



Agenda

Meeting: **Council**
Date: **28 September 2022**
Time: **7.00 pm**
Place: **Council Chamber - Civic Centre Folkestone**

To: **All Members of the Council**

YOU ARE HEREBY SUMMONED to attend a meeting of the Council on the date and at the time shown above.

Anyone who wishes to have information on any matter arising on the Agenda which is not fully covered in these papers is requested to give notice prior to the meeting to the Chairman or appropriate officer.

This meeting will be webcast live to the council's website at <https://folkestone-hythe.public-i.tv/core/portal/home>.

Please note there will be 37 seats available for members of the public, which will be reserved for those speaking or participating at the meeting. The remaining available seats will be given on a first come, first served basis.

Dr Susan Priest
Chief Executive

1. **Apologies for Absence**
2. **Declarations of Interest (Pages 7 - 8)**

Queries about the agenda? Need a different format?

Contact Jemma West – Tel: 01303 853369
Email: committee@folkestone-hythe.gov.uk or download from our
website
www.folkestone-hythe.gov.uk

Members of the Council should declare any discloseable pecuniary interest or any other significant interests in any item/s on this agenda.

3. **Minutes (Pages 9 - 14)**

To receive the minutes of the meeting of the council held on 27 July 2022 and to authorise the Chairman of the Council to sign them as a correct record.

4. **Chairman's Communications**

5. **Petitions (Pages 15 - 16)**

A petition asking for the path between the Seaview Bridge and the Tram Shelter on Princes Parade has been received and has a total of 284 signatures. As per the petitions scheme, set out in part 4 of the constitution, petitions which receive more than 250 signatures can be presented to a meeting of Full Council.

6. **Questions from the Public**

1. **From Mr Andrew Barchi to Councillor Mrs Hollingsbee, Deputy Leader of the Council and Cabinet Member for Communities**

B.T. is in the process of digitalising its residential tel nos. The effect of this can be to cut off ones lifeline without warning. This has already happened to many 000s. Your lifeline reputation is very good but one emergency call not answered could destroy that. Will you, as Folkestone and Hythe District Council, ask BT give you its forward program so that you & your customers can be warned & central control be prepared? BT will no doubt be very reluctant to do that but you must insist. One death, and you have saved many, would abolish your reputation. There are solutions but they are often individual to each BT customer.

7. **Questions from Councillors**

(Questions can be found on www.folkestone-hythe.gov.uk from noon 2 days before the meeting, on Modern.gov, under the agenda for this meeting).

Up to 45 minutes is allowed for questions from councillors.

8. **Announcements of the Leader of the Council**

To receive a report from the Leader of the Council on the business of the cabinet and on matters that the leader considers should be drawn to the council's attention. The leader shall have 10 minutes to make his announcements.

The opposition group will have an opportunity to reply to the leader's remarks. The opposition group leader shall have 5 minutes to respond after which the Leader of the Council will have a right of reply. Any right of reply will be for a maximum duration of 5 minutes.

9. **Opposition Business**

The Labour Group has raised the following matter:

Council Resolves

- To agree a programme of prospective councillor information and events.
- This programme should include:
 - Both in person and virtual events at various dates and times between now and the deadline for close of applications.
- Events should have officers and councillors in attendance to both answer questions and offer insight into the day to day processes of being a councillor and also hear first hand the pros and cons associated with the life of a councillor.
- A comprehensive package of information detailing (but not limited to)
 - The remit of the council
 - How to become a councillor, election timetables
 - Election processes, expenses, ballot papers etc
 - Councillor Job description
 - New councillor training.
 - Council meetings.
 - Other possible roles/commitments as a councillor.
 - How council decisions are made and a decision making structure
 - Major projects and their implications.
 - Current Plans and Policies
 - A regular communication stream reminding residents of
 - The election in May and key associated dates.
 - The opportunity to become a councillor
 - what the council is responsible for (as opposed to KCC etc)
 - The prospective councillor programme and how to get involved.

Debates on opposition business shall be limited to 30 minutes. If the time limit is reached or the debate concludes earlier, the leader of the group raising the item shall have a right of reply.

The Council shall:

- a) Note the issue raised and take no further action;
- b) Refer the issue to the cabinet or relevant overview and scrutiny committee, as the case may be for their observations before deciding whether to make a decision on the issue;
- c) Agree to examine the matter as part of a future scrutiny programme;
- d) Adopt the issue raised by opposition business provided that the decision so made is within the policy framework and budget.

10. **Motions on Notice**

The following motions have been placed on the agenda in the order received; up to 60 minutes shall be allowed for debates on motions on notice:

1. **From Councillor Whybrow (Green Group)**

Residents are deeply concerned about water quality and the impact of regular wastewater discharge, which includes untreated sewage, into our local rivers and seas and the impact on wildlife and on human health.

Releasing sewage into our seas and rivers is no longer an emergency-only situation occurring as a result of severe storms, but an everyday occurrence even in 'normal' rainfall, and that we are in a situation of cumulative overload on the sewage and wastewater system.

According to the Rivers Trust in 2021 there were 20 spills in our district over a period of 164 hours.

Whilst there are long term commitments, there are no plans in place which will address the immediate unacceptable situation either locally by Southern Water or by national government.

Both the local and national planning policy requires a robust approach to both water quality and pollution and a recent legal opinion from the Environmental Law Firm confirms the need to consider cumulative impact. Yet planning consultation documents show that it has not been the practice of council planners to ask Water Companies to report on cumulative impact i.e. whether or not development may lead to any potential increase in 'emergency' discharge into rivers and seas.

This Council resolves to:

1. Recognise this Council's obligation to protect its rivers and seas, including from the cumulative impacts of pollution,

2. Make sufficient resources available to work proactively with the statutory authorities to ensure that an evidence base is compiled that assesses the cumulative impact of sewage discharge so that this is factored into decisions made in new iterations of the local plan, including the overall level of future development.
3. Seek to better understand the cumulative impact of wastewater discharge including untreated sewage on our local rivers, wildlife and the health of our residents.
4. To take a lead on addressing this issue, working constructively with other agencies.
5. Ask Southern Water, from this date onwards, in its planning consultation responses for major development, to clarify which treatment works will be managing the sewage; whether it has the information available to assess the impact on the number or duration of sewage discharges into local rivers or seas, and if it does have this information to share it (noting that this can only be requested not required).
6. Request that planning officers, from now onwards, include in all reports relating to major development a specific section on the impact on watercourses including the potential for the development to affect sewage outflow into watercourses (i.e. cumulative impact), or to flag if this information is not fully available, so that this information (or the lack of it) is clearly and transparently set out.

11. **Update to the General Fund and Housing Revenue Account Capital Programmes (Pages 17 - 22)**

This report updates the General Fund and Housing Revenue Account Capital Programmes for changes which have occurred since the Council approved the budget for these on 10 and 23 February 2022 respectively. Changes to the Capital Programme, including updated Capital Prudential Indicators, are required to be submitted to full Council for consideration and approval.

12. **Regulation of Investigatory Powers Act 2000 - Policy (Pages 23 - 58)**

This report sets out the Council's policy on the use of directed surveillance and covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

13. **Report to Council on a decision made in accordance with the constitution's call-in and urgency rule (Pages 59 - 60)**

The constitution provides that, when an urgent decision is made by the Cabinet or Cabinet Member, for which any delay in implementation, likely

to be caused by the call-in process, would seriously prejudice the Council's or public interest, then the 'Call-in Rules of Procedure', Part 6.3, rules 1-6 do not apply. Decisions, taken as a matter of urgency, must be reported to the next available meeting of the Council, together with the reasons for urgency.

Declarations of Interest

Disclosable Pecuniary Interest (DPI)

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

Other Significant Interest (OSI)

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

Voluntary Announcement of Other Interests (VAOI)

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

Note to the Code:

Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; where a Member knows a person involved, but does not have a close association with that person; or where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.

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FOLKESTONE AND HYTHE DISTRICT COUNCIL

Minutes for the meeting of the Council held at the Council Chamber - Civic Centre Folkestone on Wednesday, 27 July 2022

Present: Councillors Mrs Ann Berry, Miss Susan Carey, John Collier, Laura Davison, Ray Field, Gary Fuller, Peter Gane, Clive Goddard, David Godfrey, Anthony Hills (Vice-Chair), Mrs Jennifer Hollingsbee, Nicola Keen, Michelle Keutenius, Jim Martin, Philip Martin (Chairman), Connor McConville, Jackie Meade, Ian Meyers, David Monk, Terence Mullard, Stuart Peall, Tim Prater, Patricia Rolfe, Rebecca Shoob, Douglas Wade, David Wimble and John Wing

Apologies for Absence: Councillors Georgina Treloar and Lesley Whybrow

15. **Declarations of Interest**

There were no declarations of interest at the meeting.

16. **Minutes**

The minutes of the meeting held on 30 March 2022 were submitted, approved and signed by the Chairman.

17. **Chairman's Communications**

The Chairman gave an update on the events he had attended recently, which included:

1. Normandy Vets - Sandgate Road Garden Remembrance,
2. Lydd Club Day,
3. Annual Civic Service - New Romney,
4. Armed Services Flag Raising - Civic Centre,
5. Armed Service - Folkestone Town Centre Luncheon,
6. Civic Service - Sevenoaks Town,
7. Canada Day Service - Shorncliffe Cemetery,
8. LCH Concert,
9. District of Sevenoaks Civic Service,
10. This week he would be attending the New Romney Country Fair.

18. **Petitions**

There were no petitions to be presented.

19. **Questions from the Public**

The questions asked, including supplementary questions (if any), and the answers given are set out in Schedule 1, appended to these minutes.

20. **Questions from Councillors**

The questions asked, including supplementary questions (if any), and the answers given are set out in Schedule 2, appended to these minutes

21. **Announcements of the Leader of the Council**

The Leader gave the following announcements:

“Thank you Chairman and good evening to you all.

Tonight I want to continue to talk about the chaos on our roads last weekend which actually started Friday morning. There were two major causes of the disruption firstly a severe incident on the M20 which had to be closed and so the traffic was diverted off onto our local roads.

I went into Folkestone from Densole on that morning and at that time there were two lanes of mainly lorries at a virtual standstill on the A260 Canterbury Road Hill, I thought that I would be clever and come back via junction 12, go up Beachborough Hill and through Lyminge, but the junction was gridlocked with traffic moving at a snail’s pace trying to access the North bound M20. After about an hour and covering 600yards I was able to escape through Peene to East Hawkinge and then onto home. I have just described this to give you some idea of the magnitude of the situation. I was stuck in it for about an hour, pity the people trying to access the tunnel and ferries who took up to 21 hours before they got away partly caused because at the start of the day only 4 of the French customs check points were manned.

