a review of RIPA arrangements was identified as part of the Council's annual governance processes to take place during 2020. In terms of number of authorisations granted as has been the case for some years the Council has not undertaken any RIPA approvals during the past year. However, the Council needs to make sure that it remains ready to do so should the need arise and that staff are properly trained to ensure investigations continue to be undertaken in a lawful and appropriate way.
- 1.2. In March 2020 the Investigatory Powers Commissioner's Office (IPCO) contacted the Council to make arrangements for a formal RIPA inspection to take place. The inspection was undertaken remotely during Spring 2020 by the Council's Senior Responsible Officer and the outcome of the inspection was communicated to the Council's Chief Executive in June 2020. The key findings and actions arising are set out in this report.
- 1.3. The inspector identified a small number of actions for the Council to take to improve its arrangements. Actions included the need to update the Council's RIPA and RIPA Social Media Policies, to undertake an urgent audit of social media usage across the Council, ensuring key staff were properly trained and that the RIPA policies were reviewed annually.

2. RIPA Policy, RIPA Social Media Policy and other actions taken since the inspection

- 2.1 During the inspection both policies were reviewed and updated in line with comments helpfully provided by the inspector. The policies have also been circulated to all members of the Council's RIPA working group (key officers with responsibility for and who might use RIPA).
- 2.2 Members of the Committee are asked to recommend to Council that both updated policies be formally approved for adoption.
- 2.3 An urgent audit of social media usage has been overtaken since the inspection and this has not raised any concerns with the Council's approach.
- 2.4 Due to Covid-19 there is more limited training options for key personnel but arrangements are in hand for training to be undertaken as quickly as possible.
- 2.5 The recommended annual review of the RIPA policy will now take place as part of the annual RIPA report to members as part of the Governance Committee's work plan arrangements.

List of appendices:

Appendix 1 – RIPA Policy

Appendix 2 – RIPA Social Media Policy

Background papers:

Nil

Corporate Implications

Legal/Constitutional: These are set out in the report

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

Consultees: none

Relevant Policies and Strategies:

Current RIPA and RIPA social media policies

REGULATION OF INVESTIGATORY POWERS ACT 2000

POLICY & PROCEDURAL GUIDANCE ON THE USE OF COVERT SURVEILLANCE

Version 3 draft April 2020

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1. Introduction

Context

- 1.1. This document sets out the Council's approach to ensure-
- 1.2. Council Investigations are conducted in accordance with the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA) and guidance issued by the various statutory agencies, specifically the Home Office Code of Practice for Covert Surveillance and Property Interference at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742041/201800802_CSPI_code.pdf

- i) The Council can justify the need for covert investigation techniques, which by their very nature may otherwise be in breach of the Human Rights Act 1998, and that appropriate controls are in place to ensure that the activities are properly controlled and monitored.

Why is RIPA important?

- 1.3. The provisions of RIPA are designed to regulate any act of covert investigation or surveillance carried out by a local authority. These terms are explained below.
- 1.4. RIPA was enacted to provide a lawful procedure for public bodies to carry out covert investigations without the risk of a claim being made under the Human Rights Act 1998, against either that body or the Investigating Officer, by the person subject to such an investigation.
- 1.5. The Human Rights Act introduced a remedy for persons claiming that their privacy had been breached. The right to privacy contained in the European Convention on Human Rights (ECHR) is not an absolute right. It is a qualified right and will not apply in the circumstances set out in Article 8.2 of the ECHR.
- 1.6. The provisions of Article 8.2 of the ECHR have been incorporated into English law by the enactment of Part II of RIPA. The effect of Part II of RIPA is to provide protection to the local authority itself and to the individual officer against any claim for breach of privacy, provided they are able to demonstrate that they have fully complied with the procedures prescribed by RIPA.

- 1.7. If an investigation is carried out in accordance with RIPA procedures, then any possible resultant breach of the subject's privacy rights would not be actionable as a civil claim. In addition, in criminal proceedings arising from the investigation, the evidence gathered will not be challengeable under Section 78 of the Police & Criminal Evidence Act 1984, on the ground that it is a breach of privacy rights.
- 1.8. The protection afforded by RIPA also extends to complaints made to the Investigatory Powers Tribunal and to the Local Government Ombudsman. Strict adherence to the requirements of RIPA therefore provides a defence to any civil proceedings and claims for damages for breach of privacy.
- 1.9. It is therefore crucial that all Investigating Officers adhere to the requirements of RIPA.

What RIPA Does and Does Not Do

1.9 RIPA does:

- i) Require prior authorisation of directed surveillance;
- ii) Prohibit the Council from carrying out intrusive surveillance;
- iii) Require authorisation of the conduct and use of a Covert Human Intelligence Source (CHIS); and
- iv) Require safeguards for the conduct and use of a CHIS.

1.10 RIPA does not:

- i) Make conduct unlawful which would otherwise be lawful; and
- ii) Prejudice or dis-apply any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under 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.

2. Scope of the RIPA Investigation process

Reason for the Guidance

- 2.1 This policy is intended to assist any employee of the Council who acts as an Enforcement (Investigating) Officer in any capacity or who acts as an Authorising Officer. It will direct officers from the start of the investigation to the point at which the legal process will begin which is beyond the scope of this guidance. It does not replace the need for proper training in investigation techniques.
- 2.2 If the Authorising Officer or any Applicant is in any doubt, s/he should ask the Authorising Officer or BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.

Training

- 2.3 The RIPA Co-ordinating Officer will ensure refresher training for those officers whose work involves, or is likely to involve, the use of the RIPA regime every 12 months.

The RIPA Co-ordinator has responsibility for arranging training for Authorising Officers with respect to Covert Human Intelligence Sources "CHIS" and for raising awareness more generally among staff with investigative roles.

- 2.4 New members of staff for whom the above is applicable should access the RIPA on-line "Act Now" training module. Human Resources maintain records of formal RIPA training.
- 2.5 There should be regular updates at team meetings on the use of RIPA. Guidance with respect to Covert Human Intelligence Sources is available both on the intranet and from the RIPA Co-ordinating officer.

Home Office Guidance

- 2.6 The Home Office provides guidance on the use by public authorities of RIPA legislation in its Code of Practice. It is important that officers involved with RIPA are familiar with this code, particularly Authorising Officers as public authorities may be required to justify, with regard to the code, the use or granting of authorisations in general or the failure to use or grant authorisations where appropriate.

3. Meaning of Surveillance

3.1 RIPA provides for the authorisation of covert surveillance by public authorities, where the surveillance is likely to result in the obtaining of private information about a person. It does so by establishing a procedure for authorising covert surveillance. It prescribes the office, rank and position of those permitted to authorise covert surveillance. From 1st November 2012 any authorisation cannot be granted by a local authority unless it is first approved by the Magistrates' Court.

What is Surveillance?

3.2 Surveillance includes:-

- i) Monitoring, observing or listening to persons, their movements, their conversations or any of their activities or communications
- ii) Recording anything monitored, observed or listened to in the course of surveillance
- iii) Surveillance by or with the assistance of any surveillance device.

Examples of Different Types of Surveillance

Type of Surveillance	Examples
Overt Eg Officers on patrol	<ul style="list-style-type: none">· Signposted Town Centre CCTV cameras (in normal use)· Recording noise coming from outside the premises after the occupier has been warned that this will occur if the noise persists.
Covert but do not require prior authorisation	<ul style="list-style-type: none">· CCTV cameras providing general traffic, crime or public safety information· Most test purchases where the officer does not identify themselves upon entry and views

	activity as if they are a member of the public.
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<p>Directed must be RIPA authorised</p>	<ul style="list-style-type: none"> · 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. · Test purchases where the officer has a hidden camera or other recording device to record information which might include information about the private life of a shop-owner, e.g. where s/he is suspected of running his business in an unlawful manner.
<p>Intrusive Council cannot do this!</p>	<ul style="list-style-type: none"> · Planting a listening or other device (bug) in a person's home or in their private vehicle.

What is Overt Surveillance?

- 3.3 Most of the surveillance carried out by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. In many cases, officers will be behaving in the same way as a normal member of the public and/or will be going about Council business openly.
- 3.4 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.)

What is Covert Surveillance?

- 3.5 Covert Surveillance is any surveillance which is carried out in a manner calculated to ensure that the subject is unaware it is or may be taking place. The provisions of RIPA authorise the following forms of covert surveillance:
- i) Directed surveillance;
 - ii) Intrusive surveillance; and
 - iii) The conduct and use of covert human intelligence sources (CHIS).

3.6 RIPA does not enable a local authority to make any authorisations to carry out intrusive surveillance. This type of surveillance is considered in more detail in paragraphs 3.11- to 3.15 below

What Is Directed Surveillance?

3.7 Local authorities are permitted under RIPA to authorise directed covert surveillance on the grounds that such surveillance is necessary for the prevention or detection of crime. Surveillance is directed if it is covert but not intrusive and is undertaken:

- i) For the purpose of a specific investigation or a specific operation;
- ii) In such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- iii) Otherwise and by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under RIPA to be sought for the carrying out of the surveillance.

Limitations on the Use of Directed Covert Surveillance

3.8 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 (SI 2012/1500) (2012 Order) came into force on 1 November 2012. It restricts Authorising Officers in a local authority in England or Wales, from authorising the carrying out of directed surveillance unless it is for the purpose of preventing or detecting a serious criminal offence or for preventing public disorder and meets the following conditions:

- i) That the criminal offence to be prevented or detected is punishable by a maximum term of at least six months' imprisonment; or
- ii) It constitutes an offence under sections 146, 147 or 147A of Licensing Act 2003 (sale of alcohol to children) or section 7 of the Children and Young Persons Act 1933 (sale of tobacco to children under 18 years old).
- iii) In the case of preventing public disorder, if it involves a criminal offence punishable by a maximum term of six months.

3.9 It is therefore essential that Investigating Officers consider the penalty attached to the criminal offence which they are investigating, before considering whether it may be possible to obtain an authorisation for directed surveillance. The maximum sentence should be indicated on the RIPA application form.

3.10 In addition, Intrusive Surveillance cannot be authorised for use by the Council.

What is Intrusive Surveillance?

