



Wyre Borough Council

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Please ask for : Democratic Services

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Audit Committee Agenda

**Audit Committee meeting on Tuesday, 8 November 2016 at 6.00 pm
in the Civic Centre, Poulton-le-Fylde**

1. Apologies for absence

2. Declarations of interest

Members will disclose any pecuniary and any other significant interests they may have in relation to the matters under consideration.

3. Confirmation of minutes

To approve as a correct record Minutes of the last meeting of the Audit Committee held on Tuesday 20 September 2016.

4. Annual Review of Audit Committee's Performance (Pages 1 - 8)

Report of the Head of Finance (Section 151 Officer)

5. Internal Audit and Risk Management - Progress Report (Pages 9 - 24)

Report of the Head of Finance (Section 151 Officer)

6. Annual Review of Council's Counter Fraud Policies - Anti Fraud, Corruption and Bribery, Whistle Blowing, Anti Money Laundering and Gifts and Hospitality and Registering Interests (Pages 25 - 28)

Report of the Head of Finance (Section 151 Officer)

7. Compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) (Pages 29 - 60)

Report of the Senior Solicitor

8. Annual Audit Letter 2015/16 (Pages 61 - 66)

Report of the Senior Solicitor

9. External Audit Appointments

The Head of Finance and Section 151 Officer will report verbally at the meeting on the following:

- (a) Letter confirming the appointment of KPMG LLP to audit Wyre Council's accounts for 2017/18 (Pages 67 - 78)
- (b) Consultation document on proposed work programme and scale of fees 2017/18 (Pages 79 - 88)

10. Time and date of next meeting

Tuesday 7 March 2017 at 6pm, in Committee Room 1.



Report of:	Meeting	Date	Item no.
Head of Finance (Section 151 Officer)	Audit Committee	8 November 2016	4

Annual Review of Audit Committee's Performance

1. Purpose of report

1.1 To consider CIPFA's Self-Assessment of Good Practice contained within the CIPFA publication 'Audit Committees: Practical Guidance for Local Authorities and Police 2013' and identify the actions necessary to ensure that the Audit Committee meets best practice guidance and provides value to the authority.

2. Outcomes

2.1 The determination of an improvement plan.

3. Recommendations

3.1 That the Audit Committee considers CIPFA's Self-Assessment of Good Practice at Appendix 1 and agree those areas where further improvement is considered beneficial.

4. Background

4.1 Audit committees are a key component of an authority's governance framework. Their function is to provide a high-level focus on assurance and the organisation's arrangements for governance, managing risk, maintaining an effective control environment, and reporting on financial and non-financial performance.

4.2 An Audit Committee's effectiveness should be judged by the contribution it makes to, and the beneficial impact it has on the authority's business.

4.3 Evidence of effectiveness will usually be characterised as 'influence', 'persuasion' and 'support'. A good standard of performance against recommended practice, together with a knowledgeable and experienced membership, are essential for delivering effectiveness.

- 4.4** Authorities are encouraged not to regard meeting the recommended practice as a tick box activity and are reminded that achieving recommended practice does not mean necessarily that the committee is effective. To help give a more rounded opinion of the committee's effectiveness, further guidance has been provided in the publication in respect of a knowledge and skills framework which can be used to guide members on their training needs.
- 4.5** At the last review in November 2015 the self-assessment was discussed at the meeting and an improvement plan was agreed. All actions from the assessment in November 2015 have now been implemented.

5. Key issues and proposals

- 5.1** The self-assessment at Appendix 1 has been completed by the Head of Governance and ratified by the Head of Finance (Section 151 Officer). Members will be asked to contribute to a discussion at the meeting with a view to ensuring the committee are still meeting the requirements of CIPFA's 'Self-Assessment of Good Practice' and agree the areas that require attention highlighted in bold.

Financial and legal implications	
Finance	There are no specific financial implications arising from the agreement of the improvement plan.
Legal	There are no specific legal implications arising from the agreement of the improvement plan.

Other risks / implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

report author	telephone no.	email	date
Joanne Billington	01253 887372	joanne.billington@wyre.gov.uk	20.10.2016

List of background papers:		
name of document	date	where available for inspection

List of appendices

Appendix 1 – CIPFA Self-Assessment of Good Practice

arm/audit/cr/16/0811jb2

CIPFA self-assessment of Good Practice – November 2016

Good practice questions		Yes	Partly	No	Comments
Audit committee purpose and governance					
1	Does the authority have a dedicated audit committee?	✓			The Audit Committee has been in place since December 2005.
2	Does the audit committee report directly to full council?	✓			<p>A periodic report is submitted to Full Council with the last report being considered September 2016.</p> <p>In previous years, attendance figures were included to highlight low attendance and encourage members to attend. However it is no longer felt that the figures are required due to high attendance figures.</p> <p>Action: Attendance figures will be removed from the periodic report submitted to Full Council. However this will be reviewed annually.</p>
3	Do the terms of reference clearly set out the purpose of the committee in accordance with CIPFA's Position Statement?	✓			The terms of reference sets out the purpose of the Audit Committee in accordance with CIPFA's Position Statement.
4	Is the role and purpose of the audit committee understood and accepted across the authority?	✓			The terms of reference are reviewed annually by the Committee in March and also form part of the Council's Constitution.
5	Does the audit committee provide support to the authority in meeting the requirements of good governance?	✓			The Audit Committee provide assurance on the adequacy of internal control, risk management

					and the integrity of financial reporting and the annual governance processes.
6	Are the arrangements to hold the committee to account for its performance operating satisfactorily?	✓			A review of effectiveness is completed annually.
Functions of the committee					
7	Do the committee's terms of reference explicitly address all the core areas identified in CIPFA'S Position Statement? <ul style="list-style-type: none"> ▪ good governance ▪ assurance framework ▪ internal audit ▪ external audit ▪ financial reporting ▪ risk management ▪ value for money or best value ▪ counter-fraud and corruption 	✓			The terms of reference address all the core areas identified in CIPFA's Position Statement.
8	Is an annual evaluation undertaken to assess whether the committee is fulfilling its terms of reference and that adequate consideration has been given to all core areas?	✓			The annual review of effectiveness gives the Audit Committee the opportunity to assess if it is fulfilling the terms of reference.
9	Has the audit committee considered the wider areas identified in CIPFA's Position Statement and whether it would be appropriate for the committee to undertake them?	✓			The Audit Committee already participate by considering governance and risk. The Code of Practice on Treasury Management requires a body to be nominated and responsible for ensuring effective scrutiny of the Treasury Management Strategy and policies. The Council has nominated the Overview and Scrutiny Committee. (Cabinet 25/03/2015).
10	Where coverage of core areas has been found to be limited, are plans in place to address this?	N/A	N/A	N/A	There have been no instances where coverage of core areas has been

					found to be limited.
11	Has the committee maintained its non-advising role by not taking on any decision-making powers that are not in line with its core purpose?	✓			The Committee does not take on any decision making powers that are not documented within its terms of reference.
Good practice questions		Yes	Partly	No	
Membership and support					
12	<p>Has an effective audit committee structure and composition of the committee been selected? This should include:</p> <ul style="list-style-type: none"> ▪ separation from the executive ▪ an appropriate mix of knowledge and skills among the membership ▪ a size of committee that is not unwieldy ▪ where independent members are used, that they have been appointed using an appropriate process. 	<p>✓ ✓ ✓ N/A</p>			<p>Whilst individual Members of the Audit Committee may also serve on overview and scrutiny the audit committee is independent of the scrutiny function. The Audit Committee Chairman is not a member of the Executive.</p> <p>The Council has agreed that all Members will complete a Councillor Development Plan and a Development Needs Analysis. These are compiled by the Member Development Officer and appropriate training sessions are provided.</p> <p>The Cross-Party Councillor Development Group meets quarterly to identify training needs with the Member Development Officer, who arranges training as required.</p>
13	Does the chair of the committee have appropriate knowledge and skills?	✓			The Audit Committee Chairman was appointed in May 2015. She holds an Associate Chartered Accountants qualification (ACA) and has previously worked in managerial roles within the audit

					environment.
14	Are arrangements in place to support the committee with briefings and training?	✓			Training is provided to the Audit Committee in accordance with their scheduled Audit Committee Work Programme. In addition, the Committee members will receive briefings as part of the Audit Committee agenda as and when required.
15	Has the membership of the committee been assessed against the <u>core</u> knowledge and skills framework and found to be satisfactory?	✓			The induction training in May 2015 covered the core areas of the knowledge and skills framework. In addition on-going regular attendance will ensure members complete the work programme thereby continually enhancing their knowledge and skills.
16	Does the committee have good working relations with key people and organisations, including external audit, internal audit and the chief financial officer?	✓			Both the Chief Financial Officer (CFO) and the Head of Governance (Chief Internal Auditor) attend every Audit Committee and a representative from our External Auditors is frequently in attendance. Following on from the Senior Management restructure in July 2016 the new CFO and Service Directors are developing their relationships with Audit Committee and members more generally and this will continue to evolve over the next 12 months.
17	Is adequate secretariat and	✓			

	administrative support to the committee provided?				
Effectiveness of the committee					
18	Has the committee obtained feedback on its performance from those interacting with the committee or relying on its work?	✓			Feedback is sought annually from the External Auditor.
19	Has the committee evaluated whether and how it is adding value to the organisation?	✓			Members have completed a questionnaire in respect of their qualifications, specific knowledge and experience which may assist when adding value to the committee and/or the organisation. Action: One-to-one meetings will be held with members to explore the questionnaires in more depth to identify any gaps in knowledge and skills with the view to developing a training and development action plan. Meetings will be scheduled for early January 2017.
20	Does the committee have an action plan to improve any areas of weakness?	✓			Actions contained within this checklist are highlighted in bold and will be implemented prior to the next annual review.



Report of:	Meeting	Date	Item no.
Head of Finance (Section 151 Officer)	Audit Committee	8 November 2016	5

Internal Audit and Risk Management - Progress Report

1. Purpose of report

1.1 To review progress in relation to Internal Audit and Risk Management and consider progress against the action plan resulting from the 2015/16 Annual Governance Statement.

2. Outcomes

2.1 Effective leadership of audit and governance issues allowing the Council to demonstrate that arrangements are in place to maintain a sound system of internal control.

3. Recommendations

3.1 Members are asked to note the progress reports attached at Appendices 1, 2, and 3.

4. Background

4.1 The Audit Committee has a clear role in relation to the authority's internal audit function and this involves:

- Formally approving, but not directing, the overall strategy to ensure that it meets the council's overall strategic direction;
- Approving the annual programme of audits (paying particular attention to whether there is sufficient and appropriate coverage); and
- Monitoring progress against the plan and assessing whether adequate skills and resources are available to provide an effective audit function.

4.2 The Audit Committee's role in relation to reviewing the work carried out will include formal consideration of summaries of work done, key findings, issues of concern and actions planned as a result of audit work. A key part of the role is receiving and reviewing regular reports from the Head of Governance in order to reach an overall opinion on the internal control environment and the quality of internal audit coverage.

5. Key issues and proposals

- 5.1 The progress reports in relation to Internal Audit, Risk Management and the action plan resulting from the 2015/16 Annual Governance Statement are attached at Appendices 1, 2, and 3.

Financial and legal implications	
Finance	The annual programme of audits is performed by the in-house team supplemented by 70 audit days, supplied by Lancashire Audit services and Mazars, met from an existing budgetary provision.
Legal	Effective audit and risk management assist in good governance and probity of Council actions.