Our officers were put on alert Friday morning and worked throughout the weekend to assist the Kent Resilience Forum and Kent Police.

This situation clearly cannot be tolerated, every time there is a holiday rush, there are severe weather conditions, customs delays or strike action. A comprehensive plan to alleviate the traffic congestion must be compiled.

The Leader of Dover District Council, Councillor Trevor Bartlett and myself have co-signed a letter to the Government demanding that they invest in East Kent’s road network including finishing the dualling of the A2 and sorting out Brenley Corner, developing a nationwide network of lorry parks, and create “Smart” travel corridors and efficient borders using new technology. In the meantime to provide greater resources to the Kent Resilience Forum and Kent Police so as to manage more effectively the disruption of our roads and enable proper welfare facilities to be provided.

Having said all of this, whilst travelling around Folkestone was a complete nightmare, I am able to report that not a single resident contacted our out of hours emergency lifeline 365 control centre nor any of our Community Hubs requesting immediate emergency support. I would remind members and our residents that these support routes are available should there be a need for immediate help that can’t be provided by the blue light services.

Lifeline can be contacted 24/7 (on 01303 242615) and during normal working hours:

Folkestone Community Hub (01303 316186).
Hythe Community Hub (01303 269602).
New Romney Community Hub (01797 208590).

It is my belief that the Kent Resilience Forum, Kent Police and our officers worked flat out to try and contain an impossible situation and I would like to thank them for their dedication.

I welcome Councillor Keutenius's agreement to get the Overview and Scrutiny committee to hold a special meeting on this subject, I know that it exercises all of our minds".

Councillor McConville, on behalf of the Opposition, responded to the points raised and stated that he had also experienced the diabolical traffic situation. He requested that Stagecoach be included in any discussions, as the bus service had been deeply impacted. The bus station live information had not reflected what buses were cancelled, and the length of time buses were taking.

The Leader responded that he would of course ensure Stagecoach were included in any discussion, but stated that he was sympathetic to the nightmare situation they were facing.

Proposed by Councillor Monk,
Seconded by Councillor Mrs Hollingsbee; and

RESOLVED:

That the announcements of the Leader be noted.

(The recommendations were approved by affirmation of the meeting).

22. **Opposition Business**

The Leader of the Labour Group, Councillor McConville, set out the Opposition Business which related asked that a cost of living emergency be declared for Folkestone and Hythe.

Proposed by Councillor McConville,
Seconded by Councillor Keutenius; and

RESOLVED:

That Option (c) (agree to examine the matter as part of a future scrutiny programme) be agreed for the business below:

- To declare a cost-of-living emergency for Folkestone and Hythe.
- To build on the good work the council already carries out with regards to its collaboration with the voluntary sector and convene a cost-of-living summit

within the district by October, looking at every possible way in which residents can be assisted through what will be a very tough winter.

This summit should involve all the voluntary organisations within the district who currently provide assistance to residents. As well as key organisations such as Kent Police, Citizens Advice, local GP's, and the district school network.

The summit should provide a blueprint for residents to manage through the cost-of-living emergency with regards to, education, funding, and awareness.

- To both lobby our local MP and call on the leader of the council to write to the secretary of state for work and pensions for the following:
 - Immediately restore the Universal Credit supplement of £20, which was cancelled by the Government in September 2021.
 - To increase the rate of universal credit and other support payments to a sum which is appropriate to the current level of inflation.

(Voting figures: 27 for, 0 against, 0 abstentions).

23. **Motions on Notice**

1. Councillor Gane, Liberal Democrat Group, set out his motion which requested related to the disrepair of the White Lion Public house building.

Proposed by Councillor Gane,
Seconded by Councillor Keen;

That FHDC use compulsory purchase powers, or any other powers available and appropriate, to buy the building and redevelop the site.

In accordance with the council procedure rule 17.5, five members present demanded a recorded vote.

FOR: Councillors Davison, Fuller, Gane, Keen, Keutenius, J Martin, McConville, Meade, Prater, Shoob, Wade and Wing (12).

AGAINST: Councillors Miss Carey, Collier, Field, Goddard, Godfrey, Hills, Mrs Hollingsbee, P Martin, Meyers, Monk, Mullard, Rolfe, Peall and Wimble (14).

ABSTENTIONS: Councillor Mrs Berry (1).

(Voting figures: 12 for, 14 against, 1 abstentions).

The motion was therefore **LOST**.

Following the vote on this item, Councillor Miss Carey left the meeting.

2. As Councillor Whybrow had given apologies for the meeting, the Motion she had proposed fell, and would be resubmitted to the next meeting of the Council.

24. Flexible Use of Capital Receipts Strategy 2022/23

The report sought Council approval regarding the Flexible Use of Capital Receipts Strategy for 2022/23 in accordance with the Department for Levelling Up, Housing and Communities latest guidance.

Proposed by Councillor Monk,
Seconded by Councillor Mrs Hollingsbee; and

RESOLVED:

1. That report C/22/14 be received and noted.
2. That the Flexible Use of Capital Receipts Strategy for 2022/23 be approved.

(Voting figures: 17 for, 9 against, 0 abstentions).

25. Folkestone and Hythe District Council's Financial Contribution to the council's levelling up fund round 2 application

The report sought agreement for the Council to allocate funding for the 10% financial contribution required by the government for the council's Levelling Up Fund application.

Proposed by Councillor Monk,
Seconded by Councillor McConville; and

RESOLVED:

1. That report A/22/15 be received and noted.
2. That funds be allocated as outlined in paragraph 2.5 of the report to provide the 10% match funding financial contribution for the Folkestone – A Brighter Future project which is the subject of a round 2 Levelling Up Fund application to government.
3. That the Medium Term Capital Programme be updated following a successful submission for Levelling Up Fund to include the total award for the scheme.

(Voting figures: 25 for, 0 against, 1 abstention).

26. Review of Political Balance and Committee Membership

The report set out a summary of the need to review the political balance and membership of committees following the resignation of Councillor Brook to

leave the Conservative Group and join the Folkestone and Hythe Independent Group, and Councillor Gane to leave the Conservative Group and join the Liberal Democrat Group.

Proposed by Councillor Monk,
Seconded by Councillor Wimble; and

RESOLVED:

1. **That report A/22/13 be received and noted.**
2. **That the results of the review into the political proportionality of the Council and allocation of committee seats on a politically proportionate basis be noted.**
3. **That Councillor Field be appointed as Vice-Chairman of the Personnel Committee.**

(Voting figures: 26 for, 0 against, 0 abstentions).

27. **Report to Council on a decision made in accordance with the constitution's call-in and urgency rule**

The constitution provides that, when an urgent decision is made by the Cabinet or Cabinet Member, for which any delay in implementation, likely to be caused by the call-in process, would seriously prejudice the Council's or public interest, then the 'Call-in Rules of Procedure', Part 6.3, rules 1-6 do not apply. Decisions, taken as a matter of urgency, must be reported to the next available meeting of the Council, together with the reasons for urgency.

Proposed by Councillor Monk,
Seconded by Councillor Mrs Hollingsbee; and

RESOLVED:

That report A/22/12 be received and noted.

(The recommendations were agreed by affirmation of the meeting).

Agenda Item 5

This Report will be made public on 20 September 2022



Report Number **A/22/19**

To: Council
Date: 28 September 2022
Status: Non - executive decision
Responsible Officer: Susan Priest, Chief Executive

SUBJECT: PETITION FOR THE PATH BETWEEN SEAVIEW BRIDGE AND THE TRAM SHELTER ON PRINCES PARADE TO REMAIN OPEN

SUMMARY: A petition asking for the path between the Seaview Bridge and the Tram Shelter on Princes Parade has been received and has a total of 284 signatures. As per the petitions scheme, set out in part 4 of the constitution, petitions which receive more than 250 signatures can be presented to a meeting of Full Council.

RECOMMENDATIONS:

1. To receive and note report A/22/19.
2. To consider the options set out in paragraph 2.1 of the report.

1. INTRODUCTION

1.1 A paper petition was submitted by Chris Farrell on 3 August 2022. The petition received 284 signatures.

1.2 The subject of the Petition is set out below:

'We, the undersigned, request that the path between the first bridge (Seaview Bridge) and the tram shelter remains accessible after work is completed daily and at weekends.'

1.3 The petition was submitted by Chris Farrell, a resident of the district.

2. POSSIBLE RESPONSES TO THE PETITION

2.1 As per the Petitions Scheme, set out in part of 4 of the constitution, members should make one of the following decisions shown below:

- a) Note the petition and take no further action;
- b) Refer the petition to the Cabinet or the Overview and Scrutiny Committee, as the case may be, for their observations before deciding whether to examine the issues raised by the petition;
- c) Agree to examine the issues raised by the petition, by debate, at the meeting or a future meeting;
- d) Agree to examine the issues raised by the petition, as part of a future scrutiny programme.

3. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

3.1 Legal Officer's Comments (AK)

Any legal issues are covered in the main body of the report.

3.2 Finance Officer's Comments (CS)

There are no financial implications to this report.

3.3 Diversities and Equalities Implications (GE)

There are no equality or diversity issues arising as a result of the report.

3. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

Jemma West, Democratic Services Senior Specialist
Phone: 01303 853 369
Email: Jemma.west@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report:
None.

This Report will be made public on 20 September 2022

Report Number **A/22/17**

To: Council
Date: 28 September 2022
Status: Key Decision
Head of Service: Charlotte Spendley – Director of Corporate Services
Cabinet Member: Councillor David Monk, Leader and Portfolio Holder for Finance
Councillor David Godfrey – Cabinet Member for Housing and Special Projects

SUBJECT: UPDATE TO THE GENERAL FUND AND HOUSING REVENUE ACCOUNT CAPITAL PROGRAMMES

SUMMARY: This report updates the General Fund and Housing Revenue Account Capital Programmes for changes which have occurred since the Council approved the budget for these on 10 and 23 February 2022 respectively. Changes to the Capital Programme, including updated Capital Prudential Indicators, are required to be submitted to full Council for consideration and approval.

RECOMMENDATIONS:

1. To receive and note report A/22/17.
2. To approve the changes to the General Fund and Housing Revenue Account Capital Programmes outlined in section 2 of the report.
3. To approve the updated Capital Prudential Indicators outlined in section 3 of the report.

1. INTRODUCTION AND BACKGROUND

- 1.1 Full Council approved the current General Fund Medium Term Capital Programme (MTCP) for the rolling five year period to 31 March 2027 on 10 February 2022 (minute 57 refers) and the Housing Revenue Account (HRA) Capital Programme for 2022/23 on 23 February 2022 (minute 68 refers). Since then, one new capital scheme has come forward for inclusion in the MTCP. There are also two schemes originally included as growth items as part of the Budget Strategy for 2022/23 approved by full Council on 10 February 2022 (minute 56 refers) that were not fully reflected in the MTCP. Additionally, this report seeks approval to increase the budget for the Ship Street Development in Folkestone which includes an element to be met by the HRA capital programme.
- 1.2 This report summarises the impact to the MTCP from these changes, including capital financing, and outlines amendments required to the Capital Prudential Indicators from this. Full Council approval is required for the changes proposed in the report.