3.11 This is surveillance which is covert surveillance that:

- i) Is carried out in relation to anything taking place in any residential premises or any private vehicle; and
- ii) Involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

3.12 Residential premises include a rental flat occupied for residential purposes, a police cell and a hotel bedroom. However examples of places which may not be regarded as residential premises are a communal stairway in a block of flats or the front garden of premises readily visible to the public.

3.13 Therefore, it is important to note that not all surveillance of a suspect's home or vehicle is likely to amount to intrusive surveillance. For example, if an Investigating Officer observes a suspect leaving his home from the street using binoculars, this is unlikely to be intrusive, unless the quality of the image obtained is of the same quality as might be expected to be obtained from a device actually present on the premises.

3.14 There are also a number of exceptions applicable to the use of certain monitoring equipment some of which are not considered to constitute the use of intrusive surveillance. But the intrusiveness of the surveillance proposed must be considered before any surveillance operation takes place. Therefore advice should be sought in advance before such surveillance is contemplated or it may not be admissible as evidence and may also be a breach of RIPA.

3.15 For the avoidance of doubt, surveillance that enables an Investigating Officer to view or monitor anything going on inside a dwelling is almost certainly going to be regarded as intrusive and conduct of that nature cannot be authorised by a local authority.

What is Private Information and why is this Important?

- 3.16 Information is considered to be private information if it includes any information relating to the subject's private or family life or the private or family life of any other person. It would include any aspect of a person's private or personal relationship with others, including family and professional or business relationships. Private information may include personal data for example names, telephone numbers and address details.
- 3.17 It is important to understand this as Enforcement Officers may obtain information of this nature as part of an investigation for which a RIPA authorisation is not needed. However, if officers as part of that investigation obtained private information, a RIPA authorisation would be required to use it.
- 3.18 For example, if Enforcement Officers photographed the exterior of business premises, this in itself would not amount to surveillance requiring a RIPA authorisation. However, if officers also wanted to establish a pattern of occupancy of those premises by any person and took photographs on a number of occasions, it is likely that private information would be obtained and therefore a RIPA authorisation would be required. Care is therefore needed in deciding the ultimate purpose of the surveillance and what evidence officers are seeking to capture.
- 3.19 Private information may also be acquired through covert surveillance even where a person is in a public place and may have a reduced expectation of privacy. For example, where two people hold a conversation on the street they may have a reasonable expectation of privacy over the contents of that conversation. A directed surveillance authorisation may therefore be required if a public authority records or listens to the conversation as part of a specific investigation or operation.
- 3.20 In addition, the totality of the information relating to the private life of an individual may constitute private information, even if the individual records do not, and in this case an authorisation is required. For example where-
- i) A number of records are analysed together; or
 - ii) A number of pieces of information are obtained, covertly, for the purpose of making a record about a person or for data processing to generate further information.

4. When is a RIPA Authorisation required?

- 4.1 As explained in section 1 of this guidance, interference with any individual's rights under the HRA is a statutory offence. Whilst the provisions of RIPA provide lawful reasons to do so officers need to be aware that they need to assess in all cases if their surveillance or other actions might breach any of the HRA rights.
- 4.2 Officers must assess whether an individual's human rights may be breached and provide justification for doing so based on the relevant tests in the HRA. For example, surveillance that falls into the following categories will not be covered by RIPA:
- (i) Crimes not carrying six months imprisonment
 - (ii) Employee Surveillance
- 4.3 In addition some surveillance activity does not constitute directed surveillance at all for the purposes of RIPA and no authorisation can be provided for such activity under that act. These activities include:
- i) Covert surveillance by way of an immediate response to events;
 - ii) Covert surveillance as part of general observation activities;
 - iii) Covert surveillance not relating to the prevention or detection of crime or the prevention of disorder; and
 - iv) Overt surveillance by CCTV.
- 4.4 For example, enforcement officers attending a market where it is suspected that counterfeit goods are being sold, may not be carrying out surveillance of any particular individual as their intention is to identify and tackle offenders generally. In these circumstances this forms part of the general duties of the public authority and the obtaining of private information is unlikely. In such a case a directed surveillance authorisation is not required, but an assessment of any interference under the HRA is still necessary.
- 4.5 Covert surveillance undertaken without a RIPA authorisation will not have the protection of RIPA but it will still be able to be undertaken as long as it is done in accordance with the European Convention on Human Rights (ECHR), which is directly enforceable against public authorities pursuant to the HRA. Article 8 of the ECHR states:

“everyone has the right to respect for his private and family life his home and his correspondence; and

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the rights and freedoms of others”

- 4.6 To satisfy Article 8 the covert surveillance must be both necessary and proportionate. In deciding whether it is, the same factors need to be considered as when authorising surveillance regulated by RIPA.
- 4.7 It is just as important to have a written record of non RIPA authorisation. Accordingly officers who wish to undertake any surveillance must complete a RIPA authorisation form. This must then be passed to an authorising officer who will consider whether or not to authorise it as Non RIPA surveillance or advise that RIPA applies. The process for seeking this authorisation is set out in Section 5A below.
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CCTV Systems

- 4.8 Where overt surveillance equipment is used for example in town centres, members of the public will be aware of their use and no RIPA authorisation is required.
- 4.9 If, however, CCTV cameras are used in a covert, pre-planned manner as part of a specific investigation or operation for the surveillance of a particular individual, then an authorisation for directed surveillance may be required. Such surveillance is likely to result in the obtaining of private information about a person, that is, a record of his movements and activities.

An Example of the Use of Directed Surveillance

- 4.10 This type of surveillance may be used to gather evidence for an offence such as a breach of the Trade Marks Act 1994. An Investigating Officer may need to carry out surveillance of a suspect's home to obtain information about their contacts and work patterns.

- 4.11 This would be directed surveillance as it would result in obtaining private information. A RIPA authorisation should be obtained. The Investigating Officer would need to demonstrate that such surveillance was necessary and proportionate. The Authorising Officer must be satisfied that the action proposed would not amount to intrusive surveillance, and place conditions on the conduct to avoid this happening prior to authorising the application or decline to authorise as necessary.
- 4.12 Note that if the surveillance involves the use of a surveillance device, that provides detail of the same quality as may be expected to be obtained by a device located on the premises, this may amount to intrusive surveillance. No RIPA authorisation may be given for intrusive surveillance.

Grounds for Making an Authorisation under RIPA

- 4.13 The grounds on which a local authority may make an authorisation permitting the use of directed surveillance under RIPA are limited to the prevention or detection of serious crime or the prevention of disorder. If directed surveillance is carried out for any other purpose, then an authorisation under RIPA cannot be granted.

Core Functions

- 4.14 The Council can only make authorisations under RIPA when performing its core functions. Those are the specific public functions undertaken by the local authority as opposed to its ordinary functions which are undertaken by all public authorities.
- 4.15 For example, an authorisation under RIPA cannot be used when the principal purpose of an investigation is for taking disciplinary action against an employee, as the disciplining of an employee is not a core function. It may, however, be appropriate to seek an authorisation under RIPA if there are associated criminal investigations.

The Conduct of Covert Human Intelligence Sources

- 4.16 A local authority may grant an authorisation under RIPA for the use of a covert human intelligence source (a "CHIS".) The City Council had decided as a matter of policy not to undertake this type of surveillance but it is now accepted that RIPA should only be authorised in exceptional circumstances and only after the Authorising Officer has agreed this with the RIPA Senior Responsible Officer (SRO).

4.17 A person is considered to be a CHIS if:

- i) They establish or maintain a personal or other relationship with a person for the covert purpose of doing anything falling within paragraphs (ii) or (iii) below;
- ii) They covertly use such a relationship to obtain information or provide access to any information to another person;
- iii) They covertly disclose information obtained by the use of the said relationship, or as a consequence of the existence of such a relationship.

4.18 The type of conduct that could be authorised is any that:

- i) Is comprised in any such activity including the conduct of CHIS or use of CHIS, as are specified in the authorisation;
- ii) Consists in conduct by or in relation to a person who is so specified or described as a person as to whose actions as a CHIS the authorisation relates;
- iii) Is carried out for the purposes of or in connection with the investigation or operation so specified or described; and
- iv) Is necessary and proportionate to the intelligence dividend that it seeks to achieve.

Management of Covert Human Intelligence Sources

4.19 As indicated, it is the Council's policy to only use CHIS in exceptional circumstances. In adopting this policy the Council recognises that there may be occasions when obtaining information by use of a CHIS is required.

4.20 Should an Investigating Officer believe that a CHIS should be used, an initial discussion should be conducted with an appropriate Authorising Officer who, if in agreement, will discuss the matter with the Senior Responsible Officer.

4.21 In deciding whether the use of a CHIS is appropriate, due regard will be had for the Home Office CHIS Code of Practice which all officers involved in the use of CHIS should be familiar with, and the relevant RIPA legislation.

4.22 It is important that all aspects of CHIS takes account of and complies with the Code of Practice:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742042/20180802_CHIS_code_.pdf

The Acquisition of Communications Data

4.23 Before considering submitting an application for the acquisition of communications data, all officers must first refer the matter to the Senior Responsible Officer or the RIPA Co-Ordinating Officer

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

4.25 Part 3 of the Investigatory Powers Act 2016 replaced Part 1 Chapter 2 of RIPA in relation to the acquisition of communications data and puts local authorities on the same standing as the police and law enforcement agencies. Previously local authorities have been limited to obtaining subscriber details (known now as "entity" data) such as the registered user of a telephone number or email address. Under the Investigatory Powers Act 2016, local authorities can now also obtain details of in and out call data, and cell site location. This information identifies who a criminal suspect is in communication with and whereabouts the suspect was when they made or received a call, or the location from which they were using an Internet service. This additional data is defined as "events" data.

4.26 A new threshold for which "events" data can be sought has been introduced under the Investigatory Powers Act as "applicable crime". Defined in section 86(2A) of the Act this means: an offence for which an adult is capable of being sentenced to one year or more in prison; any offence involving violence, resulting in substantial financial gain or involving conduct by a large group of persons in pursuit of a common goal; any offence committed by a body corporate; any offence which involves the sending of a communication or a breach of privacy; or an offence which involves, as an integral part of it, or the sending of a communication or breach of a person's privacy. Further guidance can be found in paragraphs 3.3 to 3.13 of CD Code of Practice.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757850/Communications_Data_Code_of_Practice.pdf

4.27 The Investigatory Powers Act has also removed the necessity for local authorities to seek the endorsement of a Justice of the Peace when seeking to acquire communications data. All such applications must now be processed through NAFN and will be considered for approval by the independent Office of Communication Data Authorisation (OCDA). The transfer of applications between

local authorities, NAFN and OCDA is all conducted electronically and will therefore reduce what can be a protracted process of securing an appearance before a Magistrate or District Judge (see local authority procedures set out in paragraphs 8.1 to 8.7 of the CD Code of Practice).