Other risks / implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

report author	telephone no.	email	date
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List of background papers:		
name of document	date	where available for inspection

List of appendices

Appendix 1 – Internal Audit Progress Report

Appendix 2 – Risk Management Progress Report

Appendix 3 – Annual Governance Statement 2015/16 - Action Plan update

arm/audit/cr/16/0811jb1

INTERNAL AUDIT PROGRESS REPORT – MAY 2016 to OCTOBER 2016

THE AUDIT PLAN AND DELIVERY

The Internal Audit and Risk Management Section is responsible to the Head of Finance (Section 151 Officer) for carrying out a continuous examination of the accounting, financial and other operations of the Council in accordance with Section 151 of the Local Government Act 1972 and the Accounts and Audit Regulations 2015. The latter states that ***“the relevant body shall be responsible for ensuring that the financial management of the body is adequate and effective and that the body has a sound system of internal control which facilitates the effective exercise of that body’s functions and which includes arrangements for the management of risk.”***

Members of the Audit Committee should note that copies of internal audit reports are published on the Council’s Intranet. Access to the supporting files is available to members of the Audit Committee on request. The table overleaf summarises audit work performed since the last progress report in May 2016.

Wyre Council attends the Lancashire District Council’s Audit Group and continues to participate in the Cabinets Office National Fraud Initiative data sharing exercise. The Council also works closely with the Association of Local Authorities Risk Managers (ALARM) and our insurer, Zurich Municipal.

The annual contract with Lancashire Audit Services (LAS) provides 38 days of audit support at a rate of £260 per day for 2016/17. A further 32 days of audit support is completed by a private audit company ‘Mazars’ at the same rate. This is supplemented by work performed by the in-house team. The work completed by the in-house team is benchmarked against the work carried out by LCC and Mazars to ensure that quality and standards are maintained.

All the major reviews conducted to date have been completed within or below the agreed time scales and to budget, and additional benefits continue to be derived from consultation with Lancashire Audit Services and Mazars, given their wealth of experience and extensive client base.

Internal Audit will continue to provide the Council with the necessary assurance about its various activities and associated systems, as outlined in the Council’s Internal Audit Charter.

Audit Work Performed May to October 2016

As summarised below the following reviews have been performed and reports issued since the last progress report was delivered in the Annual Audit report in May 2016. Lancashire Audit Services and Mazars have not yet started any of the planned work from the 2016/17 audit plan, however work is due to commence in November.

Wyre Council Reports

TITLE	STATUS	RECOMMENDATIONS – PRIORITY RANKINGS					AUDIT OPINION	Summary
		1	2	3	4	5		
<u>Audit work from 2015/16 completed since May 2016</u>								
Council Tax Support Scheme	Final Report Issued	0	0	4	0	0	Good	<p>Areas have been identified where improvements could be made to strengthen the control environment, namely;</p> <ul style="list-style-type: none"> • The revised Localised Council Tax Support policy for 2014/15 has not been published on the council website; • The Compliance Manager is the only member of staff with the facility to decrypt the Housing Benefit Matching Service files; • The reassessment of all working age claimants transferred to the CTS scheme from Council Tax Benefit in 2013 has not been completed; and • The sample checks made to new applications and changes in circumstance are limited.
Council Tax Debt Recovery – New	Final Report	0	1	2	0	0	Good	<p>Areas have been identified where improvements could be made to strengthen the control environment, namely;</p>

TITLE	STATUS	RECOMMENDATIONS – PRIORITY RANKINGS					AUDIT OPINION	Summary
		1	2	3	4	5		
workflow process	Issued							<ul style="list-style-type: none"> • Cases allocated to the workflow category are only reported to one officer; • Review dates are not recorded in all instances for liability orders recorded as ‘pending’; and • Documented procedure notes have not been cascaded to staff or training provided on the development / administration of the system.
Compliance with the Anti-Social Behaviour, Crime and Policing Act 2014	Final Report Issued	1	2	5	0	0	Fair	<p>Areas have been identified where improvements could be made to strengthen the control environment, namely;</p> <ul style="list-style-type: none"> • Reference to the community trigger procedure has not been included on the ASB website page; • The appeal procedure does not make any reference to the Ombudsman or the Independent Police Complaints Commission; • The Community Safety data sharing agreement is not published on the council website; • External agencies do not always using secure methods of sending sensitive data into the Council, for example GCSX email address or encryption; • Access to paper files are not restricted and retention periods for both paper and electronic files are not documented; • ASB complaints recorded on the CRM system are not delivered to the Pollution

TITLE	STATUS	RECOMMENDATIONS – PRIORITY RANKINGS					AUDIT OPINION	Summary
		1	2	3	4	5		
								<p>Team in all instances;</p> <ul style="list-style-type: none"> • Internal procedures for noise complaints are not adhered to; and • An ASB policy has not been developed detailing the processes for handling an ASB complaint.
<u>2016 / 17 Audit work</u>								
Marine Hall – Bar Stock	Draft Report Issued							<p>The overall objective of these audits is to examine the adequacy and effectiveness of the controls in place around each audit area and to identify any areas of potential weakness and / or risk and provide an overall opinion as to whether the controls in place are adequate and effective.</p> <p>Appropriate testing was performed to provide assurance that there are adequate controls in place to effectively manage the identified risks within each terms of reference.</p> <p>The terms of reference can be reviewed on BRIAN under the Audit and Risk Management webpages.</p>
Crown Green Bowling / Pitch and Put Income and Banking	Draft Report Issued							
Compliance to Financial Procedure Rules - Procurement	Draft Report Issued							
Election Accounts	Fieldwork in progress							
Money Laundering Checks – Payments in excess of £10,000	Fieldwork in progress							

Other audits to be performed in 2016/17 (ending 31 March 2017)

Wyre Council Reports

- Payment Card Industry (PCI) compliance (10 days)
- Follow-up work from 2015/16 Audits (20 days)
- Crown workforce management system (20 days)
- YMCA (10 days)
- Concessionary leases (10 days)
- Compliance work – FOI, Environmental Information Regulations and Equality Act (10 days)

LCC Reports

- NNDR (20 days)
- Cash Receipting / Paris (10 days)
- Website Management (10 days)
- Information Governance position statement (5 days)

Mazars Reports

- Payroll / Expenses (10 days)
- Main Accounting (10 days)
- Land Charges (10 days)

Other audit work undertaken:

Investigations

All whistleblowing calls and investigations carried out are logged and investigated with the confidential outcomes being reported to the Audit Committee's Chairman and Vice Chairman and also to the Councils external Auditor, KPMG. To date, there has been one whistleblowing call during 2016/17 that has required internal audit investigation. The investigation is still on-going therefore no further details can be provided at this stage.

National Fraud Initiative – Cabinet Office data matching exercise.

Data has now been uploaded to the Cabinet Offices Audit Commissions secure data matching system for the 2016/17 data matching exercise. The matches will be released in January 2017.

In respect of the matches from the 2015/16 data matching exercise, The Compliance Team are still working through the matches and a report will be brought to the March Committee showing the results from the exercise.

Gifts and Hospitality

The gifts and hospitality register is continually maintained throughout the year and is monitored by both the Council's Monitoring Officer and the Audit Committee. The register was examined by the Monitoring Officer in December 2015 and the Audit Committee May 2016

A reminder will be placed in Novembers Core Brief, reiterating to staff the importance of declaring all gifts and hospitality received and that there is an on-line form on BRIAN to facilitate the reporting process. Since April 2016 there have been 9 declarations made by council officers receiving gifts and hospitality.

Information Governance

The Council's on-line training package - 'Focus on Information Security' has been completed by all staff and members. All new starters are required to complete and pass the course within four weeks of their start date.

Work is continuing in respect of implementing the actions highlighted in Lancashire Audit Services report on the Council's Information Governance Framework. Information Asset registers are being completed for each council service. A large proportion of them have now been completed and asset owners have received training on their roles and responsibilities. The Audit and Risk Management Section will continue to work with the remainder of the service areas to implement their asset registers which will show the data's classification, the asset owner and also the storage and retention requirements. Once they have been completed, further training will be provided to the identified asset owners.

Security Sweeps

A security sweep of the Civic Centre was carried out in July 2016. No major concerns were identified and all minor issues have been reported to Heads of Service to ensure they are resolved with the individual officers concerned.

Anti-Fraud and Corruption Awareness

The council's counter fraud policies are reviewed annually in November and are approved by the Audit Committee. A refresher exercise will be completed before March 2017 to test awareness of existing staff and also pick up any new starters to the Council who may not have had the opportunity to read the policies provided to them as part of their induction.

arm/audit/cr/16/0811jb1

RISK MANAGEMENT PROGRESS REPORT

Operational Risks

Progress on the embedding of risk management is reported to the Audit Committee via six monthly reports by the Head of Governance (Chief Internal Auditor). This is in line with the Council's Risk Management Policy, originally approved by Cabinet in April 2004 and reviewed and approved annually by the Audit Committee in August.

Risk workshops are held in April each year with each service unit identifying any new risks that may occur during the year preventing the achievement of individual service plans. It is also an opportunity to review progress made in respect of any existing risks, remove risks that are no longer valid and action plan to mitigate against identified risks wherever possible.

All staff who have responsibilities for identified risks are encouraged to review their risks and update their action plans continually throughout the year, however a prompt is issued to staff in October to ensure progress is documented.

The Council is currently using spreadsheets to assist with the management of operational risks and these can be viewed by following the link below. The Audit Committee are encouraged throughout the year to go and view the risks identified by each service unit and ensure progress is being made to mitigate each risk and challenge officers in the instances where no progress has been made.

<http://intranet/services/RiskManagement/Pages/default.aspx>

Strategic Risks

The Council's strategic risk register is reviewed every six months. Any changes to the ratings are documented and supported by a valid reason and sufficient evidence. The 6 monthly review was carried out with the Corporate Management Team on the 20 October 2016 and the results will be reported verbally to the Audit Committee.

The next strategic risk workshop will be held on the 6 February 2017.

arm/audit/cr/16/0811jb1

ANNUAL GOVERNANCE STATEMENT 2015/16 – ACTION PLAN UPDATE

Governance Issues	Risk Rating	Year relating to	Finding / Actions	Responsible Officer	Position at October 2016
<p>Information Governance</p>	<p>Medium</p>	<p>2015/16</p>	<p>There is a fear that some officers may respond to Freedom of Information and Subject Access Requests without using the recognised procedures.</p> <p>In addition, officers are not providing information in a timely manner to allow requests to be answered within the specific timescales.</p> <p>Action Training will be providing to promote FOI / subject access requests to ensure staff use the correct channels and understand the importance of responding within the correct timescales.</p>	<p>Colin Worth</p>	<p>Training sessions will be arranged in January 2017.</p>
<p>Business Continuity</p>	<p>High</p>	<p>2015/16</p>	<p>Recent flooding in the Borough identified a number of issues, namely;</p> <p>The Council's Duty Officers were relied upon for the majority of the support during the incident placing the staff under strain; and</p> <p>The Council's Emergency Planning Officer is also the Copse Road Depot Manager. Both are important roles during an incident and there are difficulties in carrying out both roles effectively at the same time.</p> <p>Action The Management Team will review the Council's Emergency Planning / Business Continuity and Duty</p>	<p>Management Team</p>	<p>The Council's Emergency Response Plan has recently been revised to</p>

