

Audit & Standards Committee

Date: **14 January 2020**

Time: **4.00pm**

Venue **Council Chamber, Hove Town Hall**

Members: **Councillors:** Littman (Chair), Appich (Group Spokesperson), Hamilton, Henry, Hugh-Jones, Nemeth, Peltzer Dunn and West

Co-optees

Dr David Horne and Helen Aston

Contact: **John Peel**
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AGENDA

33 PROCEDURAL BUSINESS

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

In each case, you need to declare

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

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

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

Note: Any item appearing in Part Two of the agenda states in its heading the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the press and public. A list and description of the exempt categories is available for public inspection at Brighton and Hove Town Halls and on-line in the Constitution at part 7.1.

34 MINUTES

7 - 14

To consider the minutes of the meeting held on 17 September 2019.

Contact Officer: Shaun Hughes

Tel: 01273 290569

35 CHAIR'S COMMUNICATIONS

36 CALL OVER

- (a) Items 39-44 will be read out at the meeting and Members invited to reserve the items for consideration.
- (b) Those items not reserved will be taken as having been received and the reports' recommendations agreed.

37 PUBLIC INVOLVEMENT

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

- (a) **Petitions:** to receive any petitions presented to the full council or at the meeting itself;
- (b) **Written Questions:** to receive any questions submitted by the due date of 12 noon on the 8 January 2020;
- (c) **Deputations:** to receive any deputations submitted by the due date of 12 noon on the 8 January 2020.

38 MEMBER INVOLVEMENT

To consider the following matters raised by councillors:

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

39 STRATEGIC RISK FOCUS: SR35, SR36, SR23 AND SR30

15 - 54

Report of the Executive Lead Officer, Strategy Governance & Law

Contact Officer: Jackie Algar

Tel: 01273 291273

Ward Affected: All Wards

40 VALLEY GARDENS PROJECT (PHASE 3)

55 - 70

Report of the Executive Director, Finance & Resources

Contact Officer: Mark Dallen

Tel: 01273 291314

Ward Affected: All Wards

41 INTERNAL AUDIT AND COUNTER FRAUD PROGRESS REPORT - QUARTER 2 (1 JULY TO 30 SEPTEMBER 2019)

71 - 92

Report of the Executive Director, Finance & Resources

Contact Officer: Mark Dallen

Tel: 01273 291314

Ward Affected: All Wards

- 42 ANNUAL SURVEILLANCE REPORT 93 - 134**
Report of the Executive Director, Finance & Resources
Contact Officer: Jo Player Tel: 01273 292488
Ward Affected: All Wards
- 43 REVIEW OF THE CODE OF CONDUCT FOR MEMBERS 135 - 170**
Report of the Executive Lead Officer, Strategy Governance & Law
Contact Officer: Victoria Simpson Tel: 01273 294687
Ward Affected: All Wards
- 44 STANDARDS UPDATE 171 - 174**
Report of the Executive Lead Officer, Strategy Governance & Law
Contact Officer: Victoria Simpson Tel: 01273 294687
Ward Affected: All Wards
- 45 ITEMS REFERRED FOR COUNCIL**
To consider items to be submitted to the 30 January 2020 Council meeting for information.

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

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

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FURTHER INFORMATION

For further details and general enquiries about this meeting contact John Peel, (01273 291058, email john.peel@brighton-hove.gov.uk) or email democratic.services@brighton-hove.gov.uk

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BRIGHTON & HOVE CITY COUNCIL

AUDIT & STANDARDS COMMITTEE

4.00pm 17 SEPTEMBER 2019

COUNCIL CHAMBER, HOVE TOWN HALL

MINUTES

Present: Councillors Littman (Chair) Appich (Group Spokesperson), Hamilton, Hugh-Jones, Nemeth, Peltzer Dunn, Robins and West

Independent Members present: Dr David Horne and Helen Aston

PART ONE

18 PROCEDURAL BUSINESS

18a Declarations of substitutes

18.1 There were none

18b Declarations of interests

18.2 There were none

18c Exclusion of the press and public

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

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

19 MINUTES

19.1 **RESOLVED:** That the minutes of the previous meeting held on 23 July 2019 be approved and signed as the correct record.

20 CHAIR'S COMMUNICATIONS

- 20.1 The Chair communicated the information below regarding the number of service areas with zero staff sickness days.

Directorate	Staff	Staff with no sickness	%
Health & Adult Social Care	894	272	30%
Families Children & Learning	1,577	604	38%
Neighbourhoods Communities & Housing	742	243	33%
Economy Environment & Culture	1288	535	42%
Finance & Resources	698	251	36%
Chief Executive	3	3	100%
Strategy Governance & Law	237	100	42%
Grand Total	5,439	2,008	37%

21 CALL OVER

- 21.1 The following items were reserved for discussion:

Item 24 – Strategic Risk Focus SR13, SR20, SR32 and SR33
 Item 25 – Internal Audit Progress Report Quarter 1
 Item 28 – Home to School Transport (Procurement)

- 21.2 The following items were not called and therefore have been approved with the recommendations therein and adopted:

Item 26 – External Audit – Update Audit Findings Report 2018/19
 Item 27 – Approval of the Revised Audited Statement of Accounts
 Item 29 – Whistleblowing Policy
 Item 30 – Standards Update

22 PUBLIC INVOLVEMENT

- 22.1 There were none.

23 MEMBER INVOLVEMENT

(C) LETTERS

(i) School Transport- Councillors Wares and Mears

- 23.1 Councillors Mary Mears and Lee Wares spoke on the letter to the committee. It was considered that another authority should look at the situation as the Members felt there was a lack of information sharing with Councillors. It was noted that Brighton and Hove City Council (BHCC) had apologised but this was not enough. Any investigation should be independent. It has been reported that parents and carers have been horrified. The authors felt shut out of the process following the Policy, Resource & Growth Committee on 11 July 2019 when the Members were not allowed to ask further questions. Councillors Mary Mears and Lee Wares considered a cross party scrutiny panel would

be the preferred way forward. It has been calculated that 32,000 hours of teaching has been lost and this is not considered acceptable by the Members.

- 23.2 The Chair considered an external investigation would be preferable to a cross party scrutiny panel and no additional review is needed. The letter is noted, although the letter referred to was not the same as the agenda.
- 23.3 Councillor Garry Peltzer-Dunn considered that an internal audit may be to close. The honesty of appendix 1 was noted.
- 23.4 Councillor Alan Robins expressed concerns regarding which letter was being discussed. The decision of the Children, Young People and Skills (CYPS) Committee was noted.
- 23.5 Councillor Les Hamilton felt that a report should have come before CYPS first. It was noted that all parents and carers would be contact within 24 hours of the CYPS committee on Monday 16 September 2019. The phone calls need to be acted on with information for way forward.
- 23.6 Councillor Pete West questioned the way the issues were being dealt with and noted that not all Councillors agreed. The councillor did not support an external audit.
- 23.7 Councillor Robert Nemeth felt more detailed information would have been more appropriate for the A&S Committee.
- 23.8 Councillor Garry Peltzer-Dunn was informed that item 28 on the agenda included more detail and was the response to the original letter.
- 23.9 **Resolved:** That the Committee note the Letter.

24 STRATEGIC RISK FOCUS: SR13, SR20, SR32 AND SR33

- 24.1 The committee received an introduction to the report from Jackie Algar which provided the Committee with details of any changes to the council's Strategic Risk Register (SRR) last reviewed by the Executive Leadership Team (ELT) on 14 August 2019.
- 24.2 Councillor Pete West was expressed concerns that the SR36 was rated as 5 (Almost Certain - likelihood) x 4 (Major) and not 5 x 5 (Catastrophic impact). The Chair expressed the same concerns.
- 24.3 Dave Kuenssberg felt more detail would be appreciated by the Members and Officers could do a 'deep dive'.
- 24.4 Councillor Alan Robins felt that under SR15 Children should be rated with an impact of 5 (Catastrophic) and no less.
- 24.5 The Committee were informed that regular audits are held. Training is critical to staff understanding and ability to implement safeguarding for adults and children.
- 24.6 Councillor Siriol Hugh-Jones was informed by Robert Persey that the movements of adults are lesser than children. Adult support is usually based care in the home or in a

Care home. It was noted that due diligence would be cared out whoever was being transported and any neglect would be reviewed with the provider. It was also noted that vulnerable adults require services to the same level as children. The committee were informed that workshops are to be set up for Members regarding safeguarding.

- 24.7 The committee were informed that under SR20 the risks were challenging with a fast-moving situation in the NHS. The front-line operations are good. The financial repercussions are a challenge. The Health and Wellbeing Board will review the situation.
- 24.8 Dr Horne confirmed that the Winter Plan has been agreed and the risk management was better than perceived. It was noted that the key risks have been agreed to filter through NHS with the Clinical Commissioning Group (CCG). This is considered better collaboration for the future.
- 24.9 Robert Persey Director HASC informed the Members that SR33 'Not providing adequate housing and support for people with significant and complex needs' involved challenges when residential care units can institutionalise residents. It was noted that this challenge and was being worked on by BHCC to achieve understanding and resolution. It was also noted that meetings are being held at BHCC to give more holistic view.
- 24.10 Councillor Siriol Hugh-Jones was informed that a report regarding the assessment of older people's accommodation would be presented at the November 2019 meeting.
- 24.11 Councillor Garry Peltzer-Dunn was informed that the joint homeless and rough sleepers' strategy will continue to be developed to ensure the right services are ready to meet needs. An update is scheduled for January 2020.
- 24.12 The Committee were informed that with regard to SR32 the fatality of an employee at a school was being investigated. It was noted that the Health & Safety Executive recommendations following a visit to City Clean was an improvement notice was still awaited from H&SE to generate increased resource to develop and action plan and revised risk assessment process. The Members were also informed that the insurance liability was under review.
- 24.13 Councillor Carmen Appich was informed by Dave Kuenssberg that the wellbeing steering group was linked to the Wellbeing Board and covers different service areas all working together. With reference to Grenfell Tower, the Councillor Appich was informed by Mike Meik that the need for sprinklers in high rise blocks was seen as urgent. It was noted that resident groups have been active on this point and have requested new systems. New builds have new to standard sprinklers. The fitting of new systems to older buildings is very challenging. The issue of noise for manual staff is being reviewed and noted that this is not just a construction issue.
- 24.14 Councillor Siriol Hugh-Jones was informed that the replacement of fire doors was an issue. Doors across the city have been looked at. The industry standards have not been agreed since Grenfell, however replacing will need to take place.
- 24.15 Councillor Pete West was assured that although the dense workloads of staff the risk actions do not increase. Health and Safety is a priority across the city. With reference to the school incident all the H&S practices have bene reviewed. The Members were

assured that the culture of safety was taken very seriously, and the risk was balanced against resource. It was noted that managers were not liable, the authority carried the legal risk. Individuals can be prosecuted if considered negligent. In the case of the school no case law is available at the present, the Council, the governors or both may be prosecuted.

24.16 Councillor Garry Peltzer-Dunn was informed by Mark Meik that fire doors installed in Council properties were compliant at time of fitting. It was noted that a risk review was carried out and the doors are deemed to have a low risk of failing. Liability is a legal minefield at this time, but the doors will be replaced, and the safety is at the core of replacing and installing sprinklers.

24.17 **Resolved:** That the Audit & Standards Committee:

- 1) Note in paragraphs 3.3 the changes to the council's SRR as agreed at ELT on 14 August 2019.
- 2) Note Appendix 1 for details of SR13, SR20, SR33 and SR32.
- 3) Note Appendix 2 'Information on the council's risk management process relative to Strategic Risks (SRs); and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks'.
- 4) Having considered Appendix 1 and any clarification and/or comments from the officers, the Committee makes any recommendations it considers appropriate to the relevant Council body.

25 INTERNAL AUDIT PROGRESS REPORT – QUARTER 1 (1 APRIL TO 31 JUNE 2019)

25.1 **Resolved:** Members noted the report and considered any further action required in response to the issues raised.

26 EXTERNAL AUDIT - UPDATE AUDIT FINDINGS REPORT 2018/19

26.1 **Resolved:** The Audit & Standards Committee noted the findings set out in the updated Audit Findings Report 2018/19, asks questions of the auditor as necessary and raises any other matters relevant to the audit of the financial statements.

27 APPROVAL OF THE REVISED AUDITED STATEMENT OF ACCOUNTS 2018/19

27.1 **Resolved:** That the Audit & Standards Committee:

- 1) Note the updated findings of the auditor (Grant Thornton) in their updated Audit Findings Report (AFR).
- 2) Approve the revised, audited Statement of Accounts for 2018/19.
- 3) Approve the revised Letter of Representation.

28 HOME TO SCHOOL TRANSPORT (PROCUREMENT ISSUE)

- 28.1 The Committee considered a report that set out the results of the Internal Audit undertaken on decisions surrounding the recent home to school transport procurement following a request by the committee to do so.
- 28.2 Councillor Garry Peltzer-Dunn commended the officer report and the internal audit work is correct. It was considered that officers were right to ask questions and the duty of the A&S Committee to report back on any weaknesses in appendix A, and to ascertain if the way forward is workable.
- 28.3 Mark Dallen explained some parts of the report to the committee and reiterated that a formal business case was not required.
- 28.4 Councillor Siriol Hugh-Jones was informed that the CYPS Committee had dealt with the issues and no more was required from the A&S Committee.
- 28.5 Councillor Robert Nemeth was informed that no additional authority was required, and the report was found acceptable by the legal officers.
- 28.6 Councillor Pete West noted the report and believed it answered questions that had been raised. It was noted that the liability was with BHCC and this was not a new issue.
- 28.7 **Resolved:** Members noted the report and consider any further action required in response to the issues raised.

29 WHISTLEBLOWING POLICY

- 29.1 **Resolved:** That the Audit and Standards Committee:
- 1) note the information on the current arrangements for dealing with whistleblowing.
 - 2) That Members agree the changes proposed in paragraph 3.7 to enable Members to use the whistleblowing policy and those proposed in paragraph 3.8 to include allegations of discrimination related to protected characteristics within scope of the whistleblowing policy.
 - 3) That the Monitoring Officer is authorised to reissue the policy with the changes mentioned above.

30 STANDARDS UPDATE

- 30.1 **Resolved:** The Audit & Standards Committee note that the information provided in the report on Member complaints and on standards related matters.

31 ITEMS REFERRED FOR COUNCIL

- 31.1 No items were referred to Full Council.

32 ITEMS FOR THE NEXT MEETING

32.1 There were no items suggested for the next meeting.

The meeting concluded at 6.02pm

Signed

Chair

Dated this

day of

Subject:	Strategic Risk Focus: SR35, SR36, SR23 and SR30		
Date of Meeting:	14 January 2020		
Report of:	Executive Lead Officer for Strategy, Governance & Law (Monitoring Officer)		
Contact Officer:	Name:	Jackie Algar	Tel: 01273 291273
	Email:	jackie.algar@brighton-hove.gov.uk	
Ward(s) affected:	(All Wards);		

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

- 1.1 The Audit & Standards Committee has a role to monitor and form an opinion on the effectiveness of risk management and internal control. As part of discharging this role the Committee focuses on at least two Strategic Risks (SRs) at each of their meetings.
- 1.2 This report also provides the Committee with details of any changes to the city council's Strategic Risk Register (SRR) last reviewed by the Executive Leadership Team (ELT) on 20 November 2019.
- 1.3 The Strategic Risk Focus is based on detail provided in Appendix 1 of this report which records the actions taken (existing controls) and future actions (risk actions) to manage these strategic risks.
- 1.4 The officers available to answer Members' questions will be for:
SR35 – Unable to manage serious risks and opportunities resulting from the impact of Brexit on the local and regional society and economy - Abraham Ghebre-Ghiorghis, Executive Lead Officer, Strategy, Governance & Law;
SR30 – Not fulfilling the expectations of residents, businesses, government and the wider community that Brighton & Hove City Council will lead the city well and be stronger in an uncertain environment - Geoff Raw, Chief Executive;
And Nick Hibberd, Executive Director, Economy, Environment & Culture will be available for these SRs:
SR36 - Not taking all actions required to address climate and ecological change, and making our city carbon neutral by 2030; and
SR23 – Unable to develop and deliver an effective Regeneration and Investment Strategy for the Seafront and ensure effective maintenance of the seafront infrastructure.

2. RECOMMENDATIONS:

That the Audit & Standards Committee:

- 2.1 Note in paragraphs 3.3 the changes to the council's SRR as agreed at ELT on 20 November 2019.
- 2.2 Note Appendix 1 for details of SR35, SR30, SR36 and SR23.
- 2.3 Note Appendix 2 'Information on the council's risk management process relative to Strategic Risks (SRs); and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks'.
- 2.4 Having considered Appendix 1 and any clarification and/or comments from the officers, the Committee makes any recommendations it considers appropriate to the relevant council body.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The SRR details the current prioritised risks which may affect the achievement of the council's Corporate Plan purpose, including in relation to its work with other organisations across the city. It is reviewed and agreed by ELT quarterly after DMT reviews which include discussions of their individual Directorate Risk Lists which influence Directorate service activity through delivery of Directorate Plans.
- 3.2 Appendix 2 is intended to provide information on the council's risk management process relative to Strategic Risks (SRs) and is attached as a separate appendix in order to provide background reference and enable Members to focus on the changes to the SRR and any changes to the risk management process by the ELT.
- 3.3 Summary of changes to the SRR as a result of the ELT review on 20 November 2019.

















The SRR is a public document which is supported by data collected on software CAMMS Risk, a module of CAMMS Strategy. A detailed report is provided at Appendix 2 but below is Table 1 showing the current 18 Strategic Risks in order of the highest Revised Risk score as agreed by ELT on 20 November 2019 and informed by Directorate Risk Management risk review sessions in September – October 2019.













As a result of ELT's review note that:









- i. No risks were removed or added;
- ii. There were two amendments to risk scores:
 - SR20 which was reduced partly due to the Sussex Partnership Foundation Trust (SPFT) and the city council signature of a S75 agreement from 3 October 2019 until 31 March 2021; and the work that is underway to develop and simplify Integrated Discharge Pathways with service users and their families, involving partners.
 - SR15 the Revised Risk score was increased to reflect comments made by Members of the Audit & Standards Committee.
- iii. There were no changes to risk titles apart from the minor change to the risk title of SR23 (the word 'regeneration' was added).

Changes are denoted in italics in the table below.

Table 1 Strategic Risks

Risk Nos.	Risk Title	Initial Risk Score Likelihood (L) x Impact (I) & Direction of Travel (DOT)	Revised Risk Score Likelihood (L) x Impact (I) & DOT	Committee & Chair	Risk Owner
SR2	The Council is not financially sustainable	5 x 4 ◀▶  RED	4 x 4 ◀▶  RED	Policy & Resources Committee - Cllr. Platts	Executive Director, Finance & Resources
SR36	Not taking all actions required to address climate and ecological change, and making our city carbon neutral by 2030	5 x 4 ◀▶  RED	4 x 4 ◀▶  RED	Environment, Transport & Sustainability Committee – Cllr. Pissaridou	Executive Director, Economy, Environment & Culture
SR32	Sub-standard health & safety measures lead to personal injury, prosecution, financial losses and reputational damage	5 x 4 ◀▶  RED	4 x 4 ◀▶  RED	Policy & Resources Committee – Cllr. Platts	Executive Director, Finance & Resources
SR20	Failure to achieve Health and Social Care outcomes due to organisational and resource pressures on the Clinical Commissioning Group (CCG) and Brighton & Hove City Council (BHCC)	4 x 4 ▼  RED <i>(was 5 x 4 RED)</i>	3 x 4 ▼  AMBER <i>(was 4 x 4 RED)</i>	Health & Wellbeing Board – Cllr. Moonan	Executive Director, Health & Adult Social Care
SR33	Not providing adequate housing and support for people with significant and complex needs	4 x 4 ◀▶  RED	3 x 4 ◀▶  AMBER	Health & Wellbeing Board – Cllr. Moonan and Housing Committee – Cllr. Williams	Executive Director, Health & Adult Social Care
SR18	The organisation is unable to deliver its functions in a modern, efficient way due to the lack of appropriate technology	4 x 4 ◀▶  RED	3 x 4 ◀▶  AMBER	Policy & Resources Committee – Cllr. Platts	Executive Director, Finance & Resources
SR10	Corporate Information Assets are inadequately controlled and vulnerable to cyber attack	4 x 4 ◀▶  RED	4 x 3 ◀▶  AMBER	Policy & Resources Committee - Cllr. Platts	Executive Director, Finance & Resources
SR35	Unable to manage serious risks and opportunities resulting from the impact of Brexit on the local and regional society and	4 x 4 ◀▶  RED	4 x 3 ◀▶  AMBER	Policy & Resources Committee - Cllr. Platts	Executive Lead Officer, Strategy, Governance

Risk Nos.	Risk Title	Initial Risk Score Likelihood (L) x Impact (I) & Direction of Travel (DOT)	Revised Risk Score Likelihood (L) x Impact (I) & DOT	Committee & Chair	Risk Owner
	economy				& Law
SR13	Not keeping Vulnerable Adults Safe from harm and abuse	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Health & Wellbeing Board – Cllr. Moonan	Executive Director, Health & Adult Social Care
SR21	Unable to manage housing pressures and deliver new housing supply	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Housing Committee – Cllr. Williams	Interim Executive Director, Housing, Neighbourhoods & Communities
SR25	The lack of organisational capacity leads to sub-optimal service outcomes, failure to meet statutory obligations, and reputational damage	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Policy & Resources Committee – Cllr. Platts	Executive Director, Finance & Resources
SR24	The impact of Welfare Reform increases need and demand for services	4 x 3 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Policy & Resources Committee – Cllr. Platts	Executive Director, Finance & Resources
SR23	Unable to develop and deliver an effective Regeneration and Investment Strategy for the Seafront and ensure effective maintenance of the seafront infrastructure <i>(note addition of the word Regeneration)</i>	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Environment, Transport & Sustainability Committee – Cllr. Pissaridou; and Tourism, Equalities, Communities & Culture Committee – Cllr. Robins	Executive Director, Economy, Environment & Culture
SR26	Not strengthening the council's relationship with citizens	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Tourism, Equalities, Communities & Culture Committee –	Interim Executive Director, Housing, Neighbourhoods

Risk Nos.	Risk Title	Initial Risk Score Likelihood (L) x Impact (I) & Direction of Travel (DOT)	Revised Risk Score Likelihood (L) x Impact (I) & DOT	Committee & Chair	Risk Owner
				Cllr. Robins	oods & Communitie s
SR29	Ineffective contract performance management leads to sub-optimal service outcomes, financial irregularity and losses, and reputational damage	3 x 4 ◀▶  AMBER	3 x 3 ◀▶  AMBER	Policy & Resources Committee - Cllr. Platts	Executive Director, Finance & Resources
SR30	Not fulfilling the expectations of residents, businesses, government and the wider community that Brighton & Hove City Council will lead the city well and be stronger in an uncertain environment	3 x 4 ◀▶  AMBER	2 x 4 ◀▶  AMBER	Policy & , Resources Committee - Cllr. Platts	Chief Executive
SR15	Not keeping Children Safe from harm and abuse	3 x 4 ◀▶  AMBER	2 x 4 ▲  AMBER <i>(Was 2 x 3 YELLOW, score increased after Members' comments)</i>	Children, Young People & Skills Committee – Cllr. Allcock	Acting Executive Director Families, Children & Learning
SR34	Ambitions to improve offer for staff which have been stated in Our People Promise may not be realised	3 x 4 ◀▶  AMBER	2 x 3 ◀▶  YELLOW	Policy & Resources Committee - Cllr. Platts	Executive Director, Finance & Resources

3.4 Appendix 2 provides 'Information on the council's risk management process relative to Strategic Risks (SRs) and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks'. It is intended to assist Members to scrutinise the information in Appendix 1 and ask questions of the Strategic Risk Owners and officers in order to assist Members on their assurance role at this Committee.