“DP’s” To be a DP for the purposes of a Local Authority an individual must be either a Director, Head of Service, or Service Manager or equivalent. At Chelmsford City Council these are Lorraine Browne Legal and Democratic Services Manager, John Breen Information Manager, and Paul Brookes Public Health and Protection Services Manager.

Chelmsford City Council is a member of National Anti – Fraud Network (NAFN) and all applications for data communications are made to this organisation which acts as the Council’s Single Point of Contact (SPOC) and “gate keepers” ensuring that all applications are reviewed for legal compliance prior to being submitted for approval to the Council’s DP.

All the appropriate forms are available on the NAFN website which also provides guidance for their completion at:-

<http://www.nafn.gov.uk>

5.The Procedure for Obtaining Authorisations- Directed Surveillance

- 5.1 Each form of covert surveillance subject to RIPA must be authorised in accordance with the provisions of RIPA.
- 5.2 Regulations prescribe that within a local authority, Authorising Officers must hold the rank of Director, Head of Service, Service Manager or equivalent. The following post holders are designated as Authorising Officers.
- 5.3 The officers appointed by the City Council are-
 - i) Procurement and Risk Manager
 - ii) Public Health and Protection Manager

Making an Application for an Authorisation

- 5.4 The Council is also required to have a designated RIPA Senior Responsible Officer who has primary responsibility for the integrity of the RIPA scheme and is responsible for the administration of the policy and procedures. At the City Council this is the Legal &

Democratic Services Manager.

- 5.5 The Investigating Officer must complete all the information required by the appropriate prescribed form.
- 5.6 The forms, guidance for completing the forms and the RIPA manual can be found here - www.chelmsford.gov.uk/intranet/ripa-2000.
- 5.7 The Investigating Officer must obtain a unique reference number for the form from the RIPA Co-ordinating Officer and must note it on the appropriate form. The form must also include:
 - i) Precisely what type of surveillance is to be authorised and against which subjects, the property or location and the techniques and equipment to be used and the maximum penalty applicable for the offence to be investigated;
 - ii) The reason why the directed surveillance is necessary i.e. it is needed for the detection or prevention of crime or disorder and why it is necessary for the investigation of this specific case;
 - iii) Officers should, particularly, indicate on the application form the offences relied upon to found necessity;
 - iv) The reason why it is considered that the use of the surveillance requested is proportionate to the objective to be achieved i.e. what is sought to be achieved by carrying out the covert surveillance and why that objective cannot be achieved through any other means- see below;
 - v) How collateral intrusion (interference with the privacy rights of others not subject to the surveillance) will be minimised;
 - vi) Where collateral intrusion is unavoidable, a risk assessment should be carried out and a mechanism put in place to disregard any information not relevant to the case;
 - vii) That any local community conditions or sensitivities have been considered; and
 - viii) The form should be completed electronically but if necessary may be handwritten.

Submitting the Application for an Authorisation

- 5.8 The Authorisation form must be submitted in writing to the appropriate Authorising Officer and signed by the Authorising Officer,

in all but the most urgent cases.

Responsibilities of the Authorising Officer

- 5.9 The Authorising Officer must ascertain that the Investigating Officer has completed all relevant sections of the appropriate authorisation form. S/He must also be satisfied that all of the matters detailed in the paragraph headed "Making an Application" above, have been properly considered and set out in sufficient detail on the form.
- 5.10 In particular, the Authorising Officer must be satisfied that the surveillance proposed may infringe the human rights of its subject or of others. S/He must also be satisfied that the covert surveillance for which the authorisation is sought is proportionate i.e. that the information could not be obtained by any other means and that it is necessary to further the objectives of the investigation. S/He should consider whether the benefits of obtaining the information are significant rather than marginal. S/He must also consider the risk of collateral intrusion into the privacy of other persons.
- 5.11 The Authorising Officer should clearly set out what activity and surveillance equipment is authorised so that the investigating Officer is certain what has been sanctioned.
- 5.12 If the Authorising Officer is not completely satisfied that the form has been properly completed, s/he should liaise with the Investigating Officer to obtain further information.
- 5.13 The Authorising Officer must also determine if the activity requires authorisation under RIPA at all. If not they will nevertheless:
- i) Assess whether the activity should be sanctioned;
 - ii) Complete the HRA assessment and the mark the application form as Non-RIPA and whether approved; and
 - iii) Indicate on the form whether interference with the human rights of the individual is accepted or not and the reasons why and clearly mark the form as non-RIPA using a watermark where appropriate.

Necessity and Proportionality

- 5.14 The 2000 Act stipulates that the person granting an authorisation or warrant for directed or intrusive surveillance, or interference with property, must believe that the activities to be authorised are necessary on one or more statutory grounds.

- 5.15 If the activities are deemed necessary on one or more of the statutory grounds, the person granting the authorisation or warrant must also believe that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.
- 5.16 The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render intrusive actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.
- 5.17 The following elements of proportionality should therefore be considered:
- i) Balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
 - ii) Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others;
 - iii) Considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result; and
 - iv) Evidencing, as far as reasonably practicable, what other methods have been considered and why they were not implemented.

Avoiding Common Mistakes in RIPA Forms

- 5.18 Investigating and Authorising Officers can avoid making common mistakes when completing RIPA forms by referring to page 37 of the Covert Surveillance Policy and Procedures Toolkit available on the intranet at www.chelmsford.gov.uk/intranet/ripa-forms-and-guidance

Obtaining Court Approval for Authorisations

- 5.19 Authorising Officers must when making authorisations be aware that each authorisation (or renewal of an authorisation) will be subject to court approval. The Protection of Freedoms Act 2012 amends RIPA, to require that where an Authorising Officer has granted an

authorisation for the use of directed surveillance or for the use of covert human intelligence sources, court approval will be required. The Authority will be required to make an application, without giving notice, to the Magistrates' Court. The Magistrates will give approval if, at the date of the grant of authorisation or renewal of an existing authorisation, they are satisfied that:

- i) There were reasonable grounds for believing that obtaining the covert surveillance or use of a human covert intelligence source was reasonable and proportionate and that these grounds still remain.
- ii) The "relevant conditions" were satisfied in relation to the authorisation.
- iii) Relevant conditions include that:
 - a. The relevant person was designated as an Authorising Officer.
 - b. It was reasonable and proportionate to believe that using covert surveillance or a covert human intelligence source was necessary and that the relevant conditions have been complied with.
 - c. The grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA.
 - d. Any other conditions provided for by an order made by the Secretary of State were satisfied.

5.20 Once the application form has been signed by the authorising officer it should be passed to the RIPA Co-ordinating Officer who will ensure that the application is RIPA compliant

5.21 If RIPA compliance is satisfactory the Co-ordinating Officer will liaise with the court and the Investigating Officer to obtain a date and time on which the application can be heard.

5.22 If the Magistrates' Court refuses to approve the grant of the authorisation, then it may make an order to quash that authorisation.

5.23 No activity permitted by the authorisation granted by the Authorising Officer may be undertaken until the Magistrates' Court has approved its use.

5.24 Authorising Officers should be aware that they may be required to attend court with the Investigating Officer in order to support the application for authorisation.

5.25 The Co-ordinating Officer will usually attend court with the Investigating Officer in order to provide legal assistance if required.

Expiry of Authorisations

5.26 Written authorisations under RIPA cease to have effect 3 months after the authorisation by the court unless renewed (12 months for applications under CHIS). The three month authorisation is mandatory and cannot be restricted. The Authorising Officer must ensure that the correct expiry date is recorded on the authorisation form. For example, an authorisation given on 1st April will expire on 30th June. Authorisations cease at 23:59 on the last day, so it is not necessary to specify a time.

Review of Authorisations

5.27 Regular reviews of authorisations which have been granted should be undertaken by the Investigating Officer to ascertain whether it is necessary for the authorisation to continue. Authorisations may be renewed at any time by any person who would be entitled to grant a new authorisation in the same terms.

Obligations of the Authorising Officer Relating to the Renewal of Authorisations

5.28 When considering an application for renewal of an authorisation the Authorising Officer must consider whether surveillance is still necessary and proportionate.

5.29 Renewals become effective on the day on which the existing authorisation expires. Renewals of authorisations will also be subject to approval by the Magistrates' Court and the Authorising Officer must provide the RIPA Co-ordinating Officer with the appropriate forms in good time to obtain a renewal if that is required.

Cancellation of Authorisations

5.30 Authorisations under RIPA do not lapse automatically. They continue for the statutory 3 month's period from the date on which the court gives authorisation, unless cancelled earlier. Once an investigation has been completed or the circumstances of the case

dictate that it must be closed, the Investigating Officer must complete a cancellation of authorisation form and submit it to the Authorising Officer who granted or last renewed the authorisation.

Even if an authorisation has expired it must still be cancelled.

- 5.31 The Authorising Officer may cancel the authorisation if he considers that the requirements of the authorisation are no longer satisfied.
- 5.32 All of the information relating to the authorisation will form part of the records of the investigation and must be kept on the appropriate file for 5 years or longer if appeals are made.
- 5.33 Information that may be of value in connection with concurrent investigations may be kept, but information not relevant to those enquiries must be destroyed.

Maintaining Records of Authorisations, Renewals and Cancellations

- 5.34 The Authorising Officer must send the originals of all records of authorisations, renewals and cancellations to the RIPA Senior Responsible Officer who will keep a central record.
 - i) The Authorising Officer should diarise the dates for review of each authorisation; and
 - ii) Review the authorisations / renewals made on a regular basis to ensure that such authorisations/renewals are made properly, are appropriate and that all forms have been fully completed.
- 5.35 The Investigating Officer should keep the following record and diarise the dates for renewal and cancellation:
 - i) A copy of the authorisation together with supporting documents and specifically any Court Order approving the use of the authorisation;
 - ii) A copy of any renewal of any authorisation together with supporting documents;
 - iii) Any authorisation which was granted or renewed orally (an urgent case) and the reason why the case was considered to be urgent ;
 - iv) A record of the results of any reviews of the authorisation;

- v) The reasons for not renewing an authorisation;
- vi) The reasons for cancelling an authorisation; and
- vii) The Investigating Officer should diarise the dates for review of each authorisation.

