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Merton Council

Standards and General Purposes Committee Agenda

Membership

Councillors:

Peter McCabe (Chair)
Adam Bush (Vice-Chair)
Agatha Mary Akyigyina OBE
Ben Butler
John Dehaney
Brenda Fraser
Dickie Wilkinson
David Williams MBE JP
Hina Bokhari
Mary Curtin
Thomas Barlow
Pauline Cowper

Substitute Members:

Peter Southgate
Omar Bush
Stan Anderson
Sally Kenny
Nick McLean
Jenifer Gould

Date: Thursday 23 July 2020

Time: 7.15 pm

Venue: This will be a virtual meeting and therefore will not take place in a physical location, in accordance with s78 of the Coronavirus Act 2020.

This is a public meeting and can be viewed by following this link www.youtube.com/user/MertonCouncil. For more information about the agenda please contact 0208 545 3357.

All Press contacts: communications@merton.gov.uk, 020 8545 3181

Standards and General Purposes Committee Agenda

23 July 2020

- | | | |
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| 1 | Apologies for Absence | |
| 2 | Declarations of Pecuniary Interest | |
| 3 | Minutes of the previous meeting | 1 - 6 |
| 4 | Update to the EY 2019/20 Audit Plan as a result of Covid-19 | 7 - 14 |
| 5 | Internal Audit Annual Report | 15 - 32 |
| 6 | Annual Governance Statement | 33 - 50 |
| 7 | Social Media Guidance for Councillors | 51 - 58 |
| 8 | Local Government and Social Care Ombudsman Report - Enforcement Agents

This is currently being circulated as an exempt document until it is made public by the Local Government and Social Care (LGSCO) Ombudsman on 23 July 2020 at which point it will be published. | |
| 9 | Proposed Response to the Local Government Association's Consultation on a new Model Code of Conduct for Members | 59 - 94 |
| 10 | Revised RIPA Policy and update on RIPA Authorisations | 95 - 152 |
| 11 | Proposed Review of the Council's Constitution and interim Amendments to the Appointments Committee Terms of Reference and the Employee Procedure Rules | 153 - 166 |
| 12 | Complaints against Members

<i>A verbal update to be provided at the meeting</i> | |
| 13 | Member Training and Development | 167 - 184 |
| 14 | Work Programme | 185 - 186 |
| 15 | Exclusion of the Press and Public

To RESOLVE that the public are excluded from the meeting during consideration of the following report on the grounds that it is exempt from disclosure for the reasons stated in the report. | |
| 16 | Temporary and Contract Staff update | 187 - 196 |

Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. If members consider they should not participate because of a non-pecuniary interest which may give rise to a perception of bias, they should declare this, .withdraw and not participate in consideration of the item. For further advice please speak with the Managing Director, South London Legal Partnership.

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STANDARDS AND GENERAL PURPOSES COMMITTEE 12 MARCH 2020

(7.15 pm - 9.13 pm)

PRESENT Councillors Councillor Peter McCabe (in the Chair),
Councillor Adam Bush, Councillor Agatha Mary Akyigyina,
Councillor Ben Butler, Councillor John Dehaney,
Councillor Dickie Wilkinson, Councillor David Williams,
Councillor Hina Bokhari, Councillor Thomas Barlow and
Councillor Pauline Cowper

ALSO PRESENT Katy Willison – Independent Person

Suresh Patel – External Auditor

Margaret Culleton (Head of Internal Audit), John Bosley
(Assistant Director Public Space Contracts and Commissioning),
Roger Kershaw (Assistant Director of Resources), Louise Round
(Managing Director, South London Legal Partnership and
Monitoring Officer) and Amy Dumitrescu (Democratic Services
Officer)

1 APOLOGIES FOR ABSENCE (Agenda Item 1)

Apologies were received from Councillor Mary Curtin and Councillor Brenda Fraser.
Councillor Stan Anderson attended as substitute.
Apologies were also received from Independent Person Clive Douglas.

At the start of the meeting, the Chair welcomed Katy Willison, Independent Person
and Louise Round, Monitoring Officer and Managing Director South London Legal
Partnership, to their first meeting of the Committee.

2 DECLARATIONS OF PECUNIARY INTEREST (Agenda Item 2)

There were no declarations of pecuniary interest.

3 MINUTES OF THE PREVIOUS MEETING (Agenda Item 3)

RESOLVED: That the minutes of the meeting held on 7 November 2019 were agreed
as a correct record.

4 EXTERNAL AUDIT PLANS FOR COUNCIL AND PENSION FUND ACCOUNTS (Agenda Item 4)

The External Auditor presented the report and gave an overview of the audit risks
identified for the audit of the Council accounts and the Pension Fund accounts.

The External Auditor highlighted the deficit on the Dedicated Schools Grant (DSG) noting that this was a national issue. The auditors were in discussions nationally and with the Council in regards to the level of this deficit.

The Auditors had worked hard with officers to put together a timeline to ensure the accounts were closed by the July 2020 deadline and had resources planned to achieve this and the work was currently on track. *(Post meeting note: The accounting deadline has now changed to September 2020 due to the Coronavirus pandemic).*

The External Auditor informed the Committee that following EY responding to a tender relating to a review of Air Quality, he had assessed this and discussed it with officers and confirmed this did not threaten his independence to any level requiring further safeguards to be put in place.

In response to member questions, the External Auditor advised that although the level of materiality which had been tested was reduced slightly from 2% of expenditure to 1.8%, this was usual for Local Authorities of this size and if there had been any concerns with the accuracy of the accounts this figure would be reduced much further. It was the firm's approach for Pension Funds to be tested at the lower level of 1%.

In response to further questions, the External Auditor highlighted the further work which had been undertaken and therefore reflected in the fees as outlined within the report.

In relation to the Pension Fund accounts, the External Auditor advised there was a new risk identified relating to a new investment made by the Council and these are more difficult to value and obtain assurance for and so this had been identified as a new risk. Expert advice had been sought on the matter.

5 INTERNAL AUDIT PLAN (Agenda Item 5)

The Head of Internal Audit presented the report, noting that a number of new audits had been requested for the upcoming year.

In response to member questions, the Assistant Director of Resources advised that contingency and resilience plans were being worked on to respond to the Coronavirus outbreak.

RESOLVED: That members reviewed and commented upon the 2020/21 Draft Internal Audit Plan, Strategy and Charter.

6 INTERNAL AUDIT PROGRESS REPORT (Agenda Item 6)

The Head of Internal Audit presented the report noting that any audits which had received limited assurance had been summarised within the report.

In response to member questions, the Assistant Director of Public Space advised that in relation to the tree audit, a tree strategy would be produced as well as tree

monitoring. Members expressed that further information should be included on the Council's website to enable residents to assess whether they met the criteria before applying.

Officers outlined the further work being undertaken following the other audits which had received limited assurance results.

RESOLVED: That Members noted the report and commented upon matters arising from the Internal Audit Progress Report.

7 ANTI-MONEY LAUNDERING POLICY REVIEW (Agenda Item 7)

The Head of Internal Audit presented the report, advising the policy was due for review and gave an overview of the amendments and updates.

Members asked whether any training was being provided on the policy and the Head of Internal Audit responded that training was provided for the South London Legal Partnership a number of years ago and also to the Cash and Bank team on the changes. A risk assessment would be undertaken to see if there were any other areas identified which required training.

RESOLVED: That Members commented on and approved the revised Anti money laundering policy.

8 CHANGES TO THE MERTON PENSION BOARD- TERMS OF REFERENCE (Agenda Item 8)

The Assistant Director of Resources presented the report noting that a number of Local Authorities had an Independent Chair of their Pension Boards. In response to concerns regarding the costs, the Assistant Director advised that this was currently being negotiated, however it had been found that other authorities were paying similar amounts. The interaction between the pension board and the advisory panel was currently a concern and the Chair would look at this as well as the administration of the pension fund which is currently undertaken by Wandsworth Council. Officers wanted to ensure proper governance in the work going forward and to ensure the panel was given the opportunity to be held to account. Members requested a further period of consultation including with the Chair of the Pension Investment Advisory Panel and for a number of additions to the report including the addition of tracked changes to show the proposed amendments. The recommendations were therefore not agreed and a further report would be brought back to the Committee at the next meeting.

9 ENVIRONMENTAL ENFORCEMENTS UPDATE (Agenda Item 9)

The Assistant Director of Public Space presented the report and tabled some additional information which has been attached as a supplementary agenda. The Assistant Director noted that the Council was performing highly for actions associated with FPNs (Fixed Penalty Notices), noting from the ward analysis that higher levels were associated with locations in town centres or transport hubs. It was noted that it

was difficult to capture credible information to pursue further enforcement action in the majority of the publically reported fly-tipping incidents, however there had been one successful formal Court prosecution for fly-tipping since September 2019.

In response to member questions, the Assistant Director of Public Space responded:

- Information on FPNs issued is publicised on the website and further links are included within the supplemental information tabled at the meeting. A communications strategy was currently being looked at to ensure information was provided throughout the year.
- The Cabinet Member had agreed the introduction of the Envirocrime award which would offer members of the public rewards for providing information which led to a prosecution, with different levels depending on whether this was for fly-tipping or littering, with a maximum reward of up to £500. In response to further questions it was confirmed that any reports would have to be supported by a witness statement and/or the ability to attend Court proceedings.
- As part of the Flytipping strategy, the Council were looking at a Youtube channel of CCTV footage and images which members of the public could respond to with information on the offenders.
- The re-procurement of the Enforcement contract was currently being undertaken by officers.
- It was unlikely that the prosecution would ever cover the associated costs of the process of clearing and prosecuting any fly-tipper, although the legal costs for the prosecution could be claimed back through a costs order at the magistrates court.

Members thanked officers for their work and for the letter which had recently been produced to approach estate agents as suggested at the previous meeting.

RESOLVED: The Committee reviewed and commented on the further update of environmental prosecutions as outlined in the report.

10 AMENDMENTS TO THE APPOINTMENTS COMMITTEE TERMS OF REFERENCE AND THE EMPLOYEE PROCEDURE RULES (Agenda Item 10)

The Monitoring Officer presented the report and gave an overview of the recommendations which sought to resolve a couple of anomalies which had been found during a recent recruitment process.

In response to questions from the Committee, the Monitoring Officer advised that there was no legal requirement for the Monitoring Officer appointment to be agreed by Full Council and that currently any cross-borough appointments for shared services would have stakeholder panel input and are governed by the inter-authority agreement.

Some members expressed that they wanted to retain the current arrangements where Full Council agreed the appointment of Monitoring Officer.

Members wished to have further information provided on the changes proposed and further detail on the process of Senior Officer appointments before making a decision.

The recommendations were therefore not agreed, and the report would be revised and brought to the next meeting of the Committee.

11 SOCIAL MEDIA GUIDANCE FOR COUNCILLORS (Agenda Item 11)

The Monitoring Officer presented the report, advising that whilst a breach of the guidance wouldn't automatically be a breach of the code of conduct, it could be considered as part of any complaint received.

Members felt that it was important to have guidance however wished for the political groups to be consulted on the proposed guidance before it came back to Committee in July.

Members also requested that information be added to the guidance for Councillors who felt threatened on social media before it was brought back to Committee.

The recommendations were therefore not agreed and the report would be brought back to a later Committee meeting.

12 COMPLAINTS AGAINST MEMBERS (Agenda Item 12)

The Monitoring Officer informed the Committee that there had been no complaints against members received since the last meeting.

13 WORK PROGRAMME (Agenda Item 13)

The Work Programme was noted.

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Committee: Standards & General Purposes Committee

Date: 23 July 2020

Wards:

Subject: Update to the EY 2019/20 Audit Plan as a result of Covid-19

Lead officer: Caroline Holland

Lead member: Mark Allison

Contact officer: Roger Kershaw

Recommendations:

A. That Members note the Report

- 1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**
 - 1.1. To update Members on key audit issues emerging from the Covid-19 pandemic.
- 2 DETAILS**
 - 2.1. See attached note.
- 3 ALTERNATIVE OPTIONS**
 - 3.1. None
- 4 CONSULTATION UNDERTAKEN OR PROPOSED**
 - 4.1. None
- 5 TIMETABLE**
 - 5.1. N/A
- 6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**
 - 6.1. As stated in the note.
- 7 LEGAL AND STATUTORY IMPLICATIONS**
 - 7.1. As stated
- 8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**
 - 8.1. N/A
- 9 CRIME AND DISORDER IMPLICATIONS**
 - 9.1. N/A
- 10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**
 - 10.1. As stated
- 11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**
 - As attached

12 BACKGROUND PAPERS

12.1. EY Audit Plan.

**London Borough of Merton
Standards and General Purposes Committee
31 July 2020
Update to the EY 2019/20 Audit Plan as a result of Covid-19
8 July 2020**

Overview

We presented the 2019/20 Audit Plan for the Council and Pension Fund to the 12 March Committee meeting. This paper provides an update considering the known and potential impacts of Covid-19 which will be similar at all local authorities.

We will provide a further update to the next Committee meeting as we expect issues to continue to develop and change.

Timetable

MHCLG have changed the financial reporting dates for local authorities in light of Covid-19. The Council is now required to publish its draft statements by the 31 August (from 31 May) and publish audited accounts (where they have been audited) by 30 November (from 31 July). The Council has published its draft accounts on 3 July, including the Pension Fund accounts (although these were presented for audit in mid-May). We have now commenced the audit of the Council's accounts in line with the agreed timetable. We are also well progressed with the audit of the Pension Fund. We expect to report completion of the audit to the September Committee meeting.

Risks and areas of focus – Council

At present we have not identified any new significant risks. However, there are some matters we need to highlight as a result of Covid-19:

Misstatements due to fraud or error

The Audit Plan includes a significant risk in relation to fraud or error relating to the inappropriate capitalisation of revenue expenditure. In response to Covid-19 we will re-visit our fraud assessments as the incentive, opportunity and rationalisation for possible fraudulent misreporting may have changed.

Materiality

We have considered the impact of Covid-19 on the materiality levels we reported in the Audit Plan (for the Pension Fund too). We remain satisfied that those levels remain appropriate.

Going concern

There is presumption that the Council will continue as a going concern. However, the current and future uncertainty over government funding and other sources of Council revenue as a result of Covid-19 increases the need for the Council to undertake a detailed going concern assessment to support its assertion. From an audit perspective, the auditor's report going concern concept is a 12-month outlook from the audit opinion date, rather than the balance sheet date. So, this year, for example, we will need to see evidence of going concern up to and including around October 2021. This will need information relevant to the 2021/22 financial

year, it's budget, etc. For 2019/20 this is now an area of audit focus and we will be scrutinising the Council's revised financial plans and cashflow, liquidity forecasts, known outcomes, sensitivities, mitigating actions and key assumptions. We also will discuss with management the need to make specific disclosures in the 2019/20 statements on going concern and in particular any material uncertainties. As a minimum we are likely to include an emphasis of matter paragraph in the audit report in relation to going concern.

Property, plant and equipment valuations

The Audit Plan includes property valuations as a significant risk. The Royal Institute of Chartered Surveyors (RICS), the body setting the standards for property valuations, has issued guidance to valuers highlighting that the uncertain impact of Covid-19 on markets might cause a valuer to conclude that there is a material uncertainty, which the valuer would then disclose in their report. RICS has explained this is not a 'disclaimer' in the valuation: valuers are continuing to apply their professional judgement, this is disclosing the additional uncertainty attached to current valuations. This is particularly relevant for Fair Value / Market Value based assets because of the paucity of market information available at 31 March upon which to give those valuations. The draft accounts include reference to a material uncertainty from the valuer. We are now considering the impact on the audit approach as currently outlined in the audit plan to obtain the necessary audit assurance, further involving our EY valuation professionals as necessary to gain comfort over assets where the valuation basis is more likely to have been impacted by the market volatility brought about by Covid-19 at the end of the year. As a minimum we are likely include an emphasis of matter paragraph in the audit report.

Accounting for leases – IFRS 16

The adoption of IFRS 16 by the CIPFA Code of Practice on Local Authority Accounting as the basis for preparation of local government financial statements has been deferred to 2021/22. The Council will therefore no longer be required to disclose the impact of the standard in the financial statements and we no longer recognise this as an inherent risk in our audit plan.

Pensions

The pension liability and disclosures are already included as an area of audit focus in the Audit Plan. However, volatility in the financial markets is likely to have a significant impact on pension assets, and therefore net liabilities.

Impairment of receivables

There may be an increase in amounts written off as irrecoverable and impairment of year-end balances due to the increased number of businesses and residents unable to meet their financial obligations. We will review significant judgements made by management.

Valuation of investments

There may be certain investments held by the Council whose valuation as at 31 March 2020 have been impacted by the uncertainty created by Covid-19.

Events after the reporting date

Whilst the impact of the Covid-19 pandemic began to affect the Council before the 31 March 2020, there is a need for the Council to consider the impact of the pandemic on the accounts

and make appropriate disclosures. We will discuss and challenge management on its considerations and disclosures.

Annual Governance Statement

The widespread use of home working is likely to change the way internal controls operate. The Annual Governance Statement will need to capture how the control environment has changed during the period and what steps were taken to maintain a robust control environment during the disruption. This will also need to be considered in the context of internal audit's ability to issue their Head of Internal Audit opinion for the year, depending on the ability to complete the remainder of the internal audit programme.

Value for money conclusion

The Audit Plan included a significant value for money risk in relation to sustainable resource deployment - taking into account the Council's challenging financial outlook, the financial impact of addressing the matters raised by Ofsted inspection of the Council's services for special educational needs and/or disabilities and the overspend against the Dedicated Schools Grant budget. In completing our work on this risk, we will also consider the impact of Covid-19 on the Council's finances.

Risks and areas of focus – Pension Fund

Valuation of complex investments

The Audit Plan includes a significant risk in relation to the valuation of the Fund's new hedge. Whilst the Fund does not hold private equity investments it does hold material private debt, infrastructure and pooled property investments.

Often the valuation of these investments is based on the net assets of the invested fund as reported in their audited financial statements as at the end of December. Covid-19 has created an uncertain economic environment immediately prior to the Pension Fund's reporting date of 31 March 2020. As a result, the valuation of these complex investment assets as of 31 March 2020 can be subject to increased estimation and potentially significant judgements as to the valuation method adopted. The Pension Fund only has one investment where this may be relevant but is obtaining audited financial statements as of 31 March 2020 to inform its valuation in the statements.

Going concern assessment and disclosures

There is presumption that the Pension Fund will continue as a going concern. However, the current uncertain economic environment as a result of Covid-19 increases the need for the Fund to undertake a detailed going concern assessment to support its assertion.

The draft Pension Fund accounts were not accompanied by a management going concern assessment or an associated disclosure. We have since worked in collaboration with management to enable them to prepare an assessment and draft a disclosure note. We are currently scrutinising the Fund's cashflow and liquidity forecasts, sensitivities and key assumptions as part of our audit procedures.

Events after the reporting date

The Pension Fund is required to disclose material events, both favourable and unfavourable, that occur between the end of the reporting period and the date when the financial statements

are authorised for issue. Covid-19 has resulted in unprecedented circumstances and economic uncertainty on the global markets. Therefore, it is important that the Pension Fund give due consideration to the disclosure of events after the reporting date within their financial statements. Examples of notable subsequent events include significant movement of investment asset valuations since 31 March 2020 or if there are significant problems with admitted bodies making pension contributions. We will review the events after the reporting date disclosure as part of our audit procedures along with management's assessment of whether there have been any such events.

Annual Report

The widespread use of home working is likely to change the way internal controls operate. The Annual Report will need to capture how the control environment has changed during the period and what steps were taken to maintain a robust control environment during the disruption. We will review and perform consistency checks between the Pension Fund's Annual Report and its financial statements.

We will provide an update on the impact of Covid-19 on the Council and Pension Fund's financial statements, and how we have responded to the additional risks of misstatement, later in our audit.

Audit delivery

Remote working

Our audit documentation tool, Canvas, and the EY Client Portal enable us to undertake the majority of our audit procedures by working remotely. To date, the Council's finance team have also been able to deal with audit queries and continue with their closedown preparations remotely.

Audit evidence

Whilst remote working is operating relatively effectively, there are likely to be some aspects of audit evidence where we will need to work collaboratively with the finance team to ensure its appropriateness and sufficiency. For example, typically we would sit down with the finance team to observe them running reports from the ledger which support balances in the statements. We will need to agree a practical and effective way that we can gain the same assurance but working remotely.

Auditor's report

Following the government's decision to enforce a lockdown, all audit firms implemented a moratorium on the majority of their auditor reports. Whilst the moratorium was lifted in mid-April, because of the ongoing uncertainty Covid-19 presents to the material accuracy of financial statements, the firm (in common with other firms) has introduced a rigorous consultation process for all auditor reports. This is to help ensure that we give the right assurance to the Council and its stakeholders. Whilst we may not be seeking to issue the Council's auditor report until September, the consultation process may impact on the timing and the content of the audit report. We will update the Committee at its next meeting.

Fees

In the Audit Plan we referenced our intention to revisit and propose an increase to the scale fee as a result of the changes in the audit market and increases in regulation since the most recent PSAA tender exercise. We have shared with the Director of Corporate Resources details on our proposal for increasing the scale fee and details of the main drivers. In light of the matters included in this update, we will need to consider further the impact on the 2019/20 audit fee. We will update the Committee at its next meeting.

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LONDON BOROUGH OF MERTON

INTERNAL AUDIT ANNUAL REPORT YEAR ENDING 31ST MARCH 2020

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1. Head of Audit Assurance Opinion

1.1 As Head of Internal Audit for the London Borough of Merton, I am required to provide the Council with an opinion on the adequacy and effectiveness of the internal control environment: I base my opinion upon:

- All internal audit assignments undertaken during the year
- Any follow up action taken in respect of previous audit work
- Any significant recommendations not accepted by management and the consequent risks
- Matters arising from previous reports to the Standards and General Purposes Committee
- Any limitations, which may have been placed on the scope of the internal audit.

