

# Public Document Pack

## Policy & Corporate Resources Overview & Scrutiny Committee

Monday, 20th June, 2022

6.00 pm

Meeting Room A

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### AGENDA

**1. Welcome and Apologies**

To welcome those present to the meeting and to receive any apologies for absence.

**2. Declarations of Interest**

To receive any declarations of interest in items on the agenda.

**DECLARATIONS OF INTEREST FORM**

**3**

**3. Minutes of the Meeting held on 21st March 2022.**

To approve as a correct record and to sign the minutes of the meeting held on 21<sup>st</sup> March 2022.

**21st March 2022**

**4 - 7**

**4. Update on RIPA Activity, Procedural Guide and RIPA inspection.**

To receive a report of the Head of Legal Services.

**June 2022 RIPA report to O and S  
Procedural Guide Shorter Version  
RIPA Procedure and Guidance**

**8 - 71**

**5. Portfolio Responsibilities**

To update Members on the revised portfolio responsibilities and the relationship with the Policy and Corporate Resources Overview and Scrutiny Committee.

**revised portfolio responsibilities 2022**

**72 - 73**

**6. Progress Against the Corporate Plan 2021/22 for six**

**months to year end (October 2021 to March 2022)**

To receive a report considered by the Executive Board at its meeting on 9<sup>th</sup> June outlining progress on Corporate Performance.

**Year End Corporate Plan Performance** 74 - 101  
**Appendix One Year end 2122Performancev1**  
**Appendix Two Year end 2122Exceptionreportsv1**

**7. Development of the General Fund Revenue Budget 2023/24**

To receive a report considered by the Executive Board on 9<sup>th</sup> June 2022

**Medium Term Financial Plan 2023-26** 102 -  
**Appendices Budget and MTFP Updatev1** 116

**8. Work Programme for the Committee.**

To consider a work programme for the committee based on the information that members have received on the issues pressures and priorities of the Leader and Executive Members.

**9. Progress of the People and Place Overview and Scrutiny Committee.**

To receive an update on the work of the Overview and Scrutiny Committees.

Date Published: Date Not Specified  
Denise Park, Chief Executive

## DECLARATIONS OF INTEREST IN ITEMS ON THIS AGENDA

**Members attending a Council, Committee, Board or other meeting with a personal interest in a matter on the Agenda must disclose the existence and nature of the interest and, if it is a Disclosable Pecuniary Interest or an Other Interest under paragraph 16.1 of the Code of Conduct, should leave the meeting during discussion and voting on the item.**

**Members declaring an interest(s) should complete this form and hand it to the Democratic Services Officer at the commencement of the meeting and declare such an interest at the appropriate point on the agenda.**

MEETING:

DATE:

AGENDA ITEM NO.:

DESCRIPTION (BRIEF):

NATURE OF INTEREST:

DISCLOSABLE PECUNIARY/OTHER (delete as appropriate)

SIGNED :

PRINT NAME:

(Paragraphs 8 to 17 of the Code of Conduct for Members of the Council refer)

## POLICY AND CORPORATE RESOURCES OVERVIEW AND SCRUTINY COMMITTEE

21<sup>ST</sup> MARCH 2022.

PRESENT-Councillor Connor, in the chair, Councillors Bateson, Liddle, Rawat, Patel, Floyd, Hussain,

Also present- Councillor Mohammed Khan

Beth Wolfenden, Public Health.

Paul Conlon, Democratic Services.

### 1. Welcome and Apologies.

The chair welcomed those present to the meeting. Apologies for absence were received from Councillor Harling.

### 2. Minutes of the meeting held on 6<sup>th</sup> October 2021.

The Committee received the minutes of the meeting held on 6<sup>th</sup> October 2021.

**Resolved-** That the minutes of the meeting held on 6<sup>th</sup> October 2021 be approved as a correct record and signed by the chair.

### 3. Declarations of interest

There were no declarations of interest made at the meeting.

### 4. **Eat Well Move More Shape Up Strategy Refresh 2022-25**

The Committee received an update on the work of the Wellbeing Board and the Eat Well Move More Shape Up Strategy refresh 2022-25 in particular. The strategy is a one of the key strategies of the Health and Wellbeing Board and members will be aware that one of the duties of the Policy and Corporate Resources Overview and Scrutiny Committee is to review the work of the Health and Wellbeing Board and to review its efficiency and effectiveness. The Committee looked at how the strategy aimed to make a difference in the health of the borough and change people's attitudes and habits. One of the key threads of the strategy related to food resilience and how the challenges were being addressed.

**RESOLVED-** That the Committee request a development session for all members where the aims and objectives of the strategy can be addressed and to raise awareness of the work. The Committee agreed that they would review progress on the strategy and intended outcomes at a suitable time in the future.

## 5. Progress of the Overview and Scrutiny Committees.

The Committee were updated on the work of the Place and People Overview and Scrutiny Committees which had met in March to continue their work Programmes and look at the key issues affecting the Council and how the challenges were being met.

### People Overview and Scrutiny Committee 7<sup>th</sup> March 2022.

#### Health of the Borough.

The Committee received an update on public health in the Borough from Professor Dominic Harrison. Members were informed of the actions that had been taken by the Council and other Directors of public health in the northwest following the government's decision to step down restrictions and reduce testing. He outlined local guidance that included the continued wearing of masks in shops, on transport and public places, the continued testing when symptoms are displayed and self-isolation where necessary. 75 year olds would be eligible for a 4<sup>th</sup> jab in spring along with vulnerable adults and this would be administered through GPs. Professor Harrison drew attention to the recent infections which now included one third reinfections with one of the two Omicron variants. The Committee were informed that in the future it was assumed that the virus would follow a cycle like the cold virus and that it would re appear in the population in summer and if not by autumn.

The Committee discussed the effects of long covid and it was noted that about 2%-4% of those who had had Covid were likely to suffer from long covid and this was not related to the severity of the infection. The symptoms of long covid were similar to those ME. The complex issues including the effects on mental health that young people would have in future years and the lack of access to face to face GP was discussed and members were informed that the borough had the 8<sup>th</sup> lowest number of GPs per population in the country and this has been raised with the CCG.

The Committee requested that they continue to be kept informed of the situation relating to Covid and especially how the long term effects of covid will be dealt with in the borough. The Committee also requested that they be kept informed of the efforts to ensure that the ratio of GP's to the population of the borough is increased.

#### A Child of the North

The Committee had received a joint presentation from the Strategic Director Children's Services and The Director of Public Health on the Child of the North report. The report had been published in December 2021 by the Northern Health N8 Research Partnership Science Alliance and written by over 40 leading academics from across the North of England. The report highlighted the inequality for children growing up in the North of England compared with those in the rest of the country. The report called for policies to reduce child poverty and increase funding for preventative services. 18 recommendations were outlined that addressed the greater risk for children in the north of becoming involved with statutory Children's Services, the care system and acute mental health services.

The Committee discussed the ways in which the recommendations affected the outcomes for children and how we could make sure that a difference was achieved. The Committee considered ways that all members of the Council were aware of the challenges outlined in the findings and requested that a presentation be made to all members and partner organisations in the delivery of services to children. Members were also conscious of the need to ensure that the delivery of all council services consider the implications for children in everything they do. The Committee noted the implications of the Report on Child of the North and the negative

outcomes for children in the borough in comparison with those in the South of England and recommended to the executive member that a seminar be held for all members outlining the findings of the report, the implications for the children and ways that the Council can shape its policies and services to mitigate the effects on children in the borough. The Committee also asked that the Executive Board be recommended to consider the introduction of a paragraph on all policy reports outlining how the recommendations affect the outcome of children in the borough in a similar way to how financial and legal implications are outlined.

#### Send Methodology Testing Feedback

The Committee had been presented with the findings of the joint Ofsted and CQC methodology testing pilot that had been carried out to see how well local areas fulfil their responsibilities for children and young people with special educational needs and/or disabilities. The borough had been approached by Ofsted and the CQC to support them to test their new methodology for local area SEND inspections.

The Committee were informed of the work that had been required by the departments and Health partners and the challenges that had been met. These had included meeting very tight deadlines in tracking evidence and gaining consent from parents and carers of children and young people. Members were informed feedback which included the following -

- Dedicated and passionate staff who know children and young people well
- Send support services- school staff highlighted the valuable support.
- Clear examples of creative approaches to provide support.
- Practitioners were positive to find a way around things
- Practitioners appreciated practical hand holding with additional support to access
- Children and young people and parents and carers views were listened to and acted upon.

The members were informed of the areas that they were aware needed to be looked at and address and the steps being taken to improve together with the areas that had been exacerbated by covid. The Committee thanked the Children's Services Department and Partners for all the hard work that had been put in to the SEND Methodology Testing and welcomed the positive outcome.

#### Place Overview and Scrutiny Committee, 14<sup>th</sup> March 2020

The Committee had looked at the key areas of their work programme for the year and developments that had taken place following initial scrutiny. The Committee also looked at the issue of trees in the borough and how we manage them.

#### Trees.

The Committee looked at the issue of trees as a scrutiny topic for a number of reasons including ash die back, the recent storms, planting initiatives and public concerns. The Council is responsible for the care, development and maintenance of tens of thousands of trees owned by the Council, which are located in Council parks, open spaces and on the highway. The Committee noted that the Council does not have a responsibility for tree on private land or un-adopted land.

Members looked at the issue of Ash dieback and the effects that this would have on trees in the borough and across the country. Ash trees are the third most common tree in Britain, they were present in woodlands, hedgerows and parks and gardens across the country and had a cultural significance in our urban and rural landscapes. They were also valuable habitats for over 1,000 species of wildlife. It was estimated that there are more than 60 million ash trees outside woodlands in the UK and that the majority would become affected with ash dieback in

years to come. Members were informed of the main issues for the Council arising from die back and the work that was to be done on an ash die back plan which required the Council to identify the number and condition of ash trees on Council owned land and or near the highway. Members were informed that public safety was the priority for assessing what action to be taken.

The Committee looked at the process for reporting issues with trees and residents responsibilities and the management issues with council owned trees. The Committee were also informed of the recent decision at the Finance Council to increase resources to deal with tree related issues.

Members looked at the targets for tree planting in the borough to help mitigate climate change and how the planting of trees was progressing. The Committee supported the work of to involve community groups and schools in this. Members requested that the planting of value added trees such as fruit trees be investigated which could enhance community areas. The Committee also suggested that schools involvement be sought in helping compile the tree audit as this could be a learning activity.

#### Waste and Recycling

The Committee were updated on the progress of the waste and recycling collection. 98 tonnes more recycling had been achieved in the year to December and this represented real progress. Blue bin collection of waste card and paper had also increased with very little spoiled content which generated greater income to the council. Grey Bin collection content had also improved with contamination down from 36% to 24%, a significant improvement. Members were informed of the proposal to engage an additional education officer in order to boost collection further. The Committee will continue to monitor the collection and recycling rates.

#### Cemeteries and Burials

The Committee were updated on the progress in identifying and establishing new cemeteries in the borough. Tests were ongoing at two sites and the outcome would be reported to the committee in the next municipal year.

Resolved- that the progress of the People and Place Overview and Scrutiny Committees be noted.

Chair at the meeting where the minutes were signed.....

Date.....

**REPORT OF: HEAD OF LEGAL SERVICES**

**REPORT TO: Policy and Corporate Resources Overview and Scrutiny Committee**

**ON: [xx] June 2020**

**RE: Update on RIPA Activity, Procedural Guide and RIPA Inspection**

## **1. Purpose of the Report**

To update elected members on:

- The introduction of the new RIPA procedural guide,
- Adoption of recommendations made by the Investigatory Powers Commissioner's Office ['IPCO'],
- RIPA training delivered to officers,
- RIPA activity/applications.

## **2. Recommendations**

**To note that:**

**2.1** Monitoring of RIPA activity – departments have reported to 6 monthly meetings with the RIPA officers' Group with representatives from all departments and no covert surveillance has been undertaken and there have been no uses of covert human intelligence sources since the last IPCO inspection requiring RIPA authorisation.

**2.2** The training of officers is ongoing as detailed in the body of this report including the desk-top exercises recommended by the IPCO.

**To recommend:**

**2.3** That a report be submitted to Executive Board to adopt the new RIPA procedure and guidance for approval.

## **3. Background**

**3.1** At the end of 2019 the Council was inspected by the IPCO – the Investigatory Powers Commissioner's Office and on 15th October 2019 the IPCO informed the Council of the outcome of the inspection.



3.2 The Council was largely compliant, with just three main recommendations:

- To arrange a 'table top' training exercise,
- To amend its Procedure and Guidance to ensure the current RIPA Codes are referred to.
- To ensure that any reference to provisions allowing urgent applications should now be removed as those powers are no longer available.

3.3 The IPCO was concerned that local authorities generally have chosen not to use these powers and that their use had declined steadily over the past few years. However, the IPCO recognised that it was entirely a matter for each local authority as to whether it should use these powers or not. It is to be noted that the Council normally prefers to employ the use of overt investigatory techniques.

3.4 With local authorities in general the IPCO was mainly concerned that in not using these available powers Council employees would become unskilled in recognising when they may be inadvertently using covert human intelligence sources without the correct processes. In particular the IPCO wanted assurance that Council employees knew when they would need to obtain an authorisation. Hence the suggestion that the Council carries out the table-top exercises.

3.5 The table-top exercises took place on 15 December 2021 and 27 January 2022 run by the Council's Service Lead Public Protection and Principal Solicitor - Litigation. They were interactive sessions, despite taking place on Teams. Their content consisted of a brief recap of the law, and discussions using a number scenarios across different types of Council investigations including fraudulent claims, trademarks, fly-tipping and puppy farming with discussions around whether to employ directed surveillance and use of CHIS.

3.6 Training run by outside training providers has also taken place in previous years most recently being on 9th of October 2019 – full day and 29 November 2019 ½ day and both were focused on CHIS.

3.7 To address all the issues with the Procedure and Guidance and to ensure it followed and referred to the statutory Codes of Practice it was decided to present a complete re-draft and to do so with the assistance of an expert trainer who provided a template. The template needed extensive adaptation and additions to ensure it was acceptable to all departments so it has taken some time to put together. The new Draft is Appendix A with a shorter summary in Appendix B.

#### **4. Key issues**

The Council needs to adopt the new RIPA Procedure and Guidance to ensure it is compliant with current guidance and to enable it to produce this to the IPCO at the next inspection which is likely to be this year.

##### **4.1 RIPA Activity**

The Council needs to continue to hold the RIPA Group meetings to monitor any covert investigative techniques and activity even though it has not in recent years had to use them. That is to enable the Council to demonstrate that the activity to be formally monitored and reported to Members from time to time.

#### **4.2    Training Update**

Training, see in 3 above, also needs to take place and be recorded to ensure that the Council can demonstrate that it is continuing. Formal training to introduce the new RIPA Procedure and Guidance will be arranged following its formal adoption.

**CONTACT OFFICER:** Asad Laher , Head of Legal Services/Council Solicitor  
Tel: 01254 585 252

**DATE:** [xx] June 2022

## **THE FOLLOWING IS A SUMMARY OF THE PROCEDURAL GUIDE**

### **The Contents of the Guide**

Part A Introduction and RIPA general

Part B - Surveillance, Types and Criteria

Part C - Covert Human Intelligence Sources (CHIS)

Part D - RIPA Roles and Responsibilities

Part E - The Application and Authorisation Process

Part F - Central Record & Safeguarding the material

Part G - Errors and Complaints

Appendix A Internet & Social Media Research & Investigations Guidance

Appendix B List Relevant Officers names and titles

### **1. PART A Introduction to the Regulation of Investigatory Powers Act 2000 (RIPA)**

1.1 Local authorities carry out enforcement and prosecutions, some of which may require use of covert methods. For instance, local authorities have the powers to enforce counterfeiting, flytipping and under –age sales of alcohol.

1.2 If a public authority considers it necessary to undertake covert surveillance or use a covert human intelligence source as a means of investigating a criminal offence it must do so lawfully. It should not breach an individual's rights to privacy under Article 8 which is one of the human rights set out in Schedule 1 of the Human Rights Act 1998.

1.3 RIPA is an Act of Parliament which, together with its Regulations and Home Office Codes of Practice, prescribes a system of internal authorisation which includes the appointment of Director-level officers to oversee the process, appointment of authorising officers, the use of standard forms which includes an authorisation form showing a reasoned decision to authorise. It is also subject to a magistrate's approval.

1.4 If these procedures are followed, it is akin to an insurance policy as it ensures that the activities are deemed to be 'lawful for all purposes'.

1.5 It is also possible to use a similar system of authorisation in relation to these covert methods that would not be covered by RIPA or require a magistrate's approval. In other words, covert activity that does not qualify for RIPA's regime, for instance, in relation to directed surveillance, if what is being investigated is not deemed to be 'serious crime'. This may be seen to be more of a risk, however, Article 8 is a 'qualified' human right and therefore there are prescribed circumstances in which the Human Rights Act 1998 envisages that it is acceptable to interfere with the right.

1.6 It is generally accepted by practitioners in this area and by the Investigatory Powers Commissioner that to follow the similar process as is followed for a RIPA authorisation, this would ensure that the activities are in accordance with Article 8 and can be justified in law.

1.7 The use of such covert activities are currently very rare. This authority has not used them for some years, preferring to use overt investigative techniques. The Investigatory Powers

Commissioner said in his last report that only a handful of local authorities inspected in 2019 used covert methods for such purposes as test purchases and using covert cameras.

1.8 To comply with the law and the Home Office Codes of Practice this authority has to have the frameworks in place to enable it to use such powers and officer training in the processes because failure to do so would bring it to the attention of the Investigatory Powers Commissioner who inspects local authorities every 3 years. Officers untrained in these processes risk using such covert investigative techniques inadvertently.

## **2. The Regulation of Investigatory Powers Act 2000 (RIPA) came about because of the Human Rights Act 1998 and Article 8 the human right to privacy.**

2.1 Section 6 of the Human Rights Act 1998 states that it is unlawful for a public authority to act in a way which is incompatible with a Convention right.

2.2 Article 8 (1) states that everyone has the right of respect for their private and family life, their home and their correspondence.

2.3 Article 8 is a qualified right which means sometimes it can be interfered with for prescribed purposes. The second para of Article 8 states:

8 (2) There shall be no interference by a Public Authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society.

2.4 RIPA is that 'law' – a legal framework of internal (and external) authorisations which if complied with makes the activity lawful for all purposes. It requires an authority to have an internal procedure that is formally adopted and accessible to staff and the Investigatory Powers Commissioner's inspectors.

2.5 Under Article 8 in order to be lawful any interference has to be proportionate. It also has to be necessary in the interests of:

- national security,
- public safety
- the economic well-being of the country,
- for the prevention of disorder or crime,
- for the protection of health and morals
- for the protection of the rights and freedoms of others.
- RIPA only permits use of the prevention of crime and disorder criterion

## **3. What can Local authorities do under RIPA?**

3.1. They can authorise 'Directed Surveillance' (covert) for the purpose of preventing or detecting a criminal offence which is 'serious' as defined by RIPA as one that is punishable by a maximum term of at least six months imprisonment; or, exceptionally, where the crime does not fall into that category of seriousness but involves the illegal sale of alcohol or tobacco to children.

3.2 They can authorise the use of a covert human intelligence source also for the prevention and detection of crime and prevention of disorder – but it does not have to be ‘serious’ crime. They can do this subject to approval by a magistrate.

#### **4 Why comply with RIPA?**

- 4.1 Evidence obtained by covert surveillance and use of a CHIS not properly authorised or outside the authorisation given could be ruled inadmissible in court.
- 4.2 Without the RIPA process the local authority could be more open to claims against it for breach of the Human Rights Act leading to reputational damage, compensation and costs;
- 4.3 There is also a risk of complaints made by aggrieved individuals to the Investigatory Powers Tribunal (IPTC)
- 4.4 Under the Investigatory Powers Commissioner’s inspection regime it could amount to a ‘Reportable Error’ if you do covert surveillance or use a CHIS unprotected by RIPA in cases where it is possible to be so protected.
- 4.5 IPCO inspectors who inspect the authority have unfettered access to all the local authority processes and procedures and completed RIPA forms and on inspection will speak to the officers involved to check compliance and report formally to the Chief Executive.
- 4.6 A properly authorised covert operation is, according to RIPA, ‘lawful for all purposes’. This provides a defence to a claim against the authority if someone makes a claim that their Article 8 rights have been breached. The authorisation forms provide evidence that properly reasoned and lawful decision has been made.

## **Part B - Surveillance, Types and Criteria**

### **5 The definitions.**

5.1. **Surveillance:** is defined as monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications; and recording anything. It also includes the use of a surveillance device. Eg a camera

5.2. **Overt surveillance** is where you make sure that the subject of surveillance is aware that it is taking place.

E.g. by way of deliberately and prominently placed signage as in the use of CCTV or you have ensured that the person subject of the surveillance has been informed of the surveillance that may be taking place.

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

In other words you deliberately 'set out' to ensure the subject does not know you are monitoring/observing them.

#### **5.4 What is 'Directed Surveillance' ?**

- It is covert, but not intrusive;
- It is conducted for the purposes of a specific investigation or operation;
- It is likely to result in the obtaining of private information (see private information below) about a person (whether or not one specifically identified for the purposes of the investigation or operation);
- It is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought.

#### **5.5 What is 'Intrusive Surveillance' ?**

- It is covert
- Relates to anything taking place on residential premises or in a private vehicle, and
- Involves the presence of a person on the premises or in the vehicle, and
- Involves the use of a device which may not be on the premises or in the vehicle but which consistently provides information of the same quality and detail as if the device is actually on the premises or in the vehicle.
- Not available to Local Authorities – advice is to 'risk assess' devices used if high powered

#### **5.6 What is 'Private Information'**

- Any information relating to a person's private or family life – all personal relationships with others, family and professional or business relationships,
- In a public place a person's privacy can still be breached even though they enjoy a reduced expectation of privacy.
- There is an expectation that someone may observe a person walking about in public or displaying their life publicly on social media, but not that they will go further than that. Eg listen closely to your conversations, make a record of it and/or record your personal data/photos and share the record or store notes about you (cf internet)

#### 5.7 What is 'Confidential and/or Privileged information'?

- Material that has the quality of confidence in common law, for example
- confidential journalistic material and sources of journalistic information,
- medical records or spiritual counselling,
- confidential discussions between Members of Parliament and their constituents
- matters subject to legal professional privilege.
- Confidential personal information
- Directed Surveillance likely or intended to result in the acquisition of knowledge of confidential or privileged material must be authorised by the the Council's Chief Executive who must first seek legal advice from the RIPA Co-Ordinator prior to authorisation.

5.8 NB It is not possible for a local authority to contract out of its responsibilities by instructing an agency to carry out the investigation. If that agency is instructed to carry out a covert investigation it must be authorised internally under the Council's RIPA procedures and approved by a magistrate if it falls within RIPA.

## **6. Part C - Covert Human Intelligence Sources (CHIS)**

### **6.1 What are 'Covert Human Intelligence Sources'**

Someone who establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating:

- the obtaining of information or
- providing access to any information or
- the disclosure of information obtained by the use of such relationship
- Includes anything 'incidental' to the relationship

### **6.2 What is a 'covert purpose for a CHIS?**

- Where the relationship is conducted 'in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose'; and
- If information obtained 'is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question'.

### **6.3 Beware the danger of straying into CHIS territory or into CHIS Criminal Conduct**

- Officers must understand the difference between a person who simply reports a crime and becomes a witness who later may provide a witness statement in criminal proceedings and a CHIS.
- If someone has reported a crime the officer must be careful not to task them as a CHIS. If he asks them for more information they must ensure that it does not involve the tasking of the witness to undertake an investigation of their own e.g. forming covert relationships with individuals or observing them covertly over a number of weeks.
- If there is a properly authorised CHIS officers in control or and handling the CHIS must ensure that the CHIS does not commit crimes or assist in the commission of crimes whilst under-cover and if that occurs or likely to occur they must report it to the RIPA co-ordinator, cease to use the CHIS safely and send the cancellation form to the RIPA Co-ordinator.

### **6.4 CHIS criterion**

- The use of a CHIS must be necessary for the prevention and detection of crime and prevention of disorder.
- No requirement that the crime under investigation has to be 'serious' – i.e. carry a penalty of 6 month imprisonment;
- Authorisations for vulnerable and juvenile sources must be by the Chief Executive
- Authorisations must define the use of the CHIS and the control of the CHIS

### **6.5 CHIS Operation**

- There must be a 'handler' with day to day responsibility for the supervision and safety of the CHIS,
- And a 'controller' with general oversight to check all is being done properly by the handler – risk assessments and record keeping all done properly and all is being done in accordance with the authorisation.



## **7. Part D - RIPA Roles and Responsibilities**

**7.1 Senior Responsible Officer – SRO** - Responsible for: compliance, the overall integrity of the authorisation process, oversight of error reporting and correction, engagement with Investigatory Powers Commissioner's Office, post inspection action plans and ensuring authorising officers are of an appropriate standard.

**7.2 RIPA Co-ordinator** – General record keeping, maintaining a central record which can be inspected, monitoring each department's compliance and act on any cases of non-compliance and organise training, provide formal guidance (and daily advice on processes) disseminate and review the provisions of the Council Guidance.

**7.3 Social Media Co-ordinator** - Authorising covert on-line accounts and ensuring record keeping around those and report to RIPA Co-ordinator – keep log of any equipment that is non-attributable.

**7.4 Investigating officer** – Applies to Authorising officer for authorisation using correct application form and following procedures and apply to court for approval after authorisation obtained.

