

REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

1 REPORT OF THE ELECTORAL REVIEW WORKING GROUP

- 1.1 This item of business was referred by the Electoral Review Working Group on 31 March 2014 to Full Council with a recommendation on Council size as is required in the preliminary stage of the electoral review process.
- 1.2 The document attached at Appendix A provides the Council's evidence base on Council size. The Council must submit its proposed size submission to the Local Government Boundary Commission for England ("LGBCE") by 10 June 2014. The LGBCE will then consider the Council's submission and make a decision on Council size by 15 July 2014.
- 1.3 It is proposed that Council **RESOLVES** to recommend to the LGBCE that the Council size remains at 39 Members. (HLEMS)

2 REPORT OF THE STANDARDS COMMITTEE

Charter for Elected Member Development

- 2.1 This item of business was referred by the Standards Committee on 3 April 2014 to Full Council with recommendations relating to the assessors' report following the recent award of the Charter for Elected Member Development. An extract of the key elements of the report of the Head of Legal, Estates and Member Services is attached at Appendix B.
- 2.2 The assessors' report contained the following key recommendations:-
 - That, in order strengthen the strategic approach to Member development, a small cross-party Member Development Steering Group be established by the end of June 2014 to take responsibility for determining the annual Member training programme.
 - That Personal Development Plans (PDPs) for Members be implemented.
 - That the Council considers piloting a 360 degree process in Member development.
- 2.3 The Committee felt that:-
 - Responsibility for Member training should remain with the Standards Committee but that the Committee should have a greater input into the formulation and content of the training programme.
 - When considering training matters the Committee should involve representatives from all the political groups within the Council to

strengthen the training offer.

- PDPs could be considered for those Members who would like to participate.
- Because of the cost of introducing PDPs/360 degree appraisals, it is likely that budgetary provision in addition to the annual £5,000 Member training budget would be needed.

2.4 It is proposed that Council **RESOLVES**:-

- (1) That arrangements for Member development are kept as they are currently and the recommendations coming out of the recent Charter assessment are not implemented at this time.
- (2) That the Standards Committee retains responsibility for Member training and that an arrangement be introduced whereby a representative from each political group is involved at meetings when the training programme is considered.
- (3) That the Standards Committee explores how the training programme may be tailored more specifically for individual members' training needs.
(HLEMS)

3 REPORT OF THE REVIEW COMMITTEE

Annual Report

- 3.1 The Constitution states 'that the Review Committee must report annually to Full Council on its workings and make recommendations for future work programmes and amended working methods if appropriate'.
- 3.2 At its meeting on 8 April 2014 the Review Committee approved its Annual Report for submission to Council. Members requested that a summary of the Committee's achievements during the year to be included in the form of a Chairman's foreword.
- 3.3 It is proposed that Council **RESOLVES** to receive the Annual Report as attached at Appendix C. (HLEMS)

Regulation of Investigative Powers Act 2000 (RIPA)

- 3.4 This item of business was referred by the Review Committee on 8 April 2014 to Full Council with a recommendation relating to approval of a revised RIPA Policy.
- 3.5 The role of the Review Committee is to provide a strategic overview of the Council's use of RIPA powers in terms of reviewing policy and considering

quarterly and annual statistical reports. The existing policy needs to be revised due to recent changes. An extract of the key elements of the report of the Head of Legal, Estates and Member Services to the Committee is attached, along with a copy of the proposed amended policy, at Appendix D.

- 3.6 It is proposed that Council **RESOLVES** that the proposed changes to the Council's 'Covert Surveillance Policy and Procedure Manual' (RIPA Policy), be approved. (HLEMS)

If you would like this report in large print, Braille or another language please contact 01702 318111.

Part One: Governance and Decision Making

The Commission aims to ensure that Councils have the right number of Councillors to take decisions and manage their business in an effective way. We therefore look at how decisions are taken across the authority to assess the volume and distribution of responsibility amongst elected members and staff.

Leadership:

• What kind of governance arrangements are in place for your authority?

Since the start of the 2008/09 municipal year Rochford District Council has operated under the 'strong leader' model of governance.

The Council has 39 Members who are elected by thirds. The Leader is appointed for a four year term at Annual Council and he then appoints the other members of the Executive. Annual Council appoints Chairmen, Vice-Chairmen and Members to Committees and to various outside bodies. Council meets on average 10 times a year.

The Executive makes decisions within the framework set by the Council. The Overview and Scrutiny role of holding the Executive to account is provided by the Review Committee.

There are five probity/regulatory Committees - Appeals, Audit , Development, Licensing and Standards - as well as the Review Committee.

Executive Members appoint Member Advisory Groups to consider or recommend decisions, where applicable.

• How Many Portfolios are There?

The Executive comprises of the following portfolios:-

- Overall Strategy and Policy Direction (Leader)
- Planning, Transport and Heritage (Deputy Leader)
- Council Tax Collection, Benefits and Strategic Housing Functions
- Environment, Leisure, Arts and Culture
- Finance and Resources
- Economic Development, Regeneration, Business Liaison and Tourism
- Service Development/Improvement & Performance Management
- Young Persons, Adult Services, Community Care and Well-Being, Health and Community Safety

• **To what Extent are Decisions Delegated to Portfolio Holders or are Most Decisions Taken by the Full Executive?**

The Constitution makes provision for decisions to be delegated to the individual portfolio holders – see Part 3 page 3.25. The following table provides details of the split between joint and sole decisions for the last three municipal years:-



Constitution PART 3 June 2013.pdf

Municipal year	The Executive	Portfolio Holders
2011-12	84	68
2012-13	89	36
2013-14 as at 12/02/14	88	37

• **Do Executive (or other) Members Serve on other Decision Making Partnerships, Sub-Regional, Regional or National Bodies?**

The Leader is appointed to the Board of the Groundwork Trust, the East of England Local Government Association, the Joint Local Strategic Partnership, the Thames Gateway South Essex Board and the Essex Local Authority Leaders Group.

Four Councillors (plus four substitutes) are appointed to the Rochford and Southend Airport and Environs Joint Area Action Plan Forum.

Four Councillors are appointed to the Rochford Housing Association Board.

PH for Young Persons, etc. is appointed to the Police and Crime Panel (with another Councillor as substitute), the South East Essex Children's Partnership Board and the Rochford District Schools Partnership Trust.

PH for Planning, Transport and Heritage is appointed to the Essex Countywide Traveller Unit, with PH for Young Persons, etc. as substitute.

PH for Environment, Leisure, Arts and Culture is appointed to the Essex Waste Partnership and sits on the Inter Authority Member Group; the PH also sits on the Sita Partnership Board to determine matters relating to the waste and street cleansing contracts.

The Local Highways Panel has 5 District Council Members (but is not decision-making).

(Note: most of these appointments are considered as outside bodies and, as such, are included in the outside body section below.)

• **In General, are Leadership and/or Portfolio Roles Considered to be Full Time Roles?**

Portfolio roles are considered to be part time. This enables a mix of Members capable of fulfilling roles rather than limiting them to Members who have no other work commitments. Currently 4 of the 8 Portfolio Holders are employed in other occupations, which reflects the balance of the membership of the Council, where 19 of the 39 Members are of working age and are employed.

Regulatory:

• **In Relation to Licensing, Planning and other Regulatory Responsibilities, to what Extent are Decisions Delegated to Officers?**

The delegation of functions to officers is set out in Part C of Part 3 of the Council's Constitution, commencing on page 3.30.



Constitution PART 3 June 2013 .pdf

• **How many Members are Involved in Committees?**

The table below summarises the number of Members on each Committee.

Development	Audit	Appeals	Review	Licensing	Standards
39	11	8	15	15	8

In addition to Council all Members serve on the Development Committee, six Members are on no other Committees, eleven Members are on one other Committee, fourteen Members are on two other Committees and eight Members are on three other Committees.

• **Is Committee Membership Standing or Rotating?**

The membership of the Committees is determined annually at Annual Council.

• **Are Meetings *Ad Hoc*, Frequent and/or Area Based?**

There were 46 meetings scheduled in the meetings timetable for the 2013/14 municipal year. There were also 3 licensing hearings and 3 Appeals Committee hearings during the year. In addition, the Review Committee has a number of project teams which met during the year and, as and when necessary, there are meetings of Portfolio Holder Advisory Groups. Portfolio Holders also meet with the relevant Heads of Service on a regular basis throughout the Municipal Year.

- **What Level of Attendance is Achieved? Are Meetings Always Quorate?**

Problems have not been encountered with meetings not being quorate.