4. FINANCIAL & OTHER IMPLICATIONS

Financial Implications

- 4.1 For each Strategic Risk there is detail of the actions already in place ('Existing Controls') or work to be done as part of business or project plans ('Risk Actions') to address the strategic risk. Potentially these may have significant financial implications for the authority either directly or indirectly. The associated financial risks are considered during the Targeted Budget Management process and the development of the Medium Term Financial Strategy.

Finance Officer Consulted: James Hengeveld

Date: 09/12/2019

Legal Implications

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

Lawyer Consulted: Victoria Simpson

Date: 29/11/2019

SUPPORTING DOCUMENTATION

Appendices:

1. Strategic Risk Focus report: SR35, SR30, SR36 and SR23.
2. Information on the council's risk management process relative to Strategic Risks (SRs) and Suggested questions for Members to ask Risk Owners and officers on Strategic Risks.

Background Documents:

None

Brighton & Hove City Council

Appendix 1 Strategic Risk Focus Report:

SR35; SR36; SR23; and SR30.

All

Print Date: 19-Dec-2019

19-Dec-2019

Initial Rating

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

Revised Rating

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



1 - 3
Low
Monitor periodically

4 - 7
Moderate
Monitor if the risk levels increase

8 - 14
Significant
Review and ensure effective controls

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

Risk Details

Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR35	Unable to manage serious risks and opportunities resulting from the impact of Brexit on the local and regional society and economy.	Executive Lead Officer Strategy, Governance and Law Brexit Coordinator	BHCC Strategic Risk	20/11/19	Threat	Treat	 L4 x I4	 L4 x I3		Revised: Uncertain

Causes

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

The timescale and final details of the Brexit implementation is uncertain and has potential impacts on:

1. Existing rights and regulations applying to EU citizens residing in the UK pre- Brexit
2. The ability of partners in the health & social care sector to engage and retain staff
3. Local projects unable to secure future EU funding after Brexit
4. Travel and hospitality businesses' ability to recruit or employ foreign nationals
5. Pool of workers reducing (B&H has a larger pool of European residents)
6. Travel in and out of Greater Brighton due to changed border controls

Potential Consequence(s)

1. Fragmented communities leading to civil unrest
2. Increased demand for advice services for EU residents, citizens & businesses
3. Reduced city wealth
4. Reduction in workforce, skills and capacity affecting health and social care in the city
5. Disruption to supply chains - food, fuel, medical supplies and other key components of city infrastructure
6. Less able to manage local environmental impacts e.g. waste disposal
7. Less certainty around export/import regulations
8. Impact on food safety regulations and standards inc. Export Health Certificates

Existing Controls

First Line of Defence – Management Actions

First Line of Defence - Management Actions

1. Officer Brexit Resilience & Planning Group (BRPG) chaired by ELO SGL to monitor developments and co-ordinate proposals for corporate response. Core Group meeting schedule kept under review and informed by national planning assumptions & SitRep reports going to ELT and all Members and discussed at DMTs.
2. Key areas of potential impact highlighted in SitRep and monitored by BRPG with necessary mitigating activity clearly outlined. Summary provided through Readiness Report available on council website (<https://new.brighton-hove.gov.uk/sites/default/files/news/brexit/brexit-readiness-report-october-2019.pdf>)
3. Brexit Member Working Group providing Member oversight of the potential impacts of Brexit on Brighton & Hove and coordinating relations with city stakeholders and communities where potential impact has been identified by the Brexit Resilience & Planning Group.
4. City Management Board (CMB) city resilience planning as part of their city leadership role.
5. Established contact on potential Brexit impacts with our waste contractor Veolia, inc. on post-Brexit and future waste disposal arrangements including reselling of recycled materials
6. Communications are open within council and with city partners to escalate, disseminate and develop solutions to emerging issues through the Brexit Coordinator and the BHCC Communications Team.
7. BHCC Corporate Procurement Team aware of new UK portal for issuing OJEU notices and other matters.
8. BHCC monitoring developments on employment rules and laws.
9. BHCC leading on the Sussex wide supply chain and logistics cell/workstream on behalf of the Sussex Resilience Forum.
10. FCL and HASC monitoring potential impacts on service delivery e.g HM Govt's mutual recognition of social work qualification in relation to service delivery and immigration issues for workforce and service users.

Second Line of Defence – Corporate Oversight

1. ELT role as strategic lead for Brexit response through monthly overview of BRPG actions.
2. BHCC is part of the Sussex Resilience Forum (SRF). The SRF is working with colleagues both regionally and nationally to review contingency plans and ensure the county is prepared for possible Brexit impacts.
3. BHCC Director of Public Health is the co-Chair of the Local Health Resilience Partnership and attends meetings and NHS preparedness exercises.

Third Line of Defence – Independent Assurance

BHCC completes a range of HM Government surveys and returns. At this stage there is no view communicated by HM Government on BHCC actions but post-Brexit assessment from Home Office of BHCC actions may occur.

Reason for Uncertain rating in Effectiveness of Controls - there is still uncertainty and the risk actions are in development.

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
All council services to ensure that Business Continuity Plans consider potential impacts on contracts and supply chain issues related to a Brexit 'no deal' scenario.	Environmental Health Manager	50	31/01/20	06/02/19	31/01/20
<p>Comments: NCH Emergency Planning and Resilience (EPR) team are part of BRPG. ELT to ensure all their BC arrangements are considered in line with SitRep report. Senior officers risk and resilience training part 1 has been delivered. BCPs reviewed in the context of Brexit.</p>					
All directorates to ensure providers messaged to request reviewing of Business Continuity Plans in relation to a 'no deal' Brexit scenario.	Executive Lead Officer Strategy, Governance and Law	60	31/01/20	25/09/19	31/01/20
<p>Comments: Audit trail of messaging to providers requested by PPS for corporate coordination to provide evidence and offer guidance to assist those with any issues. Further assistance required from Procurement to ensure effective coverage across all council services.</p>					
Awareness raising of EU Settlement Scheme (EUSS) and available support across the city for residents, businesses and partners.	Head of Communications	30	31/01/20	06/02/19	31/01/20
<p>Comments: Communications activity currently being planned for delivery post General Election 2019. Including key messages for residents and businesses about how they can prepare for Brexit. Free ID document checking service being provided through Brighton Town Hall Registrars Office.</p>					
BHCC to maintain ongoing liaison with Shoreham Port through SRF planning arrangements.	Environmental Health Manager	60	31/01/20	06/02/19	31/01/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: EEC & NCH responsibility being covered by 2 officers, the AD City Transport and the Regulatory Services Manager. Shoreham Port risk assessment moved to Green Oct 2019. Ongoing engagement and monitoring continues.</p>					
<p>Brexit Resilience & Planning Group (BRPG) to make recommendations for ELT agreement for the prioritisation of Govt funding related to Brexit impact mitigation activities including specific communications needs and staffing resources.</p>	<p>Head of Policy, Partnerships & Scrutiny</p>	<p>75</p>	<p>31/01/20</p>	<p>06/02/19</p>	<p>31/01/20</p>
<p>Comments: Brexit Coordinator appointed Sept 2019 (part of PPS team) Brexit Communications Officer appointed Nov 2019 (part of Communications team) 4 x EU Settlement Scheme (EUSS) scanning devices purchased. In use at Brighton Town Hall as part of free ID checking service for the EUSS scheme for residents. Emergency Planning College/Cabinet Office risk & resilience training for senior officers - 2 sessions delivered - follow up session scheduled for Jan 2020. Communications plans in development for post General Election period.</p>					
<p>Cross-party Member Working Group maintaining oversight of the potential impacts of Brexit on Brighton & Hove and co-ordinate relations with city stakeholders and communities where potential impact has been identified by the Brexit Resilience & Planning Group.</p>	<p>Executive Lead Officer Strategy, Governance and Law</p>	<p>65</p>	<p>31/01/20</p>	<p>25/04/19</p>	<p>31/01/20</p>
<p>Comments: Scheduling of meetings influenced by national planning assumptions. Previously taking place fortnightly and will be reviewed after 2019 General Election. Group provides direction to the BRPG through agreement of actions and financial sign-off.</p>					
<p>Fortnightly SitRep monitoring report compiled by BRPG on potential impacts and related activity to mitigate.</p>	<p>Brexit Coordinator</p>	<p>80</p>	<p>31/01/20</p>	<p>06/02/19</p>	<p>31/01/20</p>

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
Comments: Brexit Coordinator collating and sharing fortnightly report - Frequency is reviewed reviewed depending on national planning assumptions					
Health & Social Care services provide contact point for providers if they have Brexit issues related to following the CQC guidance provided to providers.	Head of Adult Social Care Commissioning	60	31/01/20	25/09/19	31/01/20
Comments: Emails sent to all providers outlining areas of potential impact for them to consider in their Business Continuity Plans and signposting to additional Gov.uk guidance and support.					

Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR36	Not taking all actions required to address climate and ecological change, and making our city carbon neutral by 2030	Executive Director Economy, Environment & Culture Business Development Manager - Transport International & Sustainability Programme Manager	BHCC Strategic Risk	20/11/19	Threat	Treat	Red L5 x I4	Red L4 x I4		Revised: Uncertain

Causes

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

The climate is warming and studies recommend that actions must be taken to keep global warming to under 1.5 degrees to avoid negative catastrophic impacts on bio-diversity and the ecology of the planet.

Potential Consequence(s)

If this is not addressed it could cause:

- Sea-level rise
- Water shortage
- Crop failure and food insecurity
- Increased extreme weather events
- Extinction of species
- Ocean acidification
- Impact on public health

Existing Controls

First Line of Defence - Management Actions

1. Brighton & Hove is part of the UNESCO bio-sphere designated area with bio-diversity plan overseen by the bio-sphere board
 2. BHCC the Brighton & Hove Economic Partnership and the Chamber of Commerce have agreed an economic strategy which includes creating a sustainable city and moving towards a circular economy as a core objective
 3. BHCC owns 12,000 acres of downland and agricultural farmland surrounding the city and works in partnership with Southern Water and the South Downs National Park Authority on initiatives to protect the chalk aquifer and city water supply
- BHCC and the Transport Partnership work together to deliver sustainable transport policies through the delivery of the Local Transport Plan (LTP)
- Flood and Coastal Erosion risk management - Brighton Marina to River Adur coastal protection scheme undertaken in partnership with the Environment Agency (EA), BHCC, Adur District Council, Shoreham Port Authority.

Second Line of Defence - Corporate Oversight

1. BHCC's Environment, Transport & Sustainability (ETS) Committee is responsible for the council's functions in relation to coastal protection and flood defence; sustainability; parks; open spaces; sustainable transport; highways management and environmental health
2. Bio-sphere board oversees delivery of bio diversity plan
3. BHCC's Policy & Resources (PR) Committee to review the Climate Change Commission
4. Air quality Programme Board
5. Greater Brighton Economic Board's Infrastructure Panel has oversight of Energy and water plans.

Third Line of Defence - Independent Assurance

Environment Agency in respect of flood

Reason for Uncertainty in Effectiveness of Controls - The EEC Directorate Plan has actions specified but there will also be new actions added as the Climate Change agenda issues are determined by the new council post May 2019 election.

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
Create a new Climate change fund	Assistant Director - City Development & Regeneration	50	31/03/20	24/06/19	31/03/20
Comments: First call for SCRIF funding has gone out, bids due in on 18/10/19. Members Oversight Group in the diary for early November to review the bids.					
Develop a local cycling and walking infrastructure plan	Assistant Director City Transport	20	31/12/20	21/05/19	31/12/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: Further to the approval of the Task & Finish Group terms of reference at ETS Committee on 9th October 19, the first meeting of the group has now taken place, at which a revised summary programme was agreed, which will see delivery of LCWIP by the end of 2020. Four suppliers (with LCWIP development experience) will shortly be invited to bid for the provision of technical support to the council. An update will be provided to ETS Committee on 17th March 2020, to include the revised Scoping Report (setting out the programme, governance, engagement activities and key stakeholder groups).</p>					
Develop a new sustainable transport strategy (LTP5) for the city	Assistant Director City Transport	20	31/03/21	21/05/19	31/03/21
<p>Comments: A revised programme has been developed to incorporate a visioning stage (now largely complete) and two rounds of public consultation of up to 10 weeks each) as recommended by Communications. LTP5 is now forecast to be delivered by March 2021. During the autumn a programme board has been established, and initial engagement workshops have been undertaken with ETS Committee councillors and officers in City Transport and across all council services. The first round of public consultation scheduled to take place from late January to April has been delayed, awaiting clarification on how this can best be aligned or incorporated with the 2030 Carbon Neutral Programme including the establishment of a City Assembly.</p>					
Develop a route map towards a Circular Economy	Assistant Director - City Development & Regeneration	25	31/03/20	21/05/19	31/03/20
<p>Comments: Initial events on Built Environment and Visitor Economy held in June/July 2019. Accelerator events now happening with specific team, digging further into the detail. Soenecs commissioned to write strategy based on outcome of events.</p>					
Develop a whole Downland Estate plan by March 2020	Assistant Director - Property & Design	48	31/03/20	21/05/19	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: Presentation to EEC Modernisation Board and further detailed presentation to Ex Dir from Savills regarding strategy, aims and process Workshops with stakeholders are currently taking place to inform the audit of assets and natural capital themes. Rural portfolio presentation to Asset Member Board in October to include progress on the City Downland Estate Plan.</p>					
<p>Establish a 2030 Carbon Neutral City Programme to report to P&R Committee (involves work between the ED EEC; the Executive Lead Officer, SGL; and Head of Policy, Partnerships & Scrutiny)</p>	<p>Executive Director Economy, Environment & Culture</p>	<p>35</p>	<p>31/03/20</p>	<p>21/05/19</p>	<p>31/03/20</p>
<p>Comments:</p> <ul style="list-style-type: none"> • Draft 2030 Carbon Neutral Programme Initiation Document to be considered by P&R committee in December 2019 • Cross-party 2030 Carbon Neutral Programme Board to be established with terms of reference agreed by P&R Committee, December 2019. • Draft specification for the tendering for support to establish and deliver as deliberative engagement (Citizens Assembly) process to be agreed by December P&R Committee • Review of current initiatives that currently tackle climate change developed, November 2019 • Governance structure for officer steering group and project team established, October 2019 • Collation of outline the baseline data and measuring tool, October 2019 					
<p>Establish a 2030 Carbon Neutral Programme and governance framework</p>	<p>Head of Policy, Partnerships & Scrutiny</p>	<p>10</p>	<p>30/05/20</p>	<p>10/10/19</p>	<p>30/05/20</p>
<p>Comments: Draft Programme Initiation Document considered by Member steering group 09 Oct 19</p>					

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
Improve rates of recycling and re-use and develop business case for food waste collection	Assistant Director - City Environmental Management	45	31/10/20	21/05/19	31/10/20
<p>Comments: The percentage of household waste sent for reuse, recycling and composting increased from 28.70% in 2017/18 to 28.90% in 2018/19.</p> <p>Actions:</p> <ul style="list-style-type: none"> • improving the content on the website • improving the quality and frequency of recycling communication sent to residents; this started over the summer and will pick up again over Christmas; (different communications are being prepared for different stakeholders) • articles have been published in student magazines and flyers prepared for handing out to language schools and universities on what can and cannot be recycled. • rollout of on-the-go recycling litter bins has commenced, starting between Meeting House Café and Palace Pier as this area has the highest footfall. • residents on the garden waste waiting list are gradually being invited to join the service where capacity on existing rounds allows. Work continues on the viability of a third round as it is unlikely that there is sufficient capacity within the existing rounds to invite all of those on the waiting list to join the service. • rollout of recycling wheelie bins continues following completion of the wheelie bin audit • Members have agreed, in principle, design principles for a new communal bin system and associated fleet to improve the efficiency and reliability of the service. This will include different bin colours for different types of waste, improved signage and sufficient capacity in neighbourhoods across the city • working with Veolia to ensure all leaves collected during the autumn are sent for composting • working with Sussex University and their volunteer student ambassadors who door knock and talk to students about how to live responsibly in the city. they are keen to include our messaging to ensure it is consistent with what Cityclean is doing • looking to bring an options paper to Environment, Transport & Sustainability Committee in 2020/21 regarding a food waste collection service. • exploring options with B&H Food Partnership on how to extend the community composting scheme further. 					
Review Biosphere Management plan	Assistant Director - City Development & Regeneration	25	31/03/20	21/05/19	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: New Biosphere Programme Manager has started to review the existing management plan. The Biosphere Board held a workshop on principles and alignment with UN sustainable development goals at the last meeting.</p>					
<p>Review procurement of fleet to deliver lower emissions & improve air quality</p>	<p>Assistant Director - City Environmental Management</p>	<p>25</p>	<p>31/10/19</p>	<p>21/05/19</p>	<p>31/10/19</p>
<p>Comments: Approval has been obtained for spending of c.£1million on immediate fleet replacement needs. £300k of this has been allocated, and directors will be asked to authorise spending on the remainder as soon as the exact vehicles required have been identified. An options appraisal and business case will be presented to PRG in October 19 setting out a preferred strategy for re-establishing a sustainable fleet replacement strategy for the long term. Corporate Finance are supporting the financial modelling for this work. The guiding principles will be 1) that the vehicles purchased will support a sustainable and reliable delivery of the service, 2) that progress will be made towards reducing carbon footprint where this can be achieved efficiently. It is expected that the options appraisal will show that a mix of new and second hand vehicles will be the most cost-effective way to meet our requirements in the medium and long term. A project is underway to hire and test electric vehicles to inform and de-risk our preferred option.</p>					
<p>Roll out a network of electric vehicle charging points (EVCP) - Directorate Plan ref. 1.1.5</p>	<p>Assistant Director City Transport</p>	<p>60</p>	<p>31/03/20</p>	<p>21/05/19</p>	<p>31/03/20</p>
<p>Comments: The council is in the process of installing the lamp post chargers as well as finalising arrangements for the existing 'fast' network for charging a fee for the renewable electricity used. Contract has been awarded and on track for installation by the end of January 2020. In November 2018 the council submitted a successful bid for £468k of OLEV (Office of Low Emission Vehicles) funding for 4 rapid charger hubs for taxis. The aim, subject to approval is for the taxi rapid hubs to be installed by April 2020. The public charging network will be powered by 100% renewable energy. On the 12th December 2019 we were informed by the EU grant management service that we have been successful in a bid to demonstrate a portable EV solution for events and an innovative booking system for EV mandatory bays. The funding allocated to BHCC is for 198,602.50 Euros</p>					

Risk Details

Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR23	Unable to develop and deliver an effective Regeneration and Investment Strategy for the Seafront and ensure effective maintenance of the seafront infrastructure	Executive Director Economy, Environment & Culture Business Development Manager - Transport	BHCC Strategic Risk	20/11/19	Threat	Treat	Amber L3 x I4	Amber L3 x I3		Revised: Adequate

Causes

Link to Corporate Plan: Priority Economy, Jobs and Homes: Regenerate the Seafront

The seafront is a city asset which is iconic and contributes to the city's reputation. The council is the lead custodian of the seafront but the benefits are shared by many. At least 5 million people use our seafront every year. It is a very significant attraction in our visitor economy; provides a series of important public spaces for residents; many businesses in the city rely on the draw of the seafront to sustain their organisation's value and to provide an attractive place for stakeholders and employees. It is being used beyond its original design life and, in many ways, is a victim of its own success and affected by the changing patterns and increased demands of usage. Resourcing required to deliver a solution is not readily available and impacts on timing of delivery of any projects. There several ambitious capital, regeneration and investment projects along seafront in various stages of planning development, including the Waterfront project, Shelter Hall, the King Alfred. The deterioration of Madeira Terraces in particular have reached a critical point, requiring fencing and safety measures until a longer term funding is developed which is expected to cost £24 million. The council is proactive in bidding for Heritage Lottery Funds (HLF) but as at 3 January 2019 two bids have been unsuccessful. The City Council is the coast protection authority and is required to deliver coastal strategy studies, coastal protection, and flood defences in partnership with DEFRA and the Environment Agency. Management of climate events, long shore drift and the impact of climate change requires management and re-profiling of the shingle beaches, groynes and sea walls.

Potential Consequence(s)

Without adequate investment the seafront will decline in popularity and impact on the visitor economy and the city and regional economy with potential to affect:

1. the heritages structures and infrastructure along the seafront which require significant investment and ongoing revenue in order to ensure suitability for modern use
2. preservation of the reputation of the city and enhancing its offer and protecting the visitor economy
3. the A259 highway and associated structures, such as the seafront arches and sewage infrastructure which could have an impact upon our transport systems and economy, and effect sewage and foul water management in the city centre
5. management of the impact of climate events and long shore drift upon the city's beaches which would lead to reduction in amenity space impact upon the visitor economy and profitability of small businesses
6. provision of adequate sea protection measures which could lead to coastal flooding impacting upon residents, businesses and visitors.

Existing Controls

First Line of Defence: Management Controls

- 1) Strategic Delivery Board has been established and is actively considering seafront redevelopment opportunities including the Black Rock and King Alfred sites. Project managers provide a monthly report of all projects to the Strategic Delivery Board.
- 2) Department for Transport (DfT) funding secured for the redevelopment of the West Street / A259 Junction and Shelter Hall. Initial infrastructure work commenced late 2015.
- 3) Annual special inspection report on the condition of Madeira Terraces undertaken by Structural Engineering consultants.
- 4) PR&G (Policy, Resources & Growth) committee approval in December 2018 to enter into a conditional land acquisition agreement with Aberdeen Standard Investments for the Brighton Waterfront Project.
- 5) Late 2017 the Save Madeira Terrace crowd funding campaign raised £460K to restore the first three arches and the project is commencing.
- 6) PR&G in January 2019 considered a development agreement for the King Alfred site.
- 7) Physical (weekly and monthly) Inspections of 12km of Coastline and Sea Defences undertaken by Coast Protection Engineer.
8. Seafront Structures supporting the A259 are routinely maintained and restored utilising funding via the Council's LTP annual capital programme.

Second Line of Defence: Corporate Oversight

1. Quarterly monitoring of strategic management of the council's investment in the seafront through the Greater Brighton Economic Board and the Member led Strategic Delivery Board, underpinned by the Officer led Corporate Investment Board (capital) and Modernisation Board (revenue).
2. Member oversight by Regional Flood & Coastal Defence Committee, facilitated and Chaired by Environment Agency.
3. Coast Protection solutions and projects delivery by service lead officer.

Third Line of Defence: Independent Assurance

1. Projects funded by Government departments are overseen by the Greater Brighton Economic Board (quarterly) and Coast to Capital LEP governance arrangements (quarterly) / and by relevant government department (according to their timetable). No funding has been withdrawn to date.
2. DfT, C2C LEP and TfSE funded schemes will be scrutinised by their respective regional officers
3. Internal Audit - Internal audit review of Seafront Investment Strategy (Strategic Risk 23) Reasonable Assurance - December 2018. Internal Audit work on the Waterfront Project in 2017/18. Some independent assurance on this risk is also provided by the Greater Brighton Economic Board (quarterly) and Coast to Capital LEP.
2016/17 audits were Valley Gardens and Shelter Hall (Limited Assurance)
4. Coast Defence includes oversight of B&H's Coastal Defence Strategy and agreement of Business Cases by Environment Agency and DEFRA.