**7.5 Authorising Officers x 2** – Appointed by the SRO to read and deal with RIPA applications.

### **8. Duties of Authorising officers – assessing necessity and proportionality**

A local authority can only interfere with the person's privacy if it is lawful, necessary and proportionate – see above re Article 8

**8.2 Legal necessity** must be for the prevention and detection of crime if it is a RIPA application.

(for directed surveillance that must be serious crime that attracts a maximum sentence of 6 + months imprisonment or underage sales of alcohol or tobacco)

**8.3 Practical necessity** – the authorising officer must assess whether it is really necessary to use covert methods in a particular case – have all other overt methods been explored?

**8.4 Proportionality – if the covert activity appears excessive it should not be granted.**

The authorising officer will assess this by looking at the overall purpose of the covert surveillance/this and balance the need for the covert activity against the likelihood of and extent of breach of privacy.

This will include looking at the seriousness of the crime being investigated. The more serious it is the higher the level of public interest. It is necessary to assess the likely value to the case as a whole of the predicted or 'product' of the covert activity.

It will also include looking at the likelihood of the breach of privacy of an individual (s), the likely level of breach of privacy, the size of the covert operation, numbers of officers involved.

Collateral intrusion – the risk that other people other than the intended subjects of the surveillance CHIS will be caught in the observations/operation.

Authorising officers must also assess the level of collateral intrusion and ask if the operation can be limited to minimise intrusion and ask if it can be minimised.

#### **9. Part E - The Application and Authorisation Process**

Contains all the particulars necessary for those using the process to understand which forms to complete and who to send them to. There are application forms –upon which the authorising officer will endorse his approval of refusal and reasons. There are also forms for applications for reviews and renewals.

A RIPA authorisation for directed surveillance is to last 3 months and it must be granted for 3 months – if it only carries on for 2 weeks a cancellation form must be completed. A CHIS authorisation is for 12 months and if it ceases beforehand a cancellation must be completed

#### **10. Part F - Central Record & Safeguarding the material**

This section relates to record keeping and the duties of the RIPA Co-Ordinator and authorising officers must supply the information to the RIPA Co-ordinator.

#### **11. Part G - Errors and Complaints**

##### **11.1 'Relevant error' could be for example:**

- the authorisation process is not followed properly or
- covert surveillance is carried out without an authorisation under RIPA or
- failure to safeguard the material,
- Staff using own device to access social media for Council enquiries

##### **11.2 Error Reporting**

S235 (6) RIPA 2016 says that a public authority, must report to the Investigatory Powers Commissioner any 'relevant error' of which it is aware. All Council employees who become aware of a relevant error must report them.

#### **12. Appendix A Internet & Social Media Research & Investigations Guidance**

This is a guidance which explains that someone's on-line presence is treated no differently from their physical public presence. Surveillance of someone's public facing social media pages which contains their private information friends and family etc can still amount to a breach of Article 8. Just because they have not made those pages private does not mean that they are fair game for any public authority that needs to conduct directed surveillance by observing their public-facing pages and recording what they see for an investigation. Those individuals have no idea they are being monitored for those purposes and have a level of expectation of how their information will be viewed and by whom. They will rarely expect that it will be used to conduct an investigation into a criminal offence or indeed any investigation.

Therefore this guidance is for investigators to follow if they need to undertake some surveillance or use CHIS on line. The processes are broadly the same save that if the local authority were to require some covert equipment or process such as to set up a false social media account or to use a device that is not attributable to the Council to send messages, the Council's Social Media Co-ordinator

would need to be consulted and they will keep a record and ensure the appropriate RIPA authorisations for CHIS and Directed Surveillance are obtained.

### **13. Appendix B List Relevant Officers names and titles**

This is simply what it says – a list of those who are currently in these roles set out at para 7 above.



# Regulation of Investigatory Powers Act 2000 (RIPA)

## Procedure and Guidance

PHF 4 July 2019 ADAPTED BY SJL FOR BWDC 2021

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**Appendix A** Internet & Social Media Research & Investigations Guidance

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## **PART A Introduction & RIPA General**

### **1. Introduction**

- 1.1 The performance of certain investigatory functions of local authorities may require the surveillance of individuals or the use of undercover officers and informants. Such actions may intrude on the privacy of individuals and can result in private information being obtained and as such, should not be undertaken without full and proper consideration. The Regulation of Investigatory Powers Act 2000 (RIPA) governs these activities and provides a means of ensuring that they are carried out in accordance with law and subject to safeguards against abuse.

All surveillance activity can pose a risk to local authorities from challenges under the HRA or other processes. Therefore, all staff involved in the process shall take their responsibilities seriously so as to enhance the integrity of these processes, procedures and oversight responsibilities which have been adopted by Blackburn with Darwen Borough Council (the Council).

This Procedural Guidance closely follows the RIPA Codes of Practice (Revised August 2018)<sup>1</sup> and the Office of Surveillance Commissioners (OSC) Procedures and Guidance 2016 (which were adopted by the Investigatory Powers Commissioner). This Procedural Guidance will replace the previous version on the date referred to in the version control table.

If having read this document you are unclear about any aspect of the process, seek the advice from the RIPA Co-ordinator.

### **2. Scope of this Procedural Guidance (Guidance)**

- 2.1 The purpose of this Procedure and Guidance (Guidance) is to provide a consistent approach to the authorisation and undertaking of surveillance activity that is carried out by the Council. This includes the use of undercover officers and informants, known as Covert Human Intelligence Sources (CHIS). This will ensure that the Council complies with the Regulation of Investigatory Powers Act 2000 (RIPA).
- 2.2 The Guidance sets out the Council's procedure for the authorisation processes and the roles of the respective staff involved.
- 2.3 The Guidance also sets out the Council's procedure relating to surveillance which is considered necessary in the public interest to be undertaken by the authority but cannot be authorised under the RIPA legislation. This type of surveillance will have to be compliant with the Human Rights Act and is referred to as 'Non-RIPA'. (See para 21).

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<sup>1</sup> [CHIS Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

- 2.4 The Guidance also identifies how it fits with other guidance, policies and legislation, particularly with the Human Rights Act 1998, GDPR/Data Protection Act 2018 and the Criminal Procedure and Investigations Act 1996.
- 2.5 All RIPA covert activity will have to be authorised and conducted in accordance with this Guidance, the RIPA legislation and the Home Office Codes of Practice. Therefore, all officers involved in the process will have regard to this document and the statutory RIPA Codes of Practice issued and updated from time to time under section 71 RIPA (current version issued in August 2018) for both Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS). This is a link to the 2 Codes of Practice:

[Covert surveillance and covert human intelligence sources codes of practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/682222/Covert_surveillance_and_covert_human_intelligence_sources_codes_of_practice_-_GOV.UK.pdf)

### 3. Background to RIPA and Lawful Criteria

- 3.1 On 2<sup>nd</sup> October 2000 the Human Rights Act 1998 (HRA) came into force. Section 6 states that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. This makes it unlawful for a local authority to breach any article of the European Convention on Human Rights (ECHR).
- 3.2 Article 8 of the European Convention on Human Rights is set out below:

#### ***Right to respect for private and family life***

- 1** *Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2** *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
- 3.3 The right under Article 8 is a qualified right and public authorities can interfere with this right for the reasons given in 3.2 (2) above if it is necessary and proportionate to do so.
- 3.4 Those who undertake Directed Surveillance or CHIS activity on behalf of a local authority may breach an individual's Human Rights, unless such surveillance is **lawful**, consistent with Article 8 of the ECHR and is both **necessary** (see section 42) and **proportionate** (see section 43) to the matter being investigated.
- 3.5 RIPA provides a legal framework for justified interference by law enforcement authorities to ensure that any such activity undertaken, together with the information obtained, is HRA compatible and lawful.
- 3.6 However, under RIPA, local authorities can now only authorise Directed Surveillance for the purpose of preventing or detecting conduct which constitutes a criminal offence which is punishable (whether on summary conviction or indictment) by a maximum



term of at least six months imprisonment; (serious crime criteria) or involves the illegal sale of alcohol or tobacco to children. (See Sec 14 re 'lawful grounds')

- 3.7 The lawful criteria for CHIS authorisation is also prevention and detection of crime and prevention of disorder **BUT** the offence investigated is not limited to those that carry a sentence of 6 months imprisonment.
- 3.8 Furthermore, the Council's authorisation of Directed Surveillance or use of CHIS can only take effect with judicial approval which means it can only take place once a court order approving the authorisation has been granted by a Justice of the Peace (JP).
- 3.9 RIPA ensures that any surveillance and use of CHIS which is undertaken following a correct authorisation and approval from a Justice of the Peace is lawful. Therefore, it protects the authority from legal challenge. It also renders any activity authorised under RIPA and the evidence obtained by that means 'lawful for all purposes'.

#### 4. Consequences of Not Following RIPA

- 4.1 Although not obtaining authorisation does not make the authorisation unlawful per se, it does have some consequences: -
  - Evidence that is gathered may be inadmissible in court;
  - The subjects of surveillance can bring a claim against the local authority for breach of their Article 8 rights which could be costly;
  - Reputational damage as well as financial loss – especially if a challenge under Article 8 is successful;
  - Any person who believes that their rights have been breached can have their complaint dealt with by the Investigatory Powers Tribunal (IPTC) (See Complaints section 66)
  - The activity could be construed as an error and therefore have to be investigated and a report submitted by the Senior Responsible Officer to the Investigatory Powers Commissioner's Office (IPCO). (See Sec 65 Errors)

#### 4. Independent Oversight

- 5.1 From 1 Sept 2017 oversight was given to the **Investigatory Powers Commissioner's Office (IPCO)**. They are the independent inspection office whose remit includes providing comprehensive oversight of the use of the powers to which the RIPA code applies, and adherence to the practices and processes described in it. They also provide guidance to be followed which is separate to the codes. Their main oversight duties are set out in section 229 of the Regulation of Investigatory Powers Act 2016.

- 5.2 The 2016 Act gives them have unfettered access to all locations, documentation and information systems as is necessary to carry out their full functions and duties and they will periodically inspect the records and procedures of the Council to ensure the appropriate authorisations have been given, reviewed, cancelled, and recorded properly.
- 5.3 It is the duty of any person who uses these powers to comply with any request made by a Commissioner to disclose or provide any information they require for the purpose of enabling them to carry out their functions. Therefore, it is important that the Council can show it complies with this Guidance and with the provisions of RIPA 2000 and 2016.

## **PART B Surveillance, Types and Criteria**

### **6. Introduction**

- 6.1 It is important to understand the definition of surveillance; what activities are classed as surveillance under RIPA. Surveillance can be both overt and covert but not all surveillance can be authorised under RIPA and so become 'lawful for all purposes'. There are also different degrees of authorisation depending on the circumstances.

### **7. Surveillance Definition**

#### **7.1 Surveillance is:**

- Monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications.
- Recording anything monitored, observed or listened to in the course of surveillance,
- Surveillance by means of a surveillance device.

### **8. Overt Surveillance**

- 8.1 Overt surveillance is where the subject of surveillance is aware that it is taking place, either by way of signage such as in the use of CCTV or because the person subject of the surveillance has been informed of the activity.
- 8.2 Overt surveillance is outside the scope of RIPA and therefore does not require authorisation. However, it still must take account of privacy under the Human Rights

Act 1998 and be necessary and proportionate. Any personal data obtained will also be subject of the Data Protection Act.

## **9. Covert Surveillance**

9.1 Covert Surveillance is defined as “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” and is covered by RIPA. Covert surveillance is categorised as either **intrusive** or **directed**.

9.2 There are three categories of covert surveillance regulated by RIPA: -

- 1) **Intrusive surveillance** (Local Authorities are not permitted to carry out intrusive surveillance).
- 2) **Directed Surveillance;**
- 3) **Covert Human Intelligence Sources (CHIS).**

## **10. Intrusive Surveillance**

10.1 Blackburn with Darwen Borough Council has no authority in law to carry out Intrusive Surveillance. Only the Police and other central government law enforcement agencies can lawfully carry out intrusive surveillance.

10.2 Intrusive surveillance is defined in section 26(3) of the 2000 Act as

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

10.3 Where surveillance is carried out in relation to anything taking place on any residential premises or in any private vehicle by means of a device, without that device being present on the premises, or in the vehicle, it is not intrusive unless the device consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle. Thus, an observation post outside premises, which provides a limited view and no sound of what is happening inside the premises, would not be considered as intrusive surveillance.

- 10.4 The capability of equipment being used for surveillance on residential premises and private vehicles, such as high-powered zoom lenses, should be considered to ensure that its use does not meet the criteria of Intrusive Surveillance.

## **11. Directed Surveillance Definition**

- 11.1 The Council can lawfully carry out Directed Surveillance for the prevention and detection of crime and prevention of disorder where the crime is punishable by imprisonment of 6 months or is relating to the illegal sale of tobacco or alcohol to children. However, surveillance is only Directed Surveillance if the following are all true:

- It is covert, but not intrusive surveillance;
- It is conducted for the purposes of a specific investigation or operation;
- It is likely to result in the obtaining of private information (see private information below) about a person (whether or not one specifically identified for the purposes of the investigation or operation);
- It is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought.

## **12. Private information**

- 12.1 By its very nature, surveillance may involve invading an individual's right to privacy. The level of privacy which individuals can expect depends upon the nature of the environment they are in at the time. For example, within an individual's own home or private vehicle, an individual can expect the highest level of privacy. The level of expectation of privacy may reduce if the individual transfers out into public areas.
- 12.2 The Code of Practice provides guidance on what is private information. They state private information includes any information relating to a person's private or family life. As a result, private information is capable of including any aspect of a person's private or personal relationship with others, such as family and professional or business relationships.
- 12.3 Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information. This is likely to be the case where that person has a reasonable expectation of privacy even though acting in public and where a record is being made by a public authority of that person's activities for future consideration or analysis. Surveillance of publicly accessible areas of the internet should be treated in a similar

way, recognising that there may be an expectation of privacy over information which is on the internet, particularly where accessing information on social media websites.

- 12.4 Private life considerations are particularly likely to arise if several records are to be analysed together in order to establish, for example, a pattern of behaviour, or if one or more pieces of information (whether or not available in the public domain) are covertly (or in some cases overtly) obtained for the purpose of making a permanent record about a person or for subsequent data processing to generate further information. In such circumstances, the totality of information gleaned may constitute private information even if individual records do not. This can be particularly applicable where internet surveillance is carried out. Where such conduct includes covert surveillance, a Directed Surveillance authorisation may be considered appropriate.
- 12.5 Private information may include personal data, such as pictures of a person's face, names, telephone numbers, car registration numbers and address details. Where such information is acquired by means of covert surveillance of a person having a reasonable expectation of privacy, a Directed Surveillance authorisation is appropriate.
- 12.6 Information which is non-private may include publicly available information such as, books, newspapers, journals, TV and radio broadcasts, newswires, websites, mapping imagery, academic articles, conference proceedings, business reports, photographs, videos and more. Such information may also include commercially available data where a fee may be charged, and any data which is available on request or made available at a meeting to a member of the public.
- 12.7 There is also an assessment to be made regarding the risk of obtaining collateral intrusion which is private information about persons who are not subjects of the surveillance (see section 44).

### **13. Confidential or Privileged Material**

- 13.1 This is defined in the Codes of Practice as material that has the quality of confidence in common law and in particular reference is made to confidential journalistic material and sources of journalistic information, other confidential personal information such as medical records or spiritual counselling, confidential discussions between Members of Parliament and their constituents and also matters subject to legal privilege.
- 13.2 Particular consideration should be given in cases where the subject of the investigation or operation might reasonably assume a high degree of confidentiality. This includes where the material contains information that is legally privileged, confidential journalistic material or where material identifies a journalist's source, where material contains confidential personal information or political information such as communications between a Member of Parliament and another person on constituency business.
- 13.3 According to the Annex to the Codes of Practice, Directed Surveillance likely or intended to result in the acquisition of knowledge of confidential or privileged material must be

authorised by the 'Head of Paid Service' who is the Council's **Chief Executive who must seek legal advice from the RIPA Co-Ordinator prior to authorisation.**

- 13.2 Advice should be sought from the RIPA Co-Ordinator by investigating officers at the earliest stage if there is a likelihood of obtaining this type of material.

## 14. Lawful Grounds

- 14.1 Authorisation for Directed Surveillance cannot be given unless it is to be carried out for the purpose of preventing or detecting a criminal offence(s) and it meets the serious crime test i.e. that the criminal offence which is sought to be prevented or detected is
- 1) Punishable, whether on summary conviction or on indictment, by a maximum term **of at least 6 months of imprisonment**, or,
  - 2) Would constitute an offence under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933 (see 1.4 above) – sale of alcohol or tobacco to children.
- 14.2 Preventing or detecting crime goes beyond the prosecution of offenders and includes actions taken to avert, end or disrupt the commission of criminal offences.
- 14.3 For CHIS authorisations the lawful grounds are the same in that it is to be carried out for the purpose of preventing or detecting a criminal offence(s) **BUT NB it does not have to meet the serious crime test. (cf para 3.7)**

## 15. Test Purchases

- 15.1 Test purchase activity does not in general require authorisation as a CHIS under RIPA as vendor-purchaser activity does not normally constitute a relationship as the contact is likely to be so limited. However, if a number of visits are undertaken at the same establishment to encourage familiarity, a relationship may be established and authorisation as a CHIS should be considered. If the test purchaser is wearing recording equipment and is not authorised as a CHIS, or an adult is observing, consideration will be given as to whether in any particular case a Directed Surveillance authorisation should be granted. There is an example in the current Directed Surveillance Code of Practice (para 3.33) of an underage test purchaser of alcohol wearing a surveillance device and it recommends that *consideration should be given to granting a directed surveillance authorisation.*
- 15.2 Note that an authorisation is only needed where the surveillance meets the Directed Surveillance threshold namely, covert surveillance in a situations where you are likely to obtain private information.
- 15.3 Remember that it is only where the offence carries a maximum sentence of 6 months imprisonment or involves the sale of alcohol or tobacco to children that RIPA will apply.

If it does not meet that threshold or it is decided not to apply for an authorisation, it is important that a full written risk assessment is done in which the activity is justified from the aspect of compliance with Article 8 and section 6 of the Human Rights Act 1998. In addition, in all cases which are outside the scope of RIPA the Authorising Officer should consider the use of a non-RIPA application for this where it is likely that private information will be obtained as a way to achieve and show compliance.

- 15.4 When conducting covert test purchase operations at more than one establishment, it is not necessary to construct an authorisation for each premise to be visited but the intelligence must be sufficient to prevent “fishing trips”. Premises may be combined within a single authorisation provided that each is identified at the outset. Necessity, proportionality, and collateral intrusion must be carefully addressed in relation to each of the premises.
- 15.5 NB. It is unlikely that authorisations will be considered proportionate without demonstration that overt methods have been considered or attempted and failed. Adequate reasons for not using or not attempting overt methods will be needed. (See OSC Procedures & Guidance 2016)

## **16. Urgent cases**

- 16.1 Since 1 November 2012 there has been no provision to enable urgent oral authorisations to be given under RIPA as all authorisations now have to be approved by a Justice of the Peace which takes time. If any surveillance within the definition of Directed Surveillance was required to be carried out in an urgent situation or as an immediate response, this could still take place but only outside RIPA – as a ‘Non-Ripa’- in exceptional cases provided that it could be shown to be justified as necessary and proportionate in accordance with Article 8 ECHR and the Human Rights Act 1998. (see section 21 below). Should it ever appear to an Investigating Officer that an urgent oral Non RIPA authorisation is required he should contact an Authorising Officer who will consider the legality, necessity and proportionality when deciding whether to grant it orally. Once granted the AO must make a formal note of the reasons for the decision using a non-RIPA form as a template and place it on the file of the case and provide a copy for the RIPA Co-ordinator and Senior Responsible Officer as soon as reasonably practicable.

## **17. Surveillance for Preventing Disorder**

- 17.1 Authorisation for the purpose of preventing disorder can only be granted if it involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months’ imprisonment. Surveillance for disorder not meeting these criteria would need to be carried out as surveillance outside of RIPA in accordance with the Non-RIPA procedure. (See below)

## 18. CCTV

18.1 CCTV is now known as a Surveillance Camera System Section 29(6) Protection of Freedoms Act 2012. "Surveillance camera systems" is taken to include:

- (a) closed circuit television (CCTV) or automatic number plate recognition (ANPR) systems;
- (b) any other systems for recording or viewing visual images for surveillance purposes;

18.2 The Surveillance Camera Code of Practice 2013 defines a 'surveillance camera system' as:

- any other systems for recording or viewing visual images for surveillance purposes;
- any systems for storing, receiving, transmitting, processing or checking the images or information obtained.

This includes

- CCTV, Body Worn Video (BWV) and dash cams,
- Automatic Number Plate Recognition;
- Deployable mobile overt mobile camera systems e.g. to observe fly-tipping sites.
- Any other system for recording or viewing visual images for surveillance purposes;
- Any systems for storing, receiving, transmitting, processing or checking images or information obtained by those systems; and
- Any other systems associated with, or otherwise connected with those systems.

18.3 The use of CCTV systems operated by the Council do not normally fall under the RIPA regulations. However, they are also governed by the Data Protection Act 2018, Protection of Freedoms Act 2012 and the Surveillance Camera Code 2013 issued by the Surveillance Camera Commissioner. In addition, they are governed by guidance issued by the Information Commissioner's Office (ICO), namely: 'In the picture: a data protection code of practice for surveillance cameras and personal information' and the Council's CCTV Code of Practice.

18.4 Should there be a requirement for the CCTV cameras to be used to conduct surveillance for a different and/or another specific purpose or operation it is likely that the activity will fall under Directed Surveillance and therefore require an authorisation. Therefore, operators of the Councils CCTV system need to be aware of the RIPA issues associated with using CCTV and that continued, prolonged systematic



surveillance of an individual or spaces where targeted individuals frequent may require an authorisation.

- 18.5 On the occasions when the CCTV cameras are to be used in a Directed Surveillance situation either by enforcement officers from relevant departments within the Council or outside Law Enforcement Agencies such as the Police, CCTV staff should always be supplied with an assurance in writing (e.g. by official e-mail from the organisation concerned) that there is a RIPA authorisation in place, what it is for, the name and rank of the authorising officer and also the expiry date. A copy of the authorisation form in a redacted format, or a copy of the authorisation page could be requested in some cases if it is considered by the operators of the CCTV system to be necessary. If it is an urgent oral authority from the Police, a copy of the applicant's notes are to be retained or at least some other document in writing which confirms the authorisation and exactly what has been authorised. It is important that the staff check the authority and only carry out what is authorised. This information is also to be forwarded to the Central Record kept by the RIPA Co-Ordinator filing. This will assist the Council to evaluate the authorisations and assist with oversight.

## **19. Automatic Number Plate Recognition (ANPR)**

- 19.1 Automated Number Plate Recognition (ANPR) does not engage RIPA if it is used for the purpose it is registered for, such as traffic flow management or safety and enforcement within car parks. However, it is capable of being a surveillance device if used in a pre-planned way to carry out surveillance by monitoring a particular vehicle by plotting its locations, e.g. in connection with illegally depositing waste (fly-tipping).
- 19.2 Should it be necessary to use any ANPR systems to monitor vehicles, RIPA principles of lawfulness necessity and proportionality apply and a Directed Surveillance Authorisation should be sought.

## **20 Internet and Social Media Investigations**

- 20.1 Online open source research is widely regarded as the collection, evaluation and analysis of material from online sources available to the public, whether by payment or otherwise to use as intelligence and evidence.
- 20.2 The use of online open source internet and social media research techniques has become a productive method of obtaining information to assist local authorities with their regulatory and enforcement functions. It can also assist with service delivery issues and debt recovery. However, the use of the internet and social media is constantly evolving and with it the risks associated with these types of enquiries, particularly regarding breaches of privacy under Article 8 Human Rights Act (HRA) and other operational risks.

- 20.3 The internet is another method of carrying out surveillance (defined in section 7) and that makes a computer 'a surveillance device'. Repeated viewing of 'open source' sites for the purpose of intelligence gathering and data collation on one individual and their family may constitute Directed Surveillance or if outside the definition and outside RIPA it could constitute a breach of Article 8 ECHR. Activities of monitoring through, for example, a Facebook profile for a period of time where a record of the information is kept for later analysis or evidential purposes is likely to require a RIPA authorisation if it is done to obtain evidence of a crime carrying over 6 months imprisonment. If it is outside RIPA a Non-RIPA form should be completed. Where covert contact is made with another person on the internet a CHIS authority may be required.
- 20.4 Where the activity falls within the criteria of surveillance or CHIS outside of RIPA, again this will require authorising as a 'non RIPA' matter on a Non-RIPA form which will be authorised by the RIPA Authorising Officers listed in appendix B.
- 20.5 **NB** There is more specific guidance that covers online open source research which should be read and followed in conjunction at **Appendix A** of this Guidance headed, '**Internet and Social Media Research and Investigations Guidance**'.

## 21. Surveillance Outside of RIPA i.e. 'Non RIPA'

- 21.1 Compliance with RIPA provides a legal 'shield' because, rather like an insurance policy, properly authorised Directed Surveillance is 'lawful for all purposes' and will provide a defence against a claim for breach of Article 8.
- 21.2 In order to take advantage of that 'shield' Directed Surveillance must be for the purpose of prevention and detection of crime and prevention of disorder and the criminal offence concerned must carry a **6-month prison sentence** (Directed Surveillance crime threshold) or relate to the sale of alcohol or tobacco to children.
- 21.3 Some investigations relate to offences that do not meet this threshold and yet, it may still be considered necessary to undertake surveillance. Examples include:
- Surveillance for anti-social behaviour disorder which do not attract a maximum custodial sentence of at least six months imprisonment.
  - Planning enforcement prior to the serving of a notice or to establish whether a notice has been breached.
  - Most licensing breaches.
  - Safeguarding vulnerable people (where it is clear that the evidence does not indicate a criminal offence e.g. child neglect under section 1 of the Children and Young Persons Act 1933).
  - Civil matters such as insurance claims.
  - Disciplinary surveillance (see below).
- 21.4 So in cases like those, where the surveillance is of an individual who is unaware they are being monitored or observed and it not possible to engage the RIPA 'shield' there

is a higher risk that this activity could breach someone's article 8 rights to privacy. Therefore, the activity should be conducted in way which is HRA compliant, which will include considering whether the activity is lawful, necessary and proportionate.