- **Does the Council Believe that Changes to Legislation, National or Local Policy will have Influence on the Workload of Committees and their Members which would have an Impact on Council Size?**

The changes brought about by the Localism Act have not yet had any appreciable impact on the meetings structure or in the number of meetings. The changes to the Council's funding over the next few years will mean that the Members will become more involved in budget/finance matters as the reduction in the Council's grant has an increasing impact. This could mean that the Council will need to consider the possible sale of assets, areas for income generation and the rationalisation of services.

With the reduction in funding more partnership working will be necessary and Member involvement in such groups as the Flood Forum will increase.

Demands on Time:

- **Is there a Formal Role Description for Councillors in your Authority?**

There are formal role descriptions for:-

Chairman and Vice-Chairman of the probity/regulatory Committees

Chairman/Vice-Chairman of the Council

Leader/Deputy Leader of the Council

Group Leaders

Portfolio Holders

Members of the Council



Role Profile_Chairman of Standards Committee.pdf



Role Profile_Chairman of the Council.pdf



Role Profile_Group Leader.pdf



Role Profile_Leader of the Council.pdf



Role Profile_Member of the Council.pdf



Role Profile_Portfolio Holder.pdf



Role Profile_Chairman of Appeals Committee.pdf



Role Profile_Chairman of Audit Committee.pdf



Role Profile_Chairman of Development Committee.pdf



Role Profile_Chairman of Licensing Committee.pdf



Role Profile_Chairman of Review Committee.pdf

• **Do Councillors Receive Formal Training for all or any Roles at the Council?**

There is mandatory training for Development, Licensing and Appeals Committee Members. Annually there is training in ethical framework and standards, which covers Members' interests and Code of Conduct. There is Chairmanship training, as necessary. Most years there is training specifically for Audit Committee Members. There is treasury management training as necessary (the Review Committee now has a role in overseeing this). In the past there has been chairing meetings training for the Chairman of the Council. Other training of a corporate nature covers a number of role aspects.

Please see attached report to Standards Committee for further details.



Item 7 Report_Member Learning & Development 2013-14_Standards Cttee, 11 April 2013.pdf

• **Do Councillors Generally Find that the Time They Spend on Council Business is what They Expected?**

Councillors are of the general opinion that the time spent on Council business is more than expected. Whilst an introductory guide for new Members is in place to provide an overview, it is not until the role is undertaken that Members fully appreciated how much work is actually involved. As Members become more experienced and take on extra responsibilities such as portfolio holder or outside body memberships, then the demand on their time increases.

It is acknowledged that it can be increasingly difficult for working Members to balance their Council duties. However, evening meetings can help overcome other daytime commitments.

In addition to the formal decision making bodies, all Members of the Council attend two informal Budget Away Days each year. The purpose of these is to gain consensus of the priorities and non-priorities for the forthcoming year, prior to formal agreement of the budget. These sessions are held at weekends and are attended by the Chief Executive and Heads of Service.

• **How Much Time do Members Generally Spend on the Business of Your Council?**

It is not possible to provide the number of hours spent on Council business as this varies due to the different roles undertaken by Members and the diverse demands on their time from one day to another.

• **Does the Council Appoint Members to Outside Bodies? If so, How Many Councillors are Involved in this Activity and what is Their Expected Workload?**

There are a total of 24 out of the 39 Councillors represented on outside bodies (either as representatives or substitutes) – some are appointees to more than one body. The workload varies from organisation to organisation but most involve 4 to 6 meetings a year. One is monthly, one has 8 per year and there are two that meet either once or twice a year



Minutes plus Appx 1-4_Annual Council 21.05.13.pdf

• **Does the Council Attract and Retain Members?**

Of the 39 Members 21 or 54% have served more than 2 terms. Since 2011 there have been 4 by elections due to resignation or other issues.

The table below provides details of the last two elections:-

Year	No. of seats	No. of candidates	No. of Uncontested seats	No. of New Members
2012	13	38	0	3
2011	13	31	3	4

• **Have there been any Instances where the Council has been Unable to Discharge its Duties Due to a Lack of Councillors?**

There have been no instances where the Council has been unable to discharge its duties due to a lack of Councillors.

• **Do Councillors have an Individual or Ward Budget for Allocation in their Area? If so, how is Such a System Administered?**

No individual or ward budgets have been allocated to Members.

Part Two: Scrutiny Functions

Every Council has Mechanisms to Scrutinise the Executive Functions of the Council and other Local Bodies. They also have Significant Discretion over the Kind (and Extent) of Activities Involved in that Process. In Considering Council Size, the Commission will Want to Satisfy Itself that these Responsibilities can be Administered in a Convenient and Effective Way Through the Number of Councillors it Recommends.

- **How do Scrutiny Arrangements Operate in the Authority? How Many Committees are there and what is their Membership?**

The Council has one Overview and Scrutiny Committee, which is called the Review Committee and provides a check and balance to the work of the Executive. Following a Peer Review in 2012 the number of Councillors on the Committee was increased from 8 to 15. Current practice is for it to be chaired by a member of the largest opposition group.

The Committee undertakes pre decision monitoring by examining the Key Decisions Document at each of its meetings. It can also 'call-in' decisions, allowing Committee members to monitor decisions taken by the Executive but not yet implemented.

'Call-ins' have been relatively rare; the monitoring of the Key Decision document is a way of ensuring that there can be discussions with Heads of Service and Portfolio Holders on more contentious items before a decision is made.

- **What is the General Workload of Scrutiny Committees? Has the Council Ever Found that it has had Too Many Active Projects for the Scrutiny Process to Function Effectively?**

The Review Committee sets its own programme and manages its work load accordingly.

- **How is the Work of the Scrutiny Committee Programmed? Is the work Strictly Timetabled?**

There are ten meetings of the Committee scheduled into the meetings timetable at the start of the year. Additional meetings can be added should a need be identified.

At the first meeting of the Committee in a Municipal year the annual work plan is agreed. This is then reviewed at each meeting of the Committee as a standard item on the agenda.

The majority of the topics selected for the work programme are examined by project teams, made up of members of the Committee, away from the main meeting

timetable. These teams meet on a regular basis throughout the life of a project and then report back to the main Committee when their report is ready.

• **What Activities are Scrutiny Committee Members Expected to Carry Out Between Formal Meetings?**

Members of the Committee are expected to attend the meetings of the project team that they are on and attend any site visits that are arranged in relation to that project. During the 2013/14 Municipal year the Committee has looked at the following topics:-

- Review of the Council's car parks and parking charges.
- Review of options for change and financial savings that could be negotiated with the street cleansing and waste management contractor.
- Review of woodlands, including opportunities of additional funding streams.
- Review of leisure service provision and the leisure services contract.

In addition, separate training is arranged for the Members of the Committee during the year.

The 2013/14 Municipal year has seen three training sessions arranged and there have been 19 project team meetings.

Part Three: Representational Role of Councillors

The Commission understands that there is no single approach to representation and Members will represent and provide leadership to their communities in different ways. However, we are interested in hearing about the extent to which Members are routinely expected to engage with communities and how this affects workload and responsibilities. In particular, if the Council has defined a role for elected Members, the Commission would find that evidence interesting.

• **In General Terms, how do Councillors Carry Out their Representational Roles with Electors? Do Members Mainly Respond to Casework from Constituents or do they have a More Active Role in the Community?**

Whilst being contactable via telephone, letter and email Members also attend a number of meetings within the community. 15 (39%) of the Members are also Parish/Town Councillors and active in the community via this role attending Neighbourhood Action Panel meetings, etc. The Members hold a varied number of positions within the community such as school governors, the local chamber of trade and with local charities, etc.

Some of the Members also attend their local Parish Council meetings to provide an update on what is happening in the District Council.

A number of our Portfolio Holders have also established working groups. Whilst some are restricted to Council Members only, such as recent ones relating to the new grounds maintenance contract and Cherry Orchard Country Park, others also include members of the community such as the Flood Forum. The Council also has a number of active Friends Groups which are occasionally attended by ward Members and Portfolio Holders.

- **How do Councillors Generally Deal with Casework? Do they Pass on Issues Directly to Staff or do they Take a More in Depth Approach to Resolving Issues?**

Members in the first instance will deal with any contacts they receive from residents using their own knowledge. They will refer to officers when there is a gap in the knowledge or they need to confirm relevant facts. It is standard practice for a Member to follow through residents' enquiries until a successful resolution has been achieved.