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
Bring forward key development sites that form the City Regeneration Programme: - Waterfront project - King Alfred	Assistant Director - City Development & Regeneration	10	31/03/20	01/04/19	31/03/20
<p>Comments: - Waterfront: ASI looking at central site viability, and considering how the sites relate to each other. May require a standstill agreement to the CLAA while this issue is addressed. Package of enabling works being pursued on Eastern site to secure LEP funding. - King Alfred Housing - Project has been closed down due to Crest withdrawing. Options being looked at, but likely to result in project being delayed for a number of years.</p>					
Deliver a phased programme of works to manage and improve highways and structures related to the seafront	Assistant Director City Transport	65	31/03/21	01/08/16	31/03/21
<p>Comments: Delivery of the programme of improvement works for highway and coastal protection structures along the seafront is implemented utilising the results of the annual inspection programme undertaken by the council's transport projects and civil engineering team. The improvement works programme is funded utilising the City Council's Local Transport Programme (LTP) and external party funding such as DfT and section 106/278 funding. To date, a significant bid for £20M has been submitted to the DfT to fund improvement works to the seafront arches supporting the A259, as the route has been newly designated a Major Roads Network by the Transport for the South East. The outline business case for the improvement of the City's coastal protection assets has also been submitted to the Environment Agency, which will provide new and improved coastal protection. An update on this funding will be provided in the first quarter of 2020.</p>					
Document EEC's statutory responsibilities for coastal protection and highways management for use by Members	Assistant Director City Transport	90	31/10/19	08/04/19	31/10/19
<p>Comments: A short briefing note for Members on Coast Protection and Flooding was drafted including the Highways Management responsibilities.</p>					

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Flood and Coastal Erosion risk management - complete the feasibility and detailed design work prior to implement the Brighton Marina to River Adur coastal protection scheme undertaken in partnership with the Environment Agency (EA), BHCC, Adur District Council, Shoreham Port Authority. The scheme proposes new and improved groynes, seawall and beach profile management, to improve coastal protection for the seafront arches, promenade, A259, southern storm water sewer, city main foul and storm water sewer</p>	Assistant Director City Transport	50	28/02/22	01/04/18	28/02/22
<p>Comments: Initial feedback and approval from the EA for the outline business case has been given, subject to further clarification on procurement strategy, programming and the partnership funding agreement. An update and approval from Policy & Resources Committee will be sought in first quarter of 2020, subject to any further revisions from the EA and scheme partners.</p>					
<p>Implement high priority actions from the structural engineering report</p>	Assistant Director - Property & Design	75	31/03/20	03/01/19	31/03/20
<p>Comments: Implementation of higher priority works have been done. The next phase of works relate to propping and the proposals are in planning, Listed Building consent at the moment. Annual report is available and prioritisation funding for the annual planned maintenance works 19-20 has been to be agreed. This will provide information about any that are not being implemented due to financial restrictions or practically due to construction details.</p>					
<p>Subject to partnership matchfunding carry out work within 5 years, linking to Council medium term financial strategy</p>	Assistant Director City Transport	20	01/01/25	01/05/19	01/01/25

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: The council has submitted a funding bid of £20M to Department of Transport as part of the new designation for the A259 in the city as 'Major Route Network', this is being facilitated and prioritised by Transport for The South East (TfSE). In July 2019 we submitted our bid to TfSE for onward submission to DfT. The schemes would begin, if successful, within the financial year 2020/21 for approx. 5 years duration.</p>					
<p>The crowd funding campaign for the renewal and upgrading of the first three arches was successful, we now need to implement the project and spend the funding.</p>	<p>Assistant Director - City Development & Regeneration</p>	<p>20</p>	<p>31/03/20</p>	<p>22/12/17</p>	<p>31/03/20</p>
<p>Comments: Funding agreed to progress design work to get the project started. This will look at first 30 arches, but delivery will be of between three and thirty arches.</p>					
<p>Procurement of design team has started, complex process taking 6 to 9 months.</p>					
<p>Advisory Group has been formed and has met twice.</p>					

Risk Details

Risk Code	Risk	Responsible Officer	Risk Category	Last Reviewed	Issue Type	Risk Treatment	Initial Rating	Revised Rating	Future Rating	Eff. of Control
SR30	Not fulfilling the expectations of residents, businesses, government and the wider community that Brighton & Hove City Council will lead the city well and be stronger in an uncertain environment	Chief Executive	BHCC Strategic Risk	20/11/19	Threat	Treat	Amber L3 x I4	Amber L3 x I3		Revised: Adequate

Causes

Link to Corporate Plan: Priority: Economy, Jobs and Homes: Deliver better business space and affordable homes/accommodation

Fulfilling the expectations of business, government and the wider community that Brighton & Hove City Council will lead the city well and be stronger in an uncertain environment. Whilst the council has already established effective partnership arrangements to benefit the city such as Brighton & Hove Connected <http://www.bhconnected.org.uk/>, the City Management Board (CMB) find out more via <http://www.bhconnected.org.uk/content/city-management-board>; Greater Brighton Economic Board (GBEB) find out more via <https://greaterbrighton.com/about-us/introducing-the-economic-board/>) and wider city regional based leadership, if it does not 'step up to the mark' and embrace its role for Placed Based Leadership the council may be perceived as less relevant to business and wider community and others due to factors such as:

- * Brexit's significant implications for the city's internal trade profile
- * reduced council expenditure and changes to the traditional municipal model
- * increased volatility for the city, the 3rd largest city in the UK for Services Exports per job, including the impact of changed trading arrangements with Europe which currently provides 75% of current trade

Potential Consequence(s)

- * Our civic institutions are unable to provide effective leadership to the city
- * City Wealth reduces
- * Business cannot grow
- * Inequality grows
- * Fragmentation of communities
- * Fragmentation of framework for public service institutions
- * Less funding available for services
- * Lost opportunity to position the city as a positive place to attract businesses and employees who will benefit city growth
- * Reputation of council suffers as civic leadership role in the city
- * Citizens and businesses have less confidence in engaging with the council

Existing Controls

First line of defence: Management Controls

1. Full Council
2. Policy & Resources (PR) Committee has oversight of key budget and policy decisions and all reports have a financial, legal and community impact assessments.
3. Health & Wellbeing Board have similar assurance functions as the PR Committee.
4. City Management Board are not decision making but they are important influencers and it is an effective way of putting strategic issues on the radar of public authorities (find out more via <http://www.bhconnected.org.uk/content/city-management-board>)
5. Audit & Standards Committee have a role to monitor the effectiveness of risk management and internal control
6. Brighton & Hove Connected (link as above) a network of community & voluntary organisations and businesses in the city and works in an effective way to engage communities on issues of interest.
7. Royal Society of Arts, Manufacturing & Commerce ('RSA') were commissioned to work with political and managerial leadership
8. Corporate governance and processes to manage existing council business, eg Performance Management Framework (PMF).

Second Line of Defence: Corporate Oversight

1. Local Government Association (LGA) Peer Review and ad-hoc advice.
2. Two Independent Persons on the Audit & Standards Committee.
3. Greater Brighton Economic Board, rotating chair representing each partners oversees and makes decision on strategic issues relating to regional economic development (find out more via <https://greaterbrighton.com/about-us/introducing-the-economic-board/> Wider city region based leadership).
4. Corporate Modernisation Delivery Board and the Executive Leadership Team (ELT) oversee the application of the Performance Management Framework (PMF).
5. Policy Chairs Board oversight of issues of policy.

Third Line of Defence: Independent Assurance

1. HM Government
2. External Audit reviews of financial position of the city council - June 2018.
3. Inspectorate reports e.g. Ofsted 2018 - Children's Services - Good Judgement
4. Internal Audit - 2017/18 and 2018/19 No independent assurance work has been carried out on this risk.

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
Communicate the council's activity to enable the city's strong prospects as healthy place to live, work and do business, able to withstand challenges and grasp future opportunities	Head of Communications	50	31/03/20	10/01/19	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: This is a significant time for this risk.</p> <p>Work is taking place:</p> <ul style="list-style-type: none"> • with the new administration and Executive Leadership Team on a meaningful new Corporate Strategy which will need to convey that the council has a clear corporate narrative and which is clear on tangible deliverables for the city. • with the new administration and Executive Leadership Team to finalise the definition of, planning schedule, agreement and sign off processes on annual corporate campaign. <p>Once this work is completed the Communications Team will run a series of year-long holistic communications and PR campaigns and activities with specific objectives and audiences, clear and consistent messaging and means of evaluation.</p> <p>An important piece of work the Communications Team is working closely with IT&D on is the 'switch off' the council's old website with more user focused content and structure on the new website. A key piece of work will be draft a Website Strategy 2020-21 and get this signed off in order to continue the development and resourcing of the website post April 2020.</p> <p>Run a resident media / information survey to better understand not only how our residents consume information, but also how they would like to, especially targeting traditionally hard to reach audiences, older people, religious communities, rough sleepers, new arrivals to the city, young people.</p> <p>A holistic performance tracking system across all digital and social media channels is being designed to monitor and evaluate engagement with news and information on the council's online Newsroom and social media channels to be developed.</p> <p>Work is also continuing in partnership with IT&D on the phase 2 business case for CMDB on final options recommendations, and commence design and built of staff and cllr internal communications platform.</p> <p>Work has started on the 2019-20 Internal Communications and Engagement strategy and programme for senior managers, Members and staff focusing on but not limited to:</p> <ul style="list-style-type: none"> • Working with with HR&OD and the Equalities Team to develop an equalities and inclusion strategy for 2019-20 • Communicating the Corporate Strategy 					

Work continues to develop and increase the readership, relevance and frequency of Your Brighton & Hove a weekly resident's e-bulletin emailed directly to subscribers email accounts.

A public affairs / networking strategy has been written which aims to improve:

- The style and success of funding bids
- Relationships with key stakeholders
- The council's reputation as an innovator
- Winning awards for excellence
- Lobbying activities
- Responses to national and regional consultations

Work continues on the training offer to more councillors and an internal e-newsletter / briefing bulletin for all cllrs will be rolled out imminently.

The Communications Team will be talking with the Member Development Working Group to further capture what communications and engagement tools / resources would be useful to new councillors

Work also continues on better identifying proactive positive editorial media opportunities and making connections with the right influencers.

Continue effective collaboration with health & social care within the city	Executive Director Health and Adult Social Care	55	31/03/20	14/02/17	31/03/20
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Comments: There is increased focus on effective collaboration between the council, NHS partners and the voluntary and community sector. With the adoption of the HWB Strategy and its preventative focus under the 'Four Wells' (starting living, ageing dying) there is a commitment to improve our outcomes for residents. However this presents challenges within the current financial NHS Long Term Plan, due to be submitted to Central Govt in Nov 19 and an aligned delivery framework will need to be developed and updated on an annual basis.

Develop Orbis as part of Place Based Leadership to reduce costs and improve service resilience	Executive Director of Finance & Resources	75	31/03/20	14/02/17	31/03/20
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Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: Orbis growth strategy will develop from 3 year business plan. Final Business Plan approved by Orbis Joint Committee on 19 January. Aside from Business Operations (which already has multiple customers) the most likely sources of growth are Business Operations, Procurement and Audit - and examples already include running the Audit Service for Horsham District Council and Procurement for Adur & Worthing. Chief Execs of the three Founding partners (BHCC, Surrey, East Sussex) have expressed preference for local collaborations across sectors rather than national presence. Opportunities are being pursued and there has been success for Procurement (Adur & Worthing) and Internal Audit (Horsham). Recent review of Business Operations identified that a more consistent approach to seeking growth is required. This is under development.</p>					
Develop Stronger Families agenda and other measures to reduce pressures on family life	Acting Executive Families, Children & Learning	75	31/12/20	14/02/17	31/12/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: The Stronger Families Stronger Communities programme (the local Troubled Families programme) is in its sixth year of operation supporting improved outcomes for families with complex problems and delivering targeted family support to families before their issues become entrenched. We have successfully bid for upfront earned autonomy funding in the next phase of the troubled families programme nationally. This allows us to expand our family support work to include adult mental health provision. Improved parental capacity supports whole family resilience and helps reduce the call on specialist services above the social work threshold. The Troubled Families programme is set to end in 2020 which, alongside reductions in core funding for early help interventions, remains a risk from 2019 onwards. Current activity with partners seeks to evidence the impact of this programme and make the spend to save case for continued local funding as programme tapers.</p> <p>Children’s Centres provide services for families for children under 5 including support with parenting and helping parents to access childcare and work.</p> <p>In 2017 we brought together the Multi-Agency Safeguarding Team and Early Help Hub to create the Front Door for Families – a single point of contact for families and professionals. Both social work and family support services are using the Strengthening Families model of assessment and planning to identify and address the needs of the whole family.</p> <p>The city's Whole Family Working strategy was launched in May 2018 to encourage all services to consider families as an entity with overlapping problems that need to be addressed together.</p> <p>Under the auspices of the Whole Family Partnership Board the Local Government Association have been engaged to undertake an external peer review to look at the work we are doing around prevention/early help across the city. This will include partnership work with two key partners, the Police and the B&H Clinical Commissioning Group.</p>					
Develop the city's physical assets, social and environmental infrastructure	Executive Director Economy, Environment & Culture	75	31/03/20	14/02/17	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: Strategic Delivery Board is overseeing the City's Investment Programme of regeneration and infrastructure projects. Circus Street mixed- use regeneration scheme development agreement become unconditional and full construction commenced August 2017. Corporate Investment Board provides officer oversight of the investment programme. Updates on Major Regeneration Projects are provided as a standing item to Tourism, Equalities, Communities & Culture (TECC) Committee.</p>					
<p>Greater Brighton Economic Board has established an Infrastructure Panel that is overseeing the development of Energy and Water Plans for Greater Brighton.</p>					
<p>Preston Barracks planning permission approved by Planning Committee subject to conditions September 2017. s.106 agreed December 2017.</p>					
<p>Conditional Land Agreement reached unconditional January 2018. Full construction commenced Summer 2018</p>					
<p>Phase 2 Seafront Arches completed and Phase 3 (Shelter Hall) in construction - September 2017. Completion late 2019</p>					
<p>Housing Living Wage Joint Venture business Plan approved by PRG Committee - October 2017. Joint Venture legal documents agreed December 2017.</p>					
<p>Planning applications for first two sites approved Summer 2019.</p>					
<p>Road infrastructure works ongoing (North Street and Elm Grove/A259 junction) -completed December 2017</p>					
<p>Cross Party Asset Management Board established - September 2017</p>					
<p>Valley Gardens Phase 1 and 2 construction commenced October 2018.</p>					
<p>Valley Gardens Phase 3. Outline design approved by ETS Committee January 2019. Funding approved by C2C LEP Board subject to funding conditions December 2019. Funding agreement conditions agreed by LEP Board Oct 2019. Funding Agreement to be signed December 2019.</p>					
<p>Brighton Waterfront. Conditional Land Acquisition Agreement to be signed April 2019.</p>					
<p>Greater Brighton Economic Board agreed Digital Infrastructure Plan - October 2019</p>					
<p>Greater Brighton Economic Board supporting Coast to Capital LEP with development of their Local Industrial Strategy.</p>					
<p>Next Steps:</p>					
<ul style="list-style-type: none"> - Agreement of Conditional Land Acquisition Agreement for Brighton Waterfront Project - December 2018 					
<ul style="list-style-type: none"> - PRG Committee to consider development agreement for King Alfred redevelopment - December 2018 					
<ul style="list-style-type: none"> - Major projects and investment programme update reported to Strategic Delivery Board and Tourism, Development & Culture Committee - Ongoing 					

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Improve community cohesion and leadership profile with communities, incl the introduction of community hubs & neighbourhood governance.</p> <p>Comments: Links to NCH Directorate Objective 5 Improve community well-being & resilience. Directorate Plan Action 5.9 Increase social capital within communities of identity and place and collaborate working between communities and the council through training and development for staff on working with volunteers and communities, and supporting the delivery of neighbourhood hubs.</p> <p>Progress update - Neighbourhood Action Plans for Moulsecoomb & Bevendean; Hangleton & Knoll; Portslade and East Brighton are operating and are discussed at quarterly meetings with the communities. Other additional NAPS are also in development with progress as at 8 April 2019 as follows: a) Hollingdean in final stages of development; Hanover & Elm Grove - consultation on content of NAP out to community for consultation; Queens Park under development. Once these new NAPS are in place, quarterly meetings will be scheduled to ensure staff work with the community to deliver NAP outcomes. In addition, an Upstanders network is being developed that brings together representatives of different communities of identity to develop positive action to counter divisive and harmful incidents in the city and build community cohesion.</p>	<p>Interim Executive Director Housing, Neighbourhoods & Communities</p>	75	31/12/19	14/02/17	31/03/20
<p>Lead Strategy, Governance & Law services to increase the socialisation of public policy within the city</p>	<p>Executive Lead Officer Strategy, Governance and Law</p>	50	31/12/19	14/02/17	30/04/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: Work has taken place to involve key partners across the city from all sectors to develop a City Vision for 2030. This is completed and the City Council's Corporate Strategy started March 2019 with a view to adoption of the Corporate Strategy in Autumn 2019. Directorate Plans will be developed to clarify plans for delivery against which progress will be monitored as part of the Performance Management Framework. Corporate Policy Network will review coordination of a number of strategies across the organisation and links with partner agencies to ensure alignment. City Management Board in place coordinated by the Policy, Partnership & Scrutiny (PPS) team. There are a number of partnerships such as transport reporting to the City Management Board and PPS are developing a policy framework across all directorates. The work has been done to progress the Corporate Strategy and City Strategy with a view to adoption in December 2019.</p> <p>Socialising the council's policies does not exclusively relate to the Corporate Strategy, there are many other policies which require appropriate publicity through and communication programmes and the consultation portal which are part of the Communications Team usual remit; and these will be presented to CMB and other key stakeholder groups as appropriate.</p>					
Partnership work with schools to deliver education which enables young people & meets requirements of local economy	Acting Executive Director, Families, Children & Learning	55	30/09/19	14/02/17	30/09/20

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Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: IAG partnership group (Information Advice and Guidance Group) meets half termly, has representatives from every secondary school and college, and training providers and representatives from employer organisations, supporting schools and young people to pathways to employment and training. Includes Enterprise Adviser Network, Sussex Learning Network, National Careers Service and all independent careers advisers in the city. New independent providers are also encouraged to attend this group, to raise awareness of their provision. Once a year, all local training providers present to this group, for their next year's offer.</p> <p>16-19 Curriculum and standards group meets half termly, and is made up of all schools with 6th forms and colleges and university representation- vice principals or heads of 6th form. Has regular engagement with the Coast 2 Capital LEP, employers, and supports progression to employment.</p> <p>11-16 Curriculum Deputies partnership group, focused on standards and curriculum.</p> <p>Secondary and Continuing Education Partnership meets twice a year and is made up of secondary schools leaders, 6th form and FE college and universities. Considers wide range of topics and skills and IAG have featured strongly, providing pathways through secondary, FE and HE.</p> <p>Brighton & Hove Education Partnership chaired by Deb Austin, and made up of representatives from all schools' phases and universities and 6th form colleges - developing and supporting positive education pathways and improving standards.</p>					
Programme to enhance the council's role to support the city economy and promote business	Executive Director Economy, Environment & Culture	95	31/03/20	14/02/17	31/03/20

Risk Action	Responsible Officer	Progress %	Due Date	Start Date	End Date
<p>Comments: The EEC directorate reports Major Projects updates to the Tourism, Development & Culture Committee (https://present.brighton-hove.gov.uk/Published/C00000969/M00009191/AI00073061/\$TDCCMPTupdateMar19.docxA.ps.pdf)</p> <p>Corporate Modernisation 'Supporting Business' programme established.</p> <p>The Supporting Business Modernisation programme has the following workstreams:</p> <ul style="list-style-type: none"> - Developing the business case for the refurbishment of Brighton Town Hall along the 'City Hall for Business Model'. - Improving the delivery of joined up transactional council services to businesses through Digital First - Establishing a pool of Business Ambassadors who can support the city with business leadership to develop the city's Inward Investment, Trade & Export Strategy - Redesigning the City Council's Economic Development and International functions to align them to the changing needs of the city economy., -- Digital First discovery work and business process review - Q3 2017/18. - Greater Brighton Trade, Export and Investment Strategy agreed by Greater Brighton Economic Board July 2018 - A new Economic Strategy for the City agreed by Full Council December 2018. https://www.brighton-hove.gov.uk/content/business-and-trade/support-businesses/brighton-hove-economic-strategy-2018-2023 - Business Survey Spring 2019 - Economic Strategy approved by Full Council January 2019 - New Visitor Economy Strategy approved, January 2019 - 5 -year strategic Priorities for Greater Brighton Economic Board approved April 2019 <p>Next Steps</p> - New Circular Economy Framework developed with an initial focus upon the build environment and visitor Economy - Jan 2020 - Delivery of new Visitor Economy Strategy, including destination management plan 2019-onwards - Appointment of Business Ambassadors. 					

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

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

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

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

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

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

- a) Initial Risk Score reflects the Existing Controls under the ‘Three Lines of Defence’ methodology which is good practice and helps to establish the First Line – Management Controls; Second Line – Corporate Oversight; and Third Line – Independent Assurance and the currency and value of each control in managing the risk. Therefore the Initial Risk Score represents the ‘as is’/ ‘now’ position for the risk, taking account of existing controls.
- b) The Revised Risk Score focuses on the application of time and expenditure to future reduce the likelihood or impact of each risk and is based on the assumption that any future Risk Actions, as detailed in risk registers, will have been delivered to timescale and will have the desired impact.
- c) Where initial and revised scores are the same – the Risk Owners were asked to consider the 4Ts of Risk Treatments (Treat/Tolerate/Terminate/Transfer) and change the scoring or remove all future risk actions/move them to existing control. This is on the understanding that the risk action should either reduce the likelihood and/or reduce the impact – if none of this is true, there will not be any reason to undertake the action.

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

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

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

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

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

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

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

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

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

Subject:	Internal Audit Report, Valley Gardens Phase 3		
Date of Meeting:	14 January 2020		
Report of:	Executive Director, Finance & Resources		
Contact Officer:	Name:	Mark Dallen	Tel: 01273 291314
	Email:	Mark.Dallen@brighton-hove.gov.uk	
Ward(s) affected:	All		

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

- 1.1 At Audit and Standards Committee on 23 July 2019, Members requested that Internal Audit carry out a desktop review into a number of aspects of the Valley Gardens (Phase 3) project. The issues originated in a letter presented at the meeting by Cllr. Lee Wares.
- 1.2 The audit report resulting from this review is attached as Appendix 1 to this report. The report includes a copy of the letter from Cllr. Wares for reference.

2. RECOMMENDATIONS

- 2.1 That the Committee note the report.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 This review is an addition to the approved Internal Audit Plan for 2019/20.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The audit review examined the concerns raised by Cllr Wares and the findings have been summarised under the following headings:

- Status of the Grant Award;
- Funding Drawdown Deadline;
- Interlinking of Projects;
- Traffic and Environmental Considerations, and;
- Stakeholder Engagement and Consultation

- 4.2 The conclusions of the review are detailed in the body of the audit report.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 None.

6. CONCLUSION

- 6.1 The Committee is asked to note the report.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The internal audit of the Valley Gardens phase 3 project was not included in the audit plan for 2019/20, however this additional work has been accommodated through reprioritisation of audits. Therefore the audit has not impacted on the service budget.
- 7.2 There are no financial implications from the recommendations of this report or the findings summarised in appendix 1..

Finance Officer Consulted: James Hengeveld

Date: 18/12/19

Legal Implications:

- 7.2 There are no legal implications arising from the report, which is for noting. The issues covered in the desktop review into the process followed in this matter are addressed in the Audit report which is attached as Appendix 1.

Lawyer Consulted: Victoria Simpson

Date: 20/12/19

Equalities Implications:

- 7.3 There are no direct equalities implications.

Sustainability Implications:

- 7.4 There are no direct sustainability implications.

SUPPORTING DOCUMENTATION

Appendix:

1. Internal Audit Report – Valley Gardens Phase 3
Annex A: Management Responsibilities
Annex B: Letter presented by Cllr. Lee Wares at the July 2019 Audit & Standards Committee

Background Documents

1. Internal Audit and Corporate Fraud Strategic Plan 2019/20.

Internal Audit Report

Valley Gardens Phase 3

Assignment Lead: Alex McLaren, Principal Auditor
Assignment Manager: Mark Dallen, Audit Manager
Prepared for: Brighton & Hove City Council
Date: November 2019

Report Distribution List

- Geoff Raw, Chief Executive
- Nick Hibberd, Executive Director Economy Environment & Culture
- Abraham Ghebre-Ghiorghis, Executive Lead Officer Strategy Governance & Law
- David Kuenssberg, Executive Director Finance & Resources
- Mark Prior, Assistant Director City Transport

- Audit and Standards Committee

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

Brighton & Hove City Council - Internal Audit Key Contact Information

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Internal Audit Report – Valley Gardens Phase 3

1. Introduction

- 1.1. Valley Gardens is the name given to the green spaces that run from St Peter's Church to the Palace Pier.
- 1.2. The northern section of Valley Gardens is referred to as 'Phase 1 (St Peter's)' and 'Phase 2 (Victoria Gardens)'. Phase 3 refers to the area from the Old Steine to the Palace Pier roundabout, the estimated cost of Phase 3 in the council's business case is £7.84 million.
- 1.3. The core objectives for Valley Gardens Phase 3 (VG3) were approved by the Environment, Transport and Sustainability (ETS) committee in June 2018. Design options for the area were then developed and a single, preferred design option was presented to the committee on 9 October 2018, as was explained within the June 2018 report. Committee members gave approval for Council officers to undertake further development work on the design and hold a public consultation.
- 1.4. A public consultation took place from 15 October to 25 November 2018, the results of which were reported to ETS committee in January 2019. Approval of the Final Preliminary Design of Phase 3 was given by the council's ETS Committee in February 2019.
- 1.5. This desk top review was requested by Councillors at the July 2019 Audit & Standards Committee, following the receipt of a letter presented by Cllr. Lee Wares, setting out a number of concerns regarding the management of the project and the information provided to members. This audit is therefore an additional review to the agreed internal audit plan for 2019/20. A copy of this letter is separately attached as Annex B.