2. CAPITAL PROGRAMME CHANGES

- 2.1 The proposed changes to the MTCP are summarised below:

i) Play Area Improvements (new scheme)

Proposed Budget	£176,000
Capital Funding = Grant	£164,000
Capital Funding = Section 106	<u>£12,000</u>
Total Capital Funding	<u>£176,000</u>

Scheme initially reported to Cabinet in the General Fund Capital Budget Monitoring 2021/22 report on 26 April 2022 (minute 101 refers). The Council has been awarded £164k from the Contain Outbreak Management Fund (COMF) to use towards community parks. The three sites identified as being strategically important play areas for improvement are:-

- Oak Drive Play Area, St Mary's Bay
- Morehall Recreation Ground, Folkestone (FPPG Charity)
- Cheriton Recreation Ground, Folkestone (£12k of Section 106 monies also to be applied towards this site)

The improvement works for these sites were commissioned earlier this year and have now been completed.

ii) Website Content Management System (CMS) Replacement (growth item)

Budget	£130,000
Capital Funding = Capital Receipts	£130,000

This scheme, to support the digital delivery of services, is to be funded under the Flexible Use of Capital Receipts guidance.

iii) ICT Improvement Costs (growth item)

Full Budget	£314,000
Budget already approved	<u>£192,000</u>
Additional budget to approve	£122,000
Capital Funding = Capital Receipts	£122,000

This scheme, to support the digital delivery of services through the migration of Revenues and Benefits system to an externally hosted service, is to be funded under the Flexible Use of Capital Receipts guidance.

2.2 Members are reminded that full Council approved the Flexible Use of Capital Receipts Strategy 2022/23 on 27 July 2022 (minute 24 refers), and both the Website CMS and ICT Improvement schemes were identified within it to be funded by capital receipts under the guidance.

2.3 Ship Street Development

2.3.1 At the time of writing this report, Cabinet, on 21 September 2022, was due to consider and approve the ***'Ship Street Development – Next Steps'*** report (report number C/22/38 refers) outlining what needs to be done next to progress the redevelopment of the Ship Street site in Folkestone.

2.3.2 In summary, the report outlines that public funding is required to remediate the Ship Street site. The optimum means to secure funding to produce a methodology and plan for the remediation of the site is by making a planning application for a residential led scheme. By doing so, the Council can retain control of this critical housing led regeneration project and de-risk the site. It is proposed the Council will appoint a design team to develop the scheme to RIBA stage 3 and submit a full planning application. To achieve this, the Council will procure a design led team using the Homes England Multi-Disciplinary framework.

2.3.3 The estimated cost of the professional fees to appoint the design team including the associated consultants to get to RIBA stage 3 and submit a planning application are c.£500K. Cabinet has previously agreed a budget for Ship Street of £230K. Approximately £120K of this has been spent on site investigation works, wall surveys, site management, consultants, initial capacity studies and a resident engagement event. This leaves approximately £110K of available budget. Homes England have offered funding of £60K towards the design development of the scheme.

2.3.4 Council is asked to provide a further £350K to cover the additional sums required for the design team and planning submission and a small contingency, to be split 70% to the **General Fund (£245K)** and 30% to the **HRA (£105K)** in line with the original site acquisition. The £350K can be met from capital receipts earmarked for the General Fund and HRA respectively. A further report will be made to Cabinet on the proposed development of the site after planning permission has been granted.

3. UPDATE TO CAPITAL PRUDENTIAL INDICATORS 2022/23

- 3.1 As a result of the changes to the capital programmes outlined above, the Chartered Institute of Public Finance and Accountancy's (CIPFA) Prudential Code requires full Council to approve revised prudential indicators for capital expenditure and financing. In addition to the changes to the MTCP outlined above, the prudential indicators will need to reflect the reprofiling of capital expenditure from 2021/22 to 2022/23, reported to Cabinet on 16 June 2022 in the General Fund Capital Programme Provisional Outturn 2021/22 report (minute 4 refers).
- 3.2 The revised estimate of capital expenditure planned for 2022/23 is summarised in table 1, below:

Table 1: Prudential Indicator – Estimate of Capital expenditure

	2022/23 Approved Budget	Reprofiled Budget from 2021/22	Budget Changes	2022/23 Revised Budget
	£m	£m	£m	£m
General Fund services	21.671	1.993	0.673	24.337
Council housing (HRA)	14.697	-	0.105	14.802
Capital investments	14.342	6.123	-	20.465
TOTAL	50.710	8.116	0.778	59.604

- 3.3 The revised estimate of capital financing for 2022/23 is summarised in table 2, below:

Table 2: Prudential Indicator – Estimate of Capital Financing

	2022/23 Approved Budget	Reprofiled Budget from 2021/22	Budget Changes	2022/23 Revised Budget
	£m	£m	£m	£m
External sources	6.168	1.415	0.176	7.759

Own resources	22.268	0.388	0.602	23.258
Debt	22.274	6.313	-	28.587
TOTAL	50.710	8.116	0.778	59.604

3.4 None of the other existing approved capital prudential indicators are affected by the proposed changes to the capital programmes and, therefore, are excluded from this report.

4. CONCLUSIONS

4.1 Full Council approval is required for the changes to the General Fund and HRA capital programmes outlined above.

5. RISK MANAGEMENT ISSUES

5.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
Capital resources not available to meet the cost of the new projects.	High	Low	Schemes supported by grant funding will only commence once fully approved and committed by the relevant body. Revenue resources required to fund capital expenditure are covered by Earmarked Reserves and have been factored into the Council's medium term financial planning
Cost of new projects may exceed the estimate.	High	Medium	Capital monitoring procedures in place allowing prompt early action to be taken to manage the risk effectively.
Non-compliance with the requirements of the Prudential Code	High	Low	Approval of this report meets the requirements of the Prudential Code

6. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

6.1 Legal Officer's Comments (NM)

There are no legal implications arising directly out of this report. Part 1 of the Local Government Act 2003 gives the Council the power to borrow and to invest for any purpose relevant to its functions or for the purposes of the prudent management of its financial affairs. It also requires the Council to act prudently when carrying out these activities, including an obligation to determine and keep under review how much money it can borrow. In addition, the Council is required by the Local Government Finance Act 1992 to produce a balanced budget. Generally the Council must take into account its fiduciary duties to local tax payers and its continuing obligation to ensure it has the funding required to perform its statutory undertakings.

6.2 Finance Officer's Comments (LW)

This report has been prepared by Financial Services. There are no further comments to add.

6.3 Diversities and Equalities Implications

The report does not cover a new service or policy or a revision of either and therefore does not require an Equality Impact Assessment.

6.4 Climate Change Implications (AT)

There are no climate change implications arising directly from this report. It updates Cabinet on this position following decisions taken at Cabinet and Full Council. Climate change implications of the projects referenced in the report will be assessed as part of the development and implementation phases of those projects through the appropriate decision-making process

6.5 Communication Officer's Comments (KA)

There are no communication issues arising directly from this report.

7. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

Lee Walker, Capital and Treasury Senior Specialist
Tel: 01303 853593. e-mail: lee.walker@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report:

None

This report will be made public on 20 September 2022



Report Number **A/22/18**

To: Council
Date: 28th September 2022
Status: Non Executive Decision
Responsible Officer: Amandeep Khroud – Assistant Director – Governance and Law

SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT 2000 – POLICY

SUMMARY: This report sets out the Council's policy on the use of directed surveillance and covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.

REASON FOR RECOMMENDATIONS:

Full Council is asked to agree the recommendations set out below to and to approve the policy. This policy forms part of the Policy Framework as set out in the constitution.

RECOMMENDATIONS:

1. To receive and note report A/22/18.
2. To approve the RIPA policy and procedure in appendix 1 to this report.

1. INTRODUCTION

- 1.1 Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) puts covert surveillance on a statutory basis enabling public authorities identified in the legislation to carry out surveillance operations without breaching the Human Rights Act 1998.
- 1.2 A number of statutory instruments and codes of practice published by the Home Office govern the operation of RIPA; the most recent came into effect in October 2012.
- 1.3 Organisations using RIPA are subject to regular inspection by the Investigatory Powers Commissioner's Office. Previously this was undertaken by the Office of Surveillance Commissioners (OSC) however on 1 September 2017 the OSC were merged with the Interception of Communications, and Intelligence Services Commissioners to form the new regulator.
- 1.4 A last desk top inspection was carried out on 29 April 2020 which demonstrated that Folkestone and Hythe District Council was compliant with the requirements of RIPA legislation.

2. REPORTING REQUIREMENTS

- 2.1 The guidance states:

“elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.”

- 2.2 This report sets out the policy and seeks Full Council's endorsement of it.

3. BRIEF OVERVIEW OF RIPA

- 3.1 The Act enables senior officers within public authorities to authorise Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS). These authorisations can however only take effect once approved by a Magistrate.

- 3.2 The following sections give a brief overview of the types of surveillance:-

a) Directed Surveillance

RIPA defines Directed Surveillance as surveillance that is covert but not intrusive. Directed Surveillance must relate to a specific investigation or operation and is surveillance that is likely to result in obtaining private information about someone, including the target of the investigation or operation. Private information includes any aspect of a person's private or

personal relationships with others, including family and professional/business relationships.

Directed Surveillance is usually planned surveillance. There is provision, in urgent cases, for an authorisation to be applied for and granted in exceptional circumstances (i.e. where the time taken to apply in writing would, in the judgment of the Authorising Officer, be likely to jeopardise the operation). In such circumstances unless renewed, the authorisation will cease to have effect after seventy-two hours.

b) Covert Human Intelligence Sources (CHIS).

RIPA defines a Covert Human Intelligence Source (CHIS) as a person (source) who establishes and/or maintains a personal or other relationship with a person for the purpose of: covertly using the relationship to obtain information or to provide another person with access to information or, covertly disclosing information obtained through the relationship. A CHIS is deployed in a manner intended to ensure that the target is unaware of the investigation or the purpose of the relationship between the source and the target.

The Council has never sought to make use of the CHIS provision. The Policy requires that if the use of CHIS is being contemplated, the officers concerned should seek the appropriate advice from other organisations that more commonly use CHIS surveillance, such as the Police.

3.3 The council can only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. These latter offences would, in any event, be matters for Kent County Council trading standards.