- **What Support do Councillors Receive in Discharging their Duties in Relation to Casework and Representational Role in their Ward?**

Various training courses are arranged through the Member Learning and Development programme, which assists Members in broadening their knowledge of the Council's activities. This and the advice that officers can provide when contacted assist Members in discharging their duties.

At the start of each Municipal year a Members' Information Guide is produced (see attached) which provides Members with useful information and contact numbers for the Council and other local agencies.



Members' Useful Information Guide 2013-14 [May 2013] FINAL.pdf

All new Members are provided with an induction pack when they are first elected and a mentor is appointed for them to assist with the knowledge transfer.

- **How do Councillors Engage with Constituents? Do they Hold Surgeries, Distribute Newsletters, Hold Public Meetings, Write Blogs, etc.?**

All the Members are available by email. They can also be contacted by letter and phone. Some Councillors have organised surgeries that residents can attend and most of the Members issue regular newsletters to keep residents up to date with what is taking place in the District. Some of the parties have their own local websites which they use to inform residents of items of interest and in the last couple of years certain Councillors have started their own blogs, or use other social media to engage with the public.

- **How has the Role of Councillors Changed Since the Council Last Considered How Many Elected Members it Should Have?**

Since the Council last considered the number of Members that it should have there have been a number of changes. At the time of the previous review the Council was operating a Committee system of governance which meant Members were required to attend more meetings with Council business conducted via a number of Policy Committees. Under the 'strong leader' model the role of the Policy Committees have been replaced by the establishment of Portfolio Holder positions. This has meant a reduction in the number of formal meetings Members have to attend.

The Member's role as a community leader has expanded. The wide spread use of emails has changed the way that Members interact with their residents. The use of social media has also made it easier for Members to be able to flag up issues with their residents and gather their concerns.

- **Has the Council Put in Place any Mechanisms for Councillors to Interact with Young People, Those not on the Electoral Register or Minority Groups or their Representative Bodies?**

The Portfolio Holder for Young Persons, Adult Services, Community Care and Well-Being and Community Safety attends and chairs the Local Youth Strategy Group (a group set up and run by ECC) which has representation by three young people who are members of the Rochford Youth Council and the Portfolio Holder will also periodically engage with members of the Youth Council in order to gain their views on local services and provision for young people. The Council has facilitated meetings with the Clinical Commissioning Group and the Police and Crime Commissioner, which all residents can attend and ask questions.

- **Are Councillors Expected to Attend Meetings of Community Bodies such as Parish Councils or Residents Associations? If so, What is the Level of their Involvement and what Role are they Expected to Play?**

Whilst some Members are also Parish/Town Councillors and attend meetings of the Parish/Town Council other District Councillors also attend the Parish Council meetings in their role as Ward Councillor.

In addition, twice yearly, there is a meeting of representatives of the Parish/Town Councils and the Members of the Executive and the Review Committee Chairman.

Part Four: the Future

The Commission understands that the role of local authorities is constantly changing. In particular, changes such as the introduction of elected Mayors in some parts of England have significantly altered the nature of decision making

and role of elected Members. Equally, many local authorities have not seriously considered the size of their Council since the introduction of Executive/Scrutiny functions over a decade ago. We are aware that a number of local authorities have changed or intend to change their governance arrangements by reverting from Executive and Scrutiny models to Committee administrations. The pace of change for authorities is likely to continue into the foreseeable future. That is why you should consider future trends and developments when coming to conclusions on Council size.

In Parts One - Three, we set out a number of questions about how the Council and Councillors currently operate. If proposing a change in Council size, we would also be interested in knowing what changes might be made to current arrangements, which might affect the number of Councillors needed. In particular:-

Localism and Policy Development

- **What Impact do You Think the Localism Agenda Might have on the Scope and Conduct of Council Business and how do you think this might Affect the Role of Councillors?**

The Leader and other Members have always had commitments to outside body appointments and recognise that this is part of being 'a community champion' at RDC. As the Members have always worked in partnership with local groups it is not felt at this point in time that the localism agenda will make much difference to the Council.

- **Does the Council have any Plans to Devolve Responsibilities and/or Assets to Community Organisations? Or does the Council Expect to Take on More Responsibilities in the Medium to Long Term?**

The Authority does not have a large asset base that it could or would need to devolve responsibility for to community organisations. In the longer term the authority will continue to work in partnership with the parishes, other local authorities and its partners in the LSP.

Service Delivery

- **Have Changes to the Arrangements for Local Delivery of Services Led to Significant Changes to Councillors' Workloads? (For Example, Control of Housing Stock or Sharing Services with Neighbouring Authorities).**

The housing stock was transferred to Rochford Housing Association in 2007; this led to 4 Members serving on the board of the housing association but less involvement for the majority of Members.

The formation of the South Essex parking partnership to deliver on street parking enforcement has meant that a Member has been required to sit on the management board.

The creation of the Local Highways Panel and Flood Forum have meant that Members have become involved in the partnership working of these groups.

- **Are there any Developments in Policy Ongoing that Might Significantly Affect the Role of Elected Members in the Future?**

Whilst there is no obvious area of policy development that would affect the role of elected Members in the future this does not take account of what might come out of the Local Strategic Partnership over time. This is an area where improved relationships with partners and better communications are key and the interaction with Members can be important.

Finance

- **What has been the Impact of Recent Financial Constraints on the Council's Activities? Would a Reduction in the Scope and/or Scale of Council Business Warrant a Reduction in the Number of Councillors?**

Over the life of this parliament, the Authority will see a 40% reduction in real terms in its spending power. To date, there have been no major reductions in services but Councillors have had to get more involved in the budget process and consider the priorities and non-priorities. This involvement is likely to continue as further austerity measures come in.

The Local Council Tax Support scheme required Members to have a better understanding of the welfare system and the impact of these changes on the Council's finances.

The introduction of the Retained Business Rates scheme as one of the two main streams of local government funding means that Members need to have a better understanding of how local government finance works. They need to understand how the impact of decisions related to planning and economic development may increase or reduce rateable values in the district and impact directly on the Council's income.

- **If you are Proposing a Reduction in the Number of Councillors for your Authority, to what Extent is this a Reflection of Reduced Activity of the Council Overall, an Anticipation of Efficiency Plans or a Statement to Local People? Or None of these Things?**

The Council is proposing to remain with the same number of Members, namely 39.

Whilst the evidence above does not support an increase in Members (the lack of non quorate meetings and ability to discharge the Council's duties) there is no clear evidence that a decrease in the number of Members is necessary.

In addition, the Council's 15 "nearest neighbour" authorities have an average of around 43 Members which indicates RDC's present size is about right. Again, there is no evidence to suggest RDC requires more Members, but to reduce Members would take the Council further away from its nearest neighbour average.

With 39 Members of the Council there is a balance of working and non working Members (approximately 50/50) which allows for a number of different view points to be considered during the decision making process. Importantly, this allows for a mix of Member backgrounds, experience and age groups which better reflects the electorate as a whole.

If there was to be a reduction in numbers the workload would naturally increase for those remaining Members. This would make it difficult for dual hatted Members, working Members or those Members with other personal commitments to cope with the increased work.

It is critical for a Council to have adequate Member capacity so that it can be confident in professionally discharging its duties and providing effective representation in an ever-shifting social, economic and political environment.

CHARTER FOR ELECTED MEMBER DEVELOPMENT

1 SUMMARY

- 1.1 This report considers options in relation to the recommendations emanating from the assessors' report following the recent award of the Charter for Elected Member Development.

2 INTRODUCTION

- 2.1 The Council achieved the South East Employers (SEE) Charter for Elected Member Development in October 2010. Charter status was awarded for three years and a review of the Council's learning and development arrangements after 18 months took place.
- 2.2 Last year the Council committed to renew the Charter and a full day's assessment took place on 14 January 2014. SEE advised that their focus would be to identify Rochford's 'direction of travel' in Member training and ascertain whether or not the Council continued to meet the Charter standard since it was first awarded in 2010.
- 2.3 At the end of the assessment day, the SEE team advised that the Council clearly meets the assessment criteria for the Charter and the Council was awarded Charter status for a further three years. Cllr Tony Jackson, Chairman of East of England Local Government Association, will be presenting the Charter award at Full Council on 15 April.
- 2.4 The subsequent assessment report sent to the Council detailed the Council's key strengths in Member training and recommendations for future improvement and focus.
- 2.5 The key recommendation in the report from the assessment team is for a small cross-party Member Development Steering Group to be established to champion and support member development. It is envisaged that this group would have 3-5 Members and would be established by the end of June 2014. It was the opinion of the assessors that such a group would strengthen the strategic approach to Member development. This group would take responsibility for determining the annual Member Training programme.
- 2.6 It was also recommended that the introduction of Personal Development Plans (PDPs) for Members be implemented. The PDP process involves reflection on what the Member has done in the past 12 months, what learning has been undertaken and how this has helped them in their role. PDPs are designed so that individual Councillors can identify their own development requirements and a plan can be drawn up to meet these needs. In this way the Council can contribute to an elected Member's development in key areas to assist in confidence building and developing future competence.