- 21.5 **Staff disciplinary surveillance** such as poor time-keeping or other non-criminal matters must be compliant with the Monitoring at Work Guidance issued by the Information Commissioner's Office. This is to ensure that it complies with the HRA and the GDPR.
- 21.6 Should the investigation also involve a criminal offence which meets the RIPA criteria such as theft or fraud, and it is intended to prosecute the offender, the option to carry out the surveillance under RIPA should be considered so as to engage the RIPA 'shield'. However, it must be planned as a genuine criminal investigation with a view to prosecution.
- 21.7 Should it be necessary to undertake disciplinary surveillance, advice should be sought from the RIPA Co-Ordinator.
- 21.8 As part of the process of formally recording and monitoring non-RIPA surveillance, a non-RIPA surveillance application form should be completed and authorised by an Authorising Officer. A template application form can be obtained from the RIPA Co-Ordinator.
- 21.9 The Senior Responsible Officer (see 37 below for responsibilities etc) will maintain an oversight of non-RIPA surveillance to ensure that such use is compliant with Human Rights and other relevant legislation. The RIPA Co-Ordinator will maintain a Central Record of non-RIPA surveillance in addition to the required Central Records for Directed Surveillance and CHIS (see para 55 and 56).
- 21.10 The RIPA codes also provide guidance that authorisation under RIPA is not required for the following types of activity:
- General observations – see examples in section 3.33 in the codes of practice that do not involve the systematic surveillance of an individual or a group of people and should an incident be witnessed the officer will overtly respond to the situation. This is not within the definition of surveillance.
  - Use of overt CCTV and overt Automatic Number Plate Recognition systems. This is not covert so outside the definitions of directed and intrusive surveillance.
  - Surveillance where no private information is likely to be obtained. This is also outside the definitions of directed and intrusive surveillance.
  - Surveillance undertaken as an immediate response to a situation. This is a situation specifically excluded from the definition of directed surveillance.
  - Covert surveillance relating to a criminal offence other than one which **is** within the RIPA criteria.
  - The use of a recording device by a CHIS in respect of whom an appropriate use or conduct authorisation has been granted permitting them to record any information in their presence. This is covered by the parameters set within the CHIS authorisation.

- The covert recording of noise where the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm), or the recording of verbal content is made at a level which does not exceed that which can be heard from the street outside or adjoining property with the naked ear. In the latter circumstance, the perpetrator would normally be regarded as having forfeited any claim to privacy. In either circumstance this is outside of RIPA. This is because this does not constitute private information.

21.11 Where it is deemed necessary to undertake an investigation to which RIPA is not applicable but it does involve undertaking covert surveillance in a way that is directed at an individual for a specific investigation over a period of time, if the officer is concerned that private information is going to be gathered it is recommended that the officer concerned completes a NON-RIPA application form.

## **22. Joint Agency Surveillance**

22.1 In cases where one agency is acting on behalf of another, it is usually for the tasking agency to obtain or provide the authorisation. For example, where surveillance is carried out by Council employees on behalf of the Police, authorisation would be sought by the Police. If it is a joint operation involving both agencies, the lead agency should seek authorisation.

22.2 Council staff involved with joint agency surveillance are to ensure that all parties taking part are authorised on the RIPA authorisation form to carry out the activity. When staff are operating on another organisation's authorisation they are to ensure they see what activity they are authorised to carry out and make a written record. They should also provide a copy of the authorisation to the RIPA Co-Ordinator. This will assist with oversight of the use of Council staff carrying out these types of operations. Line Managers should be made aware if their staff are involved in this type of surveillance.

## **23. Use of Third-Party Surveillance**

23.1 In some circumstances it may be appropriate or necessary for Blackburn with Darwen Borough Council to work with third parties who are not themselves a Public Authority (such as an individual, company or non-governmental organisation) to assist with an investigation. Where that third party is acting in partnership with or under the direction of the Council, then they are acting as our agent and any activities that the third party, or the individuals employed by that third party, carry out which meet the RIPA definitions of Directed Surveillance should be authorised. This is because the agent or employee carrying out the activity will be subject to RIPA in the same way as any employee of the Council would be. The Council should ensure that any agents they instruct are properly qualified, understand RIPA obligations and understand they could be inspected by the IPCO, have clean DBS certificates, are ICO registered for data protection purposes and have the necessary skills to achieve the objectives. Note that such agents must be certified by a UKAS accredited certification body to the current edition of BS102000 and are inspected annually so this is a simple check that can be done. If advice is required, please contact the RIPA Co-Ordinator.

- 23.2 Similarly, a surveillance authorisation should also be considered where the Council is aware that a third party (that is not a Public Authority) is independently conducting surveillance and the Council intends to make use of any suitable material obtained by the third party for the purposes of a specific investigation.

## **24. Surveillance Equipment**

- 24.1 The Council will maintain a central (asset) register of all surveillance equipment such as cameras and noise monitoring devices. This will require a description, Serial Number, an explanation of its capabilities and where it is stored.
- 24.2 The register will be held and maintained by the RIPA Co-Ordinator. The equipment will be stored securely by the issuing department.
- 24.3 All equipment capable of being used for Directed Surveillance such as cameras etc. should be properly maintained and fit for purpose for which they are intended.
- 24.4 When completing an Authorisation, the applicant must provide the Authorising Officer with details of any equipment to be used and its technical capabilities. The Authorising Officer will have to take this into account when considering the intrusion issues, proportionality and whether the equipment is fit for the required purpose. The Authorising Officer must make it clear on the Authorisation exactly what equipment if any they are authorising and in what circumstances.

## **PART C. Covert Human Intelligence Sources (CHIS)**

### **25. Introduction**

- 25.1 A RIPA authorisation can also be obtained for the use of Covert Human Intelligence Sources (CHIS). These are sources commonly known as informants (members of the public providing the Council with information), and the activities of undercover officers. They can be employees of the Council, agents or members of the public engaged by the Council to establish or maintain a covert relationship with someone in order to obtain information.
- 25.2 Unlike directed surveillance, which interferes with Article 8 on the basis that it is likely to result in obtaining information relating to a person's private or family life, CHIS relationships may amount to an interference regardless of whether such private information is obtained. This is on the basis that Article 8 protects the right to establish and develop relationships (both personal and professional). Covert manipulation of a relationship by a public authority (e.g. where one party has a covert purpose and is acting on behalf of a public authority) may therefore engage Article 8, regardless of whether private information is obtained.
- 25.3 Not all human source activity will meet the definition of a CHIS. For example, a source may be a public volunteer or someone who discloses information out of professional or statutory duty or has been tasked to obtain information other than by way of a covert

relationship. However, Officers must be aware that volunteers giving information may have obtained that information in the course of an ongoing relationship with a family member, friend, neighbour or business associate. The Council has a duty of care to all members of the public who provide information to us and appropriate measures must be taken to protect that source. How the information was obtained should be established to determine the best course of action. The source and information should also be managed correctly in line with CPIA and the disclosure provisions.

- 25.4 Recognising when a source becomes a CHIS is therefore important as this type of activity may need authorisation. Council employees must ensure that their daily interaction with members of the public does not inadvertently cross-over into CHIS territory. For example, if a member of the public makes a complaint about antisocial behaviour, they should not be asked to utilise a relationship with a person covertly to obtain information about possible criminal offences because this amounts to the tasking of a CHIS. Should a CHIS authority be required, all of the staff involved in the process should make themselves fully aware of the contents of this Procedural Guidance and the CHIS codes of Practice. (see link to Codes at 2.5)
- 25.5 Council employees should make themselves aware of the definition of a CHIS – para 26 below - to ensure that this cross-over never occurs without first obtaining of a CHIS authorisation and all the accompanying safeguards are in place.
- 25.6 A CHIS, their conduct, and the use to which they are put is defined within Section 26(7) and (8) of RIPA. Chapter 2 of the relevant Code also provides examples of where this regime may apply.
- 25.7 Legal advice from the RIPA Co-Ordinator should always be sought where consideration is to be given to the use of CHIS.

## 26. Definition of CHIS

- 26.1 Individuals act as a covert human intelligence sources (CHIS) if they:
  - i) establish or maintain a covert relationship with another person to obtain information.
  - ii) covertly give access to information to another person, or
  - iii) disclose information covertly which they have obtained using the relationship or they have obtained because the relationship exists.
- 26.2 A relationship is established, maintained or used for a covert purpose if and only if it is conducted in a manner that is **calculated to ensure that one of the parties to the relationship is unaware of the purpose**. This does not mean the relationship with the Council Officer/Handler and the person providing the information, as this is not covert. It relates to how the information was either obtained or will be obtained. **Was it or will it be obtained from a third party without them knowing it was being passed on to the Council?** This would amount to a covert relationship.
- 26.3 It is possible, that a person will become engaged in the conduct of a CHIS without a public authority inducing, asking or assisting the person to engage in that conduct. An

authorisation should be considered, for example, where a public authority is aware that a third party is independently maintaining a relationship (i.e. “self-tasking”) in order to obtain evidence of criminal activity and the public authority intends to make use of that material for its own investigative purposes. (Section 2.26 Codes of CHIS Codes of Practice

## 27. Vulnerable and Juvenile CHIS

- 27.1 Special consideration must be given to the use of a Vulnerable Individual as a CHIS. 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 unable to protect himself against significant harm or exploitation. Any individual of this description, or a juvenile as defined below, should only be authorised to act as a source in exceptional circumstances and only then when authorised by the Chief Executive.
- 27.2 Special safeguards also apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under 16 years of age be authorised to give information against his parents or any person who has parental responsibility for him.
- 27.3 If the use of a vulnerable individual or a juvenile is being considered as a CHIS you must consult the RIPA Co-ordinator before authorisation is sought as authorisations should not be granted in respect of a juvenile CHIS unless the special provisions contained within the Regulation of Investigatory Powers (Juveniles) Order 2000; SI No. 2793 are satisfied and an enhanced risk assessment is undertaken.
- 27.4 Additional safeguards should be put in place where a juvenile is a CHIS in a case where the CHIS is covered by a Criminal Conduct Authorisation. It is only in exceptional circumstances whereby a juvenile CHIS can be used to commit assist in or be involved in criminal conduct. Such exceptional circumstances will only exist for these purposes where there is no reasonably foreseeable harm to the juvenile as a result of the authorisation, and where the authorisation is believed to be compatible with the best interests of the juvenile.

## 28. CHIS Criteria

- 28.1 The lawful criteria for CHIS authorisation is prevention and detection of crime and prevention of disorder. **NB The serious crime criteria of the offence carrying maximum penalty a 6-month sentence etc. does NOT apply to CHIS.**
- 28.2 Authorisations for juvenile sources must be authorised by the Chief Executive of the Council (or, in their absence, the Deputy Chief Executive).
- 28.3 All authorisations for use of CHIS must be ratified by a Justice of the Peace at a magistrates’ court.

## 29. Use and Conduct of a Source

- 29.1 The way the Council would use a CHIS for covert activities is known as ‘the use and conduct’ of a source.
- 29.2 The **use** of a CHIS involves any action on behalf of a public authority to induce, ask or assist a person to engage in the conduct of a CHIS, or to obtain information by means of the conduct of a CHIS.
- 29.3 The conduct of a CHIS is establishing or maintaining a personal or other relationship with another person for the covert purpose of:
- a. Using such a relationship to obtain information, or to provide access to information to another person, or
  - b. Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship or
  - c. Is incidental to anything falling within a. and b. above.
- 29.4 In other words, an authorisation for conduct will authorise steps taken by the CHIS on behalf, or at the request, of a public authority.
- 29.5 The use of a source is what the public authority does in connection with the source, such as the interaction with them to select them and induce them. It will also include what you ask them to do (see section 32). The conduct is what a source does to fulfil whatever tasks are given to them or which is incidental to it. The use and conduct require separate consideration before authorisation. However, they are normally authorised within the same authorisation.
- 29.6 The same authorisation form is used for both use and conduct. A Handler and Controller must also be designated, as part of the authorisation process, and the application can only be authorised if necessary and proportionate. Detailed records of the use, conduct and tasking of the source also have to be maintained (see section 36).
- 29.7 Care should be taken to ensure that the CHIS is clear on what is or is not authorised at any given time, and that all the CHIS's activities are properly risk assessed and that risk assessment is properly documented and retained for 5 years after the end of the CHIS authorisation period. If external specialist agents are employed to undertake the CHIS investigation, advice should be taken from them as to the proper content of such risk assessment. Care should also be taken to ensure that relevant applications, reviews, renewals and cancellations are correctly performed, documented and retained in the same way. (Section 2.10 CHIS Codes of Practice)
- 29.8 Careful consideration must be given to any particular sensitivities in the local community where the CHIS is being used and of similar activities being undertaken by other public authorities which could have an impact on the deployment of the CHIS. Consideration should also be given to any adverse impact on community confidence



or safety that may result from the use or conduct of a CHIS or use of information obtained from that CHIS. (Section 3.18 CHIS Codes of Practice)

### **Criminal Conduct by a CHIS**

- 29.9 The Covert Human Intelligence Sources (Criminal Conduct) Act 2021 was enacted on x and it amended RIPA so that ‘**criminal conduct** in the course of, or otherwise in connection with, the conduct of covert human intelligence sources’ is now included in the list of activities capable of being authorised under RIPA as well as Directed and Intrusive surveillance and the use and conduct of a CHIS described above.
- 29.10 It provides an explicit statutory power for the intelligence agencies, law enforcement and a limited number of wider public authorities, to authorise CHIS to participate in criminal conduct where it is necessary and proportionate to do so. The CHIS Code of Practice contains a section on this and contains the detail required should that be necessary and proportionate.
- 29.11 So if it is, or becomes necessary to allow a CHIS to commit or assist in what would be regarded as a crime in order to obtain information or evidence of a criminal enterprise then a further authorisation must be obtained and this may occur during the authorisation period of an existing CHIS authorisation which does not cover criminal conduct. Essentially therefore there are now two types of CHIS authorisation one for use and conduct, under s29 of RIPA and one for criminal conduct under section 29 A RIPA. The CHIS Code says, ‘*All criminal conduct that it is envisaged may form part of the conduct of a CHIS should be authorised by means of a separate but linked Section 29B Criminal Conduct Authorisation*’.

### **30. Handler and Controller**

- 30.1 Covert Human Intelligence Sources may only be authorised if the following arrangements are in place:
- That there will at all times be an officer (the **Handler**) within the Council who will have day to day responsibility for dealing with the source on behalf of the authority, and for the source’s security. The Handler is likely to be the investigating officer.
  - That there will at all times be another officer within the Council who will have general oversight of the use made of the source; (**Controller**) i.e. the line manager.
  - That there will at all times be an officer within the Council who has responsibility for maintaining a record of the use made of the source. See CHIS record keeping (see section 36)
- 30.2 The **Handler** will have day to day responsibility for:
- Dealing with the source on behalf of the Council;

- Risk assessments
- Directing the day to day activities of the source;
- Recording the information supplied by the source; and
- Monitoring the source's security and welfare.
- Informing the Controller of concerns about the personal circumstances of the CHIS that might effect the validity of the risk assessment or conduct of the CHIS

30.3 The **Controller** will be responsible for:

- The management and supervision of the "Handler" and
- General oversight of the use of the CHIS; (including ensuring that the handler has completed the necessary risk assessments)
- maintaining an audit of case work sufficient to ensure that the use or conduct of the CHIS remains within the parameters of the extant authorisation.

## 31. Undercover Officers

31.1 Oversight and management arrangements for **undercover operatives**, while following the principles of RIPA, will differ, in order to reflect the specific role of such individuals as members of the Council. The role of the handler will be undertaken by a person such as the investigating officer who in this context may also be referred to as a '**cover officer**' and the role of controller will be undertaken by their line manager who may also be referred to as the '**covert operations manager**'. (Section 6.9 CHIS Codes of Practice).

## 32. Tasking

- 32.1 Tasking is the assignment given to the source by the Handler or Controller such as by asking them to obtain information, to provide access to information or to otherwise act, incidentally, for the benefit of the Council. Authorisation for the use or conduct of a source is required prior to any tasking where the assignment requires the source to establish or maintain a personal or other relationship for a covert purpose.
- 32.2 In some instances, the tasking given to a person will not require the source to establish a personal or other relationship for a covert purpose. For example, a member of the public is asked to maintain a record of all vehicles arriving and leaving a specific

location or to record the details of visitors to a neighbouring house. A relationship has not been established or maintained in order to gather the information and a CHIS authorisation is therefore not available. Other authorisations under RIPA, for example, Directed Surveillance, may need to be considered where there is a possible interference with the Article 8 rights of an individual.

- 32.3 Authorisations should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked. Rather, an authorisation might cover, in broad terms, the nature of the source's task.

32.4 When unforeseen action or undertakings occur on the "use and conduct" of a CHIS whereby it is evident that the CHIS is required to commit, take part in or assist with the commission of a criminal offence or offences a full record must be made, a further risk assessment carried out and a proper assessment must be done to see whether a new authorisation is required.

### **33. Risk Assessments**

- 33.1 The Council has a responsibility for the safety and welfare of the source and for the consequences to others of any tasks given to the source. It is a requirement of the codes that a risk assessment is carried out. This should be submitted with the authorisation request. The risk assessment should provide details of how the CHIS is going to be handled. It should also take into account the safety and welfare of the CHIS in relation to the activity and should consider the likely consequences should the role of the CHIS become known. The ongoing security and welfare of the CHIS after the cancellation of the authorisation should also be considered at the outset.

### **34. Use of Equipment by a CHIS**

- 34.1 If a CHIS is required to wear or carry a surveillance device such as a covert camera it does not need a separate intrusive or directed surveillance authorisation, provided the device will only be used in the presence of the CHIS. It should be authorised as part of the conduct of the CHIS.
- 34.2 CHIS, whether or not wearing or carrying a surveillance device, in residential premises or a private vehicle, does not require additional authorisation to record any activity taking place inside those premises or that vehicle which takes place in their presence. This also applies to the recording of telephone conversations. This should have been identified at the planning stage.

### **35. CHIS Management**

- 35.1 The operation will require managing by the handler and controller which will include ensuring that the activities of the source and the operation remain focused and there is no status drift. It is important that the intrusion is assessed to ensure the operation remains proportionate. The security and welfare of the source will also be monitored. The authorising officer should maintain general oversight of these functions.
- 35.2 During CHIS activity, there may be occasions when unforeseen actions or undertakings occur. Such incidences should be recorded as soon as practicable after the event and if the existing authorisation is insufficient, it should either be dealt with by way of a review and re-authorised (for minor amendments only) or it should be cancelled, and a new authorisation obtained before any further action is carried out. Similarly, where it is intended to task a CHIS in a new significantly different way than previously identified, the proposed tasking should be referred to the Authorising Officer, who should consider whether a separate authorisation is required. This should be done in advance of any tasking and details of such referrals must be recorded.

## **36. CHIS Record Keeping**

### **36.1 Central Record of Authorisations**

- 36.2 A centrally retrievable record of all authorisations is held by the Council. This record contains the relevant information to comply with the Codes of Practice. These records are updated whenever an authorisation is granted, renewed or cancelled and are available to the Investigatory Powers Commissioner (IPCO) upon request. (see also paragraphs 55 and 56 of this procedure)
- 36.3 The records are retained for no less than 5 years from the ending of the authorisation subject to any reasonable increase of this time period in relation to particular cases by the Authorising Officer. (see paragraph 59.6 relating to data protection)

### **36.4 Individual Source Records of Authorisation and Use of CHIS**

- 36.5 Detailed records must be kept of the authorisation and the use made of a CHIS. An authorising officer must not grant an authorisation for the use or conduct of a CHIS unless they believe that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the CHIS. The Regulation of Investigatory Powers (Source Records) Regulations 2000; SI No: 2725 details the particulars that must be included in these records.
- 36.6 The particulars to be contained within the records are;
- a. The identity of the source;
  - b. An identity, where known, used by the source;
  - c. Any relevant investigating authority other than the authority maintaining the records;

- d. The means by which the source is referred to within each relevant investigating authority;
  - e. Any other significant information connected with the security and welfare of the source;
  - f. Any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
  - g. The date when, and the circumstances in which the source was recruited;
  - h. Identity of the handler and controller (and details of any changes)
  - i. The periods during which those persons have discharged those responsibilities;
  - j. The tasks given to the source and the demands made of him in relation to his activities as a source;
  - k. All contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
  - l. The information obtained by each relevant investigating authority by the conduct or use of the source;
  - m. Any dissemination by that authority of information obtained in that way; and
  - n. In the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.
- 36.7 The person maintaining these records are the CHIS Handler and Controller who will pass them on to the RIPA Co-ordinator on a regular basis.
- 36.8 Public authorities are also encouraged to maintain auditable records for those individuals who are known to provide intelligence on a regular basis but who do not actually meet the definition of a CHIS. This will assist authorities to monitor the status of a human source and identify whether that person should be duly authorised as a CHIS. This should be updated regularly to explain why authorisation is not considered necessary. Such decisions should be made by Authorising Officers. (Section 7.5 CHIS Codes of Practice).

### **36.9. Further Documentation**

36.10 In addition to the above appropriate records or copies of the following are also retained by the Council as per 36.3:

- A copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorising officer;
- A copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- The reason why the person renewing an authorisation considered it necessary to do so;
- Any authorisation which was granted or renewed orally (in an urgent case) and the reason why the case was considered urgent;
- Any risk assessment made in relation to the CHIS;
- The circumstances in which tasks were given to the CHIS;
- The value of the CHIS to the investigating authority;
- A record of the results of any reviews of the authorisation;
- The reasons, if any, for not renewing an authorisation;
- The reasons for cancelling an authorisation; and
- The date and time when any instruction was given by the authorising officer that the conduct or use of a CHIS must cease.
- A copy of the decision by a Judicial Commissioner on the renewal of an authorisation beyond 12 months (where applicable).

36.11 The records kept by the Council should be maintained in such a way as to preserve the confidentiality, or prevent disclosure of the identity of the CHIS, and the information provided by that CHIS. (Sec 7.7 CHIS Codes of Practice)

36.12 Please refer to paragraph 45 below for the relevant application forms which are available from the RIPA Co-Ordinator. They are also available from the Home Office on the [www.gov.uk](https://www.gov.uk) website BUT they will need amending to suit local authority use. The current link to the Home Office forms is below:

<https://www.gov.uk/government/collections/ripa-forms--2>

## **PART D. RIPA Roles and Responsibilities**

### **37. The Senior Responsible Officer (SRO)**

37.1 The nominated Senior Responsible Officer is the Director of Digital and Business Change (see Appendix B) The SRO with responsibilities for:

- The integrity of the process in place within Blackburn with Darwen Borough Council to authorise directed surveillance and CHIS as well as appropriate arrangements if such investigatory methods are necessary outside of RIPA – (non-RIPA) ;
- Compliance with the relevant sections of RIPA and the Codes of Practice;
- Oversight of the reporting of errors to the Investigatory Powers Commissioner (IPC) and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- Engagement with the Investigatory Powers Commissioner Office (IPCO) and the inspectors who support the Commissioner when they conduct their inspections;
- Where necessary, overseeing the implementation of any recommended post-inspection action plans and
- Ensuring that all Authorising Officers are of an appropriate standard, addressing any recommendations and concerns in the inspection reports prepared by the Investigatory Powers Commissioner.

## **38. RIPA Co-Ordinator**

38.1 The RIPA Co-Ordinator who is currently the Council Solicitor (see appendix B) is responsible for storing all the original authorisations, reviews, renewals and cancellation forms and the signed approval or refusal documentation from the Justice of the Peace. This will include any authorisations that have not been authorised by the Authorising Officer or refused by a Justice of the Peace or otherwise Non-RIPA authorisations.

38.2 The RIPA Co-ordinator will: -

- Keep the copies of the forms for a period of at least 5 years from the ending of each authorisation subject to any reasonable increase of this time period in relation to particular cases by the Authorising Officer, (see paragraph 59.6 relating to data protection)
- Keep the Central Record (a requirement of the Codes of Practice) as required in this Guidance of all of the authorisations, renewals and cancellations; and Issue the unique reference number.

- Keep a database for identifying and monitoring expiry dates and renewal dates.
- Along with, Directors, Service Managers, Authorising Officers, and the Investigating Officers must ensure that any electronic and paper records relating to a RIPA investigation are used, retained or destroyed in line with this Guidance, the Councils Information Management policies, departmental retention schedules and the General Data Protection Regulation (GDPR) and Data Protection Act 2018. (DPA)
- Provide administrative support and guidance on the processes involved.
- Monitor the authorisations, renewals and cancellations with a view to ensuring consistency throughout the Council;
- Monitor each department's compliance and act on any cases of non-compliance;
- Organise the provision of training, further guidance and awareness of RIPA and HRA 1998 including the dissemination of the provisions of this Guidance; and review the contents of this Guidance

### **39. Line Managers Responsibility**

Only those Line Managers that are running a team of investigating officers operationally are expected to be fully trained and to follow this Procedure and Guidance.

### **40. Investigating Officers/Applicant**

- 40.1 The applicant is normally an investigating officer who completes the application section of the RIPA form. Investigating Officers should think about the need to undertake Directed Surveillance or the use of a CHIS before they seek authorisation and, if necessary, discuss it with their Line Manager. Investigating Officers should consider whether they can obtain the information or achieve their objective by using techniques other than covert surveillance.
- 40.2 The applicant/investigating officer should also communicate with the authorising officer prior to making a RIPA application to resolve any perceived issues prior to the application form being completed.
- 40.3 The applicant is likely to attend the magistrates' court to seek the approval of a Justice of the Peace (Magistrate) and if approved and involved in the covert activity they must only carry out what is authorised and approved. They will also be responsible for the submission of any reviews, renewals and cancellations.