Governance Issues	Risk Rating	Year relating to	Finding / Actions	Responsible Officer	Position at October 2016
			Officer Roles to ensure the current arrangements are fit for purpose.		ensure workloads are spread more evenly in the event of an emergency. In addition, it has been recognised that the Duty Officers may need additional support during an emergency and that workloads need to be spread to other officers allowing the Duty Officers to continue with their roles out of hours.
Page 20	Medium	2015/16	<p>Some service Business Continuity Plans are out of date and it is felt that the plans are often not challenged therefore plans may not be as effective / useful as they could be.</p> <p>Action The Council's Risk and Insurance Officer will promote the importance of the accuracy of plans and reinforce that the responsibility of ensuring they are accurate sits with the relevant plan owner and deputy. However, random samples will be carried out to ensure the content of the plans is accurate.</p>	J Billington / N Mountford	<p>Reviews are scheduled for December 2016.</p> <p>An exercise will be undertaken following the review to ensure the accuracy of the plans.</p>
Health and Safety	High	2015/16	<p>From the 1 July 2016 there will be a new Management Team who may not be fully aware of their new roles and responsibilities in respect of health and safety.</p> <p>Management Team do not currently receive regular updates on key health and safety issues e.g.</p>		

Governance Issues	Risk Rating	Year relating to	Finding / Actions	Responsible Officer	Position at October 2016
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 21</p>			<p>legionnaires and asbestos.</p> <p>The staff survey highlighted that health and safety information on BRIAN is out of date.</p> <p>Action Management Team will consider health and safety matters on a quarterly basis.</p>	L Hadgraft	The Head of Business Support now attends Management Team on a regular basis.
			<p>The New Management Team will receive the appropriate health and safety training.</p>	L Hadgraft / K Holmes	A programme of training is currently being drawn up by the Head of Business Support and the Health and Safety Advisor. Training will include legionnaires and Asbestos.
			<p>A review of the health and safety information that is captured on BRIAN will be reviewed to ensure it is relevant and up to date.</p>	L Hadgraft / K Holmes	A review of BRIAN will take place before 31 March 2016.
<p>Corporate Information</p>	<p>Low</p>	<p>2015/16</p>	<p>Staff are not receiving or finding out about key corporate messages as and when they are issued. There is a function on BRIAN to allow staff to 'opt in' to being sent an alert when there is a new posting to BRIAN.</p> <p>In addition, as more information is added to BRIAN, key messages drop off the first screen making it harder for staff to find the information they need.</p>		

Governance Issues	Risk Rating	Year relating to	Finding / Actions	Responsible Officer	Position at October 2016
Page 22			<p>Action Key corporate messages will be sent via email to all staff.</p> <p>The Communication Team will look to find a solution to keeping key messages at the top of the news feed.</p>	<p>C Worth / M Hesketh</p> <p>M Hesketh / R Green</p>	<p>R Green has met with IT and a SharePoint consultant to look at some redesign work to BRIAN which will include the ability to categorise alerts, pin important corporate messages to the top of the newsfeed and align the Councils social media stream with BRIAN so that messages are constant and seen by all staff.</p> <p>In addition an internal communication review has been scheduled this year which will also flag if any further changes are to BRIAN are required.</p>
Procurement	High	2015/16	<p>At present there is a dedicated resource allocated to procurement; however this will not be the case going forward as the procurement officer has indicated that he will be leaving the authority – his last day of employment is anticipated to be 1 August 2016. The post will not necessarily be replaced on a like for like basis and a review is currently underway.</p> <p>There have been examples in 2015/16 where non-compliance to the Council's Financial Regulations and Financial procedure rules have been identified; in</p>		

Governance Issues	Risk Rating	Year relating to	Finding / Actions	Responsible Officer	Position at October 2016
			<p>particular;</p> <p>Instances of procurements where Financial Regulations are not correctly waived;</p> <p>Concerns that not all procurements are being published in the contracts register; and</p> <p>Non-compliance with EU Procurement rules.</p> <p>Action The Audit Team will carry out a review to test compliance to the Council's Financial Regulations and Financial Procedure Rules / legislation.</p> <p>Refresher training will be provided for the new Management Team and existing spending officers.</p> <p>A regular check to CIVICA will be made to ensure the Council's contract register is up to date.</p>	<p>J Billington</p> <p>M Hesketh / J Billington</p> <p>M Hesketh / Finance</p>	<p>The review has now been completed and a draft report will be issued shortly.</p> <p>Testing identified that there are weaknesses in of these areas and actions will be sought to address these weaknesses.</p> <p>This will be addressed once the report has been finalised. Reference has been made to this in the report.</p> <p>Prior to the departure of the Procurement Officer, manual reconciliations were being carried out to compile the contract</p>

Governance Issues	Risk Rating	Year relating to	Finding / Actions	Responsible Officer	Position at October 2016
					<p>register. The review identified that this is not a complete document. There is currently no procurement officer and a recruitment exercise is in progress. In the interim period, support is being obtained from the Lancaster City Council Procurement Manager.</p> <p>Currently the Legal Team are reviewing the contracts register on a monthly basis to ensure it is kept up to date.</p>



Report of:	Meeting	Date	Item no.
Head of Finance (Section 151 Officer)	Audit Committee	8 November 2016	6

Annual Review of Council's Counter Fraud Policies – Anti-Fraud, Corruption and Bribery, Whistleblowing, Anti-Money Laundering and Gifts and Hospitality and Registering Interests
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1. Purpose of report

1.1 Approval of the Council's Counter Fraud Policies, namely:

- Anti-Fraud, Corruption and Bribery;
- Anti-Money Laundering;
- Whistleblowing; and
- Gifts and Hospitality and Registering Interests.

2. Outcomes

2.1 The ability to demonstrate that the Council has arrangements in place that are designed to promote and ensure probity and propriety in the conduct of its business.

3. Recommendations

3.1 Members are asked to approve the policy documents detailed above which are published on the Council's intranet.

4. Background

4.1 The Audit Committee work plan includes an annual review of the following policies:

Anti-Fraud, Corruption and Bribery - originally approved by the Standards Committee in 2006. The policy was amended in November 2011 to make reference to the Bribery Act 2010, which came into effect on the 1 July 2011.

Anti-Money Laundering - first introduced in 2007 to comply with the new 'Money Laundering Regulations 2007 Act', which came into effect in December 2007.

Whistleblowing - originally agreed by the Standards Committee in 2004. The whistleblowing policy has been reviewed using the British Standards Institute (BSI) Whistleblowing Arrangements Code of Practice for 1998:2008 and the Enterprise and Regulatory Reform Act (ERRA) which received royal assent on 25 April 2013. The ERRA includes major changes to employment law which will impact considerably on whistleblower protection. The policy has also been reviewed to ensure it is in line with the Public Concern At Work publication; The Whistleblowing Commission - Report on the effectiveness of existing arrangements for workplace whistleblowing in the UK, published in November 2013.

Gifts and Hospitality and Registering Interests – originally agreed by Audit Committee in February 2009.

5. Key issues and proposals

- 5.1** The general aim of all the Council's counter fraud policies is to reduce the occurrence and impact of fraud, corruption and bribery on the organisation and provide an effective channel of communication for anyone who has concerns or suspicions of malpractice.
- 5.2** The Whistleblowing Policy has been amended to reflect which council officers can be contacted for advice and guidance following the recent re-structure.
- 5.3** The Anti-Money Laundering Policy and Procedures has been amended to reflect that there is a new Money Laundering Reporting Officer (MLRO).
- 5.4** The Anti-Fraud, Corruption and Bribery Policy has been amended to reflect which officers may be contacted if they feel that the complaints procedure is inappropriate or unlikely to provide a satisfactory outcome.

The Policy has also been amended to reflect that the National Fraud Initiative is now run by the Cabinet Office rather than the Audit Commission.

- 5.5** The Gifts and Hospitality and Registering Interests Policy has been amended to reflect that there is a new Monitoring Officer.
- 5.6** All the policies can be viewed by clicking on the following link;

<http://intranet/services/Counter%20Fraud%20and%20Corruption/Pages/default.aspx>

Financial and legal implications	
Finance	There are no specific financial implications arising from the adoption of these counter-fraud policies.
Legal	The Councils counter-fraud policies assist in good governance and probity of Council actions and decision-making. Whilst there is no statutory requirement to comply with the money laundering regulations, the Audit Commission believes that Councils should comply with the spirit and principle of the legislation. An effective Anti-Money Laundering Policy and associated training will help to ensure that Council complies with the money Laundering Regulations, the Proceeds of Crime Act and similar legislation.

Other risks / implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

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List of background papers:		
name of document	date	where available for inspection

List of appendices

None

arm/audit/cr/16/0811jb3

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Report of:	Meeting	Date	Item no.
Senior Solicitor	Audit Committee	8 November 2016	7

Compliance with the Regulation of Investigatory Powers Act 2000 (RIPA)

1. Purpose of report

- 1.1 To review the authority's use of RIPA since it was last considered at the Audit Committee in November 2015.
- 1.2 To perform the annual review of the Council's Policy.

2. Outcomes

- 2.1 Evidence that the Council complies with current legislation.

3. Recommendations

- 3.1 Members are requested to note that there have been no authorisations granted for directed surveillance or covert human intelligence source under the Regulation of Investigatory Powers Act 2000.
- 3.2 Members are requested to agree the revised RIPA policy attached at Appendix A which reflects the recommendations made by the Office of Surveillance Commissioners, following an inspection of the Council's policy, procedures and operations on 4th November 2015.

4. Background

- 4.1 Local authorities can undertake surveillance and access communications data under the framework of the Regulation of Investigatory Powers Act 2000. These rules set high standards for all public authorities that use these powers to undertake a range of enforcement functions to ensure they can keep the public safe and bring criminals to justice, whilst protecting individuals' rights to privacy.

4.2 From 1 November 2012, the Protection of Freedoms Act 2012 (the Act) became effective. It introduced a more restrictive approach to the use of RIPA by local authorities by limiting the use of direct authorisations to serious crimes, i.e. those crimes punishable by a maximum custodial sentence of 6 months or more or those constituting an offence of selling alcohol or tobacco to children. The application must also have judicial approval by a magistrate before an authorisation takes effect and the magistrate needs to be satisfied that there are reasonable grounds for believing that the requirements of RIPA are met.

5. Key issues and proposals

5.1 The Home Office Code of Practice requires a number of best working practices to be adopted by all public authorities, including:

- An annual review of the authority's use of RIPA to ensure that it is being used consistently and in accordance with the Council's policy; and
- An annual review of the policy ensuring that it remains fit for purpose.

5.2 There is a requirement for the Council to nominate a Senior Responsible Officer, who will be responsible for:

- The integrity of the RIPA process in place within the Council to authorise surveillance and the covert use of human intelligence source (CHIS);
- Compliance with the legislation and codes of practice;
- Engagement with the Commissioners and inspectors when they conduct their inspections; and
- Overseeing the implementation of any post inspection action plan recommended by the Commissioner.

5.3 There is also a requirement to have a Senior Responsible Officer who oversees the competence of Authorising Officers and the processes in use in the authority. Both of these roles are allocated to the Senior Solicitor.

5.4 There has been no use of RIPA since the last report in November 2015.

5.5 The Office of Surveillance Commissioners (OSC) oversees the use of covert surveillance by local authorities by carrying out three yearly inspections. The Council's most recent inspection took place on the 4 November 2015, during which the Inspector reviewed the Council's policy and guidance material. He also met with a number of Council officers, including the Authorising Officers and Chief Executive.

- 5.6** Following the inspection, the Inspector issued a report which concluded that the Council's policy and guidance regime was of a good standard and that the training carried out by the officers was appropriate. His only recommendation was for the Council to expand the paragraph in the Council's policy relating to the use of social network sites and the internet and in particular to explain how such use might meet the criteria for authorisation as a covert human intelligence source or as directed surveillance.
- 5.7** In light of the Inspector's recommendations, paragraph 11 of the Council's policy at Appendix A has been updated and the amendments are highlighted for members' attention via the use of 'track changes'. A flowchart has also been added at Appendix 10 of the policy to assist officers when deciding whether a RIPA directed surveillance authorisation is required.
- 5.8** Since the inspection, the two Authorising Officers, Philippa Davies and Michael Ryan have left the Council and the three newly appointed Service Directors have been appointed as Authorising Officers under RIPA (Marianne Hesketh, Mark Billington and Mark Broadhurst) All three have received RIPA training since their appointment. Appendix 2 of the policy has therefore been amended to reflect this change.