3.4 The Council may only authorise directed surveillance where it is both necessary and proportionate to the investigation or operation being undertaken and to what is being sought to achieve in terms of evidence gathering. The Authorising Officers have a key role in carefully scrutinising all applications for the use of RIPA powers under a specific authorisation. Authorising Officers must ensure that authorisations are granted only in appropriate cases and that the extent of all authorisations are clearly set out.

3.5 The last authorisation for directed surveillance was granted on 1 June 2012.

4. THE POLICY

4.1 The policy is attached as shown in the Appendix 1.

5. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

5.1 Legal Officer's Comments

The RIPA codes of practice advises that the elected members of a local authority should set the RIPA policy at least once a year. This is reflected in the council's RIPA policy.

5.2 Finance Officer's Comments (CS)

There are no direct financial implications arising from this report

5.3 Diversities and Equalities Implications

No implications arising directly from this report.

6. CONTACT OFFICER AND BACKGROUND DOCUMENTS

Councillors with any questions arising from this report should contact the following officer prior to the meeting:

Amandeep Khroud – Assistant Director – Governance, Law and Regulatory Services

Telephone: 01303 853253

E-mail: Amandeep.khroudl@folkestone-hythe.gov.uk

The following background documents have been relied upon in the preparation of this report:

None

Appendices:

Appendix 1: RIPA Policy and Procedure

FOLKESTONE & HYTHE DISTRICT

COUNCIL

Regulation of Investigatory Powers Act

2000 (RIPA)

RIPA Policy and Procedures

Issue [15]

Assistant Director (Governance, Law and Regulatory Services)
The Civic Centre
Castle Hill Ave
Folkestone
Kent CT20 2QY

Approved CLT [date]

Contents

1	Introduction	3
2	Policy Statement	3
3	Roles and Responsibilities of Corporate Directors, Heads of Service, Senior Authorising Officers, Authorising Officers, the RIPA Monitoring Officer and the Senior Responsible Officer	3
4	General Information on RIPA	7
5	When is RIPA authorisation available?	7
6	What RIPA Does and Does Not Do	8
7	Types of Surveillance	8
8	Conduct and CHIS	13
9	Acquisition of Communications Data	15
10	Authorisation Procedure	15
11	Working With / Through Other Agencies	19
12	Record Management	20
13	Reporting Arrangements	20
14	Concluding Remarks	20
	Appendix 1 – list of senior/authorising officers and the RIPA management structure	22
	Appendix 2 – flow chart for directed surveillance and CHIS	25
	Appendix 3 – notes for the use and management of CHIS	26
	Appendix 4 – CHIS awareness diagram	27
	Appendix 5 – codes of practice	28
	Appendix 6 – directed surveillance forms	28
	Appendix 7 – CHIS forms	28
	Appendix 8 – Judicial approval protocol	28

1. Introduction

This Policy is the framework on which the Council applies the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA) as it relates to covert surveillance. Certain covert powers under RIPA and the Investigatory Powers Act 2016 (IPA) are available to local authorities and can be used in appropriate circumstances in accordance with the requirements of the legislation to support the delivery of their functions. The Investigatory Powers Commissioner's Office (IPCO) oversees the use of covert powers under RIPA by local authorities.

This Policy must be read in conjunction with the Home Office Codes of Practice on Covert Surveillance and Property Interference and Covert Human Intelligence Sources. Covert surveillance should be used only rarely and in exceptional circumstances. Copies of the Home Office Codes of Practice are available on their [website](#). The Home Office website should be consulted regularly from time to time to ensure that the correct versions of the Codes of Practice are being used.

RIPA and this Policy are important for the effective and efficient operation of the Council's actions with regard to covert surveillance and Covert Human Intelligence Sources. The RIPA Monitoring Officer will therefore keep this Policy under annual review.

The RIPA Monitoring Officer is responsible for keeping the RIPA forms up to date and for checking the Home Office website and Codes of Practice. The RIPA Monitoring Officer will also be responsible for submitting a report on a three monthly basis to the Cabinet on the Council's use of RIPA if the Council has used RIPA during the previous three months. The RIPA Monitoring Officer is also responsible for submitting an annual report to Cabinet on this Policy and, if relevant, the Council's use of RIPA.

Authorising Officers must bring any suggestions for continuous improvement of this Policy to the attention of the RIPA Monitoring Officer at the earliest possible opportunity. If any of the Home Office Codes of Practice change, this Policy will be amended accordingly.

2. Policy Statement

The Council takes seriously its statutory responsibilities and will, at all times, act in accordance with the law and take necessary and proportionate action in these types of matters. In that regard, the Corporate Leadership Team is duly authorised by the Council to keep this Policy up to date and to amend, delete, add or substitute relevant provisions as necessary. The Cabinet will, if the Council has used RIPA, receive the RIPA Monitoring Officer's report every three months. The report will set out the surveillance carried out (though without revealing details of specific operations) and, if appropriate, reporting alterations to this Policy. An annual report will be submitted to Cabinet on this Policy setting out any alterations since the last report.

It is the policy of the Council that where RIPA applies (see below) surveillance should only be carried out in accordance with this Policy. This Policy covers the use of directed surveillance, intrusive surveillance and the deployment of Covert Human Intelligence Sources by the Council. These types of surveillance are set out in greater detail in paragraph 7 (Types of Surveillance) below.

Where RIPA does not apply, surveillance may properly be carried out provided that the

appropriate rules and procedures are followed. For example, surveillance connected with an employment issue will have to be carried out in accordance with the Data Protection Act 2018 and the various HR policies. The Council has also adopted a Non-RIPA Authorisation Policy¹ which Officers must follow for surveillance which falls outside of RIPA. Advice on non-RIPA surveillance should be sought from legal services or HR as appropriate.

Roles and Responsibilities of Corporate Directors, Assistant Directors, Chief Service Officers, Senior Authorising Officers, Authorising Officers, Senior Responsible Officer and the RIPA Monitoring Officer

This section sets out the various roles and responsibilities in relation to the use of RIPA.

It is essential that Corporate Directors, Assistant Directors, Chief Service Officers and Authorising Officers take personal responsibility for the effective and efficient operation of this Policy and the implementation of RIPA in their departments.

Roles

Authorising Officer

An Authorising Officer is a person who considers whether or not to grant an application to use directed surveillance. He/she must believe the activities to be authorised are necessary for the purposes of preventing or detecting crime and that they are proportionate to what is sought to be achieved by carrying them out. The authorisation is then subject to judicial approval.

An Authorising Officer may not, except in case of urgency, consider an application to use directed surveillance if the Applying Officer is an Officer in his/her service area or the Authorising Officer has direct involvement with the operation.

Senior Authorising Officer

A Senior Authorising Officer is a person responsible for considering whether or not to grant an authorisation where confidential information is likely to be obtained or for use of a CHIS.

Senior Responsible Officer

The Senior Responsible Officer has overall responsibility for the use and operation of RIPA within the Council, and oversees the competence of Authorising Officers and the processes in use in the Council. The Senior Responsible Officer is not an Authorising Officer as it would be inappropriate to oversee his / her own authorisations. The Senior Responsible Officer should be a member of the Corporate Leadership Team.

Specifically the Senior Responsible Officer will be responsible for:

- The integrity of the processes in place within the Council for the management of CHIS and directed surveillance;

- Compliance with the statutory provisions and Codes of Practice;
- Training or arranging training for Authorising Officers, together with the RIPA Monitoring Officer;
- Ensuring Officers generally understand provisions relating to covert surveillance and Covert Human Intelligence Sources;
- Engagement with the IPCO inspectors when they conduct their inspections;
- Overseeing the implementation of any post-inspection action plans approved by the relevant oversight Commissioner;
- Ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in IPCO inspection reports; and
- Addressing any concerns raised within an IPCO inspection report.

RIPA Monitoring Officer

The RIPA Monitoring Officer has:

- The duty to maintain the list of Authorising Officers;
- The power to suspend from the list of Authorising Officers any Authorising Officer who does not follow the procedure or who does not attend training sessions; and
- The power to cancel any authorisation that is manifestly wrong.

Responsibilities

Assistant Directors and Chief Service Officers are responsible for ensuring their relevant members of staff are suitably trained as 'Applying Officers' so as to avoid common mistakes appearing on forms for RIPA authorisations.

Assistant Directors and Chief Service Officers will also ensure that staff who report to them follow this Policy and do not undertake or carry out any form of surveillance governed by RIPA without first obtaining the relevant authorisations in compliance with this Policy. Wilful failure to follow this Policy will constitute gross misconduct under the Council's HR policies.

Corporate Directors, Assistant Directors, Chief Service Officers, Senior Authorising Officers and Authorising Officers must also pay particular attention to health and safety issues that may be raised by any proposed surveillance activity. Under no circumstances should Assistant Directors or Chief Service Officers permit an application to be made unless, and until, s/he is satisfied that the health and safety of Council employees/agents is suitably addressed and/or risks minimised, so far as is possible, and proportionate to/with the surveillance being proposed. It is the responsibility of the Applying Officer (i.e. the person who applies to the Authorising Officer to use the Council's RIPA powers) to carry out any risk assessment and complete a written risk assessment if necessary. **If a Head of Service is in any doubt s/he should obtain prior guidance on the same from a Corporate Director, the Council's Health & Safety Officer or the RIPA Monitoring Officer.**

Authorising Officers must acquaint themselves with the relevant Codes of Practice issued by the Home Office regarding RIPA. Any failure to comply exposes the Council to unnecessary legal risks and criticism from the IPCO. All stages of the process (application, review, renewal and cancellation) must be promptly dealt with.

Coming across **confidential information** during surveillance must be given prior thought before any applications are made or authorised, as failure to do so may invalidate the admissibility of any evidence obtained. Furthermore, thought must be given before any forms are signed to the retention and disposal of any material obtained under a RIPA

authorisation. Where confidential information is likely to be obtained through covert surveillance, the application must be authorised by a Senior Authorising Officer.

The Authorising Officer must ensure proper regard has been given to **necessity and proportionality** before any applications are authorised. 'Stock phrases' or cut and paste narrative must be avoided at all times as the use of the same may suggest that insufficient detail had been given to the particular circumstances of any person likely to be the subject of the surveillance. Any **equipment** to be used in any approved surveillance must also be properly controlled, recorded and maintained for audit purposes.

Authorising Officers must ensure that reviews are conducted in a timely manner and that cancellations and renewals are effected before the authorisation ceases to have effect. Best practice for Directed Surveillance is that a review should be carried out no more than 4 weeks after the grant of authorisation.

The RIPA Monitoring Officer shall have responsibility for maintaining, updating and enforcing this Policy. S/he, in conjunction with the Senior Responsible Officer, shall also be responsible for the provision of adequate training to Authorising Officers and Applying Officers and for ensuring that no authorisations shall be granted unless the Authorising Officer has received such training.