Opinion

I am satisfied that sufficient internal audit work has been undertaken to allow me to draw a reasonable conclusion as to the adequacy and effectiveness of the Council's control environment. In giving this opinion, it should be noted that assurance can never be absolute and, therefore, only reasonable assurance can be provided, subject to the limited assurance opinions detailed in this report.

1.2 Where weaknesses in controls have been identified, action plans are in place. It is important that departments ensure that audit actions are implemented in a timely manner to ensure effective controls are in place.

2 The Internal Audit Assurance Framework

2.1. A key responsibility of Internal Audit is to give the organisation assurances about the levels of internal control being exercised in the areas of risk and in particular, where there are transactions that are considered "material" to the Council.

2.2. In order to give such an assurance, a balanced programme of Internal Audit reviews is constructed each year. This Annual Internal Audit Plan contains elements of all the Council's activities selected using a "Risk Based" approach. There are many tools used to achieve a balanced plan including undertaking systems reviews, regularity audits (e.g. schools), contract and computer audit, fraud and misappropriation reviews and an annual review of major financial systems such as the main accounting system, payroll, Council Tax and Housing Benefits.

2.3 For each audit carried out, Internal Audit provides an opinion as to the quality of the control environment in the following processes:

- Risks have been identified, evaluated and managed
- Internal controls reduce risks to acceptable levels
- Action is being taken to promptly remedy significant failings or weaknesses
- The current levels of monitoring are sufficient

2.4 Each audit is given an opinion based on 4 levels of assurance depending on the conclusions reached and the evidence to support those conclusions. Members and management should note that the assurance level is an opinion of controls in operation at the time of the audit. The auditor will agree with management a number of recommendations which, when implemented, will result in a reduction of the exposure to risk. Each recommendation is given a priority ranking and an implementation date and these are monitored on a regular basis by the Internal Audit team. Priority 1 recommendations are defined as being those where major issues have been identified for the attention of senior management.

Levels of assurance	
Full Assurance	There is a sound system of control designed to achieve the system objectives and manage the risks to achieving those objectives. No weaknesses have been identified.
Substantial Assurance	Whilst there is a largely sound system of control, there are some minor weaknesses, which may put a limited number of the system objectives at risk.
Limited Assurance	There are significant weaknesses in key control areas, which put the system objectives at risk.
No Assurance	Control is weak, leaving the system open to material error or abuse.

PRIORITY OF RECOMMENDATIONS	
1	Major issues that we consider need to be brought to the attention of senior management.
2	Important issues which should be addressed by management in their areas of responsibility to avoid exposure to significant risk.
3	Minor issues where the risk is low. Action is advised to enhance control or improve operational efficiency.

2.5. In addition, each recommendation emanating from the audit review is given a priority rating of 1, 2 or 3 for implementation, with priority 1 being a high risk requiring immediate attention. All recommendations are followed up by Internal Audit to ensure that they have been implemented.

- 2.6. The audit plan for 2019/20 covered those area of high fraud risk, as identified through the Council's own assessments and through information from CIPFA, and other sources, where fraud risks are highlighted. Examples of these are procurement cards and direct payments.
- 2.7 These audits reviewed the controls in place, although no fraud was identified in any of these reviews, a number of recommendations were made to improve the controls.

3 Planned coverage and output

- 3.1 The total number of audit days commissioned for 2019/20 was 765 days. We can report that we have completed 100% of the total number of commissioned audit days.
- 3.2 The plan was compiled with reference to the Council's Corporate Risk register and following discussions with each departmental management teams (DMTs). This ensured that audit work was focused on the Council's key risks and targeted areas where senior managers required independent assurance over controls in their service areas.
- 3.3 Changes to the plan and updates on progress were discussed at DMT's quarterly and significant changes reported to the Standards and General Purposes Committee in the progress reports.
- 3.4 In terms of reports delivered by the audit team, the audit plan at the start of the year included 48 audits. The plan is always flexible to allow for movement in the number of audits in the plan and the days delivered reflecting changing client needs. The overall number of reports will be subject to change over the course of the year as audits may be deferred or no longer required. However, additional reviews may be added if concerns are raised about a specific control area or existing reviews may have their budgets increased. During the year, there were 6 additional audits requested. These have ranged from full audits to focused audit investigations. These included:
- Planning
 - School fund review
 - Voluntary sector
 - Conflict of issue concern
 - Contract compliance
 - Court case preparation
- 3.5 These referrals to Internal Audit help to demonstrate the continued good engagement from departments and their awareness of the role of Internal Audit and the work that they can undertake to support their service. The Council's risk profile is constantly changing. Therefore, Internal Audit and the internal audit plan need to be flexible to be able to respond to these changing and emerging risks.
- 3.6 The Internal Audit function is conscious of the significant pressure on resources that the Council is facing and has continued to identify where we can support

management through looking to identify potential efficiencies and making recommendations for possibly fewer but better controls wherever possible.

4. Internal Audit Assurances 2019/20

- 4.1. There were 43 audit reviews undertaken during 2019/20, of these 32 have provided an assurance opinion (8 reviews were advisory and 3 relate to grant claims or signing off accounts). There were 24 substantial assurances (75%) and 8 limited assurances (25%).
- 4.3 A full list of the assurances can be found in Appendix A. Action Plans for improvements are in place for all audits. The following tables summarise the results by audit type:

Table 1 Internal Audit Assurances by Audit Type 2019/20

Assurance	assurance	Limited	Totals
Procurement	1	0	1
schools	5	1	6
Financial	8	2	10
IT	0	1	1
Service Specific	6	4	10
Corp Gov	4	0	4
Totals	24	8	32

Financial systems

- 4.4 There were six key financial systems reviewed this year, which all received a substantial assurance.

Table 2 Key Financial systems audit assurance for last 3 years

Financial System	Assurance 2017/18	Assurance 2018/19	Assurance 2019/20
Payroll (iTrent)	Satisfactory	Substantial	Substantial
Accounts Payable	Satisfactory	Substantial	Not audited
Fixed Assets	Satisfactory	Not audited	Substantial (valuation review)
Debtors	Not audited	Not audited	Substantial
Housing benefits	Satisfactory	Not audited	Not audited
Treasury management/pension investment	Limited	Substantial	Substantial
Council Tax	Not audited	Not audited	Substantial
National Non-Domestic Rates (NNDR)	Satisfactory	Not audited	Not audited
General Ledger	Satisfactory	Substantial	Not audited
Pension Administration	Not audited	Not audited	Substantial

- 4.5 In addition to the in-house work, there has been a joint 3 borough audit undertaken on the iTrent payroll system. This was led by the London Borough of Sutton as host authority for the system, and they commissioned an audit report, the scope for which was agreed by all 3 boroughs using the system (Kingston, Sutton and Merton). The audit was awarded Substantial Assurance opinion which is the same opinion as given in 2018/19.
- 4.6 Other financial reviews this year have been carried out on Petty Cash Imprest, which had a substantial assurance and BACS/CHAPS and Procurement Cards had a Limited assurance. Duplicate payment testing has also been carried out.

Key Areas for 2019/20

- 4.7 Internal Audit has continued to improve their level of engagement with all levels of management. This has been achieved by attending regular DMT's to discuss audit progress, meeting with key stakeholders prior to the start of the audit to agree the audit brief.
- 4.8 When the audit plan is set, discussions are held with all key people for input; this engagement has enabled the Internal Audit team to focus on the key areas of risk as well as work closely with management to formulate actions to address areas where improvement is required.
- 4.9 As set out in the above section we have identified areas of good practice and an effective control environment across the majority of the systems, processes and establishments reviewed. This includes the Council's key financial systems.
- 4.10 However there are a number of areas where further improvements are required to strengthen the control environment and we have summarised the key issues below.

Table 3: Priority 1 recommendations

Audit	Assurance Opinion	Number of P1's	Implemented
BACS/CHAPS	Limited	4	Yes
Procurement Card – Transfer System (Pay Pal)	Limited	2	Yes

Payment Card Industry Data Security Standard	Limited	3	No
Tree Maintenance	Limited	1	No
Perseid School	Limited	6	Yes
Deprivation of Liberty safeguards	Substantial	2	Yes
Interim Staff Review	Substantial	6	Yes
Prepaid Cards*	Limited	5	n/a
No Recourse to Public Funds*	Limited	2	n/a
Direct Payments*	Limited	4	n/a

*reports to be finalised

Key issues (These have previously been reported to Standards and General Purposes Committee)

- 4.11 **BACS/CHAPS** -At the time of audit, the treasury management processing document required updating to detail the process for non-treasury CHAPS payments. It was found that there had been a significant increase in non-treasury CHAPS payments since the last audit review. Requests for CHAPS payments should be reviewed to ensure they can be justified and remain cost effective for the Council. The process for checking supporting documentation requires review as the different teams involved were unclear on their roles and responsibilities.
- 4.12 Audit testing found 7 out of 14 payments checked that the voucher request had not always been fully completed at the time of the payment being processed. The BACS Preparation/Transmission form is prepopulated with names of officers that can request and transmit a BACS payment request. A review of the names on the form found that several named officers are no longer working with the Council, it was also found that two officers have the ability to process as well as authorise and submit BACS submissions.
- 4.13 Access to the PayGate system found that the system functionality to force password change is either disabled or not in place. Some employees in IT Services have retained their access to the PayGate system but are no longer involved in the processing of BACS payments.
- 4.14 **Procurement Cards**– Transfer System (Pay Pal)- Although it is detailed in the Procurement Card user guide that PayPal is excluded from Procurement card use, PayPal was found to be used by 32 cardholders in 2018/19 and by 10 cardholders in 2019/20 (April to June).
- 4.15 The use of PayPal for procurement card expenditure is not permitted by the authority as the statement name can be defined by the account holder and therefore, potentially differ to that of the actual payee. Sample testing of Paypal transactions found that 2 out of 8 receipts did not state the supplier's details.
- 4.16 **Payment Card Industry Data Security Standard**- An Annual IT PSN Health Check had been completed by an external firm for the Council in August 2019,

which identified 3 critically, 6 highly and 11 moderately risky findings, which still required completion.

- 4.17 There was no documentary evidence to demonstrate that the Council conducts quarterly PCI DSS vulnerability scanning or evidence to how Senior Management are monitoring the compliance programme.
- 4.18 **Tree Maintenance** - There was no clear direction on how trees are managed by the council. At the time of the audit there was no final Strategy, Policy and Business Plan for the management and maintenance of the Council tree stock. As a result, the service focused on responding to resident requests rather than to a set maintenance program. There was also a significant backlog of resident's tree work requests that had not been entered onto the Highways tree system or responded to.
- 4.19 **Perseid School**- At the time of audit, the school did not have a three-year budget plan and no significant recovery plan for the deficit budget. Budget monitoring did not include commitment accounting. The school did not undertake IR35 checks when making payments for work done at the school. Access rights to the school financial system could not be verified by the school.
- 4.20 **Deprivation of Liberty safeguards** At the time of audit, the service had a 2 year contract for the provision of independent mental capacity, which started in 2011 with an option to extend for a further 12 months. This contract had continued to be extended since then. The contract is a set fee of £20,000 per year, but it was found that its use had decreased each year. A review needs to be undertaken to ensure it is providing value for money as well as meeting the needs of the service.
- 4.21 Sample checking of spot purchases invoices found that invoices had been incorrectly paid. A process needs to be put in place to review invoices for correctness, ensuring that the service has been provided.
- 4.22 **Interim Staff Review** - This audit received Substantial assurance although a number of issues were highlighted for improvement. Where there were longer term agency placements, attempts to recruit need to be evidenced clearly. Managers need to ensure that leaver's forms are completed for all agency leavers to ensure that their IT access is discontinued and IT equipment returned.
- 4.23 Supporting documentation and Comensura records must be completed to evidence the correct procedures followed for the recruitment of agency staff. Contract documentation was not in place for all consultants. Procedures for the appointment of sessional staff was not consistent across the council.

Draft reports –(These will be reported at final report stage to the next Standards and General Purposes Committee) awaiting management comments:-

- 4.24 **Prepaid Cards**- The guidance document previously recommended by Internal Audit in 2016 had been drafted by the service but had not been finalised. There were 14 active accounts open on the system for employees that had left the

employment of the council. Sample testing found that service agreements were not in place for all transactions. Receipts were not available for all expenditure and in 70% of transactions it was not clear why payments had been made on the prepaid card as the users were also in receipt of payments through BACS.

- 4.25 **No Recourse to Public Funds-** As part of the assessment process it is a requirement for the council to check the immigration status of clients requesting assistance. It was found that three adults and two families were not registered on the NRPF connect database. Reviews carried out by social workers were not always consistent and evidence of immigration checks undertaken.
- 4.26 **Direct Payments** -The service user's agreement were found to be under review as they did not fully comply with the most current legislation. A review of a sample of client found that agreements missing, undated or unsigned. Evidence of regular monitoring was unavailable at the time of audit.

5. Implementation of recommendations

- 5.1 During 2019/20 Internal Audit made a total of 218 recommended improvement actions including 24 Priority 1 (P1's) actions. Management has responded to each of our recommendations stating whether action will be taken to implement.
- 5.2 At the time of this report 193 actions (82%) were fully implemented, of these, 21 P1 actions were implemented and 4 are still in progress (1 P1 from 2018/19 is still in progress).
- 5.3 For those outstanding actions, an expected implementation date is provided by the manager. Monthly reports are sent out to all managers for actions due and where these are over two months overdue, the Head of Service also receives a copy. If an action is more than 3 months overdue, then the appropriate Director is informed. Any overdue outstanding audit actions are then reported to Standards and General Purposes committee. No recommendations are overdue and need to be reported to this meeting.

6. Review of the Effectiveness of the System of Internal Audit

- 6.1 A requirement laid down in the Accounts and Audit (England) Regulations 2015 states that 'the relevant body shall, at least once a year, conduct a review of the effectiveness of its internal audit'. An annual self-assessment against CIPFA's Code of Practice for Internal Audit in Local Government has to be carried out each year and an external assessment every 5 years.
- 6.2 A self-assessment has been undertaken against the Public Sector internal audit standard (PSIAS). This demonstrated substantial compliance with the standards. An external Assessment against the PSIAS was carried out in May 2018 and provided substantial assurance. Where actions have been identified these will be reviewed and included in the Quality Action Implementation Plan and progress reviewed.

6.3 The key focus of the review of the effectiveness of internal audit is the delivery of the service to the required standard in order to produce a reliable assurance on internal controls and the management of risks in the authority. In coming to a view on the effectiveness of the system of internal audit, the following factors are all indicators that should be taken into accounts.

- Performance of the internal audit provider (in-house and/or contractors) in terms of both quality and cost.
- Views of external audit & reliance placed on work by internal audit.
- Role and effectiveness of the Standards and General Purposes Committee.
- The extent to which internal audit adds value to the organisation and helps delivery of objectives.

6.4 During 2019/20, the internal audit service has achieved the following:-

- Delivery of 100% of the audit plan
- 100% client satisfaction for audit work

7 Fraud Investigations

7.1 The Council's Anti-Fraud and Anti-Corruption strategy sets out the Council's approach to detecting, preventing and investigating fraud and corruption. This strategy is supported by the Council's whistleblowing policy, which was reviewed and updated in 2018 and by the Council's code of conduct. The Internal Audit section has a key role in implementing this strategy and to ensure that the internal controls in place are robust to prevent fraud occurring or to tighten controls where fraud has occurred.

7.2 The South West London Fraud Partnership was established on the 1st April 2015 as a 5 borough shared fraud investigation service between LB Merton, RB Kingston, LB Sutton, LB Richmond and led by LB Wandsworth.

7.3 During 2019/20, the SWLFP has undertaken counter fraud activities in the following areas:

- National Fraud Initiative (NFI)
- Blue badge/parking permits
- Council tax reduction/discount
- Employee fraud
- Housing tenancy fraud/abuse

Investigation caseloads

7.4 In total 142 cases have been opened in 2019/20 as a result of the referrals received and concerns highlighted through proactive fraud drives and NFI

matches during the year. A breakdown of fraud referrals accepted for investigation is shown in the table below:

2019/20 Fraud Category	Sanction Target	Open Cases b/fwd	New Cases in Year	Total Cases	Closed No Sanction	Closed With Sanction	Open Cases c/fwd
Tenancy Fraud	9	41	42	83	37	12	34
Right to Buy	5	7	7	14	7	5	2
Hsg Apps Rejected	20	2	75	77	1	75*	1
Blue badge	n/a	3	4	7	3	1	3
Employee	n/a	9	9	18	3	5	10
CTR/SPD/HB	n/a	1	3	4	2	1	1
Other	n/a	13	7	20	13	0	7
Totals	34	76	147	223	66	99	58

* NFI data match on waiting list

- 7.5 **Tenancy Fraud-** Twelve properties were recovered in 2019/20. This allows for those on the Councils waiting list to be provided with the opportunity for a housing tenancy. Work is ongoing, including three cases with legal for consideration of legal action.
- 7.6 **Right to buy-** applicants are passed to the Fraud partnership and the application checked to Housing Benefit: five RTB applications have been withdrawn following intervention by the SWLFP.
- 7.7 Housing application rejected- 75 applicants have been removed from the housing list following a National Fraud Initiative data match. This would have identified that they were no longer eligible for a housing application

Corporate Fraud (internal)

- 7.8 The corporate fraud cases involving employees for 2019/20, resulted in: -
- 1 disciplinary hearing (dismissed)
 - 2 resignation
 - 2 Prosecutions in progress
 - 3 No Further action
 - 10 in progress

National Fraud Initiative (NFI)

7.9 The NFI matches are: - Creditors, Market Traders, Personal Alcohol Licences, Parking, Payroll, Pensions, Personal Budgets, Residential Care, Council Tax & Electoral Registration. This data is matched between councils and within Merton.

7.10 NFI 2018 – Reports have been released; with additional matches having been released on 31st May 2019. SWLFP are currently reviewing the reports to determine and agree with service the programme of work.

NFI	TOTAL	Closed	In progress	fraud	To review
NFI 2018/19 – Main NFI	6707	291	1612	1/0	4804
Re-Check - Ctax to ER –2019	1,629	0	0	0	1,62
Re-Check - Ctax to ER –2020	1,984	0	0	0	1.984
	10,320	291	1,612	1	8,417

8. LOCAL GOVERNMENT TRANSPARENCY CODE

8.1 Under the code the Council is required to publish the following data regarding its Fraud Investigation activity. Listed below are 2019/20 figures (with 2018/19 comparative figures shown within brackets).

Accredited number of occasions they use powers under the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014, or similar powers		
	19/20	(18/19)
Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014	12	14
The Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013	3	7
Total number (absolute and full time equivalent) of employees undertaking investigations and prosecutions of fraud		
	Absolute	FTE
Fraud Investigation - SWLFP #	15 (15)	14.5 (14.5)
Total number (absolute and full time equivalent) of professionally accredited counter fraud specialists		
PINS trained Fraud Specialist	7 (6)	7.0 (6.0)
CIPFA Certificate in Investigative Practices	1 (2)	1.0 (2.0)
CIPFA Accredited Counter Fraud Specialist	4 (4)	4.0 (4.0)
Total amount spent by the authority on investigation and fraud prevention		
	19/20	(18/19)
Fraud Partnership	£123.2k	£121.1k
Total number of fraud cases investigated.		
SPD/Council tax reduction/ Housing/Tenancy related Investigations	3 125	4 199
Right to Buy	12	11
Permit Fraud Investigation (blue badge)	4	9
Other Investigations	<u>21</u>	<u>14</u>
TOTAL	165	237

8.2 To ensure that sufficient knowledge and capability for fraud investigation was maintained Merton entered into a partnership with four neighbouring boroughs, the SWLFP. For 2019/20, the number of Fraud investigation officers and officers with specialist fraud qualifications relates to the pool of officers within the SWLFP team that can be called upon, Merton's funding contribution equates to 2 FTE investigators.