## **41. Authorising Officers**

- 41.1 The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 prescribes that for Local Authorities the Authorising Officer shall be a Director, Head of Service, Service Manager or equivalent as distinct from the officer responsible for the conduct of an investigation.
- 41.2 Appendix B lists the Authorising Officers within the Council who can grant authorisations all of which are at the required level.
- 41.3 The role of the Authorising Officers is to consider whether to authorise, review, or renew an authorisation. They must also officially cancel the RIPA covert activity. Authorising Officers must have been trained to an appropriate level so as to have an understanding of the requirements in the Codes of Practice and that must be satisfied before an authorisation can be granted.
- 41.4 Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved. Where an Authorising Officer authorises such an investigation or operation, the Central Record of authorisations should highlight this, and it should be brought to the attention of a Commissioner or Inspector during their next inspection.
- 41.5 Authorisations must be given in writing by the Authorising Officer by completing the relevant section on the authorisation form. When completing an authorisation, the case should be presented in a fair and balanced way. In particular, all reasonable efforts should be made to take into account information which weakens the case for the authorisation.
- 41.6 Authorising Officers must explain why they believe the activity is both necessary (see section 42) and proportionate (see section 43), having regard to the collateral intrusion. They must also consider any similar activity which may be taking place, or sensitivities in the area.
- 41.7 They also need to explain the parameters of the authorisation. (i.e. 'who, what, how, why, when, where'?) In other words, identify the subject of the operation and who is undertaking it, why it is necessary, in what circumstances and how it is being carried out, the location and the level of the surveillance that is needed to achieve the objective. It is important that this is made clear on the face of the authorisation form as the surveillance operatives are only allowed to carry out what is authorised. This will assist with avoiding errors.
- 41.8 If any equipment such as covert cameras are to be used, the Authorising Officer should know the capability of the equipment before authorising its use. This will have an impact on collateral intrusion, necessity and proportionality. They should not rubber-stamp a request. It is important that they consider all the facts to justify their decision.
- 41.9 The Authorising Officer may be required to attend court to explain what has been authorised and why.

- 41.10 Authorised Officers must read this Guidance and also the relevant RIPA Codes of Practice issued by the Home Office upon which it is based plus current Procedures and any other relevant guidance issued by the IPCO. It is recommended that Authorising Officers can have access to this Guidance on the Council's intranet so as to ensure they have the latest version or alternatively obtain a current one from the RIPA Co-Ordinator.

## **42 Necessity – Legal and Practical**

- 42.1 Obtaining an authorisation under RIPA and for NON-RIPA 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.
- 42.2 The first requirement is that there should be a 'legal necessity' i.e. that which is set out in law namely that the person granting an authorisation believe that the authorisation is necessary for one or more of the statutory grounds. For the local authority Directed Surveillance must be shown to be necessary for the prevention and detection of crime and that the crime attracts a custodial sentence of a maximum of 6 months or more, or for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco.
- 42.3 The lawful criteria for CHIS is prevention and detection of crime and prevention of disorder and the offence does not have to have a sentence of 6 months imprisonment.
- 42.4 'Practical necessity': the applicant and Authorising Officers must also be able to demonstrate why it is necessary in a practical sense. In other words they must ask themselves whether it is necessary to carry out the covert activity to achieve the objectives in all the circumstances of the particular case at hand. This includes assessing whether or not there are any other means of obtaining the same information by a less intrusive method. This is a specific section in the authorisation form.

## **43. Proportionality**

- 43.1 If the activities are deemed necessary, the Authorising Officer must also be satisfied that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.
- 43.2 The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should be calculated to have a real benefit the

investigation or operation and should not be disproportionate or arbitrary. The fact that a suspected offence may be serious will not alone render the proposed actions proportionate. Similarly, an offence may be so minor that any deployment of covert techniques would be disproportionate. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

- 43.3 When explaining proportionality, the Authorising Officer should explain in the authorisation why the methods and tactics to be adopted during the surveillance are proportionate.
- 43.4 The codes provide guidance relating to proportionality which should be considered by both applicants and Authorising Officers:
- Balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
  - Explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
  - Considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
  - Evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

#### **44. Collateral Intrusion**

- 44.1 Before authorising applications for Directed Surveillance, the Authorising Officer should also take into account the risk of obtaining collateral intrusion which is private information about persons who are not subjects of the surveillance.
- 44.2 Staff should take measures, wherever practicable, to avoid or minimise unnecessary intrusion into the privacy of those who are not the intended subjects of the surveillance. Where such collateral intrusion is unavoidable, the activities may still be authorised, provided this intrusion is considered proportionate to what is sought to be achieved. The same proportionality tests apply to anticipated collateral intrusion as to intrusion into the privacy of the intended subject of the surveillance.
- 44.3 All applications must therefore include an assessment of the risk of collateral intrusion and detail the measures taken to limit this to enable the Authorising Officer fully to consider the proportionality of the proposed actions. This is detailed in a section within the authorisation form.
- 44.4 In order to give proper consideration to collateral intrusion, an Authorising Officer should be given full information regarding the potential scope of the anticipated surveillance, including the likelihood that any equipment deployed may cause intrusion on persons or property other than the subject(s) of the application. If an automated

system such as an online search engine is used to obtain the information, the Authorising Officer should be made aware of its potential extent and limitations. Material which is not necessary or proportionate to the aims of the operation or investigation should be discarded or securely retained separately where it may be required for future evidential purposes. If it is relevant to the investigation it will need to be retained under CPIA. The Authorising Officer should ensure appropriate safeguards for the handling, retention or destruction of such material, as well as compliance with Data Protection Act requirements.

- 44.5 Where it is proposed to conduct surveillance activity specifically against individuals who are not suspected of direct or culpable involvement in the overall matter being investigated, interference with the privacy of such individuals should not be considered as collateral intrusion but rather as intended intrusion.
- 44.6 In the event that authorised surveillance unexpectedly and unintentionally interferes with the privacy of any individual other than the intended subject, the authorising officer should be informed by submitting a review form. Consideration should be given in any such case to the need for any separate or additional authorisation.
- 44.7 If the Council intends to access a social media or other online account to which they have been given access with the consent of the owner, the authority will still need to consider whether the account(s) may contain information about others who have not given their consent. If there is a likelihood of obtaining private information about others, the need for a Directed Surveillance authorisation should be considered, particularly (though not exclusively) where it is intended to monitor the account going forward.

## **PART E. The Application and Authorisation Process**

### **45. Relevant Forms**

- 45.1 All the forms can be obtained from the RIPA Co-ordinator or Government Website at <https://www.gov.uk/government/collections/ripa-forms--2>

**NB if you use the ones from the website you must ensure that you adapt them as instructed.**

- 45.2 For Directed Surveillance there are 4 forms within the process.

**(NB YOU MUST FIRST ADAPT EACH FORM SO THAT THERE IS ONLY ONE CRITERION IN THE LIST AT PARAGRAPH 6 I.E. FOR THE PURPOSE OF PREVENTING OR DETECTING CRIME OR OF PREVENTING DISORDER AND NOTE THERE IS NO POWER TO APPLY FOR AN URGENT AUTHORISATION**

**SO THAT SHOULD BE DELETED. IF IN DOUBT PLEASE CONTACT THE AUTHORISING OFFICER OR THE RIPA CO-ORDINATOR WHO WILL SUPPLY YOU WITH A CORRECT FORM ACCORDINGLY.)**

The links to the forms are:

- Authorisation - <https://www.gov.uk/government/publications/application-for-use-of-directed-surveillance>
- Review - <https://www.gov.uk/government/publications/review-of-use-of-directed-surveillance>
- Renewal - <https://www.gov.uk/government/publications/renewal-form-for-directed-surveillance>
- Cancellation - <https://www.gov.uk/government/publications/cancellation-of-use-of-directed-surveillance-form>

45.3 For both CHIS authorisations there are 4 forms within the process. They are:

- Authorisation - <https://www.gov.uk/government/publications/application-for-the-use-of-covert-human-intelligence-sources-chis>
- Review - <https://www.gov.uk/government/publications/reviewing-the-use-of-covert-human-intelligence-sources-chis>
- Renewal - <https://www.gov.uk/government/publications/renewal-of-authorisation-to-use-covert-human-intelligence-sources>
- Cancellation - <https://www.gov.uk/government/publications/cancellation-of-covert-human-intelligence-sources-chis>

45.4 For Non-RIPA please obtain them from the RIPA Co-ordinator or the above same forms may be adapted and used with an addition in **BOLD** of the words “**NON-RIPA**” at the head of each page.

**NB NON-RIPA FORMS MUST BE ADAPTED AS FOLLOWS: ADD THE WORDS NON-RIPA IN BOLD AT THE TOP OF THE FORM – THESE HAVE BEEN ADAPTED BY THE RIPA CO-ORDINATOR AND WILL BE SUPPLIED ON REQUEST.**

## **46. Duration of Authorisations**

46.1 Authorisations must be given for the maximum duration from the date approved by the Justice of the Peace/magistrate (magistrate) but reviewed on a regular basis and formally cancelled when no longer needed. They do not expire, they must be cancelled when the surveillance is no longer proportionate or necessary. Therefore, a Directed

Surveillance authorisation will cease to have effect after three months from the date of approval by the magistrate unless renewed or cancelled. Durations detailed below:

<b>Directed Surveillance</b>	3 Months
<b>Renewal</b>	3 Months
<b>Covert Human Intelligence Source</b>	12 Months
<b>Renewal</b>	12 months
<b>Juvenile Sources</b>	4 Months
<b>Renewal</b>	4 Months

- 46.2 It is the responsibility of the Investigating Officer to make sure that the authorisation is still valid when they undertake surveillance. It is sometimes helpful to think of the authorisation as something like an insurance policy.

## **47. Applications/Authorisation**

- 47.1 The applicant/investigating officer should take into account the level of intrusion ie the chances of obtaining private information prior to making the application and should communicate with the authorising officer in advance with any concerns prior to applying. The person seeking the authorisation must then complete the application form having regard to, this Guidance and the statutory Codes of Practice. The form should then be submitted to the Authorising Officer for authorisation.
- 47.2 When completing an application for authorisation, the applicant must ensure that the case for the authorisation is presented in the application in a fair and balanced way. In particular, all reasonable efforts should be made to take into account information which weakens the case for the warrant or authorisation. This is a requirement of the Home Office Codes.
- 47.3 All the relevant sections must be completed with sufficient information to ensure that applications are sufficiently detailed for the Authorising Officer to consider Necessity, Proportionality having taken into account the Collateral Intrusion issues **Cutting and pasting or using template entries should not take place as this would leave the process open to challenge.**
- 47.4 If it is intended to undertake both Directed Surveillance and the use of a CHIS on the same surveillance subject, the respective authorisation should be completed and the respective procedures followed. Both activities should be considered separately on their own merits.
- 47.5 All application forms should be submitted to the Authorising Officer after any internal management requirements have been complied with such as a requirement for Line Manager approval.
- 47.6 Applications whether authorised or refused will be issued with a unique number (obtained from the RIPA Co-Ordinator) by the Authorising Officer. The number will be

taken from the next available number in the Central Record of authorisations which is held by the RIPA Coordinator.

- 47.7 If not authorised, feedback will be provided to the applicant and the application will be forwarded to the RIPA Co-Ordinator for recording and filing. If having received the feedback, the applicant feels it is appropriate to re submit the application, they can do so and it will then be considered again.
- 47.8 Following authorisation, the applicant will then complete the relevant section of the judicial application/order form available on line by accessing the link after the next paragraph. Although this form requires the applicant to provide a brief summary of the circumstances of the case, this is supplementary to and does not replace the need to supply a copy and the original RIPA authorisation as well.
- 47.9 Government guidance on how to obtain approval from the Justice of the Peace/magistrates – ie the ‘judicial approval’ is available on [www.gov.uk](http://www.gov.uk) and access to that guidance and the application form that should be used to submit to the magistrates court can be obtained via the link below. Advice on this can also be obtained from the RIPA Co-Ordinator.

<https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa>

## **48. Arranging the Court Hearing For Judicial Approval**

- 48.1 It will be necessary within office hours to contact the administration office at the nearest Magistrates’ Court to arrange a hearing. The hearing of the application will be in private and on oath before a single Justice of the Peace/magistrate (magistrate).
- 48.2 Officers who may present the application at these proceedings **must** ensure they have the requisite delegated powers given by the Council under section 223 of the Local Government Act 1972 to appear, be sworn in and present evidence or information as required by the magistrate. If in doubt as to whether you are able to present the application seek advice from the RIPA Co-Ordinator<sup>2</sup> who can make the application on your behalf under the Council Solicitor delegated power to institute proceedings if necessary.

## **49. Attending the Hearing**

- 49.1 The Government 2002 Judicial Approval Guidance (see link at 47.9 above) envisages that only the applicant/investigating officer will attend the hearing; however, the IPCO recommends, and it is much better practice for the Authorising Officer also to attend the hearing. This is because the applicant/investigating officer cannot answer

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<sup>2</sup> See Judicial Approval Guidance

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/118173/local-authority-england-wales.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/118173/local-authority-england-wales.pdf)

questions about the Authorising Officer's own assessment of necessity and proportionality which are key issues about which the court will ask questions. Upon attending the hearing, the officer must present to the court the partially completed judicial application/order form, the original and a copy of the RIPA application/authorisation form, together with any supporting documents setting out the case. The original RIPA authorisation should be shown to the court but will be retained by the Council so that it is available for inspection by IPCO, and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT).

- 49.2 The magistrate will read and consider the RIPA authorisation and the judicial application/order form – accessible via the link at paragraph 47.9 above. The magistrate may have questions to clarify points or require additional reassurance on particular matters. These questions are supplementary to the content of the application form. **However, the forms and supporting papers must by themselves make the case. It is not sufficient for the Council to provide oral evidence where this is not reflected or supported in the papers provided.**
- 49.3 The magistrate will consider whether they are satisfied that, at the time the authorisation was granted or renewed, there were reasonable grounds for believing that the authorisation was necessary and proportionate. In addition, they must be satisfied that the person who granted the authorisation was an appropriate Designated Person within the Council to authorise the activity and the authorisation was made in accordance with any applicable legal restrictions, for example, the crime threshold for Directed Surveillance. ( NB The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 prescribes that for Local Authorities the Authorising Officer shall be a Director, Head of Service, Service Manager or equivalent as distinct from the officer responsible for the conduct of an investigation. CF Para 41.1 above)

## **50. Decision of the Magistrate/Justice of the Peace (magistrate)**

- 50.1 The magistrate has a number of options which are:
- 50.2 **Approve or renew an authorisation.** If approved by the magistrate, the date of the approval becomes the commencement date for the duration of the three months and the officers are now allowed to undertake the activity for that duration.
- 50.3 **Refuse to approve or renew an authorisation.** The RIPA authorisation will not take effect and the Council may **not** use the technique in that case.
- 50.4 Where an application has been refused, the applicant may wish to consider the reasons for that refusal. If more information was required by the magistrate to determine whether the authorisation has met the tests, and this is the reason for refusal, the officer should consider whether they can reapply. For example, if there was information to support the application which was available to the Council, but not included in the papers provided at the hearing.
- 50.5 For, a technical error (which does not alter the substance of the matter or otherwise as may be defined by the magistrate), the form may be remedied without going through



the internal authorisation process again. The officer may then wish to reapply for judicial approval once those steps have been taken.

- 50.6 **Refuse to approve or renew and quash the authorisation.** This applies where the magistrate refuses to approve or renew the authorisation and decides to quash the original authorisation. However, the court must not exercise its power to quash the authorisation unless the applicant has had at least 2 business days from the date of the refusal in which to make representations. If this is the case, the officer may take advice from the Council Solicitor who will consider whether to make any representations.
- 50.7 The magistrate will record the decision on the order section of the judicial application/order form. The court administration will retain a copy of the Council's RIPA application and authorisation form and the judicial application/order form. The officer will retain the original authorisation and a copy of the judicial application/order form.
- 50.8 The Council may only appeal a magistrates' decision on a point of law by judicial review. If such a concern arises, Legal will decide what action if any should be taken.
- 50.9 There is a Home Office chart showing the above procedure attached to the Government Guidance referred to and accessible via the link at paragraph 47.9 above

## **51. Post Court Procedure**

- 51.1 It will be necessary to work out the cancellation date from the date of approval and ensure that the applicant and the Authorising Officer is aware. The original application and the copy of the judicial application/order form should be forwarded to the RIPA Co-Ordinator. A copy will be retained by the applicant and if necessary by the Authorising Officer. The Central Record will be updated with the relevant information to comply with the Codes of Practice and the original documents filed and stored securely.
- 51.2 Where dates are set within the process such as reviews, they must be adhered to. This will help with demonstrating that the process has been managed correctly in line with the Codes of Practice and reduce the risk of errors.

## **52. Reviews**

- 52.1 When an application has been authorised and approved by a magistrate, regular reviews must be undertaken by the Authorising Officer to assess the need for the surveillance to continue.
- 52.2 In each case the Authorising Officer should determine how often a review should take place at the outset. This should be as frequently as is considered necessary and

practicable. Particular attention is drawn to the need to review authorisations frequently where the surveillance provides a high level of intrusion into private life or significant collateral intrusion, or confidential information (as defined in para 13). They will record when they are to take place on the application form. This decision will be based on the circumstances of each application. However, reviews will be conducted on a monthly or less basis to ensure that the activity is managed. It will be important for the Authorising Officer to be aware of when reviews are required to ensure that the applicants submit the review form on time.

- 52.3 Applicants should submit a review form (to obtain an application form see paragraph 45) by the review date set by the Authorising Officer. They should also use a review form for changes in circumstances to the original application which would include a change to the level of intrusion so that the need to continue the activity can be re-assessed. However, if the circumstances or the objectives have changed considerably, or the techniques to be used are now different, a new application form should be submitted, and it will be necessary to follow the process again and be approved by a magistrate. The applicant does not have to wait until the review date if it is being submitted for a change in circumstances.
- 52.4 Line managers of applicants may need to make themselves aware of when the reviews are required in accordance with internal staff management arrangements to ensure that the relevant forms are completed on time.
- 52.5 The reviews are dealt with internally by submitting the review form to the Authorising Officer. There is no requirement for a review form to be submitted to a magistrate.
- 52.6 The results of a review should be recorded on the Central Record.
- 52.7 NB Reviews should also be undertaken in relation to NON-RIPA cases – all of the above applies also to them except for reference to magistrates' approval.

## **53. Renewals**

- 53.1 A renewal form is to be completed by the applicant when the original authorisation period is about to expire but Directed Surveillance or the use of a CHIS is still required. (to obtain an application form see paragraph 45)
- 53.2 Should it be necessary to renew an authorisation for Directed Surveillance or CHIS, this must be approved by a magistrate.
- 53.3 Applications for renewals should not be made until shortly before the original authorisation period is due to expire. However, they must take account of factors which may delay the renewal process (e.g. intervening weekends or the availability of the relevant Authorising Officer and a magistrate to consider the application).
- 53.4 The applicant should complete all the sections within the renewal form and submit the form to the Authorising Officer for consideration.

- 53.5 Authorising Officers should examine the circumstances with regard to Necessity, Proportionality and the Collateral Intrusions issues before making a decision to renew the activity. A CHIS application should not be renewed unless a thorough review has been carried out covering the use made of the source, the tasks given to them and information obtained. The Authorising Officer must consider the results of the review when deciding whether to renew or not. The review and the consideration must be documented.
- 53.6 If the Authorising Officer refuses to renew the application, the cancellation process should be completed. If the Authorising Officer authorises the renewal of the activity, the same process is to be followed as for the initial application and approval must be sought from a magistrate.
- 53.7 A renewal takes effect on the day on which the authorisation would have ceased and lasts for a further period of three months.
- 53.8 Renewal forms should also be used as above in relation to Non-RIPA cases.

## **54. Cancellation**

- 54.1 The cancellation form must be submitted to the authorising officer by the applicant or another investigator in their absence. (to obtain the forms see paragraph 45) The Authorising Officer who granted or last renewed the authorisation must authorise the cancellation if they are satisfied that the Directed Surveillance no longer meets the criteria upon which it was authorised. Where the Authorising Officer is no longer available, this duty will fall on the person who has taken over the role of Authorising Officer or the person who is acting as Authorising Officer. NB If the directed surveillance of CHIS runs its course to the end of the three months or 12 months – it must not be allowed to simply expire – the completion of a cancellation form is still required.
- 54.2 As soon as the decision is taken that Directed Surveillance should be discontinued, the applicant or other investigating officer involved in the investigation should inform the Authorising Officer. The Authorising Officer will formally instruct the investigating officer to cease the surveillance, noting the time and date of their decision. This will be required for the cancellation form. The date and time when such an instruction was given should also be recorded in the Central Record of authorisations.
- 54.3 The Investigating Officer submitting the cancellation should complete in detail the relevant sections of the form and include the period of surveillance and detail if any images were obtained, particularly any images containing innocent third parties. The Authorising Officer should then take this into account and issues instructions regarding the management and disposal of the images etc. See sections 58 to 65 Safeguarding and the Use of Surveillance Material below.
- 54.4 The cancellation process should also be used to evaluate whether the objectives have been achieved and whether the applicant carried out what was authorised. This check will form part of the oversight function. Where issues are identified including errors (see section 65), they will be brought to the attention of the RIPA Co-Ordinator and the

Senior Responsible Officer (SRO) (and also the line manager for internal management purposes). This will assist with future audits and oversight and comply with the Codes of Practice.

- 54.5 When cancelling a CHIS authorisation, an assessment of the welfare and safety of the source should also be assessed, and any issues identified.
- 54.6 All cancellations must be submitted to the RIPA Co-Ordinator for inclusion in the Central Record and storing securely with the other associated forms.
- 54.7 Do not wait until the 3 month period is up to cancel. Cancel it at the earliest opportunity when no longer necessary and proportionate. Line Managers should be aware of when the activity needs cancelling and ensure that staff comply with the procedure.**

## **Part F Central Record and Safe-keeping of the Material**

### **55. Introduction**

- 55.1 Authorising Officers, applicants and line managers of relevant enforcement departments may keep whatever records they see fit to administer and manage the RIPA application process. This includes the legal obligations under the Criminal Procedures and Investigations Act 1996. However, this will not replace the requirements under the RIPA Codes of Practice, which includes the fact that the Council must hold a centrally held and retrievable record.

### **56. Central Record**

- 56.1 The centrally retrievable record of all authorisations will be held and maintained by the RIPA Co-Ordinator. It will be regularly updated whenever an authorisation is applied for, refused, granted, renewed or cancelled. The record will be made available to the relevant Commissioner or an Inspector from IPCO, upon request.
- 56.2 All original authorisations and copies of Judicial applications/order forms whether authorised or refused, together with review, renewal and cancellation documents, must be sent within 48 hrs to the RIPA Co-Ordinator who will be responsible for maintaining the Central Record of authorisations. They will ensure that all records are held securely with no unauthorised access. If in paper format, they must be forwarded in a sealed envelope marked confidential.
- 56.3 The documents contained in the Central Record should be retained for at least 5 years from the ending of the authorisation subject to any reasonable increase of this time period in relation to particular cases by the Authorising Officer. (see paragraph 59.6 relating to data protection) The Central Record contains the following information:

- If refused, (the application was not authorised by the AO) a brief explanation of the reason why. The refused application should be retained as part of the Central Record of authorisation;
- If granted, the type of authorisation and the date the authorisation was given;
- Details of attendances at the magistrates' court to include the date of attendances at court, the determining magistrate, the decision of the court and the time and date of that decision;
- Name and rank/grade of the authorising officer;
- The unique reference number (URN) of the investigation or operation;
- The title of the investigation or operation, including a brief description and names of subjects, if known;
- Frequency and the result of each review of the authorisation;
- If the authorisation is renewed, when it was renewed and who authorised the renewal, including the name and rank/grade of the authorising officer and the date renewed by the JP;
- Whether the investigation or operation is likely to result in obtaining confidential information (as defined in para 13);
- The date the authorisation was cancelled;
- Authorisations by an Authorising Officer where they are directly involved in the investigation or operation. If this has taken place it must be brought to the attention of a Commissioner or Inspector during their next RIPA inspection.

56.4 As well as the Central Record the the RIPA Co-ordinator will also retain:

- The original of each application, review, renewal and cancellation, copy of the judicial application/order form, together with any supplementary documentation of the approval given by the Authorising Officer;
- The frequency and result of reviews prescribed by the Authorising Officer;
- The date and time when any instruction to cease surveillance was given;
- The date and time when any other instruction was given by the Authorising Officer;
- A record of the period over which the surveillance has taken place. This should have been included within the cancellation form.

- 56.5 These documents will also be retained for 5 years from the ending of the authorisation subject to any justifiable increase of this time period in relation to particular cases by the Authorising Officer. (see paragraph 59.6 relating to data protection)

## **57. Safe-keeping and the Use of Surveillance Material**

- 57.1 This part of the Guidance (part F) provides guidance on the procedures to be applied in relation to the handling of any material obtained through Directed Surveillance or CHIS activity. This material may include private, confidential or legally privileged information. It will also show the link to other relevant legislation.
- 57.2 The Council should ensure that their actions when handling information obtained by means of covert surveillance or CHIS activity comply with relevant legal frameworks and the Codes of Practice, so that any interference with privacy is justified in accordance with Article 8(2) of the European Convention on Human Rights. Compliance with these legal frameworks, including Data Protection requirements, will ensure that the handling of private information obtained continues to be lawful, justified and strictly controlled, and is subject to robust and effective safeguards. The material will also be subject to the Criminal Procedure and Investigations Act (CPIA) 1996.