2. Scope

- 2.1. The Audit & Standards Committee requested 'a desktop audit limited in scope to the questions of whether the Council had correctly followed processes and procedures'. Our interpretation of this request was that our review should focus on making sure that appropriate decision making arrangements were in place, including the accuracy and transparency of information provided to Members. Specifically our review focused on the following which align to concerns raised in Cllr. Wares letter:
 1. Whether information about £6m of LEP funding, as contained in the Committee report (7 February), was correct at the time of report writing.
 2. To consider whether accurate information has been communicated to Members about the implications of delays on the funding of the project.
 3. To identify whether key projects which closely relate to the VG3 have been transparently reported to Members and the LEP.
 4. To ascertain if there has been any traffic or environment assessment of the VG3 project.
 5. To review the approach taken to stakeholder engagement and the consultation process relating to VG3.

3. Methodology

3.1. This review has focussed on an examination and analysis of the following:

- Meeting with Cllr Lee Wares to discuss the letter in more detail;
- Review of agendas, reports, and minutes (including part 2) from BHCC ETS committee meetings;
- Review of minutes from the LEP committee and board meetings;
- Records of correspondence between the Council and the LEP;
- Interviews with key officers.

4. Management Summary

4.1. We have concluded that appropriate decision making processes have been followed in relation to the areas below.

Status of the Grant Award

4.2. The Coast to Capital (C2C) Local Enterprise Partnership (LEP) considered and approved the business case for Phase 3 of the Valley Gardens project (VG3) and confirmed a £6m allocation from the Local Growth Fund (LGF) at their 22/01/2019 board meeting, with the remaining project cost of £1.84 m to be contributed by or through the Council. Access to the LGF funding was subject to final conditions of the grant being finalised with the LEP's Investment Committee, and completion of a legal funding agreement with the council.

4.3. On 01/02/2019 the LEP sent a letter to the Council confirming its conditions for the grant award. These were principally to seek assurance from the Monitoring Officer that the Council had approached their consultation in compliance with statutory requirements, that the Final Preliminary Design met the requirements of all relevant statutory legislation, and that public comments; including those of the Valley Gardens Forum, had been taken into account in the development of the scheme.

4.4. The final preliminary design option was taken to the council's Environment, Transport and Sustainability (ETS) committee on 07/02/2019. This meeting was to seek member approval for the design to proceed to the detailed design stage, and for officers to commence procurements relating to this. The committee report pack included a summary report detailing the results of the consultation taken on the proposals, as well as a summary of design changes that had been implemented as a result of feedback received.

4.5. The reports pack and minutes are clear that funding had been approved but was subject to a funding agreement being reached. This is consistent with the LEP's own board meeting minutes from 22/01/2019 which stated that the revised business case had been approved and that conditions would be set out in the LGF grant award letter.

4.6. In an email the LEP wrote to the Executive Director-Economy Environment & Culture on 24/01/2019. They stated: *"We are delighted to inform you that the Brighton Valley Gardens Phase 3 project has been approved for funding of £6,000,000 subject to final conditions of the grant being finalised with the Investment Committee. These will be*

communicated with you and drawn up in the funding agreement once confirmed”.

- 4.7. We also note that the LEP sent an email sent to the Assistant Director-City Transport on 08/02/2019 with a draft funding agreement. This was prior to the Council’s response to their pre-conditions letter. The email states *“Whilst you work through the conditions as set out in the letter for the Brighton Valley Gardens Phase 3 project, we thought it would be a good idea to start drafting the funding agreement, so then once the conditions have been met we can progress quickly”.*
- 4.8. Based on the above there is no evidence of a shortfall with the information that Members received about the status of the LEP funding at the ETS committee meeting on 07/02/2019.

Funding Drawdown Deadline

- 4.9. Members were asked to consider approval at the 07/02/2019 ETS meeting for the final preliminary design, to enable the project to continue in line with the approved delivery programme. The programme indicated that the project was expected to be substantially completed by March 2021, and therefore the funding drawdown deadline of March 2021 would also be met.
- 4.10. In an email from the LEP to the Executive Director-Economy Environment & Culture on 22/07/2019, they state that the current situation is that LGF monies must be drawn down by March 2021. They do acknowledge that recent Government advice allows scope for funds to be spent after this deadline, but that would only be in very exceptional circumstances, and that their Board retains the right to withdraw and reallocate funding on schemes that are unlikely to draw down funding before March 2021.
- 4.11. The LEP’s email also states: *“It should be noted that to date no projects have been granted flexibility funding to be spent after March 2021 and the likelihood that any projects will be, is considered by officers to be very unlikely”.*
- 4.12. We also note that the LEP’s own Funding Withdrawal Protocol states that funding could be removed if a March 2021 drawdown is not met.
- 4.13. We therefore conclude that there is no evidence that the advised March 2021 deadline as contained in the 07/02/2019 ETS committee report was not properly communicated.

Interlinking of Projects

- 4.14. A number of emerging 'sub projects' have been raised as potentially impacting upon the VG3 business case. Two of these that were identified in Cllr Wares’ letter were:
- 1) The proposed reversal of the existing Traffic Regulation Order (TRO) which prohibits right turns coming out of Little East Street onto the A259.
 - 2) The proposed installation of traffic signals at the top and bottom of Dukes Mound, where the road ramp links the A259 and Madeira Drive.

- 4.15. Regarding point 1 above, proposals for the TRO reversal i.e to remove the right turn ban, came out of the consultation process, where it was identified that traffic exiting The Lanes via Little East Street that wanted to travel West would have to use a different route. This could include travelling further east before being able to safely turn around, in the absence of being able to use the roundabout to perform a U-turn. This solution was presented to members in the February 2019 ETS committee together with all additions and refinements to the preferred design following the consultation process.
- 4.16. The Council's consultants to the project Mott MacDonald advised the February 2019 ETS committee that traffic currently performing a U-turn on the roundabout accounted for less than 0.5% of all traffic using the junction and as such, the impact on traffic flow was deemed to be minimal. We understand from the Head of Transport Policy & Strategy that the cost of the TRO reversal could be expected to be relatively minor (possibly up to £10k).
- 4.17. The Duke's Mound traffic signals (point 2 above) are also a key requirement for the council's Waterfront project enabling works. This is a separate major project which already has approved grant funding of £12.1m from the LEP. We understand that the need for these works was identified early on in the development of the Waterfront project. The Waterfront project was identified within the project dependencies section of the VG3 business case.
- 4.18. During the progression of the VG3 preferred design, members have been appraised of the requirement of, and revisions to, the Duke's Mound junctions, including in the February 2019 ETS committee where the minutes (para 66.62) state "*..the Committee agrees that officers progress design work for the proposed improvements to the A259/Duke's Mound/Madeira Drive junctions, in liaison with the council's Waterfront project team*".
- 4.19. The Duke's Mound traffic signalling was, at the time of this committee, estimated to cost in the region of £500k. Further consideration of the design as part of the Waterfront project has meant that this estimate has since risen to £600k-£800k. However, this work is being funded through the Waterfront Project enabling works grant award. As a result we understand that the signalling works would be installed with or without VG3.
- 4.20. Overall we have not identified any significant shortfall in communications relating to the interlinking of these other projects.

Traffic and Environmental Considerations

- 4.21. There is evidence that traffic modelling was undertaken by the council's consultants Mott MacDonald both as part of the development process for the various VG3 designs, to feed into decision making for the preliminary design, and for the post-consultation revised preliminary design.
- 4.22. Objections have been raised that the traffic modelling conducted to date has not included the impact of the Duke's Mound signalling and that this may impact journey times for road users. Advice was given to ETS committee in February 2019 by the Council's consultants for the scheme that, while the traffic modelling had not included

the proposed signalling, it did include displaced traffic that would have otherwise exited from Madeira Drive on to the roundabout. At this same committee the Executive Director, Economy, Environment & Culture stated that this was a matter that had recently arisen through the consultation and the issue would be looked at as part of the detailed design at a later stage.

- 4.23. Environmental impacts have been assessed and quantified, and were reported by Mott MacDonald in Appendix K as part of their stage 2 report dated February 2019. The report begins by explaining that a full statutory Environmental Impact Assessment is not required in accordance with DMRB (Design Manual for Roads and Bridges) guidance, however, a number of potential environmental impacts were still assessed as part of a screening process. It was concluded that the scheme is not expected to have significant adverse effects, and has the potential to bring a number of benefits.
- 4.24. It is confirmed that traffic modelling and environmental considerations have last been assessed post consultation against the final preliminary design, and that there have been suggested refinements to the design since this stage.
- 4.25. Based on our desktop review there is evidence that traffic modelling and environmental considerations have been considered and documented in relation to this project.

Stakeholder Engagement and Consultation

- 4.26. The consultation process for the preferred design option was undertaken for VG3 was conducted in October and November 2018.
- 4.27. As well as being published on the consultation portal on the council's website, the questionnaire was heavily promoted in a series of proactive drives, including use of social media, staffed exhibitions, and a mail-out to over 1,300 addresses. This indicates that an extensive consultation process with the public was conducted, as well as consultation with private and voluntary sector organisations. As a result of the consultation, a number of design revisions were made to accommodate the feedback and opinions of respondents and other stakeholders, this was then presented to ETS committee in February 2019 as the final, preliminary design.
- 4.28. We note that the consultation questionnaire explicitly elicited from respondents whether they agreed/disagreed/neither with questions over whether the proposals improved: walking in the area, cycling in the area, and public transport in the area. The question over whether the proposals improved traffic flows and road safety was freetext, and as such it could be perceived that the range of answers provided may have provided less clarity over respondents views on the proposals relating to vehicular traffic.
- 4.29. We note that the focus of the project is defined as one which aims to significantly improve upon the existing design and provision for sustainable transport options of walking, cycling, and buses. While the consultation is focussed on whether the Phase 3 design met these specific areas of improvement, opinion has been sought from other users such as those who use the area to travel by vehicle, as well as with multiple stakeholders.

Internal Audit Report – Valley Gardens Phase 3

- 4.30. In seeking to assess whether the Council was transparent with members over the focus of the project, we note that the VG3 report that went to the June 2018 ETS committee specifically communicates the eight design objectives as improving walking, cycling and public transport in the area, as well as improving accessibility, road safety, vehicle congestion and to enhance the environment and the general public realm.
- 4.31. The primary challenge of the current Valley Gardens area according to the VG3 business case is described as *"the severance caused by inefficient land use and an overly complex road layout that favours vehicular traffic to the detriment of pedestrians and cyclists"*. Collision data is also reported for the period 2013 to 2017 which shows that two thirds of those people who received serious injury as a result of reported collisions were cyclists and pedestrians.
- 4.32. In addition, we note that the project aligns with the policy within the BHCC City Plan Part One, and a number of the strategic objectives contained in BHCC's current Transport Strategy in its Local Transport Plan.
- 4.33. Finally, in order to qualify for LEP funding, a project must meet one of the LEP's defined criteria for investment projects. VG3 is aligned to the following one: *"Increased capacity in sustainable transport and 'key' arterial routes where there are 'bottlenecks', together with flood resilience and digital infrastructure investment"*.
- 4.34. From the documentation we reviewed there is evidence of significant stakeholder engagement and consultation processes which were linked to the purpose and objectives of this project.

5. Acknowledgements

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

Annex A

Management Responsibilities

The matters raised in this report are only those which came to our attention during our internal audit work and are not necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

Internal control systems, no matter how well designed and operated, are affected by inherent limitations. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

This report, and our work, should not be taken as a substitute for management's responsibilities for the application of sound business practices. We emphasise that it is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal Audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.

Annex B

Letter presented by Cllr. Lee Wares at the July 2019 Audit & Standards Committee

Geoff Raw – Chief Executive
Brighton & Hove City Council

2nd July 2019

Dear Geoff

I am submitting this letter under Council Procedure Rule 23.3 to be included on the agenda for the Audit and Standards Committee meeting of 23rd July 2019.

I respectfully request that Audit and Standards Committee commission an Audit report for consideration by the Audit and Standards Committee or such other relevant Committee regarding matters relating to the Valley Gardens Phase 3 (VG3) project.

My primary reasons for this request include, but are not limited to, the following: -

1. In the report dated 7th February 2019 to the Environment, Transport and Sustainability Committee (ETS) several references were made (paras 1.2, 7.1, 7.7 as examples) to funding from the Local Enterprise Partnership (LEP) specifically either stating that £6.0m from the LEP had been secured and/or was subject to a funding agreement. This was further reinforced by the Chair of ETS who in answer to questions from the public advised that "The council's Business Case.....has achieved the release of the 6 million pounds" (minutes dated 19th March, para 63.22, page 7). In further answer to a public question about LEP conditions the Chair advised "We have received some communication from the LEP and are studying that in detail and we will be making our comments back to them" (minutes dated 19th March 2019, para 63.12 page 5).

The report and comments, that influenced Member debate and decision-making process on the substantive item to progress VG3, sought to express or strongly imply that funding had been secured and that the LEP's communication was somehow "business as usual".

The reality of the situation as known to the Administration prior to the Special ETS Committee sitting on the 7th February 2019 was that the Council had only secured funding in principle and that the actual decision to fund was down to the LEP's Investment Committee (IC) that to this day, has yet to convene to consider granting funding (or not) and has not set a date to do so. Further, it has subsequently come to light that the LEP correspondence referred to was in fact a letter expressing specific conditions on the Council that had to be satisfied before the funding agreement could be signed subject still to the IC granting the funds. I understand there is further correspondence in existence with the LEP questioning the Council's responses to the conditions.

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Further, during the 25th June 2019 ETS Committee it was acknowledged that funding had not yet been granted and that correspondence with the LEP had not been shared with ETS Members save only for information that the Administration considered necessary for Members to be aware of such that they could make the “correct decision”.

My concern is that the decision on the 7th February 2019 may be unsafe due to the Administration portraying information in such a manner and not sharing information with ETS members that may otherwise have resulted in a different outcome or enabled amendments and/or Notices of Motion to be tabled to reflect the true position as at 7th February 2019.

2. The report dated 7th February 2019 and during discussion at the same ETS Committee (and subsequently thereafter on numerous occasions, including at later ETS Committees) the Administration has briefed that any delays to the decision would risk the LEP funding due to a draw-down date of March 2021. Para 7.17 of the 7th February 2019 report is offered as an example where it states “any significant delay would be a critical project risk in terms of financing the project given the need to drawdown the LGF funding by the end of March 2021”.

In recent correspondence produced by the LEP they have confirmed that there is no “hard deadline” and that subject to certain conditions, they could for example consider “Capital Swaps”.

My concern is that by continuously reinforcing the so-called critical risk deadline, Members might have been compelled to making decisions that they otherwise might not have. It would be reasonable to presume that the Council, having been the recipient of many LEP grants awards, would be aware of how the LEP would consider funding and should have included the options in the reports and in answer to subsequent questions.

3. VG3 is being “contained” to the original project boundary. However, as the project has developed, in ensuring that “preferred option 1” can actually be delivered it has become necessary for “sub-projects” to be created. For example, this relates to major junction works at Duke’s Mound (DM)/A259 and consideration of reversing previous Traffic Regulation Orders (TROs) to allow right turns onto the A259 west of the Aquarium roundabout. Such sub-projects are presently being progressed independent of the VG3 project notwithstanding that absent them being done, VG3 as presently proposed will fail. Officers in Committee have confirmed that VG3 and DM/ TRO changes are inextricably linked.

Irrespective of the Waterfront Project Enabling Works (WFP) being considered to fund DM, this appears to mask the true cost of VG3 and would demonstratively alter the Business Case that the Council presented to the LEP. It is likely the financial cost/benefit ratio would be negative.

My concern is that to enable VG3 to progress, the entirety of the project impact and cost is not being consolidated and that Members and the LEP have no over-arching perspective of the project or ability to judge its true financial/social/economic/environmental impact. Further, residents and businesses in the expanded project boundary area have not been party to any

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consultation with the Administration confirming on the 25th June 2019 that it will not allow a consultation regarding DM.

4. VG3 preferred option 1 that is progressing to detailed design stage was developed following the agreement of certain design principles, traffic studies and the feedback from a public consultation. However, preferred option 1 is a fundamental revision of the design offered for public consultation that now includes DM, the addition of a 5th traffic lane on the east side of the Old Steine (south bound bus route) and the relocation of the dedicated cycle lane to the west side impacting event space planning and design.

This revised scheme has not had the benefit of any environmental impact studies (nor did the original), has had no traffic modelling applied and has no assessment of traffic displacement; in ETS Committee officers advised that they did not know or understand how displaced traffic would function or disperse. Further and notwithstanding these seismic amendments, there will be no public consultation.

My concern is that the present design, not having the benefit of any traffic and environmental assessments and public involvement, cannot possibly be assessed as either being a “good” or “bad” solution. It is impossible to assess the impact on the original Business Case and it is impossible to judge the views and feedback of stakeholders. The project has morphed into something substantially different and should be subject to the same tests and scrutiny as the original designs and principles.

5. During October to November 2018 the Administration conducted a public consultation of which the results were the primary driver behind the present preferred option 1 that is progressing to the detailed design stage.

Because of that consultation, significant public disquiet has arisen as to the notification of that consultation and the subsequent dismissal by the Administration of a public petition requesting further consultation.

Further, the consultation questionnaire itself appears to be flawed in that rather than seeking unfettered opinion, it asked specific questions such as has the design improved cycling, walking and accessibility provision. Such questions it appears were designed to solicit a positive response as opposed to canvassing opinion. In addition, in reporting the results to the 7th February 2019 ETS Committee, the Administration sought to highlight responses that supported the scheme (albeit the questions were contrived) and under-play responses that were negative such as most respondents objecting to the removal of the Aquarium roundabout.

My concern is that the consultation thus far conducted was biased in its presentation and remains unsound in that subsequent public opinion is being ignored given that the Administration is filtering out negative responses without due and proper regard. This is further amplified given the project expansion discussed above and the substantial changes to the design that have now occurred. Failure to involve stakeholders in a full and comprehensive

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manner is to deny public opinion, subvert the democratic process and potentially lead somebody to conclude that the consultation was mere “tick boxing” rather than a genuine exercise.

It is conceded that the Administration is proposing to consult on the TRO related to VG3. However, it appears to have used this position to suggest to the public that there is further consultation in such a manner that will allow additional stakeholder engagement on the scheme whereas the reality is that the TRO consultation is on the technical aspects of, for example, where double yellow lines or taxi ranks might be positioned as opposed to the overall scheme itself.

As the Committee charged with overseeing compliance with the code of Corporate Governance, a key aspect of which includes appropriate adherence to the constitutional decision-making processes, we would urge the Committee to commission this report so that it can either satisfy itself that everything is being done properly or ensure that any shortcomings are addressed by the relevant committee or officer.

Yours sincerely

Cllr. Lee Wares

Subject:	Internal Audit Progress Report – Quarter 2 (1 July to 30 September 2019)		
Date of Meeting:	14 January 2020		
Report of:	Executive Director, Finance & Resources		
Contact Officer:	Name:	Mark Dallen	Tel: 29-1314
	Email:	Mark.Dallen@brighton-hove.gov.uk	
Ward(s) affected:	All		

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

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

2. RECOMMENDATIONS

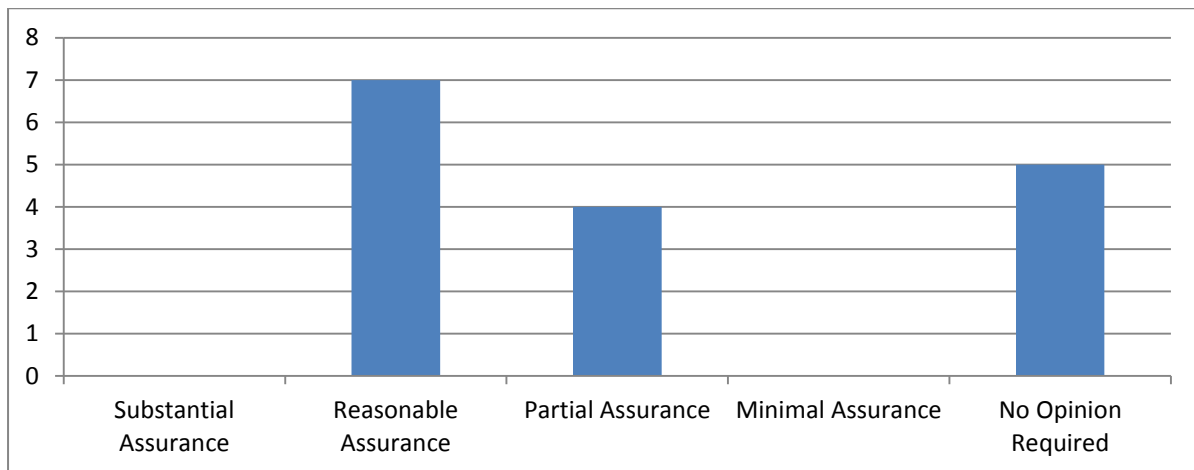
- 2.1 That the Committee note the report.
- 2.2 That the Executive Director, Health & Adult Social Care reports back to the next Audit and Standards Committee on progress on the actions within the follow-up Internal Audit report on Extra Care Housing.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The current annual plan for internal audit is contained within the Internal Audit Strategy and Annual Plan 2019/20 which was approved by the Audit and Standards Committee on 12 March 2019.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Internal Audit is on target to deliver 90% of the approved audit plan as per the key performance indicator.
- 4.2 Key audit findings from final reports issued during Quarter 2 are detailed in Appendix 1 and the opinions given are summarised in the chart below. There were seven reasonable assurance and four partial assurance reports. In addition there were five pieces of audit work which did not require an assurance opinion.



4.3 Formal follow up reviews continue to be carried out for all audits where ‘minimal assurance’ opinions have been given and for higher risk areas receiving ‘partial assurance’.

4.4 It should be noted that one of the reports that gave ‘partial assurance’, Extra Care Housing, was a follow-up of a 2018/19 audit of this service that also gave ‘partial assurance’. As a result it is recommended that officers be asked to separately report back to this Committee on the actions being taken to address the risks identified in the most recent audit report.

4.5 Appendix 1 also provides details of counter fraud investigations completed, information on the tracking of high priority actions and progress against our performance targets.

5. COMMUNITY ENGAGEMENT & CONSULTATION

5.1 None.

6. CONCLUSION

6.1 The Committee is asked to note the report.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

7.1 It is expected that the Internal Audit and Corporate Fraud Plan 2019/20 will be delivered within existing budgetary resources. Progress against the plan and action taken in line with actions support the robustness and resilience of the council’s practices and procedures in support of the council’s overall financial position.

Finance Officer Consulted: James Hengeveld

Date: 18/12/19

Legal Implications:

7.2 The Accounts and Audit Regulations 2015 require the Council to ‘undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal

auditing standards'. It is a legitimate part of the Audit and Standards Committee's role to review the level of work completed and planned by internal audit.

Lawyer Consulted: Victoria Simpson

Date: 20/12/19

Equalities Implications:

- 7.3 There are no direct equalities implications.

Sustainability Implications:

- 7.4 There are no direct sustainability implications.