Internal Audit reviews 2019/20

Department	Audit Title	Assurance	type	P1	P2	P3	Status
Corporate Services	Merton & Sutton Joint Cemetery Board 2019-20	accounts	accounts	0	0	0	Final
Corporate Services	Mayors Office (Charitable Trust)	accounts	accounts	0	0	0	Final
Corporate Services	Local Land Charges Income review	Advisory	adhoc	0	2	0	Final
Children, Schools and Families	Cricket Green School Fund	Advisory	ad-hoc	0	4	0	Final
Children, Schools and Families	Conflict of Interest investigation	Advisory	ad-hoc	0	2	0	Final
Environment and Regeneration	Planning Investigation	Advisory	ad-hoc	0	2	0	Final
Corporate Services	Voluntary Sector - Investigation	Advisory	ad-hoc	0	1	0	Final
Corporate Services	Contract investigation	Advisory	ad-hoc	0	2	0	Final
Children, Schools and Families	School investigation	Advisory	ad-hoc	0	1	0	Final
Environment and Regeneration	Building Control accounting query	Advisory	ad-hoc	0	3	0	Final
Corporate Services	Duplicate Payment check 2019-20	Substantial Assurance	financial	0	0	0	Final
Corporate Services	BACS-CHAPS	Limited Assurance	financial	4	3	1	Final
Corporate Services	Shared iTrent Audit	Substantial Assurance	financial	0	4	3	Final

Corporate Services	Accounts Receivable	Substantial Assurance	financial	0	5	4	Final
Environment and Regeneration	Valuations	Substantial Assurance	financial	0	1	0	Final
Corporate Services	Pension Administration-joint review	Substantial Assurance	financial	0	4	1	Final
Corporate Services	Council Tax	Substantial Assurance	financial	0	3	0	Final
Corporate Services	Treasury Management	Substantial Assurance	financial	0	9	3	Final
Corporate Services	Petty Cash Imprests	Substantial Assurance	financial	0	5	2	Final
Corporate Services	Procurement Card -Transfer System (Pay pal)	Limited Assurance	financial	2	2	0	Final
Merton Cross Cutting	Foi's and Subject Access Requests 2019-20	Substantial Assurance	governance	0	4	1	Final
Merton Cross Cutting	Transparency agenda	Substantial Assurance	governance	0	2	0	Final
Corporate Services	Risk Management	Substantial Assurance	governance	0	0	0	Final
Merton Cross Cutting	GDPR	Substantial Assurance	governance	0	4	0	Final
Children, Schools and Families	Troubled Families Grant	Grant	grant	0	0	0	Final
Corporate Services	PCI compliance	Limited Assurance	IT	3	1	0	Final
Community and Housing	Adult Learning Contract	Substantial Assurance	procurement	0	2	1	Final
Children, Schools and Families	Perseid School	Limited Assurance	school	6	5	0	Final

Children, Schools and Families	Bond Primary School	Substantial Assurance	school	0	11	0	Final
Children, Schools and Families	Malmesbury Primary School	Substantial Assurance	school	0	10	0	Final
Children, Schools and Families	Abbotsbury Primary School	Substantial Assurance	school	0	12	0	Final
Children, Schools and Families	Singlegate Primary School	Substantial Assurance	school	0	11	1	Final
Children, Schools and Families	Garfield Primary School	Substantial Assurance	school	0	10	2	Final
Community and Housing	Reviews of Care Plans	Substantial Assurance	service specific	0	12	4	Final
Corporate Services	Interim Staff Review	Substantial Assurance	service specific	6	7	2	Final
Community and Housing	Deprivation of liberty safeguards assessments	Substantial Assurance	service specific	2	11	0	Final
Children, Schools and Families	Unaccompanied Asylum Seeking Children	Substantial Assurance	service specific	0	5	0	Final
Corporate Services	Monitoring of School Returns	Substantial Assurance	service specific	0	4	0	Final
Environment and Regeneration	Tree Maintenance	Limited Assurance	service specific	1	4	1	Final
Community and Housing	Direct Payments	Limited Assurance	service specific	4	6	0	Draft
Environment and Regeneration	Penalty Charge Notices (PNC)	Substantial Assurance	service specific	0	3	0	Draft
Merton Cross Cutting	No Recourse to Public Funds	Limited Assurance	service specific	2	3	2	Draft
Community and Housing	Prepaid Cards	Limited Assurance	service specific	5	6	0	Draft

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Committee: Standards and General Purposes Committee

Date: 23 July 2020

Agenda item: Wards:

All

Subject: Annual Governance Statement 2019/20

Lead officer: Caroline Holland – Director of Corporate Services

Lead members: Peter McCabe- Chair of Standards and GP Committee

Contact officer: Margaret Culleton- Head of Internal Audit

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Recommendations:

- a) The Committee considers and comments on the draft Annual Governance Statement (AGS) for 2019-20
- b) The Committee approves the draft Annual Governance Statement for 2019/20 prior to final sign off by the Leader of the Council and the Chief Executive.
- c) The Committee agree the proposed adjustment to the Whistleblowing policy

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 Merton Council is required to prepare an Annual Governance Statement (AGS) for the year 2019/20. This statement is required in order to comply with Regulation 6(3) of the Accounts and Audit Regulations 2015.

2. DETAILS

- 2.1 The purpose of the AGS is to report on the robustness of the Council's governance arrangements. Corporate governance is defined, for the purposes of this report, as:

“ The framework of accountability to users, stakeholders and the wider community, within which organisations take decisions, and lead and control their functions, to achieve objectives. The quality of corporate governance arrangements is a key determinant of the quality of services provided by organisations.”

- 2.2 *Delivering Good Governance in Local Government: Framework, (CIPFA/Solace, 2016)* applies to annual governance statements. The concept underpinning the Framework is that it is helping local government in taking responsibility for developing and shaping an informed approach to governance, aimed at achieving

the highest standards in a measured and proportionate way. The Framework is intended to assist authorities individually in reviewing and accounting for their own unique approach. The overall aim is to ensure that:

- resources are directed in accordance with agreed policy and according to priorities
- there is sound and inclusive decision making
- there is clear accountability for the use of those resources in order to achieve desired outcomes for service users and communities.

3. Background

3.1 The Council has responsibility for conducting, at least annually, a review of the effectiveness of its governance framework, including its system of internal control. The Council has charged the Standards and General Purposes Committee with keeping the effectiveness of the Council's system of internal control under review and reporting any recommendations for improvement..

3.2 The AGS is a tool to ensure the appropriate profile of governance arrangements in an organisation and demonstrates the Council's commitment to good governance. To have the intended effect, the AGS must be open, honest and balanced. The document should reflect contributions from across the organisation.

3.3 The AGS reviews and reflects upon the Council's governance arrangements at a specific point in time. This review covered from April 2019 to March 2020. In March 2020 the council put in place emergency governance arrangements due to the Covid 19 pandemic. The action plan has included a review of these arrangements and a recovery plan for 2020/21.

3.4 The Head of Audit led the review of the effectiveness and a draft Annual Governance Statement This year's review of effectiveness has been informed by:

- The Head of Assurance Annual Opinion presented to this Committee
- Any comments made by the Council's External Auditors, and outcomes from other review agencies and inspectorates.
- Review against the guidance produced by CIPFA and Solace.

4 Actions from review

4.1 An update on the actions for 2019/20 are included in table 2, two of these actions have been closed and three have been carried over. The actions carried over to 2020/21 include Brexit, financial pressures and procurement.

4.2 The issues to be considered during 2020/21 are set out in table 1. These include

- A recovery plan for the easing of the lockdown, to include short, medium or long term changes including preparation for a second wave.
- The council had a LGA review in 2019/20, which made a number of recommendations which were put on hold during the pandemic, these will be reviewed during 2020/21.

5 Limited assurance report – Internal Audit

5.1 The Internal Audit work for 2019/20 provided eight limited assurance reports. These are set out in the annual report of the Head of Internal Audit, which supports the AGS. (Separate paper to committee).

5.2 All recommendations have been accepted by management and at the time of this review, there were 11 priority 1 recommendations in progress.

6 Whistleblowing policy

6.1 A review of the whistleblowing process has been set up in 2019/20, with monthly meetings held with the Head of Internal Audit, HR and the monitoring officer to review new cases and progress on current ones. A decision was made at the last meeting to discontinue the use of the charity Protect and therefore reference to them has been removed from the policy.

7. ALTERNATIVE OPTIONS

7.1 There are no alternative options as the AGS is a statutory requirement, as stated at paragraph 1.1 above.

8. CONSULTATION UNDERTAKEN OR PROPOSED

8.1 No external consultation has taken place or is planned for this document.

9 TIMETABLE

9.1 This report has been prepared to meet the timetable for the approval of the Statement of Accounts.

10 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

10.1 There are no specific financial, resource or property implications apart from the need to implement the AGS Improvement Plan, which will be completed within existing resources

11 LEGAL AND STATUTORY IMPLICATIONS

11.1 The AGS is a statutory requirement.

12 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION

IMPLICATIONS

- 12.1 There are no specific human rights, equalities or community cohesion implications, except in so far as this report is wholly concerned with good governance.

13 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 13.1 There are no specific risk management or health and safety implications other than the assessment of the Council's risk management arrangements in the AGS

14 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- 14.1 Appendix I: Annual Governance Statement 2019/20.

15 BACKGROUND PAPERS

- 15.2 CIPFA / SOLACE Delivering Good Governance in Local Government – Framework 2016
- 15.3 CIPFA / SOLACE Delivering Good Governance in Local Government – Guidance Note for Local Authorities

ANNUAL GOVERNANCE STATEMENT 2019/20

This statement from the Leader and the Chief Executive provides assurance to all stakeholders that within Merton Council processes and systems have been established, which ensure that decisions are properly made and scrutinised, and that public money is being spent economically and effectively to ensure maximum benefit to all citizens of the borough.

1. Scope of responsibility

- 1.1. Merton Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.
- 1.2. This statement explains how Merton Council has complied with the principles of the CIPFA/SOLACE Framework *Delivering Good Governance in Local Government* (2016) and the requirements of regulation 6(1b) of the Accounts and Audit Regulations 2015 which requires all relevant bodies to prepare an annual governance statement.

2 The governance framework

- 2.1 The governance framework comprises the systems and processes, culture and values by which the authority is directed and the activities through which it accounts to, engages with and leads its communities. It enables the authority to monitor the achievement of its strategic objectives and to consider whether those objectives have led to the delivery of appropriate services and value for money.
 - The full council sets the policy and budgetary framework and is responsible for the appointment of the Mayor; members of other bodies such as Scrutiny, other Committees and local committees. It also adopts the Code of Conduct for Councillors, agrees any changes to the Councils constitution and terms of reference for committees, panels and other member bodies. These meetings are open to the public, except where personal or confidential matters are being discussed.
 - The Overview and Scrutiny Commission and Panels are responsible for holding the executive to account, influencing the decision-making process, and shaping the development of new policy. Scrutiny oversees the development of the council's business plan and budget and takes an active role on financial and performance monitoring of council services. Three scrutiny panels cover all portfolios, and all areas of council activity. The Commission comprises fourteen members, four of whom are statutory co-opted members. The chair of the Commission is the leader of the Merton Park Ward Independent Resident Group.
 - The External Scrutiny Protocol sets out scrutiny powers, duties and responsibilities of the council and its partners. The protocol seeks to ensure all partners, statutory and non-statutory, adhere to the same principles for effective

scrutiny, provide information, consider recommendations and respond to the relevant overview and scrutiny panel within an agreed time frame. The protocol forms part of the council's constitution.

- The key principles of scrutiny in Merton, set out in the scrutiny handbook, are that it should be member-led, consensual, evidence-based and relatively informal. The handbook also contains advice for councillors and officers on their respective roles, guidance and practical steps on how to achieve successful scrutiny. It is based on experience of scrutiny in Merton, best practice research and examples from other local authorities.
- The Standards and General Purposes Committee has overall responsibility for promoting corporate governance and ensuring controls are adequate and working effectively. The Committee is also concerned with the promotion and maintenance of high standards of conduct within the council; the enforcement of the Member Code of Conduct; and advising the council on ethical governance matters. The Committee monitors the registers maintained in relation to gifts and hospitality received by councillors and offered to and accepted by staff. The Committee comprises twelve members, and the Council's two Independent Persons regularly attend as observers.
- The Standards and General Purposes Committee fulfils the role of an Audit Committee in accordance with CIPFA recommended best practice, and this committee has overall responsibility for ensuring controls are adequate and working effectively
- The Standards and General Purposes Committee is responsible for a range of non-executive functions, including electoral matters and personnel issues. It also has responsibility for considering and making recommendations to Full Council on any changes to the council's Constitution. Its functions include ensuring compliance with relevant laws and regulations, internal policies and procedures, and overseeing council accounts and audit activity.
- The council's constitution sets out the roles and responsibilities of members and senior officers. The role of the corporate management team, including the statutory chief officers, such as the Head of Paid Service, Section 151 officer as well as the Monitoring officer is to support members in the policy and decision-making process by providing assessments and advice to ensure that decision making is rigorous.
- The Council has a designated Monitoring officer, who, after consulting with the Head of Paid Service (Chief Executive) and Director of Corporate Services, reports to the Full Council, or the Leader in relation to an executive function, if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission would give rise to unlawful action. The Monitoring Officer also oversees members complaints and conduct, and matters referred by the Standards and General Purposes Committee and delivers reports and recommendations in respect of those to this Committee.
- The financial management of the Council is conducted in accordance with the Financial Regulations set out in the Constitution. The Council has designated

the Director of Corporate Services, as the Chief Financial Officer in accordance with Section 151 of the Local Government Act 1972. The Council has in place a four-year medium-term financial strategy that was agreed at Council in October 2019 and is updated annually supporting the Council's strategic objectives. The financial strategy ensures the economical, effective and efficient use of resources including a financial management process for reporting the Council's financial standing.

- Internal audit is responsible for monitoring the quality and effectiveness of internal controls. Using the Council's risk registers and an audit needs assessment, a plan of internal audit work is developed. The outcome of the internal audit risk-based work is reported to Directors and regularly to the Standards and General Purposes Committee. Implementation of recommendations is monitored, and progress reported. Regular Fraud update reports are presented to the Standards and General Purposes committee by the SWLFP.
- The Council has a performance planning process supplemented by detailed business planning to establish, monitor and communicate the Council's objectives. This includes a performance management system that sets key targets and reports on performance monitoring. The performance management framework is utilised to measure the quality of services for users, to ensure that they are delivered in accordance with the Council's objectives and that these services represent the best use of resources and value for money.
- The Council has a risk management process to identify, assess and manage those significant risks to the Council's objectives including the risks of its key strategic partnerships. The risk management process includes a risk management strategy, corporate and directorate risk registers. Key corporate risks are regularly reviewed by the Corporate Risk Management Group, Corporate Management Team and an annual report is presented to the Standards and General Purposes Committee.
- The Council has adopted codes of conduct for its staff and its Members, including co-opted members. These are provided to all staff as they are inducted into the organisation. Members and co-opted members sign an undertaking to abide by their Code of Conduct at the point of their election or appointment. These Codes are always available for reference and reminders and training are provided as necessary.
- To ensure that concerns or complaints from the public can be raised, the Council has adopted a formal complaints policy which sets out how complaints can be made, what should be expected and how to appeal. Arrangements are in place for Freedom of Information requests, Subject Access requests and publishing of data under the Transparency Agenda.
- A whistleblowing policy has been adopted to enable staff, partners and contractors to raise concerns of crime or maladministration confidentially. This has been designed to enable referrals to be made without fear of being identified. These arrangements are part of ensuring effective safeguarding, counter-fraud and anti-corruption arrangements are developed and maintained

in the Council. The operation of this policy is overseen by the heads of audit, fraud, human resources and the Monitoring Officer on a monthly basis.

- Members' induction training is undertaken after each local government election. In addition, an on-going programme of training and awareness is available for Members with formal and informal events each year, including all major changes in legislation and governance issues. Details of training provided are also reported to the Standards and General Purposes Committee.
- A corporate induction programme is delivered to all new staff joining the Council, supplemented by department specific elements. In addition, further developmental needs are identified through the Council's Appraisal Scheme.

3 Partnerships

- 3.1 The Merton Community Plan 2020 -2025 sets out the achievements of the Partnership over recent years and priorities for the next five years.
- 3.2 The Merton Partnership is responsible for the delivery of the Merton Community Plan (the Sustainable Community Strategy). The Partnership is chaired by the Leader of the Council and hosts an annual themed conference. It has an Executive Board, also chaired by the Leader of the Council that meets quarterly and whose role is to set the strategic direction of the Partnership and manage the delivery of the priorities and targets set out in the Community Plan.
- 3.3 The Merton Partnership Governance Handbook and the Performance Management Framework set out the respective governance and performance management arrangements for the Merton Partnership, including the thematic partnerships sitting under the Partnership and Executive Board (namely the Health and Wellbeing Board, the Children's Trust, the Sustainable Communities and Transport Board, and the Safer and Stronger Communities (which also serves as the Community Safety Partnership).
- 3.4 The Merton Partnership and its thematic Boards and working groups provide a mechanism for the Council to engage with key stakeholders. Most of the Partnership Boards meet quarterly and have clear governance arrangements. The MVSC are being commissioned to provide training to community groups.
- 3.5 The principles guiding the relationship and conduct between the council and voluntary, community and faith sector is set out in the Merton Compact (last refreshed in 2011). The Merton Compact is a partnership agreement between local public bodies and the voluntary and community sector to improve the relationships. The Merton Compact subscribes to the principles of the National Compact, setting out principles and values of the partnership and aims to achieve a Compact way of working

- 3.6 The Merton Compact is monitored by the Compact Board, comprising of representatives from public bodies including Merton Council (political and officer), Merton CCG, the police, the Fire Brigade and South Thames College and local representatives from the voluntary, community and faith sector. A dispute resolution procedure has been developed to help organisations through the difficulties associated with disputes and disagreements.
- 3.7 The council maintains a Partnerships Register which captures details of partnership bodies the council is involved in that are outside the standing bodies of the council, but which inform policy development or implementation. The Partnerships Register is reviewed annually to ensure it is up to date and is published on the council's intranet and website.
- 3.8 The Merton Partnership developed a new Voluntary Sector and Volunteering Strategy in 2017 to inform and guide its collective approach to sustaining a thriving voluntary sector. This new Strategy will guide the requirements for the Council's Strategic Partner programme that commissions advice and information services, as well as support for the voluntary sector.
- 3.9 The Council publishes an annual report setting out expenditure with the Voluntary and Community Sector, including notional funding and business rate discounts

4. Council owned companies

- 4.1 A review was carried out by the Committee on Standards in Public Life on Local Government Ethical Standards in January 2019 which recommended areas of best practice.

Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principles of openness and publish their board agendas and minutes and annual reports in an accessible place.

- 4.2 Merton council has established two companies.

CHAS 2013 Ltd (CHAS). The company was incorporated on the 28th March 2013, to provide both desktop and onsite supplier/contract risk management assessment and services. There are 2 council officers listed as directors, the Director of Environment and Regeneration, the Assistant Director of Adult Social Services and a managing director. The accounts are audited by EY and filed and published with Companies House. A note is also included in the council's main accounts.

Merantun Development Limited. The company was incorporated on the 9th August 2017, to undertake new housing build for 77 residential units. There are 2 council officers listed as directors, the Assistant Director of Resources and the Assistant Director of Sustainable Communities.

The shareholders board (Merantun Development Limited subcommittee) has 3

Councillors; the Leader of the council, Cabinet Member for Regeneration, Housing and Transport and the Deputy Leader and Cabinet Member for Finance. The sub committee meets 3 or 4 times a year and minutes and agendas are published on the council's website. The accounts are audited by Ernst & Young and are filed and published with Companies House.

5 Review of effectiveness

5.1 The London Borough of Merton has responsibility for conducting, at least annually, a review of the effectiveness of its governance framework including the system of internal control. The review of effectiveness is informed by the work of the senior managers within the authority who have responsibility for the development and maintenance of the governance environment, standards and general purposes committee, the Head of Internal Audit annual report, and also by comments made by the external auditors and other review agencies and inspectorates and others as appropriate.

5.2 This review process includes:

- The Monitoring Officer reviews the constitution as changes are required, to ensure its aims and principles are given full effect.
- Under the Council's constitution an annual report is presented to Council, outlining the work of the Overview and Scrutiny function over the course of the municipal year. This details the work carried out and outcomes achieved and residents' involvement.
- Each year a survey of all members is undertaken to seek their views on the effectiveness of the scrutiny function and suggestions for improvement. The results are reported to the Overview and Scrutiny Committee together with an action plan containing measures for innovation and improvements over the coming year
- Each year (after Annual Council) Members are asked to declare their interests and at the start of all committee meetings. Senior Officers are required to make annual declarations of interests. Guidance to senior officers is currently being updated. (see Table 1).
- The Council's financial management arrangements conform to the requirements of the CIPFA statement on the Role of the Chief Financial Officer in Local Government (CIPFA 2016).
- The Council maintains an effective Internal Audit service that has operated, in accordance with the Public Sector Internal Audit Standards. The Council's assurance arrangements conform to the governance requirements of the *CIPFA Statement on the Role of the Head of Internal Audit* (2019). An internal Public Sector Internal Audit Standards review for 2019/20 of the Internal Audit service concluded that the service is satisfactory and fit for purpose. A five-year external review was also undertaken in May 2018 and provided a compliance assurance.

- A revised Anti-Fraud and Corruption strategy was approved by the Standards and General Purposes Committee in 2019/20.
- An Internal Audit review on the effectiveness of the council's risk management arrangements was undertaken in 2019/20 and provided a substantial assurance.
- Quarterly Information Security and Governance board meetings are held to review policy, procedures and breaches, with representatives from each department and key officers.
- Considerations of the council's corporate risks and action in place (key risks included in table 1).
- Regular Fraud update reports are presented to the Standards and General Purposes committee.
- The annual financial planning process includes two rounds of budget scrutiny each year where the public can make representations in writing and at meetings. Budget monitoring reports are also presented and discussed at the quarterly Overview and Scrutiny Committee financial monitoring task group.
- There is an aligned Medium-Term financial strategy and Capital programme. Recommendations from the LGA review are included in Table 1.
- Review and challenge of PIs are established as part of service planning Review and challenge with monthly, quarterly and annual returns e.g. monitor if changes markedly from prior measure. London Authority Performance Solutions provides current comparison data across London for approximately 30 Indicators to compare and challenge if our data changes markedly and report to Corporate Management Team
- Performance reports on partnership working are produced for the Merton Partnership Executive Board.
- An LGA peer review was undertaken in 2019/20. This states that the council was working well but recommended some areas for improvement. Working groups have been set up to implement these, but this has been put on hold during to the current pandemic. A summary of the areas for improvement are included in table 1.
- The opinion of the external auditors in their reports and annual letter.
- Other review agencies, through their inspection arrangements, such as the Care Quality Commission and Ofsted.

5.3 The review has shown that the governance framework is consistent with the principles of the CIPFA / SOLACE best practice framework and the examples of the arrangements that should be in place. Internal Audit has reviewed the

effectiveness of the system of internal control for 2019/20. The Head of Internal Audit opinion based on this work, is that the system of internal control is generally sound and effective. Controls to manage principal risks are monitored by service managers. This includes services with statutory responsibilities for the safety of vulnerable people.