## **58. Authorised Purpose**

- 58.1 Dissemination, copying and retention of material must be limited to the minimum necessary for authorised purposes. For the purposes of the RIPA codes, something is necessary for the authorised purposes if the material:
- Is, or is likely to become, necessary for any of the statutory purposes set out in RIPA in relation to covert surveillance or CHIS activity;
  - Is necessary for facilitating the carrying out of the functions of public authorities under RIPA;
  - Is necessary for facilitating the carrying out of any functions of the Commissioner or the Investigatory Powers Tribunal;
  - Is necessary for the purposes of legal proceedings; or
  - Is necessary for the performance of the functions of any person by or under any enactment.

## **59. Handling and Retention of Material**

- 59.1 As mentioned above, all material associated and obtained with an application will be subject of the provisions of the Data Protection Act (DPA) 2018, GDPR and CPIA

Codes of Practice. All officers involved within this process should make themselves aware of the provisions within this legislation and how it impacts on the whole RIPA process. Material obtained, together with relevant associated paperwork should be held securely. Extra care needs to be taken if the application and material relates to a CHIS.

- 59.2 Material required to be retained under CPIA should be retained until a decision is taken whether to institute proceedings against a person for an offence or if proceedings have been instituted, at least until the accused is acquitted or convicted or the prosecutor decides not to proceed with the case.
- 59.3 Where the accused is convicted, all material which may be relevant must be retained at least until the convicted person is released from custody, or six months from the date of conviction, in all other cases.
- 59.4 If the court imposes a custodial sentence and the convicted person is released from custody earlier than six months from the date of conviction, all material which may be relevant must be retained at least until six months from the date of conviction.
- 59.5 If an appeal against conviction is in progress when released, or at the end of the period of six months, all material which may be relevant must be retained until the appeal is determined.
- 59.6 If retention is beyond these periods it must be justified for data protection purposes under the GDPR and or Data Protection Act 2018 (DPA). Each relevant service within the Council may have its own provisions under their Data Retention Guidance which will also need to be consulted to ensure that the data is retained lawfully and for as long as is necessary.

## **60. Use of Material as Evidence**

- 60.1 Material obtained through Directed Surveillance, may be used as evidence in criminal proceedings. The admissibility of evidence in criminal proceedings or civil proceedings is governed by common law and many pieces of legislation notably including the Police and Criminal Evidence Act 1984, Criminal Procedure and Investigations Act 1996 (CPIA), Criminal Justice Act 2003, Civil Evidence Act 1995 and subordinate legislation such as both the Civil and Criminal Procedure Rules. Also challenges to the way evidence is gathered can be made if it can be shown that there has been a breach of Articles 8 (privacy) and/or 6 (fair trial) of the European Convention as adopted in the Schedule to the Human Rights Act 1998.
- 60.2 Ensuring the continuity and integrity of evidence is critical to every prosecution. Accordingly, considerations as to evidential integrity are an important part of the disclosure regime under the CPIA and these considerations will apply to any material acquired through covert surveillance that is used in evidence. When information obtained under a covert surveillance authorisation is used evidentially, the Council will be able to demonstrate how the evidence has been obtained, to the extent required by the relevant rules of evidence and disclosure.

- 60.3 Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements. In a criminal case the codes issued under CPIA will apply. They require that the investigator record and retain all relevant material obtained in an investigation and later disclose relevant material to the Prosecuting Solicitor. They in turn will decide what is disclosed to the Defence Solicitors.
- 60.4 There is nothing in RIPA which prevents material obtained under Directed Surveillance authorisations from being used to further other investigations

## **61. Dissemination of Information**

- 61.1 It may be necessary to disseminate material acquired through the RIPA covert activity within the Council or shared outside with other Councils or agencies, including the Police. The number of persons to whom any of the information is disclosed, and the extent of disclosure, should be limited to the minimum necessary. It must also be in connection with an authorised purpose as set out in sec 58 above. It will be necessary to consider exactly what and how much information should be disclosed. Only so much of the material may be disclosed as the recipient needs; for example, if a summary of the material will suffice, no more than that should be disclosed.
- 61.2 The obligations apply not just to the Council as the original authority acquiring the information, but also to anyone to whom the material is subsequently disclosed. In some cases, this will be achieved by requiring the latter to obtain permission from the Council before disclosing the material further. It is important that the Authorising Officer and line manager in charge of the enquiry considers these implications at the point of dissemination to ensure that safeguards are applied to the data.
- 61.3 A record will be maintained justifying any dissemination of material. If in doubt, seek advice.

## **62. Storage**

- 62.1 Material obtained through covert surveillance and CHIS authorisations, and all copies, extracts and summaries of it, must be handled and stored securely, so as to minimise the risk of loss. It must be held so as to be inaccessible to persons who are not required to see the material (where applicable). This requirement to store such material securely applies to all those who are responsible for the handling of the material. It will be necessary to ensure that both physical and IT security and an appropriate security clearance regime is in place to safeguard the material.

## **63. Copying**



- 63.1 Material obtained through covert surveillance may only be copied to the extent necessary for the authorised purposes set out above. Copies include not only direct copies of the whole of the material, but also extracts and summaries which identify themselves as the product of covert surveillance, and any record which refers to the covert surveillance and the identities of the persons to whom the material relates.
- 63.2 In the course of an investigation, the Council must not act on or further disseminate legally privileged items unless it has first informed the Investigatory Powers Commissioner that the items have been obtained.

## **64. Destruction**

- 64.1 Information obtained through covert surveillance, and all copies, extracts and summaries which contain such material, should be scheduled for deletion or destruction and securely destroyed as soon as they are no longer needed for the authorised purpose(s) set out above. If such information is retained, it should be reviewed at appropriate intervals to confirm that the justification for its retention is still valid. In this context, destroying material means taking such steps as might be necessary to make access to the data impossible.

## **Part G. Errors and Complaints**

### **65. Errors**

- 65.1 Errors can have very significant consequences on an affected individual's rights. Proper application of the surveillance and CHIS provisions in the RIPA codes and this Guidance should reduce the scope for making errors.
- 65.2. There are two types of errors within the codes of practice which are:
- Relevant error and
  - Serious error.

#### **65.3 Relevant Error**

- 65.4 An error must be reported if it is a “**relevant error**”. A relevant error is any error in complying with any requirements that are imposed on a public authority by any enactment which are subject to review by a Judicial Commissioner. This would include compliance by public authorities with Part II of the RIPA.

65.5 Examples of relevant errors occurring would include circumstances where:

- Surveillance activity has taken place without lawful authorisation.
- There has been a failure to adhere to the safeguards set out in the relevant statutory provisions and Chapter 9 of the Surveillance Codes of Practice relating to the safeguards of the material.

65.6 All relevant errors made by the Council (and its employees) must be reported to the Investigatory Powers Commissioner by the Council as soon as reasonably practicable and a full report no later than ten working days. The report should include information on the cause of the error; the amount of surveillance conducted, and material obtained or disclosed; any unintended collateral intrusion; any analysis or action taken; whether any material has been retained or destroyed; and a summary of the steps taken to prevent recurrence.

## **65.7 Serious Errors**

65.8 The Investigatory Powers Commissioner must inform a person of any relevant error relating to that person if the Commissioner considers that the error is a serious error and that it is in the public interest for the person concerned to be informed of the error. The Commissioner may not decide that an error is a serious error unless they consider that the error has caused significant prejudice or harm to the person concerned. The fact that there has been a breach of a person's Convention rights (within the meaning of the Human Rights Act 1998) is not sufficient by itself for an error to be a serious error.

65.9 It is important that all staff involved in the RIPA process report any issues, so they can be assessed as to whether it constitutes an error which requires reporting.

## **66. Complaints**

66.1 Any person who reasonably believes they have been adversely affected by surveillance activity by or on behalf of the Council may complain to the RIPA Co-Ordinator who will investigate the complaint and report the findings to the Senior Responsible Officer. A complaint can also be made to the official body which is the Investigatory Powers Tribunal (IPT). They have jurisdiction to investigate and determine complaints against any public authority's use of RIPA powers, including those covered by this Guidance.

66.2 Complaints should be addressed to:

The Investigatory Powers Tribunal

PO Box 33220

London

SWIH 9ZQ

### Change Control

Item	Reason for Change	Version	Author	Date	Reviewed by Overview and Scrutiny Committee on –date
Regulation of Investigatory Powers Act 2000 (RIPA) Procedure and Guidance	Completely new version to replace the previous one in line with and referring to the updated Government Codes of Practice	Version 1	Shelagh Lyth  Principal Solicitor (Litigation) based on a template provided by specialist and trainer P Fowler and adapted to BwD processes	2021	

## **APPENDIX A**

### **INTERNET & SOCIAL MEDIA RESEARCH & INVESTIGATIONS GUIDANCE**

#### **1. Introduction**

- 1.1 Online open source research is widely regarded as the collection, evaluation and analysis of material from online sources available to the public, whether by payment or otherwise to use as intelligence and evidence.
- 1.2 The use of online open source internet and social media research is a method of obtaining information to assist the Council with its regulatory and enforcement functions. It can also assist with service delivery issues. However, the use of the internet and social media is constantly evolving and with it the risks, particularly regarding breaches of privacy under Article 8 Human Rights Act (HRA) and other operational risks.
- 1.3 Blackburn with Darwen Council (the Council), as a public authority, is, in law, subject to the Human Rights Act 1998, and as such, the staff of the authority must always work within this legislation. This applies to research on the internet.
- 1.4 Researching, recording, storing, and using open source information regarding a person or group of people must be both necessary and proportionate and take account of the level of intrusion against any person. The activity may also require authorisation and approval by a magistrate under the Regulation of Investigatory Powers Act (RIPA) 2000 if it involves Directed Surveillance or acting as a CHIS. To ensure that any resultant interference with a person's Article 8 right to respect for their private and family life is lawful, the material must also be retained and processed in accordance with the principles of the General Data Protection Regulations (GDPR).

#### **2. Scope of this Social Media Research Guidance (Appendix A Guidance)**

- 2.1 This Social Media Research Guidance is Appendix A of the Council's RIPA Procedural Guidance and this and any associated internal operational guidance adopted by managers of officers undertaking investigations establish the Council's approach to ensure that all the online research and investigations are conducted by its officers in such a way that it is lawful and ethical to reduce risk. It provides guidance to all officers employed by the Council of the implications and legislative framework associated with online internet and social media research. It will also ensure that the activity undertaken, and any evidence obtained will stand up to scrutiny.
- 2.2 This Appendix A Guidance takes account of the Human Rights Act 1998, Regulation of Investigatory Powers Act (RIPA) 2000, Criminal Procedures Investigations Act (CPIA) 1996, General Data Protection Regulations (GDPR), NPCC Guidance on Open Source Investigation/Research.
- 2.3 This Appendix A Guidance and any associated operational guidance will be followed at all times and should be read where required with the Council's RIPA Procedural Guidance to which it is appended and with the Home Office RIPA Codes of Practice. Should there be any queries, advice can be sought from the RIPA Co-ordinator and/or the Social Media Officer – See Appendix B list of relevant officers.

- 2.4 As with the RIPA Procedural Guide, members of staff who knowingly fail to adhere to this Appendix A Guidance and associated operational procedures could result in members of staff being dealt with through the Council's disciplinary procedure.
- 2.5 This Appendix A Guidance should not be exempt from disclosure under the Freedom of Information Act 2000

### **3. Risk**

- 3.1 Staff must be aware that any activity carried out over the internet leaves a trace or footprint which can identify the device used, and, in some circumstances, the individual carrying out the activity and that there is a risk of a breach of Article 8.
- 3.2 Article 8 is a European Convention right enshrined in the Human Rights Act 1998 which states "Everyone has the right to respect for his private and family life, his home and his correspondence". 8.2 states "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". The Council must act in a way that is compatible with that Convention right.
- 3.3 With any breach of this Article 8 Convention right there is also a risk of compromise to an ongoing investigation, therefore, the activity should be conducted in a manner that does not compromise any current or future investigation or tactics.
- 3.4 It should be standard practice for the staff member to complete a risk assessment prior to and during open source internet and social media research.

### **4. Necessity / Justification**

- 4.1 To justify the research, there must be a clear lawful reason, and it must be necessary for any of the purposes set out in Article 8 eg prevention of crime or disorder. Therefore, the reason for the research must be identified and clearly described. This should be documented with clear objectives. Should the research be aimed at serious criminal conduct and fall within RIPA activity, a properly constituted RIPA authorisation can render the research 'lawful for all purposes'.

### **5. Proportionality**

- 5.1 Proportionality involves balancing the intrusiveness of the research on the subject and other innocent third parties who might be affected by it (collateral intrusion) against the need for the activity in operational terms. The Council should question what the benefit of carrying out the activity is and how that benefit will outweigh the intrusion and set out the answers to those questions clearly.
- 5.2 The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

### **6 Private information**

- 6.1 Private information is defined in the RIPA Codes of Practice and states it "includes any information relating to a person's private or family life". Private information should be

taken generally to include any aspect of a person's private or personal relationship with others, including family and professional or business relationships. From a data protection perspective, personal data (information as defined by the UK GDPR as 'any information relating to an identified or identifiable natural person') also falls within this definition<sup>3</sup>.

- 6.2 Prior to, and during any research, staff must take into account the privacy issues regarding any person associated with the research.
- 6.3 Where it is deemed necessary to undertake an investigation to which RIPA is not applicable because it does not meet the serious criminal offence threshold test or where it is not a criminal investigation per se, then, if the officer is concerned that a private information (which amounts to personal data) a risk assessment should be completed and this should reveal the level of risk and how to mitigate it.

## **7. Reviewing the Activity**

- 7.1 During the course of conducting the internet open source research, the nature of the online activity may evolve. It is important staff continually assess and review their activity to ensure it remains lawful and compliant. Where it evolves into RIPA activity, the RIPA procedure should be followed. If in doubt, seek advice from the RIPA Co-ordinator or the Social Media Lead Officer.

## **8. Use of Material**

- 8.1 The material obtained from conducting open source internet and social media research may be used as intelligence or evidence.
- 8.2 Any material gathered from the internet during the course of a criminal investigation must be retained in compliance with the Criminal Procedure and Investigations Act (CPIA) Codes of Practice and all material stored in line with the General Data Protection Regulations (GDPR) data retention policy

## **9. Monitoring and Review of Social Media Policy**

- 9.1 This Appendix A Guidance will be monitored and reviewed where necessary by the RIPA Co-ordinator at the same time as the RIPA Procedure and Guidance to which this is an Appendix.

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<sup>1</sup> “‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”.

## **APPENDIX B**

### **Regulation of Investigatory Powers Act 2000 (RIPA)**

### **Procedure and Guidance**

#### **Appendix B List Relevant Officers names and titles**

##### **Authorising Officers**

The Chief Executive – Denise Park (Only where the Directed surveillance or use of Chis may result in the obtaining of ‘confidential information’)

The Head of Public Protection – Gary Johnston

The Head of Audit and Assurance – Colin Ferguson

##### **Other Responsible Officers**

RIPA Co-Ordinator – Council Solicitor– Asad Laher

The Senior Responsible Officer (SRO) – Director of Digital and Resources - Paul Fleming

The Social Media Lead Officer – Ben Greenwood.

## The Executive: Summary of Portfolio Responsibilities – PROPOSAL FOR 2022

LEADER	ADULTS SOCIAL CARE & HEALTH	CHILDREN, YOUNG PEOPLE & EDUCATION	PUBLIC HEALTH, PREVENTION & WELLBEING	ENVIRONMENT & OPERATIONS	GROWTH & DEVELOPMENT	FINANCE & GOVERNANCE	DIGITAL & CUSTOMER SERVICES
Corporate plan	Adult social care assessment & provision	Every Child Matters	Public Health	Waste management, collection, disposal	Growth programme – employment, housing including working with registered social landlords or other providers	Budget & Medium Term Financial Plan	Digital services & transformation
Overall policy, research, strategy & performance	Strategic commissioning	Children's Social Care	Prevention	Recycling & HWRC's	Empty Housing	Capital strategy	Digital inclusion strategy
Corporate communication & place promotion	Care quality assurance & performance management	Safeguarding Children	Health promotion & positive lifestyles	Street Cleansing	Economic strategy, development & external investment	Budget monitoring & financial management	Website & intranet
Democratic Services	Care market sustainability	Health relationships - children & families	Vaccination & Immunisation	Enviro-crime	Inward investment & assistance to business	Statutory final accounts	Information & communications technology
Member support & development	Safeguarding Adults & LSAB	Inter-agency co-operation	Health inequalities	Parks & grounds maintenance	Employment & skills	Capital receipts strategy and delivery programme	Information governance & data protection
The Mayoralty, Civic & ceremonial	Carers services	Advice and guidance -vulnerable young people	Joint Strategic Needs Analysis (JSNA), joint planning with health & other agencies	Your Call	Local Plan	Financial services to schools	Data strategy & business intelligence
National and regional relationships	Sensory impairment	CAMHS	HealthWatch	Cemeteries & crematorium	Planning & development management	Corporate governance	Customer Services & standards
Lancashire Leaders	Independent living and supported housing	Youth offending & exploitation	Health & Wellbeing Board	Licensing	Building Control	Audit, internal & external	Registration Services
Pennine Lancashire Leaders	Disabled facilities grants for Adults	Children in our care & care leavers	Health & Wellbeing Strategy	Trading standards	Land Charges	Insurance	Coroner
LEP (Lancashire Enterprise Partnership)	Integrated health & care services, Lancashire & South Cumbria	Children with complex needs	Sports & Leisure centres	Environmental health, animal welfare & food safety	Local Transport Plan	Risk management	Corporate Complaints / Ombudsman
Marketing Lancashire Festivals & Events	Place based Health & Care Partnership & integration	Fostering & Adoption	Together an Active Future programme	Housing Standards	Highways, transport & drainage	VAT & Treasury management	School Admission Appeals
		Early Years & Children's Centres	Wellbeing services	Private sector landlord licensing	Public passenger transport Growth Lancashire	Procurement	Health & safety
		Services to schools & pupil place planning	Drugs & Alcohol	Caravan dwellers & transient communities		Revenues & Benefits	
		School improvement	Healthy child programme & school nursing				



LEADER	ADULTS SOCIAL CARE & HEALTH	CHILDREN, YOUNG PEOPLE & EDUCATION	PUBLIC HEALTH, PREVENTION & WELLBEING	ENVIRONMENT & OPERATIONS	GROWTH & DEVELOPMENT	FINANCE & GOVERNANCE	DIGITAL & CUSTOMER SERVICES
<p>Strategic Growth Programmes &amp; Investment</p> <p>Strategic place-making and levelling up priorities</p> <p>Business &amp; Investor Engagement</p> <p>Strategic transport, including Transport for the North &amp; Lancashire</p> <p>Strategic housing initiatives</p> <p>Zero Carbon Strategy</p> <p>Joint arrangements, e.g. Fire, Police</p> <p>Police &amp; Crime Commissioner relationship</p>	<p>Relationships with health providers, primary and community care</p> <p>Demand management strategies</p> <p>Integrated neighbourhood teams</p> <p>Lifelong learning &amp; adult workforce development</p>	<p>Relationships with nurseries, schools &amp; academies</p> <p>Special educational needs, education psychology</p> <p>Education welfare</p> <p>School Admissions &amp; Exclusions</p> <p>Governor support</p> <p>Extended schools curriculum</p> <p>Post-16 service</p> <p>Young People's Services</p> <p>Relationship with Youth Zone &amp; organisations for young people</p>	<p>Sexual Health</p> <p>Volunteering, community engagement &amp; capacity building</p> <p>Community &amp; voluntary groups &amp; organisations</p> <p>Cohesion &amp; Equality</p> <p>Covid response &amp; preparedness</p> <p>Community safety and Prevent</p> <p>Crime &amp; disorder, CCTV</p> <p>Housing needs &amp; homelessness</p> <p>Asylum seekers &amp; refugees</p>	<p>Corporate buildings &amp; maintenance</p> <p>Commercial services, including markets, business centres &amp; parking services</p>	<p>Town centres, visitors &amp; marketing strategy</p> <p>King George's Hall &amp; Darwen Library Theatre</p> <p>Libraries, Arts, Museums &amp; Cultural Services</p> <p>Carbon management &amp; sustainability programme</p> <p>Asset management &amp; valuations</p> <p>Commercial investment estate, tenanted property, including the Mall</p> <p>Strategic investment joint ventures</p>	<p>Council Tax &amp; Business Rates policy and collection</p> <p>Local Council Tax Support policy</p> <p>Advice services</p> <p>Legal services</p> <p>HR, Payroll and pensions</p> <p>HR services to schools</p> <p>Organisational &amp; workforce development</p> <p>Trade Union relations</p>	<p>Civil contingencies</p> <p>Emergency planning</p> <p>Business continuity</p>
Lead Officer:							
Chief Executive	Strategic Director, Adults & Health	Strategic Director, Children & Education	Director of Public Health	Strategic Director, Environment & Operations	Strategic Director, Growth & Development	Director of Finance	Strategic Director, Resources

## EXECUTIVE BOARD DECISION



**REPORT OF:** Leader

**LEAD OFFICERS:** Chief Executive

**DATE:** 9th June 2022

**PORTFOLIO/S AFFECTED:** All

**WARD/S AFFECTED:** All

**KEY DECISION:** YES ☐ NO ☒

### SUBJECT:

Report on the progress against the Corporate Plan 2021/2022 for six months to Year-end (October 2021 to March 2022).

### 1. EXECUTIVE SUMMARY

To provide Executive Board the opportunity to review progress against the Council's strategic priorities documented within the Corporate Plan (2019-23) and to provide assurance that appropriate actions are being taken to address key areas of concern.

### 2. RECOMMENDATIONS

That the Executive Board:

1. Note the overall performance against the delivery of the Council's strategic objectives as illustrated in Appendix One Performance
2. Note the remedial action to improve delivery against the 2019-2023 Corporate priorities which are giving cause for concern, as outlined in Appendix Two Exception Reports

### 3. BACKGROUND

In March 2019, the Council endorsed the Corporate Plan 2019-2023, which outlines eight corporate priorities and ambitions providing a focus for our activity over the coming years.

To help us measure our performance against our corporate priorities and ambitions a performance framework is in place. The Council currently measures performance based on 70 Key Performance Indicators (KPIs).

### 4. KEY ISSUES & RISKS

#### 4.1 Performance summary

The attachments to this report provide an overview of the Council's performance up to 31<sup>st</sup> March 2022. Elected members will be aware that the Council has been responding to the emergencies of the Coronavirus pandemic since early March 2020. Covid rules in England ended at the end of February 2022 as part of Government's "Living With Covid" strategy. This now gives an opportunity to learn from both pre-Covid and during Covid service delivery, and to focus on the recovery from the pandemic.

In some instances, we have not been able to report data for all of the 70 KPIs.

Each portfolio has been asked to allocate a red, amber or green forecast to the measures that they own.

The 70 measures within the Corporate Plan are linked to the Council's priority objectives and information for the period is as follows:

- 9% (6 actual) have been forecast as "red" where performance is, or is likely to be off track
- 26% (18 actual) have been forecast "amber" where delivery is on track and currently being managed
- 54% (38 actual) have been forecast "green" or on track
- 11% (8 actual) of the measures data and or a RAG rating is currently unavailable

The table below shows a breakdown of the measures across priorities:

Priority		Total	Red	Amber	Green	Awaiting Data
<b>People (29)</b> A good quality of life for all of our residents	P1 – Supporting young people and raising aspirations	4	0	1	3	0
	P2 – Safeguarding and supporting the most vulnerable people	9	0	5	4	0
	P3 – Reducing health inequalities and improving health outcomes	16	0	4	9	3
<b>Place (13)</b> Community pride in a vibrant place to live and visit	P4 – Connected communities	8	3	0	5	0
	P5 – Safe and clean environment	5	0	1	4	0
<b>Economy (13)</b> A strong and inclusive economy with continued growth	P6 – Strong, growing economy to enable social mobility	9	1	1	6	1
	P7 – Supporting our town centres and businesses	4	0	1	3	0
<b>Council (15)</b> Delivered by a strong and resilient Council	P8 – Transparent and effective organisation	15	2	5	4	4
<b>Total</b>		70	6	18	38	8
<b>Overall percentage</b>		100%	9%	26%	54%	11%

The following guidelines have been provided to ensure a standardised approach to allocating these forecasts:

#### Red

- The measure is likely to fail or perform poorly in the future
- The measure falls below a set national target / statutory required performance.
- The measure may also be below a minimum requirement for the particular service as agreed by the department
- The lead department perceives there could be a potential serious risk to the Council

#### Amber

- The measure is at risk of failure, but the lead department feels this is currently being managed
- Actions are or need to be in place to ensure that the end of year position is achieved

#### Green

- The measure is on target/ over performing / over achieving (if departmental target has been set)
- The lead department perceives there is currently no risk to the council in relation to this measure.

### 5. POLICY IMPLICATIONS

There are no additional policy implications. The proposed activity over the next 12 months will strengthen existing policies.

### 6. FINANCIAL IMPLICATIONS

There are no additional financial implications. Activity will be managed within department existing budgets.

### 7. LEGAL IMPLICATIONS

There are no legal implications as a result of this report.

### 8. RESOURCE IMPLICATIONS

There are no resource implications as a result of this report. Resource implications of any actions referred to in the report will be included in an appropriate briefing paper.

### 9. EQUALITY AND HEALTH IMPLICATIONS

**Please select one of the options below. Where appropriate please include the hyperlink to the EIA.**

Option 1 ☐ Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 ☒ In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. [Corporate Plan 2019/2023 EIA](#)

Option 3 ☐ In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision.