The RIPA Monitoring Officer shall also ensure that adequate records are maintained in accordance with the relevant and current Codes of Practice and also to check that reviews are conducted in a timely manner and that cancellations and renewals are effected before the authorisation ceases to have effect.

The RIPA Monitoring Officer's contact details are set out in Appendix 1 of this Policy.

4. RIPA – General Information

The Human Rights Act 1998 (which brought much of the European Convention on Human Rights and Fundamental Freedoms 1950 into UK domestic law) requires the Council, and organisations working on its behalf, pursuant to Article 8 of the European Convention, to respect the private and family life of citizens, his/her home and his/her correspondence.

The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council **may** interfere in the citizen's right mentioned above, **if** such interference is:

- (a) **In accordance with the law;**
- (b) **Necessary** (see below); **and**
- (c) **Proportionate** (see below).

RIPA provides a statutory mechanism (i.e. in accordance with the law) for authorising **covert surveillance** and the use of a '**Covert Human Intelligence Source**' (**CHIS**) e.g. undercover agents. It now also permits public authorities to compel telecommunications and postal companies to obtain and release communications data to themselves in certain circumstances. It works to ensure that **any** interference with an individual's right under Article 8 of the European Convention is **necessary** and **proportionate**. In doing so, RIPA seeks to ensure both the public interest and the human rights of individuals are suitably balanced.

Directly employed Council staff and external agencies working for the Council are covered

by RIPA while they are working for the Council. All external agencies must therefore comply with RIPA and the work carried out by agencies on the Council's behalf must be properly authorised by one of the **Council's Authorising Officers**. It is the responsibility of the contracts manager to ensure that external agencies comply with this Policy. Authorising Officers are listed in **Appendix 1** to this Policy.

If the correct procedures are **not** followed, the courts may disallow evidence; a complaint of maladministration could be made to the Ombudsman; the Council could be the subject of an adverse report made by the IPCO; and the Human Rights Act 1998 provides a cause of action for damages and/or an injunction against the Council should it be proven that the Council's actions amount to an unwarranted interference with human rights. Such action would not, of course, promote the good reputation of the Council and will, undoubtedly, be the subject of adverse press and media interest. In addition wilful failure to follow this Policy could constitute gross misconduct under the Council's HR policies. **It is essential, therefore, that all involved with RIPA comply with this Policy and any further guidance that may be issued.**

Flowcharts of the procedures to be followed appear at **Appendix 2** for Directed Surveillance and for CHIS.

5. When is RIPA authorisation available?

RIPA authorisation is only appropriate for surveillance which relates to the "core functions" of the Council and is for the purpose of preventing or detecting crime.

The core functions of the Council are defined as its "specific public functions" as opposed to its "ordinary functions". The ordinary functions are those functions which any public authority carries out e.g. employment of staff or entering into contractual agreements.

Surveillance, whether overt or covert, related to ordinary functions is not governed by RIPA and RIPA does not prohibit such activity. The Council has adopted a policy covering the authorisation of surveillance which is not covered by RIPA. The policy can be found [here](#). Advice on such surveillance should be sought from Legal Services and HR as appropriate.

Authorisations for both directed surveillance and CHIS are also subject to judicial approval, meaning that the Council must obtain the approval of the Magistrates' Court for any grant or renewal of a RIPA authorisation. The Magistrates' Court will only approve an authorisation where satisfied that the statutory tests have been met, and that the use of the technique is necessary and proportionate. Surveillance cannot commence until this approval has been obtained (see paragraph 10 below for further detail).

Through the application of authorisation procedures and Magistrates' Court approval, RIPA ensures that a balance is maintained between the public interest and the human rights of individuals.

6. What RIPA does and does not do:

RIPA does:

- require prior authorisation of directed surveillance;
- prohibit the Council from carrying out intrusive surveillance;

- compel disclosure of communications data from telecom and postal service providers;
- require authorisation of the conduct and use of a CHIS;
- require safeguards for the conduct and use of a CHIS; and
- permit the Council to obtain communications records from communications service providers.

RIPA does not

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

If the Authorising Officer or any Applying Officer is in any doubt, s/he should ask the RIPA Monitoring Officer BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.

7. Types of Surveillance

'Surveillance' includes:

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

Surveillance can be overt or covert.

Overt Surveillance

Most of the surveillance carried out by the Council will be done overtly; there will be nothing secretive, clandestine or hidden about it. In many cases, officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a market inspector walking through markets).

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

Covert Surveillance

Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place (section 26(9) (a) of RIPA). Generally covert surveillance cannot be used if there is reasonably available an overt means of finding out the information desired. However if those overt means might seriously undermine the conduct of any investigation or put innocent persons at risk then covert

surveillance can be used.

RIPA regulates **two types of covert surveillance, (directed surveillance and intrusive surveillance)** and the use of **Covert Human Intelligence Sources (CHIS)**).

Directed Surveillance

Directed surveillance is surveillance which:

- is covert, but not intrusive surveillance;
- is conducted for the purposes of a specific investigation or operation;
- is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation);
- 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 to seek authorisation under the Act

Intrusive Surveillance

Intrusive surveillance is surveillance which:

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

“Residential premises” means any premises occupied or used, however temporarily, for residential purposes or otherwise as living accommodation. This includes a hotel room or prison accommodation that is occupied or used for residential purposes, but does not include common areas that a person has access to in common with others and in connection with their use of accommodation.

The 2010 Legal Consultations Order also provides that any directed surveillance that is carried out on premises ordinarily used for legal consultations, at a time when they are being so used, is to be treated as intrusive surveillance.

Intrusive Surveillance cannot be authorised under RIPA for the Council. Only the police and other law enforcement agencies can use RIPA to authorise intrusive surveillance. Likewise, the Council has no statutory powers to interfere with private property.

Covert Human Intelligence Source

A Covert Human Intelligence Source (“CHIS”) is someone who establishes or maintains a personal or other relationship for the covert purpose of using the relationship to obtain or disclose information (see below).

Private Information in relation to a person includes any information relating to his/her private or family life. Private information is generally taken to include any aspect of a

person's private or personal relationship with others including family and professional or business relationships. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her **and others** that s/he comes into contact or associates with.

To take an example: although overt town centre CCTV cameras do not normally require authorisation, if the camera(s) are to be directed for a specific purpose to observe particular individual(s), authorisation will be required. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. This example does not apply in Folkestone & Hythe as the Council no longer owns nor manages a town / city CCTV system.

Social media

Social media can provide useful information as part of an investigation. However, Council Officers must consider if a RIPA authorisation is required if they are accessing social media for this purpose before undertaking any monitoring of a site.

Whilst initial research of social media to establish a fact or collate an intelligence picture is unlikely to require an authorisation for directed surveillance, repeat viewing of 'open source' sites may constitute directed surveillance on a case by case basis. This should be borne in mind e.g. if someone is being monitored through, for example, their Facebook profile for a period of time and a record of the information is kept for later analysis, this is likely to require a RIPA authorisation for directed surveillance. The key consideration is whether there is a repeated and systematic collection of personal information.

Where it is intended to access a social media or other online account to which the Council has been given access with the consent of the owner, the Council 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.

In addition, Council Officers must be aware that the fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the social networking site being used works. Authorising Officers must not assume that one service provider is the same as another or that the services provided by a single provider are the same. Whilst it is the responsibility of an individual to set privacy settings to protect against unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available.

The author has a reasonable expectation of privacy if access controls are applied. In some cases, data may be deemed private communication still in transmission (instant messages for example). Where privacy settings are available but not applied the data may be considered 'open source' and an authorisation is not usually required.

If it is necessary and proportionate for the Council to covertly breach access controls, an authorisation for directed surveillance is required. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a Council Officer or

by a person acting on the Council's behalf (i.e. the activity is more than mere reading of the site's content). It is not unlawful for a Council Officer to set up a false persona, but this must not be done for a covert purpose without authorisation. Using photographs of other persons without their permission to support the false identity infringes other laws and such photographs must not be used.

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

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

To avoid the potential for inadvertent or inappropriate use of social network sites in investigative and enforcement roles, Council Officers should be mindful of the following:

- do not create a false identity in order to 'befriend' individuals on social networks without authorisation under RIPA;
- when viewing an individual's public profile on a social network, do so only to the minimum degree that is necessary and proportionate in order to obtain evidence to support or refute an investigation;
- repeated viewing of open profiles on social networks to gather evidence or to monitor an individual's status must only take place under a RIPA authorisation;
- be aware that it may not be possible to verify the accuracy of information on social networks and if such information is to be used as evidence, take reasonable steps to ensure its validity.

For the avoidance of doubt, only those Officers designated and certified to be Authorising Officers for the purpose of RIPA can authorise directed surveillance IF, AND ONLY IF, the RIPA authorisation procedures detailed in this Policy are

followed. Authorisation for directed surveillance can only be granted if it is for the purpose of preventing or detecting crime and the criminal offence is punishable by at least six months' imprisonment or it is an offence under sections 146, 147, 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933 (sale of alcohol and tobacco to underage children).

The [Home Office Codes of Practice](#) on covert surveillance and CHIS contain essential guidance in relation to online covert activity and must be consulted.

If you are in doubt as to whether or not you can use directed surveillance for the crime you are investigating, you should contact Legal Services for advice to ensure that no unauthorised online covert activity takes place within the Council.

Proportionality

The authorised conduct will not be proportionate if it is excessive in the overall circumstances of the case. Each authorised action should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means.

The following elements of proportionality should therefore be considered:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods 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.

In other words, this means balancing the intrusiveness of the activity on the target subject and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances - each case will be unique and will be judged on its merits - or if the information that is sought could reasonably be obtained by other less intrusive means. **All such activity must be carefully managed to meet the objective in question and must not be arbitrary or unfair.** Extra care should also be taken over any publication of the product of the surveillance.

Put very simply, it means not using a sledgehammer to crack a nut.

As well as being proportionate, the covert surveillance must be necessary in all the circumstances.

Examples of different types of Surveillance

Type of Surveillance	Examples
----------------------	----------

Overt	<ul style="list-style-type: none"> - Police Officer or Environmental Enforcement Officer on patrol - Signposted town centre CCTV cameras (in normal use) - Recording noise coming from outside the premises after the occupier has been warned that this will occur if the noise persists. - Most test purchases (where the officer behaves no differently from a normal member of the public).
Covert but not requiring prior authorisation	<ul style="list-style-type: none"> - CCTV cameras providing general traffic, crime or public safety information.
Directed surveillance (must be RIPA authorised)	<ul style="list-style-type: none"> - Officers follow an individual or individuals over a period, to establish whether s/he is working when claiming benefit or off long term sick from employment. - Test purchases where the officer has a hidden camera or other recording device to record information which might include information about the private life of a shop-owner, e.g. where s/he is suspected of running his business in an unlawful manner.
Intrusive surveillance or interfering with private property – Note: The Council cannot use RIPA to authorise this	<ul style="list-style-type: none"> - Planting a listening or other electronic device (bug) or camera in a person's home or in/on their private vehicle/person.