6 Internal Audit Outcomes

- 6.1 The Head of Audit is required to provide the Council with an opinion on the adequacy and effectiveness of the internal control environment. In the Annual Report on the work of Internal Audit during 2019/20 the Head of Internal Audit is satisfied that sufficient internal audit work has been undertaken to draw a reasonable conclusion as to the adequacy and effectiveness of the Council's control environment.
- 6.2 The review of the governance framework in place at the London Borough of Merton up to the middle of March 2020 concluded that it is fit for purpose in accordance with the governance framework.
- 6.3 During March the council changed the governance arrangements, which are outlined in point 7 below. The impact on the control environment was managed during this period, whereby any changes would be agreed and reported or identified on the risk register.
- 6.4 An Internal Audit review of the impact of the changes to the control environment, have been on-going. This has included attending the Risk Management group to consider risks in relation to Covid 19, in particular on IT, Remote working, and also undertaking fraud checks on Business grant and discretionary grant payments. A Covid 19 audit, providing a high level review the decision making process, funding allocations is in progress with other shorter reviews to provide quick assurances and advice.
- 6.5 The Internal Audit Plan for 2020/21 has been adjusted to ensure that it covers the change in the risk environment. Assurance work will include a review of the impact on internal control, IT controls, assurance on funding streams and payments.

7 Impact of Covid 19

- 7.1 The impact of the COVID-19 pandemic in March 2020, changed the governance arrangements in the council as it focuses on the crisis.
 - The council adopted formal London Resilience (Gold, Silver, Bronze) arrangements to manage the coronavirus response in the borough. This comprised a Gold Command team consisting of CMT members meeting regularly to discuss complex decisions, a Silver level group initially meeting daily to bring all decisions to one place and consider their impact and Bronze level departmental meetings, where issues around

staffing levels and service provision are resolved.

- Formal Committees have continued to meet, including Cabinet, the Overview and Scrutiny Commission and the Planning Application and Licensing Committees. The Annual Meeting has been postponed until the autumn but there is a plan to hold an ordinary meeting of full Council in July to allow for appropriate member oversight.
- A Covid 19 risk register was set up with daily updates to ensure oversight and control of the main risk areas.
- Additional funding has been provided by central government to local authorities to cover additional costs. Funding has also been provided for Business and the voluntary sector. This by no means covers the full amount of the costs incurred and the income foregone as a result of the pandemic and officers and members are working closely to understand what this means for the Council's medium-term financial strategy.
- Redeployment of council employees to key areas in place.

7.2 During 2020/21, the council will need to consider preparations to return to a new 'normal', lessons learnt and assessing the long-term impact and consequences of the pandemic

Table 1 Based on the review the following issues have been identified:

Issues	Action	Responsible Officer
A recovery plan for the easing of the lockdown and an assessment of the long-term disruption and consequences arising from the coronavirus pandemic	During 2020/21, as the lockdown eases, the council will start planning for recovery. This will have short term, medium term and long-term changes in place as an assessment is undertaken on services to restart, stop, retain or change. An Interim Head of Recovery has been appointed.	CMT
LGA review- summary of recommendations Develop a strategic vision for Merton as a place, with priorities that reflect the council's place-shaping role. The council's Business Plan reviewed to ensure that capacity is focused to deliver the new objectives. Review budget planning in line with the strategic vision to allow for the development of a clearer Medium-Term Financial Strategy. Rationalise internal governance to allow for more streamlined decision making. Improve the scrutiny function at the council, to ensure scrutiny of political	Working groups have been set up for 5 work streams, each with a senior management lead and a CMT lead. This work started in 2019/20 and has been put on hold due to the current pandemic but will recommence during 2020/21.	CMT

objectives through more effective agenda setting		
Corporate Business Plan & balanced budget	The Business Plan 2020-24 approved 04-03-2020. Following the Final Local Government Settlement, a balanced budget was achieved for 2020-21 with a budget gap on the MTFs rising to circa £9m in 2023-24. A Council Tax of 3.99% was set for 2020-21 which was within the referendum principles. Risk remains constant due to DSG Deficit and loss of income and increased expenditure due to Covid 19 response.	Director of Corporate Services
Annual Savings Programme (from 2019/20 action plan) We might fail to deliver the savings of £15.7m which have been agreed for the period 2020/21 to 2023/24 (the period of budget decisions required by this council).	The monthly monitoring report is forecasting a shortfall in savings in 2019/20 of £1.1 million (17%). Unfortunately, the impact of Covid 19 has meant that the shortfall increases to £2.1m in 20/21. Delivery of savings continues to be carefully monitored and reported as they are critical to balance the budget and reported to government for potential further support..	Director of Corporate Services
Brexit (from 2019/20 action plan) A working group of members and officers to monitor the impact of Brexit	Establish a corporate task group to review the implications of Brexit in detail and direct appropriate actions as required	Director of Corporate Services
Internal Audit work relating to Declaration of interests Officers The guidance was not readily available, and officers were not routinely completing the forms, those officers in a senior role, budget holder or those responsible for procurement. The declaration of interest form has been in the process of being updated for the last few years but has not been agreed.	A reminder has gone to employees to complete a declaration of interest form. The new form and guidance are in the process of being reviewed	Managing Director of Sllp and Assistant Director of HR
Public Contract Regulations/Contract Standing Orders (from 2019/20 action plan) and Internal Audit work relating to Procurement. Recent audit findings have found the following weaknesses: - Improvements required on	Regular training is now in place for managers on CSO. Issues identified in the audit have been discussed at the corporate procurement board and monitoring of compliance is included in the Operational Procurement Groups. Another internal audit review has been requested for 2020/21. A review and update of Contract	Assistant Director of Infrastructure and Transactions.

<p>compliance with CSO on tendering, exemptions and extensions to contracts Evidence of signed contracts or extensions letters (by both parties) not in place. Contract monitoring was found to be limited. Contract Register requires updating.</p>	<p>Standing Orders is being undertaken in September, in conjunction with a wider review of the constitution and the drive to improve compliance with legislative requirements is being further supported through the introduction of specialist procurement training for those individuals who are responsible for procurement as part of their normal duties.</p>	
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Table 2 Issues raised in 2018/19 Statement and progress to date

Key Issues	Action to be taken	Progress
<p>Financial Pressure (carried over to 2019/20) The comprehensive spending review is due in 2019 and will determine how much funding the council will receive. It is anticipated that there will be a significant budget gap by 2022/23 of £6.078 million</p>	<p>Once feedback from the Comprehensive Spending review and fair funding formula are received, the Medium-Term financial strategy and saving plans will be revisited. This will be kept under close review by CMT.</p>	<p>Following the Final Local Government Settlement, a balanced budget was achieved for 2020-21 with a budget gap on the MTFS rising to circa £9m in 2023-24. A Council Tax of 3.99% was set for 2020-21 which was within the referendum principles.</p> <p>- Risk remains constant due to DSG funding and now impact on Covid 19 on expenditure and income.</p>
<p>Asset Valuations (closed) The valuation process used by Merton's in house professionally qualified valuers has been reviewed in detail as part of the 2017/18 Account Closure and material misstatements have had to be corrected. It has therefore had a material impact on the financial accounts of the Authority and the completion of the statements by the required deadline.</p>	<p>An internal review will be undertaken to ensure that future valuation work is both accurate and timely.</p>	<p>This review has been completed.</p>

<p>Public Contract Regulations/Contract Standing Orders (carried over to 2019/20)</p> <p>This is currently identified as an area of high risk and further work identified to embed good practice. An on-line toolkit was launched in September 2018, training is being rolled out to promote the use of the portal and new documents and templates.</p>	<p>Operational Procurement Group reviews to be undertaken to ensure they are more effective. Commissioning Strategies to be refreshed and reviewed. Progress will be reviewed by the Corporate Procurement board.</p>	<p>A review and update of Contract Standing Orders is currently being undertaken, and the drive to improve compliance with legislative requirements is being further supported through the introduction of specialist procurement training for those individuals who are responsible for procurement as part of their normal duties.</p>
<p>New financial system (closed)</p> <p>This action was carried forward from 2018/19 and is in progress.</p>	<p>To complete the review of internal controls considering new financial system</p>	<p>This review has been carried out and further reviews will be on-going.</p>
<p>Brexit (carried over to 2020/21)</p> <p>A working group of members and officers has been established to monitor the impact of Brexit</p>	<p>The working group will monitor developments and potential impact on areas such as suppliers, recruitment and potential NRTPF. A report is due to cabinet later in the year.</p>	<p>Officers closely monitor developments on the Brexit negotiations and the potential impact for the council, citizens and businesses. This includes reviewing the Technical Notices, guidance from the LGA and other sector related assessments of possible implications. A session has been held with Collective DMT to identify risks. This has been reviewed by CMT and a task group of officers from across the council meets regularly to monitor developments and how the Council responds.</p> <p>Cabinet considered the implications of Brexit at their November 2018 meeting and the Overview and Scrutiny Commission are reviewing the</p>

		implications for citizens. One outcome of the Cabinet meeting was to establish a corporate task group headed by the CS Director to review the implications of Brexit in detail and direct appropriate actions as required
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7.3 We propose over the coming year to take steps to address the above matters to further enhance our governance arrangements. We are satisfied that these steps will address the need for improvements that were identified in our review of effectiveness and will monitor their implementation and operation as part of our next annual review.

Signed: Leading Member

Signed: Chief Executive

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Committee: Standards and General Purposes Committee

Date: 23 July 2020

Wards: All

Subject: Social Media Guidance for Councillors

Lead officer: Louise Round, Managing Director of SLLP and Monitoring Officer

Lead member: Chair of Standards and General Purposes Committee

Contact officer: Louise Round, Managing Director of SLLP and Monitoring Officer

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Recommendations:

- A. To approve the Social Media Guidance for Councillors and to recommend its adoption to full Council.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 To seek approval of the Social Media Guidance for Councillors, which is designed to give guidance on the safe use of social media.

2 DETAILS

- 2.1 The use of social media is increasing exponentially. Whilst it is a useful tool for all walks of life, including assistance in performing the role of a Councillor, the pitfalls are becoming more apparent. It is important to have safeguards in place to ensure that the benefits of social media are exploited, without breaching the law or codes of conduct. This guidance has been designed to raise awareness of the responsibilities of Councillors in relation to social media and to give guidance on the safe use of social media. It should be read in conjunction with the Councillor Code of Conduct and the Acceptable Use of IT Policy. A copy of the Guidance is attached at Appendix 1.
- 2.2. This report was deferred at the last meeting of the Committee in March to allow the political groups to consider and comment on the draft guidance. Consultation has taken place. There were no objections in principle to the guidance but some suggested drafting amendments have been incorporated.

3 ALTERNATIVE OPTIONS

- 3.1 The Council could have taken no action in this respect, but because of the increasing number of incidents nationally involving social media, this was not considered a viable option.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1 The report has been the subject of consultation with all the political groups represented on the Council.

5 TIMETABLE

- 5.1 If approved by this Committee, the Guidance will be submitted to the next full Council meeting for approval.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1 There are no financial, resource or property implications.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1 There is potential for breaches of various areas of law including defamation, copyright, harassment, data protection, discrimination and malicious and obscene communications in the use of social media.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1 No equalities impact needs assessment (EINA) has been carried out, but the guidance included information about potential breaches of equality provisions.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purposes of this report, other than guidance is given regarding prevention of potential crimes.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. The purpose of the Guidance is to minimise risk in relation to such things as reputational damage or breaches of the law.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Social Media Guidance for Councillors

12 BACKGROUND PAPERS

- 12.1. Social Media Guidance for Councillors

Social Media Guidance for Councillors

Section 1 – Introduction

1. The Council welcomes and wishes to encourage Councillors' use of new technology, including social media. It is not a requirement for Councillors to have a Facebook or Twitter account or use other forms of social media. If Councillors are already using or planning to use social media in connection with their work as a councillor, they should ensure that they are familiar with the guidance set out below and that their use of social media does not put the organisation's information and security systems at risk.
2. Most people are familiar with doing things online and residents will increasingly expect the Council to provide its services online, with the same level of interactivity that they find everywhere else. However, there are challenges that may discourage Councillors and the Council from using social media. For example, inappropriate use (which may occur inadvertently) can cause significant damage to a Councillor's (or the Council's) reputation and can lead to legal claims. In addition, technology is changing fast. This can mean that it is hard to keep up and maintain useful interaction with residents.
3. There are also some pitfalls to be aware of, and this Guidance is produced to help Councillors avoid these. This Guidance does not tell Councillors what social media is, or which blogs or networks might be used effectively. It assumes that Councillors are aware of those. It deals with the pitfalls that specifically apply to the role of local Councillors.

Section 2 – Legal Considerations

4. Three of the important Nolan Principles applying to those in public life are "Openness", "Accountability" and "Leadership". That means Councillors should be as open as possible about the actions and decisions they take, submit to an appropriate level of public scrutiny, and lead by example. Social media can be a vital tool for public debate and its use by Councillors is encouraged.
5. In the same way as anyone else publishing material, Councillors will need to be aware of the laws that apply to published material. Some of the main ones are these:

- a. **Defamation:** if you publish an untrue statement about a person that is damaging to their reputation you may be liable to pay damages;
 - b. **Copyright:** publishing information that is not yours, without permission, may also result in an award of damages against you;
 - c. **Harassment:** it is an offence to repeatedly pursue a campaign against a person that is likely to cause alarm, harassment or distress;
 - d. **Data protection:** do not publish personal data of other people, including photographs, without their express permission to do so;
 - e. **Incitement:** it is an offence to incite any criminal act;
 - f. **Discrimination and 'protected characteristics':** it is unlawful to discriminate against anyone based on protected characteristics (as defined in the Equality Act 2010);
 - g. **Malicious and obscene communications:** it is an offence to send malicious or obscene communications
6. . Social media posts should not include confidential or commercially sensitive information belonging to the Council, or personal or confidential information about an individual. Nor should anything be published which could reasonably be considered abusive or threatening, as promoting g illegal activity or which is intended to deceive.
7. Additional considerations apply to Councillors.

Bias and pre-determination

8. Members sitting on regulatory committees such as planning or licensing should be aware that they are allowed to have a view but must not have gone so far as to have predetermined their position on a matter. Any views aired on social media could be used as evidence of making a decision in advance of hearing all relevant information. The Council's decision is then open to challenge and could be invalidated, and the 'disrepute' provisions of the Code of Conduct for Members could be engaged.

Equality and discrimination

9. The Council is a public authority required to comply with the Equalities Act 2010. As noted above it is unlawful to discriminate against anyone based on their protected

characteristics. The Council must also have 'due regard' to the Public Sector Equality Duty (which consists of eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations); Councillors should exercise caution to ensure they do not place the Council in breach of that duty by publishing content when appearing to act in their official capacity.

Electioneering

10. Council resources, including Council mobile devices or IT equipment, should not be used for party political/campaign purposes. Particular care should also be taken when using social media during the pre-election period. The Electoral Commission has further guidance including on the requirements to provide a return of expenditure on election advertising which includes web advertising.

Human Rights

11. Article 8 of the European Convention on Human Rights (ECHR) provides that public authorities should not interfere with the right of individuals to a private and family life without lawful authority to do so, and where it is necessary, proportionate, and in pursuit of one of the aims set out in Article 8(2). (These are national security, public safety, economic well-being, health or morals, prevention of crime or disorder, or protecting others' rights).
12. Article 10 of the ECHR also protects councillors' freedom of expression although this a qualified right which may be limited in order to protect the rights and interests of others. Case law has established the principle that in a political context, more robust exchanges might be acceptable than would otherwise be the case. This does not extend to gratuitous personal comment.

Code of Conduct

13. Councillors may use social media in both an official and personal capacity but they must be aware that the public may perceive them as acting in either capacity when that is not their intention. Any social media account which could be potentially linked to a councillor would need to meet the standards of the code of conduct.

Section 3 – Responsibilities of Councillors

14. Councillors will need to monitor and, where appropriate, censor or remove the contributions made by others to their sites. Allowing defamatory or offensive statements to remain on a site can become the Councillor's own legal problem as the 'publisher' of the material and could also give rise to Code issues where allowing comments to remain could be seen as condoning or endorsing them.
15. Similarly, 'liking', 'sharing' or 're-tweeting' posts could be seen as an endorsement of them and legally this can be a separate instance of publication, by the Councillor, to which all the legal and Code considerations would apply.
16. Beyond that it is generally best to allow disagreement rather than to seek to censor it. However, there is no need to respond to everything and unhelpful online arguments should be avoided. Be professional, respectful and polite, even (or especially) when corresponding with those who do not return the courtesy.
17. Careful use of language is required. Inappropriate and offensive material should not be published and sarcasm, irony and ambiguous comments should be avoided.
18. Promptly admit to mistakes.
19. Avoid using social media when you are tired, angry, upset or your judgment may be impaired as something permanently published can't be easily taken back
20. Think carefully about who to 'follow' or 'befriend' online. Online 'friendships' with council officers should be avoided as they may compromise the appearance of impartial advice. It is inadvisable to 'follow' anyone without a good reason – some constituents may find it uncomfortable (and see the Human Rights comments above). Many Councillors wait to be 'followed' before returning the compliment.
21. Always ensure the security of your devices to prevent unauthorised access by third parties who may make inappropriate use of the device. You will have signed up to the Acceptable use of IT Policy, so refer to its contents for guidance.

Section 4 – Principles for using Social Media

You should follow these five guiding principles for any social media activities:

22. **Be respectful** – set the tone for online conversations by being polite, open and respectful. Use familiar language, be cordial, honest and professional at all times.

Make sure that you respect people's confidentiality – do not disclose non-public information or the personal information of others.

23. **Be credible and consistent** – be accurate, fair, thorough and transparent. Encourage constructive criticism and deliberation. Make sure that what you say online is consistent with your other communications.
24. **Be honest about who you are** – it is important that any accounts or profiles that you set up are clearly and easily identifiable. Be clear about your own personal role, in particular a clear distinction should be drawn between use of an account in your personal capacity and use in your capacity as a councillor. Note that merely stating you are acting in your private capacity may not be sufficient.
25. **Be responsive** – make an effort to share what you know. Offer insights where appropriate and put people in touch with someone who can help if you cannot. Respond to questions and comments in a timely manner.
26. **Think twice** – think carefully about all your social media posts. Once published it will be too late to change your mind. Following these rules and seek further guidance if you need it.

Section 5 – Use of Social Media during Committee Meetings

27. Use mobile devices sparingly, discreetly and with common sense at meetings, considering the impression they are giving to others. Councillors should be mindful that regulatory committees such as planning or licensing require the Councillor to alert officers to any lobbying material they have received. This would be difficult if it arrives on Twitter and is read by the Councillor during the course of a meeting.
28. Mobile devices enable councillors to manage their busy lives when time is at a premium. There may be occasions when texting or e-mailing between Councillors during meetings on matters relevant to the debate at hand may be valuable (on the same basis as circulating paper notes) However it is important for Councillors not to give the impression that insufficient attention is being given to the discussion at the meeting. That could lead to the relevant decision coming under challenge if Councillors are perceived to have made a decision without having properly listened to the debate. It could also result in Code complaints of a failure to treat others with respect or of bringing the Council into disrepute.

Section 6- Inappropriate use of Social Media by Others

29. Anyone receiving threats, abuse or harassment via their use of social media should report it to the police.
30. Other inappropriate content can be reported to the social media site directly to ask for it to be removed. You may wish to save a screenshot in the circumstances.

Section 7 - Further Reading Materials

- Connected Councillors – A guide to using social media to support local leadership. Local Government Association.
- The Local Government Association's webpage on social media

Section 8 – Complaints

30. These guidelines do not form part of the Code of Conduct for Members but there may be instances where councillors' use of social media amounts to a breach of that Code and the Monitoring Officer may take these guidelines into account when considering whether such a breach has taken place. The procedure for making complaints against councillors is set out in part four of the Council's constitution:

<https://democracy.merton.gov.uk/ecSDDisplay.aspx?ID=212&RPID=0>

Contact details

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Committee: Standards and General Purposes

Date: 23 July 2020

Wards: All

Subject: Proposed Response to the Local Government Association's Consultation on a new Model Code of Conduct for Members

Lead officer: Louise Round, Managing Director, South London Legal Partnership

Lead member: Councillor Peter McCabe, Chair, Standards and General Purposes Committee

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Recommendations:

- A. To consider the attached proposed response to the Local Government Association's Consultation on a new Model Code of Conduct for Members
 - B. To authorise the Monitoring Officer to submit the response at Appendix B, as amended to take into account the Committee's views.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. In January 2019 the Committee on Standards in Public Life published its report into Local Government Ethical Standards and among other things, recommended that a new model code of conduct be produced in order to provide for consistency of approach across all local authorities. Prior to the Localism Act, there had been a model code which all councils were obliged to adopt but the Localism Act dispensed with this requirement and replaced it with a more general requirement simply to have a code and a process for dealing with breaches. The only mandatory detailed provisions relate to the requirement to register and declare disclosable pecuniary interests which are defined in the Relevant Local Authorities (Disclosable Pecuniary Interests) Regulations 2012.
- 1.2. As a result of the Committee's recommendations, the Local Government Association (LGA) has produced a model code which is attached as Appendix A and is currently consulting on its contents. The consultation questionnaire and some suggested responses to it is attached as Appendix B. The consultation period ends on 17 August. The Council will not be under any obligation to adopt the new code once finalised although it would seem prudent to consider whether to do so in whole or in part. As currently drafted, the Council's current code is arguably very general which could lead to difficulties should it be tested through a formal investigation process. The current code is attached as Appendix C.
- 1.3. The Monitoring Officer has partially completed the consultation questionnaire and would welcome this Committee's views on the suggested response. This report sets out some specific aspects of the model code which

members are invited to consider in order to inform the completion of the rest of the questionnaire.