Financial and legal implications	
Finance	There are no direct financial implications associated with the changes. Training for staff, to ensure that they are kept up to date with good enforcement practices and revisions to RIPA, will be met from existing budgets.
Legal	The approval of the recommendation will ensure that the statutory requirements have been complied with.

Other risks / implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There are no significant implications arising directly from this report, for those issues marked with a x.

risks/implications	✓ / x
community safety	x
equality and diversity	x
sustainability	x
health and safety	x

risks/implications	✓ / x
asset management	x
climate change	x
data protection	x

report author	telephone no.	email	date
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List of background papers:		
name of document	date	where available for inspection

List of appendices

Appendix A – Updated RIPA Policy

arm/audit/cr/16/0811mg1



Wyre Borough Council

Policy Statement

The Regulation of Investigatory Powers Act, 2000 (RIPA)

November 2016

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Appendix 1 - Definitions

Appendix 2 - Scheme of Delegation

Appendix 3 - Examples

Appendix 4 - Codes of Practice 2014

www.homeoffice.gov.uk

Appendix 5 -RIPA 2000

www.homeoffice.gov.uk

Appendix 6 OSC Procedures and Guidance

*surveillancecom
missioners.indep
endent.gov.uk*

Appendix 7 - s.37 and 38 of the Protection of
Freedoms Act 2012 and RIPA (Directed Surveillance
and Covert Human Intelligence Sources)
(Amendment) Order 2012.

[www.legislation.
gov.uk](http://www.legislation.gov.uk)

Appendix 8 – Home Office Guidance Protection of
Freedoms Act 2012.

[www.homeoffice.
gov.uk](http://www.homeoffice.gov.uk)

Appendix 9 – RIPA Forms

intranet - RIPA

Appendix 10- RIPA Directed Surveillance Decision
Chart for Local authorities

1. Introduction

- 1.1** The Regulation of Investigatory Powers Act 2000 (RIPA) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
- 1.2** Wyre Borough Council is therefore included within the RIPA framework with regard to the authorisation of both Directed Surveillance and of the use of Covert Human Intelligence Sources and access to Communications Data.
- 1.3** The purpose of this guidance is to:-
 - explain the scope of RIPA and the circumstances where it applies
 - provide guidance on the authorisation procedures to be followed.
- 1.4** The Council has had regard to the Codes of Practice produced by the Home Office in preparing this guidance and copies are attached at Appendix 4.
- 1.5** In summary, RIPA requires that when the Council undertakes "directed surveillance" or uses a "covert human intelligence source" these activities must only be authorised by an officer with delegated powers when the relevant criteria are satisfied. Following changes made by the Protection of Freedoms Act 2012 all authorisations must be approved by a magistrate from 1st November 2012. An extract from the Scheme of Delegation indicating the Authorising Officers is attached at Appendix 2.
- 1.6** Authorisation under RIPA gives lawful authority to carry out directed surveillance and the use of a covert human intelligence source. Obtaining authorisation helps to protect the Council and its officers from complaints of interference with the rights protected by Article 8(1) of the European Convention on Human Rights which is now enshrined in English law through the Human Rights Act 1998. This is because the interference with the private life of citizens will be "in accordance with the law". Provided activities undertaken are also "reasonable and proportionate" they will not be in contravention of Human Rights legislation.
- 1.7** Authorising Officers and investigators within the Local Authority are to note that RIPA does not extend powers to conduct Intrusive Surveillance (see para 2.4.5). Investigators should familiarise themselves with the provisions of the Code of Practice on Directed Surveillance and Covert Human Intelligence Sources (Appendix 4) to ensure a good understanding of the limitation of powers within RIPA.
- 1.8** Deciding when authorisation is required involves making a judgment. Paragraph 2.4 explains this process in detail. If you are in doubt, seek the advice of an Authorising Officer, if they are in doubt they will seek advice from the Senior Solicitor.

2. Directed Surveillance

2.1 What is meant by Surveillance?

“Surveillance” includes:-

- a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication;
- b) recording anything monitored, observed or listened to in the course of surveillance; and
- c) surveillance by or with the assistance of a surveillance device.

2.2 When is surveillance directed?

Surveillance is ‘Directed’ for the purposes of RIPA if it is covert, but not intrusive and is undertaken:

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

2.3 Surveillance becomes intrusive if the covert surveillance:

- a) is carried out in relation to anything taking place on any “residential premises” or in any “private vehicle”; and
- b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device; or
- c) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle but is carried out without that device being present on the premises or in the vehicle, where the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

It should be noted that the Council cannot authorise “intrusive surveillance”.

- 2.4 Before any officer of the Council undertakes any surveillance of any individual or individuals they need to assess whether the activity comes within RIPA. In order to do this the following key questions need to be asked.

2.4.1 **Is the surveillance covert?**

Covert surveillance is that carried out in a manner calculated to ensure that subjects of it are unaware it is or may be taking place.

If activities are open and not hidden from the subjects of an investigation, the RIPA framework does not apply.

Examples of surveillance are provided in the Code of Practice 2014 and are summarised in Appendix 3.

2.4.2 **Is it for the purpose of a specific investigation or a specific operation?**

If Officers are monitoring general activity in a street or car park, whether covert or overt, then it is not covered by RIPA, as such general observation duties are part of the legislative functions of public authorities and are not pre-planned surveillance of a specific person or group of people.

2.4.3 **Is it in such a manner that is likely to result in the obtaining of private information about a person?**

“Private information” is any information relating to a person’s private or family life.

It is an issue of fact and degree, which has to be examined in each case.

Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person’s activities may still result in the obtaining of private information. This is likely to be the case where that person has a reasonable expectation of privacy even though acting in public and where a record is being made by a public authority of that person’s activities for future consideration.

Example: Officers of a local authority wish to drive past a café for purpose of taking a photograph of the exterior. This is not likely to require a directed surveillance authorisation, as no private information about any person is likely to be obtained. However if the authority, wish to establish a pattern of occupancy of the premises, the accumulation of information is likely to result in the obtaining of private information and a direct surveillance authorisation should be considered.

If it is likely that observations will not result in the obtaining of private information about a person, then it is outside RIPA.

2.4.4 **Otherwise than by way of an immediate response to event or circumstances where it is not reasonably practicable to get authorisation**

The Home Office Code of Practice 2014 gives the example of an immediate response to something happening during the course of an observer's work, which is unforeseeable e.g. a housing benefit fraud officer who conceals himself and continues to observe a person working who he knows to be claiming benefits and whom he comes across unexpectedly.

However, if as a result of that immediate response, a specific investigation subsequently takes place that brings it within the RIPA framework.

2.4.5 **Surveillance - Directed or Intrusive?**

Directed surveillance turns into intrusive surveillance if it is carried out involving anything that occurs on residential premises or any private vehicle and involves the presence of someone on the premises or in the vehicle or is carried out by means of a (high quality) surveillance device.

If the device is not on the premises or in the vehicle, it is only intrusive surveillance if it consistently produces information of the same quality as if it were.

Commercial premises and commercial vehicles are therefore excluded from intrusive surveillance.

High quality video monitoring or CCTV cameras may run a significant risk of providing consistently high quality data "as if you were there" and therefore come within the definition of intrusive surveillance.

Matron boxes ie. noise monitors, used by environmental health departments will not usually be covered. Usually they are stationed in a neighbouring property and do not provide evidence of the same quality as if the device was actually on the premises. Also the Code of Practice advises that in such circumstances the perpetrator would normally be regarded as having forfeited any claim to privacy.

The Council is not authorised to carry out intrusive surveillance.

3. Covert use of Human Intelligence Source (CHIS)

3.1 A person is a **Covert Human Intelligence Source** if:

- a) he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph b) or c).

- b) he covertly uses such a relationship to obtain information or provide access to any information to another person; or
- c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

3.2 A purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose.

3.3 A relationship is used covertly and information obtained is disclosed covertly, if and only if it is used or as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

3.4 An example given by the Home office is where intelligence suggests a local shopkeeper is selling alcohol to underage customers and the local authority engages an employee to act as a juvenile in order to make a purchase of alcohol. In these circumstances any relationship, if established at all, is likely to be so limited, that the authority can conclude that an authorisation is unnecessary.

3.5 Lay Witnesses

Choose carefully how you ask lay witnesses to gather information for you. For example, if a member of the public telephones to complain about noise nuisance caused by a neighbour. The third party is in a relationship with that person already and is just passing on information to the Council and would not be covered by RIPA. However the more the Council tasks a lay witness to do something then you may inadvertently change them into a CHIS.

If you are in any doubt seek advice from an Authorising Officer, and if they are in doubt they will seek advice from the Senior Solicitor.

3.6 The Use of Covert Human Intelligence Sources

3.6.1 In practice, it is most unlikely that it will ever be appropriate for the Council to utilise a CHIS. However, in the event that it is ever considered, advice should be sought from the Senior Solicitor at an early stage. It is potentially possible, that the role of a Council employee may be that of a source, or the Council may also use an external or professional source for the purpose of obtaining information. Such persons may be a CHIS if he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs b or c of paragraph 3.1.

3.6.2 Nothing in RIPA prevents material obtained by an employee acting as a source being used as evidence in Court proceedings.

- 3.6.3 The Authorising Officer must consider the safety and welfare of a CHIS acting as a source, and the foreseeable consequences to others of the tasks they are asked to carry out. A risk assessment should be carried out before authorisation is given and considering what issues could be facing the security and welfare of a CHIS in relation to what they are to be asked to do. This should take place before any authorisation is granted, at any renewal, review and cancellation.
- 3.6.4 Before authorising the use of a CHIS as a source, the Authorising Officer should believe that the conduct/use including the likely degree of intrusion into the privacy of those potentially affected is proportionate to what the use or conduct of the source seeks to achieve. He should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the operation or investigation (collateral intrusion). Measures should be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those not directly connected with the operation.
- 3.6.5 Particular care should be taken in circumstances where people would expect a high degree of privacy or where, as a consequence of the authorisation, “confidential material” is likely to be obtained (see definition of confidential material in Appendix 1). Special provisions relate to vulnerable individuals and juvenile services.
- 3.6.6 In addition to the usual authorisation process, the following management arrangements must be in place at all times in relation to the use of a CHIS:
1. there will be an appropriate officer of the Council (‘handler’) who has day-to-day responsibility for dealing with the CHIS, and for the security and welfare of the CHIS; and
 2. there will be a second appropriate officer of the Council who has general oversight of the use made of the CHIS, and who will have responsibility for maintaining an accurate and proper record about the source and tasks undertaken.(‘manager’ and ‘recorder’)
- 3.6.7 The CHIS forms contain appropriate boxes and prompts for ensuring the above is carried out.

4. Duration, Authorisations, Reviews, Renewals and Cancellations

4.1 Duration

4.1.1 Authorisations lapse, if not renewed

- 4.1.1.1 within 12 months –from date of last renewal if it is for the conduct or use of a covert human intelligence source or

4.1.1.2 in all other cases (i.e. directed surveillance) 3 months from the date of their grant or latest renewal.

4.1.2 **Directed Surveillance - Authorisation**

4.1.2.1 For directed surveillance no officer shall grant an authorisation for the carrying out of directed surveillance unless he believes:

- a) that an authorisation is **necessary** (on the one the ground detailed below) and
- b) the authorised surveillance is **proportionate** to what is sought to be achieved by carrying it out.