### 10. CONSULTATIONS

The report has been developed in consultation with the relevant Council officers and Executive

**11. STATEMENT OF COMPLIANCE**

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

**12. DECLARATION OF INTEREST**

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

<b>VERSION:</b>	<b>1</b>
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<b>CONTACT OFFICER:</b>	<b>Denise Park</b>
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<b>DATE:</b>	17/05/2022
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<b>BACKGROUND PAPER:</b>	Corporate Plan 2019-2023
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**Appendix One: Corporate Plan 2021/2022:  
Performance Report for year-end (1<sup>st</sup> October 2021 to 31<sup>st</sup> March 2022)**

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
<b>P E O P L E</b>	1 – Supporting young people and raising aspirations	1. % increase in uptake of the two years old offer by eligible children	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Higher	58% (2018/19)	3% increase on previous year (60% or higher)	60%  (GREEN)	69% (Local Authority tracking)  (GREEN)
		2. Personal Education Plans for cared for children  a) % of children & young people with plans in place	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Higher	84% (2018/19)	95%	93% for academic year 2020/21  (GREEN)	96% for Autumn Term 2020/21  (GREEN)
		3. Personal Education Plans (PEP) for cared for children  b) % of audited plans rated as Good or Outstanding	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Higher	46% (2018/19)	55%	70% good or outstanding for academic year 2020/21  (GREEN)	81% Good or Outstanding for Autumn Term 2020/21  (AMBER)
		4. Council Apprenticeship start-ups	Finance & Governance Cllr Vicky McGurk	HR, Governance & Engagement	Higher	20 apprentices	20 apprentices	22 apprentices recruited 2021/22  (GREEN)	22 apprentices recruited 2021/22  (GREEN)
	P2 – Safeguarding and supporting the most vulnerable people	5. % of Transforming Lives Cases closed with outcomes achieved	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	50%	56%	Q1 – 56% Q2 – 50%   (GREEN)	Q1 61%* Q2 57%* Q3 61% Q4 60%  *New data for Q1 & Q2 made available since last reporting period.  2021/22 Annual outturn 60%  (GREEN)
		6. % of looked after children with 3 placements or more in year	Children's, Young People &	Children's Services & Education	Lower	13.1% (2019/20)	Achieve at or below national	9.6% (October 2020 to September 2021)	11.1% (April 2021 to March 2022)



	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
			Education Cllr Julie Gunn				average for 2021/22	(GREEN)	(National figures to be confirmed in December 2022 – for context, 2020/21 national average was 9%) (AMBER)
		7. % of children in care for 2 ½ years who have remained in the same placement for at least 2 years	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Higher	65% (2020/2021)	Achieve at or above national average for 2021/22	60% (National average 68%) (AMBER)	67% As at 31st March 2022 (National figures to be confirmed in December 2022. For context, 2020/21 national average was 70%) (AMBER)
		8. % of children leaving care where a Special Guardianship Order (SGO) placement is granted.	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Higher	23% (2018/19)	Higher than 2020/21 (25%)	26% April to September 2021 (GREEN)	19% April 2021 to March 2022 (AMBER)
		9. Number of children open to children's social care including; those who are Child in Need, looked after or open to child protection.	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Lower	1,852 (open referrals as at end March 2019)	Benchmarked at comparator average	1,338 open referrals as at end September 2021 Awaiting comparator	1,388 open referrals as at end March 2022 (GREEN)
		10. Rate of cared for children per 10,000 compared with the regional average.	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Lower	105* per 10k as at 31 <sup>st</sup> March 2019	At or below the regional average for 2021/22	100.67 per 10k as at end September 2021 Awaiting comparator	100.12 per 10k as at end March 2022 (For context, regional average is 98 per 10k – December 2021) (AMBER)
		11. Rate of re-referrals into Children's Social Care	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Lower	17.9% (BWD 2018/19)	At or below national average for 2021/22	16.1% as at end September 2021	17.9% as at end March 2022

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
								Awaiting comparator	(For context, national average for 2020/21 was 22.7%)  (GREEN)
		12. Increase in the number of Young Carers identified	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Higher	183 young people (2019/20)	200 Young People	203  (GREEN)	245 Young Carers identified  (GREEN)
		13. Percentage of commissioned residential placements for Looked After Children as a total of all Looked After Children placements.	Children's, Young People & Education Cllr Julie Gunn	Children's Services & Education	Lower	7.1% (2018/19)	Maintain (5.96% or lower)	4.95%  (GREEN)	6.4%  (AMBER)
	P3 – Reducing health inequalities and improving health outcomes	14. Continue to achieve over 85% of Learning Disability service users living in settled accommodation	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	92.3% (2019/20)	85%	93% of Service Users were in settled accommodation April to September 2021  (GREEN)	DATA UNAVAILABLE  This information is an outcome of the SALT return for which the deadline is 25/05/2022.
		15. Number of those in residential care aged 65 and above to be within 5% of the 2018-19 figure.	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Lower	157 (2019/20)	150	59 admissions into Long Term Residential /Nursing care for people aged 65+ April to September 2021  (GREEN)	Admissions per quarter: Q1 – 40 Q2 – 31 Q3 – 47 Q4 – 37  Annual total = 155  (AMBER)
		16. Increase the number in Extra Care by over 10%	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	120 (2019/20)	176	140 people were in Extra care as at 30 <sup>th</sup> September 2021  (GREEN)	173 people were in Extra care as at 31 <sup>st</sup> March 2022.  (AMBER)
		17. Greater than 80% of people aged 65 and over independent at home for 91 days or more following	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	89% (2019/20)	80%	85% were still at home April to September 2021	88% were still at home October 2021 to March 2022



	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
		hospital discharge into one of our intermediate tier services.						(GREEN)	Annual total = 86% (GREEN)
		18. Increased number of residents referred and discussed at the integrated neighbourhood team (INTs) weekly meeting	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	740 (2018/19)	777	517 April to September 2021 (GREEN)	1,367 (GREEN)
		19. Ensure 90% of Mental Health Act requests are responded to within 8 hours of notification	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	100% (2019/20)	90%	98% of cases were responded to within 8 hours April to September 2021 (GREEN)	98% of cases were responded to within 8 hours October 2021 to March 2022 Annual total = 98% (GREEN)
		20. Where outcomes are expressed by the service user in safeguarding investigations, to ensure that 85% are fully or partially achieved.	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	95% (2019/20)	85%	95% were fully or partially achieved in completed cases April to September 2021 (GREEN)	DATA UNAVAILABLE This information is an outcome of the Safeguarding Adults annual return, which is due 08/06/2022.
		1. Number of households prevented from becoming homeless.	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	814 (2019/20)	550	245 households prevented from becoming homeless. (GREEN)	475 households prevented from becoming homeless. The homeless target was affected by changes in the recording mechanism part way through the year – splitting Prevention into 'Prevention' and 'Relief' which reduced the number recorded as prevention. (AMBER)

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
		2. Number of Domestic Abuse victims contacted for support within 48 hours.	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	100% (2020/21)	95%	<b>100%</b> <b>(GREEN)</b>	<b>100%</b> <b>(GREEN)</b>
		23. Number of leisure attendances (including pitches)	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Higher	688,337	275,334	<b>248,131 attendances</b> <b>(GREEN)</b>	<b>750,259 attendances</b> <b>(GREEN)</b>
		24. Total number of referrals into the BwD wellbeing service	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Higher	570	825	<b>400 referrals</b>  <b>(AMBER)</b>	<b>Q3 + Q4 = 579 referrals</b>  <b>Total referrals for 2021/22 = 979</b> <b>(GREEN)</b>
		25. Reduce smoking in adults	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Lower	15.5%	16%	<b>15.5%</b>  <b>(RED)</b> <b>See Exception Report</b>	<b>15.1%</b>  <b>A lower number is preferable in terms of lower prevalent rates for smoking</b> <b>(AMBER)</b>
		26. Proportion of all in drug treatment who successfully completed treatment and did not re-present within six months.	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Higher	18.7%	22%	<b>20.85%</b>  <b>(AMBER)</b>	<b>23%</b>  <b>(GREEN)</b>
		27. Child obesity – child measurement programme survey for both reception and year 6 children – prevalence of overweight (including obesity)	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Lower	Reception 22.1% Year 6 36.6% (2019/20)	Target yet to be agreed due to the disruption in the measurement programme	<b>DATA UNAVAILABLE</b>  <b>PHE have advised that Local Authorities will only be required to achieve a representative sample of 10% data as per PHE guidance for 2020/21. This will not produce Local Authority level data for 2020/21</b>	<b>DATA UNAVAILABLE</b>  <b>Update as per Q1 &amp; 2</b>
		28. % of alcohol retailers compliant with licensing conditions.	Environmental Services Cllr Jim Smith	Environment & Operations	Higher	≥95%	≥95%	<b>DATA UNAVAILABLE</b>	<b>99%</b>

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
P L A								Inspections of licensed premises in the first quarter of 2021/22 have focused on Covid security measures being in place.	Please note this figure is only based on ongoing complaints received about licensed premises. The usual programme of inspections has not yet re-started.  (GREEN)
		29. *New Measure 21/22* % of food businesses achieving 3 Star and above rating on the National Food Hygiene Rating Scheme	Environmental Services Cllr Jim Smith	Environment & Operations	Higher	New measure 2021/22 baseline year	85%	93.3%  The measure is artificially higher than the target set because many new businesses or businesses with a change of ownership are classed as “Awaiting inspection”.  Whilst awaiting inspection these businesses are taken out of the total number of food businesses included in the National Food Hygiene Rating Scheme.  (AMBER)	93.3%  All food safety inspections required under the Food Standards Agency’s current operating plan have been completed  (GREEN)
P L A	P4 – Connected communities	30. Number of referrals “Stepped Down” from Social Work Teams to the Neighbourhood Service for Community Connectors and Volunteers	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	165 (2019/20)	165	114  (GREEN)	179  (GREEN)
		31. Number of individuals engaged in activity across the Our Community Our Future Programme	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	New measure 2020/21	1,000	405 individuals  (GREEN)	638 individuals Significantly impacted by Covid  (RED) See Exception Report

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
<b>C E</b>		32. Number of community groups engaged in activity across the Our Community, Our Future Programme	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	New measure 2020/21	80	<b>33 groups</b>  <b>(GREEN)</b>	<b>53 groups</b> <b>Significantly impacted by Covid</b>  <b>(RED)</b> <b>See Exception Report</b>
		33. Number of volunteers supporting Council services	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	1,173 volunteers (2018/19)	2,000	<b>2,170 volunteers supporting Council services</b> <b>(GREEN)</b>	<b>2,240 volunteers supporting Council services</b> <b>(GREEN)</b>
		34. Number of citizens engaged through Digital Health and Care Hubs	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Higher	490 (2020/21)	550	<b>265</b>  <b>Provision of onsite digital support events and activities is increasing as service areas reopen.</b>  <b>(AMBER)</b>	<b>Q3 + Q4 = 511</b>  <b>2021/22 Annual outturn 776</b>  <b>(GREEN)</b>
		35. Number of volunteer hours supporting Culture and Leisure services delivery	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Higher	4,215 (2020/21)	12,645	<b>4,525 volunteer hours</b>  <b>Refresh = 706</b> <b>Arts &amp; Heritage = 1,270</b> <b>Libraries = 2,549</b>  <b>(AMBER)</b>	<b>12,683 volunteer hours</b>  <b>Refresh Q3 + Q4: 1,265</b> <b>Refresh Total: 1,971</b>  <b>Arts &amp; Heritage Q3 + Q4: 2,950</b> <b>Arts &amp; Heritage Total: 4,220</b>  <b>Libraries Q3 + Q4: 3,943</b> <b>Libraries total: 6,492</b>  <b>(GREEN)</b>
		36. Number of cultural events and activities across arts and heritage services	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Higher	182 (2018/19)	200	<b>177 cultural events and activities</b>  <b>Arts and Heritage: 42</b> <b>Libraries: 135</b>	<b>2021/22 Annual Outturn 1,112</b> <b>Cultural events &amp; activities</b>  <b>Libraries Q3 + Q4 = 348</b>

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
								(GREEN)	Libraries total: 483  Arts & Heritage Q3+Q4: 587 Arts & Heritage Total = 629  (GREEN)
		1. Number of digital library loans	Public Health & Wellbeing Cllr Damian Talbot	Public Health & Wellbeing	Higher	53,241 (2020/21)	54,000	18,161  (Changes to the supplier data reporting mechanism for e-magazine loans has shown a fall for all members of the AGMA consortia group, including BwD).  (AMBER)	Q3 + Q4 = 18,327  2021/22 Annual outturn = 36,488  (RED) See Exception Report
	P5 – Safe and clean environment	2. Increase in number of your call community litter pickers	Environmental Services Cllr Jim Smith	Environment & Operations	Higher	1,898 (2020/21)	2,000 volunteers registered	2,000 volunteers registered  (GREEN)	2,057 volunteers registered  (GREEN)
		3. Increase number of prosecutions for enviro-crime offences	Environmental Services Cllr Jim Smith	Environment & Operations	Higher	119 (2020/21)	125 enforcement actions across the year as a whole	101 enforcements.  Which includes: 74 Prosecutions, 26 Fixed Penalty Notices, 1 Simple Caution.	Q3 and Q4 67 enforcements. Which includes 27 Prosecutions 37 Fixed Penalty Notices 3 Simple Cautions  2021/22 Annual Outturn 168 enforcements Which includes 101 prosecutions 63 Fixed Penalty notices 4 Simple Cautions

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
								(GREEN)	(GREEN)
		4. Number of 4-hour repair/make safe following inspection of dangerous defects on the highways	Growth & Development Cllr Phil Riley	Environment & Operations	Higher	96%	98%	98.19%	98.94%
								(GREEN)	2021/22 Annual outturn 98.57%
									(GREEN)
		5. Increase the household recycling rate	Environmental Services Cllr Jim Smith	Environment & Operations	Higher	29%	32%	Q1 – 31% Q2 – data not yet available	Q1 – 31.0% Q2 – 32.6% Q3 – 30.3% Q4 – data not available until approx. mid May 2022 Year to date: 31.3%
								(AMBER)	(AMBER)
		6. Reduce waste to landfill	Environmental Services Cllr Jim Smith	Environment & Operations	Lower	98.05% (2020/21)	65%	Q1 – 84% (16% landfilled) Q2 – data not yet available	Q1 - 84% (16% landfilled) Q2 – 99.5% (0.5% landfilled) Q3 – 98% (2% landfilled) Q4 – 100% (0% landfilled)
								(GREEN)	(GREEN)
<b>E C O N O</b>	P6 – Strong, growing economy to enable social mobility	7. Number of adult qualifications achieved (via the Adult Learning contract)	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	400 (2018/19)	425	337 (August 2020 to July 2021 outturn) (Still awaiting some results) Despite the pandemic, the team was able to achieve 84% of the target by delivering new online qualifications  April to September 2021 – 103 Awaiting results of an additional 15. No concerns about	DATA NOT YET AVAILABLE  Projected numbers are between 420 and 450

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
M Y								achieving the target as a number of qualifications are 24 weeks and not included in the data until they are either a 'Pass' or 'Fail'  (AMBER)	
		8. Number of people supported into employment or learning.  <i>*NCS - National Citizen Service</i> <i>** MPT - More Positive Together</i>	Adult Services & Prevention Cllr Mustafa Desai	Adults & Prevention	Higher	845	1,235	300 people supported into employment or learning  (235* NCS, 65 **MPT) (April to September 2021)  October and November traditionally see a spike in numbers due to the impact of appointments with college and adult learning customers  (AMBER)	879 people supported into employment or learning  Significantly impacted by Covid  (RED) See Exception Report
		9. Private rented sector homes, which have been inspected and have had Cat 1 and 2 hazards removed	Environmental Services Cllr Jim Smith	Environment & Operations	Higher	112 Cat 1 and 2 hazards removed (2020/21)	>112 Cat 1 and 2 Hazards removed	29  Guidance issued by DCLG recommended that proactive inspection work should cease therefore only high-risk service requests have been responded to during this period.  (AMBER)	128  (GREEN)
		10. Number of long term (over 6 months) empty properties brought back into use	Growth & Development Cllr Phil Riley	Growth & Development	Higher	400 properties	500 properties	325 Properties brought back into use	676 (over 6 months)

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
								(GREEN)	(826 inc 0-6 months) (GREEN)
		11. Monitoring against national planning performance targets 2018: Major projects decided in 13 weeks	Growth & Development Cllr Phil Riley	Growth & Development	Higher	85%	95%	100%  16 applications determined. 5 applications determined within 13 weeks, and 11 applications determined within agreed extensions of time.  (GREEN)	100%  24 applications determined. 8 applications determined within 13 weeks, and 16 applications determined within agreed extensions of time  (GREEN)
		12. Monitoring against national planning performance targets 2018: Non-major projects decided in 8 weeks	Growth & Development Cllr Phil Riley	Growth & Development	Higher	90%	95%	98%  343 applications determined. 219 applications determined within 8 weeks, and 118 applications determined within agreed extensions of time.  (GREEN)	99%  342 applications determined. 196 applications determined within 8 weeks, and 145 applications determined within agreed extensions of time.  (GREEN)
		13. Appeals: Major applications allowed preceding 2 years	Growth & Development Cllr Phil Riley	Growth & Development	Lower	2%	2%	0%  0 major applications determined at appeal.  (GREEN)	0%  0 major applications determined at appeal.  (GREEN)
		14. Appeals: Non-major applications allowed preceding 2 years	Growth & Development Cllr Phil Riley	Growth & Development	Lower	2%	2%	0.28%  1 appeal allowed against all non-major applications determined  (GREEN)	0.39%  2 out of 12 appeals allowed against all non-major applications determined.  (GREEN)



	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
		15. Development of new employment space in the year (m <sup>2</sup> )	Growth & Development Cllr Phil Riley	Growth & Development	Higher	8,000 sq.m	9,000 sq.m	1,595 sq.m (Q1 & Q2)  (This measure should be read as a trend across 3 yrs+, therefore it is not an immediate cause for concern).  (AMBER)	4,094 sq.m (Q3 & Q4)  2021/22 Annual Outturn 5,689 sq.m (Note data incomplete – excludes BwD 40% proportion of Frontier Park. Awaiting completion data from Hyndburn BC).  (This measure should be read as a trend across 3 yrs+, therefore it is not an immediate cause for concern).  (AMBER)
	P7 – Supporting our town centres and businesses	16. Total number of events at King Georges Hall (KGH)	Environmental Services Cllr Damian Talbot	Environment & Operations	Higher	213 events	200 events	70  (In addition to booked events during the restriction closure KGH was used as a testing centre for 76 days April to the end of July).  (AMBER)	Q3 and Q4 97 events  2021/22 Annual Outturn = 167 events  Achieved over 9 months of re-opening  (GREEN)
		17. Total attendances for ticketed events at King Georges Hall (KGH)	Environmental Services Cllr Damian Talbot	Environment & Operations	Higher	107,537 attendances	53,768 attendances	9,846 (First ticketed event 29 <sup>th</sup> August 2021).  (AMBER)	Q3 and Q4 58,759 attendances for ticketed events  2021/22 Annual Outturn = 68,605  (GREEN)

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
		18. Total number of events at Darwen Library Theatre (DLT)	Environmental Services Cllr Damian Talbot	Environment & Operations	Higher	240 events	116 events	<b>21 events</b>	<b>Q3 and Q4 52 events</b> Second half of the year saw expected number of events.  <b>2021/22 Annual Outturn = 73 events</b>  Achieved over 9 months of re-opening  <b>(AMBER)</b>
		55. Total attendances for ticketed events at Darwen Library Theatre (DLT)	Environmental Services Cllr Damian Talbot	Environment & Operations	Higher	13,383 attendances	6,693 attendances	<b>1,543 attendances</b>	<b>Q3 and Q4 5,178 attendances</b>  <b>2021/22 Annual Outturn = 6,721 attendances</b>  <b>(AMBER)</b> <b>(GREEN)</b>
COUNCIL	P8 – Transparent and effective organisation	19. Online satisfaction rates for new Blackburn with Darwen website	Digital & Customer Services Cllr Quesir Mahmood	Resources	Higher	2019/20 Baseline year	Increase on previous year	<b>DATA IS PRESENTLY UNAVAILABLE</b>	<b>DATA IS PRESENTLY UNAVAILABLE</b>
		20. Number of online customer transactions and forms completed	Digital & Customer Services Cllr Quesir Mahmood	Resources	Higher	New measure 2019/20	163,674 (2019/20) Target excludes Covid related services	<b>81,465 forms</b>	<b>Q3 and Q4 58,046 forms</b>  Customer Contact Portal (CCP) = 19,522, Digital Customer Portal (DCP) = 38,524  Annual Outturn 2021/22 Total 139,511  <b>(AMBER)</b> <b>(AMBER)</b>
		21. Response to Freedom of Information Requests (FOIs) within timescale	Digital & Customer Services	Resources	Higher	92.11% (2020/21)	90%	<b>94.24%</b>	<b>Q3 and Q4 95.75%</b>

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
			CLlr Quesir Mahmood					FOIs due in last 6 months 538 FOIs responded to on time 507  (GREEN)	FOIs due in last 6 months = 565 FOIs responded to on time = 541  Annual Outturn 2021/22 95.01% (GREEN)
		22. Response to Environmental Information Requests (EIRs) within timescale	Digital & Customer Services CLlr Quesir Mahmood	Resources	Higher	72.82% (2020/21)	90%	98.08% EIRs due in last 6 months 938 EIRs responded to on time 920  (GREEN)	Q3 and Q4 97.85% EIRs due in last 6 months = 792 EIRs responded to on time 775  Annual Outturn 2021/22 97.98% (GREEN)
		23. Response to Subject Access Requests (SARS) under the Data Protection Act within timescale	Digital & Customer Services CLlr Quesir Mahmood	Resources	Higher	89.32% (2020/21)	90%	93.98% SARS due in last 6 months 133 SARS responded to on time 125  (GREEN)	Q3 and Q4 90.65% SARS due in last 6 months = 139 SARS responded to on time = 126  Annual Outturn 2021/22 93.04% (GREEN)
		24. 95.5% collection of Council Tax	Finance & Governance CLlr Vicky McGurk	Resources	Higher	94.77% (2020/21 outturn)	95.5%	Q1 27.36% Q2 52.51%  (AMBER)	Q3 77.8% Q4 94.8%  (AMBER)
		25. 98.5 % collection of Business Rates	Finance & Governance CLlr Vicky McGurk	Resources	Higher	96.52% (2020/21 outturn)	98.5%	Q1 20.13% Q2 51.33%  (AMBER)	Q3 77.2% Q4 97.7%  (AMBER)

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
		26. Undisputed and valid supplier invoices paid within 30 days	Finance & Governance Cllr Vicky McGurk	Finance	Higher	94% (2020/21)	95%	90%	Q3 89% Q4 91%  Annual outturn 2021/22 is 91%  (AMBER)  (RED) See Exception Report
		27. Current ratio of total useable reserves (excluding Public Health and schools) to net revenue expenditure	Finance & Governance Cllr Vicky McGurk	Finance	Higher	Average level reported by all Unitary Authorities in 2019/20 41.06%  Average in 2020/21 = not yet published due to delays because of Covid-19)	The data is only published after submission of the Revenue Outturn Returns to MHCLG at the year-end  This target to be reviewed in 2021/22	DATA UNAVAILABLE  A review of the relevance and appropriateness of this target is underway	DATA UNAVAILABLE  The data is only published after submission of the Revenue Outturn Returns to MHCLG at the year-end  This target to be reviewed
		28. Percentage change in reserves over the past 3 years	Finance & Governance Cllr Vicky McGurk	Finance	Higher	Data for 2020/21 is not yet available for other LAs  BwD 2019/20 15.27% reduction  BwD 2020-21 70.71% increase	The data is only published after submission of the Revenue Outturn Returns to MHCLG at the year-end  This target to be reviewed in 2021/22	DATA UNAVAILABLE  A review of the relevance and appropriateness of this target is underway	DATA UNAVAILABLE  The data is only published after submission of the Revenue Outturn Returns to MHCLG at the year-end  This target to be reviewed
		29. Achieve a breakeven or underspend against overall portfolio and corporate budgets	Finance & Governance Cllr Vicky McGurk	Finance	Higher	Breakeven	Breakeven or underspend	A review of the relevance and appropriateness of this target is underway	A review of the relevance and appropriateness of this target is underway
		30. 10% year on year reduction of carbon emissions from Council facilities	Growth & Development Cllr Phil Riley	Growth & Development	Lower	5,378 tonnes CO2	10% reduction	+94 tonnes CO2 +5%	+ 18 tonnes CO <sub>2</sub> +0.3%  Energy consumption in 2020/21 was down due to Covid closures and home working. Services were still affected in 2021/22,

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
									<p>but show a downward trend (935 tonnes - 17%) compared with 2019/20, helped by a significant reduction in the carbon conversion factor for electricity as well as the Decarbonisation programme.</p> <p>Please note, the analysis is based on March-Feb data for gas because bills have not yet been received. About 2% of electricity figures are estimated as quarterly bills and bills for small sites have not been received yet.</p> <p>(RED) See Exception Report</p> <p>(AMBER)</p>
		31. Response time and progress of stage One complaints to the Council	Digital & Customer Services Cllr Quesir Mahmood	HR, Governance & Engagement	Higher	85% (2018/19)	90%	<p>Qtr. 1 - 100% Qtr. 2- 50%</p> <p>Two Stage 1 Complaints were received during Q1, both of which were completed on time. 96% of the complaints received at the informal stage were successfully resolved.</p> <p>During Q2, 10 Stage 1 complaints were received of which 50% were successfully completed on time. For more complex cases where the investigating officer</p>	<p>Qtr. 3 - 71% Qtr. 4 - 90%</p> <p>0 Stage 1 Complaints were received during Q3. 88% of the complaints received at the informal stage were successfully resolved.</p> <p>During Q4, 4 Stage 1 complaints were received of which 50% were successfully completed on time.</p> <p>2 Stage 2 complaints were received of which 50% were successfully completed on time.</p>

	Priority	Performance measure	Portfolio	Department	Good performance is	Baseline	21/22 target	Half-year performance and rating (Q1 & Q2 – April 21 to September 21)	Year-end performance and rating (Q3 & Q4 – October 21 to March 22 & Annual Outturn)
								requires more than 15 working day's response time, a holding response email/letter is sent with an extension request to the complainant. 97% of the complaints received at the informal stage were successfully resolved.  <b>(AMBER)</b>	95% of the complaints received at the informal stage were successfully resolved.  <b>(AMBER)</b>
		32. Reduction in employee absence through sickness	Finance & Governance Cllr Vicky McGurk	HR, Governance & Engagement	Lower	7.58 days (2020/21 excluding Covid-19 absences)	8 days per annum	<b>Q1 – 1.95 days per FTE (excluding Covid-19 absences)</b>  Awaiting figures for Q2.  <b>(AMBER)</b>	<b>Q3 – 2.73 days per FTE</b> <b>Q4 – 2.48 days per FTE (excluding Covid-19 absences)</b>  Annual Figure: 9.41 days per FTE (excluding Covid-19 absences)  <b>(RED)</b> See Exception Report
		33. Information relating to RIDDOR	Finance & Governance Cllr Vicky McGurk	HR, Governance & Engagement	Lower	7 RIDDOR per annum (2020/21)	10 RIDDOR per annum	<b>3 RIDDOR</b>  <b>(GREEN)</b>	<b>Q3 and Q4 2 RIDDOR</b>  2021/22 Annual Outturn = 5 RIDDOR  <b>(GREEN)</b>

**Appendix Two: Corporate Plan 2021/2022: Performance Report**  
**Year-end (1 October 2021 to 31 March 2022) Exception Reports**

Six Key Performance Indicators (9%) have been forecast as “red” where performance is, or is likely to be off track

**Priority: P4 – Connected communities**

- KPI No. 31 Number of individuals engaged in activity across the Our Community Our Future Programme **AND** KPI No. 32 Number of community groups engaged in activity across the Our Community, Our Future Programme
- KPI No. 37 Number of digital library loans

**Priority: P6 – Strong, growing economy to enable social mobility**

- KPI No. 44 Number of people supported into employment or learning

**Priority: P8 – Transparent and effective organisation**

- KPI No. 63 Undisputed and valid supplier invoices paid within 30 days. (*Corporate Measure*)
- KPI No. 69 Reduction in employee absence through sickness

<b>Department: Neighbourhoods, Wellbeing &amp; Prevention</b>			
<b>Priority: P4 – Connected communities</b>			
<b>Performance Measures:</b>		<b>Good performance is Higher</b>	
KPI No. 31. Number of individuals engaged in activity across the Our Community Our Future Programme			
KPI no. 32. Number of community groups engaged in activity across the Our Community, Our Future Programme			
<b>Target:</b>	KPI No 31: 1,000 individuals. KPI No 32: 80 groups	<b>Baseline:</b>	KPI 31: 1,000 individuals. KPI 32: 80 groups
<b>Quarterly performance</b>	KPI No. 31: 405 individuals (GREEN)  KPI No. 32: 33 groups (GREEN)		KPI No. 31: 638 individuals (RED)  KPI No. 32: 53 groups (RED)
<b>What is the reason for the performance?</b>			
Impact of Covid-19. Specifically, groups changing delivery models to online and testing hybrid. For pure online delivery, digital accessibility was a challenge along with groups trying out new resources to try and keep beneficiaries engaged as best as possible. For Hybrid mode delivery, beneficiaries still did not feel comfortable attending in-person sessions and decided to not participate.			