2 DETAILS

- 2.1. The proposed new code is similar in many ways to the pre 2011 version in that it recites the Nolan principles and then sets out twelve specific obligations with which members will be expected to comply. There are also some “model conduct” clauses but failure to comply with those would not amount to a breach of the code. Under each specific obligation there are some explanatory notes.
- 2.2. Some of the consultation questions would on the face of it seem to be relatively easy to answer and officers have included some suggested responses. For instance, in relation to the twelve specific obligations, it might be expected that in principle the Council could support all of them to a great extent. The complexity arises when it comes to the interpretation of them. In other areas, the issues are more finely balanced and members’ attention is drawn to the following:

Capacity

- 2.3. Under section 27 of the Localism Act, the requirement is to have a code of conduct which sets out what is expected of members of the authority *when they are acting in that capacity*. The Committee on Standards in Public Life concluded that any code should include a rebuttable presumption that any conduct in public is in a members’ official capacity. The model code seeks to accommodate this recommendation by stating that the code will apply:

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting]₁ in [public or in]₂ your capacity as a member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times.

- 2.4. The LGA is seeking views on this, hence the words in square brackets – the second set of bracketed words is much wider and if adopted in preference to the first set would indeed mean that any public behaviour could trigger the application of the Code and arguably goes beyond what the Act would allow. Interestingly though, the question in the consultation questionnaire is phrased slightly differently:

To what extent do you support the proposal that councillors demonstrate the behaviours set out in the Code when they are publicly acting as, identifying as, and/or giving the impression that they are acting as a councillor, including when representing their council on official business and when using social media?

- 2.5. The Monitoring Officer has assumed that there would be general agreement that the code of conduct should extend to a range of circumstances beyond formal council business to situations where a reasonable person might conclude someone was acting as a councillor so is suggesting answering that question by agreeing “to a moderate extent”, subject to the Committee’s

views, but also to comment that the proposed wording seems to go beyond that intention.

Interests

- 2.6. The model code seeks to expand the range of interests which a council may require members to register and goes into some detail about the circumstances in which having such an interest would affect the member's ability participate in a meeting where that interest arises. These go well beyond the Council's current regime where only statutory disclosable pecuniary interests, trade union membership and positions of general management or control in third party organisations in the borough are required to be registered. The Council's code does not deal with other personal interests at all.
- 2.7. The model code proposes in table 2 that membership of or positions of management and control in any organisation to which the member is appointed by the Council should be registered, as should holding such a position in any body exercising functions of a public nature, directed to charitable purposes or one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union). This would represent a slight extension to what the Council currently requires but not a total change of direction so the Monitoring Officer is suggesting that the Council agree with their inclusion to a moderate extent, although members may have views about the different categories.
- 2.8. However, the model code also proposes a new approach to other interests where a matter affects the financial position or well-being of a member, their spouse or partner, relative or close associate. "Relative" and "Close Associate" are not defined. Question 11 seeks the Council's views on whether these wider interests should be declared. The answer does not seem straightforward. On the one hand, it is easy to envisage interests beyond those of one's partner – a sibling or child for instance, where their significance is such as to represent a real conflict of interest. On the other hand as drafted, the current proposals are very widely cast. It is suggested that the council agrees to a "small extent" and elaborates in the free text.
- 2.9. The other key aspect of the model code in relation to interests is the way it is suggested they are treated at meetings. The law relating to disclosable pecuniary interests is clear: it is a criminal offence to participate in the discussion of a matter in which a member has such an interest. For other interests, the model code takes a different approach depending on the nature of the interest. Under paragraph 5 of Appendix B of the Code, if the matter under consideration *directly relates* the financial interest or well-being of the member, their spouse or partner, relative or close associate, then member can only take part in the meeting if members of the public are also allowed to speak. If not, the member must leave the room. Paragraphs 6 and 7 of the appendix are not clearly drafted but appear to state that if the matter only *affects*, as opposed to directly relating to, the financial interests

or well-being of those people, then the member must declare this but can participate if the effect is not greater than it is for other residents in the ward. If the impact of the decision is greater such that it calls into question the ability of the member to act in the wider public interest, the member can only speak if other members of the public are allowed to, otherwise s/he must leave the room.

- 2.10. The Monitoring Officer's view is that although there is an argument that the definition of interests which preclude a member from participating in a discussion of and voting on a matter should be wider than the currently statutory provisions, the proposed wording is far too complicated and wide ranging. It would not be reasonable to expect members to work through all the permutations in order to decide how to act. Under the old code, the test for whether someone should participate, and which some neighbouring councils have retained, is whether a reasonable person, in possession of all the relevant facts, would consider that the member's ability to judge the public interest is prejudiced. Members' views are sought on whether the Council should recommend the adoption of that test.

Social Media

- 2.11. The model code makes brief reference to social media in the context of addressing the code's scope, to make it clear that the obligations apply when using social media as they would during face to face interaction or other forms of written communication. The questionnaire seeks views as to whether there should be more detail in the code itself. Elsewhere on this agenda is a report recommending social media protocol for members and members' views are sought on whether the code of conduct should cover both or whether there is value in a separate protocol.

Gifts and Hospitality

- 2.12. The model code contains some fairly standard provisions around gifts and hospitality, prohibiting the acceptance of any gifts at all from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage. The LGA is seeking views on the financial limit beyond which other gifts and hospitality should be declared, with £25 being proposed. The Council's current code is silent on gifts and hospitality but declarations of them are included in members' individual details on the website. Some neighbouring councils have higher limits ranging from £35 to £100. Members' views are sought on the appropriate limit.

3 ALTERNATIVE OPTIONS

- 3.1. An alternative option would be not to respond to the consultation exercise but it would seem a shame to miss the opportunity to influence the model code, particularly if there were a wish to consider adopting it, or part of it, in the future.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The political group offices have been consulted on the proposed response. Political parties will also be able to respond to the LGA consultation in their own right.

5 TIMETABLE

- 5.1. The consultation response is due by 17 August.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The legal implications are set out in the body of the report.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. None

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix A – LGA Model Code of Conduct
- Appendix B - Draft proposed response to consultation
- Appendix C – The Council’s current code of conduct

12 BACKGROUND PAPERS

- 12.1. Report on Local Government Ethical Standards by the Committee

Local Government Association Model Member Code of Conduct

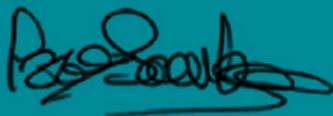
Introduction

The Local Government Association (LGA) is providing this Model Member Code of Conduct as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance.

The role of councillor in all tiers of local government is a vital part of our country's system of democracy. In voting for a local councillor, the public is imbuing that person and position with their trust. As such, it is important that as councillors we can be held accountable and all adopt the behaviours and responsibilities associated with the role. The conduct of an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to and want to participate with. We want to continue to attract individuals from a range of backgrounds and circumstances who understand the responsibility they take on and are motivated to make a positive difference to their local communities.

All councils are required to have a local Member Code of Conduct. This Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation. The LGA can also offer support, training and mediation to councils and councillors on the application of the Code, whilst the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.

As a councillor we all represent local residents, work to develop better services and deliver local change. The public have high expectations of us and entrust us to represent everyone (in our ward/town/parish), taking decisions fairly, openly, transparently and with civility. Councillors should also be treated with civility by members of the public, other councillors and council employees. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations. This Code, therefore, has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.



Councillor Izzi Seccombe OBE
Leader, LGA Conservative Group



Councillor Nick Forbes CBE
Leader, LGA Labour Group



Councillor Howard Sykes MBE
Leader, LGA Liberal Democrats Group



Councillor Marianne Overton MBE
Leader, LGA independent Group

Purpose

The purpose of this Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect yourself, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all members and a minimum set of obligations relating to conduct. The overarching aim is to create and maintain public confidence in the role of member and local government.

Application of the Code

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting]¹ in [public or in]² your capacity as a member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [including where you could be deemed to be representing your council or if there are potential implications for the council's reputation.] Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

The seven principles of public life

Everyone in public office at all levels – ministers, civil servants, members, council officers – all who serve the public or deliver public services should uphold the seven principles of public life. This Code has been developed in line with these seven principles of public life, which are set out in appendix A.

Model member conduct

In accordance with the public trust placed in me, on all occasions I will:

- act with integrity and honesty
- act lawfully
- treat all persons with civility; and
- lead by example and act in a way that secures public confidence in the office of councillor

In undertaking my role, I will:

- impartially exercise my responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently and in the public interest

Specific obligations of general conduct

This section sets out the minimum requirements of member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media.

As a councillor I commit to:

Civility

- 1. Treating other councillors and members of the public with civility.**
- 2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.**

Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a civil manner. You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.

In your contact with the public you should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police. This also applies to members, where action could then be taken under the Member Code of Conduct.

Bullying and harassment

- 3. Not bullying or harassing any person.**

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

The Equality Act 2010 defines harassment as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

Impartiality of officers of the council

- 4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.**

Officers work for the council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although you can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

Confidentiality and access to information

- 5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.**
- 6. Not preventing anyone getting information that they are entitled to by law.**

Local authorities must work openly and transparently, and their proceedings and

printed materials are open to the public except in certain circumstances. You should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held by the council are treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

Disrepute

7. Not bringing my role or council into disrepute.

Behaviour that is considered dishonest and/or deceitful can bring your council into disrepute. As a member you have been entrusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on other councillors and/or your council.

Your position

8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.

Use of council resources and facilities

9. Not misusing council resources.

You may be provided with resources and facilities by the council to assist you in carrying out your duties as a councillor. Examples include office support, stationery and equipment such as phones, and computers and transport. These are given

to you to help you carry out your role as a councillor more effectively and not to benefit you personally.

Interests

10. Registering and declaring my interests.

You need to register your interests so that the public, council employees and fellow members know which of your interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise.

It is also important that the public know about any interest that might have to be declared by you or other members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. Discuss the registering and declaration of interests with your Monitoring Officer/Town or Parish Clerk and more detail is set out in appendix B.

Gifts and hospitality

11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.

12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.

You should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you

because you are a member. However, you do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you may wish to notify your monitoring officer of any significant gifts you are offered but refuse which you think may have been offered to influence you.

Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes.

Breaches of the Code of Conduct

Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any councillors who breach the Code.

The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence.

Political parties may have its own internal standards and resolution procedures in addition to the Member Code of Conduct that members should be aware of.

Example

LGA guidance and recommendations

Internal resolution procedure

Councils must have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local standards committee. The internal resolution procedure should be proportionate, allow for members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the council as a whole.

In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken.

If the breach is confirmed and of a serious nature, action can be automatically escalated.

1. an informal discussion with the monitoring officer or appropriate senior officer
2. an informal opportunity to speak with the affected party/ies
3. a written apology
4. mediation
5. peer support
6. requirement to attend relevant training
7. where of a serious nature, a bar on chairing advisory or special committees for up to two months
8. where of a serious nature, a bar on attending committees for up to two months.

Where serious misconduct affects an employee, a member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

Endnotes

1. CSPL recommend that “Section 27(2) of the Localism Act 2011 should be amended to state that a local authority’s code of conduct applies to a member when they claim to act, or give the impression they are acting, in their capacity as a member or as a representative of the local authority”.
2. CSPL recommend that “councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches.”
3. Subject to footnotes 1 and 2 above
4. See CSPL website for further details www.gov.uk/government/news/the-principles-of-public-life-25-years
5. ACAS’s definition of bullying

Appendices

Code Appendix A

The principles are :

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Code Appendix B

Registering interests

1. Within 28 days of this Code of Conduct being adopted by the council or your election or appointment to office (where that is later) you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) and Table 2 (Other Registerable Interests).
2. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest in Table 1 or 2, or of any change to a registered interest, notify the Monitoring Officer.

Declaring interests

3. Where a matter arises at a meeting which directly relates to an interest in Table 1, you must declare the interest, not participate in any discussion or vote on the matter and must not remain in the room unless granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
4. Where a matter arises at a meeting which directly relates to an interest in Table 2, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

5. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest) or a financial interest or well-being of a relative or close associate, you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.
6. Where a matter arises at a meeting which affects –
 - a. your own financial interest or well-being;
 - b. a financial interest or well-being of a friend, relative, close associate; or
 - c. a body covered by table 1 below

you must disclose the interest.

7. Where the matter affects the financial interest or well-being to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest you must declare the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to declare the nature of the interest.

Table 1: Disclosable Pecuniary Interests

Subject	Description
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain. [Any unpaid directorship.]
Sponsorship	Any payment or provision of any other financial benefit (other than from the council) made to the councillor during the previous 12-month period for expenses incurred by him/her in carrying out his/her duties as a councillor, or towards his/her election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 .
Contracts	Any contract made between the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (or a firm in which such person is a partner, or an incorporated body of which such person is a director* or a body that such person has a beneficial interest in the securities of*) and the council — (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land and Property	Any beneficial interest in land which is within the area of the council. ‘Land’ excludes an easement, servitude, interest or right in or over land which does not give the councillor or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners (alone or jointly with another) a right to occupy or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the council for a month or longer.
Corporate tenancies	Any tenancy where (to the councillor’s knowledge)— (a) the landlord is the council; and (b) the tenant is a body that the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners is a partner of or a director* of or has a beneficial interest in the securities* of.
Securities	Any beneficial interest in securities* of a body where— (a) that body (to the councillor’s knowledge) has a place of business or land in the area of the council; and (b) either— (i) the total nominal value of the securities* exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the councillor, or his/her spouse or civil partner or the person with whom the councillor is living as if they were spouses/civil partners has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

*'director' includes a member of the committee of management of an industrial and provident society.

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

Table 2: Other Registerable Interests

Any Body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council;	
Any Body—	(a) exercising functions of a public nature;
	(b) directed to charitable purposes; or
	(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)
of which you are a member or in a position of general control or management.	



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LGA Consultation on Draft Model Member Code of Conduct

Thank you for taking the time to complete this consultation. This Model Member Code of Conduct [[Model Member Code of Conduct.pdf](#)] aims to be concise, written in plain English and be understandable to members, officers and the public. The Model Member Code is designed to aid members in all tiers of local government model the behaviours and high standards that anyone would expect from a person holding public office. Equally, it articulates behaviour which falls below the standards that would be expected of council members. It is designed to help set a framework for public and councillor interaction, emphasising the importance of civility and that councillors should be protected from bullying, intimidation and abuse.

The LGA has reviewed the existing Model Member Code of Conduct and updated it here incorporating the recommendations from the Committee on Standard's in Public Life's recommendations on Local Government Ethical Standards and the representation from its membership. Part of the Committee's recommendations were the introduction of sanctions for breaches of the code, alongside an appeals process. This aspect is out of scope of this consultation, as it requires legislative changes by Government, but the LGA has sought to reflect some of the possible changes by using square brackets where legal changes would be necessary. The LGA is continuing to take soundings from the sector on the issue of sanctions in anticipation of a Government response to the Committee's recommendations.

This consultation addresses key areas that the LGA would like a view on to help finalise the Code. It is aimed at councillors and officers from all tiers of local government. If you would like a wider discussion about the code, please do sign up to one of the forthcoming Webinars the LGA are holding as part of this consultation. Details will be posted on our [LGA events website](#).

Instructions and privacy notice

You can navigate through the questions using the buttons at the bottom of each page. Use the 'previous' button at the bottom of the page if you wish to amend your response to an earlier question.

All responses will be treated confidentially. Information will be aggregated, and no individual or authority will be identified in any publications without your consent. Identifiable information may be used internally within the LGA but will only be held and processed in accordance with our [privacy policy](#). We are undertaking this consultation to aid the legitimate interests of the LGA in supporting and representing authorities.

Please complete your response in one go - if you exit before submitting your response your answers may be lost. If you would like to see an overview of the questions before completing the consultation online, you can access a PDF here.

About you

Your name Louise Round

Are you...

A councillor An officer

Answering on behalf of a whole council (Please provide council name below)

Other (please specify below)

Please indicate your council type

Community/Neighbourhood/Parish/Town

District/Borough County

Metropolitan/Unitary/London

Borough Other (please

specify below)

Application of the Code

Under the Localism Act 2012, the Code of Conduct applies to councillors only when they are acting in their capacity as a member. The LGA believes that because councillors are elected by the public and widely recognised by the public, it makes sense for them to continue to model these behaviours when they are making public comment, are identifying as a councillor and when it would be reasonable for the public to identify them as acting or speaking as a councillor. The Committee on Standards in Public Life supported this approach in their report into Local

Government Ethical Standards. Whilst the LGA is waiting for Government's response to these recommendations the option has been added in square brackets as it would need changes in legislation.

Q1. To what extent do you support the proposal that councillors demonstrate the behaviours set out in the Code when they are publicly acting as, identifying as, and/or giving the impression that they are acting as a councillor, including when representing their council on official business and when using social media?

- To a great extent
- To moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q1a. If you would like to elaborate on your answer please do so here:

The Council agrees that it is sensible to ensure the scope of the code covers a wider set of circumstances than formal council duties but if the wording in the second set of parenthesis is adopted, this would arguably capture any behaviour in public. The Council considers that this goes too far and arguably exceeds the statutory wording in section 27 of the Localism act which refers to members 'acting in that capacity', and the recommendation of the committee on standards in public life which only refers to a rebuttable presumption.

Q2. Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?

- Yes
- No
- Don't know ◆

Q3. Do you prefer the use of the personal tense, as used in the Code, or would you prefer the passive tense?

Personal tense (“I will”)

Passive tense

(“Councillors should”)

No preference

Specific obligations

The Code lists 12 specific obligations – these set out a minimum standard councillors are asked to adhere to.

Each obligation or group of obligations is put into a wider context to explain why that particular obligation is important.

Q4. To what extent do you support the 12 specific obligations?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / Prefer not to say
1. Treating other councillors and members of the public with civility.	✓				
2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.	✓				
3. Not bullying or harassing any person.	✓				
4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.	✓				

5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.	✓				
6. Not preventing anyone getting information that they are entitled to by law.	✓				
7. Not bringing my role or council into disrepute.	✓				
8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.	✓				
9. Not misusing council resources.	✓				
10. Registering and declaring my interests.	✓				
11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.	✓				
12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.	✓				

Q5. If you would like to propose additional or alternative obligations, or would like to provide more comment on a specific obligation, please do so here:

Q6. Would you prefer to see the obligations as a long list followed by the guidance, or as it is set out in the current draft, with the guidance after each obligation?

- As a list
- Each specific obligation followed by its relevant guidance
- No preference

Q7. To what extent to you think the concept of ‘acting with civility’ is sufficiently clear?

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q7a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

Q8. To what extent do you think the concept of ‘bringing the council into disrepute’ is sufficiently clear?

- To a great extent
- To a moderate extent
- To a small extent

- ♦ Not at all
- Don't know/prefer not to say

Q8a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

Q9. To what extent do you support the definition of bullying and harassment used in the code in a local government context?

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q9a. If there are other definitions you would like to recommend, please provide them here.

It would be helpful if the definition could address the question of whether in cases of alleged bullying, the intention of the person whose conduct is being questioned is at all relevant, or whether the matter should be judged by reference to the impact on the complainant.

Q10. Is there sufficient reference to the use of social media?

- Yes
- No
- Don't know/prefer not to say

♦

Q10a. Should social media be covered in a separate code or integrated into the overall code of conduct? Separate code Integrated into the code

Don't know/prefer not to say

Q10b. If you would like to make any comments or suggestions in relation to how the use of social media is covered in the code please do so here:

Registration and declarations of interests

The law at present requires, as a minimum, registration and declaration of 'Disclosable Pecuniary Interests' - that is matters which directly relate to the councillor and their partner if applicable.

The LGA is proposing that all councillors are required to declare interests where matters also relate to or affect other family members or associates. The LGA has broadened the requirement to declare interests beyond this current statutory minimum in line with a recommendation from the Committee on Standards in Public Life. These specific provisions are set out in **Appendix B** of the Code.

Q11. To what extent to you support the code going beyond the current requirement to declare interests of the councillor and their partner?

To a great extent

To a moderate

extent To a small

extent

Not at all

Don't know/prefer not

to say

Q11a. If you would like to elaborate on your answer please do so here:

The Council supports the inclusion of the interests in table 2. So far as the wider personal interests being contemplated, as currently drafted, the scope is too extensive. It would be helpful to define relative and close associate. The drafting in paragraphs 5,6 and 7 is confusing, insofar as it appears to seek to distinguish between matters which directly relate to financial interests and wellbeing and those which only affect those interests. It is not clear what the interrelationship between paragraphs 6 and 7 is. The Council's view is that there are too many permutations which is likely to lead to some confusion.

Q12. Should the requirement to declare interests be in the main body of the code or in the appendix where the draft model code currently references it?

- In the main body of the code
- In the appendix
- Other (please specify below)
- Don't know/prefer not to say

Q12a. If you would like to make any comments or suggestions in relation to how the requirement to declare interests is covered in the code please do so here:

It is also suggested that more outside interests should be registered than is the current statutory minimum. These are set out in **Table 2 of the Appendix** and are designed to demonstrate to the community transparency about other bodies with which the councillor is engaged.

Q13. To what extent do you support the inclusion of these additional categories for registration?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / Prefer not to say

Any organisation, association, society or party of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council		✓			
Any organisation, association, society or party that exercises functions of a public nature of which you are a member or in a position of general control or management		✓			
Any organisation, association, society or party directed to charitable purposes		✓			
Any organisation, association, society or party of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)		✓			

Q13a. If you would like to propose additional or alternative **categories** for registration, please provide them here:

Q14. To what extent do you support the proposed requirement that councillors do not accept significant gifts as set out in Obligation 11?

- To a great extent
 To a moderate extent
 To a small extent

 Not at all
 Don't know/prefer not to say

Q14a. If you would like to elaborate on your answer please do so here:

Q15. The draft code proposes £25 as the threshold for registering gifts and hospitality. Is this an appropriate threshold?