4.1.2.2 An authorisation is necessary on the grounds stated below following the introduction of the Protection of Freedoms Act 2012:-

- a) for the purpose of preventing or detecting conduct which constitutes/corresponds to a criminal offence that is punishable by a maximum custodial sentence of 6 months or more or
 - b) constitutes an offence under s.146, 147, or 147A of the Licensing Act 2003- selling alcohol to children or
 - c) selling tobacco to persons under 18 years of age (s.7 Children and Young Persons Act 1933)

4.1.2.3 The Authorising Officer should set out, in his own words, why he believes the activity is necessary and proportionate. A bare assertion is insufficient. The onus is therefore on the person authorising such surveillance to satisfy themselves it is:

- a) necessary for the ground stated above and be able to demonstrate the reasons why it is necessary and;
- b) proportionate to its aim

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.

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 following elements of proportionality should therefore be considered:

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

It is important therefore that all officers involved in surveillance are fully aware of the extent and limits of the authorisation.

The Code of Practice 2014 gives an example of an individual suspected of carrying out a series of criminal damage offences at a local shop, after a dispute with the owner. It is suggested that a period of directed surveillance should be conducted against him to record his movements and activities for the purposes of preventing or detecting crime. Although these are legitimate grounds on which directed surveillance may be conducted, the Home Office code states that it is unlikely the interference with privacy will be proportionate in the circumstances of the particular case. In particular, the obtaining of private information on the individual's daily routine is unlikely to be necessary or proportionate in order to investigate the activity of concern. Instead, other less intrusive means are likely to be available, such as overt observation of the location in question until such time as a crime may be committed.

4.1.2.4 In order to ensure that Authorising Officers have sufficient information to make an informed decision it is important that detailed records are maintained. The applicant in completing the forms must provide facts and evidence

It is also sensible to make any authorisation sufficiently wide enough to cover the means required as well as being able to prove effective monitoring of what is done against what is authorised.

4.1.2.5 Authorisations must be in writing. The standard forms to be used can be accessed via the Council's intranet.

4.1.2.6 IMPORTANT NOTE: THE PROTECTION OF FREEDOMS ACT 2012 INTRODUCES A REQUIREMENT FOR MAGISTRATE APPROVAL FOR ALL RIPA AUTHORISATIONS FROM 1st NOVEMBER 2012. ACCORDINGLY AUTHORISATIONS CANNOT TAKE EFFECT UNTIL SUCH TIME AS A JP HAS MADE AN ORDER APPROVING THE AUTHORISATION I.E. A GRANT OR RENEWAL. The procedure and application process is set out in Annex A, B and C of Appendix 8. It is important that you seek advice from the Senior Solicitor before making the application for judicial approval.

4.1.2.7 Any Authorising Officer proposing to approve an application for the use of directed surveillance or for the use of a covert human intelligence source must immediately inform the Senior Solicitor who will then make arrangements for an application to be made to the Magistrates' Court.

4.1.2.8 In such circumstances, the Council will be required to make an application, without giving notice, to the Magistrates' Court. The Magistrates will give approval if and only if, at the date of the grant of authorisation or renewal of an existing authorisation they are satisfied that:

- (a) 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.
- (b) the "relevant conditions" were satisfied in relation to the authorisation.

Relevant conditions include that:

- (i) the relevant person was designated as an Authorising Officer.

(ii) 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.

(iii) the grant or renewal of any authorisation or notice was not in breach of any restrictions imposed under section 25(3) of RIPA (restrictions on the rank of the person granting the authorisation).

(iv) any other conditions provided for by an order made by the Secretary of State were satisfied.

If the Magistrates' Court refuses to approve the grant or renewal of the authorisation, it may make an order to quash that authorisation. However the Court must not exercise its power to quash the authorisation unless the Council has had at least two business days from the date of the refusal in which to make representations.

4.1.3 **Reviews**

4.1.3.1 Authorising Officers are responsible for ensuring that authorisations undergo timely reviews and are cancelled promptly after directed surveillance activity is no longer necessary.

4.1.3.2 It is recommended that regular reviews be undertaken to see if the need for the surveillance is still continuing. Results of reviews should be recorded in the Central Register of Authorisations (see paragraph 7). Reviews should be more frequent when access to confidential information or collateral intrusion is involved. Review frequency should be as often as the Authorising Officer deems necessary or practicable.

4.1.3.3 Each Authorising Officer will therefore determine in each case how often authorisations should be reviewed. It is recommended that they ensure records of the review be supplied on the relevant form. Copies should be sent to the Senior Solicitor to keep the Central Register up to date.

4.1.4 **Renewals**

4.1.4.1 An Authorising Officer may renew an authorisation before it would cease to have effect if it is necessary for the authorisation to continue for the purpose for which it was given. A renewal of the authorisation in writing can be made for 3 months. Applications for renewal should

detail how many times an authorisation has been renewed; significant changes to the original application for authority; reasons why it is necessary to renew; content and value of the information obtained so far and results of regular reviews of the investigation or operation.

- 4.1.4.2 Each application to renew should be made at least 7 days before the authorisation is due to expire on the relevant form. A record of the renewal should be kept within the applying service and supplied centrally to the Senior Solicitor to be placed in the Central Register.

IMPORTANT NOTE: FROM 1 NOVEMBER 2012 RENEWALS CANNOT TAKE EFFECT UNTIL SUCH TIME AS A MAGISTRATE HAS MADE AN ORDER APPROVING THE RENEWAL. SEE PARAGRAPH 4.1.2.6 - 4.1.2.8 ABOVE.

4.1.5 **Cancellations**

- 4.1.5.1 All authorisations, including renewals should be cancelled if the need for the surveillance is no longer justified. This will occur in most cases where the purpose for which the surveillance was required has been achieved.
- 4.1.5.2 Requesting officers should ensure they inform Authorising Officers if this is the case before the next review. If, in the opinion of the Authorising Officer at the next review, the need for surveillance is no longer justified, it must be cancelled.
- 4.1.5.3 The cancellation forms will be used to record a cancellation, and the Authorising Officer will ensure the original cancellation has been sent to the Senior Solicitor or nominated representative to update the Central Register.

4.2 **Covert Use of Human Intelligence Sources**

4.2.1 **Authorisation**

- 4.2.1.1 The same principles as set out in paragraphs 4.1.2.1 and 4.1.2.2 apply to CHIS except the ground on which a CHIS can be authorised, which remains unaltered by the Protection of Freedoms Act 2012.

A CHIS authorisation can only be approved where it is necessary for the purpose of preventing or detecting crime, or of preventing disorder.

A CHIS authorisation can last for up to 12 months.

4.2.1.2 The conduct so authorised is any conduct that:

- a) is comprised in any such activities involving the conduct or use of a covert human intelligence source, as are specified or described in the authorisation;
- b) relates to the person who is specified or described as the person to whose actions as a covert human intelligence source the authorisation relates; and
- c) is carried out for the purposes of, or in connection with, the investigation or operation so specified or described.

4.2.1.3 In order to ensure that Authorising Officers have sufficient information to make an informed decision it is important that detailed records are maintained.

It is also sensible to make any authorisation sufficiently wide enough to cover all the means required as well as being able to prove effective monitoring of what is done against what is authorised.

4.2.2 **Renewals/Reviews**

4.2.2.1 Similar provisions apply for a CHIS except that a renewal here can last for a further 12 months, a review must have been carried out on the use of the source and an application should only be made to renew when the initial authorisation period is drawing to an end. Applications to renew a CHIS also should contain use made of the source and tasks given to the source during the previous authorised period and the information obtained.

IMPORTANT NOTE: FROM 1 NOVEMBER 2012 AUTHORISATIONS CANNOT TAKE EFFECT UNTIL SUCH TIME AS A MAGISTRATE HAS MADE AN ORDER APPROVING THE AUTHORISATION I.E. A GRANT OR RENEWAL. SEE PARAGRAPH 4.1.2.6-4.1.2.8 ABOVE.

4.2.3 **Cancellations**

4.2.3.1 The same principles as Directed Surveillance apply.

4.2.3.2 Separate forms have been devised for applications to authorise, review, renew and cancel a CHIS. These can be accessed via the Council's intranet.

5. Communications Data

5.1 Communications Data Order 2010

The Regulation of Investigatory Powers (Communications Data) Order 2010 replaced the earlier 2003 order which gave local authorities the powers set out within RIPA to access communications data. The 2010 Order raised the seniority of the Authorising Officers in local authorities to a 'Director, Head of Service, Manager or equivalent.' Communications data includes information relating to the use of a communications service but does not include the contents of the communications itself. Communications data can be split into three types; "traffic data" i.e. where a communication was made from, to whom and when; "service data" is the use made of the service by any person eg itemised telephone records; and "subscriber data" i.e. any other information that is held or obtained by an operator on a person they provide a service to. Local authorities are allowed to access "service data" and "subscriber data"; they are not allowed to access "traffic data".

NOTE: An Investigatory Powers Bill was announced in the Queen's Speech in May 2015 relating to communications data. The bill's progress will be monitored and amendments to this policy will be made as and when required.

5.2 Authorisation

The Order permits access to communications data, by local authorities only where it is necessary for the purpose of preventing or of detecting crime or preventing disorder. As with surveillance, access to communications data should only be authorised where it is proportionate to the objectives the Council is seeking to achieve. It should not be authorised where less intrusive means can be used to further an investigation

5.3 Alternative methods for authorisation

Access to communications data may be authorised in two ways; either (a) through an authorisation by an Authorising Officer which would allow the authority to collect or retrieve data itself, or (b) by a notice given to a postal or telecommunications operator requiring that operator to collect or retrieve the data and provide it to the local authority.

5.4 Application

Application will be made by the investigating officer and submitted to a Single Point of Contact (SPOC) who will either accept or reject the application. If the SPOC accepts the application he will forward it together with a SPOC report and a draft notice (where appropriate) to an Authorising Officer for authorisation.

If the Authorising officer accepts the application, it will need to be approved by a magistrate before the forms are returned to the SPOC and the SPOC will deal with the postal or telecommunications operator directly. The SPOC will also advise investigating officers and Authorising officers on whether an authorisation or a notice is appropriate in the circumstances.

Although it is unlikely that the Council will access communications data, in the event that it did, the Council would appoint a nominated SPOC from NAFN, (National Anti- Fraud Network), who have received training on a course recognised by the Home Office.

Authorising Officers

Authorising Officers for the purposes of communications data will be the same as for directed surveillance and CHIS's.

IMPORTANT NOTE: FROM 1 NOVEMBER 2012 AUTHORISATIONS CANNOT TAKE EFFECT UNTIL SUCH TIME AS A MAGISTRATE HAS MADE AN ORDER APPROVING THE AUTHORISATION. SEE PARAGRAPHS 4.1.2.6 - 4.1.2.8 ABOVE.

6. Other Factors to Consider

- 6.1** Particular consideration should be given to **collateral intrusion** i.e. the risk of intrusion into the privacy of those not directly the targets of the investigation. Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the privacy of those who are not the intended subjects of the surveillance activity. Where such collateral intrusion is unavoidable, the activities may still be authorised, provided this intrusion is considered proportionate to what is sought to be achieved. The same proportionality tests, as outlined above, apply to the likelihood of collateral intrusion as to intrusion into the privacy of the intended subject of the surveillance. Such collateral intrusion or interference would be a matter of greater concern in cases where there are special sensitivities, for example in cases of premises used by lawyers or for any form of medical or professional counselling or therapy.
- 6.2** An application for an authorisation should include an assessment of the risk of any collateral intrusion or interference. The Authorising Officer will take this into account, particularly when considering the proportionality of the surveillance.
- 6.3** Those carrying out the covert surveillance should inform the Authorising Officer if the operation/investigation unexpectedly interferes with the privacy of individuals who are not the original subject of the investigation or covered by the authorisation in some other way. In some cases the original authorisation may not be sufficient and consideration should be given to whether a separate authorisation is required.