SUPPORTING DOCUMENTATION

Appendices:

1. Internal Audit and Counter Fraud Quarter 2 Progress Report 2019/20

Background Documents

1. Internal Audit and Corporate Fraud Strategic Plan 2019/20.

Internal Audit and Counter Fraud Quarter 2 Progress Report 2019/20

CONTENTS

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

1. Summary of Completed Audits

Housing Repairs Programme – Position Statement, No Specific Audit Opinion

- 1.1 The October 2018 Policy, Resources & Growth Committee approved the recommendation to bring the responsive repairs and empty property refurbishments service in house. The annual value of the work is thought to be approximately £8m. In addition, the following services are to be procured externally:
- Planned maintenance and improvement programmes services;
 - Major capital projects;
 - Specialist works.
- 1.2 The objective of the audit was to provide assurance that the progress of the programme is sufficient to ensure the delivery of the repairs service on time and at the expected cost.
- 1.3 The audit has concluded, as at November 2019, that there is significant risk that the Council will not be able to successfully deliver a cost effective and efficient in-house repairs service by 1 April 2020.
- 1.4 The audit found that, whilst appropriate governance arrangements are in place and staff are working hard to develop a future programme for housing repairs and to deliver a new in-house service by the 1 April 2020, there are significant challenges to overcome in order to deliver the service by the deadline. Key risks include uncertainties about future costs, insufficient project staff, and challenges in the timetable for delivery of appropriate IT systems and in procuring and managing supply chains.
- 1.5 It was agreed with management that to bring this project back on track and achieve the delivery deadlines, further work was required to ensure:
- That the estimated costs of the in-house service have been forecast as accurately as possible;
 - The project is sufficiently resourced i.e. the recruitment of additional and replacement resources (including an Interim Executive Director as well as replacement Programme Manager);
 - The Planned Maintenance Programme is delivered on time;
 - The materials supply chain is properly understood and that the related IT requirements can be delivered within the available timescale;

- There is a clear understanding of how the Works Management System will be used (this will initially be sourced from the existing supplier);
 - The arrangements for the leasing and operation of the vehicle fleet are put in place within the timescales available;
 - That that a process for the appointment of sub-contractors to carry out specialist works is put in place;
 - A telephony system is in place that meets the requirements for a new customer call centre;
 - Performance management and quality control frameworks are put in place that will allow the effective management of the service;
 - The development of more detailed project plans and improvements to the existing risk management process.
- 1.6 Housing management, the project team and support services are working to implement these actions, and this will be subject to further assurance work by Internal Audit as the programme progresses.

E-Recruitment System– Position Statement, No Specific Audit Opinion

- 1.7 With effect from April 2019, the three Orbis partner authorities implemented a joint Applicant Tracking System (ATS) called TribePad, designed to converge recruitment processes administered for all three bodies by Business Operations and replace the various versions of the Talentlink system.
- 1.8 At the time of our review some of the implementation was still in progress. As a result, our input was focused upon providing advice on key controls being developed including:
- The implementation of effective governance structures, including ensuring that roles and responsibilities are clearly defined and understood;
 - Restriction of system access to appropriately authorised individuals;
 - System permissions being aligned correctly to job functions; and
 - Ensuring that the recruitment process was fair, open and transparent in line with the Council's sovereign policies.

- 1.9 The ongoing nature of development meant that we did not give an opinion in respect of overall assurance, and this audit was issued as a no-opinion position statement as a result. We were, however, able to conclude that the expected key controls within the overall recruitment area were robust and under continual review.
- 1.10 Our audit identified a number of areas for additional improvement around transparency of change management approval, and in preventing the publication of job advertisements by managers without the knowledge of recruitment teams. Most significant of our findings was the identification of an area that could be non-compliant with GDPR requirements (where hiring managers could see details of 'new' applications that were never actually formally submitted): as a result of the finding, a task was commissioned with suppliers TribePad to resolve this issue immediately.

Contract Collusion – Reasonable Assurance

- 1.11 This audit was a planned audit from the 2018/19 audit plan which was carried forward and completed in 2019/20.
- 1.12 Collusion in procurement is a risk in terms of security, VFM, effectively delivery of services and the reputation of the Council. It can occur when suppliers/bidders agree among themselves to eliminate competition in the procurement process or it can occur between the supplier and Council officers.
- 1.13 The audit concluded Reasonable Assurance as the Council has a good awareness of the risks of contract collusion and has measures in place to protect the Council from collusion. However, the Council has continued to identify issues with individual procurements through Whistleblowing and other tip offs. For procurements over £75,000, there is a good level of engagement with the Procurement Service, however, this is not the case with procurements under this threshold.
- 1.14 The following areas were identified where the Council can strengthen the control environment to both prevent and detect collusion in procurement processes:-
- Always clearly documenting the rationale for the percentage split between cost and quality as these can be manipulated to favour specific contractors;
 - Taking additional action to ensure that a sufficient number of bids are received for all procurements to meet the requirement of Contract Standing Orders;
 - Introducing a requirement for all bidders to sign a declaration of non-collusion;
 - Evidencing anti-fraud checks that are undertaken as part of procurement processes;

- Creating reports and using data analytics to detect suspicious patterns in our procurement data.

Cottesmore St Mary's School – Partial Assurance

1.15 An audit of Cottesmore St Mary's School was undertaken in accordance with our standard audit programme. This covers governance arrangements, financial planning, budget monitoring, purchasing, income, payroll and some limited testing on school funds and assets.

1.16 The review concluded partial assurance and identified a number of weaknesses in the system of control. Actions for improvement were agreed with management at the school in the following areas:

- Updating statutory information on the School's website;
- Reviewing and updating the School's scheme of delegation;
- Ensuring that reports are issued to the Governing Body on a more timely basis;
- Working with the Council's Finance team to resolve a problem with the payroll reconciliation and better evidencing checks carried out on new appointments to the school;
- Reconciling overtime payments and introducing a checklist for staff leavers;
- Ensuring that evidence is retained when the insurances of contractors are checked;
- Improving the process for raising purchase orders and security over purchasing cards in use;
- Improving the process for reimbursing expenses;
- Introducing more regular review of the school fund account;
- Better record keeping over the school's keys and assets.

Working Time Directive – Partial Assurance

1.17 The Working Time Regulations (1998) implement the European Working Time Directive (EWTD) into UK law. The Council has a statutory obligation to comply with these requirements.

1.18 The regulations set down employee rights to maximum working hours, rest periods, rest breaks whilst at work, annual leave and working arrangements for night workers.

- 1.19 This was an unplanned audit review following the investigation into the fatal accident at Blatchington Mill School, in which it was found that the member of staff concerned had two contracts with the Council for an aggregate of 50 hours per week, which is in excess of the 48 hours allowed under the Working Time Directive.
- 1.20 The following areas for improvement were identified by our review:
- Human Resources to carry out monitoring of hours worked outside of the WTD rules;
 - Opt-out agreements to be completed by all staff to record their agreement to such arrangements and that evidence of these opt-outs to be retained;
 - A standardised risk assessment form to be introduced where opt-outs are agreed;
 - Better communication of WTD requirements to all staff via the Wave and other routes, including specific manager responsibilities;
 - Improved record keeping in relation to external employment by members of staff, which are also counted for the purpose of the WTD.
- 1.21 All of the actions were agreed with management as part of a formal action plan and will be subject to a follow up by Internal Audit as part of the 2020/21 audit plan.

Temporary Accommodation – Partial Assurance

- 1.22 Temporary Accommodation is funded by the general fund and has a gross budget of £18m in 2019/20. It overspent its budget by £0.59m in 2018/19 and is again expected to overspend in 2019/20.
- 1.23 This audit was carried forward from the 2018/19 financial year and its main focus was on budget management and the collection and recovery of rents.
- 1.24 Our report gave a Partial Assurance opinion and we identified a number of key areas where improvements need to be made. These were to:
- Take steps to reduce the budget overspend by increasing homeless prevention work and moving current tenants into private sector rented accommodation;
 - Improve the budget monitoring process;
 - To take action to improve the monitoring and collection of current tenants arrears (at the time of audit totally £1m);

- To take action to improve the monitoring and collection of former tenants arrears (at the time of audit totally £2.2m plus);
 - To improve the process for the write-off or irrecoverable debt;
 - To review the bad debt provision for temporary accommodation debts.
- 1.25 In all cases these actions have been agreed with management and will be followed up by Internal Audit as part of the 2020/21 audit plan.

Transport Capital Grants – Claim Certified (No audit opinion is applicable)

- 1.26 This work involved the certification of two 2018/19 grant claims received from the Department for Transport. These were:
- Local Transport Capital Block Funding Grant;
 - Bus Subsidy Grant.
- 1.27 No significant issues were identified in the grant certification.

HASC Temporary Accommodation – Reasonable Assurance

- 1.28 Following a Councillor enquiry about payments made by Health and Adult Social Care (HASC) for temporary accommodation to a specific provider, it was identified that an appropriate contract was not in place. As a consequence, it was agreed to undertake a further review to obtain assurance that this was a one-off and contractual arrangements are in place with other HASC temporary accommodation providers. The review was an addition to the agreed Internal Audit Plan for 2019/20.
- 1.29 The main method of providing temporary accommodation to HASC is via the Housing Temporary Accommodation service. Although contracts were found to be in place with almost all providers, the audit found there is a lack of a joined up approach across the two directorates with regard to providing temporary accommodation. Specific areas for review and improvement were:
- The joint working arrangements between Housing Temporary Accommodation and HASC in relation to Emergency and Temporary Accommodation;
 - The arrangements with two accommodation providers who are still procured via a spot – purchasing arrangement;

- Those temporary accommodation cases where it is unclear as to whether there is still a duty to house them under the Care Act.

Treasury Management – Reasonable Assurance

- 1.30 The purpose of the audit was to provide assurance that controls are in place over all investment and borrowing decisions and that effective cash flow and performance monitoring arrangements are in place.
- 1.31 The audit found that an appropriate Treasury Management Policy and Treasury Management Practice Statements were in place and the performance of investments exceeded the targets set. Testing confirmed that controls were in place over borrowing and investment transactions, and record keeping was effective.
- 1.32 Three actions for improvement were agreed but two of these were low priority. The medium priority action was that there was a need to improve the evidencing of a management check during the processing of investment and borrowing transactions.

Purchasing Cards System – Reasonable Assurance

- 1.33 The purpose of the audit was to provide assurance that controls over purchasing cards ensure that they are only used for Council business and by those with appropriate authorisation. Also, that the accounting and VAT arrangements are fit for purpose.
- 1.34 The audit report concluded Reasonable Assurance and that the main controls were in place over the authorisation of purchases and the use of the cards. Actions were agreed to further improve the control environment as follows:
- Identified delays in the authorisation of transactions are addressed by the additional monitoring of compliance reports and the reintroduction of exception reports to detect potential rogue transactions;
 - Appropriate receipts are retained to support the VAT reclaimed on all relevant transactions;
 - Appropriate narrative is always included on the system to explain the purchase;
 - To review card holder spending limits to detect any increases which have only been agreed on a temporary basis.

Care Leavers (Follow-up) – Reasonable Assurance

- 1.35 The Care Leaver Services Team provide information, help and support to those leaving care, aged 18-24, in order to help them make the transition to adult life successfully. This includes the statutory responsibility for providing financial assistance towards accommodation, education and training costs.
- 1.36 This was a follow-up on a previous audit report, from August 2018, which provided a Partial Assurance opinion. The objective of this audit was to provide assurance that the actions from the last audit had been implemented and that key financial controls were in place and operating effectively for administering grants and other payments to those leaving care.
- 1.37 This audit concluded Reasonable Assurance and that the majority of actions from the 2018 report had been implemented. The remaining areas for improvement that were identified were as follows:
- That continued action is taken to ensure that all six monthly Pathway Plan reviews are completed on time (the target is 90% of Care Leavers);
 - That purchasing financial limits are always complied with;
 - The security arrangements for purchasing cards are complied with.

Public Health – Reasonable Assurance

- 1.38 As a result of consultation with service management it was agreed that the focus of this audit of Public Health would be on the 'Active for Life' programme. Specifically that the programme is subject to robust monitoring, evaluation and reporting processes and that budgetary control, procurement and other financial processes complied with corporate requirements. Also, that there was compliance with the General Data Protection Regulations whenever personal data was being collected and used.
- 1.39 The audit concluded Reasonable Assurance and that each element of the programme is subject to robust monitoring, evaluation and reporting.
- 1.40 The following areas were identified where additional improvement to controls can be made:
- The introduction of Projection Initiation Documents (PIDs) to support the introduction of new projects/ activities;
 - Improved sharing of budgetary control information with project managers and more accurate coding of income and expenditure;

- Better income reconciliation processes;
- Improvements to data recording and handling.

Extra Care Housing Follow-up – Partial Assurance

- 1.41 Extra Care Housing schemes are designed for older people (over 55) who are still able to live independently but require care for low to moderate needs. The units are purpose built self-contained flats, designed to encourage independent living for as long as possible.
- 1.42 This audit was a follow-up to a 2018/19 audit that gave a Partial Assurance opinion. The purpose of the audit was to provide assurance that the objectives and rationale of the service model are clear and Extra Care Housing performance measures are aligned. Also that:
- Contracts are in place with third parties that detail service level expectations and performance is monitored;
 - Budget monitoring processes are robust and arrangements are in place to evaluate the cost effectiveness of the service model.
- 1.43 The audit again concluded Partial Assurance and that further action is still required to improve the control environment over this service. Specifically:
- Action is taken to avoid extra care units being left empty or individuals being accepted with lower care or social housing needs than would be expected;
 - There is additional review to ensure that this type of accommodation provides value for money, including that all relevant costs are take into consideration;
 - To identify why the care provider's linked to Extra Care Schemes are not always being used by residents;
 - To introduce an operational protocol between the Council and one of the Extra Care providers;
 - That key performance information is captured by service providers and reviewed by the Council.
- 1.44 The deadline for implementing these actions is April 2020 and this will be subject to a further follow up by Internal Audit to confirm that sufficient improvement is made.

Cyber Security – Reasonable Assurance

- 1.45 Cyber-attacks on the Council's IT systems and devices are a threat to the security of the council's data, and could have a large adverse impact on service delivery. Cyber security refers to the measures in place to combat these threats, and is defined as the protection of information systems (hardware, software and associated infrastructure), the data on them, and the services they provide, from unauthorised access, harm or misuse. This includes harm caused intentionally by the operator of the system, or accidentally, as a result of failing to follow security procedures.
- 1.46 The audit concluded Reasonable Assurance and found that comprehensive information and guidance is available to users providing information on cyber security issues. This included mandatory and additional training, plus policies, advice, and regular news items posted on the intranet where new and emerging issues are identified.
- 1.47 Technical defences are in place and are regularly tested by external penetration testers. Further proactive measures are taken by relevant staff to keep informed of emerging cyber security threats and trends.
- 1.48 A number of areas where further improvements to control can be made were identified and actions agreed. These were in relation to:
- The development of a Cyber response plan and improved co-ordination with our Orbis partners to share best practice;
 - Enhanced monitoring of IT activity and procurement of additional vulnerability scanning tools.

EU Grant – SHINE (Claim 7)

- 1.49 This is an EU Interreg project that requires grant certification at least once a year. The full title of the project is Sustainable Housing Initiatives in Excluded Neighbourhoods. The total value of the project between 2016 and 2020 is approximately £367,000 (Grant expected £220,000).
- 1.50 No significant issues were identified in the grant certification.

Valley Gardens (Phase 3) - No Specific Audit Opinion

- 1.51 This audit was requested by the Audit and Standards Committee in July 2019 and is included as a separate agenda item at this meeting.

2. Proactive Counter Fraud Work

- 2.1 Internal Audit deliver both reactive and proactive counter fraud services across the Orbis partnership. Work to date has focussed on the following areas.

National Fraud Initiative Exercise

2.2 The results from this exercise were received on 31 January 2019 and have been prioritised for review over the coming months. Periodic updates on any outcomes from this work will be provided as part of future internal audit progress reports.

Counter Fraud Policies

2.3 Each Orbis partner has in place a Counter Fraud Strategy that sets out their commitment to preventing, detecting and deterring fraud. Internal Audit are in the process of reviewing the sovereign strategies to align with best practice and to ensure a robust and consistent approach to tackling fraud.

Fraud Risk Assessments

2.4 Fraud risk assessments have been consolidated and are regularly reviewed to ensure that the current fraud threat for the Council has been considered and appropriate mitigating actions identified.

Fraud Response Plans

2.5 The Fraud Response Plans take into consideration the results of the fraud risk assessments and emerging trends across the public sector in order to provide a proactive counter fraud programme. These include an increased emphasis on data analytics. The Fraud Response Plans set out the proactive work plan for Internal Audit in 2019/20. Areas identified include analysis in the following areas:

- Conflict of Interest
- Gifts and Hospitality
- Purchasing and Fuel Cards

Fraud Awareness

2.6 The team has been refreshing eLearning content to provide engaging and current material available to the whole organisation. This will be run in conjunction with fraud awareness workshops to help specific, targeted services identify the risk of fraud and vulnerabilities in their processes and procedures. An awareness campaign was undertaken to coincide with Internal Fraud Awareness Week in November.

Reactive Counter Fraud Work - Summary of Completed Investigations

Cash Loss

- 2.7 Following reports of cash loss at a care home, Internal Audit provide advice on security and improving controls over cash handling.

Housing Tenancy & Local Taxation

- 2.8 In addition to the above, a key focus area remains housing tenancy fraud and Local Taxation, and the team has made good progress with work to date delivering:

- 7 properties returned so far this year;
- 4 people removed from the Housing Waiting List following investigation;
- £14,803 in Housing Benefit overpayment has been identified as a result of investigation;
- £812 in Council Tax Reduction overpayment identified;
- SPD to the value of £2,982 has been removed from council tax account following investigation;
- An individual has been charged £28,393 in Business Rates following an investigation that found the individual had been renting a property out as holiday lets when the property had been listed as residential.

3. Action Tracking

- 3.1 All high priority actions agreed with management as part of individual audit reviews are subject to action tracking. As at the end of quarter2, 86% of high priority actions due had been implemented.
- 3.2 As at December 2019 there are 4 high priority actions which are overdue. Details of these are provided below, together with details of progress and commentary.

Details of Audit, Risk and Action	Dir.	Due date	Revised date	Progress and Comments
<p>Residential and Nursing Care</p> <p><u>Contract Rates and Fees.</u> A shortage of residential nursing care vacancies in the city meant prices were significantly higher than the set rates the Council pays. To secure appropriate care for individual nursing care clients, rates were agreed above the BHCC set fee, following the approval of a waiver. There were insufficient resources in the Care Matching Team to effectively manage this issue.</p> <p>An action was agreed that the function and process of the Care Matching Team will be reviewed to include negotiation (brokerage) and waivers.</p>	HASC	31/7/19	To be reviewed during the 2020/21 audit.	<p>Over the past year to 18 months HASC has identified that to continue meeting its statutory responsibilities and ensuring vulnerable adults are supported with high quality services required significant changes to the way they worked. This has impacted on the implementation of this action (and the two other ASC actions below).</p> <p>A new Operating Model for the directorate has been adopted and Residential and Nursing Care is incorporated into this programme of work.</p> <p>If this issue is not addressed there is an ongoing budget risk.</p> <p>Residential and Nursing Care will be included in the Internal Audit Plan for 2020/21.</p>
<p>Residential and Nursing Care</p> <p><u>Resident Care Needs Assessments.</u> It is a requirement for care plans to be regularly reviewed. The audit found that this is not always happening. There is a risk client's care needs are not being met and/or that the Council may be paying for nursing care that is no longer required by the client.</p> <p>The service agreed an action to improve performance with a revised</p>	HASC	31/7/19	To be reviewed during the 2020/21 audit.	<p>The service has stated that historically performance regarding Reviews has not always been to the standard that would be wanted (in terms of numbers completed) but there is still a desire to improve this performance in line with the requirement of the Care Act and the quality/ impact of these reviews.</p>

Details of Audit, Risk and Action	Dir.	Due date	Revised date	Progress and Comments
target set of 60% per annum but which prioritises clients in nursing care settings.				In 2019/20 efforts 'targeting' review activity were focussed on the most vulnerable and those presenting as benefiting most from a review. The 'Better Lives, Stronger Communities' (BLSC) programme, we will focus on continued improvement.
<p>Direct Payments</p> <p><u>Annual client reviews.</u> The audit found that only a quarter of client accounts had been reviewed in the previous 12 months. This created a risk that clients are not receiving the required level of care or that funds could be used more effectively.</p> <p>An action was agreed to allow the service to attain their target of reviewing 60% of clients annually.</p>	HASC	31/7/19	To be reviewed during the 2019/20 audit.	<p>Please see the comments above regarding client reviews.</p> <p>The BLSC programme will focus on the reviewing activity aligned to this cohort. The service also wants to increase the numbers of people receiving a direct payment if they can.</p> <p>A follow-up audit is currently in progress.</p>
<p>Housing Local Delivery Vehicle (Follow-up)</p> <p><u>Funding Gap.</u> The terms of the original funding agreement with Seaside Homes included a guaranteed rent payment which is no longer affordable over the last five years the Local Housing Allowance rate (which is the maximum rent the council can charge its tenants to match the housing benefit) has remained static.</p> <p>This has meant a growing and significant financial gap between</p>	NCH	30/9/19	Not yet agreed.	<p>This is a complex issue which has not yet been resolved. The Executive Director (F&R) and the former and Acting Director (NCH) have held meetings during 2019 and options are being considered to manage the financial gap.</p> <p>If this issue is not addressed, it will result in a substantial cumulative deficit which cannot be funded from future rents.</p>

Details of Audit, Risk and Action	Dir.	Due date	Revised date	Progress and Comments
<p>what the council receives in rent and what it pays to Seaside Homes.</p> <p>The Executive Director agreed to work with Seaside Homes to discuss and agree a constructive way forward.</p>				A follow-up audit will be scheduled for 2020/21.

4. Amendments to the Audit Plan

4.1 In accordance with proper professional practice, the internal audit plan for the year remains under regular review to ensure that the service continues to focus its resources in the highest priority areas based on an assessment of risk. The following additions to the audit plan have been made since the last meeting of the Audit and Standards Committee:

- E-Recruitment Project Assurance;
- Home Care (Follow-up).

4.2 Through the same process, audits could either be removed or deferred from the audit plan and, where appropriate, considered for inclusion in the 2020/21 plan as part of the overall risk assessment completed during the annual audit planning process. One audit has been deleted since the last meeting as follows:

- IT and Digital Projects.

5 Internal Audit Performance

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

Aspect of Service	Orbis IA Performance Indicator	Target	RAG Score	Actual Performance
Quality	Annual Audit Plan agreed by Audit Committee	By end April	G	Approved by Audit Committee on 12 March 2019

Aspect of Service	Orbis IA Performance Indicator	Target	RAG Score	Actual Performance
	Annual Audit Report and Opinion	By end July	G	2019/20 Annual Report and Opinion approved by Audit Committee on 23 July 2019
	Customer Satisfaction Levels	90% satisfied	G	100% as at the end of quarter 1
Productivity and Process Efficiency	Audit Plan – completion to draft report stage	90%	G	On target. 64% of the plan complete as at the end of quarter 1.
Compliance with Professional Standards	Public Sector Internal Audit Standards	Conforms	G	January 2018 – External assessment by the South West Audit Partnership gave an opinion of ‘Generally Conforms’ – the highest of three possible rankings
	Relevant legislation such as the Police and Criminal Evidence Act, Criminal Procedures and Investigations Act	Conforms	G	No evidence of non-compliance identified
Outcome and degree of influence	Implementation of management actions agreed in response to audit findings	95% for high priority agreed actions	A	86% at end of quarter 2.
Our staff	Professionally Qualified/Accredited	80%	G	85%

Audit Opinions and Definitions

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

Subject:	Annual Surveillance Report 2019		
Date of Meeting:	14 January 2020		
Report of:	Executive Director for Finance and Resources		
Contact Officer:	Name:	Jo Player	Tel: 29-2488
	Email:	Jo.player@brighton-hove.gov.uk	
Ward(s) affected:	All		

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

- 1.1 The purpose of this report is to appraise Committee of the activities that have been undertaken utilising the powers under the Regulation of Investigatory Powers Act 2000 (RIPA) since the last report to Committee in March 2019.
- 1.2 The report also introduces a revised Policy and Guidance document

2. RECOMMENDATIONS:

- 2.1 That the continued use of covert surveillance be approved as an enforcement tool to prevent and detect crime and disorder investigated by its officers, providing the activity is in line with the Council's Policy and Guidance and the necessity and proportionality rules are stringently applied.
- 2.2 That the surveillance activity undertaken by the authority since the report to Committee in March 2019 as set out in paragraph 3.3 is noted.
- 2.3 That the continued use of the amended Policy and Guidance document as set out in Appendix 1 be approved.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert surveillance techniques by Public authorities, including local authorities. RIPA was enacted as part of a suite of legislation flowing from the Human Rights Act 1997. RIPA requires that when public authorities need to use covert techniques to obtain information about someone, they do it in a way that is necessary and compatible with human rights. Codes of Practice also help officers to undertake this work in an appropriate manner. The most recent code was updated in September 2018.
- 3.2 RIPA regulates the interception of communications, directed and intrusive surveillance and the use of covert human intelligence sources (informants). Local authorities may only carry out directed surveillance, access certain communications data and use informants.