As we did not deliver the social integration programme between 2020-21, the target numbers were reduced from our Year 1 delivery (2,764 individuals and 181 for groups). The Social Integration team worked with partners and their chosen delivery methods to concentrate on depth and impact of delivery with those beneficiaries it worked with. For groups, many groups were still trying to find ways to continue delivering working through Covid-19 infection amongst staff, perpetual restrictions and a stronger focus towards the borough's local fight against Covid19. Some groups have disbanded completely having seen the impact of Covid19 affect their staffing and funding resources.

**What is the likely impact of continued performance?**

Central government restrictions have ended which now gives an opportunity to take learning from both pre-Covid and during Covid delivery, to focus on the recovery from the pandemic and look to set new measures. Although the Social Integration team will be smaller than in previous years, it will retain a strong focus on areas of strength within the programme which make the greatest impact. Residents will continue to be supported to live a full life within the borough and have equal access to what the borough has to offer. The portfolio has benefitted from the Social Integration Team's experience supporting Adult Learning, Covid Community Champions and the Help Hub and will continue to do so going forwards.

**What activities have been or are being put in place to address these issues?**

The end of programme evaluation is still to be completed with some outstanding end of contract reviews, which could increase some of the metrics.

**Are there any decisions likely to be required of Executive Members in the future, in relation to this issue?**

Not expected. The Executive Member for Adult Services & Prevention is regularly briefed with regard to both KPIs.

<b>Department: Place: Library and Information Service</b>		
<b>Priority: P4 - Connected Communities</b>		
<b>Performance Measure: KPI No. 37. No of digital loans</b>		<b>Good performance is:</b>
<b>Target: 54,000</b>		<b>Baseline: 53,241</b>
<b>Quarterly performance</b>	<b>Half year performance and RAG rating</b> <b>18,161</b>  <b>(AMBER)</b>	<b>Year-end performance and RAG rating</b> <b>Q3 + Q4 = 18,327</b>  <b>Total for 2021/22 = 36,488</b> <b>(RED)</b>
<b>What is the reason for the performance?</b> This measure records the number of e-book/e-audio/e-magazine loans. Explanation against target: e-resource provision is purchased as part of the AGMA Library consortium; performance data are provided to each Local Authority directly from the provider and are solely based on their data capture and reporting platform. The 2021/22 target was based on 2020/21 performance data which saw a massive increase in virtual loans due to the pandemic lockdowns; these data also included e-magazine loan data. During 2021/22, lockdowns eased and the library services was one of the first public buildings to open back up to the public. With access to 'hard copy' books, newspapers etc the demand for virtual loans		



saw a decrease. In addition to building re-openings, the e-resource supplier changed their data recording process and excluded e-magazine loans data. This decision was beyond the control of BwD and other AGMA Authorities.

Comparisons / trends – compared to previous quarters, previous years: All AGMA Authorities using the same e-magazine supplier have reported decreases in their e-loans in comparison with 2020/21 performance. Scrutiny of the overall virtual loan data available shows that there is stability in the quarterly performance for 2021/22 – with a slight increase for Quarters 3 & 4.

There has been no change to policy or service delivery. A wide range of virtual e-resources, provided through the AGMA procured supplier are accessible to BwD Library Card holders via a login.

**What is the likely impact of continued performance?**

There is no impact to library users / residents as there has been no change to service delivery. Neither is there any operational impact; the service remains fully accessible. It is a data reporting change that has impacted KPI performance.

Given the information available, it will be pertinent to revise the KPI target going forward to ensure that it reflects the data available.

**What activities have been or are being put in place to address these issues?**

In addition to the on-going local scrutiny of quarterly data provided from the supplier's platform, any issues identified will be raised at the regular AGMA Library meetings and with the supplier.

The Library service will continue to actively promote the availability of e-resources to increase awareness and encourage library users to utilise this flexible and convenient alternative to hard copy loans

There are no changes in policy / structures.

**Are there any decisions likely to be required of Executive Members in the future, in relation to this issue?**

No, service delivery is unaffected and future targets will be adjusted to reflect the available dataset. The Executive Member for Public Health & Wellbeing is regularly briefed with regard to this KPI.

<b>Department: Adults &amp; Health</b>		
<b>Priority: P6 – Strong, growing economy to enable social mobility</b>		
<b>Performance Measure: KPI No. 44 Number of people supported into employment or learning</b>		<b>Good performance is: Higher</b>
<b>Target: 1,235</b>		<b>Baseline: 845</b>
<b>Quarterly performance</b>	<b>Half year performance and RAG rating</b> <b>300</b>  <b>(AMBER)</b>  <b>(235 NCS, 65 MPT)</b>  <i>*NCS - National Citizen Service</i> <b>** MPT - More Positive Together</b>	<b>Year-end performance and RAG rating</b> <b>879</b>  <b>(RED)</b>  <b>(831 NCS, 48 MPT)</b>
<b>What is the reason for the performance?</b> <p>The Covid restrictions in place locally meant that the team of advisers were unable to see as many people as they would have done previously. Proportionately, the number of people progressing into employment or learning was broadly in line with the requirements of our contract 42% (target 45%).</p> <p>There was a combination of reasons for this during 2021/2022:</p> <ul style="list-style-type: none"> <li>• Lack of physical space and/or opportunity for people to have face to face appointments</li> <li>• Fewer people being referred by agencies who work with people looking to improve their work prospects (e.g. DWP)</li> <li>• Fewer face to face courses and training sessions that provide groups for advisers to access new customers</li> <li>• DWP were unable to host group sessions due to restricted room availability following an increase in numbers of work coaches</li> <li>• One member of staff on maternity leave reduced the overall numbers seen because of capacity issues. This person is now back</li> </ul> <p>The reduction in restrictions will enable the team to see more people throughout the year, which should in turn increase the number of people progressing into employment and learning.</p>		
<b>What is the likely impact of continued performance?</b> <p>As Covid restrictions have been removed in the main, it is hoped that the NCS team will see greater throughput this year. As this is a payment by results contract any shortfall in targets has an impact on income.</p>		
<b>What activities have been or are being put in place to address these issues?</b> <p>A delivery plan and projections template is updated monthly and is used to identify potential shortfalls giving the opportunity to mitigate this where possible.</p>		

All of the above issues which resulted in the shortfall will no longer apply over the coming months. DWP are inviting the team back in to provide face to face appointments on-site, there will be more face to face appointments in the Neighbourhood Learning Centres and more access to groups and courses that provide greater numbers. There is likely to be an initial shortfall until these changes are in place, but we should see numbers improving as a result.

**Are there any decisions likely to be required of Executive Members in the future, in relation to this issue?**

Not at this time. The Executive Member for Adult Services & Prevention is briefed regularly with regard to this KPI.

<b>Department: Finance</b>		
<b>Priority: P8 – Transparent and effective organisation</b>		
<b>Performance Measure: KPI No. 63 Undisputed and valid supplier invoices paid within 30 days. (Corporate Measure)</b>		<b>Good performance is: Higher</b>
<b>Target: 95%</b>		<b>Baseline: 94% (2020/21)</b>
<b>Quarterly performance</b>	<b>Half year performance and RAG rating</b> <b>90%</b>  <b>(AMBER)</b>	<b>Year-end performance and RAG rating</b> Q3 89% Q4 91% <b>Annual outturn 2021/22 is 91%</b>  <b>(RED)</b>
<b>What is the reason for the performance?</b> Work continues to identify budget areas who only raise purchase orders on receipt of invoices and/or, who hold invoices within their department, that impacts upon the Exchequer teams' ability to pay invoices within 30 days from the date of the invoice. By raising purchase orders on Civica Purchasing at the time of or in advance of the receipt of goods and services this allows suppliers to quote the purchase order number on the invoice submitted for payment. Civica will then automatically match invoices to orders facilitating smooth and quick payment of those invoices without the need for intervention by the Exchequer team.  Performance has improved over the past two years, as follows: <u>2019/2020 (Target 100%)</u> Q1 & Q2 (April to September 19): 64% Q3 & Q4 (October 19 to March 20): 74% year-end <u>2020/2021 (Target: 95%)</u> Q1 & Q2 (April to September 20): 91% Q3 & Q4 (October 2020 to March 2021): 91%		

**What is the likely impact of continued performance?**

The Public Contracts Regulations 2015, stipulates that payment must be made by the contracting authority to the contractor for goods and services received, no later than 'the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed'. The authority must also report on the internet, and include in their statutory accounts/annual report, the proportion of invoices that were paid in accordance with those obligations, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with those obligations.

Failure to pay within these terms could have a detrimental impact on suppliers, as this impairs cashflow and could open up the Council to claims of late payment fines and interest.

**What activities have been or are being put in place to address these issues?**

The Exchequer Team is constantly working with those budget areas (portfolios, departments, cost centres and budget holders) and Suppliers to improve payment performance.

**Are there any decisions likely to be required of Executive Members in the future, in relation to this issue?**

No. The Executive Member for Finance & Governance is regularly briefed with regard to this KPI.

<b>Department: HR, Legal &amp; Governance</b>		
<b>Priority: P8 – Transparent and effective organisation</b>		
<b>Performance Measure: KPI No. 69. Reduction in employee absence through sickness</b>		<b>Good performance is: Lower</b>
<b>Target: 8 days per annum</b>		<b>Baseline: 7.58 days. (2020/21 excluding Covid-19 absences)</b>
<b>Quarterly performance</b>	<b>Half year performance and RAG rating</b> <b>Q1 – 1.95 days per FTE</b> <b>(excluding Covid-19 absences)</b>  <b>Awaiting figures for Q2.</b>  <b>(AMBER)</b>	<b>Year-end performance and RAG rating</b> <b>Q3 – 2.73 days per FTE</b> <b>Q4 – 2.48 days per FTE</b> <b>(excluding Covid-19 absences)</b>  <b>Annual Figure – 9.41 days per FTE</b> <b>(Excluding Covid Absences)</b>  <b>(RED)</b>

**What is the reason for the performance?**

Sickness absence remains a constant concern for the Organisation in terms of cost, impact on service delivery and creating additional workload for those who remain in work. Following the release of the data, it has been recognised that there has been a significant increase in the number of days lost to sickness and a need to have a more focussed approach to look at how closely managers are working in line with the Council's Improving Attendance Policy in an attempt to reduce absence.

There is a number of reasons for the level of absence, with mental health and musculoskeletal problems being amongst the highest. The effect of covid and post-covid has had a significant impact on the workforce and this has been recognised across the organisation.

**What is the likely impact of continued performance?**

Increased absence levels puts pressure on departments and the ability to deliver their objectives and services.

**What activities have been or are being put in place to address these issues?**

Prior to lockdown HR would deliver monthly training sessions to support managers' development in implementing Blackburn with Darwen Policies. However, since the pandemic the sessions have not taken place. These are to be re-introduced with effect from June and the focus for the first session is absence management, as it is recognised that as well as some re-set being required there are also a number of team leaders, supervisors and managers relatively new in post who would benefit from extra guidance on how to manage sickness absence appropriately and what options could be considered in an attempt to get employees back into the workplace.

The HR Services is also proactively liaising with all Managers on their sickness reports and offering advice and support on individual cases as necessary.

There is also the intention to further communicate and engage with the organisation on wellbeing and the support services that are available for all:

- Health and Wellbeing Champions within departments promoting events and sharing information on wellbeing topics.
- Focussed wellbeing spotlights in line with national topic days or weeks. For example, April has been Stress Awareness Month and a calendar of events have been shared across the Organisation with staff being encouraged to join in with activities which have included a variety of topics from Food and Mood Workshops to Reading Workshops etc. A full calendar of events is being developed.
- Financial Wellbeing is also being highlighted with Monday's Money Messages going out over the intranet with useful hints and tips for reducing costs and making savings.

**Are there any decisions likely to be required of Executive Members in the future, in relation to this issue?**

The Executive Member for Finance & Governance is regularly briefed on staff sickness absence; the activities to address this issue are outlined above.



**REPORT OF:** Executive Member for Finance and Governance

**LEAD OFFICER:** Director of Finance

**DATE:** 9<sup>th</sup> June 2022

**PORTFOLIOS AFFECTED:** All

**WARDS AFFECTED:** All

**KEY DECISION:** Y

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**TITLE OF REPORT:** Development of the General Fund Revenue Budget 2023/24

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## 1. PURPOSE

- 1.1 The purpose of this report is to provide the Executive Board with an update on the Council's Medium Term Financial Plan (MTFP) 2023/26 as the start of the process for developing the Council's Budget for 2023/24.

## 2. RECOMMENDATIONS

- 2.1 It is recommended that Executive Board:-
- a) agree to write to the Department for Levelling Up, Housing and Communities (DLUHC) seeking an increase in the Council's funding settlement for 2022/23 to reflect the significant increase in inflation;
  - b) note the key risks to the delivery of the budget in 2022/23 and that these will be subject to consideration as part of the regular Budget Monitoring reports submitted to the Executive Board;
  - c) note the uncertainty with the funding outlook for the Council, not least the limited progress on Local Government Finance reforms and the possibility that these may not take place before the next General Election in 2024;
  - d) note the update to the Medium Term Financial Plan for 2023/26 as shown at **Appendix A** and that a further update will be provided in October 2022;
  - e) note the scenario analysis shown at **Appendix C and D** which models 'worst'/'best' case scenarios around the baseline MTFP as part of the assessment of potential risks facing the Council;
  - f) note the potentially significant financial impact of the review of the pay structure (should it be considered necessary), the financial impact of the Social Care reforms and Academisation of Schools and that an update on these matters be provided in future reports on the MTFP;

- g) in accordance with the Council's Budget and Policy Framework Procedure Rules, request that Portfolio Holders develop draft proposals to meet the funding gap set out in the report for the period to 2025/26 and that any such proposals are considered by the Executive Board in due course;
- h) note the timetable set out in the report for the development of the Council's Budget for 2023/24.

### 3. BACKGROUND

- 3.1 At the meeting of the Finance Council on 28<sup>th</sup> February 2022, the Council approved the Financial Strategy 2022/26. As part of the Financial Strategy, an update was provided on the Council's Medium Term Financial Plan (MTFP). Acknowledging that the Council is operating in a dynamic environment and that the assumptions underpinning the MTFP are subject to change, it is good practice to review and update the MTFP on a regular basis.
- 3.2 To that end, work has been undertaken to update the Council's Medium Term Financial Plan (MTFP) 2023/26 to ensure that the Council has a good understanding of its forward financial forecasts and is able to start planning for the development of the budget in 2023/24.

### 4. RATIONALE

- 4.1 The development of the budget is a key element of the Council's financial governance processes. Starting this work early in the current financial year should allow adequate time to develop a range of options for Councillors to consider when setting the budget for 2023/24.
- 4.2 It is also worthwhile noting that, as part of the new approach to the assessment of the Council's Value for Money arrangements, the Council's External Auditors assess what arrangements the Council has in place to deliver a balanced budget including the adequacy of savings schemes, extent to which there is consultation with stakeholders etc. It is important, therefore, for the Council to have developed **a robust and deliverable set of options** for achieving a balanced and sustainable budget over the medium term to avoid any adverse commentary in the Auditor's report on Value for Money that may lead to more directive action.

### 5. KEY ISSUES

#### **Funding Outlook**

- 5.1 Any consideration of the Council's Financial Strategy and Medium Term Financial Plan must be undertaken in the context of the funding outlook for Local Government and what that means for the Council.

#### *Spring Statement 2022*

- 5.2 The Spring Statement 2022 provided no new funding announcements of substance for Local Government (or other Government Departments for that matter). This is despite the general rate of inflation increasing to c7% thereby reducing in real terms the funding settlements announced at the Autumn Budget 2021 (which also set out the results of the Comprehensive Spending Review) which are set in cash terms. There has been no indication from the Government that these 'real' terms reductions in funding will be made up with additional allocations.

5.3 Equally, the Government has not made any further announcements about the progress, or otherwise, of the planned reforms of Local Government Finance. As previously set out, there are three areas of proposed reform as follows:-

- **Fair Funding Review** – this review commenced in 2018 with the aim of setting new baseline funding allocations for each local authority based on their relative needs and available resources. The outcome of the review was to inform the funding settlement for Councils for 2020/21 but was delayed due to BREXIT. And, in April 2020, the Government announced the implementation of the review *‘would not now go ahead to allow Councils to focus on meeting the immediate public health challenge posed by the Pandemic’*.

Most recently, as part of the Local Government Finance Settlement for 2022/23, the Government confirmed its commitment to *‘ensuring that funding allocations for Councils are based on an up-to-date assessment of needs and resources and to consulting with Local Government on any potential funding reform’*. That being said, however, there has been no movement by the Government on this matter to date.

- **Business Rates Retention Review** – the Government had planned to increase the percentage of business rates that Councils keep, from 50% to 75%, from 2020/21. Again, this has been postponed and it was expected this will be implemented in 2022/23. Again, given the impact of Covid-19 on business and questions about the sustainability of business rates as a method of funding local government services, it is not clear whether the Government will pursue a policy of increasing the amount of business rates retained.

And, related to Business Rates, in May 2020 the Government announced that, again due to the impact of the Pandemic, the planned revaluation of Business Rates in 2021 will now take place in 2023 and will be based on rental data from April 2021. This was confirmed in the Government’s response to the Business Rates Review undertaken in 2021/22 which also:-

- set out the Government’s proposals **to have more frequent revaluations** to improve the distributional fairness of the business rates system. In essence, this means revaluations will take place every 3-years (and not every 5-years as at present) with an aspiration to moving to annual revaluations in the future;
- include reform of the Business Rates Valuation Appeals process (otherwise known as **Check, Challenge, Appeal**) by removing the ‘Check’ stage and reducing the window for submission of Challenges to 3-months. These changes are likely to take place from the 2026 List and should, hopefully, reduce the number of spurious appeals;
- referenced the current consultation by HM Treasury on an **Online Sales Tax** which may be considered to help rebalance the taxation of the retail sector recognising the move from traditional ‘bricks and mortar’ retail outlets to online retailing and the impact on the Business Rates tax base ([OST\\_condoc.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/92444/OST_condoc.pdf)).



- **Services Grant** – This is a new grant that was introduced as part of the 2022/23 Settlement. In total, this is worth £822m for Local Government and for BwD, the grant is £3.072m. In the Settlement for 2022/23, the Government described this grant as ‘one-off’ and that the funding would be excluded from any proposed baseline for transitional support in future years. What this means specifically is not clear but, for the purposes of the MTFP, it is assumed that the grant will continue at its present rate;
- **New Homes Bonus** – as part of the Funding Settlement for 2022/23, the Secretary of State for DLUHC announced a further one-year allocation of New Homes Bonus (plus the legacy payments from previous years);

The Government’s rationale for a single year payment in the previous financial year (2021/22) was their intention to consult on a new method of incentivising housing growth in Spring 2021 (this consultation was expected in 2020 but was deferred because of the Covid-19 Pandemic). The Government did conduct a consultation on changes to the New Homes Bonus Scheme early in 2021 but, despite the end of the consultation, the Government remains silent on the future of the New Homes Bonus;

• **Lower Tier Services Grant** – a new feature of the Funding Settlement for 2021/22 was the payment of a Lower Tier Services Grant which, as its name suggests, is payable to Councils like Blackburn with Darwen that have a responsibility for lower tier services. It was assumed that this grant was one-off for 2021/22 but the Government chose to pay it also in 2022/23. It has been assumed that this will continue to be paid over the life of the MTFP.

- 5.4 Recent speculation in the public sector press quotes the Chief Executive of the Local Government Association suggesting that these reforms are now unlikely to take place before the next General Election. This now seems likely given the potential for the redistribution of funding to be challenging for the Government.

### Update of Medium Term Financial Plan 2023/26

- 5.5 Since the meeting of Finance Council on 28<sup>th</sup> February 2022, and recognising that the Council is operating in a dynamic environment, work has continued to update the Council’s Medium Term Financial Plan (MTFP) for the period to 2025/26. A summary of the updated MTFP is provided in the Table 1 below with a more detailed analysis provided at **Appendix A:-**

**Table 1: Medium Term Financial Plan 2023/26**

	2022/23 £000	2023/24 £000	2024/25 £000	2025/26 £000
Portfolio Budgets	133,880	132,912	132,567	132,567
Other Corporate I & E	16,123	20,553	27,776	35,351
<b>Net Revenue Expenditure</b>	<b>150,003</b>	<b>153,465</b>	<b>160,343</b>	<b>167,918</b>
Less Core Funding	(82,626)	(84,717)	(85,618)	(86,537)
Less Council Tax	(54,231)	(62,153)	(65,421)	(67,696)
<b>Shortfall before Reserves</b>	<b>13,146</b>	<b>6,595</b>	<b>9,304</b>	<b>13,685</b>
Change in Specific Reserves	(13,146)	(1,388)	(960)	(500)
Change in GF Balance	-	-	-	-
<b>Funding 'Gap'</b>	<b>-</b>	<b>5,207</b>	<b>8,344</b>	<b>13,185</b>

<b>In Year Funding 'Gap'</b>	<b>-</b>	<b>5,207</b>	<b>3,137</b>	<b>4,841</b>
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See Appendix A

- 5.6 **Appendix B** provides an analysis of the movement in the MTFP shown above when compared to the last MTFP reported Finance Council on 28<sup>th</sup> February 2022.
- 5.7 As the table indicates, the forecast funding gap for the period to 2025/26 is now estimated to be £13.1m. The key changes to the MTFP include:-
- an update to the Pay Award assumption for 2023/24 onwards. For planning purposes, it is now assumed that the Pay Award for 2023/24 will be 4%, falling to 2% in 2024/25 and 2025/26. This reflects guidance from the National Employers Organisation which is cognisant of rising inflationary pressures. Whilst inflation is tracking at c7% in the current financial year to date, the Office of Budget Responsibility expect it to peak in 2022 and fall back to 4% in 2023, and c2% thereafter;
  - an update to the assumption on the National Living Wage to reflect the Low Pay Commission's 'central path' forecast. This assumes a c6% year-on-year increase over the life of the MTFP. As the Executive Board may be aware, this is a key issue in the determination of Adult Social Care Provider uplifts. These 'uplifts' are, however, likely to be determined with reference to the Fair Cost of Care exercise (and Market Sustainability Assessment) the Council is required by the Government to undertake in 2022/23 and which may have a significant bearing on what the Council should pay;
  - update on the inflation assumptions for energy costs to reflect the significant change in the wholesale price of energy and its potential impact on the Council's activities, for example the operation of Leisure Centres. This in turn has impacted on the assumed increase in commissioning costs for both Adults and Children's Services.
- 5.8 These and the other assumptions underpinning the MTFP will remain under review as the financial year progresses.