- Yes
- Yes, but the amount should be reviewed annually with the code's review
- No, it should be lower (please specify amount)
_____ No, it should be higher (please specify amount) _____ Don't know/prefer not to say

Q16. The LGA will be producing accompanying guidance to the code. Which of the following types of guidance would you find most useful? Please rank 1-5, with 1 being the most useful.

- _____ 1_ Regularly updated examples of case law
- _____ 1_ Explanatory guidance on the code
- _____ 3 Case studies and examples of good practice
- _____ 3_ Supplementary guidance that focuses on specific areas, e.g., social media
- _____ Improvement support materials, such as training and e-learning packages **Q16a.**

If you would like to suggest any other accompanying guidance please do so here:

Q17. If you would like to make any further comments about the code please do so here:

Once you press the 'Submit' button below, you will have completed your response.

Many thanks for taking the time to respond to this consultation. You are in control of any personal data that you have provided to us in your response. You can contact us at all times to have your information changed or deleted. You can find our full privacy policy here: [click here to see our privacy policy](#)

APPENDIX C

Part 5 – A

CODE OF CONDUCT

Introduction

This code applies to elected councillors and statutory co-opted members of Merton Council.

As a member, or co-opted member of Merton Council, I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

The Act further provides for registration and disclosure of interests and in Merton Council this will be done in accordance with guidance issued by the Standards Committee.

Principles

Selflessness

- Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

- Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

- In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

- Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

- Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

- Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

- Holders of public office should promote and support these principles by leadership and example.

Commitment

I agree to behave in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.

Part 5 – A Addendum

CODE OF CONDUCT – DECLARING INTERESTS

Registering and declaring pecuniary and non-pecuniary interests

You must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

In addition, you must, within 28 days of taking office as a member or co-opted member, notify your authority's monitoring officer of any disclosable pecuniary or non-pecuniary interest which your authority has decided should be included in the register.

If an interest has not been entered onto the authority's register, then the member must disclose the interest to any meeting of the authority at which they are present, where they have a disclosable interest in any matter being considered and where the matter is not a 'sensitive interest'.¹

Following any disclosure of an interest not on the authority's register or the subject of pending notification, you must notify the monitoring officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, you may not participate in any discussion of, vote on, or discharge any function related to any matter in which you have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, you must observe the restrictions your authority places on your involvement in matters where you have a pecuniary or non pecuniary interest as defined by your authority.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a member or co-opted member of an authority having an interest, and the nature of the interest being such that the member or co-opted member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the member or co-opted member, or a person connected with the member or co-opted member, being subject to violence or intimidation.



[Coronavirus information](#) for residents and businesses

[Merton Council](#) < [Council and democracy](#) < [Councillors](#)

Councillors' declarations of interest

All councillors and statutory [co-opted members](#) must declare certain "pecuniary" and "non-pecuniary" interests.

These declarations can be found on each [individual councillor's web page](#).

Pecuniary interests

These are:

- employment, office, trade, profession or vocation carried out for profit or gain
- sponsorship received in respect of carrying out duties as a member of the authority, or towards election expenses
- contracts between a councillor (or body in which they have a beneficial interest) and the London Borough of Merton (or organisation contracted to carry out business on its behalf)
- address of property or land in the London Borough of Merton in which the councillor has a beneficial interest
- any licence (alone or jointly with others) to occupy land in the London Borough of Merton for a month or longer
- any tenancy where (a) the landlord is the London Borough of Merton; and (b) the tenant is a body in which the relevant person has a beneficial interest
- any beneficial interest in securities (stocks, shares, bonds...) applies only when the councillor has a large shareholding of a company that operates in the borough: where (a) that body has a place of business or land in the London Borough of Merton; and (b) either (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) of the share capital is of more than one class, the total nominal value of any one class in which the councillor has a relevant interest exceeds one hundredth of the total issued share capital of that class

Non-pecuniary interests

These are:

- trade union membership
- any position of management or control that the councillor holds in any third party organisation within the borough

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Committee: Standards & General Purposes Committee

Date: 23 July 2020

Wards: All

Subject: Regulation of Investigatory Powers Act Authorisations

Lead officer: Louise Round, Managing Director, South London Legal Partnership

Lead member: Councillor Mark Allison

Contact officer: louise.round@merton.gov.uk

Recommendations:

- A. That members note the purposes for which investigations have been authorised under the Regulation of Investigatory Powers Act (RIPA) 2000.
 - B. That members note the outcome of the inspection by the Investigatory Powers Commissioner's Office (IPCO).
 - C. That members agree the revised RIPA policy.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To inform members about investigations authorised since September 2019 under RIPA.

2 DETAILS

- 2.1. The council has a number of statutory functions that involve officers investigating the conduct of others with a view to bringing legal action against them. These functions include investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), benefit fraud, contraventions of trading standards, licensing and food safety legislation.
- 2.2. Whilst the majority of investigations are carried out openly, some investigations must be carried out using covert surveillance techniques or involve the acquisition of communications data. Communications data is information about the times of calls or internet use and the location and identity of the callers, but not the content of the calls or details of the websites viewed.
- 2.3. RIPA regulates the authorisation and monitoring of these investigations to safeguard the public from unwarranted intrusion of privacy.
- 2.4. With effect from 1 November 2012, the Protection of Freedoms Act 2012 requires local authorities to obtain the approval of a magistrate for the use of covert surveillance.
- 2.5. In line with the revised Code of Practice, reports detailing the use of RIPA are submitted to Standards and General Purposes Committee on a regular basis.

- 2.6. Since September 2019, there has been one repeat request for directed surveillance of a business. Unfortunately, due to technical issues with the surveillance equipment, there were delays with this request, which meant that it did not proceed and the required surveillance activity has not been undertaken.
- 2.7. Since September 2019, there have been no requests for CCTV footage for RIPA investigations.
- 2.8. No RIPA authorisations have been rejected by the Magistrates Court.
- 2.9. Since September 2019, no applications have been made for the acquisition of communications data.
- 2.10. Future reports will include data on Non-RIPA activity.

Inspection

- 2.11. IPCO undertook their three yearly inspection of the council's on 15 January 2020 to assess the council's levels of compliance with RIPA in respect of its use and management of covert surveillance and covert human intelligence sources (CHIS), and communications data under the Investigatory Powers Act 2016.
- 2.12. The inspection consisted of:
- An introduction with the Louise Round, Managing Director, South London Legal Partnership (Senior Responsible Officer) and Karin Lane, Head of Information Governance (RIPA co-ordinator) to outline the council's process and structure; the progress on previous recommendations; and the examination of documents of all RIPA authorisations since the last inspection.
 - A focus group with Authorising Officers John Hillarby, Trading Standards Manager and Margaret Culleton, Head of Internal Audit to discuss any challenges and talk about recent and relevant issues across similar organisations.
 - Feedback to the Senior Responsible Officer and RIPA coordinator.
- 2.13. Statistics relating to the records reviewed during the inspection are below.

	Total authorisations in current reporting period	Total authorisations in previous reporting period	Total records viewed at Inspection
Directed Surveillance	3	18	3
CHIS	0	0	0

- 2.14. Merton Council was last inspected in February 2016 and four recommendations were made. Those recommendations and the status of their implementation are set out below:

- R1: That Merton's RIPA Policy and Procedure document be revised – Discharged as the recommendation is superseded by a new recommendation;
- R2: That future cancellations comply with paragraph 109 of OSC Procedures & Guidance (repeat recommendation). Discharged;
- R3: That the SRO review the RIPA training needs of RIPA authorising officers and arrange the necessary training, a composite record of those attending being maintained – Discharged as training requirements are again the subject of a new recommendation;
- R4: That Merton keep under review the question of carrying out juvenile test purchase operations under RIPA authorisation, as recommended in OSC Procedures and Guidance and in the BRDO Code of Practice. Discharged.

2.15. The recommendations from this inspection were:

- R1: That we should revise our current RIPA Policy to incorporate recent legislative changes. Completed, see Appendix A.
 - It was noted that the South West London Fraud Partnership be recognised within the policy revision and any activity within our boundaries is included on our central register.
- R2: The SRO should consider implementing a process to monitor current applications. This would ensure an element of quality assurance and timeous reviews, renewals and cancellations. Completed.
- R3: The SRO should ensure that those involved in the application, use, management and authorisation of RIPA should receive the appropriate training. A plan should also be considered which would raise the awareness of RIPA across the organisation. Currently in development.
 - It was noted that use of social media should become a focus of a renewed training and awareness package.
 - It was also noted that the council needs to increase the number of Authorising Officers.

3 ALTERNATIVE OPTIONS

3.1. The report is for information only.

4 CONSULTATION UNDERTAKEN OR PROPOSED

4.1. No consultation has been undertaken regarding this report.

5 TIMETABLE

5.1. N/A.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

6.1. None.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. All investigation using covert surveillance techniques or involving the acquisition of communications data is in line with the Regulation of Investigatory Powers Act 2000.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. RIPA was introduced to regulate existing surveillance and investigations in order that they meet the requirements of Article 8 of the Human Rights Act. Article 8 states:

1) Everyone has the right for his private and family life, his home and his correspondence.

(2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. RIPA investigations are authorised for the prevention or detection of crime or the prevention of disorder.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- 11.1. RIPA Policy.

12 BACKGROUND PAPERS

- 12.1. None.

LONDON BOROUGH OF MERTON

POLICY & PROCEDURE

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

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A INTRODUCTION

1. **OBJECTIVE: SUSTAINABLE COMMUNITIES; SAFER AND STRONGER COMMUNITIES**

Merton London Borough Council ('the Council') is committed to improving the quality of life for its residents and businesses which includes benefiting from a cleaner and more attractive physical environment. It also wishes to maintain its position as a low crime borough and a safe place to live, work and learn. Although most of the community comply with the law, it is necessary for the Council to carry out enforcement functions to take full action against those who flout the law. The Council will carry out enforcement action in a fair, practical and consistent manner to help promote a thriving local economy.

2. **HUMAN RIGHTS ACT 1998 – ARTICLE 8 – RIGHT TO RESPECT FOR PRIVATE & FAMILY LIFE, HOME AND CORRESPONDENCE**

The Human Rights Act 1998 brought into UK domestic law much of the European Convention on Human Rights and Fundamental Freedoms 1950. Article 8 of the European Convention requires the Council to respect the private and family life of its citizens, their homes and their correspondence. Article 8 does, however, recognise that there may be circumstances in a democratic society where it is necessary for the state to interfere with this right.

3. **USE OF COVERT SURVEILLANCE TECHNIQUES AND HUMAN INTELLIGENCE SOURCES**

The Council has various functions which involve observing or investigating the conduct of others, for example, investigating anti-social behaviour, fly tipping, noise nuisance control, planning (contraventions), fraud, contraventions of trading standards, licensing and food safety legislation.

In most cases, Council officers carry out these functions openly and in a way which does not interfere with a person's right to a private life. However, there are cases where it is necessary for officers to use covert surveillance techniques to undertake a specific investigation. The use of covert surveillance techniques is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA), which seeks to ensure that the public interest and human rights of individuals are appropriately balanced. The Council has appointed Authorising Officers to authorise the use of two covert investigatory techniques 1) directed surveillance and 2) use of covert human intelligence source ('CHIS'). An investigating officer ('the Applicant') may **not** implement the authorisation until it has been approved by a Justice of the Peace (Magistrate). This shall require the Applicant to attend ~~the~~ Wimbledon Magistrates' Court to make an application for an order approving the authorisation. The third investigatory technique, the acquisition of communications data, is managed by an Authorising Officer through the National Anti-Fraud Network ('NAFN').

This document sets out the Council's policy and procedures on the use of covert surveillance techniques and the conduct and use of a Covert Human

Intelligence Source. You should also refer to the two Codes of Practice published by the Government. These Codes, which were revised in August 2018, are on the Home Office website and supplement the procedures in this document.

The Codes are admissible as evidence in criminal and civil proceedings. If a provision of these Codes appear relevant to any court or tribunal, it must be taken into account.

Covert Surveillance and Property Interference Code of Practice:-
The current policy is found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384975/Covert_Surveillance_Property_Interference_web_2_.pdf

Covert Human Intelligence Sources Code of Practice:
The current policy is found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384976/Covert_Human_Intelligence_web.pdf

4. ACQUISITION OF COMMUNICATIONS DATA

RIPA also regulates the acquisition of communications data. Communications data is data held by telecommunications companies and internet service providers. Examples of communications traffic data which may be acquired with authorisation include names, addresses, telephone numbers, internet provider addresses, geographical location of the calling or the called parties. Communications data surveillance does not monitor the content of telephone calls or emails

This document sets out the procedures for the acquisition of communications data. You should also refer to the Code of Practice which is available on the Home Office website.

Acquisition and Disclosure of Communications Data Code of Practice:
The current code of practice is found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/Acquisition_and_Disclosure_of_Communications_Data_Code_of_Practice_March_2015.pdf

Overview of responsibilities

	RIPA	CHIS	Communications	Non-RIPA
Application	Applicant (service area)	Applicant (service area)	Applicant (service area)	Applicant (service area)
URN	Head of Information Governance (IG)	Head of IG	NAFN	Head of IG
Authorisation of application	Authorising Officer (AO)	AO & for identified cases (see F7 & F8) the Chief Executive	NAFN	AO
Quality assurance of application prior to court submission	SRO	SRO	N/A	N/A but seek legal advice if in doubt
Application at court	Applicant (service area)	Applicant (service area)	N/A	N/A
Review	Authorising Officer (AO) Applicant (service area)	Authorising Officer (AO) Applicant (service area)	NAFN	Applicant (service area)
Cancellation	Authorising Officer (AO) Applicant (service area)	Authorising Officer (AO) Applicant (service area)	NAFN	Applicant (service area)
Records held	Service area and central register held by Head of IG	Service area and central register held by Head of IG	NAFN	Service area and central register held by Head of IG
Register of AOs	Central register held by Head of IG	Central register held by Head of IG	N/A	Central register held by Head of IG
Details of training records	Service area and central register held by Head of IG	Service area and central register held by Head of IG	N/A	Service area and central register held by Head of IG
Retention	Central register and applications – 3 years	Central register and applications – 3 years	NAFN	Central register and applications – 3 years

Material gathered during the surveillance operation shall be retained in accordance with section N1 and N8
Records collected in relation to investigation —3 years or length of custodial sentence if longer

Material gathered during the surveillance operation shall be retained in accordance with section N1 and N8
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Material gathered during the surveillance operation shall be retained in accordance with section N1 and N8
Records collected in relation to investigation —3 years or length of custodial sentence if longer

B AUTHORISING OFFICER RESPONSIBILITIES

1. The Council may only conduct directed surveillance under RIPA where the 'crime threshold' is satisfied and judicial approval has been granted for the operation.
2. The Council's Monitoring Officer (the Managing Director of the South London Legal Partnership) is the Senior Responsible Officer for the purposes of this policy. The Monitoring Officer has delegated powers to appoint Authorising Officers. Authorising Officers will only be appointed if the Monitoring Officer is satisfied that they have received suitable training on RIPA. The Chief Executive means the Head of Paid Services as defined within section 4, Local Government and Housing Act 1989.
3. Chief Officers of the Council and Authorising Officers in their Departments take personal responsibility for the effective and efficient observance of this document.
4. Authorising Officers will also ensure that staff who report to them follow this policy and procedures document and shall not undertake or carry out any form of covert surveillance without first obtaining the relevant authorisations in compliance with this document.
5. 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 an Authorising Officer authorise any surveillance unless, and until satisfied that
 - the health and safety of Council employees/agents are suitably addressed
 - risks minimised so far as is possible, and
 - risks are proportionate to the surveillance being proposed.
6. If an Authorising Officer is in any doubt guidance should be sought from the Chief Officer, the Council's Health & Safety Officer ~~and~~ or Head of Law (Communities and Environment).>
7. Authorising Officers should wherever practicable send an application to the Monitoring Officer for quality assurance purposes before it is submitted to court. The Authorising officer must also ensure that, when sending copies of Forms to the Monitoring Officer (or any other relevant authority), the forms are sent via email marked OFFICIAL-SENSITIVE [LEGAL].
8. Reports on the use of RIPA will be submitted quarterly to be considered by the Standards and General Purposes Committee.

C

GENERAL INFORMATION ON RIPA

1. The Human Rights Act 1998 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, their homes and their correspondence.
2. 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 (as defined in this document); and
 - (c) proportionate (as defined in this document).
3. The Regulation of Investigatory Powers Act 2000 provides the statutory mechanism for authorising covert surveillance and the use of a CHIS– e.g. undercover agents. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA and this Policy and Procedure document seeks to ensure both the public interest and the human rights of individuals are suitably balanced.
4. Directly employed Council staff and external agencies working for the Council are covered by the Act for the time 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 designated Authorising Officers. Please refer to Section G ~~and to paragraph 2~~ on Authorising Officers.
5. If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint may be made to the Investigatory Powers Tribunal, a complaint of maladministration could be made to the Ombudsman, and/or the Council could be ordered to pay compensation.
6. A flowchart of the procedures to be followed appears at **Appendix 1**.

D WHAT RIPA DOES AND DOES NOT DO

1. RIPA does:

- require prior authorisation of directed surveillance.
- **prohibit the Council from carrying out intrusive surveillance.**
- require authorisation of the conduct and use of a CHIS.
- require safeguards for the conduct and use of a CHIS.
- permit the council to obtain communications data from Communications service providers

2. RIPA does not:

- make lawful conduct which is otherwise unlawful.
- 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 this Act. For example, it does not affect the Council's current powers to obtain information from the DVLA or from the Land Registry as to the ownership of a property.

3. If the Authorising Officer or any Applicant is in any doubt, advice should be obtained from the Monitoring Officer or Head of Law (Communities and Environment) before any directed surveillance and/or CHIS is authorised, renewed, cancelled or rejected.

E TYPES OF SURVEILLANCE

1. **Surveillance** includes:

- monitoring, observing and listening to persons, watching or following their movements, listening to their conversations and other such activities or communications. It may be conducted with or without the assistance of a surveillance device.
- 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.

2. **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 (eg. in the case of most test purchases), and/or will be going about Council business openly.

3. 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.

4. **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). It cannot however be necessary if there is reasonably available an overt means of finding out the information desired.

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

6. **Directed Surveillance**

Directed surveillance is surveillance which:-

- is covert surveillance that is not intrusive;
- is carried out in relation to a specific investigation or operation in a manner likely to obtain private information about any person (whether

- or not that person is specifically targeted for purposes of an investigation). (*Section 26(10) RIPA*); and
- Other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under RIPA.

A planned covert surveillance of a specific person, where not intrusive, would constitute directed surveillance if such surveillance is likely to result in the obtaining of private information about them, or any other person.

7. Private Information includes any information relating to a person's private or family life. As a result, private information is capable of including any aspect of a person's private or personal relationships with others, such as family and professional or business relationships. Family should be treated as extending beyond formal relationships created by marriage or civil partnerships.
8. Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information. This is likely to be the case where that person has a reasonable expectation of privacy even though acting in public and where a record is being made by a public authority of that person's activities for future consideration or analysis.

Example: *Two people holding a conversation on the street or in a bus may have a reasonable expectation of privacy over the contents of that conversation, even though they are associating in public. The contents of such a conversation should therefore still be considered as private information. A directed surveillance authorisation would therefore be appropriate for a public authority to record or listen to the conversation as part of a specific investigation or operation.*

9. Private information may include personal data such as names, addresses or telephone numbers. Where such information is acquired by means of covert surveillance of a person having a reasonable expectation of privacy, a directed surveillance authorisation is appropriate.

Example: *A trading standards officer intends to record a specific person providing their name and telephone number to a shop assistant, in order to confirm their identity, as part of a criminal investigation. Although the person has disclosed these details in a public place, there is nevertheless a reasonable expectation that the details are not being recorded separately for another purpose. A directed surveillance authorisation should therefore be sought.*

10. Similarly, although overt town centre CCTV cameras do not normally require authorisation, if the camera is tasked for a specific purpose, which involves prolonged surveillance on a particular person, authorisation will be required.

The way a person runs ~~their~~~~his/her~~ business may also reveal information about ~~his or her~~~~their~~ private life and the private lives of others.

11. Privacy considerations are likely to arise if several records are examined together to establish a pattern of behaviour.

Example: *An Environment Health Officer wishes to drive past a public house or café for the purposes of obtaining a photograph of the exterior. Reconnaissance of this nature is not likely to require a directed surveillance authorisation as no private information about any person is likely to be obtained or recorded. However, if the authority wished to conduct a similar exercise, for example to establish a pattern of occupancy of the premises by any person, the accumulation of information is likely to result in the obtaining of private information about that person and a directed surveillance authorisation should be considered.*

12. Only officers authorised by the Monitoring Officer as Authorising Officers for the purpose of RIPA may authorise directed surveillance'

13. Intrusive Surveillance

Intrusive surveillance is covert surveillance that is:

- carried out in relation to anything taking place on residential premises, or
- in a private vehicle, and
- involves the presence of an individual on the premises or in the vehicle, or
- 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.

Example: *An observation post outside residential premises which provides a limited view compared to that which would be achievable from within the premises does not constitute intrusive surveillance. However, the use of a zoom lens, for example, which consistently achieves imagery of the same quality as that which would be visible from within the premises, would constitute intrusive surveillance*

Example: *A communal stairway in a block of flats would not be regarded as residential premises unless used as a temporary place of abode by a homeless person.*

Example: A front garden or driveway of premises readily visible to the public are not regarded as residential premises.

Example: residential premises occupied by the Council for non-residential purposes – for an undercover operation to catch rogue traders who provide bogus services (for example, replacing a electrical consumer unit when all that is required is the replacement of a blown fuse).