- 2.7 As well as PDPs, the assessors asked the Council to consider piloting a 360 degree process in Member development with a pilot group of Councillors. 360 degree feedback is a performance appraisal system where the Councillor requests feedback from a number of contributors including, for example, Group Leader, fellow Ward Member, outside body, lead officer or constituent. The Councillor rates his/her own skills and emails a questionnaire to the list of people they have chosen. The aim of the 360 degree process is to provide individual Councillors with information on their skills, performance and development needs from the feedback they receive from these contributors.
- 2.8 Other Councils who have introduced PDPs and 360 degree feedback have been approached to get a flavour of their experience and to see what benefits they felt have been achieved by their introduction. Of the four Councils that responded, two were County Councils, one a unitary authority and one a District Council. These four Councils are all larger than Rochford and have significantly higher Member training budgets than Rochford. One Council was extremely positive about the success of PDPs for their Councillors and had also trialled 360 degree assessments with Members of their Executive. This Council has a dedicated Member trainer. Another Council summarised its experience of the introduction of PDPs as expensive and not well received by their Members; its Members were not keen either to adopt a 360 degree process. One of the County Councils that responded uses a consultant to carry out the PDPs and 360 interviews, which is expensive. The final Council we heard from has been running PDPs for Members for 5 years and has undertaken a trial of 360 degree assessment with Executive Members using a tool developed by a consultant.
- 2.9 In summary, although the implementation of a system of PDPs for Members and/or introducing 360 degree feedback can have benefits, it is likely to be resource intensive and expensive and would not necessarily have an obvious benefit to Rochford District Council. The Member training budget for 2014/15 is £5,000, which has to cover all aspects of Member development. This is likely to be insufficient to implement the assessor recommendations around PDPs and 360 degree feedback.
- 2.10 On a positive note, the SEE assessment team reported that the Council's Member training programme continues to meet the standards of the Charter and is suitable for the needs of the authority. It can be seen, therefore, that maintaining the Charter is not key to continuing to provide good quality training for Members that is relevant to their role. Prior to achieving the Charter in 2010, the Council introduced mandatory training for Planning, Licensing and Appeals Committees. The mandatory planning training was amended further in 2012 to accommodate the need for more regular planning training sessions throughout the year.

3 OPTIONS AVAILABLE

- 3.1 SEE have confirmed that the recommendation relating to setting up a separate Member Development Group was the settled view of the assessment team as a means to further push forward member development within Rochford. However, this recommendation and the other recommendations will not affect Rochford's current Charter status should it be decided not to proceed with them. However, when the Council has the 18 month review meeting with SEE the assessors will be looking for evidence of progress made in these areas.
- 3.2 The Committee is asked to consider the following options:-
- That arrangements are kept as they are currently and the recommendations coming out of the recent Charter assessment are not implemented.
 - That a cross-party Member Development Steering Group is established to provide direction in Member training and to determine the annual Member Learning and Development programme lead on and support Member Development but that the other assessor recommendations are not implemented at this time. This steering group could come under the auspices of an appropriate Portfolio Holder by way of an Advisory Group.
 - That ways of implementing the recommendations in the assessment report are investigated to see how to best this can be achieved within the budget and officer resource available.

4 RISK IMPLICATIONS

- 4.1 South East Employers have confirmed that Charter status is not dependent on the Council achieving the recommendations from the recent assessment.

5 RESOURCE IMPLICATIONS

- 5.1 Any cost relating to Member development will be taken from the overall Member training budget, which is £5,000 for 2014/15.

Rochford District Council

April 2014

Review Committee Annual Report 2013/2014



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2 Glossary

ECC	Essex County Council
LSP	Local Strategic Partnership
OSC	Office of Surveillance Commissioner

If you would like this report in large print, Braille or another language please contact 01702 318111

3 Chairman's Foreword

This report provides a summary of the work of the Review Committee during the 2013/14 Municipal Year.

This year has been a challenging one for all Members of the Committee. I became the new Chairman at the start of the year. At the same time the Committee was enlarged from eight to fifteen Members. We started the year with four topics to feed into the budget process, with an October deadline. The fact that the Committee achieved this deadline was down to the Committee Members who attended numerous project team meetings to delve in to the complexities of the topics set.

Officially the Committee meets formally ten times a year; the reality is that not a week goes by without a meeting of one or other of the project teams. This does not include the phone calls between Members of the team and officers to confirm understanding and obtain clarification on various issues.

Of the 26 recommendations put forward by the Committee relating to these initial topics, 24 were accepted by the Executive, although one of the recommendations regarding car parking charges was subsequently overturned by Council during its budget deliberations.

Since October the Committee has been looking into two topics that came out of the initial reviews.

Recently, the Members have debated how the Committee should function and have agreed that this should be for the next year's membership of the Committee to decide.

Whilst the workload as Chairman has been high, the results that have been achieved would not have been possible without the support and dedication of the other Members of the Committee.

4 Introduction

- 4.1 During the 2013-14 Municipal Year the Review Committee has considered a number of topics both as a whole Committee and in smaller teams reporting back to the main Committee once the team has completed its work. Details of the Reviews are outlined further on in this report.
- 4.2 In addition to the Committee's role to conduct Reviews it also has the duty to scrutinise decisions made by the Executive. As part of this role the Committee studies the Key Decision Document on a monthly basis.

5 Local Strategic Partnership and Community Safety Partnership

- 5.1 As part of the review of the Political Decision Making structure during the 2008/09 Municipal Year it was agreed that the Committee would look at the Local Strategic Partnership and also the Crime and Disorder Reduction Partnership (now the Community Safety Partnership).
- 5.2 Due to the changes in the health representation in the district and following on from the visit of the local clinical commissioning group (CCG) last year the Committee decided that they would like to take a more in depth look at the thematic partnerships that make up the LSP and therefore in October 2013 the Health and Wellbeing Board attended a meeting of the Committee.
- 5.3 The Committee followed this up with a meeting with the Vice Chairman of the LSP in March 2014.
- 5.4 Under the Police and Justice Act 2006, every local authority is required to have a Crime and Disorder Committee with the power to scrutinise the local Community Safety Partnership, as a whole, in terms of how they are tackling crime and disorder for the benefit of the local communities. Under the Act the Committee has to meet at least once a year to fulfil this function.
- 5.5 These requirements were enacted by the Crime and Disorder (Overview and Scrutiny) Regulations 2009 which came into force for local authorities in England on 30 April 2009.
- 5.6 Representatives from the CSP attending the Committee in September 2013 and February 2014 to update Members on the work they were undertaking in the District.

6 Overview of the Refuse Collection and Recycling, Street Cleansing Contracts

- 6.1 Representatives of SITA UK attended the Committee in December 2013 and brought Members up to date with progress on the waste and street cleansing contracts. The Committee were pleased to note that the Council had been recently judged the number one recycling authority for 2013. The update covered an outline of the achievements within the contracts over the last twelve months and plans and projects for the forthcoming year to enhance the recycling and street scene services.

7 Overview of the Key Decision Document

- 7.1 During the year the Committee continued to monitor the decisions due to be made by the Executive and its members. The Committee studied the Key Decision document on a monthly basis asking for further details as and when they felt necessary.
- 7.2 The Committee has found this a useful way to explore the reasons behind decisions being made and to reduce the need to consider the call-in of a decision after it has been made.

8 Initial 2013/2014 work programme

- 8.1 The Chief Executive's report to Full Council on 26 February 2013 on the key Policies and Actions for 2013/14 contained a number of suggested topics for review that could aid the budget process for 2013/14. These suggestions were:-
 - Review of the Council's car parks and parking charges
 - Review of options for change and financial savings that could be negotiated with the Street Cleansing and Waste Management Contractor
 - Review of woodlands, including opportunities of additional funding streams
 - Review of Leisure Service provision and the Leisure Services Contract
- 8.2 It was agreed by the Committee at its meeting in June 2013 that four project teams would be formed to look at these topics. Due to the need to feed into the budget process it was necessary to complete these reviews by the end of October 2013.
- 8.3 All the teams produced their reports by the deadline and a number of recommendations were submitted to the Executive and then into the budget process.