6.4 Any person giving an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance is taking place or of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance.

6.5 **Confidential Material**

RIPA does not provide any special protection for '**confidential material**' (see the definitions in Appendix 1). Nevertheless, such material is particularly sensitive, and is subject to additional safeguards. In cases where the likely consequence of the conduct of a source would be for any person to acquire knowledge of confidential material, the deployment of the source should be subject to special authorisation, i.e. by the chief Executive.

6.6 In general, any application for an authorisation which is likely to result in the acquisition of confidential material should include an assessment of how likely it is that confidential material will be acquired. Special care should be taken where the target of the investigation is likely to be involved in handling confidential material. Such applications should only be considered in exceptional and compelling circumstances with full regard to the proportionality issues this raises.

6.7 The following general principles apply to confidential material acquired under authorisations:

- Those handling material from such operations should be alerted to anything that may fall within the definition of confidential material. Where there is doubt as to whether the material is confidential, advice should be sought from the Senior Solicitor before further dissemination takes place;
- Confidential material should not be retained or copied unless it is necessary for a specified purpose;
- Confidential material should be disseminated only where an appropriate officer (having sought advice from the Senior Solicitor) is satisfied that it is necessary for a specific purpose;
- The retention or dissemination of such information should be accompanied by a clear warning of its confidential nature. It should be safeguarded by taking reasonable steps to ensure that there is no possibility of it becoming available, or its content being known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information.
- Confidential material should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.

6.8 In the case of confidential information a higher level of authorisation is required. Therefore where authorisation is sought to carry out surveillance in respect of communications subject to legal professional privilege, or containing confidential personal information or confidential journalistic material, the Chief Executive must sign the authorisation.

6.9 Joint Working

In cases of joint working, where one agency is acting on behalf of another, usually the tasking agency can obtain or provide the authorisation i.e. if the Council has been tasked by the Police to assist in a covert surveillance operation, they should get the authorisation, which would then cover the Council. But advice should be sought from the Senior Solicitor prior to any arrangements being agreed.

6.10 Handling and Disclosure of Materials

Authorising Officers are reminded of the guidance relating to the retention and destruction of confidential material as described in paragraph 6.7 above.

6.11 Applications and associated reviews, renewals and cancellations for directed surveillance shall be centrally retrievable for a period of 5 years. Where it is believed that the records could be relevant to pending or future criminal proceedings, they should be retained for a suitable further period, commensurate to any subsequent review.

6.12 Authorising Officers must ensure compliance with the appropriate data protection requirements and the relevant codes of practice in the handling and storage of material. Where material is obtained by surveillance, which is wholly unrelated to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to believe it will be relevant to future civil or criminal proceedings, it should be destroyed immediately. Consideration of whether or not unrelated material should be destroyed is the responsibility of the Authorising Officer. If in doubt advice should be sought from the Senior Solicitor.

6.13 There is nothing in RIPA that prevents material obtained through the proper use of the authorisation procedures from being used in other investigations. However, the use outside the Council, of any material obtained by means of covert surveillance and, other than in pursuance of the ground, on which it was obtained, should be authorised only in the most exceptional circumstances. Advice should be sought from the Senior Solicitor.

7. Central Register of Authorisation

7.1 The RIPA Code of Practice requires a central register of all authorisations to be maintained. The Legal Section maintains this register.

7.2 Whenever an authorisation is authorised, renewed, reviewed or cancelled the Authorising Officer must send the signed original authorisation to the Senior Solicitor or nominated representative. Receipt of the form will be acknowledged.

7.3 The Central Register will contain the following information:

- the type and date of authorisation
- the name and grade of the Authorising Officer
- a unique reference number for the investigation or operation
- the title of the investigation/operation, and a brief description and names of the subjects, if known
- if an authorisation is renewed, when and the name and designation of the Authorising Officer
- if confidential information is likely to be a consequence of the investigation or operation
- the date the authorisation was cancelled.
- the date of magistrates court approval

7.4 The legal section will securely retain the original authorisations and maintain the Central Register. Authorisations should only be kept for a minimum of 5 years from the end of an authorisation. Once the investigation is closed (bearing in mind cases may be lodged some time after the initial work) the records held by the department should be disposed of in an appropriate manner (e.g. shredded).

8. Codes of Practice

There are Home Office codes of practice and Office of Surveillance Commissioners (OSC) Guidance that expand on this policy statement and copies are attached at Appendices 4 and 6. The Codes also lists General Best Practices, which should be followed where at all possible.

The codes do not have the force of statute, but are admissible in evidence in any criminal and civil proceedings. As stated in the codes, "if any provision of the code appears relevant to a question before any Court or tribunal considering any such proceedings, or to the tribunal established under RIPA, or to one of the commissioners responsible for overseeing the powers conferred by RIPA, it must be taken into account".

Staff should refer and familiarise themselves with the Home Office Codes of Practice and OSC Guidance for supplementary guidance.

Authorising Officers and the Senior Responsible Officer (Senior Solicitor) should also familiarise themselves with the Procedures and Guidance document produced by the OSC attached at Appendix 6.

9. Benefits of Obtaining Authorisation Under RIPA

9.1 Authorisation of surveillance and human intelligence sources

RIPA states that

- if authorisation confers entitlement to engage in a certain conduct and
- the conduct is in accordance with the authorisation, then

- it shall be “lawful for all purposes”.

However, the corollary is not true – i.e. if you do not obtain RIPA authorisation it does not make any conduct unlawful (e.g. use of intrusive surveillance by local authorities). It just means you cannot take advantage of any of the special RIPA benefits.

- 9.2** RIPA states that a person shall not be subject to any civil liability in relation to any conduct of his which –
- a) is incidental to any conduct that is lawful by virtue of an authorisation; and
 - b) is not itself conduct for which an authorisation is capable of being granted under a relevant enactment and might reasonably be expected to have been sought in the case in question.

10 Scrutiny and Tribunal

10.1 The Surveillance Commissioner will regulate conduct carried out under RIPA. The Surveillance Commissioner and his assistants to ensure RIPA compliance are conducting a programme of inspection of Local Authorities.

10.2 RIPA provides for the establishment of a tribunal to consider and determine complaints made under RIPA, and persons aggrieved by a local authority’s conduct e.g. directed surveillance can make complaints to the tribunal. The forum hears applications on a judicial review basis. Claims should be brought within one year unless it is just and equitable to extend that.

The tribunal can order, among other things, the quashing or cancellation of any authorisation and can order destruction of any records or information obtained by such authorisation, and records of information held by any public authority in relation to any person. The Council is, however, under a duty to disclose or provide to the tribunal all documents they require if:

- A Council Officer has granted any authorisation under RIPA.
- Council employees have engaged in any/all conduct as a result of such authorisation.
- A disclosure notice requirement is given.

11 Covert Surveillance of Social Networking Sites (SNS)

11.1 The fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the SNS being used works. Authorising officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.

- 11.2** Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available; the author has a reasonable expectation of privacy if access controls are applied. In some cases data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. However, where repeated viewings of open profiles on SNS is necessary and proportionate to gather further evidence or monitor an individual's profile or lifestyle, then RIPA authorisation must be considered as repeat viewing of "open source" sites may constitute directed surveillance and must be reviewed on a case by case basis.
- 11.3** If it is necessary and proportionate for the Council to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e. the activity is more than mere reading of the site's content). This will include entering into any online conversation or dialogue with a third party covertly, ie where they do not know the true identity of the person they are communicating with or the purpose of the communication. It could also include sending a 'friend request' on Facebook or joining a group, especially where any communication is transmitted to ensure the request is accepted.
- 11.4** It is not unlawful for Council officers to set up a false identity but it is inadvisable for a Council officer to do so for a covert purpose without authorisation. Using photographs of other persons without their permission to support the false identity infringes other laws.
- 11.5** Council officers should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without authorisation, and without the consent of the person whose identity is used, and without considering the protection of that person. The consent must be explicit (i.e. the person from whom consent is sought must agree (preferably in writing) what is and is not to be done.
- 11.6** To avoid the potential for inappropriate or inadvertent use of SNS in investigative and enforcement roles, Council officers should be mindful of the following:
- Do obtain the approval of your manager before accessing any SNS in accordance with the Council's Social Media and Employment Policy
 - If it is necessary and proportionate to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance.

- When viewing an individual's public profile on SNS, do so only to the minimum degree necessary and proportionate in order to obtain evidence to support or refute an investigation
- Do not create a false identity in order to befriend individuals on SNS without authorisation under RIPA.
- Repeated viewings of open profiles on SNS to gather evidence or to monitor an individual's status, may constitute directed surveillance and must be reviewed on a case by case basis.
- A CHIS authorisation is required if entering into any online conversation or dialogue with a third party covertly.
- Be aware that it may not be possible to verify the accuracy of information on SNS and if such information is to be used as evidence, take reasonable steps to ensure its validity.
- During the course of an investigation, the nature of the online activity may evolve, therefore continually assess and review the activity to ensure it remains lawful and compliant with RIPA.

12 Conclusion

12.1 If you can carry out investigations in an obviously overt way so that it does not compromise what you are trying to achieve then that is the best way. However, if you need to do things covertly, then you need to consider RIPA and you are advised to take a wide view and interpretation of your activities. If you are in doubt you can seek advice from Senior Solicitor and remember if there is any doubt then it is usually safer to get an authorisation.

Definitions from the 2000 Act

- **“RIPA”** means the Regulation of Investigatory Powers Act 2000.
- **“Confidential Material”** consists of:
 - a) matters subject to legal privilege;
 - b) confidential personal information; or
 - c) confidential journalistic material
- **“Matters subject to legal privilege”** includes both oral and written communications between a professional legal adviser and his/her client or any person representing his/her client, made in connection with the giving of legal advice to the client or in contemplation of legal proceedings and for the purposes of such proceedings, as well as items enclosed with or referred to in such communications. Communications and items held with the intention of furthering a criminal purpose are not matters subject to legal privilege (see Note A below)
- **“Confidential Personal Information”** is information held in confidence concerning an individual (whether living or dead) who can be identified from it, and relating:
 - a) to his/her physical or mental health; or
 - b) to spiritual counselling or other assistance given or to be given, and
 which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office (See Note B below). It includes both oral and written information and also communications as a result of which personal information is acquired or created. Information is held in confidence if:
 - c) it is held subject to an express or implied undertaking to hold it in confidence; or
 - d) it is subject to a restriction on disclosure or an obligation of secrecy contained in existing or future legislation.
- **“Confidential Journalistic Material”** includes material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.
- **“Covert Surveillance”** means surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place;
- **“Authorising Officer”** means a person designated for the purposes of RIPA to grant authorisations for directed surveillance.

Note A *Legally privileged communications will lose their protection if there is evidence, for example, that the professional legal adviser is intending to hold or use them for a criminal purpose; privilege is not lost if a professional legal adviser is properly advising a person who is suspected of having committed a criminal offence. The concept of legal privilege shall apply to the provision of professional legal advice by any agency or organisation.*

Note B *Confidential personal information might, for example, include consultations between a health professional or a professional counsellor and a patient or client, or information from a patient's medical records.*

Extract from Part 7 of the Council's Constitution- Management Structure and Scheme of Delegation

Scheme of Delegation to Officers –

All delegations to officers are subject to the following general conditions:

(2) In the absence of the Chief Executive the functions of the Chief Executive will be the responsibility of either of the Service Directors

Executive Functions Delegated to the Chief Executive (7) To provide the necessary authorisations in respect of surveillance in accordance with the Regulation of Investigatory Powers Act 2000, where confidential information is involved or where authorisation is sought for the employment of a juvenile or vulnerable Covert Human Intelligence Source (CHIS).