14. **Council officers and its agents may not carry out intrusive surveillance.**

15. **Intrusive surveillance may only be carried out only by police and other law enforcement agencies. Intrusive surveillance relates to the location of the surveillance, and not any consideration of the information that is likely to be obtained.**

16. **“Necessity” – Applies in All Cases**

RIPA requires that the person authorising surveillance to consider it to be necessary in the circumstances of the particular case. Therefore, Applicants and Authorising Officers must consider why directed surveillance is necessary. In addressing the issues of necessity, information should include:

- Why directed surveillance is needed to obtain information that is sought from the operation?
- Why is it necessary to interfere with an individuals’ privacy using covert surveillance
- Why covert surveillance is the best option to obtain the information having considered other alternatives?
- What other methods of obtaining the information has been considered and why they have been discounted?

17. Authorising Officers may not authorise directed surveillance unless:

It is for the purpose of preventing or detecting a criminal offence AND meets the ‘crime threshold’.

The ‘crime threshold’ is met if the purpose of the directed surveillance is:

- a) to detect or prevent criminal offences for which the punishment on conviction is a term of imprisonment of not less than 6 months; or
- b) the offence or the activity subject to directed surveillance constitute an offence under sections 146, 147, or 147A of the Licencing Act 2003 or section 7 of the Children and Young Persons Act 1933 (offences involving sale of alcohol and tobacco to underage children).

The crime threshold applies to directed surveillance, not to CHIS or

Communications Data authorisations.

Applications for directed surveillance should identify the offence(s) by reference to the statutory provision and penalty on conviction.

18. Proportionality

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 harm;
- 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 information sought;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented, or have been implemented unsuccessfully.

19. The activity will not be proportionate if it is excessive in the circumstances or if the information which is sought could reasonably be obtained by less intrusive means. All such activity must be carefully managed to meet the objective and must not be arbitrary or unfair. All those involved in undertaking directed surveillance must be fully aware of the extent and limits of the authorisation.

20. Collateral Intrusion

Before authorising directed surveillance the Authorising Officer should also take into account the risk of obtaining private information about persons who are not the subjects of the surveillance (collateral intrusion). Particular consideration should be given in cases where religious, medical, journalistic or legal privileged material may be involved, or where communications between a Member of Parliament and another person on constituency business may be involved.

21. 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. Where such collateral intrusion is unavoidable, the activities may still be authorised, provided the intrusion is considered proportionate to what is sought to be achieved. The same proportionality tests apply to anticipated collateral intrusion as to the intrusion of the privacy of the intended subject of the surveillance. All applications should include an assessment of the risk of collateral intrusion and details of any measures

taken to limit this, to enable the authorising officer to fully consider the proportionality of the proposed actions.

22. 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.
23. A directed surveillance authorisation may be required to view or monitor a social media or other online account despite access being given with the consent of the owner. There will be a need to consider whether the account(s) 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.

Activity not falling within the definition of covert surveillance

24. Some surveillance activity does not constitute directed surveillance and no directed surveillance authorisation can be obtained for such activity. Such activity includes:
 - covert surveillance by way of an immediate response to events;
 - covert surveillance as part of general observation activities;
 - covert surveillance not relating to the detection and prevention of crime (for offences satisfying the crime threshold)
 - overt use of CCTV and ANPR systems;
 - certain other specific situations (see paragraph F6 and G) or the covert recording of noise where the recording is of decibels only or constitutes non-verbal noise (music, machinery or an alarm).

Immediate response

25. Covert surveillance that is likely to reveal private information about a person, but is carried out by way of an immediate response to events such that it is not reasonably practicable to obtain an authorisation would not require a directed surveillance authorisation. RIPA is not intended to prevent law enforcement officers fulfilling their legislative functions. To this end, section 26(2)(c) of the RIPA provides that surveillance is not directed surveillance when it is carried out by way of an immediate response to events or circumstances, the nature of which is such that it is not reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

Example: An authorisation under RIPA would not be appropriate where a waste enforcement in course of a routine patrol recognises suspicious activity, for example, a flatbed lorry fully laden with waste driving into the secluded part of a housing estate after 4pm on a winter's afternoon.

General observation activities

26. The general observation duties of many enforcement officers do not require authorisation under RIPA, whether covert or overt. Such general observation duties frequently form part of the legislative functions of the Council, as opposed to the pre-planned surveillance of a specific person or group of people. General observation duties may include monitoring of publicly accessible areas of the internet in circumstances where it is not part of a specific investigation or operation.

Example: Trading standards officers attend a car boot sale where it is suspected that counterfeit goods are being sold, but they are not carrying out surveillance of particular individuals and their intention is, through reactive policing, to identify and tackle offenders. Again this is part of the general duties of the Council and the obtaining of private information is unlikely. A directed surveillance authorisation need not be sought.

Example: Intelligence gathered by the Council suggests that a local shopkeeper is openly selling alcohol to underage customers, without any questions being asked. The Trading Standards Team deploys a juvenile to make a purchase of alcohol. In these circumstances any relationship, if established at all, is likely to be so limited in regards to the requirements of RIPA, such that officers are likely to conclude that a CHIS authorisation is unnecessary. However, if the test purchaser is wearing recording equipment and is not authorised as a CHIS, or an adult is observing, consideration should be given to granting a directed surveillance authorisation. Different considerations may apply to a 'test purchase' carried out in a supermarket as opposed to a corner shop.

Surveillance not relating to public functions

27. RIPA does not grant powers to carry out surveillance. It simply provides a framework that allows the Council to authorise and supervise a defined category of surveillance in a manner that ensures compliance with the Human Rights Act 1998. Equally RIPA does not prevent surveillance from being carried out in other circumstances that fall outside the RIPA framework. Further guidance is provided at section **K Non RIPA Authorisation**.

Overt surveillance cameras - CCTV and ANPR (Automatic Number Plate Recognition)

28. The use of overt CCTV cameras by the Council does not normally require an authorisation under RIPA. Members of the public are made aware that such

systems are in use by virtue of cameras or signage being clearly visible, through the provision of information and by undertaking consultation. Guidance on their operation is provided in the Surveillance Camera Code of Practice issued under the Protection of Freedoms Act 2012 (“the 2012 Act”) and overseen by the Surveillance Camera Commissioner. The Council is aware of the Information Commissioner’s code (“In the Picture – A Data Protection Code of Practice for Surveillance Cameras and Personal Information”).

29. The Council has regard to the provisions of the Surveillance Camera code, where surveillance is conducted overtly by means of a surveillance camera system in a public place in England and Wales.
30. The Surveillance Camera code sets out a framework of good practice that includes existing legal obligations, including the processing of personal data under the Data Protection Act 2018 and a public authority’s duty to adhere to the Human Rights Act 1998. Similarly, the overt use of ANPR systems to monitor traffic flows or detect motoring offences does not require an authorisation under RIPA.

***Example:** A town centre CCTV systems is used to gather information as part of a reactive operation (for example, a flatbed lorry fully laden with waste is captured tipping its contents within a Council operated car park – the CCTV system is used to track the vehicle to observe it pass an ANPR camera so that it may be identified as being used in the commission of the offence). Such use does not amount to covert surveillance as the equipment was overt and not subject to any covert targeting. Use in these circumstances would not require a directed surveillance authorisation.*

31. However, where overt CCTV or other overt surveillance cameras are used in a covert and pre-planned manner as part of a specific investigation or operation, for the surveillance of a specific person or group of people, a directed surveillance authorisation should be considered. Such covert surveillance is likely to result in the obtaining of private information about a person (namely, a record of their movements and activities) and therefore falls properly within the definition of directed surveillance. The use of the CCTV or other overt surveillance cameras in these circumstances goes beyond their intended use for the general prevention or detection of crime and protection of the public.

F CONDUCT AND USE OF A COVERT HUMAN INTELLIGENCE SOURCE (CHIS)

It is unlikely that the Council would need to use a CHIS. If it appears that use of a CHIS may be required Authorising Officers must seek legal advice from the Monitoring Officer.

Who is a CHIS?

1. A person is a CHIS if they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within the following:
 - a) they covertly use such a relationship to obtain information or to provide access to any information to another person; or
 - b) they covertly disclose information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
2. A relationship is established or maintained for a covert purpose if and only if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.
3. A relationship is used covertly, and information obtained is disclosed covertly, if and only if the relationship is used or the information is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question
4. RIPA generally does not apply in circumstances where members of the public volunteer information to the Council as part of their normal civic duties, or to contact numbers set up to receive information. This will depend on how the member of the public has obtained the information. If it is obtained in the course of a personal or other relationship or as a consequence of that relationship even if the relationship was not established or maintained for the purpose of obtaining the information then the informant is likely to be a CHIS. The Applicant should seek legal advice before acting on the information received from such an informant.
5. However, by virtue of section 26(8) (c) of RIPA, 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 tasked 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. **Legal advice must be sought in any such circumstances.**

What must be authorised?

4. The conduct or use of a CHIS requires prior authorisation.
 - **Conduct** of a CHIS means establishing or maintaining a personal or other relationship with a person for the covert purpose of (or incidental to) obtaining and passing on information.
 - **Use** of a CHIS means taking action to induce, ask or assist a person to act as a CHIS and the decision to use a CHIS in the first place.
5. The Council may use CHIS's if, and only if, the RIPA procedures detailed in this document, are followed. Authorisation for CHIS's may only be granted if it is for the purposes of preventing or detecting crime or of preventing disorder.
6. The use of a recording device by a covert human intelligence source in respect of whom an appropriate use or conduct authorisation has been granted permitting him or her to record any information obtained in their presence is neither directed nor intrusive surveillance [s48(3), RIPA].

Juvenile Sources

7. Special safeguards apply to the use or conduct of juvenile sources (i.e. those under the age of 18). On no occasion can a child under 16 years of age be authorised to give information against his or her parents or any person with parental responsibility for him or her. Only the Chief Executive, or in their absence, a Chief Officer can authorise the use of a juvenile as a source.

Vulnerable Individuals

8. 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.
9. A vulnerable individual will only be authorised to act as a source in the most exceptional of circumstances. Only the Chief Executive, or in their absence, a Chief Officer can authorise the use of a vulnerable individual as a source.

Test Purchases

9. Carrying out test purchases will not (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. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter).
10. By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product (e.g. illegally

imported products) shall require authorisation as a CHIS. Similarly, using hidden body video cameras to record what is going on in the shop may require authorisation as directed surveillance. A combined authorisation can be given for a CHIS and also directed surveillance.

11. Authorising Officers should consider the likelihood that the test purchase will lead to a relationship being formed with a person in the shop. If the particular circumstances of a particular test purchase are likely to involve the development of a relationship Authorising Officers must seek legal advice from the Monitoring Officer.

Anti-Social Behaviour Activities (eg. Noise ~~and~~, Violence, Race etc)

12. 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. The covert recording of noise where the recording is of decibels only or constitutes non-verbal noise (such as music, machinery or an alarm), or the recording of verbal content is made at a level which does not exceed that which can be heard from the street outside or adjoining property with the naked ear. In the latter circumstance, the perpetrator would normally be regarded as having forfeited any claim to privacy. In either circumstance, an authorisation is unlikely to be available. In such circumstances the Non-RIPA authorisation process should be followed as set out in section K Non-RIPA Activity.
13. 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 without RIPA authorisation if the noisemaker is warned that this will occur if the level of noise continues. Placing a covert stationary or mobile camera outside a building to record anti-social behaviour on residential estates will require prior authorisation pursuant to the council's separate policy on camera surveillance. It will also be important to engage with the Safer Merton Team.

G Voluntary Interviews with members of the public

The recording, whether overt or covert, of an interview with a member of the public does not constitute directed nor intrusive surveillance where it is made clear that the interview is entirely voluntary and that the interviewer is a Council officer. In such circumstances, whether the recording equipment is overt or covert, the member of the public knows that they are being interviewed by a member of the Council and that information gleaned through the interview will pass into the possession of the Council.

H AUTHORISATION PROCEDURES

1. Directed surveillance and the use of a CHIS can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation as approved by the Justice of the Peace (Magistrate).

Appendix 1 provides a flow chart of the process from application consideration to recording of information.

Authorising Officers

2. Forms can only be signed by Authorising Officers appointed by the Monitoring Officer. Officers can only be Authorising Officers if they are the Chief Executive, Chief Officers, Heads of Service, or other Unit Managers who are considered to be suitable by the Monitoring Officer. Appointments of these officers are subject to the training requirements set out in paragraph 4 below.
3. Authorisations under RIPA are separate from delegated authority to act under the Council's Scheme of Delegation and internal departmental Schemes of Management. RIPA authorisations are for specific investigations only, and must be renewed or cancelled once the specific surveillance is complete or about to expire. **The authorisations do not lapse with time Although authorisations cease effect with time they and must be formally cancelled.**

Training Records

4. The Monitoring Officer will only appoint Authorising Officers if satisfied that they have undertaken suitable training on RIPA. The Monitoring Officer shall require evidence of suitable training to be supplied usually in the form of a certificate from the relevant party to the effect that the Authorising Officer has completed a suitable course of instruction.
5. The Head of Information Governance shall maintain a Register of Authorising Officers and details of training undertaken by them.
6. If the Monitoring Officer is of the view that an Authorising Officer has not complied fully with the requirements of this document, or the training provided to him or her, the Monitoring Officer is duly authorised to withdraw that Officer's authorisation until they have undertaken further approved training or have attended a one-to-one meeting with the Monitoring Officer.

Application Forms

7. Only the approved RIPA forms may be used which are retained on the Home Office website. The forms can be found using the hypertext links in Appendices 2 and 3. With each application the relevant form should be downloaded from the Home Office website.

8. 'A Forms' (Directed Surveillance) – See Appendix 2

Form A 1	Application for Authority for Directed Surveillance
Form A 2	Renewal of Directed Surveillance Authority
Form A3	Review of Directed Surveillance Authority
Form A4	Cancellation of Directed Surveillance

9. 'B' Forms (CHIS) – See Appendix 3

Form B 1	Application for Authority for Conduct and Use of a CHIS
Form B 2	Renewal of Conduct and Use of a CHIS
Form B 3	Review of Conduct and Use of a CHIS
Form B 4	Cancellation of Conduct and Use of a CHIS

Grounds for Authorisation

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

Assessing the Application Form

11. The following information should be included on the application form:
- the reasons why the authorisation is necessary in the particular case and on the grounds listed in s 28(3)b of RIPA;
 - the nature of the surveillance and the precise location it is to take place;
 - the identities, where known, of those to be the subject of the surveillance;
 - a summary of the intelligence case and appropriate unique intelligence references where applicable;
 - an explanation of the information which it is desired to obtain as a result of the surveillance;
 - the details of any potential collateral intrusion and why the intrusion is justified;
 - the details of any confidential information that is likely to be obtained as a consequence of the surveillance;
 - the reasons why the surveillance is considered proportionate to what it seeks to achieve and detail of less intrusive options that have been considered.
12. Before an Authorising Officer signs a Form, they must:-
- (a) Comply with this Policy & Procedures document and the training they have undertaken
 - (b) Satisfy themselves that the RIPA authorisation is:-
 - (i) in accordance with the law;

- (ii) (in respect of directed surveillance) that the offence being investigated satisfies the crime threshold;
 - (iii) necessary in the circumstances of the particular case on the ground mentioned in paragraph 10 above; and
 - (iv) proportionate to what it seeks to achieve.
- (c) In assessing whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information. The least intrusive method will be considered proportionate by the courts.
- (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (collateral intrusion). Measures must be taken wherever practicable to avoid or minimise (so far as is possible) collateral intrusion. This matter may be an aspect of determining proportionality;
- (e) Make a note on the Form that the Applicant was informed of the requirement to return to have the authorisation cancelled should it be apparent (to the Applicant) the directed surveillance no longer meets the criteria upon which it was authorised. Further, a date shall be set for the review of the authorisation;
- (f) Obtain a Unique Reference Number (URN) for the application from the Head of Information Governance by emailing data.protection@merton.gov.uk on 020 8545 4182;
- (g) Ensure that a copy of the RIPA Forms (and any review/cancellation of the same) is forwarded via email to the Monitoring Officer (or any other relevant authority), marked OFFICIAL-SENSITIVE [LEGAL], within 5 days of the relevant authorisation, review, renewal, cancellation or rejection.
13. For Communications and CHIS applications, the Authorising Officer should:
- (a) Set a date for review of the authorisation and review on that date using the relevant form;
 - (b) Obtain a Unique Reference Number (URN) for the application from the Head of Information Governance by emailing data.protection@merton.gov.uk Allocate a Unique Reference Number (URN) for each form:-
Year / Department / Number of Application;
 - (c) Ensure that a copy of the RIPA Forms (and any review/cancellation of the same) is forwarded via email to the Monitoring Officer (or any other relevant authority), marked OFFICIAL-SENSITIVE [LEGAL] prior to within the relevant authorisation being submitted to court if reasonably practicable, and within 5 days of any, renewal, cancellation or rejection;

- (dk) In the case of notices relating to communications data, these will be kept by a 'Designated Person' selected by the Monitoring Officer. The Monitoring Officer shall have access to such forms as and when required;
- (el) If unsure on any matter, authorising officers should obtain advice from the Monitoring Officer, before signing any forms.

Additional Safeguards when Authorising a CHIS

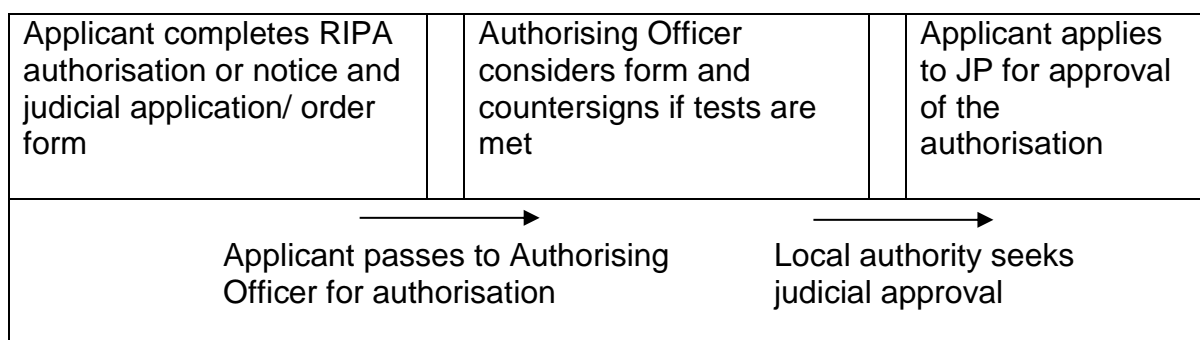
14. When authorising the conduct or use of a CHIS, the Authorising Officer must also:-
- (a) be satisfied that the conduct and/or use of the CHIS is proportionate to what is sought to be achieved.
 - (b) Be satisfied that appropriate arrangements are in place for the management and oversight of the CHIS and this must address health and safety issues through a risk assessment;
 - (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; and
 - (e) Ensure records contain particulars and are not available except on a need to know basis.
 - (f) Ensure that if the CHIS is under the age of 18 or is a vulnerable adult the Authorising Officer has to be the Chief Executive or in ~~his~~their absence, a Chief Officer.

The Authorising Officer must attend to the requirement of section 29(5) RIPA and of the Regulation of Investigatory Powers (Source Records) Regulations 2000. Legal advice must be obtained in relation to the authorisation of a CHIS.

15. Approval by a Justice of the Peace (JP)
Judicial approval is required before acting on the authorisation to carry out directed surveillance and conduct or use of a CHIS. Arrangement should be made to attend an Applications Court at Wimbledon Magistrates' Court. It may be appropriate to instruct the South London Legal Partnership to attend court on the Council's behalf, depending on the nature of the application and the experience of the Authorising Officer.
16. Judicial approval is also required on the renewal of an authorisation.

17. The JP must decide whether the grant or renewal of an authorisation should be approved and it will not come into effect unless and until it is approved by a JP (sometimes referred to as a Magistrate). Although it is possible to request judicial approval for the use of more than one technique (i.e. directed surveillance and CHIS data) at the same time, in practice, it is better to separate the applications for approval as different considerations apply to these different techniques, this may prove to be difficult to perform with the degree of clarity required. It is recommended that separate authorisations or notices to use different RIPA techniques should be submitted.
18. Please note that the application and any renewal of the application require judicial approval. Reviews and cancellations of authorisations do not require judicial approval and remain an internal process. The process is outlined below:

Directed Surveillance / CHIS (Covert Human Intelligence Source)



The Role of the JP

19. The role of the JP is set out in section 32A RIPA (for directed surveillance and CHIS).
20. The Act provides that the authorisation shall not take effect until the JP has made an order approving such an authorisation. The matters on which the Magistrate needs to be satisfied before giving judicial approval are:
 - there were reasonable grounds for the local authority to believe that the authorisation was necessary and proportionate and there remain reasonable grounds for believing that these requirements are satisfied at the time when the JP is considering the matter;
 - in the case of a CHIS authorisation, that there were reasonable grounds for the local authority to believe that arrangements exist for the safety and welfare of the source that satisfy section 29(5) RIPA and there remain reasonable grounds for believing that these requirements are satisfied at the time when the JP is considering the matter;
 - in the case of a CHIS authorisation, that there were reasonable grounds for the local authority to believe that the requirements imposed by

Regulation of Investigatory Powers (Juveniles) Order 2003 were satisfied and there remain reasonable grounds for believing that these requirements are satisfied at the time when the JP is considering the matter;

- the local authority application has been authorised by a designated person;
- the grant of the authorisation was not in breach of any restriction imposed by virtue of an order made under the following sections of section 25(3) RIPA

Duration

21. The Form must be reviewed in the time stated and cancelled once it is no longer needed. The authorisation to carry out/conduct the surveillance lasts for 3 months (from authorisation) for directed surveillance, and 12 months (from authorisation) for a 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).
22. Authorisations can be renewed in writing when the maximum period has expired. The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date, and any collateral intrusion that has occurred.
23. All authorisations should be reviewed based on the level of collateral intrusion or the amount of confidential information obtained. Authorising Officers should set review dates based on the likelihood of this information being captured.