9 Additional items added to the work programme

- 9.1 The initial reviews brought to the attention of the Review Committee other items that the Committee members felt should be investigated and, therefore, two further project teams were formed to complete the following reviews:-
 - Review of maintenance of the buildings within the leisure contract
 - Review of the Council's sports provision in open spaces including the pavilions and possible improvements

- 9.2 During the year it was put forward by Members that they would like to look at the Council's ICT contract and this item would be carried over into next year.

10 Regulation of Investigatory Powers Act 2000 (RIPA)

- 10.1 As part of the Council's procedures around the Regulation of Investigatory Powers Act members of the Review Committee are given bi annual training related to RIPA along with the officers who might have to submit a request to use the powers from the Act. This training took place in January 2014.
- 10.2 A report was submitted in April 2014 when the Committee reviewed the Council's policy and use of RIPA.

11 Other items considered by the Committee

- 11.1 It was agreed during 2012 that the Committee would in future be responsible for systematically scrutinising treasury management strategy in advance of this being reported to Council. The Committee received three reports during the year in July 2013, November 2013 and February 2014.
- 11.2 In November 2013 the Committee was provided with an update on how the recommendation from its review of how voluntary and community groups function in the District were being implemented. The Committee was pleased to note the changes that had come about as a result of the recommendations that the Committee made.
- 11.3 In February 2014 it was agreed that the Committee would look at the Council's newspaper, Rochford District Matters, and a report was considered at the April meeting of the Committee.

12 Topics for future work programme

- 12.1 The following topics have been identified for the work programme for the next Municipal year:-
- Car parking charges: to review April – June 2014 figures for car parking income.
 - Rochford District Matters – following the April meeting of the Committee it was agreed that a further review of Rochford District Matters would be undertaken in 2014/15.

- 12.2 It was agreed that, prior to the first meeting of the Committee, a training session facilitated by an independent trainer would help determine the work programme.

13 Performance Measures

- 13.1 The Review Committee has previously agreed a set of performance measures. These are listed below with the results or comments linked to them.

1. Completion of Overview and Scrutiny work programme on time.

Project	Scheduled Completion date	Actual Completion date	Reason for extension of date
Review of the Council's car parks and parking charges	October 2013	October 2013	
Review of options for change and financial savings that could be negotiated with the Street Cleansing and Waste Management Contractor	October 2013	October 2013	
Review of woodlands, including opportunities of additional funding streams	October 2013	October 2013	
Review of Leisure Service provision and the Leisure Services Contract	October 2013	October 2013	

Project	Scheduled Completion date	Actual Completion date	Reason for extension of date
Review of the Council's sports provision in open spaces including the pavilions and possible improvements	April 2014	Ongoing	
Review of maintenance of the building within the Leisure Contract	April 2014	April 2014	.
Review of the operation of the ICT contract.	To be agreed		

2. The percentage of Overview and Scrutiny recommendations approved/rejected/acted upon by the Executive.

During this Municipal year the Review Committee has submitted four reports to the Executive and 24 of the 26, or 92% of the recommendations, have been approved.

3. Number of external representatives involved in Overview and Scrutiny work per annum.

During this year the Committee has heard from representatives of seven different external bodies in relation to the items that have been examined.

4. Number of items on the work programme suggested by the public or in response to issues raised through surveys, comments or complaints.

None

5. Number of call-in notices received per annum.

One item has been called in by the Committee this Municipal Year.

6. The number of times that the Executive state that a decision is urgent and not subject to call-In.

During the year five decisions have not been subject to call-in.

7. Whether sufficient information is provided to witnesses about the Overview and Scrutiny process.

The responses from witnesses would indicate that they are happy with the information supplied to them prior to the meeting.

8. Witnesses' views of value added by Overview and Scrutiny meetings.

The responses received would indicate that witnesses think that their contribution has been worthwhile.

9. What has changed as a result of the Overview and Scrutiny function?

Due to the work the Members of the Committee undertook at the start of the year on areas surrounding the budget various savings have been made.

REGULATION OF INVESTIGATORY POWERS ACT 2000 ("RIPA")

1 SUMMARY

- 1.1 The purpose of this report is to update Members on the use of RIPA over the past year and to allow for the review of the Council's RIPA policy, making any amendments should this be required.

2 INTRODUCTION

- 2.1 On 8 March 2011, Members of the Review Committee agreed to provide a strategic overview of the Council's use of RIPA powers in terms of reviewing the policy and considering quarterly and annual statistical reports on usage.
- 2.2 On 12 July 2011 the Committee agreed that in the interests of saving resources, it would consider statistics and review the Council's RIPA policy on an annual rather than quarterly basis.
- 2.3 The last report to this Committee regarding RIPA usage was on 16 April 2013. A further report was considered on 9 July 2013 which proposed changes to the Council's RIPA policy.
- 2.4 Members and officers received RIPA training on 31 January 2014.

3 ANNUAL STATISTICS ON THE COUNCIL'S USE OF RIPA POWERS

6 March 2013 – 5 March 2014

Authorisation Date	Nature of Authorisation	Expiry date / Review Date(s)/ Cancellation Date
NIL		

- 3.1 Members will note that the Council is a sparing user of RIPA powers, the last authorisation having been made on 8 February 2011.

4 ANNUAL POLICY REVIEW

- 4.1 The Council's RIPA policy was updated on 9 July 2013 and took account of various developments and changes to the law.
- 4.2 Some further minor amendments are required to be made to the policy as follows:

Page 6.8, delete paragraph 4.5 in its entirety.

Page 6.10, paragraph 6.7 delete “Albert Bugeja the Head of Legal Estates & Member Services” and replace with “the person named in Annex 1(b)”

Page 6.10, paragraph 6.12 delete “Nicholas Khan (Principal Solicitor)” and replace with “the person named in Annex 1(c)”

Page 6.21, replace the words “Paul Warren” with “Amar Dave”.

Page 6.21, Insert “1(b) Senior Responsible Officer – Albert Bugeja, Head of Legal, Estates & Member Services”

Page 6.21, Insert “1(c) RIPA Monitoring Officer – Nicholas Khan, Principal Solicitor & Deputy Monitoring Officer”

5 RISK IMPLICATIONS

- 5.1 The improper or disproportionate use of RIPA powers could lead to adverse publicity in the media and serious reputational damage.

6 CRIME AND DISORDER IMPLICATIONS

- 6.1 The use of RIPA powers when necessary and proportionate will assist in the prevention and detection of crime.

7 LEGAL IMPLICATIONS

- 7.1 Failure to comply with RIPA legislation may mean that covert investigatory evidence will not be accepted in court and there may be issues of privacy/human rights contraventions, as well as a claim for damages.



ROCHFORD DISTRICT COUNCIL

COVERT SURVEILLANCE POLICY AND PROCEDURE
MANUAL

PURSUANT TO THE
REGULATION OF INVESTIGATORY POWERS ACT
2000

This manual has been prepared to assist officers who undertake covert surveillance but is not intended to be an exhaustive guide

A.J. Bugeja

Head of Legal, Estates & Member Services
RIPA Senior Responsible Officer

GUIDANCE

1 PURPOSE

- 1.1 The Council's officers in the course of investigating frauds, regulatory criminal offences and in the interests of the safety and well being of the district may be required to undertake covert monitoring operations to gather evidence to present to a court. In doing so those officers must comply with the relevant legislation i.e, the Regulation of Investigatory Powers Act 2000 (RIPA) and the associated regulations and codes of practice. Evidence collected without complying with the statutory procedures may become inadmissible and prejudice the outcome of the investigation and may be the subject of a claim for damages under the Human Rights Act 1998.

2 SCOPE

- 2.1 This guidance applies to the planned deployment of directed covert surveillance or the use of Covert Human Intelligence Sources (CHIS) against specified individuals in such a manner as is likely to result in obtaining private information about the person. The following provisions relate therefore to the observation of specified individuals from a vehicle, foot surveillance, the setting up of covert observation positions, the use of equipment for the monitoring of specified individuals and the use of informants or undercover officers.
- 2.2 The Council's policy does not contemplate the monitoring of internet use, telephone use or portal use (communications data) other than in exceptional circumstances as this is unnecessary and disproportionate in most if not all local authority criminal investigations. Guidance regarding the acquisition of communications data is beyond the scope of this document and separate advice from the RIPA Senior Responsible Officer, Monitoring Officer or Ray How (as the Council's Single Point of Contact regarding communications data) should be obtained.