Role of the RIPA Senior Responsible Officer

5.36 In accordance with the Home Office Code of Conduct the Council designates a Senior Responsible Officer in relation to RIPA powers and delegations. The SRO has overarching responsibility for the RIPA scheme, and in particular:

- i) To ensure the integrity of the process to authorise directed surveillance, compliance with the Act and the Codes of Practice;
- ii) To engage with the Commissioners and Inspectors when they conduct inspections, to oversee the implementation of any post-inspection action plan recommended or approved by an inspector;
- iii) To review the operation of RIPA and report to the Governance Committee on a quarterly basis to ensure that the scheme is being used in accordance with the Council's policy and to provide statistical information with respect it's use.
- iv) To prepare and submit an annual report to the Governance Committee in order for the Committee to ensure RIPA policy; remains " fit for purpose".
- v) To convene a meeting with the RIPA administrative personnel every six months to review its operation.

Role of the RIPA Co-Ordinating Officer

5.37 The RIPA Co-Ordinating Officer will be the litigation lawyer who has primary responsibility for criminal litigation, and will exercise the following delegated responsibilities:

- i) To ensure that a central record of all RIPA authorisations, renewals and cancellations are maintained. That paperwork is renewed prior to RIPA applications being made to the Magistrates' Court and ensure that all renewals and cancellations are RIPA compliant;

- ii) To regularly review the RIPA scheme to ensure that it is compliant with the Act and the Codes of Practice;
- iii) To be the legal advisor with respect to RIPA and ensure day to day compliance with the requirements of this policy ;
- iv) To provide advice to Investigating and Authorising Officers; and
- v) To review training requirements every 18 months and ensure that, where appropriate, training is undertaken.
- vi) Provide a Unique Reference Number for each RIPA application upon request by an Investigating Officer; and
- vii) Maintain a central record of all RIPA authorisations, renewals and cancellations.

Regulation of Use of Authorisations

5.38 The Investigatory Powers Commissioner reviews the exercise and performance of the use of authorisations by public bodies. Information must be provided on request to enable the inspections that will be carried out regularly by the Surveillance Commissioner.

5.39 A tribunal has been established to consider and determine complaints relating to the exercise of RIPA powers by any person aggrieved. The tribunal deals with these matters in a similar manner to the courts when dealing with judicial review cases. Complaints must be lodged with the tribunal within one year unless the tribunal determines it is just and equitable to extend that period.

5.40 The tribunal may order the quashing or cancellation of any authorisation, records or information obtained by use of an authorisation.

5.41 The Council is under a duty to disclose to the tribunal all documents that may be required relating to the authorisation.

6. Further Information and how to Make a Complaint

6.1 Further information is available from:

i) The Regulation of Investigatory Powers Act 2000

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

ii) RIPA Explanatory Notes

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

iii) RIPA Statutory Codes of Practice

a. Covert Surveillance and Property interference – see para of this policy

b. Covert Human Intelligence Sources – see paragraph of this policy

c. Acquisition and Disclosure of Communications Data – see para of this policy

iv) SI 2000 No.2793 The Regulation of Investigatory Powers (Juveniles) Order 2000

<http://www.legislation.gov.uk/uksi/2000/2793/made>

v) SI 2010 No.480 Regulation of Investigatory Powers (Communications Data) Order 2010

<http://www.legislation.gov.uk/uksi/2010/480/contents/made>

vi) SI 2010 No.521 Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010

<http://www.legislation.gov.uk/uksi/2010/9780111490365/contents>

vii) SI 2010 No. 461 Regulation of Investigatory Powers
(Extension of Authorisation Provisions: Legal Consultations)
Order 2010

<http://www.legislation.gov.uk/uksi/2010/461/contents/made>

viii) SI 2012 No. 1500 Regulation of Investigatory Powers
(Directed Surveillance and Covert Human Intelligence
Sources) (Amendment) Order 2012

<http://www.legislation.gov.uk/uksi/2012/1500/contents>

ix) The Investigatory Powers Commissioner's Office:

PO Box 29105

London

SW1V 1ZU

[email: info@ipco.org.uk](mailto:info@ipco.org.uk)

6.2 Complaints can be made to:

i) Chelmsford City Council:

RIPA Senior Responsible Officer

(Who will ensure that they are passed to the relevant Authorising
Officer for an initial response.)

Chelmsford City Council

Civic Centre

Chelmsford

Essex

CM1 1JE

Tel: 01245 606560

www.chelmsford.gov.uk/complaintsprocedure.

ii) The Investigatory Powers Tribunal:

The Investigatory Powers Tribunal

PO Box 33220

London, SW1H 9ZQ

Tel: 0207 035 3711

www.ipt-uk.com

APPENDIX 1

RIPA ADMINISTRATION

Senior Responsible Officer

Lorraine Browne : Legal & Democratic Services

Manager Tel: 01245 606560

Email: lorraine.browne@chelmsford.gov.uk

RIPA Co-ordinating Officer

Emma Stenson: Litigation Lawyer

Tel: 01245 606676

Email: emma.stenson@chelmsford.gov.uk

AUTHORISING OFFICERS

Paul Brookes

Public Health & Protection Manager

Tel: 01245 606436

Email: Paul.Brookes@chelmsford.gov.uk

Alison Chessell

Chief Procurement & Risk Officer

Tel 01245

Email: Alison.Chessell@chelmsford.gov.uk

DESIGNATED OFFICERS

Lorraine Browne and Paul Brookes – details as above

John Breen

Information Manager

Tel: 01245 606954

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RIPA - USE OF SOCIAL MEDIA IN INVESTIGATIONS

POLICY AND PROCEDURES

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1 INTRODUCTION & BACKGROUND

- 1.1 Social Media has become a significant part of many people's lives, with millions of people regularly using and interacting with a plethora of different forms of what can be categorised as Social Media. By its very nature, Social Media accumulates a sizable amount of information about a person's life, from daily routines to specific events. Their accessibility on mobile devices can also mean that a person's precise location at a given time may also be recorded whenever they interact with a form of Social Media on their devices. All of this means that incredibly detailed information can be obtained about a person and their activities like never before.
- 1.2 Social Media can therefore be a very useful tool when investigating alleged offences with a view to bringing a prosecution in the courts. The use of information gathered from the various different forms of Social Media available can go some way to proving or disproving such things as whether a statement made by a defendant, or an allegation made by a complainant, is truthful or not. However, there is a danger that the use of Social Media can be abused, which would have an adverse effect, damaging potential prosecutions and even leave the Council open to complaints.
- 1.3 This Policy sets the framework on which the Council may utilise Social Media when conducting investigations into alleged offences. Whilst the use of Social Media to investigate is not automatically considered covert surveillance, its misuse when conducting investigations can mean that it crosses over into the realms of covert and/or targeted surveillance, even when that misuse is inadvertent. It is therefore crucial that the provisions of The Regulation of Investigatory Powers Act 2000 (RIPA), as it relates to covert and directed surveillance, are followed at all times when using Social Media information in investigations.
- 1.4 It is possible for the Council's use of Social Media in investigating potential offences to cross over into becoming unauthorised surveillance, and in so doing, breach a person's right to privacy under Article 8 of the Human Rights Act. Even if surveillance without due authorisation in a particular instance is not illegal, if authorisation is not obtained, the surveillance carried out will not have the protection that RIPA affords and may mean it is rendered inadmissible.
- 1.5 It is the aim of this Procedure to ensure that investigations involving the use of Social Media are done so lawfully and correctly so as not to interfere with an accused's human rights, nor to require authorisation under RIPA, whilst ensuring that evidence gathered from Social Media is captured and presented to court in the correct manner.
- 1.6 Officers who are involved in investigations, into both individuals and business they suspect to have committed an offence, may wish to consult Legal Services if they are unsure about any part of this Policy and how it affects their investigative practices.

2 REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

- 2.1 Given the change in social habits in the last few years, with the almost ubiquitous use of smartphones and personal devices, there is a significant amount of information on an individual's Social Media pages. This information might be relevant to an investigation being undertaken by the Council. However, unguided research into the sites of suspects could fall within the remit of RIPA and therefore require authorisation prior to it being undertaken. Officers may wish to seek advice from Legal Services prior to undertaking any investigation using Social Media sites.
- 2.2 Council officers embarking on any form of investigatory action should always do so with RIPA in mind. Whilst RIPA will not always be relevant to every investigation, it is vital that Council officers involved in investigative practices against individuals, regularly review their conduct with respect to investigatory actions. Any investigation is capable of evolving from being one that does not require RIPA authorisation, to one that does, at any point.
- 2.3 Accordingly, this Policy should be read in conjunction with the Council's RIPA Policy, as well as the statutory codes of practice issued by the Secretary of State, the Office of Surveillance Commissioners Guidance and any additional guidance provided by individual CCC Directorates to deal with the specific issues of their service.
- 2.4 Instances of repeated and/or regular monitoring of Social Media accounts, as opposed to one-off viewing, may require RIPA authorisation. Advice may be sought from Legal Services where it is envisaged that this level of monitoring will be required in relation to a particular investigation. See paragraph 6.2 below.

3 WHAT IS MEANT BY 'SOCIAL MEDIA' FOR THE PURPOSES OF THIS POLICY

- 3.1 Social Media, sometimes also referred to as a Social Network, can take many forms, with different examples of Social Media ranging from being very similar to each other to very different. This makes defining Social Media, for the purposes of this policy, difficult, however there are some facets which will be common to all forms of Social Media.

Social Media will always be a web-based service that allows individuals and/or businesses to construct a public or semi-public profile. Beyond this, Social Media can be very diverse, but will often have some, or all, of the following characteristics;

- The ability to show a list of other users with whom they share a connection; often termed "friends" or "followers",
- The ability to view and browse their list of connections and those made by others within the system
- Hosting capabilities allowing users to post audio, photographs and/or video content that is viewable by others

Social Media can include community-based web sites, online discussions forums, chatrooms and other social spaces online as well.