- 3.3 The Council has carried out no surveillance activity since the last report to Committee in March 2019.
- 3.4 The Protection of Freedoms Act was enacted in November 2012. Since then, approval must be sought from a Magistrate when local authorities wish to conduct surveillance activity, access communications data and use informants. This is in addition to the authorisation by an Authorising Officer who meets the criteria regarding their position within the authority.
- 3.5 In addition to seeking the approval of a Magistrate, all applications must meet the Serious Offence test. This stipulates that any directed surveillance is restricted to the investigation of offences that carry a custodial sentence of six months or more. The only offence where this will not apply is in regard to the investigation of underage sales of tobacco or alcohol.
- 3.6 In November 2018 the Investigatory Powers Commissioner's Office (previously the Office of the Surveillance Commissioner) audited the authority's use of RIPA in the last three years since the previous audit in 2015. The inspector recommended that the Policy and Guidance document was updated, to reflect the new Codes of Practice in relation to social media and that refresher training is given to all authorising officers. The policy was updated to reflect this recommendation and training is being arranged for authorising officers.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

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

5. COMMUNITY ENGAGEMENT & CONSULTATION

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

6. CONCLUSION

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

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

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

Finance Officer Consulted: Michael Bentley

Date: 03/12/19

Legal Implications:

- 7.2 The statutory framework is set out a in the body of the report. There are no further legal implications in relation to this.

Lawyer Consulted: Simon Court

Date: 2nd December 2019

Equalities Implications:

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

Sustainability Implications:

- 7.4 There are no sustainability implications

Any Other Significant Implications:

- 7.5 None.

SUPPORTING DOCUMENTATION

Appendices:

1. Other Implications
2. Policy and Guidance Document version January 2020

Background Documents:

None

Crime & Disorder Implications:

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

Risk and Opportunity Management Implications:

- 1.2 None

Public Health Implications:

- 1.3 None

Corporate / Citywide Implications:

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



**Brighton & Hove
City Council**

Corporate Policy & Procedures Document on the Regulation of Investigatory Powers Act 2000 (RIPA)

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

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Version: January 2020

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

Introduction

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

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

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

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

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

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

Policy Statement

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

It is this Council's Policy that

- All covert surveillance exercises conducted by the Council should comply with the requirements of RIPA
- An Authorisation will only be valid if initialled by a gatekeeper and signed by an authorising officer.
- Authorising 'Access to Communications data' will be restricted to the Head of Safer Communities. The National Anti Fraud Network will become the Single Point of Contact for purposes of Access to Communications Data.

Senior Responsible Officer

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

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

Authorising Officers Responsibilities

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

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

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

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

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

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

- **Necessary** in this context includes consideration as to whether the information sought could be obtained by other less invasive means, and that those methods have been explored and been unsuccessful or could have compromised the investigation. The Authorising Officer must be satisfied that there is necessity to use covert surveillance in the proposed operation. In order to be satisfied there must be an identifiable offence to prevent or detect before an authorisation can be granted on the grounds falling within sec 28(3)(b) and 29(3)(b) of RIPA and ss6(3) and 7(3) of RIP(S)A. The application should identify the **specific offence** being investigated (**including the Act and section**) and the **specific point(s) to prove** that the surveillance is intended to gather evidence about. The applicant must show that the operation is **capable of gathering that evidence** and that such **evidence is likely to prove** that part of the offence.
- Deciding whether the activity is **proportionate** includes balancing the right to privacy against the seriousness of the offence being investigated. Consideration must be given as to whether the activity could be seen as excessive. An authorisation should demonstrate how the

Authorising Officer has reached the conclusion that the activity is proportionate to what it seeks to achieve; including an explanation of the reasons why the method, tactic or technique proposed is not disproportionate to what it seeks to achieve. A potential model answer would make it clear that the 4 elements of proportionality had been fully considered.

1. Balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
2. Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,
3. That the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result and,
4. Evidencing what other methods had been considered and why they were not implemented.

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

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

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

General Information on RIPA

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

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

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

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

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

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

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

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

What RIPA Does and Does Not Do

RIPA does:

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

RIPA does not:

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

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

Types of Surveillance

'Surveillance' includes

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

Surveillance can be overt or covert.

Overt Surveillance

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

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

The following are NOT normally Directed Surveillance:

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

Covert Surveillance

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

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

Directed Surveillance

Directed Surveillance is surveillance which: -

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

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

Examples of Expectations of Privacy:

Two people are holding a conversation on the street and, even though they are talking together in public, they do not expect their conversation to be overheard and recorded by anyone. They have a 'reasonable expectation of privacy' about the contents of that conversation, even though they are talking in the street.

The contents of such a conversation should be considered as private information. A directed surveillance authorisation would therefore be appropriate for a public authority to record or listen to the conversation as part of a specific investigation or operation and otherwise than by way of an immediate response to events.

A Surveillance officer intends to record a specific person providing their name and telephone number to a shop assistant, in order to confirm their identity, as part of a criminal investigation.

Although the person has disclosed these details in a public place, there is nevertheless a reasonable expectation that the details are not being recorded separately for another purpose. A directed surveillance authorisation should therefore be sought.

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

Reconnaissance- Examples

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

by any person, the accumulation of information is likely to result in the obtaining of private information about that person or persons and a directed surveillance authorisation should be considered.

Intrusive Surveillance

This is when it: -

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

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

Council Officers must not carry out intrusive surveillance.

Notes about 'Intrusive'

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

Examples:

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

Examples of different types of Surveillance

Type of Surveillance	Examples
<u>Overt</u>	<ul style="list-style-type: none"> • Police Officer or Parks Warden on patrol • Sign-posted 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. • Most test purchases (where the officer behaves no differently from a normal member of the public).
<u>Covert</u> but not requiring prior authorisation	<ul style="list-style-type: none"> • CCTV cameras providing general traffic, crime or public safety information.
<u>Directed</u> (must be RIPA authorised)	<ul style="list-style-type: none"> • Officers follow an individual or individuals over a period, to establish whether s/he is working when claiming benefit or off long term sick from employment. • Test purchases where the officer has a hidden camera or other recording device to record information that might include information about the private life of a shop-owner, e.g. where s/he is suspected of running his business in an unlawful manner.
<u>Intrusive</u>	<ul style="list-style-type: none"> • Planting a listening or other device (bug) in a person's home or in their private vehicle. <p style="text-align: center;">THE COUNCIL CANNOT CARRY OUT THIS ACTIVITY AND FORBIDS ITS OFFICERS FROM CARRYING IT OUT</p>

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

Who is a CHIS?

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

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

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

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

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

Examples of a CHIS may include:

- Licensing officers, working with the Police, covertly building a business relationship with a cab company which is believed to be using unlicensed drivers.
- Food safety officers posing as customers to get information on what is being sold at premises and developing a relationship with the shopkeeper beyond that of supplier and customer

What must be authorised?

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

- Creating (or "Conduct of") a CHIS means procuring a person to establish or maintain a relationship with a person so as to secretly obtain and pass on information. The relationship could be a personal or 'other' relationship (such as a business relationship) and obtaining the information may be either the only reason for the relationship or be incidental to it. Note that it can also include asking a person to continue a relationship which they set up of their own accord.

- Use of a CHIS includes actions inducing, asking or assisting a person to act as a CHIS and the decision to use a CHIS in the first place.

Online Covert Activity

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

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

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

Whether a public authority interferes with a person's private life includes a consideration of the nature of the public authority's activity in relation to that information. Simple reconnaissance of such sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and

therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation should be considered. These considerations apply regardless of when the information was shared online. See above.

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

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

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

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

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

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

Example: *Researchers within a public authority using automated monitoring tools to search for common terminology used online for illegal purposes will not normally require a directed*

surveillance authorisation. Similarly, general analysis of data by public authorities either directly or through a third party for predictive purposes (e.g. identifying crime hotspots or analysing trends) is not usually directed surveillance.

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

Juvenile Sources and Vulnerable Individuals

Juvenile Sources

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

Authorisations for juvenile CHIS must not be granted unless: -

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

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

Vulnerable Individuals

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

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

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

Test Purchases

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

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

Please also see below under 'Serious Crime'

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

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

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

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

Accessing Communications Data

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

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

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

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

Customer data (Subscriber)

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

It includes:-

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

Service Data (Service user)

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

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

Traffic Data

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

Authorisation Procedures

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

Authorising Officers

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

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

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

Authorising Officers—Access to Communications data

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

Training Records

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

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

Application Forms

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

A gatekeeper role will be undertaken by either the Head of Safer Communities or the Principal Trading Standards Officer who will check that the applications have been completed on the correct forms, have a URN and that they contain sufficient grounds for authorisation. They will provide feedback to the applicant and will initial the forms before being submitted to the authorising officer.

The Head of Safer Communities can fulfil both the role as gatekeeper and authorising officer but will not fulfil both roles for an individual application.

Grounds for Authorisation

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

- For the prevention or detection of crime

Serious Crime and Non RIPA Surveillance

Serious Crime

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

Non RIPA Surveillance

This new process will automatically restrict the use of surveillance activity under the RIPA framework by a number of our services as the offences they deal with do not meet the serious crime threshold.

RIPA does not grant any powers to carry out surveillance, it simply provides a framework that allows authorities to authorise surveillance in a manner that ensures compliance with the European Convention on Human Rights. Equally, RIPA does not prohibit surveillance from being carried out or require that surveillance may only be carried out following a successful RIPA application.

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

separate record of Non-RIPA activities, and monitor their use in the same manner as RIPA authorised activities.

Assessing the Application Form

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

Be mindful of this Corporate Policy & Procedures Document

Satisfy themselves that the RIPA authorisation is

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

This means that they must consider

- whether other less invasive methods to obtain the information have been considered. The least intrusive method will normally be considered the most proportionate unless for example it is impractical or would undermine the investigation.
- balance the right of privacy against the seriousness of the offence under investigation. When considering necessity and proportionality, an authorising officer should spell out in terms of the 5 W's, (who, what, why, where, when and how) what specific activity is being sanctioned.
- Take account of the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**Collateral Intrusion**).
- Ensure that measures are taken wherever practicable to avoid or minimise collateral intrusion.
- Set a date for review of the authorisation and review on only that date where appropriate.
- Ensure that the form carries a unique reference number
- Ensure that the applicant has sent a copy to the Head of Safer Communities for inclusion in the Central Register within 1 week of the authorisation.
- Ensure that the application is cancelled when required.

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

Retention and Destruction of the Product

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

There is nothing in RIPA 2000 which prevents material obtained from properly authorised surveillance being used in other investigations. However we must be mindful to handle store and destroy material obtained through the use of covert surveillance appropriately. It will be the responsibility of the Authorising Officer to ensure compliance with the appropriate data protection

requirements and to ensure that any material is not retained for any longer than is necessary. It will also be the responsibility of the Authorising Officer to ensure that the material is disposed of appropriately.

Confidential Material

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

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

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

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

Confidential Personal Information and Confidential Journalistic Information

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

Confidential journalistic material includes material acquired or created for the purpose of journalism and held subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

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

Additional Safeguards when Authorising a CHIS

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

- Be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved;

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

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

Duration

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

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

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

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

Working with Other Agencies

If an officer wishes to utilise the CCTV system operated by the Police

Directed Surveillance Authorisation must be obtained before an approach is made to the Control Room. If immediate action is required an Authorisation must be obtained within 72 hours of the request being made.

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

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

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

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

Record Management

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

Records maintained in the Department

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

Central Register maintained by Safer Communities

Authorising Officers must forward details of each form to The partnership support officer Safer Communities for the Central Register, **within 1 week of the authorisation, review, renewal, cancellation or rejection.**

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

Consequences of Non Compliance

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

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

Oversight by Members

- Elected Members shall have oversight of the Authority’s policy and shall review that policy annually.
- The report to members shall be presented to the Elected Members by the SRO. The report must not contain any information that identifies specific persons or operations.
- Alongside this report, the SRO will report details of ‘Non-RIPA’ surveillance in precisely the same fashion
- Elected Members may not interfere in individual authorisations. Their function is to, with reference to the reports; satisfy themselves that the Authority’s policy is robust and that it is being followed by all officers involved in this area. Although it is elected members who are accountable to the public for council actions, it is essential that there should be no possibility of political interference in law enforcement operations.

Concluding Remarks

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

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

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

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

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

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

Appendix 1: List of Authorising Officers

List of Authorised Officers

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

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

- Head of Safer Communities: Jo Player

Single Point of Contact for Accessing Communications Data

- National Anti Fraud Network (NAFN)

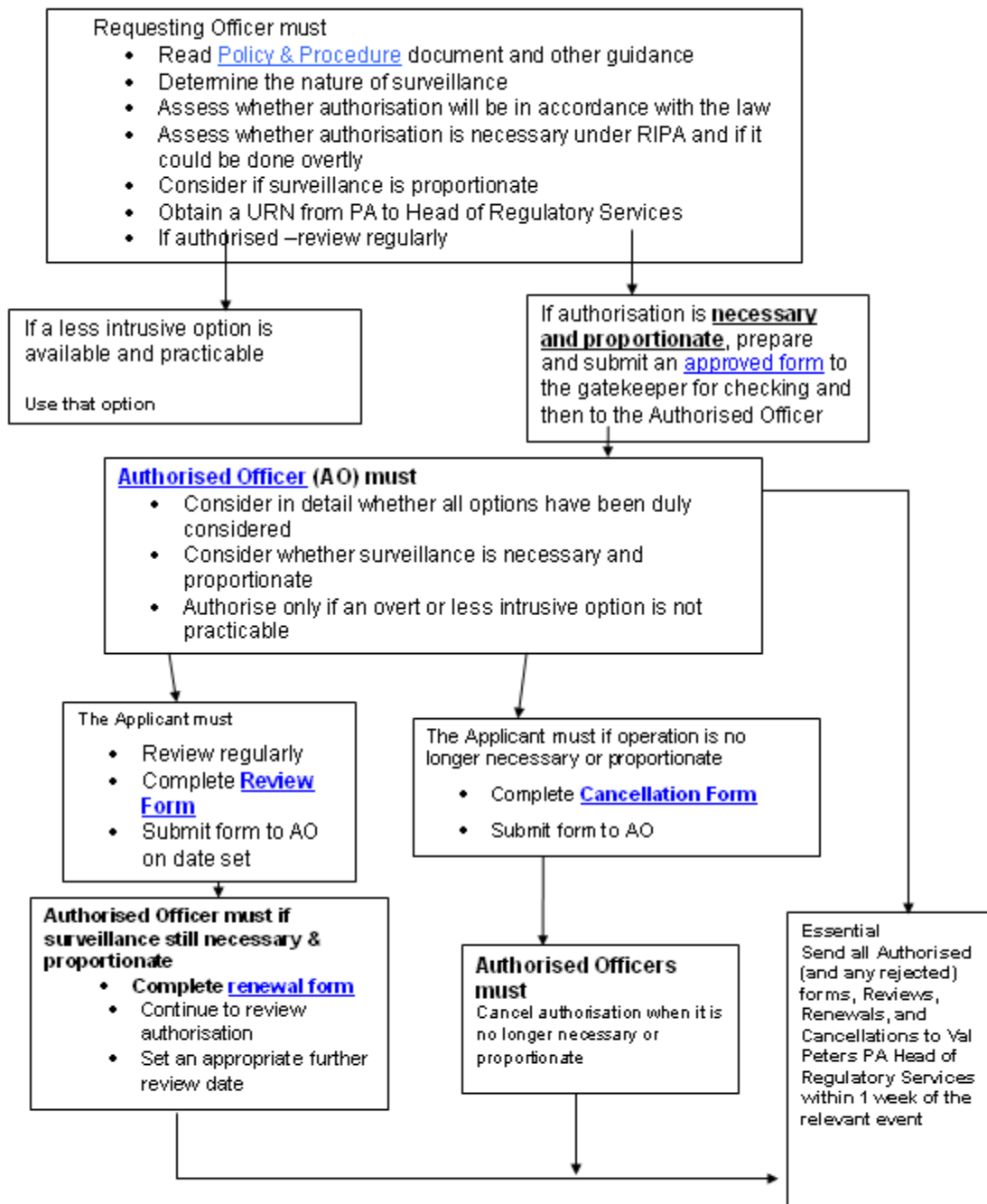
Gatekeepers

- Head of Safer Communities: Jo Player
- Principal Trading Standards Officer: John Peerless

Please contact Charlotte Farrell for a URN

Appendix 2: Flow chart outlining process

Authorising Directed Surveillance Process



Appendix 3: List of Useful Websites

RIPA Forms, Codes of Practice and Advice

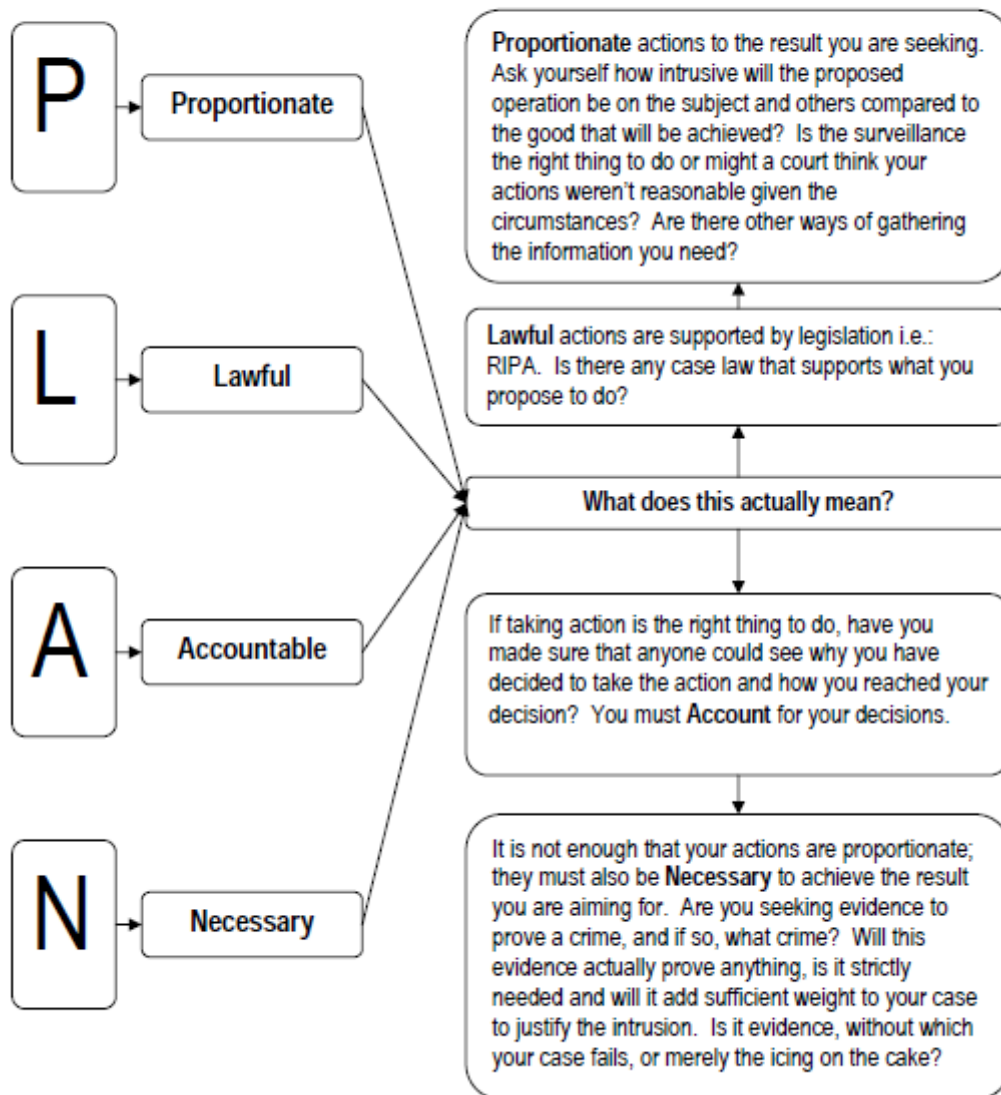
The policy requires you to use the most up-to-date versions of forms and codes of practice. Rather than reproduce forms and codes of practice that are subject to change, we have provided links to the currently approved versions. You should access the document you require by following the relevant link.

- The most up-to-date RIPA forms must always be used. These are available from the Home Office website and may be found by following this link :
<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>
- The full text of the Codes of Practice are available here :
<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>
- The Act is available here:
<http://www.legislation.gov.uk/ukpga/2000/23/contents>
- The Office of Surveillance Commissioners website has some useful information and advice and is available here :
<http://surveillancecommissioners.independent.gov.uk/>

Appendix 4: Guidance for Authorising Officers

APPENDIX FOUR

Notes for Guidance for Authorisation – Directed Surveillance



Authorised Officer's Statement

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

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

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

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

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

Authorised Officer's Statement

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

Sections 15 and 16:

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

Appendix 5: Guidance for Applicants

The RIPA 1 Form – Guidance Notes on Completion

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

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

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

APPLICATION FOR AUTHORISATION TO CARRY OUT DIRECTED SURVEILLANCE

Public Authority
(including full address)

What public body do you work for?
Record it here

Unit/Branch/Division

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

Full address

Full address of your dept / office / building.

Contact details

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

Investigation/Operation Name (if applicable)

You can give the operation a name if you wish.

Investigating Officer (if a person other than the applicant)

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

Details of application:

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

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

Page Two

Enter a summary of the reason for the operation and what you are planning to do. Be brief: what will you do, why are you doing it and what will you get out of it?

2. Describe the purpose of the specific operation or investigation.

3. Describe in detail the surveillance operation to be authorised and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used.

What methods will you use for the surveillance?
What are the technical aspects? Who, what, when, where, how long, how many, equipment etc. Mention everything. You will not be authorised to do things you don't mention here.

4. The identities, where known, of those to be subject of the directed surveillance.

Name:
• Address:
• DOB:
• Other information as appropriate:

Who are you intending to gather evidence on?
If you do not know the identity of all parties you must describe them as best as you are able.

5. Explain the information that it is desired to obtain as a result of the directed surveillance.

What evidence do you intend to obtain from the surveillance? Specify exactly what you intend to get, how much and what types. This is so a judgement can be made on the weight of the evidence that you will get. Be careful what you write here: when you have achieved these aims the surveillance must stop immediately.

Page Three

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

Page Four

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

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

...ive might it
by the need for
? (Code paragraph
2.5]

10. Confidential information [Code paragraphs 3.1 to 3.12].

INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL INFORMATION:

11. Applicant's details

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

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

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

Subject:	Review of the Code of Conduct		
Date of Meeting:	14th January 2020		
Report of:	Head of Law and Monitoring Officer		
Contact Officer:	Name:	Victoria Simpson	Tel: 01273 294687
	Email:	Victoria.Simpson@brighton-hove.gov.uk	
Ward(s) affected:	All		

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

- 1.1 This report seeks to update Members on the work done by the cross party Member Working Group which this Committee set up on a 'task and finish' basis to review the Council's arrangements in light of the best practice recommendations of the Committee on Standards in Public Life's [Review of Local Government Ethical Standards](#). This Committee's approval is sought in relation to proposals to amend certain aspects of this authority's arrangements, including the Code of Conduct for Members which forms part of the Council's Constitution and which requires full Council approval.