Further Information

Further guidance on surveillance which can be found in the Home Office Codes of Practice is set out in Appendix 5.

Confidential Information

Special safeguards apply with regard to confidential information relating to:

- confidential personal information;
- confidential constituent information; and
- confidential journalistic material.

The Authorising Officer for directed surveillance where confidential information is likely to be obtained or for the use of a CHIS must be a Senior Authorising Officer. Further guidance is available in the Home Office Codes of Practice.

Legal Privilege

Surveillance that is intended to result in knowledge of matters subject to legal privilege CANNOT be authorised. Where surveillance is not intended to result in knowledge of matters subject to legal privilege, but acquisition of such matters is likely, then the Authorising Officer must consider carefully whether such surveillance is appropriate. In particular, such surveillance can only be authorised to prevent or detect serious crime. The Authorising Officer in these circumstances must be a Senior Authorising Officer. Further guidance is available in the Home Office Codes of Practice.

Collateral Intrusion

Before authorising surveillance the Authorising Officer should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

Those carrying out the surveillance should inform the Authorising Officer if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation. When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised or a new authorisation is required.

Further guidance is available in the Home Office Codes of Practice.

Retention and Destruction of Products of Surveillance

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 for a suitable period and subject to review. Authorising Officers must make sure that they have regard to the [Code of Practice](#) (2015 edition) made under S23 Criminal Procedure and Investigations Act 1996.

There is nothing in RIPA that prevents material obtained from properly authorised surveillance from being used in other investigations. Authorising Officers must ensure, therefore, that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising Officers must also ensure compliance with the appropriate data protection requirements and any relevant codes of practice produced by individual authorities relating to the handling and storage of material.

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

Who is a CHIS?

A CHIS is someone who establishes or maintains a personal or other relationship for the covert purpose of using the relationship to obtain information.

Members of the public who volunteer information to the Council and those engaged by the Council to carry out test purchases in the ordinary course of business (i.e. they do not develop a relationship with the shop attendant and do not use covert recording devices) are not CHIS and do not require RIPA authorisation.

However, there may be instances where an individual covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship. In such circumstances where a member of the public, though not asked to do so, gives information (or repeated information) about a suspect, then serious consideration should be given to designating the individual as a CHIS, particularly if the Council intends to act upon the information received.

It is possible therefore that a person could become engaged in the conduct of a CHIS without the Council inducing, asking or assisting the person to engage in that conduct (i.e. "Tasking" – see Appendix 3 for further detail on the use and management of CHIS). As stated in paragraph 2.25 the Home Office CHIS Code of Practice the tasking of a person should not be used as the sole benchmark in seeking a CHIS authorisation, and it is possible that a person will become engaged in the conduct of a CHIS without a local authority inducing, asking or assisting the person to engage in this conduct. It is recommended that legal advice is sought in any such circumstances.

What must be authorised?

The conduct or use of a CHIS requires **prior authorisation**:

- **Conduct** of a CHIS = Establishing or maintaining a personal or other relationship with a person for the covert purpose of (or is incidental to) obtaining and passing on information
- **Use** of a CHIS = Actions inducing, asking or assisting a person to act as a CHIS and the decision to use a CHIS in the first place.

Most CHIS authorisations will be for both use and conduct. This is because public authorities usually take action in connection with the CHIS, such as tasking the CHIS to undertake covert action, and because the CHIS will be expected to take action in relation to the public authority, such as responding to particular tasking.

Authorisations are also subject to judicial approval and cannot commence until this has been obtained.

Detailed records must be kept relating to each source.

The Council can only authorise CHIS under RIPA IF, AND ONLY IF, the procedures, as detailed in this Policy, are followed. Authorisation for CHIS can only be granted if it is for the purposes of preventing or detecting crime.

Juveniles and Vulnerable Individuals

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

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

Vulnerable individuals and juveniles will only be authorised to act as a CHIS in very exceptional circumstances and a Senior Authorising Officer **MUST** give the authorisation for their use.

Test Purchases

Carrying out test purchases will not usually (as highlighted above) require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. However, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require **authorisation** as **directed surveillance**. A combined authorisation can be given for a **CHIS** and also **directed surveillance**.

Anti-Social Behaviour Activities (e.g. noise, violence, race abuse, etc.)

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

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

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 which is made at a level that does not exceed that which can be heard from the street outside or adjoining property with the naked ear, are unlikely to constitute either direct or intrusive surveillance. In the latter circumstance, the perpetrator would normally be regarded as having forfeited any claim to privacy. Placing a covert stationary or mobile video camera outside a building to record anti-social behaviour on residential estates **will** require prior authorisation.

Use and Management of a CHIS

Particular requirements apply to the management and use of a CHIS. This is particularly important when considering that the CHIS may be putting themselves in some jeopardy by performing as a CHIS. Details of those arrangements are contained within **Appendix 3**.

The Senior Authorising Officer must be satisfied that these arrangements are in place before authorising a request. The overriding duty is to the safety of and duty of care towards the CHIS.

Further Information

Further guidance on CHIS can be found in the Home Office's Codes of Practice on surveillance listed in **Appendix 5**.

9. Acquisition of Communications Data

What is Communications Data?

Communication data means any traffic or any information that is or has been sent by over a telecommunications system or postal system, together with information about the use of the system made by any person.

Procedure

There are powers granted by S22 RIPA in respect of the acquisition of Communications Data from telecommunications and postal companies. These issues are beyond the scope of this Policy. Where an Authorised Officer considers that such data is required, the advice of the RIPA Monitoring Officer should be sought.

10. Authorisation Procedures

Directed surveillance and the use of a **CHIS** can only gain the protection under RIPA if properly authorised, and conducted in strict accordance with the terms of the authorisation. **Appendix 2** provides flow charts of processes from application / consideration to recording of information and the storage / retention of data obtained.

Authorising Officers

Forms can only be signed by Authorising Officers who have the necessary authority from the Council. Authorised officers are listed in **Appendix 1**. It is the person that is authorised rather than his/her post. This Appendix will be kept up to date by the RIPA Monitoring Officer and added to as needs require. If it is felt that a post should be removed or added, the RIPA Monitoring Officer will request a resolution from the Cabinet. The RIPA Monitoring Officer is however able to suspend an Authorising Officer from the list as detailed above.

All RIPA authorisations must be for specific investigations only and must be reviewed, renewed or cancelled once the specific surveillance is complete or about to expire. **The authorisations for directed surveillance last for three months and for CHIS 12 months (four months for a juvenile CHIS); however they must also be cancelled as soon as the need for them no longer exists.**

Training Records

All Council staff who may be involved in the application, authorisation and management of covert activity will receive refresher training as appropriate in the issues to take into account, including in relation to online covert activity. The RIPA Monitoring Officer will keep a record of those receiving training and will work with Human Resources to ensure that training is carried out as appropriate to account for staff turnover, legislative changes etc. Periodic written tests will be conducted to ensure that the Authorising Officers and Applying Officers retain the knowledge.

The training and testing regime will be documented in sufficient detail to enable assessment of its quality and competence.

Application Forms

Only the RIPA forms set out in this Policy are permitted to be used. **The Authorising Officer and/or the RIPA Monitoring Officer will reject any other forms used.** All forms are available on the Intranet.

'A Forms' (Directed Surveillance) -see Appendix 6

- Form A1 **Application** for Authority for Directed Surveillance
- Form A2 **Review** of Directed Surveillance Authority
- Form A3 **Renewal** of Directed Surveillance Authority
- Form A4 **Cancellation** of Directed Surveillance
- Form A5 **Judicial approval** for Directed Surveillance

'B Forms' (CHIS) -see Appendix 7

- Form B1 **Application** for Authority for Conduct and Use of a CHIS
- Form B2 **Review** of Conduct and Use of a CHIS
- Form B3 **Renewal** of Conduct and Use of a CHIS
- Form B4 **Cancellation** of Conduct and Use of a CHIS
- Form B5 **Judicial approval** for the use of a CHIS

Grounds for Authorisation

Directed Surveillance (**A Forms**) and the Conduct and Use of the CHIS (**B Forms**) can be authorised by the Council **only on the grounds of preventing or detecting crime. NO other grounds are available to local authorities.**

Assessing the Application Form

Before an Authorising Officer signs a Form, **s/he must:**

- (a) Be mindful of this Policy, the training provided and any other guidance issued, from time to time, by the RIPA Monitoring Officer on such matters;
- (b) **Be clear on what is being authorised and make sure that there are no ambiguities in either the application or the authorisation;**
- (c) **Ensure that his/her statement as the Authorising Officer is completed spelling out the "5Ws" – who, what, where, when, why and how. In addition the Authorising Officer must ensure that the proposed operation is both necessary and proportionate;**
- (d) Satisfy his/herself that the RIPA authorisation is:
 - (i) **In accordance with the law;**
 - (ii) **Necessary** in the circumstances of the particular case on the grounds mentioned above; **and**
 - (iii) **Proportionate** to what it seeks to achieve;
- (e) In assessing whether or not the proposed surveillance is necessary, consideration should be given to whether it is necessary to use covert surveillance in all the circumstances. Consideration must be given as to whether the information could be obtained by other means;
- (f) In assessing whether or not the proposed surveillance is proportionate, consider whether there are any other non-intrusive methods available and, if there are none, whether the proposed surveillance is no more than necessary to achieve the objective, as the **least intrusive method will be considered proportionate by the courts. Guidance on proportionality is given above;**
- (g) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**Collateral Intrusion**) and the Applying Officer's plan to minimise that intrusion. Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion. When considering proportionality the right to privacy of both third parties and the intended subject of the investigation must be considered against the seriousness of the offence and harm likely to be caused;

- (h) Allocate a Unique Reference Number (URN) for **each form**;
- (i) Set a date for **review** of the authorisation and review the authorisation on that date using the relevant form. The Authorising Officer should take account of how long authorisations for directed surveillance may last for (three months). The review date must be appropriate for the type of surveillance sought. At a review the Authorising Officer should be satisfied that the criteria for granting the authorisation still exists. They may also amend the authorisation;
- (j) **Make sure that the authorisation expiry date and time are inserted**;
- (k) Ensure that any RIPA Departmental Register is duly completed, and that a copy of the RIPA Forms (and any review / renewal / cancellation of the same) is forwarded to the RIPA Monitoring Officer's Central Register, **within 2 working days of the relevant authorisation, review, renewal, cancellation or rejection**. The original should be kept on the departmental register; and
- (l) If unsure on any matter, obtain advice from the RIPA Monitoring Officer **before** signing any forms.