Executive Functions Delegated to the Service Directors

(2) To act as authorising officers for the purposes of the Regulation of Investigatory Powers Act 2000 and Protection of Freedoms Act 2012.

Executive Functions Delegated to the Senior Solicitor

(3) To act as the Senior Responsible Officer for the purpose of Part II of the Regulation of Investigatory Powers Act 2000

(4) To make an application to a Justice of the Peace in accordance with the Protection of Freedoms Act 2012, seeking an order approving the grant or renewal of a RIPA authorisation or notice and to represent the Council in making such an application.

Executive Functions Delegated to Fraud and Compliance Manager and Fraud Investigation Officers

(1) To make an application to a Justice of the Peace, in accordance with the Protection of Freedoms Act 2012, seeking an order approving the grant or renewal of a RIPA authorisation or notice and to represent the Council in making such an application

(3) Power to carry out surveillance which is governed by the Regulation of Investigatory Powers Act 2000 as agreed by an authorising officer.

Examples of Surveillance

Examples of different types of Surveillance.	Examples
Surveillance that does not require RIPA Authorisation	<ul style="list-style-type: none"> - Council officers on patrol, who conceal themselves to observe suspicious persons that they come across in the course of a routine patrol. - 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. - Sampling purchases (where the officer behaves no differently from a normal member of the public). - Dog Warden in uniform on patrol in park, street or van - Food Safety or Health & Safety Inspections -General observational duties not specifically targeted/planned or considered directed surveillance. . - CCTV cameras providing general traffic, crime or public safety information - Covert surveillance of an employee who is suspected by his employer of undertaking additional duties in breach of discipline regulations, as it does not relate to the discharge of the Employer's core functions.
Covert Directed Surveillance must be RIPA authorised.	Officers follow/observe an individual or individuals over a period, to establish whether s/he is working when claiming benefit provided the conduct constitutes/corresponds to a criminal offence punishable with at least 6 months imprisonment
Surveillance that is not intrusive	- An observation post outside residential premises, which provides a limited view compared to that which would be achievable from within the premises.
Intrusive – Council cannot do this!	<ul style="list-style-type: none"> - Planting a listening or other device in a person's home or in their private vehicle. - Use of a zoom lens outside residential premises, which consistently achieves imagery of the same quality as that which would be visible from within the premises.

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Annual Audit Letter 2015/16

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Wyre Borough Council

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FINAL

25 October 2016



Agenda Item 8

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This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. Public Sector Audit Appointments issued a document entitled Statement of Responsibilities of Auditors and Audited Bodies summarising where the responsibilities of auditors begin and end and what is expected from audited bodies. We draw your attention to this document which is available on Public Sector Audit Appointment's website (www.psaa.co.uk).

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

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

This Annual Audit Letter summarises the outcome from our audit work at Wyre Borough Council in relation to the 2015/16 audit year.

Although it is addressed to Members of the Authority, it is also intended to communicate these key messages to key external stakeholders, including members of the public, and will be placed on the Authority's website.

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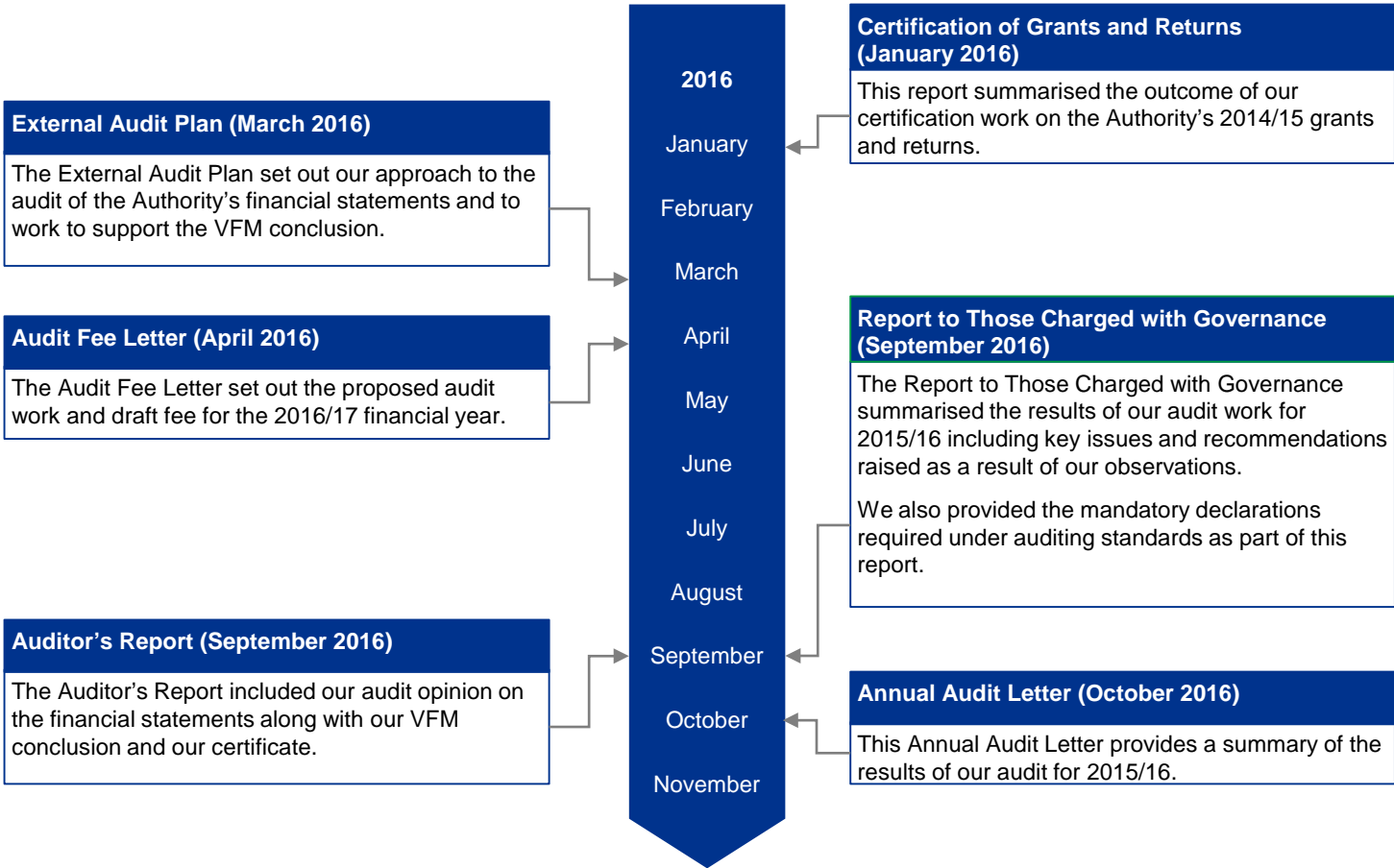
VFM conclusion	<p>We issued an unqualified conclusion on the Authority's arrangements to secure value for money (VFM conclusion) for 2015/16 on 28 September 2016. This means we are satisfied that during the year the Authority had appropriate arrangements for securing economy, efficiency and effectiveness in the use of its resources.</p> <p>To arrive at our conclusion we looked at the Authority's arrangements to make informed decision making, sustainable resource deployment and working with partners and third parties.</p>
Audit opinion	<p>We issued an unqualified opinion on the Authority's financial statements on 28 September 2016. This means that we believe the financial statements give a true and fair view of the financial position of the Authority and of its expenditure and income for the year.</p>
Financial statements audit	<p>We did not identify any material misstatements as a result of our audit work. We did, however, agree with management a small number of presentational adjustments to the accounts during the course of our audit.</p> <p>We identified one audit issue in 2015/16 which has been communicated to management. This resulted in one low priority recommendation within our report to those charged with governance, as follows:</p> <ul style="list-style-type: none"> — Declaration of Interest forms should be completed by all key officers and members at least annually, and signed by the relevant individual to evidence that the document is a complete and accurate record of their financial and other interests.
Other information accompanying the financial statements	<p>Whilst not explicitly covered by our audit opinion, we review other information that accompanies the financial statements to consider its material consistency with the audited accounts. This year we reviewed the Annual Governance Statement and Narrative Report. We concluded that they were consistent with our understanding and did not identify any issues.</p>
Whole of Government Accounts	<p>The Authority prepares a consolidation pack to support the production of Whole of Government Accounts by HM Treasury. We are not required to review your pack in detail as the Authority falls below the threshold where an audit is required. As required by the guidance we have confirmed this with the National Audit Office.</p>
Certificate	<p>We issued our certificate on 28 September 2016. The certificate confirms that we have concluded the audit for 2015/16 in accordance with the requirements of the Local Audit & Accountability Act 2014 and the Code of Audit Practice.</p>
Audit fee	<p>Our fee for 2015/16 was £48,662, excluding VAT. This was a reduction of around 25% on the fee for 2014/15, and in line with the planned fee for 2015/16. Further detail is contained in Appendix 2.</p>

Appendix 1: Summary of reports issued

This appendix summarises the reports we issued since our last Annual Audit Letter.

These reports can be accessed via the Audit Committee pages on the Authority's website at www.wyre.gov.uk.

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Appendix 2: Audit fees

This appendix provides information on our final fees for the 2015/16 audit.

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To ensure transparency about the extent of our fee relationship with the Authority we have summarised below the outturn against the 2015/16 planned audit fee.

External audit

Our final fee for the 2015/16 audit of the Authority was £48,662, which is in line with the planned fee.

Certification of grants and returns

Under our terms of engagement with Public Sector Audit Appointments we undertake prescribed work in order to certify the Authority's housing benefit grant claim. This certification work is still ongoing. The final fee will be confirmed through our reporting on the outcome of that work in January 2017.



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arm/audit/cr/16/0811 Item 8

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22 September 2016

Clare James
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Dear Ms James

Wyre Borough Council - confirmation of auditor appointment for 2017/18

I am writing to confirm the appointment of KPMG LLP to audit the accounts of Wyre Borough Council for 2017/18.

This is an extension of the appointment made under section 3 of the Audit Commission Act for the audit of the accounts up to 2016/17, under the audit contracts previously let by the Audit Commission. The auditor appointment has been extended for one year as a consequence of the extension of the transitional arrangements made by the Department of Communities and Local Government.

The appointment of KPMG LLP under the current audit contracts will conclude with the completion of the audit of the accounts for 2017/18.

Extension of the transitional arrangements

Following the closure of the Audit Commission in 2015, the Secretary of State for Communities and Local Government delegated statutory functions on a transitional basis from the Audit Commission Act 1998 to PSAA. These were delegated by a commencement order made under the Local Audit and Accountability Act 2014.

In October 2015, the Secretary of State confirmed that the transitional provisions would be amended to allow an extension of the audit contracts for a period of one year for audits of principal local government bodies only. A commencement order was made on 27 June 2016, supported by a revised letter of delegation to PSAA.

The audit contracts novated to PSAA have therefore also been extended for one year for principal local government bodies, and will end with the completion of the audits of the 2017/18 accounts.

Changes to auditor appointments

Please be aware that it is a statutory requirement for PSAA to make the auditor appointment for principal local government bodies for 2017/18, on the basis of the provisions set out in the Audit Commission Act 1998.

If you wish to make representations about the extension of the current auditor appointment, please send them by email to auditorappointments@psaa.co.uk by **7 October 2016**. Your email should set out the reasons why you think the appointment should change. Any changes in auditor appointments can only be made under these audit contracts for the 2017/18 audit.

We will consider carefully any representations you make about your current auditor appointment. If we accept your representations, we will consult you on an alternative appointment.