2. RECOMMENDATIONS:**Audit and Standards Committee:**

- 2.1 That this Committee recommend to Full Council that it approve the changes proposed in para 3.4 and reflected in Appendix 2
- 2.2 That the proposed changes to the Procedure for Dealing with Allegations of Breaches of the Code of Conduct recommended at para 3.5 below and reflected in Appendix 3 be agreed.

Full Council:

- 2.1 That Full Council approve the changes recommended in para 3.4 and reflected in Appendix 2.

3. CONTEXT/BACKGROUND INFORMATION**THE REPORT OF THE COMMITTEE ON STANDARDS IN PUBLIC LIFE ('the CSPL') INTO LOCAL GOVERNMENT STANDARDS**

- 3.1 The Committee on Standards in Public Life ('the CSPL') took evidence in 2018 and published its detailed Report in January 2019. The headline recommendations included amongst other things making available the sanction

of elected members being suspended for up to 6 months for a failure to declare a disclosable pecuniary interest. The CSPL also recommended that the law be changed so as to remove the requirement that councillor's home addresses be published on their register of interests and further proposed that a rebuttable presumption be created that a councillor's behaviour in public should normally be deemed to be in an official capacity, this although an individual's behaviour in private would remain outside the Code.

- 3.2 The recommendations highlighted in 3.1 above would require Parliament to enact legislation before the changes could be implemented. In light of this, the Members Working Group focused instead on the 15 best practice points which the CSPL also included in its Report with a recommendation that local authorities consider adopting them. These measures do not require legislative change to be implemented and the CSPL's recommendation is that authorities consider making those changes in the short term.

GAP ANALYSIS & PROPOSALS

- 3.3 Appended here as Appendix 1 is a gap analysis. It provides an indication of the process whereby the Working Group reviewed the best practice recommendations in the CSPL report against this authority's current arrangements, and includes the position which that Group took.

- 3.4 It will be noted that many of the best practice points recommended in the CSPL report have already been implemented at least in part by this authority. Where that is not the case, the members of the cross party Working Group were able to achieve consensus and to recommend some changes to the Code of Conduct for members. A tracked changes version of the current Code is appended as Appendix 2. The proposed amendments would incorporate the following changes:

- Explicit reference would be made in the Code to harassment over and above harassment which is based on a protected characteristic (which is already caught by the current Code).
- The inclusion of illustrative (but not limiting) examples of the sorts of behaviour which might be deemed to amount to bullying and/or harassment.
- That additional transparency be achieved in relation to any gifts and/or hospitality received by members. The change would provide that where any gifts and/or hospitality are received in any given year from a single source which are individually under the £50 threshold but together total more than £100, then those must be notified to the Monitoring Officer.
- Explicit reference to an expectation that a review of the Code be initiated when necessary, but in any event not less than every 3 years.

- 3.5 In addition, one change was proposed to the Procedure for Dealing with Allegations of Breaches of the Code of Conduct by Members. This would ensure that it provides reassurance by making explicit reference to the arrangements which are put in place where potential or actual conflicts of interest arise during the determination of a complaint against a member. The amended version of that document is appended as Appendix 3, again as a tracked changes document.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

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

5. COMMUNITY ENGAGEMENT & CONSULTATION

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

6. CONCLUSION

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

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 There are no financial implications arising from this report.

Finance Officer Consulted: James Hengeveld

Date: 09/12/2019

Legal Implications:

- 7.2 These are covered in the body of the Report.

Lawyer Consulted: Victoria Simpson

Date: 03/12/2019

Equalities Implications:

- 7.3 There are no equalities implications arising from this Report

Sustainability Implications:

- 7.4 There are no sustainability implications arising from this Report

Any Other Significant Implications:

- 7.5 None

SUPPORTING DOCUMENTATION

Appendices:

1. Gap analysis
2. Code of Conduct for Members (tracked changes)
3. Procedure for Dealing with Allegations of Breaches of the Code of Conduct for Members (tracked changes)

Background Documents:

1. Local Government Ethical Standards: A Review by the Committee on Standards in Public Life:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

Audit and Standards Member Working Group
21st and 27th November 2019
Review of the Best Practice Recommendations [the Report on Local Government Ethical Standards](#)
by the Committee on Standards in Public Life

References are to the Members' [Code of Conduct](#), the [Practice Note on the Use of Council Facilities](#), the [Procedure](#)

Best Practice Recommendation	Commentary	Proposal for consideration	Steer provided by WG members

Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.

The CSPL have acknowledged that whilst there is no statutory definition of bullying, the Advisory, Conciliation and Arbitration Service (Acas) have codified a helpful definition: "Offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient."

The CSPL note Newcastle City Council's Code :

You must not bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct. (Note: Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating or

BHCC's Code of Conduct includes a prohibition on **bullying** at para 1.3: 'Members must not act in a way which a reasonable person would regard as bullying or intimidatory'.

BHCC's Code also includes express reference to the requirements of the Equality Act 2010, which prohibit **harassment** based on any of the protected characteristics only. So no express prohibition on harassment not based on a protected characteristic.

Whether a) specific reference to harassment not based on protected characteristics should be added to the Code of Conduct, and b) whether 'bullying' and/or 'harassment' might be defined or examples given in BHCC's Code.

Unanimous agreement that a) harassment not based on the protected characteristics should also be prohibited by the Code while b) Newcastle CC definitions of both bullying and harassment be inserted as examples (wording: 'including but not limited to').

The key importance of ensuring that the Code make explicit reference to the Council's Whistleblowing Policy (at p2 of the current Code) was noted.

<p>2</p>	<p><u>Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors.</u></p>	<p>The CSPLs recommendation aims to avoid councillors seeking to disrupt standards investigations; or misusing the process to make allegations against another councillor for the purposes of political gain.</p> <p>BHCC's Code of Conduct requires compliance with standards investigations:</p> <ul style="list-style-type: none">• 1.8. Members must not refuse or fail to – (i) co-operate with council investigations of any description, including those into alleged breaches of this Code; and/or (ii) provide full access to all material that, in the view of the investigating officer, may be relevant to such an investigation. <p>BHCC's Code does not however prohibit councilors from making trivial or malicious allegations against each other. Provision could be made if members wish it. A steer on whether to leave the interpretation of what is trivial and/or malicious to the discretion of the MO in consultation with the IP would be helpful.</p>	<p>Members to consider whether existing provisions are satisfactory or whether amends should be made to the Code of Conduct</p>	<p>The Working Group did not consider there was a need for specific provisions prohibiting trivial or malicious allegations</p>
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3	<p><u>Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.</u></p>	<p>The CSPL took into account evidence that ‘many’ authorities hadn’t revisited their Codes of Conduct since the legislation changed; they preferred Codes which were in plain English and not those which were minimal and ‘Nolan-only’ codes.</p> <p>BHCC’s Code does not fall into any of the above categories. It goes above the minimum legislative requirement by amongst other things making provision for ‘Other Interests’ to catch some key interests which are not DPs. It is regularly updated, most recently in March 2019, although there is no formal expectation that this will be done annually or be the subject of external consultation.</p>	<p>Members to consider whether existing arrangements are satisfactory. If there is a desire to review the Code annually and/or to consult externally then a steer is invited re the degree of resource that members want to invest</p>	<p>Noted that BHCC’s Code has been the subject of regular review. Creating an expectation of a compulsory annual review was considered to be disproportionate. Decision instead to provide that the Code will be reviewed when necessary, and in any event at least once a term.</p> <p>Consideration is also being given to reporting on Standards as part of the annual AGS report.</p>
4	<p><u>An authority’s code should be readily accessible to both councillors and the public, in a prominent position on a council’s website and available in council premises.</u></p>	<p>This is provided to councillors as part of their induction process at the start of their term of office. It is then maintained in the Council’s Constitution.</p> <p>Insofar as accessibility to the public is concerned, the Code is published in the Council’s website plus there is a dedicated “Complaints against Councillors” webpage which is readily accessible from a google search and provides a description of the</p>	<p>Members are invited to agree that no further action is necessary</p>	<p>Agreed – no action necessary</p>

5	<p><u>Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as pdf.</u></p>	<p>The CSPL have acknowledged that there is no legal requirement for Councils to maintain a gifts and hospitality register; and that not all Councils make reference to this within their Code.</p> <p>BHCC's Code requires members to register:</p> <ul style="list-style-type: none"> • Any gift or hospitality worth more than an estimated value of £50, which the Member has accepted by virtue of his or her office <p>The £50 threshold has been retained when the Code has been reviewed in the past on the basis that it encourages transparency. However one possible change could be to make provision for <u>gifts/ hospitality totalling £100 pa from any individual source</u> also be caught, in accordance with the recommendation 6 in the CPSL report.</p>	<p>Members are invited to consider whether any changes (including the 'totalling £100') are necessary</p>	<p>Proposal to change threshold to include gifts/ hospitality from a single source which exceed £100 in any year will be put to Committee</p>
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<p>6</p>	<p><u>Councils should publish a clear and straightforward public interest test against which allegations are filtered.</u></p> <p>The CSPL have taken account of the practice of the standards bodies in Scotland, Wales and Northern Ireland in making the recommendation to publish a public interest test. They offer the Northern Ireland Local Government Commissioner for Standards public interest test as a best practice example.</p> <p>Northern Ireland Local Government Commissioner for Standards public interest test</p> <p>1 'CAN' we investigate your complaint? • Is the person you are complaining about a councillor? • Did the conduct occur within</p>	<p>BHCC Procedure provides at preliminary assessment stage that the MO may decide not to progress the complaint having consulted with the IP amongst other things where it would not be in the public interest to do so. Similarly, resolving matters informally during the process remains an option for the MO if proceeding is not considered to meet the public interest.</p> <p>There is no explicit reference to proportionality however and this could potentially be included.</p> <p>BHCC's Procedure:</p> <ul style="list-style-type: none"> the Monitoring Officer may decide not to progress the complaint where – (i) the complaint is vexatious or frivolous in nature; (ii) if proven, the complaint would not amount to a breach of the code of conduct for members; or (iii) it would not be in the public interest to do so. 	<p>Members to consider whether existing arrangements are satisfactory, or whether to make explicit reference to proportionality/ other changes</p>	<p>Existing provisions considered to be satisfactory</p>
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7	<p><u>Local authorities should have access to at least two Independent Persons.</u></p> <p>In their recommendations to Government, the CSPL have also recommended that the requirement for Independent Persons to be appointed should be for a fixed term of two years, renewable once, and that the role be given additional protections. They have included a further recommendation to formalise the Independent Person's role in statute.</p> <p>The basis for their recommendations is ensuring that the Independent Person remains as an impartial advisor and their views are clearly taken into account.</p>	<p>BHCC has two IPs, which is considered to be the minimum number to enable to the process work effectively.</p> <p>It is considered that terms of four years plus have allowed the Independent Persons to develop considerable experience and knowledge to support the Council, Members and the Monitoring Officer in standards matters. The requirement that any IP be neither a member nor officer can mean that any appointee needs to acquire familiarity with all aspects of the brief from scratch.</p> <p>BHCC's longest serving IP will reach the end of his second 4 year term in October 2020, and a second IP will need to be recruited before then. BHCC's other IP was appointed in March 2019 on a four year term, potentially renewable by the MO for a further two years.</p>	No further action is suggested.	No action necessary
8	<p><u>An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial</u></p>	<p>The IP is very much embedded in BHCC's arrangements, which provide that they be consulted before the MO makes key decisions at all stages, even on request to appeal a Standards Panel decision.</p>	No further action is suggested	No action necessary

9	<p><u>Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.</u></p>	<p>Currently a brief formal decision notice is published: a practice which is reflected in the Procedure.</p> <p>The IPs view is not however provided in the decision or otherwise recorded. The IP does not have a vote and the proposal to expose them in this way is considered to have the potential to impact on their profile with the parties to the complaint and with the wider public - plus possibly for relations with Panel members in the future.</p>	<p>If members are satisfied with current arrangements, no further action is required.</p>	<p>No action necessary</p>
10	<p><u>A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.</u></p>	<p>This best practice point is considered to be met by the information published externally: https://www.brighton-hove.gov.uk/content/council-and-democracy/feedback-about-council-services/complaints-about-councillors</p>	<p>If satisfied with current arrangements, no further action is required.</p>	<p>No action necessary</p>
11	<p><u>Formal standards complaints about the conduct of a parish councillor towards a clerk should be made by the chair or by the parish council as a whole, rather than the clerk in all but exceptional circumstances.</u></p>	<p>The CSPLs recommendation is based on Parish Councils taking corporate responsibility when there are allegations about a councillor, particularly involving an employee.</p>	<p>Members could direct the MO to bring this recommendation to the direct attention of Rottingdean Parish Council's clerk</p>	<p>the MO to action</p>

12	<p><u>Monitoring Officers' roles should include providing advice, support and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.</u></p>	<p>The role of the Monitoring Officer is set by statute and confirmed within BHCC's (and RPC's) Constitution.</p>	<p>If satisfied with current arrangements, no further action is required</p>	<p>No action necessary</p>
13	<p><u>A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.</u></p>	<p>Current practices are based on informal arrangements whereby members of the Legal Services team assume different, separate, roles and maintain confidentiality by not discussing matters. This practice is relatively common in legal professional practice where conflict or the potential for it has been identified. In an appropriate situation, it would be an option for the Monitoring Officer to seek support from a neighbouring council, or an external party, where necessary. Some/ any of the above could be formalized in arrangements if members wish.</p>	<p>Members to consider whether existing arrangements are satisfactory, or whether there is a need to formalise existing practice.</p>	<p>Consensus that current approach is fit for purpose, and that it would be appropriate to make explicit reference to the existence of arrangements for dealing with potential or perceived conflicts.</p>

<p>14</p>	<p><u>Councils should report on separate bodies they have set up or which they own as part of their annual governance statement, and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness, and publish their board agendas and minutes and annual</u></p>	<p>The CSPLs have recognised that issues may arise within the partnership arrangements that authorities have and that separate bodies may not be fully transparent. The key principles are clear however the complexity of this and other councils' partnership arrangements is also noted. The council's current AGS is provided via the link below. https://www.brighton-hove.gov.uk/sites/brighton-hove.gov.uk/files/Annual%20Governance%20Statement%202018-19.pdf</p>	<p>Members to consider whether existing arrangements are satisfactory or whether they wish to propose any changes.</p>	<p>The degree of the challenge – which is an ongoing one - was noted by all WG members, who felt the importance of achieving transparency.</p> <p>The Constitution Review Group recently considered the matter of reports to Full Council on outside body activity and decided to invite annual reports from East Sussex Fire and Rescue Service and the Police and Crime Commissioner only at this stage. The CWG could be asked to consider extending the scope of this, if members wish it.</p> <p>Consideration also to be given to providing additional information on this topic alongside the Annual Governance Report.</p>
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15	<u>Senior officers should meet regularly with political group leaders or group whips to discuss standards issues</u>	This is covered as part of regular briefings to Group Leaders	No further action is considered necessary.	No action needed.
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SOCIAL MEDIA PROTOCOL REVIEW: UPDATE

149 The current Social Media Protocol for Members was also briefly reviewed by the Working Group. Group members considered that a practical resource with guidance specific to different available social media platforms would be helpful to assist those members who choose to use social media to carry out their business as councillors.

Work on that resource has been planned and it is proposed that it exist alongside a publicly-available Guidance document which will replace the current Social Media Protocol. The proposal is that indicates how the Code of Conduct for Members applies to communications made via social media. That Guidance will provide members with some tools to assist them in managing some commonplace expectations (for instance of a rapid response and ongoing communication chain) which those communicating with elected members may have.

The above Guidance will be circulated to Working Group members in draft form before being brought to the Audit & Standards Committee in due course for it to review and consider formally approving.

CODE OF CONDUCT FOR MEMBERS

Introduction

This Code of Conduct covers all elected members and co-opted members (together referred to in this Code as ‘Member’ or ‘Members’ as appropriate) of Brighton & Hove City Council whenever they are acting as a member or representative of the council or when they claim to act or give the impression of acting as a representative of the council. [The Code is reviewed regularly and in any event at least every three years.](#) The Independent Persons who are appointed to the Council’s Audit and Standards Committee are also expected to abide by this Code in terms of the standards of behaviour they observe and by voluntarily declaring any interests they have in any matter under discussion at any meeting.

The requirements outlined in this Code regarding the Declaration of Interests at Meetings apply to formal meetings of the Council, its committees and sub committees and its joint committees and sub committees. Members are however encouraged to voluntarily declare at all meetings, both formal and informal, any facts which they consider may be relevant to the perception of their decision-making, this although they are not required to do so.

The Code does not apply when Members are acting or appearing in the perception of a reasonable person to be acting in a purely private capacity.

When carrying out their public role, Members must adhere to the seven principles of public life – selflessness, integrity, objectivity, accountability, openness, honesty, and leadership, as defined in Appendix B.

This Code of Conduct should be read alongside the Council’s corporate values – respect, collaboration, efficiency, openness, creativity, and customer focus, as defined in Appendix C.

All Members are bound by the requirements of the Equality Act 2010, which amongst other things prohibits discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. In addition, Members are expected to promote equality in their actions and behaviours.

When applying and interpreting this Code of Conduct, Members should have regard to the following policies and documents (as amended from time to time):

- (a) Council Procedure Rules
- (b) Arrangements regarding the Register of Members’ Interests
- (c) Practice Note – Use of Council Facilities
- (d) Protocol for Members regarding planning applications

- (e) Code of Conduct for Member/Officer Relations
- (f) Guidance on use of social media
- (g) Guidance on confidentiality
- (h) Anti-fraud and Corruption Strategy
- (i) Whistleblowing Policy

Behaviour

1.1. Members must behave in such a way that a reasonable person would regard as respectful.

1.2. Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.

1.3. Members must not act in a way which a reasonable person would regard as bullying or intimidatory, and nor must they harass any person*.

1.3.1.4. Members must not seek to improperly confer an advantage or disadvantage on any person.

1.4.1.5. Members must comply with the Equality Act 2010, both insofar as the prohibition on discrimination on the grounds of a protected characteristic is concerned and generally, and must not do anything which may cause the council to breach any of its equality duties.

1.5.1.6. Members must only use the resources of the council in accordance with the Practice Note on Publicity and the Use of Council Facilities.

1.6.1.7. Members must not disclose information which is confidential or exempt from publication or where disclosure is prohibited by law.

1.7.1.8. Members must not refuse or fail to –

- (i) co-operate with council investigations of any description, including those into alleged breaches of this Code; and/or
- (ii) provide full access to all material that, in the view of the investigating officer, may be relevant to such an investigation.

1.8.1.9. Members must respect the impartiality of officers and not act in a way that a reasonable person would regard as bringing an officer's impartiality into question.

1.10 When reaching decisions on any matter, Members must have regard to any relevant advice provided to them by the council's–

- (i) chief finance officer;

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- (ii) monitoring officer; or
- (iii) chief executive and head of paid service

where that officer is acting pursuant to his or her statutory duties.

1.11 Where, following a complaint that a Member has breached this Code of Conduct, and the complainant and the Member complained of consent to resolve the matter informally by a particular means, the Member must co-operate and comply with the agreed method of resolution.

*NOTE to para 1.3: Behaviour amounting to bullying may include (but is not limited to) the following: offensive, intimidating, malicious or insulting behaviour; or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Similarly, harassment may be characterised amongst other things as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

Registration of interests

- 2.1. Within 28 days of the Member's election or the co-opted member's appointment (where that is later), Members must notify the Monitoring Officer of their Disclosable Pecuniary Interests which fall within the categories set out in Appendix A. They must also notify the Monitoring Officer of those of their Other Interests which must be entered on the Register of Interests pursuant to para 3.2 of this Code.
- 2.2. Upon the re-election of a Member, or the re-appointment of a co-opted member, Members must within 28 days notify the Monitoring Officer of all of their registrable interests which fall within the categories of Disclosable Pecuniary Interests and Other Interests, defined in Appendix A and para 3.2 below, whether previously registered or not.
- 2.3. Members must notify the Monitoring Officer of any change to their registrable interests and/or of any new registrable interests as defined by Appendix A and para 3.2 within 28 days of becoming aware of the relevant interest.
- 2.4. While members must notify the Monitoring Officer of all of their registrable interests, the Monitoring Officer may agree not to make public any interest which s/he agrees is a 'sensitive interest'. A sensitive interest is one which, if made public, could lead to the Member or a person connected with the Member being made subject to violence or intimidation.
- 2.5. In the interests of being seen to take decisions in an open and transparent manner and in accordance with the principle of Openness which forms one of the Seven Principles of Public Life (see Appendix B), Members may voluntarily provide written notification to the Monitoring Officer of their membership of any private club, society or organisation (and of any subsequent change or addition to their membership).

2.6. Similarly members may request that facts be minuted at any meeting where they consider that their circumstances affect their relationship to the issue under debate, although they are not compulsorily required to declare them as Disclosable Pecuniary Interests or Other Interests under this Code.

2.7. While members may choose to make voluntary declarations to assist in ensuring transparency, paragraphs 2.5 and 2.6 are not to be read as creating additional obligations on a member to disclose voluntarily any matter which they are not otherwise obliged to declare under the terms of this Code.

Declaration of interests at meetings

A. Disclosable Pecuniary Interests

N.B. It is a criminal offence to fail to notify the Monitoring Officer of a disclosable pecuniary interest (as defined in Appendix A), to take part in discussion or votes at meetings, or to take a decision, where you have a Disclosable Pecuniary Interest, without reasonable excuse. It is also an offence to knowingly or recklessly provide false or misleading information to the Monitoring Officer in connection with the registration and/or declaration of interests.

3.1. Where a matter arises at a meeting of the Council, one of its committees or sub committees (or at a joint committee or sub committee), which relates to an interest in Appendix A, Members—

- (i) must declare their interest;
- (ii) may not participate in a discussion or vote on the matter;
- (iii) must, in accordance with council procedure rule 25.4, leave the room where the meeting is held, while any discussion or voting takes place.

B. Other declarable interests, or 'Other Interests'

3.2 Members may have an interest in a matter under consideration even where they do not have a Disclosable Pecuniary Interest. These other declarable interests are known as 'Other Interests' and may be subject to paras 2.1 to 2.4 inclusive in which case they must be notified:

Other Interests which must be notified to the Monitoring Officer:

- Any body of which the Member is in a position of general control or management, or
- Any gift or hospitality ~~worth more than an estimated value of £50,~~ which the Member has accepted by virtue of his or her office and which constitutes either a) a single instance of a gift or hospitality worth more than an estimated value of

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£50 or alternatively constitutes b) two or more instances of gifts or hospitality received in from a single source in any given year which taken together have a total estimated value in excess of £100.

Other Interests which need not be notified (but must be declared):

- Any interest of a financial nature of the Member, their spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they are civil partners which is not a Disclosable Pecuniary Interest.

3.3 Where a matter arises at a meeting which relates to or affects any Other Interest then (whether or not it is a compulsorily notifiable interest) the Member must declare that interest at the meeting.

3.4 Where the Member has an Other Interest as defined above then they must in addition consider whether a) their interest is affected by the matter under consideration more than the interests of the majority of people in the area affected by the matter, and if so, whether b) a reasonable member of the public would think the Member's judgement of the public interest would be adversely affected by the interest.

If the answer to a) and b) above is yes then the Member:

- (i) must declare the interest at the relevant time; and
- (ii) may not participate in a discussion or vote on the matter; and
- (iii) must leave the room where the meeting is held while any discussion or voting takes place.

3.5 Where the Member has an Other Interest pursuant to para 3.2 but they are permitted to continue participating in decision-making once they have declared it pursuant to para 3.3, then they will have a declarable **non-prejudicial interest**. Where they are not permitted to participate in decision-making either as a result of an Other Interest or because they have a Disclosable Pecuniary Interest then their interest will be a **prejudicial interest**.