The authorisation section of the form should be completed in the Authorising Officer's own handwriting and in his/her own words. The Authorising Officer must be prepared to justify his/her authorisation in a court of law and must be able to answer for his/her decision.

Additional Safeguards when Authorising a CHIS

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

- (a) Be satisfied that the **conduct** and/or **use** of the CHIS is **proportionate** to what is sought to be achieved;
- (b) Be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS and this must address health and safety issues through a written risk assessment (**see Appendix 3**);
- (c) Consider the likely degree of intrusion of all those potentially affected;
- (d) Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained;
- (e) Ensure **records** contain particulars and are not available except on a need to know basis; and
- (f) If unsure on any matter, obtain the advice from the RIPA Monitoring Officer **before** signing any forms.

Judicial Approval

After an Authorising Officer has authorised directed surveillance or the Senior Authorising Officer has approved the use of a CHIS, the Council **must** make an application to the Magistrates' Court for approval of the authorisation. This applies to all authorisations and renewals. The activity permitted by the authorisation **cannot** be carried out until the court has approved the authorisation.

After the Authorising Officer has approved the application, the Applying Officer (or the Authorising Officer in appropriate cases) must complete the first part of the approval form found at Appendix 6 and Appendix 7. Two copies of the approval form, the original authorisation and a copy must be taken to court for the Magistrate to consider.

The court will consider:

- (a) if the Authorising Officer was at the correct grade; and
- (b) whether the activity proposed is necessary and proportionate.

The authorisation and the approval form must be detailed enough for the court to consider the application. Whilst the court may ask the Officer attending court to clarify the application, oral evidence is not a substitute for a full and reasoned written application.

The court can either approve or quash the authorisation or renewal. Any application for renewal must take place before the expiry of the authorisation. The Applying Officer must ensure that any application to renew is made in good time so that the Authorising Officer and the court have enough time to consider the application.

The original authorisation must be retained by the Council. A copy of the approval or rejection by the Magistrates must be placed on the department's register and a further copy given to the RIPA Monitoring Officer for his/her Central Register.

Any Officer attending court to obtain judicial approval must be authorised by the Council under section 223 of the Local Government Act 1972 to conduct legal proceedings on the Council's behalf.

Further information about the procedure for obtaining judicial approval can be found at Appendix 8.

Duration

The form **must be reviewed in the time stated, renewed and/or cancelled** once it is no longer needed. The authorisation to carry out/conduct the surveillance lasts for three months (from authorisation) for Directed Surveillance, and 12 months (from authorisation) for a CHIS and four months for a juvenile CHIS. However, whether the surveillance is carried out/conducted or not, in the relevant period, does not mean the authorisation is 'spent'. In other words, **the forms do not expire**. The forms have to be **reviewed, renewed and/or cancelled** (once they are no longer required).

Authorisations can be renewed in writing before the maximum period in the Authorisation has expired. The Authorising Officer must **consider the matter afresh** including taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred. An Authorisation cannot be renewed after it has expired. In such event, a fresh Authorisation will be necessary.

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

11. Working With/Through Other Agencies

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

When some other agency (e.g. Police, HM Revenue & Customs, Department for Work and Pensions etc.):

- (a) Wishes to use the Council's resources, that agency must use its own RIPA procedures **and**, before any Officer agrees to allow the Council's resources to be used for the other agency's purposes, s/he **must obtain** a copy of that agency's RIPA form for the record (a copy of which must be passed to the RIPA Monitoring Officer for the Central Register) or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources; or
- (b) Wishes to use the Council's premises for their own RIPA action and is expressly seeking assistance from the Council, the Officer should normally co-operate with the same unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought, if necessary, from the other agency for the Council's co-operation in the agency's RIPA operation. In such cases, however, the Council's own RIPA forms should **not** be used, as the Council is only 'assisting' not being 'involved' in the RIPA activity of the external agency.

If the Police or other agency wish to use Council resources for general surveillance, as opposed to specific RIPA operations, an appropriate letter requesting the proposed use, extent of remit, duration, who will be undertaking the general surveillance and the purpose of it must be obtained from the Police or other agency **before** any Council resources are made available for the proposed use. The appropriate head of service will be responsible for agreeing to the proposed use.

Joint operations

Where the Council is conducting an investigation jointly with another agency and that investigation involves directed surveillance or use of a CHIS only one authorisation under RIPA is needed. Duplicate authorisations therefore should be avoided. At the start of the joint operation the relevant Assistant Directors or Chief Service Officers should agree with his/her opposite number in the other agency who the lead body should be. The lead body will be responsible for RIPA authorisations.

If in doubt, please consult with the RIPA Monitoring Officer at the earliest opportunity.

12. Record Management

The Council must keep a detailed record of all Authorisations, Reviews, Renewals, Cancellations and rejections in Departments and a **Central Register of all Authorisation Forms will be maintained and monitored by the RIPA Monitoring Officer.**

Records Maintained in the Department

The Council will retain records for a period of at least three years from the ending of the Authorisation. The Investigatory Power Commissioner's Office (IPCO) can audit/review the Council's policies and procedures and individual Authorisations, Reviews, Renewals, Cancellations and rejections.

Central Register Maintained by the RIPA Monitoring Officer

Authorising Officers must send a copy of any authorisation, cancellation, renewal or

review to the RIPA Monitoring Officer within 2 working days of the issue. Whilst the RIPA Monitoring Officer is responsible for oversight and review of the records, the Authorising Officers are responsible for their own records.

13. Reporting Arrangements

Where there has been an application for the use of powers under RIPA, a report on the use of the powers shall, within three months of the application, be provided to Cabinet.

14. Concluding Remarks

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

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

Authorising Officers MUST exercise their minds every time they are asked to consider a form. They must NEVER sign or rubber stamp form(s) without thinking about their own personal and the Council's responsibilities. They should also report refusals to the RIPA Monitoring Officer. The RIPA Monitoring Officer will be able to assess whether the refusals were reasonable and this will also be reported to Cabinet.

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

For further advice and assistance on any aspect of RIPA, please contact the Council's RIPA Monitoring Officer; contact details are set out in Appendix 1.

Appendix 1 – List of Senior Authorising Officers Authorising Officers, Senior Responsible Officer and RIPA Monitoring Officer

Post Title	Current Post Holder	RIPA post	Contact Details
Head of Paid Service	Susan Priest	Senior Authorising Officer / Senior Responsible Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 susan.priest@folkestone-hythe.gov.uk
Director of Corporate Services	Charlotte Spendley	Authorising Officer/ Senior Authorising Officer in the absence of the Head of Paid Service	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853263 Charlotte.spendley@folkestone-hythe.gov.uk
Assistant Director (Governance, Law and Regulatory Services)	Amandeep Khroud	RIPA Monitoring Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853253 amandeep.khroud@folkestone-hythe.gov.uk
Director of Housing & Operations	Andy Blaszkowicz	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY 01303 853315 andrew.blaszkowicz@folkestone-hythe.gov.uk
Director - Place	Ewan Green	Authorising Officer	Civic Centre, Castle Hill Avenue, Folkestone CT20 2QY Ewan.green@folkestone-hythe.gov.uk

RIPA MANAGEMENT STRUCTURE

Directed Surveillance

Court



Authorising Officers

Susan Priest
Head of Paid Service

Charlotte Spendley
Director of Corporate Services

Andrew Blaszkowicz
Director of Housing & Operations

Ewan Green
Director - Place



Applying Officer

Amandeep Khroud
Assistant Director
(Governance, Law and
Regulatory Services)