3 BACKGROUND

- 3.1 Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) provides a mechanism for public authorities to undertake certain investigative techniques in compliance with the Human Rights Act 1998. In particular it allows lawful interference with Article 6 (right to a fair trial) and Article 8 (right to respect for private and family life) rights.
- 3.2 The Home Office has issued revised Codes of Practice to provide guidance to public authorities on the use of RIPA to authorise covert surveillance that is likely to result in the obtaining of private information. The revised Codes of Practice are titled "Covert Surveillance and Property Interference" and "Covert Human Intelligence Sources".

- 3.3 All Codes of Practice issued pursuant to section 71 of RIPA are admissible as evidence in criminal and civil proceedings. If any provision of the Codes appear to be relevant to a court or tribunal considering any such proceedings, or to the Investigatory Powers Tribunal established under RIPA, or to one of the Commissioners responsible for overseeing the powers conferred by RIPA, they must be taken into account.
- 3.4 This Procedure sets out the procedures that must be followed when the Council undertakes authorised covert surveillance and brings into effect a number of changes that have been implemented by the revised Codes as well as recent changes to the law in this area. It is intended to be a best practice guide. This Manual is not intended to replace the Home Office Codes.
- 3.5 Those officers that intend to apply for an authorisation under RIPA must familiarise themselves with the appropriate Code of Practice as well as this Procedure. The Codes of Practice are available online and in the G/Shared/RIPA/Code of Practice area.
- 3.6 The covert surveillance regulated by RIPA and covered by the above Codes of Practice is in three categories; intrusive surveillance, directed surveillance and covert human intelligence. The Act and Codes set up procedures for the authorisation of these activities.
- 3.7 The authorising officer should first satisfy themselves that the authorisation is necessary for the purpose of investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1 below) and that the surveillance is proportionate to what it seeks to achieve. Authorising and requesting officers (See Annex 1 and 2 for lists of named officers) should have regard to the Code of Practice "Covert Surveillance and Property Interference", paragraphs 3.3 - 3.6. This states that obtaining an authorisation will only ensure that there is a justifiable interference with an individual's Article 8 Rights if it is necessary and proportionate for these activities to take place.
- 3.8 It first requires authorising officers to believe that the authorisation is necessary in the circumstances of the particular case which further to changes to the law, means for the purpose of investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1) Authorising officers should ask themselves if the evidence could be obtained in any other way? Is the surveillance operation really necessary to what the requesting officer is seeking to achieve? Should there be a less intrusive means of obtaining the information, then the authorisation should not be granted. Judicial approval of the authorisation will also be required before the surveillance takes place which is set out further at paragraph 9

3.9 If the activities are considered necessary, the authorising officer must then satisfy himself that they are proportionate to what is sought to be achieved by carrying them out. He should consider the four elements of proportionality:

- i) balancing the size and scope of the operation against the gravity and extent of the perceived mischief,
- ii) explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others,
- iii) considering whether the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result, and
- iv) evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

4 COVERT SURVEILLANCE

4.1 Covert surveillance means surveillance, which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place. There are two categories of covert surveillance defined in RIPA: intrusive surveillance and directed surveillance.

Intrusive Surveillance

4.2 Covert surveillance is “intrusive surveillance” if 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 or the 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 or vehicle. This is unlikely in the case of equipment such as a DAT recorder when used to assess noise nuisance but care must be taken in setting up of equipment and locating the microphone.

4.3 This form of surveillance can therefore only be carried out by the police and other law enforcement agencies. Council Officers **must not** carry out intrusive surveillance.

Directed Surveillance

- 4.4 Directed surveillance, as defined in RIPA Section 26, as surveillance which is covert, but not intrusive, and undertaken:
- (a) For the purpose of a specific investigation or operation; and
 - (b) In such a manner as is likely to result in obtaining private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
 - (c) Otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under this part to be sought for the carrying out of the surveillance.

~~4.5 Private information includes information about a person relating to his private or family life. Covert enforcement functions directed at shops or workplaces are unlikely to require authorisation unless it involves the systematic surveillance of an individual. Nor does it include surveillance carried out by way of immediate response to events that could not have been foreseen.~~

5 COVERT HUMAN INTELLIGENCE SOURCES (“CHIS”)

- 5.1 Surveillance by a CHIS will not be authorised by the Council other than in exceptional cases due to the adverse risk to the health and safety of officers and such use will usually only be authorised when working alongside the police.
- 5.2 If use of a CHIS is contemplated officers must familiarise themselves with the Code of Practice on Covert Human Intelligence Sources and advice should be sought from the RIPA Senior Responsible Officer and RIPA Monitoring Officer.
- 5.3 A CHIS is defined as a person who establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating anything that:
- (a) Covertly uses such a relationship to obtain information or to provide access to any information to another person; or
 - (b) Covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
- 5.4 A relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose. This relationship is established or maintained specifically to obtain or provide

access covertly to information about private or family life of another person. It also covers those activities where the relationship itself can be construed as an infringement of a person's private or family life.

- 5.5 A member of the public making complaints or giving unsolicited information about individuals is outside the provisions of RIPA. However, someone might become a covert source as a result of a relationship with the case officer. For example when a member of the public is asked to monitor the occupation of a premises. The normal sampling or undertaking of test purchases from shops does not come under the scope of the Act.

6 AUTHORISATIONS

- 6.1 An authorisation for directed surveillance or the use or conduct of a CHIS, may only be authorised by the council on the following ground:

for the purpose of investigating crimes which carry a custodial sentence of 6 months or more or for offences relating to the sale of alcohol or tobacco to children and those under 18 (see paragraph 10.1)

The authorising officer must believe that:

- (a) The action is necessary on the ground set out above; and
- (b) The surveillance is proportionate to what it seeks to achieve.

The Authorising Officer will be responsible for considering all applications for covert surveillance and for granting or refusing authorisations as appropriate. The Authorising Officer will also be responsible for carrying out reviews and ensuring that authorisations are renewed or cancelled where necessary.

- 6.2 The minimum office, rank or position of an Authorising Officer has been designated by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010. For a local authority the Authorising Officer must be the Director, Head of Service, Service Manager or equivalent.
- 6.3 The Council should also have in place a back-up system for situations where the Authorising Officer is unavailable to grant a written authorisation and the situation becomes urgent. This will enable officers to identify the person who is able to give authorisations in the Authorising Officer's absence.
- 6.4 Wherever knowledge of confidential information, such as a doctor's report, is likely to be acquired through the directed surveillance, a higher level of authorisation is needed. In the Council, this would be the Head

or Paid Service (the Chief Executive) or the person acting as Head of Paid Service in his absence.

- 6.5 A list of those officers who have been nominated as Authorising Officers is given below at Annex 1.
- 6.6 It is also now recommended best practice that there should be a Senior Responsible Officer (SRO) in each public authority who is responsible for :
- The integrity of the processes in place to authorise directed surveillance
 - Compliance with RIPA and with the 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.
- 6.7 As the SRO for a local authority has to be a member of the corporate leadership team, the Senior Responsible Officer for this Council will be Albert Bugeja the Head of Legal, Estates & Member Services the person named in Annex 1(b). He will also be responsible for ensuring that all authorising officers are of an appropriate standard in light of the recommendations or concerns raised in the inspection reports prepared by the Office of Surveillance Commissioners following their routine inspections.
- 6.8 The SRO will also undertake an annual audit of records and will be responsible for the day-to day quality control.
- 6.9 There is also now a requirement for elected members of the Council to review the use of RIPA and to set the policy on covert surveillance at least once a year. Therefore, the Review Committee will review this Policy every 12 months and will report to Full Council, should they be of the opinion that it is not fit for purpose or requires amendment.
- 6.10 The Review Committee will also consider the Council's use of RIPA every 12 months to ensure that it is being used consistently with the Council's Policy.
- 6.11 The Committee should not, and will not, be involved in making decisions on specific authorisations.
- 6.12 RIPA Monitoring Officer (RMO) will be Nicholas Khan (Principal Solicitor) the person named in Annex 1(c). The role of the RMO is as follows:

- Maintaining the Central Record of authorisations and collating the original applications/authorisations, reviews, renewals and cancellations.
- Oversight of submitted RIPA documentation.
- Organising and maintain a RIPA training programme.
- Raising RIPA awareness within the Council.
- Appointment of investigating officers as authorised applicants by their inclusion in annex 2.