3.6 Where a matter arises at a meeting which relates to a sensitive interest defined under paragraph 2.4, Members are not required to disclose the nature of their interest. However they must nonetheless disclose the fact that they have a Disclosable Pecuniary Interest and must follow the rules regarding non-participation.

C. Dispensations

3.7 On a written request made to the council's Monitoring Officer, preferably in advance of the meeting, the Monitoring Officer may – following consultation, where reasonably practicable, with either one of the Independent Persons or the Chair of Audit & Standards Committee – grant a Member a dispensation to participate in a discussion and/or vote on a matter at a meeting where they would otherwise not be allowed to if the Monitoring Officer

believes 1) that the number of Members otherwise prohibited from taking part in the meeting would be so great a proportion of the relevant body as to impede the transaction of the business; or 2) considers that without the dispensation the representation of different political groups would be so upset as to alter the likely outcome of any vote; or 3) considers that it is in the interests of the inhabitants in the council's area to allow the Member to take part; or 4) considers that it is otherwise appropriate to grant a dispensation.

- 3.8 Members are not required to register or declare an interest that is shared with ordinary members of the public living or working in the area (such as the payment of, or liability to pay, council tax, or having bins collected) or that arises simply from being a Member (such as Members' allowances); or where the interest is otherwise de minimis.
- 3.9 Accordingly, no Member will need a dispensation to take part in the business of setting the council tax or precept or local arrangements for council tax reduction schemes, because it is a decision affecting the generality of the public in the council's area, rather than one or more individual..
- 3.10 It is at all times the responsibility of each individual member to monitor whether they have any disclosed or as yet undisclosed interests in matters under consideration and to declare these where necessary.

Appendix A – Disclosable Pecuniary Interests

The interests defined by regulations made under section 30(3) of the Localism Act 2011 are described in the table below.

N.B. Interests listed in this Appendix are those of the Member; or those of their partner (which means spouse or civil partner, a person with whom they are living as husband or wife, or a person with whom they are living as if they are civil partners), where the Member is aware that their partner has the interest.

Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from Brighton & Hove City Council) made or provided in the 12 month period preceding notification of this pecuniary interest in respect of any expenses incurred by the member in carrying out duties as a member, or towards the election expenses of the member. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

Contracts

Any contract which is made between you or other relevant persons* (or a body in which the relevant person has a beneficial interest**) and the relevant authority –

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

*A “relevant person” is your spouse or civil partner; a person with whom you are living as husband or wife; or a person with whom you are living as if they were a civil partner.

** A “body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

“Director” includes a member of the committee of management of a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014, other than a society registered as a credit union.

See ‘Securities’ below for definition of ‘securities’.

Land

Any beneficial interest in land which is within the area of the relevant authority.

“Land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income.

Licences

Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

Corporate tenancies

Any tenancy where (to the member’s knowledge) -
(a) the landlord is the relevant authority; and
(b) the tenant is a “body in which the relevant person has a beneficial interest” (see ** under ‘Contracts’ for definition) .

Securities

Any beneficial interest in securities of a body where –

- (a) that body (to the member’s knowledge) has a place

of business or land in the area of the relevant authority; and

(b) either -

(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*"Securities" means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

See 'Land' in left column for definition of 'land'.

Appendix B – the Seven Principles of Public Life

Selflessness	Members should act solely in terms of the public interest.
Integrity	Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
Objectivity	Members must act and take decisions impartially, fairly, and on merit, using the best evidence and without discrimination or bias.
Accountability	Members are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
Openness	Members should act and take decisions in an open and

transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

Honesty	Members should be truthful.
Leadership	Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix C – the Council’s Corporate Values

Respect	Embrace diversity with kindness and consideration, and recognise the value of everyone
Collaboration	Work together to contribute to the creation of effective and successful decision making forums, working groups and partnerships across the council and beyond
Efficiency	Work in a way that makes the best and most sustainable use of the council’s resources
Openness	Share and communicate with honesty about the council and its decisions and activities
Creativity	Have ideas that challenge the ‘tried and tested’; use evidence of what works; listen proactively to feedback from constituents and others
Customer Focus	Do your part to help the council deliver its ‘Customer Promise’ to colleagues, partners and customers; the council aims to listen, to be easy to reach, to be clear, to treat everyone with respect, and to get things done.

Brighton & Hove City Council

Procedure for Dealing with Allegations of Breaches of the Code of Conduct for Members

1. Introduction and legal framework

- 1.1 This procedure is made in accordance with section 28(6) of the Localism Act 2011 which requires the council to have in place arrangements for investigating and determining allegations that a member or co-opted member of the council has failed to comply with its Code of Conduct for Members.
- 1.2 This version of the procedure supersedes all previous versions.
- 1.3 The Code of Conduct to which this procedure relates was originally adopted by the Council in 2012 in accordance with section 27 of the Localism Act 2011, has undergone minor revision since then, and is set out at 8.1 in the [Council's constitution](#)

2. Principles

The principles underpinning the procedure are:

- (i) a drive to engender member and public confidence that allegations of member misconduct will be dealt with effectively and efficiently;
- (ii) that Standards Panels reach their findings fairly and independently;
- (iii) that Standards Panel hearings be conducted openly, wherever possible

3. Making a complaint

- 3.1 If a person wishes to make a complaint about Member conduct, they should write to:

The Monitoring Officer
c/o Standards and Complaints
Brighton & Hove City Council

[231 Kings House](#)
[Grand Avenue](#)
[Hove BN3 2LS](#)
[Hove Town Hall](#)
[Hove](#)
[BN3 3BQ](#)

Or use the following Web link [Councillor Complaint](#)

- 3.2 The complainant will be asked to provide their name and a postal or email address. Only complaints from named individuals will be accepted.
- 3.3 Council officers wishing to complain about Member conduct are recommended to use the Code of Conduct for Member/Officer Relations but still have the option of using the complaints procedure set out here.
- 3.4 The Monitoring Officer will inform the complainant that their complaint will be assessed against the Code of Conduct for Members and that they may if they wish seek the views of one of the Council's Independent Persons.
- 3.5 The Monitoring Officer will acknowledge receipt of the complaint within 5 working days of receiving it, and will send the complainant standard information about the Council's policy on disclosing their identity, as set out in paragraph 4.2 below; and will require the complainant to confirm their agreement to this policy, in order for the complaint to proceed.
- 3.6 The Council aims to complete the complaint process within a maximum of three months from receipt.
- 3.7 Once a complaint has been filed with the Monitoring Officer, it may not be withdrawn without the consent of the complainant, the subject member and the Monitoring Officer.
- 3.8 At an early stage in communications, the Council will discourage all parties – both the complainant and the subject member, as well as any other parties - from seeking actively to publicise the matter before the complaint has been fully determined.
- 3.9 [The potential for a conflict of interest to arise will be considered when the complaint is first received in, and will be kept under subsequent review. If any potential or actual conflicts are identified, then appropriate arrangements will be made to prevent them impacting negatively on the process.](#)
4. [Information provided to the Member complained about](#)

- 4.1 The Member against whom the complaint is directed (the 'subject member') will be notified that a complaint has been received as soon as possible and in any event within 5 working days of the council receiving it, unless the Monitoring Officer considers that doing so may prejudice any investigation into the complaint.
- 4.2 The Monitoring Officer will provide the subject member with all documentation relevant to the complaint, including the identity of the complainant except where doing so might compromise the complainant's safety (see also paragraph 6.2 below).
5. Preliminary assessment
- 5.1 Subject to paragraph 5.2, the Monitoring Officer will, in consultation with one of the Independent Persons, carry out a preliminary assessment in order to determine what action should be taken.
- 5.2 The Monitoring Officer reserves the right to refer the preliminary assessment to the Standards Panel in respect of any complaint.
- 5.3 The Monitoring Officer will seek to complete his/her assessment within 10 working days of receiving a valid complaint, although the process may take longer if more information is required from the complainant or subject member (or both) for a proper assessment to be made.
- 5.4 Pursuant to paragraph 5.3, the Monitoring Officer may – having regard to the views of the relevant Independent Person – undertake small-scale preliminary enquiries directly related to the complaint, to help determine whether a formal investigation is required.
- 5.5 Based on the preliminary assessment, the Monitoring Officer may decide **not** to progress the complaint where –
- (i) the complaint is vexatious or frivolous in nature;
 - (ii) if proven, the complaint would not amount to a breach of the code of conduct for members; or
 - (iii) it would not be in the public interest to do so.
- 5.6 Where the circumstances in paragraph 5.5 do not apply, the Monitoring Officer may:
- (i) seek to resolve the complaint informally;
 - (ii) arrange for the complaint to be formally investigated;
- 5.7 An informal resolution may involve the Member accepting that his/her conduct was unacceptable and offering an apology, or some other action on their part. Where the Member makes a reasonable offer of informal resolution, but the complainant is not willing to accept that offer, the Monitoring Officer will take account of this in deciding whether the complaint merits formal investigation. In any event, the Monitoring

Officer retains the discretion to resolve matters informally having consulted with the parties as well as with one of the Independent Persons.

- 5.8 Where the complainant and subject member have consented to resolve the complaint informally by a particular means (for example, by written apology), the member should co-operate with and adhere to that measure.
- 5.9 Complaints settled informally, whether at this stage or during the course of a formal investigation, will be reported to the Audit & Standards Committee but without naming the parties involved.
- 5.10 Where the parties attempt to resolve the matter informally but fail to reach a mutually agreeable outcome, the matter will, subject to 5.7 above, be referred for investigation. In the subsequent report to a Standards Panel, it will be stated that informal resolution was attempted but did not succeed. Details of the negotiations comprising those attempts will not be published.
- 5.11 If the complaint identifies conduct which, on the face of it, is a criminal offence or regulatory breach by any person, the Monitoring Officer may refer the matter to the Police and/or appropriate regulatory body as well as, or in lieu of, an investigation by the council.
- 5.12 On completion of the assessment, the Monitoring Officer will inform the complainant and subject member of his/her decision, with reasons.

6. Formal Investigation

- 6.1 If the Monitoring Officer decides that a complaint merits formal investigation, he/she will appoint an Investigating Officer, who may be another officer of the council, an officer of another local authority or an external investigator. The Investigating Officer will, subject to any direction from the Monitoring Officer, have discretion as to how the investigation is carried out.
- 6.2 The Investigating Officer will ask the complainant and the Member to provide their explanation of events, and will identify what documents he/she needs to see and whom he/she needs to interview. In exceptional cases, it may be appropriate to keep the identity of the complainant, witnesses, or key documents confidential where disclosure might prejudice the investigation.
- 6.3 The Investigating Officer will produce a draft report and send copies, in confidence, to the complainant and subject member, to give both an opportunity to identify any matter in the report which they feel requires more consideration.

- 6.4 Having received and taken account of any comments on the draft report, the Investigating Officer will send his/her final report to the Monitoring Officer. If the Monitoring Officer is not satisfied that the investigation has been conducted properly or that aspects of the report require revision or clarification, he/she may ask the Investigating Officer to reconsider his/her report.
- 6.5 Copies of the final report will be sent to the complainant and the member concerned.
- 6.6 At any point during the investigation, the Monitoring Officer may consult the parties as to whether they would accept an informal settlement rather than continue with the formal investigation. Having had regard to the wishes of the parties and the views of the Independent Person, the Monitoring Officer may halt the investigation and seek to resolve the matter informally. Should that course of action prove unsuccessful, the formal investigation would normally be resumed. However the Monitoring Officer retains the discretion to resolve matters informally having consulted with the parties as well as with one of the Independent Persons where s/he considers that doing so to be in the public interest.

7. Investigation Outcomes

- 7.1 On completion of a formal investigation, the findings available to the Investigating Officer in respect of each element of the Code of Conduct considered relevant are:

- (i) A substantive breach
- (ii) A technical but minimal breach
- (iii) No breach

7.2 **Substantive breach.**

Where the Investigating Officer finds that the subject member has substantively breached one or more elements of the code of conduct, the Monitoring Officer will normally refer the complaint to the Standards Panel for determination.

However where the Monitoring Officer considers exceptionally that it would not be in the public interest to refer the breach to a Standards Panel and has consulted with one of the Independent Persons, then provided that that Independent Person agrees, the Monitoring Officer may recommend to the parties that the matter be settled informally and invite the parties to make representations regarding whether or not they agree. While either the complainant or the subject member may request that the matter be referred to a Panel for determination, the

Monitoring Officer will retain the discretion to resolve matters informally having consulted with all of the parties.

7.3 Technical but minimal breach.

7.3.1 This finding reflects a set of circumstances where the conduct complained of does – on a strict interpretation – amount to a breach of the code, but little or no culpability attaches to the subject member. This could occur, for example, where the member had made an unintentional and minor administrative error on their declaration of interests by recording relevant information but under the wrong class of interest.

7.3.2 Where the Monitoring Officer, after consultation with one of the Independent Persons, considers that it would not be in the public interest to refer a technical but minimal breach to a Standards Panel, he will recommend to the parties that the matter be settled informally. While either party may request that the matter is referred to a Panel for determination, the Monitoring Officer will retain the discretion to resolve matters informally having consulted with all of the parties.

7.4 No breach

7.4.1 If the Investigation finds no breach of the code of conduct, and the Monitoring Officer considers – after consultation with the Independent Person – that there is no public interest in pursuing the matter further, he will contact both parties to ask if they accept the finding and are willing to end the matter there. If they respond in the affirmative, the Monitoring Officer will confirm to the parties in writing that the complaint will be taken no further. If either party rejects the finding or is not willing to conclude the matter, they may make representations to the Monitoring Officer as to why the complaint should nonetheless be referred to the Standards Panel. However the Monitoring Officer retains the discretion to decide to resolve the matter informally, without referral to a Panel.

7.4.2 Similarly the Monitoring Officer may, having consulted one of the Independent Persons, refer the complaint to the Standards Panel, even where the investigation finds no breach and the parties are willing to terminate the matter.

8. Standards Panel

8.1 As soon as reasonably practicable after referring a completed investigation to the Standards Panel for hearing and determination, the Monitoring Officer shall convene a meeting of the Panel.

8.2 The Monitoring Officer shall select the persons to comprise a Standards Panel, in accordance with the following criteria:

8.2.1 Membership of a Standards Panel is restricted to persons who –

- (a) are a member of Audit & Standards Committee; and
- (b) have attended the necessary training and re-training sessions specific to these Panels

8.2.2 The Panel shall consist of 3 or 5 elected members, appointed on a cross-party basis, plus one Independent Person who shall chair the Panel but not vote.

8.2.3 If more than the minimum number of qualified persons (pursuant to paragraph 8.2.1) are available for a particular Panel, selection will be based on (i) the criteria specified in 8.2.2 and (ii) in such a way that ensures a spread of experience across the Panel.

9. Arrangements for and Conduct of the Standards Panel Hearing

- 9.1 There is a presumption of openness with regard to Panel hearings. Hearings will be conducted in open session unless the Panel resolve that the public be excluded on one or more of the grounds permitted under Part VA of the Local Government Act 1972.
- 9.2 Where the hearing itself is open to the public, the Panel's deliberations following the hearing will be held in private.
- 9.3 Care is needed to ensure that the published report detailing the allegation and investigation does not unlawfully disclose personal or sensitive personal data of any party. Accordingly, the Monitoring Officer shall have discretion to redact material from the published report where necessary for data protection purposes.
- 9.4 Where the complaint concerns the use of an offensive word or expression, the wording will not be repeated in the Panel report more than is necessary and in any event placed within inverted commas, to indicate the words were those allegedly used by the subject member.
- 9.5 To coincide with the publication of the hearing report, the Council shall (unless the Panel is being advised to consider excluding the public from the hearing) issue a press release about the hearing, which shall include an explanation of the Independent Person's role. Advice will be sought from the council's Head of Communications as to the precise content of the release.
- 9.6 The Independent Person, in his/her capacity as Panel chair, may – after consulting the Monitoring Officer – issue directions as to the manner in which the hearing is to be conducted.

- 9.7 Adequate security must be in place throughout the hearing, to protect Panel members and other parties actively involved in the hearing against threats or intimidation.
- 9.8 Arrangements must be made to ensure the privacy of the Panel while in recess following the hearing.
- 9.9 Arrangements must enable the Panel to conduct their deliberations in recess without feeling pressurised to reach a decision within a set time.
10. Reaching a Decision
- 10.1 In accordance with statutory requirements, the voting members of the Panel must seek and take into account the views of the Independent Person before reaching their decision in respect of the allegation.
- 10.2 The Panel should, where possible, reach their decision by consensus and vote by acclamation. Where there is disagreement, the matter shall be put to a vote with Members voting for or against the proposal..
- 10.3 The decision of the majority of the Panel Members shall constitute the decision of the Panel. The Chair, being an Independent Person, shall not be permitted to vote or exercise a casting vote.
- 10.4 In the event that no majority decision can be reached (e.g. where one voting member felt unable to decide the allegation), the Panel will make no finding and a fresh Panel shall be appointed to re-hear the complaint.
- 10.5 The decision of the Panel should be owned collectively by all its Members and Panel Members should, as far as reasonably practicable, avoid statements or actions that undermine public confidence in the complaints process.
11. Range of decisions available to the Standards Panel
- 11.1 Having heard the allegation, the Standards Panel may –
- (i) find that the subject member **did fail** to comply with the council's code of conduct for members in one or more respects;
 - (ii) find that the subject member **did not fail** to comply with the council's code of conduct for members;
 - (iii) make no finding in respect of the allegation. It is open to the Panel merely to note the issues raised by the complaint and, if appropriate, to make recommendations which address them.

- 11.2 Even where the Panel finds a breach, it is not obliged to take action in respect of the member. In accordance with section 28(11) of the Localism Act, it must have regard to the failure in deciding *whether* to take action and, if so, what action to take.
- 11.3 Neither the Standards Panel nor any other body of the council has power to suspend or disqualify a member or to withdraw their basic or special responsibility allowance.
- 11.4 Actions the Panel may take in relation to a member who has failed to comply with the code of conduct include:
- (i) publishing its findings in respect of the member's conduct;
 - (ii) writing a formal letter to the member, which could include recommended actions such as an apology;
 - (iii) reporting its findings to Council for information; or recommending to Council that it takes one or more of the actions listed here;
 - (iv) formal censure;
 - (v) recommending to the member's Group Leader that he be removed from any or all of the council's committees or sub-committees;
 - (vi) recommending that the Monitoring Officer offer appropriate training

12. Publicising the Panel's Decision

At the end of the hearing, the Chair will state the decision of the Standards Panel as to whether the Member failed to comply with the Code of Conduct and as to any actions which the Standards Panel resolves to take.

As soon as reasonably practicable thereafter, the Monitoring Officer shall prepare a formal decision notice in consultation with the Chair of the Standards Panel, send a copy to the complainant and the member, make that decision notice available for public inspection and report the decision to the next convenient meeting of the Audit and Standards Committee.

13. Right of Appeal

- 13.1 Subject to paragraphs 13.2 to 13.4, the complainant and subject member may each appeal the decision of the Standards Panel.

- 13.2 A request for an appeal must be made in writing to the Monitoring Officer and set out reasons for the request, with reference to the grounds set out in paragraph 13.4.
- 13.3 The appeal request must be received by the Monitoring Officer within 10 working days of the original Panel hearing.
- 13.4 The appeal request will only be granted if one or more of the following criteria are met:
- (i) the hearing was procedurally flawed; a relevant consideration was not taken into account; or an irrelevant consideration was taken into account;
 - (ii) new evidence or material has arisen with a direct and significant bearing on the allegation; or
 - (iii) the Panel's decision was irrational, meaning it was so unreasonable that no sensible Standards Panel, having applied its mind to the complaint, could have arrived at that decision.
- 13.5 The decision as to whether the appeal request does fulfil one or more of the above criteria, resulting in the request being granted, shall be in the sole discretion of the Monitoring Officer, in consultation with the Independent Person.
- 13.6 In the event that an appeal is granted, a Standards Panel composed of different members to the one that heard the original case will consider the entire case. The appeal Panel may dismiss or uphold the appeal. If they uphold the appeal, they may substitute the original decision with a new decision. If the appeal Panel considers that essential information was not included in the investigation, they may refer the complaint back to the investigation stage.
- 13.7 There is no internal right of appeal from the decision of the appeal Panel.

Subject:	Standards Update		
Date of Meeting:	14th January 2020		
Report of:	Head of Law and Monitoring Officer		
Contact Officer:	Name:	Victoria Simpson	Tel: 01273 94687
	Email:	Victoria.Simpson@brighton-hove.gov.uk	
Ward(s) affected:	All		

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

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

2. RECOMMENDATIONS

2.1 That the Committee note the information provided in this Report on member complaints and on standards-related matters.

3. MEMBER COMPLAINTS and STANDARDS TRAINING**MEMBER COMPLAINTS**

- 3.1 Information was provided in [the last Update to this Committee](#) regarding complaints designated A, D, E, G and H, all of which still remained ongoing at the time of publication of that Report. Since that last Update, Complaint G has been resolved by a determination to take no further action when the complainant did not provide key clarificatory information. Complaint D has also been resolved, this via the process for dealing with complaints made against members by officers.
- 3.2 Complaints A and E had both been referred for formal investigation at the time of the last Update. In the case of E, the formal investigation has since been completed and the written report finalised, having first been circulated to the parties in draft form in accordance with established procedure. Having reviewed the final report and noted the Investigating Officer's finding that substantive breaches have occurred, the Monitoring Officer has decided to refer the complaint to a dedicated Standards Panel for determination at a date to be confirmed in early 2020.
- 3.3 In the case of A, consideration was given by the Monitoring Officer some way into the formal investigation process as to whether an informal settlement of the matter might be an appropriate alternative to continuing with the formal investigation. The subject member offered to clarify matters and to provide a limited apology and the complainant was satisfied with that as a means of resolving matters. As well as seeking representations from the interested parties, the views of the Independent Person were also sought in accordance with the Procedure. They took the view

that resolving the complaint informally was the best option on the facts. As a result, that matter is now at an end.

- 3.4 Complaint H remains at preliminary assessment stage at time of writing despite the efforts which have been made to clarify key aspects of the complainant's complaint. An update will be provided in due course.
- 3.5 Two complaints have been received in subsequent to the publication of the September Report. Complaint I alleged that a social media post made in the member's capacity as a councillor regarding an MP who was standing down in the December General Election amounted to conduct which breached the requirements in the Code to treat others with respect. Complaint J concerned a comment made by a member regarding another member at a Council committee meeting, which amongst other things was alleged to amount to a failure to treat the other councillor with respect. Both I and J have been resolved at preliminary assessment stage in accordance with the Council's procedures. These permit a decision to be taken not to progress a complaint on public interest grounds, the Monitoring Officer having first consulted with the Independent Person, who in both instances favoured such a resolution.
- 3.6 Regard has been had throughout to the Council's Procedure for Dealing with Allegations of Breaches of the Code of Conduct for Members.

STANDARDS TRAINING FOR MEMBERS

- 3.7 Making sure that training opportunities are offered to members on the Code of Conduct for Members and related matters is a key means by which this Committee discharges its responsibilities to promote high standards of conduct. With this in mind, training for all elected members on Standards-related matters was offered to all members of Brighton and Hove City Council on two alternative dates in November 2019.
- 3.8 Dedicated Standards Panel training for members of the Audit and Standards Committee also took place in September and November 2019, members having been made aware that only those members of this Committee who have attended Panel training may be appointed to any future Standards Panel.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

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

5. COMMUNITY ENGAGEMENT & CONSULTATION

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

6. CONCLUSION

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

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

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

Finance Officer Consulted: James Hengeveld

Date: 09/12/2019

Legal Implications:

- 7.2 These are covered in the body of the Report.

Lawyer Consulted: Victoria Simpson

Date: 06/12/19

Equalities Implications:

- 7.3 There are no equalities implications arising from this Report

Sustainability Implications:

- 7.4 There are no sustainability implications arising from this Report

Any Other Significant Implications:

- 7.5 None

SUPPORTING DOCUMENTATION

Appendices:

None

Background Documents:

None