CHIS

Court



Susan Priest
Head of Paid Service

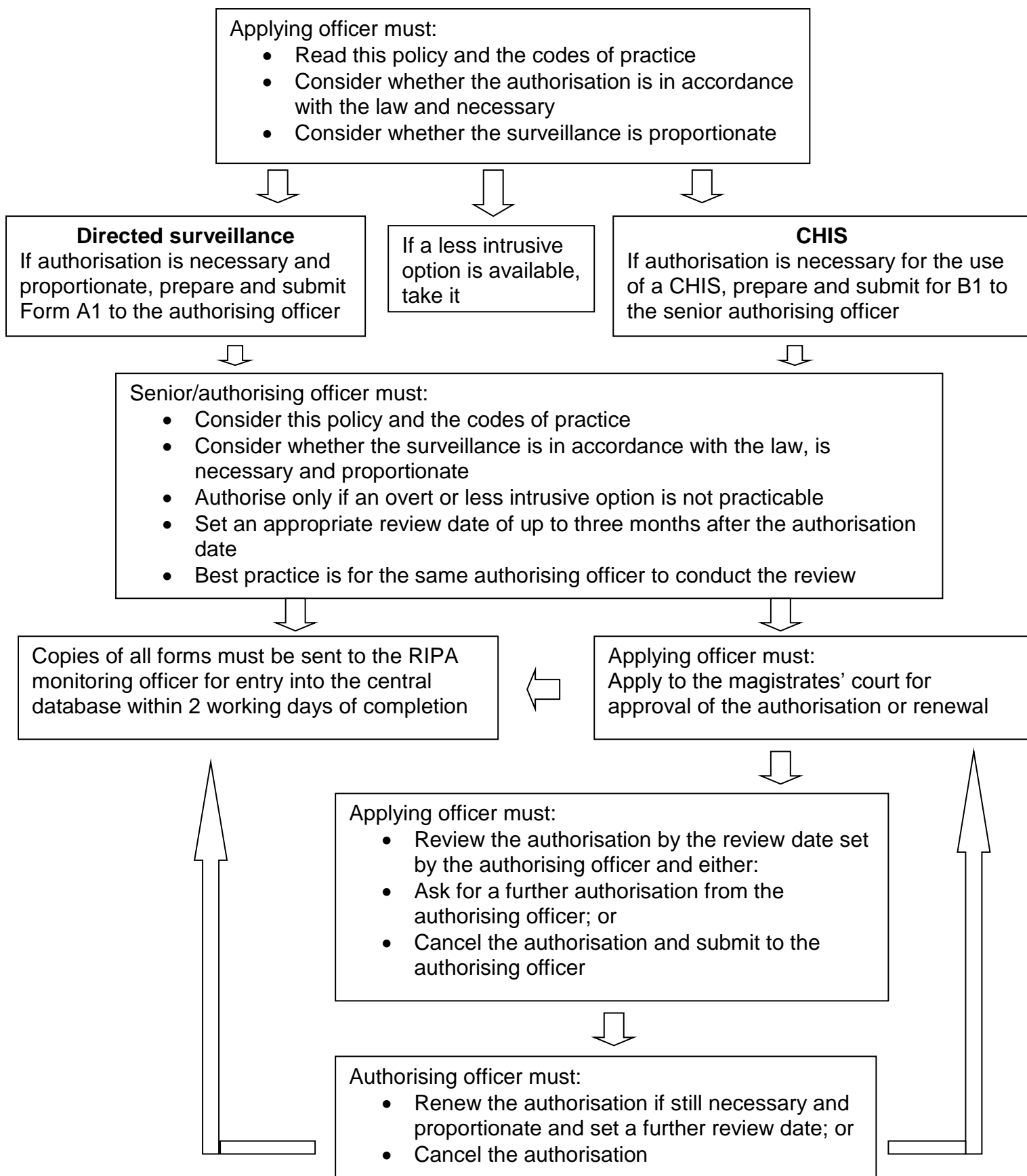
Or

Charlotte Spendley
Director of Corporate Services



Applying Officer

Appendix 2 – Flow Chart for Directed Surveillance and CHIS



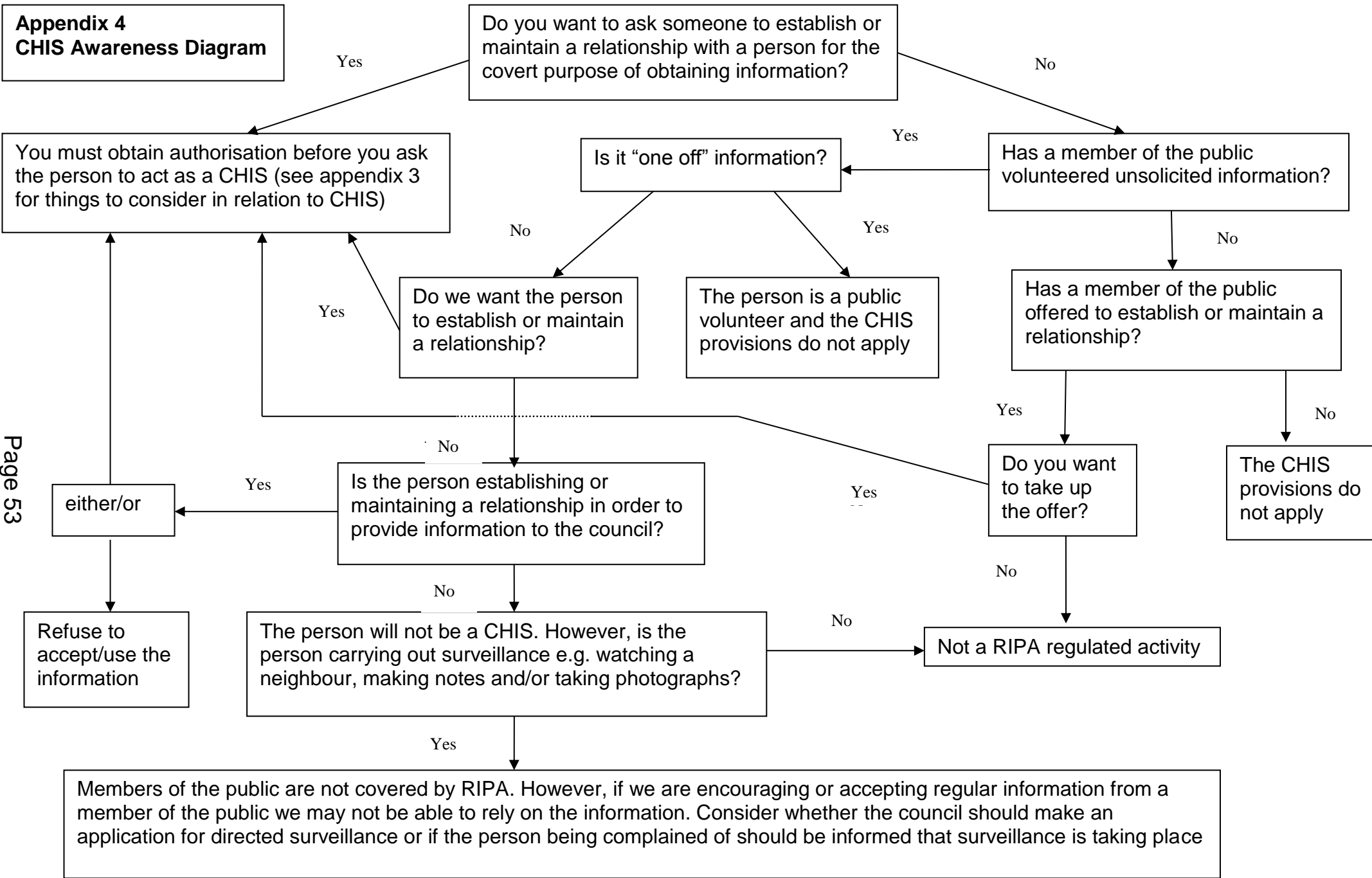
Applying officer – the person who makes a request to use RIPA powers;
 Authorising officer – the person who considers whether or not to grant an authorisation;
 Senior authorising officer – the senior person who considers whether or not to grant an authorisation for the use of a CHIS

Appendix 3 – Additional Notes for the Use and Management of a CHIS

Tasking

- 1 “Tasking” is the assignment given to the CHIS by the persons defined in sections 29(5) (a) and (b) of RIPA, asking him/her to obtain information, provide access to information or to otherwise act incidentally, for the benefit of the relevant public authority.
- 2 Authorisation for the use or conduct of a CHIS must be obtained prior to any tasking where such tasking requires the CHIS to establish or maintain a personal or other relationship for a covert purpose.
- 3 The person referred to in section 29(5) (a) of RIPA will have day to day responsibility for:
 - Dealing with the CHIS on behalf of the Council
 - Directing the day to day activities of the CHIS
 - Recording the information supplied by the CHIS, and
 - Monitoring the CHIS’s security and welfare
- 4 The person referred to in section 29(5) (b) of the 2000 Act will be responsible for the general oversight of the use of the CHIS.
- 5 The authorisation should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked. The authorisation could cover the broad terms of the CHIS’s task.
- 6 The persons mentioned in paragraphs 3 and 4 above must take great care to ensure that actions are recorded in writing and must also keep the authorisation under review to ensure that it covers what the CHIS is actually doing. During the course of a task, unforeseen events may occur which mean that the authorisation may need to be cancelled and applied for again.
- 7 The Corporate Director – Strategy as Head of Paid Service of the Council has the power to appoint officers to act under s29(5)(a) and (b) of RIPA.
- 8 In relation to health and safety, before tasking a CHIS, the relevant Officers will ensure that a risk assessment is carried out which determines the risk to the CHIS and to others in carrying out the task. The ongoing security and welfare of the CHIS after the task has been completed should also be considered.
- 9 Further advice on good practice is contained within the CHIS [Code of Practice](#).

**Appendix 4
CHIS Awareness Diagram**



Page 53

This flowchart cannot answer every scenario an officer may encounter. If you are unsure whether or not you authorisation speak to Legal Services or the RIPA monitoring officer

Appendix 5 – Codes of Good Practice

RIPA Codes of Practice can be accessed at:

[Codes of Practice](#)

Appendix 6 – Directed Surveillance Forms

[Directed surveillance application form](#)

[Directed surveillance renewal form](#)

[Directed surveillance review form](#)

[Directed surveillance cancellation form](#)

[Judicial approval form](#)

Appendix 7 – CHIS Forms

[Application to authorise a CHIS](#)

[CHIS cancellation form](#)

[CHIS renewal form](#)

[CHIS review form](#)

[Judicial approval form](#)

Appendix 8 – Judicial approval protocol

In order to obtain judicial approval for your RIPA authorisation you will need to book an appointment to attend court. You must not turn up to court without an appointment. This step must not be taken unless an Authorised Officer has first authorised the application.

To book an appointment, contact the court administration centre on 01304 218600 option 6. There may be a delay between you making the appointment and attending court so make sure you factor this in when thinking about your timetable and the start date.

Your application may be heard at Folkestone or Canterbury Magistrates' Court. You will generally be asked to attend court at 9.30am before the court starts sitting although you may be given an alternative time to attend.

You will need to take two copies of the approval form with the first part completed and the original authorisation to court as well as a copy. Ensure that you retain the original authorisation and a signed approval form.

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This report will be made public on 20 September 2022



Report Number **A/22/16**

To: Council
Date: 28 September 2022
Status: Non- Executive Decision
Head of Paid Service: Susan Priest
Responsible Officer: Amandeep Khroud, Assistant Director – Governance, Law and Regulatory Services

SUBJECT: Report to Council on a decision made in accordance with the constitution's call-in and urgency rule

SUMMARY: The constitution provides that, when an urgent decision is made by the Cabinet or Cabinet Member, for which any delay in implementation, likely to be caused by the call-in process, would seriously prejudice the Council's or public interest, then the 'Call-in Rules of Procedure', Part 6.3, rules 1-6 do not apply. Decisions, taken as a matter of urgency, must be reported to the next available meeting of the Council, together with the reasons for urgency.

REASONS FOR RECOMMENDATIONS:

This report is recommended to Council, to note for information, in accordance with the constitution, Part 6.3, rule 7.

RECOMMENDATION:

1. To receive and note report A/22/16.

1 INTRODUCTION

- 1.1 The constitution (paragraph 7, part 7.3, Call-In Rules of Procedure) provides that, when an urgent decision is made, for which any delay in implementation, likely to be caused by the call-in process, would seriously prejudice the Council's or public interest, then the call-in rules of procedure, Part 6.3, rules 1 to 6, do not apply. Decisions, taken as a matter of urgency, must be reported to the next available meeting of the council, together with the reasons for urgency.
- 1.2 On 20 July 2022, Cabinet considered report C/22/18, which presented the policy of allocating and managing the Household Support Fund funding received from Kent County Council (KCC).. The Cabinet resolved:
1. That report C/22/18 be received and noted.
 2. That the Council's Household Support Fund Policy be approved and adopted.

This decision was taken using General Exception urgency provisions (Part 6.4, Rule 12). It was necessary to take the decision under the constitution's 'Call in and Urgency' rule (Part 6.3, rule 7) because the council was notified of its specific allocation of HSF on 9 June, and the allocation is above the threshold for a key decision. The policy framework cannot be delayed as the grant conditions require the sum to be allocated by 30 September, so in order to get the funds to those vulnerable within our community, the policy framework needed to be considered as a matter of urgency in July.

2 LEGAL, FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

- 2.1 **Legal Officer's comments (AK)**
There are no legal issues arising from this report.
- 2.2 **Finance Officer's comments (LW)**
The financial implications of this report were addressed in cabinet report C/21/73 to which this relates.
- 2.3 **Diversity and Equalities Implications (ST)**
There are no diversity and equality implications arising from this report.

3 CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting:

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The following background documents have been relied upon in the preparation of this report:

None