3.2 Current examples of the most popular forms of Social Media, and therefore the most likely to be of use when conducting investigations into alleged offences, include;

- Facebook
- Twitter
- Instagram
- LinkedIn
- Pintrest
- Google+
- YouTube
- Vine
- Tumblr
- Reddit
- Flickr

3.3 The number and type of Social Media available to the public is fluid. In a given year, many new sites can open whilst some of the more established names can wain in popularity, the classic example being that of Myspace; from 2005 to 2008, Myspace was the largest social networking site in the world, whereas today it is mostly ignored and is therefore largely insignificant. This Policy will concentrate on Social Media generally and will not make reference to specific sites or services.

4 PRIVACY SETTINGS

4.1 The majority of Social Media services will allow its users to dictate who can view their activity, and to what degree, through the use of privacy settings. Whilst some users are happy, or otherwise indifferent about who is able to view their information, others prefer to maintain a level of privacy.

4.2 Depending on their intentions, many users will purposely use Social Media with no privacy setting applied whatsoever. This could be due to the fact that they are actively promoting something, such as a business or event, and therefore require as many people as possible to be able to view their Social Media profile at all times; others may do so for reasons of self-promotion or even vanity. The information publicly available is known as an individual's public profile.

4.3 Social Media sites will usually advise its users through its terms and conditions of the implications of not activating privacy controls, namely that all content they publish or share will be viewable by everyone, including sometimes people who, themselves, do not have an account with that provider.

4.4 Notwithstanding this, any individuals with public profiles who operate on Social Media without any, or only limited, forms of privacy settings being activated may do so because they are unaware, unable or have not properly thought through privacy settings.

4.5 The opposite of a public profile is a private profile. Some users of Social Media will not wish for their content, information or interactions to be viewable to anyone outside of a very small number of people, if any. In these instances, users will normally set a level of privacy on their Social Media profiles that reflects what they are comfortable with being made available, meaning that, for example, only friends, family and other pre-approved users are able to view their content or make contact with them through that site.

4.6 By setting their profile to private, a user is making it clear that they do not allow everyone to access and use their content, and respect should be shown to that person's right to privacy under Article 8 of the Human Rights Act. However, even with "public" profiles when privacy settings have not been applied, Article 8 rights

still need to be considered. 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 by the Council. This might not, however, extend to instances where a third party takes it upon themselves to share information which originated on a private profile on their own Social Media profile. For example, Person A publicises on their *private* Social Media page that they intend to throw a party, at which they will be selling alcohol and providing other forms of licensable activities, despite not having a licence from the Council to do so. Person B, who “follows” Person A’s Social Media page, re-publishes this information on their *public* Social Media page. The information on Person A’s profile cannot be used, however the same information on Person B’s profile, might (subject to the considerations outlined in this policy).

5 WHAT IS PERMITTED UNDER THIS POLICY

- 5.1 Whether or not Social Media can be used in the course of investigating an offence, or potential offence, will depend on a number of things, not least of which is whether the suspect has a Social Media presence at all. Investigating offences will always be a multi-layered exercise utilising all manner of techniques, and it is important not to place too high an emphasis on the use of Social Media in place of more traditional investigative approaches.
- 5.2 Further to this, a lack of information on an individual’s Social Media profile should not be taken as evidence that something is or isn’t true. For example, a lack of evidence corroborating an individual’s assertions that they were at a particular location on a specific day does not prove that they are being misleading and it is important to consider it only as part of a well rounded investigation.
- 5.3 For those individuals who do have a presence on Social Media, a lot of what is permitted under this policy for use in investigations will depend on the consideration of an individual’s Article 8 right to privacy and is not simply determined by whether or not their privacy settings are public or private.
- 5.4 In practice, this means that things such as photographs, video content or any other relevant information posted by individuals and businesses on any given Social Media platform might be able to be used as evidence against them should the matter end in legal proceedings, subject to privacy considerations and the usual rules of evidence.
- 5.5 When considering what is available on an individual’s Social Media profile, those investigating an offence, or potential offence, should always keep in mind what relevance it has to that investigation. Only information that is relevant to the investigation at hand, and goes some way toward proving the offence, should be gathered. If there is any doubt as to whether something is relevant, then advice should be sought from Legal Services.

6 WHAT ISN’T PERMITTED UNDER THIS POLICY

- 6.1 Should it be discovered that an individual under investigation has set their Social Media account to private, Council officers should not attempt to circumvent those settings under any circumstances. Such attempts would include, but are not limited to;
 - sending “friend” or “follow” requests to the individual,
 - setting up or using bogus Social Media profiles in an attempt to gain access to the individual’s private profile,

- contacting the individual through any form of instant messaging or chat function requesting access or information,
- asking family, friends, colleagues or any other third party to gain access on their behalf, or otherwise using the Social Media accounts of such people to gain access, or
- any other method which relies on the use of subterfuge or deception.

Officers should keep in mind that simply using profiles belonging to others, or indeed fake profiles, in order to carry out investigations does not provide them with any form of true anonymity. The location and identity of an officer carrying out a search can be easily traced through tracking of IP Addresses, and other electronic identifying markers.

- 6.2 A distinction is made between one-off and repeated visits to an individual's Social Media profile. As outlined at paragraph 2 above, under Part II of RIPA, authorisation must be sought in order to carry out directed surveillance against an individual. Whilst one-off visits, or otherwise infrequent visits spread out over time, cannot be considered "directed surveillance" for the purposes of RIPA, repeated or frequent visits may cross over into becoming "directed surveillance" requiring RIPA authorisation. A person's Social Media profile should not, for example, be routinely monitored on a daily or weekly basis in search of updates, as this will require RIPA authorisation. Should further guidance on this point be needed, officers can contact Legal Services.
- 6.3 The Social Media profile belonging to a suspected offender should only ever be used for the purposes of evidence gathering. Interaction or conversation of any kind should be avoided at all costs, and at no stage should a Council officer seek to make contact with the individual through the medium of Social Media. Any contact that is made may lead to accusations of harassment or, where a level of deception is employed by the officer, entrapment, either of which would be detrimental and potentially fatal to any future prosecution that may be considered.

7 CAPTURING EVIDENCE

- 7.1 Once content available from an individual's Social Media profile has been identified as being relevant to the investigation being undertaken, it needs to be recorded and captured for the purposes of producing as evidence at any potential prosecution. Depending on the nature of the evidence, there are a number of ways in which this may be done.
- 7.2 Where evidence takes the form of a readable or otherwise observable content, such as text, status updates or photographs, it is acceptable for this to be copied directly from the site, or captured via a screenshot, onto a hard drive or some other form of storage device, and subsequently printed to a hard copy. The hard copy evidence should then be exhibited to a suitably prepared witness statement in the normal way.
- 7.3 Where evidence takes the form of audio or video content, then efforts should be made to download that content onto a hard drive or some other form of storage device such as a CD or DVD. Those CD's and/or DVD's should then be exhibited to a suitably prepared witness statement in the normal way. Any difficulties in downloading this kind of evidence may need advice to assist in capturing it. (advice should be sought initially from the Council's Digital team).

- 7.4 When capturing evidence from an individual's public Social Media profile, steps should be taken to ensure that all relevant aspects of that evidence are recorded effectively. For example, when taking a screenshot of a person's Social Media profile, the Council officer doing so should make sure that the time and date are visible on the screenshot in order to prove when the evidence was captured. Likewise, if the evidence being captured is a specific status update or post published on the suspected offender's profile, steps should be taken to make sure that the date and time of that status update or post is visible within the screenshot. Without this information, the effectiveness of the evidence is potentially lost as it may not be admissible in court.
- 7.5 Due to the nature of Social Media, there is a significant risk of collateral damage in the form of other, innocent parties' information being inadvertently captured along side that of the suspected offender's. When capturing evidence from a Social Media profile, steps should be taken to minimise this collateral damage either before capturing the evidence, or subsequently through redaction. This might be particularly prevalent on Social Media profiles promoting certain events, where users are encouraged to interact with each other by posting messages or on photographs where other users may be making comments.

8 OTHER INFORMATION TECHNOLOGY TOOLS AVAILABLE FOR INVESTIGATIVE PURPOSES

- 8.1 Whilst Social Media can be a useful and fruitful means of investigating offences and potential offences, it is by no means the only tool available within the realm of Information Technology. A vast array of other, mostly web-based tools are also at the disposal of those conducting investigations. For example, where there is a website advertising the services of a local business, and there is evidence that this business is engaging in illegal activity, there are IT tools available that can track who is responsible for setting up that website, and so can be a good starting point when trying to link potential offenders to the offending business.
- 8.2 For assistance in identifying which tools may be appropriate, and how best to utilise them, advice can be sought from the Shared Anti-Fraud Service (SAFS) who are best placed to advise on this point.

9 RETENTION AND DESTRUCTION OF INFORMATION

- 9.1 Where recorded material (in any form or media) is obtained during the course of an investigation which might be relevant to that investigation, or another investigation, or to pending or future civil or criminal proceedings, then it should **not** be destroyed, but retained in accordance with the requirements of the Data Protection Act 2018, the Freedom of Information Act 2000, and any other legal requirements, including those of confidentiality, and the Council's policies and procedures regarding document retention. Advice should be sought from the Monitoring Officer or the Information Governance Manager.
- 9.2 Personal data gathered by the Council is subject to the Data Protection Act 2018. When considering whether to retain the data, the Council should:
- review the length of time it keeps personal data;
 - consider the purpose or purposes it holds the information for in deciding whether (and for how long) to retain it;

- securely delete information that is no longer needed for this purpose or these purposes; and
- update, archive or securely delete information if it goes out of date

9.3 Due to the nature of Social Media, it is important to remember that when information produced as a hard copy is destroyed in line with this paragraph, that all digital copies of that evidence is likewise destroyed.

10 FURTHER GUIDANCE

10.1 Further helpful guidance can be found in paragraphs 3.4 to 3.6 and 3.10 to 3.17 of the Covert Surveillance and Property Interference Code of Practice and paragraphs 4.10 to 4.16 of the CHIS Code.

11 REVIEW

11.1 This Policy will be reviewed periodically and in line with the RIPA Policy & Procedure document to ensure that both Policies remain current and compliant with relevant legal requirements and best practice guidance.