AUTHORISATION PROCEDURE

7 STAGE 1 - Internal Authorisation

- 7.1 Any of the Council's authorised applicants(Annex 2) (who will invariably also be the investigating officer) may make an application for authorisation under RIPA to conduct a covert operation to an authorised officer (Annex 1). Any application for permission to conduct a covert operation must be in writing on the appropriate form. The forms listed below are standard forms for use by all public authorities that are listed in Schedule 1 of RIPA. The forms are an indication of the information required before an authorisation can be granted and are consistent with the requirements in the codes of practice. The Home Office recommends that all users of the form should add any information that is relevant to their organisation but avoid taking any information out of the forms.
- 7.2 Forms for the application, review, renewal or cancellation of authorisations are available in the Council's G/shared/RIPA/RIPA forms file.

Directed Surveillance

- DIRECT1 – Authorisation Directed Surveillance
- DIRECT2 – Review of a Directed Surveillance Authorisation
- DIRECT3 – Renewal of a Directed Surveillance Authorisation
- DIRECT4 – Cancellation of a Directed Surveillance Authorisation
- JUDICIAL1 – application for judicial approval for authorisation to conduct directed surveillance

Covert Human Intelligence Source

- CHIS1 – Application for Authorisation for the use or conduct of a Covert Human Intelligence Source
- CHIS2 – Review of a Covert Human Intelligence Source Authorisation
- CHIS3 – Application for Renewal of a Covert Human Intelligence Source Authorisation

- CHIS4 – Cancellation of a Covert Human Intelligence Source Authorisation
- JUDICIAL1 – application for judicial approval for authorisation to use CHIS

7.3 A written application for authorisation must record:

- (a) The action to be authorised, including any premises or vehicles involved
- (b) The identities, where known, of those to be the subject of surveillance;
- (c) A full account of the investigation or operation;
- (d) Justifying that the authorisation is sought for investigating a crime which carries a custodial sentence of 6 months or more (see paragraph 10.1)
- (e) How and why the investigation is both necessary and proportionate.
- (f) Authorising Officer should state in his own words why the investigation is necessary and proportionate.

7.4 It is considered good practice for a simple sketch map of the immediate area of investigation, detailing specific observation points, location of monitoring equipment etc., to be appended to the application for authorisation. Further details on completing a written application for authorisation are contained in the Codes of Practice.

8 CONSIDERATION

8.1 The investigating officer will keep notes during the initial stages of gathering intelligence. Such records will be held on the case file.

8.2 Requests to the authorising officer for authorisation to mount a covert operation will be subject to and based on, the intelligence gathered and recorded on the investigator's notes. The officer will consider if such an operation would assist in investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1)

8.3 Responsibility for authorisation for a covert operation will be considered on the grounds that any operation is likely to be of value in connection with;

- investigating crimes which carry a custodial sentence of 6 months or more (see paragraph 10.1)
- and that the proposed covert operation is a reasonable means of achieving the desired result. This must be balanced with the individual's rights under the Human Rights Act 1998.

8.4 Any authorisation must be on the basis that the activity is both necessary and proportionate. The Authorising Officer must also take

into consideration the risk of intrusion into the privacy of persons other than those directly implicated in the operation or investigation (collateral intrusion)

8.5 Additional considerations with respect to the use of a CHIS are

- their likely value as a source of information
- assessment of any risks to them
- the use of vulnerable individuals
- juvenile sources i.e. under 18 years

8.6 For further guidance on these issues please see the Home Office code of practice on the use of Covert Human Intelligence Source. The use of CHIS will only be in exceptional circumstances (See paragraph 5.1 above), and prior advice should be sought from the SRO or RMO.

8.7 If in doubt, ask the SRO or RMO Officer BEFORE any directed surveillance and/or CHIS is authorised, rejected, renewed or cancelled.

9 STAGE 2 - Judicial Oversight and Approval

9.1 The *Protection of Freedoms Act* brought into law the Judicial oversight of all RIPA approvals by Local Authorities. It inserts sections into the 2000 Act which mean that authorisations whilst still given by Council staff, do not take effect until a Magistrate has approved them. The Judicial oversight does not take the place of the current authorisation process – it is an oversight function and not an authorisation function. **The Authority may not undertake the regulated activity until Judicial Approval has been given.**

9.2 The Authority has appointed all investigation officers and managers to make applications under this part (Annex 2) (in accordance with s.223(1) of the Local Government Act 1972), subject to their inclusion in the approved list at annex 2 by the *RMO*. The Authority has authorised the *RMO* to appoint as many investigation officers and managers to make applications under this part as he sees fit. Those officers must be listed at annex 2 and any decisions to or deletions from that list must be notified to Members as part of the regular reporting protocols.

9.3 Once the application has been approved by an officer listed in Annex 1, the Authority must apply to the Magistrates Court for an order confirming that:

- a. The person who granted or renewed the authorisation, or the notice, was entitled to do so;
- b. The grant or renewal met the relevant restrictions or conditions;

- c. There were reasonable grounds for believing (at the time it was made or renewed) that obtaining the information described in the form was both necessary and proportionate; and
 - d. It is still (at the time the court considers it) reasonable to believe the grant/renewal to be both necessary and proportionate.
- 9.4 The oversight will be determined at a hearing in front of a single Magistrate or District Judge. An officer appointed to do so (and listed at Annex 2 i.e. also the authorised applicant) must approach the court office to arrange the hearing.
- 9.5 There is a form held in G/Shared/RIPA/RIPA forms/JUDICIAL1 that must accompany all applications. The authorised applicant (normally the *Officer in Charge* of the case) must complete this form electronically, once the *Authorising Officer* has approved the application. (This also applies to requests for renewals of authorisations.)
- 9.6 Once the form has been completed, the authorised applicant must submit this, along with electronic copies of any accompanying documents (set out below) to the *Authorising Officer for checking*. Once satisfied with the standard of the form and any attachments, the *Authorising Officer* must submit the bundle electronically to the *RMO* for onward transmission to the courts.
- 9.7 The bundle for submission to the courts must include:
- a. The application for the order approving the authorisation;
 - b. The authorised application or renewal form;
 - c. Any supporting information, that exceptionally, does not form part of the form;
 - d. Any information you have that might show a reason to refuse the application;
 - e. An extract from the relevant legislation showing the offence being investigated and that it carries the relevant maximum sentence (unless it is one of the offences provided for in 7A(3)(b) of the 2010 regulations (see 10.1 below) and
 - f. A copy of the Annexes 1 and 2 to this policy, showing that the *Authorising Officer* and the authorised applicant are both persons duly approved to carry out those functions by the Authority.
- 9.8 The form requires that the authorised applicant makes a declaration of truth and disclosure, as part of the application for Judicial approval. **It is important that this is not signed lightly**; check that all material facts

have been disclosed within the bundle and that the contents are accurate and true.

- 9.9 The authorised applicant must attend the hearing and assert the accuracy of the application. They must also be prepared to answer any questions about the application and the investigation which the Magistrate may have. At the end of the application, the magistrate will give the Court's decision.
- 9.10 Once the bundle has been submitted the *RMO* will note this in the central record. Within 24 hours of receiving the Court's decision, the applicant must notify the *RMO* and the *Authorising Officer* by sending them an email. Both parties must also be sent copies of any court order. The original must be retained on the investigation file. The *RMO* will note the record of the outcome.
- 9.11 In the event that the Court refuses the application, the authorised applicant, the *Authorising Officer* and the *RMO* will review the decision within 24 hours and decide if they wish to make representations to the Court before a *Quashing Order* is made.
- 9.12 If the Authority decides to make representations about a refused application, the *Authorising Officer and RMO* will immediately notify the court officer of this and request a hearing.
- 9.13 Grounds for the submission should be set out in writing and notified to the court before the hearing. It must be drafted by the applicant and approved by the *Authorising Officer and RMO*. It must contain the standard declaration as set out above.
- 9.14 If the Authority elects to seek a hearing, the applicant, *Authorising Officer and RMO* will attend the hearing.
- 9.15 At the conclusion of the hearing, the *RMO* will note the outcome in the central record.