Local auditor appointment requirements from 2018/19

The arrangements for local auditor appointment set out in the Local Audit and Accountability Act will apply for audits of the accounts of principal local government bodies from 2018/19 onwards. Auditor appointments must be made for 2018/19 audits by 31 December 2017, as required by section 7 of the Local Audit and Accountability Act 2014. Appointments may be made by the audited body itself, by groups of audited bodies, or by a specified appointing person.

PSAA has been specified by the Secretary of State for Communities and Local Government as the appointing person for principal local government bodies under the provisions of the 2014 Act. This means that PSAA will make auditor appointments to relevant principal local government bodies that choose to opt into the national appointment arrangements PSAA is developing. We will be communicating with audited bodies separately on this.

If you have any questions about your auditor appointment, please email us at auditorappointments@psaa.co.uk.

Yours sincerely



Jon Hayes
Chief Officer

Proposed work programme and scales of fees 2017/18

Local government and police bodies

October 2016

Public Sector Audit Appointments Limited (PSAA) is an independent company limited by guarantee incorporated by the Local Government Association in August 2014.

The Secretary of State for Communities and Local Government delegated a number of statutory functions (from the Audit Commission Act 1998) to PSAA on a transitional basis by way of a letter of delegation issued under powers contained in the Local Audit and Accountability Act 2014.

As a consequence of these delegations, for 2017/18 the company will continue to be responsible under transitional arrangements for appointing auditors to local government and police bodies, for setting audit fees and for making arrangements for certification of housing benefit subsidy claims.

Looking beyond 2017/18, the Secretary of State has specified PSAA as an appointing person for principal local government bodies from 2018/19, under the provisions of the Local Audit and Accountability Act 2014 and the Local Audit (Appointing Person) Regulations 2015.

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Introduction

- 1 This consultation document sets out the work that auditors will undertake at principal local government and police audited bodies during 2017/18, with the associated proposed scale audit fees and indicative certification fees.
- 2 We hope the information set out in this document is helpful to stakeholders in considering our proposals for the 2017/18 scale fees, as well as supporting audited bodies' financial planning.

Background

- 3 The Local Audit and Accountability Act 2014 provides for the introduction of a new framework for local public audit. Under these provisions, the Audit Commission closed in March 2015 and the Secretary of State for Communities and Local Government delegated some statutory functions from the Audit Commission Act 1998 to Public Sector Audit Appointments Limited (PSAA) on a transitional basis from 1 April 2015.
- 4 In October 2015, the Secretary of State confirmed that the transitional arrangements would be extended for one year for audits of principal local government bodies only, to cover the audit of the accounts for 2017/18. The audit contracts previously let by the Audit Commission and novated to PSAA have therefore also been extended for one year to give effect to this decision.
- 5 PSAA's responsibilities under the transitional arrangements include setting fees, appointing auditors and monitoring the quality of auditors' work. Further information on [PSAA and its responsibilities](#) is available on our website.
- 6 From 2018/19, new arrangements for local auditor appointment set out in the Local Audit and Accountability Act 2014 will apply for principal local government and police bodies. PSAA will play a new and different role in these arrangements.

2017/18 fees

- 7 There are no changes to the overall work programme for local government and police audited bodies for 2017/18. We therefore propose that 2017/18 scale audit fees are set at the same level as the scale fees applicable for 2016/17.
- 8 The proposed scale fees for 2017/18 reflect the significant fee reductions of up to 55 per cent made to scale fees since 2012/13. When these reductions were made, the expectation was that they would continue to apply for the length of the current audit contracts, providing there are no significant changes to auditors' work, and subject to annual review.
- 9 PSAA may approve variations to published scale fees and indicative certification fees for individual audited bodies, to reflect changes in circumstances or audit risks.
- 10 For authorities with highways network assets, a change in accounting requirements implemented by CIPFA/LASAAC in 2016/17 will continue to require some additional audit work in 2017/18. The fee variation process will apply in 2017/18 for this additional work, because the amount of work will vary at each authority.

Distribution of surplus

11 Following completion of the Audit Commission's accounts, PSAA received a payment in respect of the Audit Commission's retained earnings. PSAA operates on a not-for-profit basis and will therefore distribute this and any other surpluses from audit fees to audited bodies on a timetable to be established during 2017. The amount of the redistribution is likely to be in the order of 15 per cent of scale audit fees for local government bodies.

New local audit arrangements

12 In July 2016, the Secretary of State specified PSAA as an appointing person for principal local government and police bodies, under the provisions of the Local Audit and Accountability Act 2014 and the requirements of the Local Audit (Appointing Person) Regulations 2015.

13 PSAA will therefore make auditor appointments to principal local government bodies that choose to opt into the national scheme the company is developing with the sector, for audits of the accounts from 2018/19.

14 We intend to run the scheme in a way that will save time and resources for local public bodies. A collective procurement will enable us to secure the best prices, keeping the cost of audit as low as possible for the bodies who choose to opt in, without compromising on audit quality. Using the scheme will avoid the need for opted-in authorities to:

- establish an audit panel with independent members;
- manage their own auditor procurement and cover its costs;
- monitor the independence of their appointed auditor for the durations of the appointment; and
- manage the contract with the auditor.

15 We expect to issue the invitation to opt into the national auditor appointment arrangements at the end of October 2016 with an expected deadline for responses in early March 2017.

16 Further information is available on the [appointing person page](#) of our website.

Responding to this consultation

We welcome comments on the proposals contained in this document. Please send comments by email to:

workandfeesconsultation@psaa.co.uk

The consultation will close on **Thursday 12 January 2017**.

Proposed work programme for 2017/18

Audit

17 Under the provisions of the Local Audit and Accountability Act 2014, the National Audit Office (NAO) is responsible for publishing the statutory [Code of Audit Practice](#) and guidance for auditors. Audits of the accounts for 2017/18 will be undertaken under this Code, on the basis of the work programme and scale fees set out in this consultation. Further information on the NAO Code and guidance is available on the [NAO website](#).

18 Auditors tailor their work to reflect local circumstances and their assessment of audit risk. They do this by assessing the significant financial and operational risks facing an audited body, and the arrangements it has put in place to manage those risks.

Audit work on highways network assets

19 New requirements were introduced from 2016/17 in the *Code of Practice on Local Authority Accounting in the United Kingdom* in relation to the measurement requirements for highways network assets.

20 As we have set out in the [2016/17 work programme and fees](#) published on our website in March 2016, fees for the additional work identified by auditors at individual audited bodies for 2016/17 will be subject to approval under the normal fee variations process. An expected range of £5,000 to £10,000 will apply, where authorities are able to provide the information required, and the auditor is able to rely on central assurance of the models in use.

21 Fees for additional audit work required for 2017/18 will also be approved under the fee variations process, with a lower expected range of £3,000 to £6,000, where authorities are able to provide the information required, and the auditor is able to rely on central assurance of the models in use. These fee ranges are indicative, and costs outside them may be necessary in some cases.

Auditors' local value for money arrangements work

22 Under the Local Audit and Accountability Act 2014, auditors are required to satisfy themselves that an audited body has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources (the value for money arrangements conclusion).

23 Auditors will apply a risk-based approach to their work, giving a conclusion on the arrangements in place. The NAO's Code of Audit Practice and supporting guidance for auditors set out the approach and reporting criteria applicable.

Certification work

24 At the request of the Department for Work and Pensions, auditors appointed by PSAA will certify local authority claims for housing benefit subsidy for 2017/18. This is the final year in which these certification arrangements will apply.

25 Auditors will undertake this work as agents of PSAA, using guidance based on the arrangements previously developed by the Audit Commission.

National report

26 PSAA will publish an annual report summarising the results of auditors' work on audited bodies' 2017/18 financial statements and arrangements to secure value for money.

Proposed scales of fees for 2017/18

Scales of audit fees for local government and police bodies

27 The scales of fees for 2017/18 reflect the cost of the work programme outlined above. The proposed 2017/18 scale fee for each [local government](#) and [police](#) audited body is available on our website.

28 The proposed scale audit fees for 2017/18 audits are the scale fees applicable for 2016/17.

29 PSAA has the power to determine the fee above or below the scale fee, where it considers that substantially more or less work was required than envisaged by the scale fee. The scale fees are based on the expectation that audited bodies are able to provide the auditor with complete and materially accurate financial statements, with supporting working papers, within agreed timeframes.

30 As the 2017/18 scale fees are based on the scale fees for 2016/17, they continue to reflect the auditor's assessment of audit risk and complexity. We would only expect variations from the scale fee to occur for 2017/18 where these factors are significantly different from those identified and reflected in the 2016/17 scale fee.

31 PSAA obtains updated fee information, and explanations for any proposed variations from the scale fee, from appointed auditors on a regular basis. We consider the reasonableness of the explanations provided by auditors before agreeing to any variation to the scale fee. Auditors cannot invoice audited bodies for any variations to scale fees until these have been approved by PSAA.

32 PSAA will charge fees for considering objections from the point at which auditors accept an objection as valid, or any special investigations, such as those arising from disclosures under the Public Interest Disclosure Act 1998, as a variation to the scale fee.

Pension fund audits

33 The proposed scale fees for 2017/18 pension fund audits are the scale fees applicable for 2016/17. The proposed individual [pension fund audit scale fees](#) for 2017/18 are available on our website.

Certification work

34 The statutory duty to make certification arrangements, delegated to PSAA by the Secretary of State for the purpose of certifying housing benefit subsidy claims, requires PSAA to charge fees that cover the full cost of certification work.

35 An indicative certification fee is published each year for each relevant audited body, using the latest final certification fees available. Indicative fees for 2017/18 housing benefit subsidy certification work will be based on final 2015/16 certification fees. We will receive this information from auditors in January 2017, after this consultation has closed, and will publish indicative 2017/18 certification fees on our website in March 2017.

36 For the purposes of this consultation, audited bodies and stakeholders may wish to refer to the [indicative certification fees for 2015/16](#), published on our website.

37 Indicative fees for certification work are based on the expectation that audited bodies are able to provide the auditor with complete and materially accurate claims and returns, with supporting working papers, within agreed timeframes.

38 We expect variations from the indicative certification fee for an audited body to occur only where issues arise that are significantly different from those identified and reflected in the previous year's fee.

Value added tax

39 All the 2017/18 fee scales exclude value added tax (VAT), which will be charged at the prevailing rate of 20 per cent on all work done.

Next steps

40 PSAA has a statutory duty to prescribe scales of fees for the audit of accounts. Before prescribing scales of fees, we are required to consult relevant representative organisations.

41 We welcome comments from audited bodies and stakeholders on the proposals contained in this document. The consultation will close on **Thursday 12 January 2017**.

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42 Following responses to this consultation, the PSAA Board will approve the final 2017/18 work programme and scales of fees for publication in late March 2017.

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Proposed work programme and scales of fees 2017/18

Local government and police bodies

October 2016

Public Sector Audit Appointments Limited (PSAA) is an independent company limited by guarantee incorporated by the Local Government Association in August 2014.

The Secretary of State for Communities and Local Government delegated a number of statutory functions (from the Audit Commission Act 1998) to PSAA on a transitional basis by way of a letter of delegation issued under powers contained in the Local Audit and Accountability Act 2014.

As a consequence of these delegations, for 2017/18 the company will continue to be responsible under transitional arrangements for appointing auditors to local government and police bodies, for setting audit fees and for making arrangements for certification of housing benefit subsidy claims.

Looking beyond 2017/18, the Secretary of State has specified PSAA as an appointing person for principal local government bodies from 2018/19, under the provisions of the Local Audit and Accountability Act 2014 and the Local Audit (Appointing Person) Regulations 2015.

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