Chelmsford City Council Governance Committee

14 October 2020

Report from the Council's Constitutional Working Group in relation to changes recommended to the Council's Constitution

Report by:
Monitoring Officer

Officer Contact:

Lorraine Browne, Legal & Democratic Services Manager & Monitoring Officer,
lorraine.browne@chelmsford.gov.uk, 01245 606560

Purpose

To update members on the outcome of the Constitutional Working Group meeting on 30th September and the proposed changes to the Constitution recommended for adoption by Council. Cabinet is also consulted prior to any changes being made and so this issue will also be reported to Cabinet prior to final consideration by Council in December.

Recommendations

1. To recommend that Council approves the changes to the Constitution set out in this report (constitutional changes are also considered by Cabinet prior to any decision by Council).
-

1. Constitutional Working Group

- 1.1. The Constitutional working Group met virtually on 30th September and considered three changes proposed to the Constitution. The first change proposed is a minor clarification to a licensing delegation for the renewal of Private Hire Vehicles. The second is the insertion of a new paragraph for working group arrangements and the final change relates to a proposed change to the procedure for amendments to Motions.

2. Proposed Changes to the Constitution

- 2.1. Officer Delegation in relation to Licensing – requested amendment to 3.4.7.11 (c) of the Constitution:

The constitution currently provides “applications for renewal of private hire licences where the circumstances of the applicant have changed since the grant of the previous licence.”

It is proposed that this is changed to read:

“applications for a private hire licence where the circumstances of the applicant have changed since the grant of a previously held licence.”

- 2.2. Working Groups - the insertion of a new provision to cover the general principles for the operation of working groups as regards membership, attendance and speaking at the meeting as follows:

Add as 4.2.8A of the Cabinet and Committees Procedure Rules in Part 4.2:

4.2.8A Working Groups

4.2.8A.1 A non-Executive body may create such Working Groups of such size and membership as it may decide. Working Groups need not be politically balanced but should, where possible, comprise members of all political groups on the Council. All groups will be permitted to appoint substitute member(s) to any seat(s) allocated to their particular group.

4.2.8A.2 The Cabinet Member whose portfolio is most closely associated with the general work of a Working Group shall be entitled to attend its meetings and speak at them. Other Cabinet Members may, with the permission of the Chair of the Working Group, attend and speak at its meetings if it is considering a matter related to their portfolios.

4.2.8A.3 Other members of the Council may attend meetings of a Working Group but will not be entitled to speak.

2.3 Amendments to Motions

To amend Council Rules as follows:

Amend Rule 4.1.13.9 to read:

“An amendment should not negate the motion. All amendments should be submitted in writing to the Legal and Democratic Services Manager no later than 24 hours before the meeting. If valid, they will be published with the agenda for the meeting on the Council’s website no later than six hours before the meeting. If the Legal and Democratic Services Officer considers that the motion is not valid, the councillor who submitted it will be given the opportunity to alter it to make it a valid amendment, provided they do so and send the revised amendment to the Legal and Democratic Services Manager no later than eight hours before the meeting.

Nothing in the forgoing paragraph would rule out a short amendment to a Motion being presented on the night provided it is compliant with paragraph 4.1.13.8. ”

Amend Rule 4.1.12.1 (h) to read: “to amend an amendment to a motion”.

List of appendices:

Nil

Background papers:

Nil

Corporate Implications

Legal/Constitutional: These are set out in the report

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

Consultees: None

Relevant Policies and Strategies:

The Constitution



Chelmsford City Council Governance Committee

14 October 2020

Annual Whistleblowing Report

Report by:

Director of Connected Chelmsford

Officer Contact:

Lorraine Browne, Legal and Democratic Services Manager, tel: 01245 606560, email:
lorraine.browne@chelmsford.gov.uk

Purpose

To provide an annual update to members of the Governance Committee on the operation of the Council's Whistleblowing Policy and Procedure.

Recommendations

1. To note the contents of the report as regards complaints received.
-

1. Background

1.1. The Council's Whistleblowing Policy and Procedure was first introduced in October 1997. Since then the policy has been updated and reviewed regularly to ensure it is compliant with any changes in legislation or guidance.

1.2. The policy establishes a system whereby employees of the Council, including agency workers, consultants, users of its services, members of the public and Councillors, are

able to report suspected wrongdoing. By doing so the Council publically declares that, it does not tolerate malpractice or fraudulent activities in the operation of its services.

- 1.3. The Council's Whistleblowing Policy highlights the legal protection for workers who "blow the whistle" (i.e. the 'Whistleblower') and ensure that they do not suffer any recriminations, victimisation or harassment as a result of raising a concern with the Council. An employee who makes a protected disclosure benefits from legal protection if they have a reasonable belief that the issue being raised is in the public interest.
- 1.4. Employees are protected under the Public Interest Disclosure Act 1998 as amended, which means that the Council cannot discriminate against them because they made such a complaint. That protection is not subject to any qualifying period of employment and is referred to as a 'day one' right in employment law. The principles of protection are also applied to non employees under the Council's Whistleblowing Policy and Procedure.
- 1.5. The Council's appointed Whistleblowing Officer is the Director of Connected Chelmsford. However, the day to day management and handling of issues raised is dealt with by the Legal & Democratic Services Manager or, in their absence, the Human Resources Services Manager. Both have delegated authority to receive and investigate complaints under the procedure whilst safeguarding the confidentiality of the complainant as far as is possible. Normally this means the identity of the whistleblower will only be known by the officer managing the complaint and any investigator. All complaints raised are fully investigated and dealt with swiftly.
- 1.6. In many cases the issue raised is not strictly a whistleblowing matter but a complaint about a service received from the Council. In those cases the matter is passed to the relevant department to resolve direct with the complainant. This is noted on the papers and is then dealt with outside the Whistleblowing procedure.
- 1.7. As is best practice an annual report is made to the Governance Committee regarding the issues addressed. The last such report was made in 2019 and this report provides the update since that time.

2. Position Update and Analysis

2.1. The table below provides a history of the number of whistleblowing reported cases received over the previous nine years:

Year	Number of complaints received
2009 - 2010	8
2010 - 2011	5
2011 - 2012	5
2012 - 2013	6
2013 - 2014	13
2014 - 2015	12
2015 - 2016	10
2016 - 2017	13
2017 - 2018 (to Oct 2017 only)	8
2018-2019 (to Oct 2018 only)	13
2019 (October 2018 – December 2019)	5
2020 (January - October 2020)	5

2.2. A summary of the complaints received since January 2020 are set out below. Members are reminded that further information cannot be provided due to the confidentiality protection to which whistleblowers are entitled. 3 complaints were valid whistleblowing complaints. One was fully investigated and there was no evidence of wrongdoing found. In the other two valid cases the allegations were investigated as far as we were able to do so from the information provided. No evidence of wrongdoing was identified and the outcomes were reported to the complainants in all cases. Of the remaining 2 complaints one was referred to another more appropriate public body for investigation and the final complaint was a service complaint.

How they were received?

By Post	0
Telephone call	0
E-mail via whistleblowing@chelmsford.gov.uk	5
Webpage via Achieve Form	0

How they were processed

No public interest dimension so could not be dealt with as a WB complaint, or was instead assessed and investigated as a service complaint	1
Assessed and investigated as a whistleblowing complaint.	3
Not capable of resolution by the City Council (i.e. outside our jurisdiction)	1

2.3. It is apparent that both staff and members of the public have confidence in the Council and are willing to raise concerns. The electronic facilities for logging complaints through the dedicated whistleblowing mailbox and through use of achieve forms on the website are clearly the preferred methods of communication. The publicity arrangements for whistleblowing also appear to be embedded and working well.

2.4. Every effort is made to maintain confidentiality where requested. When this is not possible complainants are advised and provided with the reasons. Complainants' details are not disclosed until they are made aware of how they will be used. This allows officers to follow up on concerns raised and to provide progress updates and feedback when a case is concluded. This approach instils trust and confidence in the arrangements in place and fosters a relationship of openness and accountability.

2.5. The policy forms an essential part of newly appointed staff induction training and contained in the information pack issued. It is easily accessible on the Council's intranet and internet sites. Posters are also placed on staff notice boards to remind them about their responsibilities and the importance of whistleblowing at work. Periodic reminders are also issued to remind and update staff.

2.6. The Council's Whistleblowing Policy and Procedures can be easily accessed through our website.

3. Conclusion

3.1. Members of the Governance Committee are asked to note the details as to the complaints received for the period from January to October 2020.

List of appendices: None

Background papers: None

Corporate Implications

Legal/Constitutional: The legislative requirements are addressed in the report

Financial: None, although the process enables reporting of potential fraudulent activities and malpractices that may affect the financial position of the Council

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: The process underpins the promotion of a culture of openness and transparency and creates an environment where whistleblowing is encouraged and supported.

Risk Management: The process assists to minimise the risk of malpractice and fraud within the Council

Equality and Diversity: The policy and procedure has not changed so no impact assessment is required

Health and Safety: Establishment of whistleblowing procedures ensures that both Council employees and users of its services are able to confidentially report matters of concern (including those with H&S implications) and for these to be proactively addressed.

Digital: None

Other: None

Consultees:

Director of Connected Chelmsford

Financial Services Manager

Relevant Policies and Strategies:

The report takes into account the following policies and strategies of the Council:

- Whistleblowing Policy and Procedure
- Fraud and Corruption Strategy
- Anti-bribery Policy



Chelmsford City Council Governance Committee

14 October 2020

Complaints to the Local Government and Social Care Ombudsman – Annual Review

Report by:

Director of Connected Chelmsford

Officer Contact:

Brian Mayfield, Democratic Services Manager, brian.mayfield@chelmsford.gov.uk, 01245 606923

Purpose

This report provides information on complaints dealt with by the Local Government and Social Care Ombudsman about the City Council in 2019-2020 and the Annual Letter from the Commission dated 22 July 2020.

Recommendations

Subject to any comments members might have, the report be noted.

1. Introduction

1.1 The Local Government and Social Care Ombudsman (LGO) investigates complaints about councils and certain other bodies. The LGO's aims are to promote good service delivery and customer care. It investigates complaints about most council matters including and in particular, as far as this Council is concerned, housing and planning functions.