10 SERIOUSNESS THRESHOLD

- 10.1 No officer may make an authorisation under this policy unless it concerns conduct which constitutes one or more criminal offences (or would do if it all took place in England and Wales) and either the criminal offence (or one of the criminal offences):
- Is or would be an offence which is punishable by a maximum term of at least 6 months of imprisonment; or

- Is an offence under:
 - i. Section 146 of the Licensing Act 2003(3) (sale of alcohol to children);
 - ii. Section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
 - iii. Section 147A of the Licensing Act 2003(4) (persistently selling alcohol to children);
 - iv. Section 7 of the Children and Young Persons Act 1933(5) (sale of tobacco, etc., to persons under eighteen).
- 10.2 In exceptional circumstances, where no named authorising officer is available, any Service Manager or more senior appointment is prescribed within legislation as an authorising officer. They would not however be permitted to authorise unless they have previously received relevant RIPA training.
- 10.3 Officers should not authorise their own activities except as a matter of urgency.

11 URGENT

- 11.1 Authorisations must be in writing unless urgent. When given orally a written record that the authorising officer has expressly authorised the action must be made in the case officers note book or case notes as soon as is reasonably practicable. This must be endorsed by the authorising officer and followed within seventy-two hours with a written authorisation as necessary. It will be rare that an authorisation would be given orally.

12 DURATION OF AUTHORISATIONS

- 12.1 Authorisations for directed surveillance will cease to have effect three months from the day of issue and for the use of covert human intelligence sources, twelve months. The expiry date and time on the authorisation form will therefore always be three/twelve months from the date of authorisation, controlled by review and cancellation. Authorisations should be reviewed on a regular basis, using the appropriate form, to ensure that they are still necessary and proportionate.
- 12.2 Authorisations can be renewed prior to their expiry providing the criteria in paragraph 3.9 and the Code of Conduct is met. Applications for renewal must be in writing and the application and the decision, detailing the grounds for the renewal or refusal to renew or withdrawal of the authorisation.
- 12.3 When the case is closed prior to the authorisation expiring or covert surveillance is no longer required or meets the criteria for authorisation,

which ever is the sooner, the authorisation must be cancelled by the authorising officer using the appropriate form.

13 CENTRAL RECORD OF ALL AUTHORISATIONS

- 13.1 The SRO, Head of Legal, Estates and Member Services will maintain a central record of all authorisations granted, renewed or cancelled by the council. These records to be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners, upon request.
- 13.2 Within one week of the relevant date, a copy of the application, review, renewal, court order and cancellation form is to be placed in the RIPA Records File kept secure by the Secretary/Personal Assistant to the Head of Legal, Estates & Member Services.
- 13.3 All records shall be retained for a minimum of three years to ensure that they are available for inspection by the Commissioner. Where there is a belief that the material relating to an investigation could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with the Criminal Procedure and Investigations Act 1996 and kept a period of at least five years.

14 CONFIDENTIAL INFORMATION

- 14.1 There are no special provisions under RIPA for the protection of “confidential information”. Nevertheless, special care needs to be taken where the subject of the investigation or operation might reasonably expect a high degree of privacy or where confidential information is involved.
- 14.2 Confidential Information can include matters that are subject to legal privilege, confidential personal information or confidential journalistic material.
- 14.3 In practice, it is likely that most of the surveillance authorised and carried out by the Council would not involve confidential information. However, where there is a possibility that the use of surveillance will enable knowledge of confidential information to be acquired e.g. conversations between a doctor and patient, a higher level of authority for such surveillance is required.
- 14.4 In cases where it is likely that knowledge of confidential information will be acquired, the use of covert surveillance is subject to a higher level of authorisation, namely by the Head of Paid Service (Chief Executive) or, in his/her absence, the Chief Officer acting as Head of Paid Service.
- 14.5 The authorised applicant should complete the application for authorisation of directed surveillance in the usual way, but with

sufficient indication of the likelihood that confidential information will be acquired.

14.6 At all times during any operation officers are to conduct themselves in a manner that will not breach

- The Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Data Protection Act 1998
- The Council's Enforcement Concordat
- This Guidance & Working Code of Practice
- Any code of practice issued by the Home Office

15 COMPLAINTS

15.1 There is provision under RIPA for the establishment of an independent Tribunal. This Tribunal will be made up of senior members of the legal profession or judiciary and will be independent of the Government.

15.2 The Tribunal has full powers to investigate and decide upon complaints made to them within its jurisdiction, including complaints made by a person who is aggrieved by any conduct to which Part II of RIPA applies, where he believes such conduct to have taken place in "challengeable circumstances" or to have been carried out by or on behalf of any of the intelligence services.

15.3 Conduct takes place in "challengeable circumstances" if it takes place:

- (i) with the authority or purported authority of an authorisation under Part II of the Act; or
- (ii) the circumstances are such that it would not have been appropriate for the conduct to take place without authority; or at least without proper consideration having been given to whether such authority should be sought.

15.4 Further information on the exercise of the Tribunal's functions and details of the relevant complaints procedure can be obtained from:

Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ
020 7273 4514

15.5 Notwithstanding the above, members of the public will still be able to avail themselves of the Council's internal complaints procedure, where

appropriate, which ultimately comes to the attention of the Local Government Ombudsman.

16 THE OFFICE OF SURVEILLANCE COMMISSIONERS

- 16.1 The Act also provides for the independent oversight and review of the use of the powers contained within Part II of RIPA, by a duly appointed Chief Surveillance Commissioner.
- 16.2 The Office for Surveillance Commissioners (OSC) was established to oversee covert surveillance carried out by public authorities and within this Office an Inspectorate has been formed, to assist the Chief Surveillance Commissioner in the discharge of his review responsibilities.
- 16.3 One of the duties of the OSC is to carry out planned inspections of those public authorities who carry out surveillance as specified in RIPA, to ensure compliance with the statutory authorisation procedures. At these inspections, policies and procedures in relation to directed surveillance and CHIS operations will be examined and there will be some random sampling of selected operations. The central record of authorisations will also be inspected. Chief Officers will be given at least two weeks notice of any such planned inspection.
- 16.4 An inspection report will be presented to the Chief Officer, which should highlight any significant issues, draw conclusions and make appropriate recommendations. The aim of inspections is to be helpful rather than to measure or assess operational performance.
- 16.5 In addition to routine inspections, spot checks may be carried out from time to time.
- 16.6 There is a duty on every person who uses the powers provided by Part II of RIPA, which governs the use of covert surveillance or covert human intelligence sources, to disclose or provide to the Chief Commissioner (or his duly appointed Inspectors) all such documents and information that he may require for the purposes of enabling him to carry out his functions.

IMPORTANT NOTE

This Procedure Manual has been produced as a guide only and is primarily based on the revised Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources published by the Home Office. These Codes can be found at www.homeoffice.gov.uk.

For further information please contact Legal Services:

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Nick Khan – Principal Solicitor,
RIPA Monitoring Officer – 01702 318169, EXT 3702
nicholas.khan@rochford.gov.uk

ANNEX 1

Appointment of Authorised Officers

The following officers have been appointed by the Council as Authorising Officers for the purposes of RIPA:

Martin Howlett (Principal Environmental Health Officer)

Nick Barnes (Team Leader, Planning Enforcement)

Ray How (Fraud Manager)

~~Paul Warren~~ [Amar Dave](#) (Chief Executive and Head of Paid Service)

1(b) Senior Responsible Officer

Albert Bugeja, Head of Legal, Estates & Member Services

1(c) RIPA Monitoring Officer

Nicholas Khan, Principal Solicitor & Deputy Monitoring Officer

ANNEX 2

Council's Authorised Applicants

In order for the Authority's RIPA authorisations to take effect, they must be approved by a Magistrate. That process requires applicants in person to appear for the Authority and the official court service guidance makes it clear that these should be investigators not lawyers.

Any person from this Authority wishing to make an application must be named in this annex and must take to court a copy of this annex and their official identification.

I certify that the following have been appointed under section 223(1) of the Local Government Act 1972 to appear for the Authority and are approved applicants in accordance with paragraph 9.2 of this policy:

Name	Section	Appointed from	Appointment terminated
Caroline Bell	Street Scene		
Graham Manser	Fraud		
Hannah Weston	Planning Enforcement		
Ivor Chapman	Environmental Health		
Jane Spink	Environmental Health		
Kim Appleby	Fraud		
Lesley Athey	Street Scene		
Yvonne Dunn	Planning Enforcement		
Graham Browne	Anti social behaviour		
Martin Howlett	Environmental Health		
Ray How	Fraud		
Nick Barnes	Planning Enforcement		
Janette Fowler	Licensing		
Andrew Paddon	Environmental		

Signed.....

Nicholas Khan
RIPA Monitoring Officer