### ***Key Areas of Uncertainty***

- 5.9 The MTFP is a forecast of the Council's financial position over the period to 2025/26. At this stage, there remain a number of matters where insufficient information is available but which are likely to have a significant impact on the MTFP. These include:-

### ***Delivery of the Budget in 2022/23***

- 5.10 Delivering the budget in 2022/23 is critical to the sustainability of the Council's financial position. The key risks to delivery of the budget that Executive Board need to remain sighted on are as follows:-
- ***Implementation of savings*** – the Council agreed savings totalling £2.065m to balance the budget for the year. All of these savings were permanent reductions in the budget and to the extent that they are not delivered in full or at all, there will be an additional budget pressure for 2023/24 onwards. The expectation is that they will be delivered;
  - ***Pay Award in 2022/23*** – this is budgeted at 2%; at this stage no announcements have been made on the pay award 'ask' or 'offer' but with general inflation (CPI) tracking at c7%, there is every likelihood that the pay award could be higher than budgeted. To note, for every 1pp increase, the additional cost to the Council is c£550k (and will, of course, have an ongoing cost to the Council);

- **Energy Inflation** – the Council’s cost of energy has increased significantly and is now estimated to be £3.916m in 2022/23 (in 2021/22, it was £1.447m). may want to give some consideration to any measures (eg operation of facilities, implementation of alternative energy supplies etc.) that can be implemented to manage the cost increases, acknowledging that in the current economic climates prices are expected to continue rising;
- **Demand for Adult and Children’s Social Care** – this remains an ever present risk for the Council, not least as the Borough emerges from the impact of Covid-19. As part of the budget setting process, £1m of Social Care Grant was held back to mitigate the impact of costs pressure but, in the light of the recent Ofsted Inspection of Children’s Social Care, that funding has been allocated entirely towards the delivery of the Children’s Social Care Improvement Plan. Any cost of demand pressures will, therefore, have to be contained within existing budgets;
- **Impact of Covid-19** – whilst the rates of infection for Covid-19 have fallen, and continue to fall, the risk of new variants remain and with all legal restrictions lifted, there is potential for surge infections to occur. The Government has provided no new funding to Local Authorities in 2022/23 to deal with Covid-19, so any activity undertaken will have to be funded from within existing resources;

5.11 These and other matters will be considered in more detail as part of the regular budget monitoring reports to the Executive Board as the financial year progresses.

#### *Funding Settlement*

5.12 Given the funding settlement for 2022/23 is for one-year only, and that there appears to be a diminishing prospect of the Local Government Finance reforms referred to above, it is difficult to estimate the likely level of funding the Council will receive from 2023/24 onwards. Whilst the amount of funding from Business Rates and Revenue Support Grant appear relatively stable, it is not clear how the Government might choose to distribute the Services Grant or whether the New Homes Bonus will continue in any form at all.

#### *Future Pay Awards*

5.13 As the Executive Board may be aware, the Pay Award for 2021/22 has only recently been settled with no details as yet about the Pay Offer for 2022/23. It is likely that, given the current ‘cost of living’ crisis, the pay negotiations for 2022/23 will be as protracted as they were in the last financial year and there will be significant pressure on Local Government Employers to agree a pay award in line with the rate of inflation. And unless inflation is brought under control, there is every likelihood that the pressure on Pay Awards will continue to grow.

#### *National Living Wage and Impact on Pay Structure*

5.14 Details of the likely change in the NLW are set out above. An emerging issue arising from the increase in the NLW is the erosion of the ‘headroom’ between it and the lowest points on the NJC Pay Scales, a principle of that Employers have sought to maintain since the introduction of the NMW.

- 5.15 According to present forecasts, by 2024 all of the ‘headroom’ will have gone and, given the view of Local Government Employers that Local Government should not be a minimum wage employer, consideration is being given to options to avoid this. However, it is expected that any such options (eg deleting pay points or reducing the working week) will, inevitably, result in additional costs for Councils (and may, if there is a need to undertake a formal job evaluation exercise, lead to significant work).
- 5.16 In relation to any proposal to reconsider the pay structure of the Council in the light of the change in NLW, it is recommended that, should it be considered necessary, a report on this matter is considered by the Executive in due course setting out the options for the Council.

*Social Care Reforms (including Market Sustainability and Cost of Care exercise)*

- 5.17 During 2022/23, the Council is required to undertake a Cost of Care exercise (for 65+ Care Homes and 18+ Domiciliary Care) alongside the development of an Adult Social Care Market Sustainability Plan. Whilst it is not intended to replace the negotiation of commissioning or contract arrangements for care, the Cost of Care exercise is expected to inform Provider uplifts for 2023/24. Although it is not possible to predict the outcome of this exercise, the Council’s payments to providers are already known to be below other Commissioners (eg Lancashire County Council) and so there is every likelihood the Cost of Care exercise will suggest an increase in payments to Commissioners.
- 5.18 Overlaying these requirements is the move towards the broader social care reforms set out in the Government’s White Paper – ‘People at the Heart of Care’. In particular, the introduction of the Cost of Care Cap from October 2023 and the need to understand how demand might change as a result of charging reform, changes in the means test capital limits and the self-funders who look to the Council for their care and support needs. Aside from the difficulties of assessing the financial impact of this (the cost to the Councils, estimating the likely additional funding from the Government), it is inevitable that it will require to review and redesign of both existing systems and processes to cope with the changes efficiently and effectively.
- 5.19 In view of the magnitude of the proposed changes and once more information is available from the Government, it is recommended that a report on this matter is submitted for consideration by the Executive Board in due course.

*Care Quality Commission (CQC) Inspection*

- 5.20 Councillors may be aware that the Health and Care Act 2022 includes provisions for a new assurance framework led by the CQC to inspect the performance of the delivery of Adult Social Care. The implementation of these provisions depends on the enactment of the Bill, the arrangements that the CQC need to put in place to conduct the inspection and the timetabling of individual Local Authority inspections.
- 5.21 The CQC Inspection is likely to focus on the Council’s arrangements for working with people- (assessment of needs, prevention etc.), providing support (nature and strength of care markets, integration with NHS etc.), ensuring the safety of residents (safeguarding, safe systems of care) and Leadership.

- 5.22 Despite the uncertainty around the date of inspection of the Council's Adult Social Services, work is already underway to ensure the Council is prepared for any such inspection. This will include, in due course, briefing for Councillors as necessary. Subject to this ongoing work, there may be a need to consider the Council's capacity to do this work effectively so that the Council is adequately prepared.

#### *Investment in Children's Services*

- 5.23 The Executive will be aware of the outcome of the recent Ofsted Inspection of Children's Services and the need for additional investment to support the Improvement Plan. Indeed, this is a matter dealt with in a report elsewhere on the Agenda for this meeting. It is expected that this will be funded from within the current budget. However, the extent to which improvements are made and better outcomes achieved will be subject to regular review by Ofsted and may, potentially, necessitate additional investment. This is a matter that will need to remain under review as the year progresses.

#### *Academisation of Schools*

- 5.24 Following the publication of the Education White Paper, the Government has set out a clear timeline for all Schools to become part of a Multi-Academy Trust by 2030. This includes the proposal for Local Authorities to establish MATs.
- 5.25 The proposition of establishing a Local Authority MAT will, subject to more detail being provided by the Government, be the subject of a separate report to the Executive Board in due course. However, the initial assessment of the impact of further academisation on the Council's financial position has highlighted the risk to the sustainability of the Council's 'top-slice' of Dedicated Schools Grant (DSG)(c£941k) and income from Service Level Agreements (c£2.4m), both of which could be substantially reduced as this policy is implemented.

#### *Other Matters*

- 5.26 The narrative above sets out some of the key matters for Executive Board consider but it is not an exhaustive list. Other issues include, for example, the sustainability of recharges to the capital account, management of adult and children's social care demand, affordability of rising debt charges, the future of shared costs under the Continuing Healthcare arrangements given the changes to the Health and Social Care system in Lancashire. As ever, consideration will be given to the likely impact of these matters on the Council's MTFP.

#### **Scenario Planning (Sensitivity Analysis)**

- 5.27 As mentioned above, the MTFP is based on a range of assumptions which impact on both income and expenditure. Changes in these assumptions can have a fundamental effect on the Council's funding gap and the level of savings the Council will be required to make over the next 3 years.

- 5.28 The Executive Board will appreciate that it is good practice to model scenarios based on changes to some of the key assumptions in the MTFP. The purpose of this sensitivity analysis is not to predict or forecast the future, but rather test and understand the Council's sustainability into an uncertain future given alternative plausible scenarios for the key drivers of costs, service demands, funding and key risks to which the Council is exposed. Such 'stress testing' is considered to be good practice and acts as an indicator of the Council's financial sustainability.
- 5.29 The sensitivity analysis gives some indication of the likely range of the Council's deficit position bounded by realistic worst- and best-case scenarios. Although it is always possible there might be scenarios outside of these boundaries (as well as numerous ones within them), this is considered unlikely as the worst case assumes strongly negative estimates for most of the main aspects of the MTFP. Likewise, the best-case contains only positive changes.
- 5.30 Some of the key variables that have been modelled are as set out at **Appendix C** with the results of this analysis at **Appendix D** and summarised in Table 2 below:-

**Table 2: Scenario Analysis**

	2023/24 £000	2024/25 £000	2025/26 £000
Best Case	274	1,535	3,493
Base Position (Table 1 above)	5,207	8,344	13,185
Worst Case	11,310	16,111	22,994

See Appendix C and D

- 5.31 As the table indicates, the range of potential positions is a deficit of c£3.5m to a deficit of £23m. These scenarios are provided to reflect the level of potential volatility in the assumptions and reinforces the uncertainty with future budget estimates.

### **Financial Strategy 2022/23 to 2025/26**

- 5.32 The Financial Strategy remains based around the following strands:-
- **Growing** the Council's income using the funding mechanisms now in place for local government, particularly the Business Rate Retention Scheme and the New Homes Bonus if it remains as a potential income stream. This means that the Council must actively consider ways in which it can increase income from business and housing growth to ensure that funding for services can be maintained;
  - **Charging** for services, raising income which will mean that it is possible to continue providing services that resident's value. This will mean reviewing the level of fees and charges, reducing the subsidy on some services and considering the introduction of new fees and charges. It will also include reviewing the amount of Council Tax Support given;
  - **Saving** costs by, for example, reviewing how the Council delivers services, doing things differently and more efficiently, scaling services to appropriate levels within the resources available to the Council and working with local town and parish councils and other partners to sustain local facilities;

- **Stop** spending on lower or non-priority areas. This could also mean, for example, that the Council works with other partners (Voluntary, Faith, Community Sector, Town/Parish Councils etc.) and residents to deliver services, something akin to the ‘Your Call’ Initiative.

5.33 The Financial Strategy was reported and approved by Council at its meeting on 28<sup>th</sup> February 2022.

### **Next Steps**

5.34 Table 3 below provides an outline timetable for the development of the budget for 2023/24.

**Table 3: Indicative Timetable for Development of Budget 2023/24**

<b>Date</b>	<b>Action</b>	<b>Status</b>
Mar 2022	Budget Implementation Report 2022/23	Completed
May 2022	Updated MTFP to the Executive Board	This report
June - Sept 2022	Development of Proposals	
<b>13<sup>th</sup> Oct 2022</b>	<b>Update MTFP to Executive Board</b>	
Oct-Nov 2022	Further development of ideas/options	
<b>8<sup>th</sup> Dec 2022</b>	<b>First Budget Report to Executive Board</b>	
Dec 2022	Provisional Local Government Finance Settlement (LGFS) 2023/24	
Dec 2022	Update on Budget/LGFS to Corporate Leadership Team	
Dec 2022	Update on Budget/LGFS to Policy Development Session	
<b>19<sup>th</sup> Dec 2022</b>	<b>First Budget Report to Resources Scrutiny</b>	
Jan/Feb 2023	Final Local Government Finance Settlement 2023/24	
Jan 2023	Update on Budget to Corporate Leadership Team	
<b>9<sup>th</sup> Feb 2023</b>	<b>Second Budget Report to Executive Board (with Scrutiny Minutes)</b>	
<b>27<sup>th</sup> Feb 2023</b>	<b>Finance Council sets Budget and Council Tax for 2023/24</b>	

## **6. POLICY IMPLICATIONS**

6.1 There are no policy implications arising directly from this report.

## **7. FINANCIAL IMPLICATIONS**

7.1 The financial implications are as given in the report.

## **8. LEGAL IMPLICATIONS**

8.1 There are no legal implications arising directly from the contents of this report.

## **9. RESOURCE IMPLICATIONS**

9.1 There are no other resources implications arising from the contents of this report.

## **10. EQUALITY AND HEALTH IMPLICATIONS**

10.1 There are no equality and health implications arising from the contents of this report.

## **11. CONSULTATIONS**

11.1 None arising from the contents of this report.

## **12. STATEMENT OF COMPLIANCE**

12.1 None arising from the contents of this report.

### **Appendices**

Appendix A – Updated Medium Term Financial Plan 2023/26

Appendix B – Changes to the Medium Term Financial Plan 2023/26 since Finance Council

Appendix C – Assumptions for Best/Worst Case Scenario Analysis

Appendix D – Analysis of Best/West Case Scenario Analysis

<b>VERSION:</b>	1
<b>CONTACT OFFICER:</b>	Dean Langton – Director of Finance
<b>DATE:</b>	12 <sup>th</sup> May 2022
<b>BACKGROUND PAPERS:</b>	None



Medium Term Financial Plan 2022/25

Funding Statement

	2022/23 Base Budget £000	2022/23 Revised Budget £000	2023/24 Base Budget £000	2024/25 Base Budget £000	2025/26 Base Budget £000	2026/27 Base Budget £000
<b>Estimated Funding</b>						
Business Rates	(18,185)	(18,185)	(20,306)	(20,712)	(21,126)	(21,549)
Business Rates - Top Up	(24,275)	(24,275)	(24,761)	(25,256)	(25,761)	(26,276)
Revenue Support Grant	(14,016)	(14,016)	(14,016)	(14,016)	(14,016)	(14,016)
Improved Better Care Fund Grant	(8,349)	(8,349)	(8,349)	(8,349)	(8,349)	(8,349)
Social Care Grant	(8,813)	(8,813)	(8,813)	(8,813)	(8,813)	(8,813)
Market Sustainability and Fair Funding	(516)	(516)	-	-	-	-
BSF PFI Grant	(8,472)	(8,472)	(8,472)	(8,472)	(8,472)	(8,472)
Council Tax Income (incl Social Care Precept)	(60,171)	(60,171)	(62,294)	(64,492)	(66,767)	(69,123)
Council Tax Income - Town and Parish Precepts	(164)	(164)	(164)	(164)	(164)	(164)
Transfer from/to Collection Fund - Council Tax	(755)	(755)	(39)	(765)	(765)	(765)
Transfer from/to Collection Fund - NNDR	6,859	6,859	344	-	-	-
<b>Total Estimated Funding</b>	<b>(136,857)</b>	<b>(136,857)</b>	<b>(146,870)</b>	<b>(151,039)</b>	<b>(154,233)</b>	<b>(157,527)</b>
<b>Forecast Expenditure</b>						
Portfolios	130,938	133,880	132,912	132,567	132,567	132,567
<b>Corporate Income and Expenditure</b>						
Contingencies	8,447	5,505	13,497	20,360	27,318	34,653
RCCO	6,351	6,351	-	-	-	-
Debt Charges	18,987	18,987	19,325	19,582	19,736	19,736
Recharges to Schools	(1,274)	(1,274)	(1,207)	(1,154)	(1,091)	(1,016)
Benefit Admin Grants	(650)	(650)	(700)	(650)	(250)	(250)
New Homes Bonus	(1,006)	(1,006)	-	-	-	-
Lower Tier Services Grant	(341)	(341)	(341)	(341)	(341)	(341)
Services Grant	(3,072)	(3,072)	(3,072)	(3,072)	(3,072)	(3,072)
Business Rates s31 Grant	(8,568)	(8,568)	(7,140)	(7,140)	(7,140)	(7,140)
Council Tax Support Grant	-	-	-	-	-	-
Town and Parish Precepts (incl Grants)	191	191	191	191	191	191
<b>Net Expenditure</b>	<b>150,003</b>	<b>150,003</b>	<b>153,465</b>	<b>160,343</b>	<b>167,918</b>	<b>175,328</b>
<b>Contributions to/(from) Reserves</b>						
R&M Sinking Fund	80	80	80	80	-	-
Welfare Reform Reserves	-	-	-	-	-	-
Covid-19 Reserve	-	-	-	-	-	-
NNDR Reserve	(5,471)	(5,471)	-	-	-	-
Other Reserves (to fund RCCO)	(6,261)	(6,261)	-	-	-	-
Invest to Save Reserve	(374)	(374)	-	-	-	-
Use of Budget Strategy Reserve	(1,120)	(1,120)	(1,468)	(1,040)	(500)	-
	-	-	-	-	-	-
<b>Budget Requirement (excl GF Balance)</b>	<b>136,857</b>	<b>136,857</b>	<b>152,077</b>	<b>159,383</b>	<b>167,418</b>	<b>175,328</b>
Contribution to/from GF Balance	-	-	-	-	-	-
<b>Budget Requirement</b>	<b>136,857</b>	<b>136,857</b>	<b>152,077</b>	<b>159,383</b>	<b>167,418</b>	<b>175,328</b>
<b>Net Shortfall/(Surplus)</b>	<b>-</b>	<b>-</b>	<b>5,207</b>	<b>8,344</b>	<b>13,185</b>	<b>17,801</b>

Incremental Change					
Change 2022/23 £000	Adjust £000	Adjusted Change 2022/23 £000	Change 2023/24 £000	Change 2024/25 £000	Change 2024/25 £000
(2,121)		(2,121)	(406)	(414)	(423)
(486)		(486)	(495)	(505)	(515)
-		-	-	-	-
-		-	-	-	-
-		-	-	-	-
516		516	-	-	-
-		-	-	-	-
(2,123)		(2,123)	(2,198)	(2,275)	(2,356)
-		-	-	-	-
716		716	(726)	-	-
(6,515)	5,471	(1,044)	(344)	-	-
<b>(10,013)</b>	<b>5,471</b>	<b>(4,542)</b>	<b>(4,169)</b>	<b>(3,194)</b>	<b>(3,294)</b>
(968)		(968)	(345)	-	-
7,992		7,992	6,863	6,957	7,336
(6,351)	6,261	(90)	-	-	-
338		338	257	154	-
67		67	53	63	75
(50)		(50)	50	400	-
1,006		1,006	-	-	-
-		-	-	-	-
-		-	-	-	-
1,428		1,428	-	-	-
-		-	-	-	-
-		-	-	-	-
<b>3,462</b>	<b>6,261</b>	<b>9,723</b>	<b>6,878</b>	<b>7,575</b>	<b>7,411</b>
-		-	-	-	-
-		-	-	-	-
-		-	-	-	-
5,471	(5,471)	-	-	-	-
6,261	(6,261)	-	-	-	-
374		374	-	-	-
(348)		(348)	428	540	500
-		-	-	-	-
<b>11,758</b>	<b>(11,732)</b>	<b>26</b>	<b>428</b>	<b>540</b>	<b>500</b>
-		-	-	-	-
-		-	-	-	-
-		-	-	-	-
<b>5,207</b>	<b>-</b>	<b>5,207</b>	<b>3,137</b>	<b>4,921</b>	<b>4,617</b>

Incremental Change - Year 1 to 3		
Change 2021/25 £000	Adjust £000	Adjusted Change 2021/25 £000
(3,364)	-	(3,364)
(2,001)	-	(2,001)
-	-	-
-	-	-
-	-	-
516	-	516
-	-	-
(8,952)	-	(8,952)
-	-	-
(10)	-	(10)
(6,859)	5,471	(1,388)
<b>(20,670)</b>	<b>5,471</b>	<b>(15,199)</b>
(1,313)	-	(1,313)
29,148	-	29,148
(6,351)	6,261	(90)
749	-	749
258	-	258
400	-	400
1,006	-	1,006
-	-	-
-	-	-
1,428	-	1,428
-	-	-
-	-	-
<b>25,325</b>	<b>6,261</b>	<b>31,586</b>
(80)	-	(80)
-	-	-
-	-	-
5,471	(5,471)	-
6,261	(6,261)	-
374	-	374
1,120	-	1,120
-	-	-
<b>38,471</b>	<b>(5,471)</b>	<b>33,000</b>
-		-
<b>38,471</b>	<b>(5,471)</b>	<b>33,000</b>
<b>17,801</b>	<b>-</b>	<b>17,801</b>

## Changes in Medium Term Financial Plan since 28th February 2022

	2023/24 Base Budget £000	2024/25 Base Budget £000	2025/26 Base Budget £000	2026/27 Base Budget £000
<b>Report to Finance Council 28th February 2022</b>	<b>2,885</b>	<b>5,980</b>	<b>9,025</b>	<b>-</b>
Change in Business Rates Assumptions	(134)	(128)	(122)	12,943
Change in Council Tax Assumptions	(3)	(11)	(30)	
In Year Transfer to Reserves (for Leisure Equipment/Sinking Fund) not necessary in Year	-	-	(80)	
Add on Deficit for next Financial Year				
<b>Starting Point for Report to CLT 19th April 2022</b>	<b>2,748</b>	<b>5,841</b>	<b>8,793</b>	<b>12,943</b>
<b><i>Update to Inflation Assumptions</i></b>				
Adjustment to HB/CTS Admin Subsidy	(100)	(100)	250	200
National Living Wage Adjustment	285	(96)	987	938
ASC Commissioning Inflation	421	449	455	509
Children's Commissioning Inflation	163	333	518	703
Update to Pay Award Assumptions (4% in 2023/24, 2% pa thereafter)	1,084	998	936	936
Update to National Insurance Assumptions (in line with Pay Award increase)	239	364	491	617
Update to Pension Assumptions (in line with Pay Award increase)	34	66	97	129
Utility Inflation	334	490	657	824
<b>Report to CLT 19th April 2022</b>	<b>5,207</b>	<b>8,344</b>	<b>13,185</b>	<b>17,801</b>

## Scenario Analysis - Assumptions for Worst/Base/Best Case Position

	Worst Case	Base Position	Best Case
Services Grants	£2.000m	£3.072m	£4.000m
New Homes Bonus	-	-	Scheme rolled forward 1 year £1.006m
Lower Tier Services Grant	-	£0.341m	£0.341m
Pay Award	6% in 2023/24 3% in 2024/25 3% in 2025/26	4% in 2023/24 2% in 2024/25 2% in 2025/26	2% in 2023/24 2% in 2024/25 2% in 2025/26
Pension Contribution Increases	19.4% in 2023/24 20.4% in 2024/25 21.4% in 2025/26	18.4% in 2023/24 19.4% in 2024/25 20.4% in 2025/26	17.9% in 2023/24 18.4% in 2024/25 18.9% in 2025/26
National Living Wage	9% in 2023/24 7% in 2024/25 7% in 2025/26	6.3% in 2023/24 5.9% in 2024/25 5.6% in 2025/26	4% in 2023/24 2% in 2024/25 2% in 2025/26
Energy Inflation	20% in 2023/24 10% in 2024/25 10% in 2025/26	10% in 2023/24 5% in 2024/25 5% in 2025/26	5% in 2023/24 2% in 2024/25 2% in 2025/26
Children's Services Improvement Plan Investment	£1.000m	-	-

## Scenario Analysis - Assumptions for Worst/Base/Best Case Position

	Worst Case				Better Case			
	2023/24	2024/25	2025/26	2026/27	2023/24	2024/25	2025/26	2026/27
	£000	£000	£000	£000	£000	£000	£000	£000
Base Position	5,207	8,344	13,185	17,801	5,207	8,344	13,185	17,801
Services Grant	3,072	3,072	3,072	3,072	3,072	3,072	3,072	3,072
Lower Tier Services Grant	341	341	341	341	-	-	-	-
New Homes Bonus	-	-	-	-	-	-	-	-
Pay Award	(2,383)	(3,622)	(4,885)	(6,210)	(2,383)	(3,622)	(4,885)	(6,210)
Pension Contribution	(588)	(1,174)	(1,759)	(2,345)	(588)	(1,174)	(1,759)	(2,345)
National Living Wage	(3,592)	(7,220)	(10,870)	(14,748)	(3,592)	(7,220)	(10,870)	(14,748)
Energy Inflation	(392)	(607)	(833)	(1,059)	(392)	(607)	(833)	(1,059)
Children Services	-	-	-	-	-	-	-	-
	1,666	(865)	(1,751)	(3,149)	1,325	(1,206)	(2,092)	(3,490)
Services Grant	(2,000)	(2,000)	(2,000)	(2,000)	(4,000)	(4,000)	(4,000)	(4,000)
Lower Tier Services Grant	-	-	-	-	-	-	-	-
New Homes Bonus	-	-	-	-	(1,006)	-	-	-
Pay Award	3,574	5,468	7,419	9,370	1,191	2,406	3,646	4,885
Pension Contribution	1,172	1,757	2,343	2,929	295	588	882	1,177
National Living Wage	5,114	9,497	14,212	18,278	2,273	3,468	4,695	8,224
Energy Inflation	783	1,253	1,770	2,487	196	278	362	446
Children Services	1,000	1,000	1,000	1,000	-	-	-	-
Revised Deficit	11,310	16,111	22,994	28,917	274	1,535	3,493	7,242
Best								3,493
Base								13,185
Worst								22,994