- 1.2 The service it provides is independent, impartial and free. The LGO looks at the process of decision making, rather than the decision itself and cannot investigate complaints where there are other means of obtaining redress such as via planning appeals or through the courts. The process requires people to use a council’s complaints procedures first before complaining to the LGO if they are dissatisfied with the response.
- 1.3 The duty of the LGO is to establish whether or not there has been maladministration or fault and, if so, whether it led to injustice. Maladministration means that a matter was not dealt with properly, for example because procedures were not correctly followed. Injustice means that the maladministration led to the complainant being unfairly treated.
- 1.4 A significant proportion of complaints to the LGO are not formally investigated as they are referred to local authorities to deal with through their local complaint arrangements if those have not been followed. Similarly, many complaints are not formally determined by the LGO because the complaint is settled during the course of the investigation ('local settlements') by being referred back to the local authority. The LGO encourages such local settlements whenever possible.
- 1.5 Each year, the LGO writes to each authority to summarise the work of the Commission in relation to that authority and its performance generally in comparison with other authorities. The letter and the information on complaints against the Council is submitted to this Committee for its consideration and comments. The letter for 2019-2020 is at **Appendix 1** to this report.

2. Complaints Received in 2019-20

- 2.1 Year on year the number of enquiries and complaints fluctuates and, in 2019-20, 13 enquiries and complaints relating to this Council were received by the Commission, the same as in 2018-19. This compares to 18 in 2017-18. The number of complaints received does not necessarily tally with the number of complaints decided as the receipt and investigation of complaints can cover two annual periods.
- 2.2 In comparison with previous years, the number of complaints received last year reflected a general downward trend over the past few years:

<u>2013/14</u>	<u>2014/15</u>	<u>2015/16</u>	<u>2016/17</u>	<u>2017/18</u>	<u>2018/19</u>	<u>2019/20</u>
21	17	16	11	18	13	13

2.3 During 2019-20, the Commission made decisions on 13 complaints about the Council.

- In four cases no maladministration was found
- Five were adjudged not to be warranted and closed after initial enquiries
- Four were regarded as premature and advice was given to pursue the complaint first with the Council rather than go directly to the Ombudsman

2.4 The data provided by the Ombudsman is based in information held by that office and will not necessarily match that held by the Council. For example, the Ombudsman's numbers include enquiries from people signposted back to the Council after contacting the LGO, some of whom may never subsequently contact the Council.

2.5 A summary of those cases on which decisions were made and about which the Council is aware is set out in **Appendix 2**. It is pleasing that no complaints were upheld. Had any been upheld, they would have been the subject of detailed reports to the Governance Committee.

2.6 Seen in the context of complaints against other councils, Chelmsford is neither better nor worse than other authorities of a similar size and with similar responsibilities. Comparative information can be seen by following the link entitled Your Council's Performance on page 2 of the Annual Letter.

3. Conclusion

3.1 The Ombudsman's Annual Letter reveals no change in the number of complaints against the Council in 2019-20 and that none were upheld. The Ombudsman has expressed no concerns about the way in which the Council handles complaints or about its internal processes in general.

List of appendices:

Appendix 1A - Letter from Local Government Ombudsman dated 20 July 2020,

Appendix 1B – Complaint statistics

Appendix 2 - Cases decided in 2019-20 of which the Council is aware.

Background papers:

The appendices to this report

Corporate Implications

Legal/Constitutional:

None

Financial:

None as there were no complaints in respect of which the Council had to pay compensation or ex gratia payments

Potential impact on climate change and the environment:

None

Contribution toward achieving a net zero carbon position by 2030:

None

Personnel:

None

Risk Management:

A failure to be aware of or to address complaints could result in unsafe or inadequate services being delivered to the detriment of those receiving them. The Council's reputation could also be damaged

Equality and Diversity:

(For new or revised policies or procedures has an equalities impact assessment been carried out? If not, explain why)

Complaints are monitored by equalities representatives in each service to ensure that there is no disproportionate dissatisfaction by the different equality target groups. This data is considered as part of the assessment process to ensure that there is no discrimination in service delivery.

Health and Safety:

None

Digital:

None

Other:

Consultees:

None

Relevant Policies and Strategies:

None are relevant

22 July 2020

By email

Mr Eveleigh
Chief Executive
Chelmsford City Council

Dear Mr Eveleigh

Annual Review letter 2020

I write to you with our annual summary of statistics on the decisions made by the Local Government and Social Care Ombudsman about your authority for the year ending 31 March 2020. Given the exceptional pressures under which local authorities have been working over recent months, I thought carefully about whether it was still appropriate to send you this annual update. However, now, more than ever, I believe that it is essential that the public experience of local services is at the heart of our thinking. So, I hope that this feedback, which provides unique insight into the lived experience of your Council's services, will be useful as you continue to deal with the current situation and plan for the future.

Complaint statistics

This year, we continue to place our focus on the outcomes of complaints and what can be learned from them. We want to provide you with the most insightful information we can and have made several changes over recent years to improve the data we capture and report. We focus our statistics on these three key areas:

Complaints upheld - We uphold complaints when we find some form of fault in an authority's actions, including where the authority accepted fault before we investigated. A focus on how often things go wrong, rather than simple volumes of complaints provides a clearer indicator of performance.

Compliance with recommendations - We recommend ways for authorities to put things right when faults have caused injustice. Our recommendations try to put people back in the position they were before the fault and we monitor authorities to ensure they comply with our recommendations. Failure to comply with our recommendations is rare. An authority with a compliance rate below 100% should scrutinise those complaints where it failed to comply and identify any learning.

Satisfactory remedies provided by the authority - We want to encourage the early resolution of complaints and to credit authorities that have a positive and open approach to

resolving complaints. We recognise cases where an authority has taken steps to put things right before the complaint came to us. The authority upheld the complaint and we agreed with how it offered to put things right.

Finally, we compare the three key annual statistics for your authority with similar types of authorities to work out an average level of performance. We do this for County Councils, District Councils, Metropolitan Boroughs, Unitary Councils, and London Boroughs.

This data will be uploaded to our interactive map, [Your council's performance](#), along with a copy of this letter on 29 July 2020, and our Review of Local Government Complaints. For further information on how to interpret our statistics, please visit our [website](#).

Resources to help you get it right

There are a range of resources available that can support you to place the learning from complaints, about your authority and others, at the heart of your system of corporate governance. [Your council's performance](#) launched last year and puts our data and information about councils in one place. Again, the emphasis is on learning, not numbers. You can find the decisions we have made, public reports we have issued, and the service improvements your Council has agreed to make as a result of our investigations, as well as previous annual review letters.

I would encourage you to share the tool with colleagues and elected members; the information can provide valuable insights into service areas, early warning signs of problems and is a key source of information for governance, audit, risk and scrutiny functions.

Earlier this year, we held our link officer seminars in London, Bristol, Leeds and Birmingham. Attended by 178 delegates from 143 local authorities, we focused on maximising the impact of complaints, making sure the right person is involved with complaints at the right time, and how to overcome common challenges.

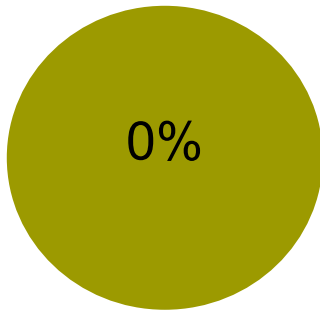
We have a well-established and successful training programme supporting local authorities and independent care providers to help improve local complaint handling. During the year, we delivered 118 courses, training more than 1,400 people. This is 47 more courses than we delivered last year and included more training to adult social care providers than ever before. To find out more visit www.lgo.org.uk/training.

Yours sincerely,



Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Complaints upheld



0% of complaints we investigated were upheld.

This compares to an average of **45%** in similar authorities.

0
upheld decisions

Statistics are based on a total of 4 detailed investigations for the period between 1 April 2019 to 31 March 2020

Compliance with Ombudsman recommendations

No recommendations were due for compliance in this period

Satisfactory remedies provided by the authority

The Ombudsman did not uphold any detailed investigations during this period

Reference	Authority	Category	Received
19000116	Chelmsford City Council	Planning & Development	02 Apr 2019
19002347	Chelmsford City Council	Housing	15 May 2019
19006852	Chelmsford City Council	Planning & Development	24 Jul 2019
19007046	Chelmsford City Council	Corporate & Other Services	29 Jul 2019
19009221	Chelmsford City Council	Planning & Development	03 Sep 2019
19011026	Chelmsford City Council	Planning & Development	01 Oct 2019
19011087	Chelmsford City Council	Planning & Development	01 Oct 2019
19012344	Chelmsford City Council	Housing	22 Oct 2019
19013269	Chelmsford City Council	Environmental Services & Public Protection & Regulation	07 Nov 2019
19013884	Chelmsford City Council	Environmental Services & Public Protection & Regulation	14 Nov 2019
19014834	Chelmsford City Council	Planning & Development	28 Nov 2019
19016893	Chelmsford City Council	Housing	10 Jan 2020

Reference	Authority	Category	Decided	Decision	Decision Reason	Remedy	Service improvement recommendations
18017625	Chelmsford City Council	Highways & Transport	09/09/2019	Not Upheld	no mal		
19000116	Chelmsford City Council	Planning & Development	06/09/2019	Not Upheld	no mal		
19002347	Chelmsford City Council	Housing	09/07/2019	Closed after initial enquiries	Not warranted by alleged mal/service failure		
19006852	Chelmsford City Council	Planning & Development	30/09/2019	Closed after initial enquiries	Not warranted by alleged mal/service failure		
19007046	Chelmsford City Council	Corporate & Other Services	29/07/2019	Referred back for local resolution	Premature Decision - advice given		
19009221	Chelmsford City Council	Planning & Development	09/03/2020	Not Upheld	no mal		
19011026	Chelmsford City Council	Planning & Development	26/11/2019	Closed after initial enquiries	Not warranted by alleged mal/service failure		
19011087	Chelmsford City Council	Planning & Development	26/03/2020	Not Upheld	no mal		
19012344	Chelmsford City Council	Housing	19/12/2019	Closed after initial enquiries	Not warranted by alleged mal/service failure		
19013269	Chelmsford City Council	Environmental Services & Public Protection & Regulation	07/11/2019	Referred back for local resolution	Premature Decision - advice given		
19013884	Chelmsford City Council	Environmental Services & Public Protection & Regulation	14/11/2019	Referred back for local resolution	Premature Decision - advice given		
19014834	Chelmsford City Council	Planning & Development	28/11/2019	Referred back for local resolution	Premature Decision - advice given		
19016893	Chelmsford City Council	Housing	10/02/2020	Closed after initial enquiries	Not warranted by alleged Injustice		

No compliance data recorded during the period

Appendix 2

Complaints decided by the Ombudsman in 2019-20 of which the Council is aware

Complaint reference

18017625

Category

Highways and Transport

Summary of decision

Mr Y complained about the process followed by the Council when making a Traffic Regulation Order to introduce parking restrictions on several local roads. Mr Y said he would be affected because those who parked on the roads previously would now park on his road. Based on the evidence seen, the Ombudsman found no evidence of procedural fault in the process followed by the Council. Consequently, there were no grounds for to challenge the merits of the Council's decision to introduce the scheme.

Remedy

N/A

Complaint reference

19000116

Category

Planning and Development

Summary of decision

Mr X complained that the Council failed to consider road safety and parking issues when it approved a planning application for a fast food restaurant. He believed the development would compromise road safety and cause traffic congestion. Based on the evidence provided, the Ombudsman did not find fault in the way the Council made its planning decision.

Remedy

N/A

Complaint reference

19002347

Category

Housing

Summary of decision

Mr X complained about the Council threatening him with compulsory purchase of his property. The Ombudsman decided not to investigate this complaint because there was insufficient evidence of fault by the Council which would warrant an investigation.

Remedy

N/A

Complaint reference

19006852

Category

Planning and Development

Summary of decision

The Ombudsman decided not to investigate Mr X's complaint about the Council's handling of his neighbour's planning application because it was unlikely to find fault in the way the Council reached its decision.

Remedy

N/A

Complaint reference

19009221

Category

Planning and Development

Summary of decision

Mr B complained that the Council had not taken enforcement action against an illegal waste processing site near his home and had not kept him informed about action being taken about the site. The Council was found not to be at fault.

Remedy

N/A

Complaint reference

19011087

Category

Planning and Development

Summary of decision

There was no fault in the way the Council considered the impact of a dormer extension on Mrs X's property. There was also no fault in the Council deciding the addition of a flue to a single storey extension is covered under permitted development rules.

Remedy

N/A

Complaint reference

19011026

Category

Planning and Development

Summary of decision

The Ombudsman decided not to investigate Ms X's complaint about the Council's handling of her neighbour's planning application for an extension. This was because it was unlikely to find fault affecting its decision.

Remedy

N/A

Complaint reference

19012344

Category

Housing

Summary of decision

The Ombudsman decided not investigate Mrs B's complaint about her housing application. This is because there was insufficient evidence of fault in the way the Council had reached its decision on the current priority banding for the application.

Remedy

N/A

Complaint reference

19016893

Category

Housing

Summary of decision

Ms B complained about the length of time the Council took to decide her homelessness application. The Ombudsman would not investigate Ms B's complaint. There was a delay in the Council deciding and this was fault. However, there was insufficient evidence that this fault caused Ms B a significant injustice, so investigation was not warranted.

Remedy

N/A

Note: No details were provided on Complaints Reference 19007046, 19013269, 19013884 and 19014834. It is assumed that the complainants went directly to the Ombudsman and were advised to contact the Council to enable the complaints to be dealt with through its internal complaints procedure.



Chelmsford City Council Governance Committee

14 October 2020

Best Practice Recommendations from Committee on Standards in Public Life Update Report

Report by:
Monitoring Officer

Officer Contact:

Lorraine Browne, Legal & Democratic Services Manager & Monitoring Officer,
lorraine.browne@chelmsford.gov.uk, 01245 606560

Purpose

To update members of the current position concerning the Council's response to the Best Practice recommendations contained with the Committee on Standards in Public Life report in 2019.

Recommendations

That members note the position concerning the Council progress in relation to the best practice recommendations.

1. Background

- 1.1. The Committee on Standards in Public Life published a report in January 2019 in relation to Local Government Ethical Standards. The report included a number of recommendations which required primary and secondary legislative changes as well as 15 best practice recommendations. This report focuses on the City Council's response to the 15 best practice recommendations.
- 1.2. The best practice recommendations were reported to Members in November 2020 and an update provided at that time. An update on the latest position is set out in the table below.
- 1.3. Of course, since the publication of the Committee on Standards in Public Life report a new Model Code of Conduct has been announced and a draft Model Code of Conduct published for consultation which took place over the summer. The Council is awaiting the final version of the National Model Code before considering the adoption of a new Model Code for City and Parish/Town Councillors within Chelmsford. Accordingly, any actions that are recommended via changes to the Code of Conduct will be dealt with through the adoption of the new Code of Conduct once the new Model has been published.

2. Review of the Council's compliance with the best practice recommendations

Table setting out the current position

CSPL Best Practice Recommendation	Latest Position
Best practice 1: <i>Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.</i>	The consultation on the model code of conduct included this requirement. National Model Code of Conduct due to be published in Autumn 2020 and is currently awaited before consideration of its adoption by the Council and Parish Councils.
Best practice 2: <i>Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.</i>	Feedback was given during the consultation in relation to the Model Code of Conduct that this should be included in the national Model. As noted above publication of the national code is awaited prior to adoption of a new Code of Conduct.
Best practice 3: <i>Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.</i>	Annual review of Code of Conduct suspended in light of proposed national Model Code of Conduct. Once the Council's new Code of Conduct is in place appropriate review arrangements will be put in place.
Best practice 4: <i>An authority's code should be readily accessible to both councillors and the public, in a prominent</i>	The Council already complies with this requirement.

<p><i>position on a council's website and available in council premises.</i></p>	
<p>Best practice 5: <i>Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.</i></p>	<p>The register is currently available upon request. However, when the new Code of Conduct is adopted it is planned to move to publication of the registered which is updated periodically (at least quarterly).</p>
<p>Best practice 6: <i>Councils should publish a clear and straightforward public interest test against which allegations are filtered.</i></p>	<p>The Council already complies with this recommendation and reviewed its assessment criteria earlier this year.</p>
<p>Best practice 7: <i>Local authorities should have access to at least two Independent Persons.</i></p>	<p>The Council already complies with this recommendation.</p>
<p>Best practice 8: <i>An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.</i></p>	<p>The Council already complies with this recommendation.</p>
<p>Best practice 9: <i>Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.</i></p>	<p>The Council already complies with this recommendation.</p>
<p>Best practice 10: <i>A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.</i></p>	<p>The Council already complies with this recommendation. Complainants, members subject to complaint and also where appropriate parish clerks are kept informed of the various stages of a complaint.</p>
<p>Best practice 11: <i>Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole rather than the clerk in all but exceptional circumstances.</i></p>	<p>This advice is given to parish councils.</p>
<p>Best practice 12: <i>Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.</i></p>	<p>The Council already complies with this recommendation.</p>

<p>Best practice 13: <i>A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.</i></p>	<p>The Council already has appropriate arrangements in place for an officer from another Council (or the outsourcing) when the need arises for an investigation to be undertaken.</p>
<p>Best practice 14: <i>Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.</i></p>	<p>There are no separate bodies set up by the Council that need to be reported upon although this is checked each year through the preparation of the annual governance statement.</p>
<p>Best practice 15: <i>Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.</i></p>	<p>The first meeting was held in September 2020 between the CX, MO and Group Leaders to specifically discuss ethical governance arrangements. Further meetings will be held periodically.</p>

3. Conclusion

3.1 The Council is well placed to implement all recommendations. In relation to items 1-3 & 5 these will be dealt with when the Council considers adoption of the Model Code of Conduct which is awaiting publication. The Governance Committee has already considered the draft Model of Code of Conduct and all 26 Parish/Town Councils have also been kept informed. The rest of the recommendations have already been implemented.

List of appendices:

nil

Background papers:

Local Government Ethical Standards report by Committee on Standards in Public Life (January 2019)

Draft Model Code of Conduct and consultation published by the LGA (Summer 2020)

Corporate Implications

Legal/Constitutional: Compliance with the best practice recommendations fits well with the Council's obligations to ensure high standards in public life.

Financial: none

Potential impact on climate change and the environment: none

Contribution toward achieving a net zero carbon position by 2030: none

Personnel: none

Risk Management: none

Equality and Diversity:

No equalities impact assessment necessary.

Health and Safety: none

Digital: Proposed publication of the register of gifts and hospitality will be dealt with in conjunction with the adoption of a new Code of Conduct.

Other: none

Consultees:

None

Relevant Policies and Strategies:

Code of Conduct



Chelmsford City Council Governance Committee

14 October 2020

Work Programme

Report by:
Monitoring Officer

Officer Contact:
Monitoring Officer – Lorraine Browne, 01245 606560, lorraine.browne@chelmsford.gov.uk

Purpose

The purpose of this report is to receive members' comments on the Committee's future work programme.

Recommendations

1. Members are invited to comment on the Committee's work programme, attached as Appendix 1 to this report, and make any necessary amendments to it.
-

1. Background

- 1.1. The Work Programme is reviewed by the Committee at each meeting. The current version is attached at Appendix 1 to this report and includes the proposed work for future meetings, based on the Programme content for recent years.

2. Conclusion

- 2.1. Members are invited to comment on the Committee's work programme and make any necessary amendments to it.

List of appendices:

Appendix 1 – Governance Committee Work Programme

Background papers:

Nil

Corporate Implications

Legal/Constitutional: None

Financial: None

Potential impact on climate change and the environment: None

Contribution toward achieving a net zero carbon position by 2030: None

Personnel: None

Risk Management: None

Equality and Diversity: None

Health and Safety: None

Digital: None

Other: None

Consultees:

None

Relevant Policies and Strategies:

Not applicable

14 October 2020

- Monitoring Officer Report
- Senior Responsible Officer's report in relation to the Council's RIPA arrangements
- Constitutional changes
- Annual Report on Whistleblowing
- Ombudsman Complaints
- Best Practice Recommendations from Committee on Standards in Public Life Update Report
- Work Programme

20 January 2021

- Monitoring officer Report
- Declarations of Interests
- Gifts and Hospitality Report
- Model Code of Conduct Update
- Work Programme

10 March 2021

- Monitoring Officer Report
- RIPA Annual Review
- Work Programme

Ad hoc reports

- Politically exempt officer posts

Training