I WORKING WITH / THROUGH OTHER AGENCIES

1. When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this document and the forms in it must be used by the Authorising Officer and the agency advised or kept informed, as necessary, of the various requirements. The agency must be made aware explicitly what they are authorised to do.
2. When another agency (e.g. Police, HMRC etc.):-
 - (a) wishes to use the Council's resources (e.g. CCTV surveillance systems), 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 ~~Assistant Director of Corporate Governance~~Monitoring Officer for the Central Register) and/or relevant extracts from the same which are sufficient for the purposes of protecting the Council and the use of its resources;
 - (b) wishes to use the Council's premises for their own RIPA action, the Chief Officer or Head of Service 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 agent'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.
3. In terms of 2(a), 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.
4. Any person granting or applying for an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance is taking place and of any similar activities being undertaken by other public authorities which could impact on the deployment of surveillance. It is therefore recommended that where an authorising officer considers that conflicts might arise they should consult a senior officer within the police force area in which the investigation or operation is to take place.
5. **If in doubt, please consult with the Monitoring Officer at the earliest opportunity.**

J DIRECTED SURVEILLANCE - SOCIAL MEDIA POLICY

1. The growth of the internet, and the extent of the information that is now available online, presents new opportunities for the Council to view or gather information which may assist in preventing or detecting crime or carrying out other statutory functions, as well as in understanding and engaging with the public it serves. Much of it can be accessed without the need for RIPA authorisation; use of the internet prior to an investigation shall not normally engage privacy considerations. But if the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, RIPA authorisations may need to be considered.
2. The internet may be used for intelligence gathering and/or as a surveillance tool. Where online monitoring or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for directed surveillance should be sought.
3. Where an officer (or person acting on behalf of the Council) intends to engage with others online without disclosing his or her identity, a CHIS authorisation may be needed
4. In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject(s) knowing that the surveillance is or may be taking place. Use of the internet itself may be considered as adopting a surveillance technique calculated to ensure that the subject is unaware of it, even if no further steps are taken to conceal the activity. Conversely, where a reasonable steps to inform the public or particular individuals that the surveillance is or may be taking place, the activity may be regarded as overt and a directed surveillance authorisation will not normally be available.
5. Depending on the nature of the online platform, there may be a reduced expectation of privacy where information relating to a person or group of people is made openly available within the public domain, however in some circumstances privacy implications still apply. This is because the intention when making such information available was not for it to be used for a covert purpose such as investigative activity. This is regardless of whether a user of a website or social media platform has sought to protect such information by restricting its access by activating privacy settings.
6. Where information about an individual is placed on a publicly accessible database, for example the telephone directory or Companies House, which is commonly used and known to be accessible to all, they are unlikely to have any reasonable expectation of privacy over the monitoring by the council of that information. Individuals who post information on social media networks and other websites whose purpose is to communicate messages to a wide

audience are also less likely to hold a reasonable expectation of privacy in relation to that information.

7. Whether the Council interferes with a person's private life requires a consideration of the nature of the activity in relation to that information. Simple reconnaissance of social media and online sites (which would take the form of a preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where an officer (or third party acting on the behalf of the Council) is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation should be considered. These considerations apply regardless of when the information was shared online.

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

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

Example: *A Fraud Investigator officer makes an initial examination of an individual's online profile to establish whether they are of relevance to an investigation. This is unlikely to need an authorisation. However, if during that visit it is intended to extract and record information to establish a profile including information such as identity, pattern of life, habits, intentions or associations, it may be advisable to have in place an authorisation even for that single visit.*

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

- Whether it is likely to result in obtaining private information about a person or group of people
 - 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.
9. Internet searches carried out by a third party on behalf of a public authority, or with the use of a search tool, may still require a directed surveillance authorisation (see paragraph 4.32).

Example: *A trading standards officer using automated monitoring tools to search for common terminology used online for illegal purposes will not normally require a directed surveillance authorisation. Similarly, general analysis of data by the Council either directly or through a third party for predictive purposes (e.g. identifying crime hotspots or analysing trends) is not usually directed surveillance. In such cases, the focus on individuals or groups is likely to be sufficiently cursory that it would not meet the definition of surveillance. But officers should be aware of the possibility that the broad thematic research may evolve, and that authorisation may be appropriate at the point where it begins to focus on specific individuals or groups. If specific names or other identifiers of an individual or group are applied to the search or analysis, an authorisation should be considered.*

10. Officers should be aware of the importance to verify the accuracy of information on social networking sites if such information is to be used as evidence. An individual may post information that inflates, exaggerates or embellishes the truth.

K NON-RIPA ACTIVITY

1. There may be occasions when during the course of an investigation it may become necessary to conduct surveillance of individuals in respect of matters that do not satisfy the crime threshold. For example, in relation to an investigation into an allegation that a contractor is not carrying out their work as contracted, a serious disciplinary offence by a member of staff is alleged e.g. gross misconduct, or children are at risk where Court Orders are not being respected, then a RIPA authorisation is not usually available because criminal proceedings are not normally contemplated.
2. Similarly, there may be serious cases of neighbour nuisance or involving anti-social activity which involve potential criminal offences for which the penalty is below the thresholds which would enable use of a RIPA authorisation. Nonetheless in such cases there may be strong grounds for carrying out directed surveillance or use of a CHIS. Indeed there may be circumstances in which directed surveillance or use of CHIS is the only effective means of efficiently obtaining significant information to take an investigation forward.
3. A person may make a claim or a complaint to the Investigatory Powers Tribunal should they consider the use of directed surveillance or use of a CHIS infringed their Article 8 rights. It would be then for the Council to satisfy the IPT that such infringement was justified, necessary and proportionate in pursuit of a legitimate aim. Completing the Non-RIPA application forms provides a written record of those matters taken into account at that time regarding justification, necessity and proportionality.
4. In these circumstances, the investigating officer is required to go through the RIPA authorisation process in terms of considering:
 - a) Why there is no other alternative to undertaking the directed surveillance;
 - b) Why the surveillance is necessary; and,
 - c) How it is proportionate in the circumstances.
5. The investigating officer is required to complete a 'non-RIPA' authorisation form (in the same terms of a RIPA form but clearly marked 'NON-RIPA'). The application must be submitted to an Authorising Officer for approval.
6. Where it is deemed that the above-mentioned criteria have been satisfied, the non RIPA surveillance should be monitored and reviewed in accordance with the existing Council policy. The same arrangements for RIPA authorisations are followed for Non-RIPA authorisations, that is, a Non-RIPA URN is required; the operation is subject to review and cancellation; and records are retained in the same way and are to be made available to an IPCO, if requested. In the event of a claim or complaint made to the IPT it shall be essential to have such records to demonstrate the activity was justified, necessary and proportionate.

Test purchase exercises

7. If no application for directed surveillance is made in relation to a test purchase exercise involving juveniles the 'Non RIPA Activity' procedure shall be followed. On completion of the test purchase exercise a written record shall be made of the review of the exercise, including an assessment of the risks of private information being obtain and the risk of collateral intrusion. Regard shall be had to the reviews before embarking on successive test purchase exercises.

L RECORDS MANAGEMENT

1. The Council must keep a detailed record of all authorisations, renewals, cancellations and rejections in Departments and a Central Register of all Authorisation Forms will be maintained and monitored by the Monitoring Officer.

Records Maintained in the Department

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

Central Register maintained by the Monitoring Officer

3. Authorising Officers must forward a copy of the form to the Monitoring Officer for the Central Register, within 5 days of the authorisation, review, renewal, cancellation or rejection. The ~~Assistant Director Corporate Governance~~ Monitoring Officer will monitor the same and give appropriate guidance to Authorising Officers from time to time, or amend this document in the light of changes of legislation or developments through case law.
4. The Council shall retain records for a period of at least three years from the ending of the authorisation for applications and for ~~records collected in relation an investigation, 3 years or the length of custodial sentence if longer~~ surveillance material acquired during an operation only for so long as shall be compliant with sections N1 and N8.
5. The Investigatory Powers Commissioner's Office (IPCO) can audit/review the Council's policies and procedures, and individual authorisations.
6. The Investigatory Powers Commissioner's Office will also write to the Council from time to time, requesting information as to the numbers of authorisations

made in a specific period. It will be the responsibility of the Monitoring Officer to respond to such communications as well as to submit the annual return.

M Reporting Errors

1. An error must be reported to the Monitoring Officer if it is a “relevant error”. The error should be reported in the first instance to Authorising Officer who must immediately report the error to the Monitoring Officer. The Monitoring Officer shall agree with the Authorising Officer the scope and purpose of a written report to be completed within 5 days.
2. Under section 231(9) of the Investigatory Powers Act 2016, a relevant error is any error by the Council in complying with any requirements imposed on it by any enactment which are subject to review by a Judicial Commissioner. This would include compliance by public authorities with Part II of RIPA. Examples of relevant errors occurring would include circumstances where:
 - surveillance activity has taken place without lawful authorisation; or
 - There has been a failure to safeguard private information, confidential or privileged information gathered or obtained pursuant to an authorisation.
3. The Monitoring Officer shall notify the Investigatory Powers Commissioner when a relevant error has occurred. The Council is required to notify the Investigatory Powers Commissioner as soon as reasonably practicable, and no later than ten working days (or as agreed with the Commissioner) after it has been established by appropriate internal governance processes that a relevant error has occurred. Where the full facts of the error cannot be ascertained within that time, an initial notification must be sent with an estimated timescale for the error being reported in full and an explanation of the steps being undertaken to establish the full facts of the error.
4. From the point at which the Council identifies that a relevant error may have occurred, it must take steps to confirm the fact of an error as quickly as it is reasonably practicable to do so. Where it is subsequently confirmed that an error has occurred and that error is notified to the Commissioner, the Council must also inform the Commissioner of when it was initially identified that an error may have taken place.
5. The Monitoring Officer shall submit a full report to the Investigatory Powers Commissioner as soon as reasonably practicable in relation to any relevant error, including details of the error and, where it has not been possible to provide the full report within ten working days (or as agreed with the Commissioner) of establishing the fact of the error, the reasons this is the case. The report shall include information on the cause of the error; the amount of surveillance and material obtained or disclosed; any unintended collateral intrusion; any analysis or action taken; whether any material has been retained or destroyed; and a summary of the steps taken to prevent recurrence.
6. The Investigatory Powers Commissioner may issue guidance as necessary, including guidance on the format of error reports.

N Managing information

1. Dissemination, copying and retention of material must be limited to the minimum necessary for authorised purposes. For the purposes of this ~~code~~policy and procedure, something is necessary for the authorised purposes if the material:
 - is, or is likely to become, necessary for any of the statutory purposes set out RIPA in relation to covert surveillance;
 - is necessary for facilitating the carrying out of the functions of public authorities under RIPA;
 - is necessary for facilitating the carrying out of any functions of the Commissioner or the Investigatory Powers Tribunal;
 - is necessary for the purposes of legal proceedings; or
 - is necessary for the performance of the functions of any person by or under any enactment.
2. There is nothing in RIPA which prevents material obtained under directed or surveillance from being used to further other investigations where it becomes relevant and in accordance with the safeguards regarding the dissemination of material.
3. Material acquired through covert surveillance may be disseminated both within the Council and shared with other Councils, the Police or HMRC, where necessary in order for action to be taken on it. The number of persons to whom any of the information is disclosed, and the extent of disclosure, should be limited to the minimum necessary for the lawful purposes. This obligation applies equally to disclosure to additional persons within a public authority and to disclosure outside the authority. In the same way, only so much of the material may be disclosed as the recipient needs; for example if a summary of the material will suffice, no more than that should be disclosed.
4. The obligations apply not just to the original public authority acquiring the information under an authorisation, but also to anyone to whom the material is subsequently disclosed. In some cases, this will be achieved by requiring the latter to obtain the original authority's permission before disclosing the material further. In others, explicit safeguards should be applied to secondary recipients.
5. Where material obtained under an authorisation is to be disclosed to the authorities of a country or territory outside the UK, the Council must ensure

that the material is only handed over to the authorities if it appears to them that any requirements relating to minimising the extent to which material is disclosed, copied, distributed and retained will be observed to the extent that the authorising officer considers appropriate.

Storage

6. Material obtained through directed surveillance, and all copies, extracts and summaries of it, must be handled and stored securely, so as to minimise the risk of loss or theft. It must be held so as to be inaccessible to persons without the required level of security clearance (where applicable). This requirement to store such material securely applies to all those who are responsible for the handling of the material. Any physical evidence - hardcopies of photographs; written records (notes and prints of digital records); hard drives; USB sticks; smart phones (until digital records are transferred) shall be retained within a secure storage with restricted access. Property records shall be maintained which include the details of when the secure storage was entered and for what purpose.
7. All such material in digital form shall be retained on a secure network with access limited to those staff that have the relevant permissions. There should be a full audit trail of any viewing, download or transfer of the information.

Destruction

8. Information obtained through covert surveillance, and all copies, extracts and summaries which contain such material, should be scheduled for deletion or destruction and securely destroyed as soon as they are no longer needed for the authorised purposes set out in paragraph 1 above. If such information is retained, it should be reviewed at appropriate intervals to confirm that the justification for its retention is still valid. In this context, destroying material means taking such steps as might be necessary to make access to the data impossible.
9. All applicants and Authorising Officers are required to have a thorough understanding of section 9 of the Covert Surveillance and Property Interference code of practice (August 2018).

O ACQUISITION OF COMMUNICATIONS DATA

Background

1. The Investigatory Powers Act 2016 ('IPA') provides a mechanism for the Council to acquire communications data from telecommunications and postal operators by setting up an authorisation procedure. The definition of communications data is very wide and can include subscriber information, telephone numbers called or received, the IP address of the sender of an email or the status or contact details of the customer of a social networking site. However it does not include the content of the communications.
2. The legislation seeks to ensure that public authorities only acquire communications data where it is necessary and proportionate, for a legally prescribed purpose, and that the acquisition is carried out in such a way that the risk of infringing the human rights of individuals is kept to a minimum. For the Council the only legal purpose for acquiring communications data is for the preventing or detecting crime or of preventing disorder.
3. The Home Office has issued a Communications Data Code of Practice which can be found at the following link:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/757850/Communications_Data_Code_of_Practice.pdf
. This policy must be read in conjunction with the Code of Practice and all staff involved in the acquisition of communications data must have regard to the provisions of the Code of Practice.

Introduction

4. The Council will on occasion need to acquire communications data to carry out its enforcement functions effectively. By following the authorisation procedures set out by IPA 2016, officers can demonstrate that the data acquisition is for a permitted purpose in connection with a specific investigation or operation and that it is a necessary and proportionate measure to take, given all the circumstances.
5. The purpose of this policy is to reinforce the requirements of the IPA 2016 and the Communications Data Code of Practice, to ensure compliance with the law, to protect the rights of individuals and to minimise the risk of legal challenge as a result of officer actions.
6. All communications data acquisition must be done in accordance with the legislative framework and this policy including where these activities are carried out by a contractor. Any restrictions on the type of communications data that the Council is authorised to access and the tests to be applied must be observed, and any acquisition must be properly authorised and recorded. Within the Council, a Senior Responsible Officer is appointed to oversee the process for the acquisition of communications data (presently this post is held by the Monitoring Officer). They are responsible for the implementation and effective operation of this policy.

7. All applications for the acquisition of communications data made by the Council will be considered by an independent body, The Office for Communications Data Authorisations (OCDA) who perform this function on behalf of the Investigatory Powers Commissioner.

Communications Data

8. Communications data is the “who”, “when”, “where” and “how” of a communication but does not include the content and under no circumstances can the content of a communication be obtained. The Council has no right to listen in to telephone conversations without permission or read post or electronic communications before they have been received.
9. However, the definition of Communications Data in the legislation is very broad and the Communications Data Code of Practice gives specific examples of what is included and excluded from the definition. It includes the way in which, and by what method, a person or thing communicates with another person or thing. It excludes anything within a communication including text, audio and video that reveals the meaning, other than inferred meaning, of the communication.
10. Communications Data can include the address to which a letter or parcel is sent, the time and duration of a communication, the telephone number or email address of the originator and recipient, and the location of the device from which the communication was made. It covers electronic communications, including internet access, internet telephony, instant messaging and the use of apps.
11. Communications data is generated, held or obtained in the provision, delivery and maintenance of communications services defined as telecommunications services or postal services.
12. **Telecommunications Data**: All communications data held by a telecommunications operator, or obtainable from a telecommunications system fall into one of two categories:
 - data about the entity: this data is about entities or links between them and describes or identifies the entity but does not include information about individual events. Entities could be individuals, groups and objects (such as mobile phones or other communications devices). This might include subscriber details or billing information including payment methods.
 - data about the event: this data identifies or describes events in relation to a telecommunication system which consist of one or more entities engaging in an activity at a specific point, or points, in time, such as itemised telephone calls or their duration, or the location of a device when it was used to send a communication.

13. [Apart from events data the Council can obtain communications data to prevent and detect crime and prevent disorder.](#) The only lawful purpose for which the Council can obtain events data is in relation to “**serious crime**”. This means an offence for which an adult is capable of being sentenced to one year or more in prison; any offence involving violence, resulting in a substantial financial gain or involving conduct by a large group of persons in pursuit of a common goal; any offence committed by a body corporate; any offence which involves the sending of a communication or a breach of privacy; or an offence which involves, as an integral part of it, or the sending of a communication or breach of a person’s privacy.
14. The Council may not make an application that requires the processing or disclosure of internet connection records for any purpose.
15. **Postal Data.** A postal service is a service which includes one or more of collection, sorting, conveyance, distribution and delivery of postal items. Postal data may be:
 - Anything comprised in or attached to a communication for the purpose of the service by which it is transmitted. This can include addresses or markings of the sender or recipient written on the outside of the postal item or online tracking.
 - Data relating to the use made by a person of a postal service. This can include redirection services, price and postage class used, registered post or special/recorded delivery and parcel consignment records.
 - Information held or obtained about persons who have used a communications service such as PO Box numbers even if no mail has ever been received
16. Postal data must however be related to a postal service and does not include data which may be held about a customer more generally.

Accessing Communications Data

- ~~17. Part 3 IPA allows a designated senior officer of the Council, to authorise officers to obtain data from any person which relates to a telecommunications system or data derived from a telecommunication system if he considers it necessary for the purpose of preventing or detecting crime or of preventing disorder. This is subject to the requirement for the Council to enter into a collaborative agreement.~~
- ~~18.~~17. The Council is party to a collaborative agreement with the National Anti-Fraud Network (NAFN) and uses the NAFN shared SPoC (Single Point of Contact) services for the acquisition of Communications Data. Applicants consult a NAFN SPoC throughout the application process and the SPoC will scrutinise the applications independently. All applications are made electronically using the NAFN secure portal.

~~19-18.~~ There are 5 roles set out within the Code of Practice in respect of who will be involved in the acquisition of communications data.

The Applicant

~~20-19.~~ This is the person involved in conducting or assisting an investigation or operation within the Council who makes an application in writing (electronically) for the acquisition of communications data. The Council limits the persons who are permitted to make an application to acquire communications data to those who have had sufficient training and knowledge of this area of law and only Authorised Officers may submit an application.

The Single Point of Contact (SPoC)

~~21-20.~~ The SPoC promotes efficiency and good practices in ensuring that only practical and lawful applications for communications data are made.

~~22-21.~~ Applicants follow the advice of the SPoC to ensure that the Council acts in a lawful and informed manner.

~~23-22.~~ No application is submitted for authorisation until the SPoC is satisfied that it is practical and lawful and that the appropriate verification procedure has been followed by the Council.

~~24.~~ ~~Within the Council, the SPoC is a member of the NAFN Service Team.~~

The Authorising Individual

~~25-23.~~ Communications data applications can be authorised by three separate categories of individual depending on the circumstances of the specific case.

- An authorising officer in the Office for Communications Data Authorisations.
- The designated senior officer who holds a prescribed office or rank in the Council (where the independent authorisation does not apply). ~~In the Council, the designated senior officer in the Trading Standards Manager.~~
- A judicial commissioner who is responsible for approving requests to identify or confirm journalistic sources.

The Senior Responsible Officer

~~26-24.~~ The Senior Responsible Officer is responsible for:

- the integrity of the process in place within the public authority to acquire communications data;
- engagement with authorising officers in the Office for Communications Data Authorisations (where relevant);
- compliance with Part 3 of the IPA and with the Communications Data Code of Practice, including responsibility for novel and contentious cases;
- oversight of the reporting of errors to the IPC and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;

- ensuring the overall quality of applications submitted to OCDA by the public authority;
- engagement with the IPC's inspectors when they conduct their inspections;
- where necessary, oversight of the implementation of post inspection action plans approved by the IPC. Within the Council, the Senior Responsible Officer is the Monitoring Officer.

The Application Process

27-25. The Applicant will complete an application form setting out for consideration the necessity and proportionality of a specific requirement for acquiring communications data. This is done via the NAFN secure portal by completing the electronic application form. The applicant will have regard to the Communications Data Code of Practice in completing this form and in particular:

- describe the communications data required, specifying, where relevant, any historic or future date(s) and, where appropriate, time period(s);
- specify the purpose for which the data is required, by reference to a statutory purpose under IPA;
- include a unique reference number;
- include the name and the office, rank or position held by the person making the application;
- describe whether the communications data relates to a victim, a witness, a complainant, a suspect, next of kin, vulnerable person or other person relevant to the investigation or operation;
- include the operation name (if applicable) to which the application relates
- identify and explain the time scale within which the data is required;
- explain why the acquisition of that data is considered necessary and proportionate to what is sought to be achieved by acquiring it;
- present the case for the authorisation in a fair and balanced way. In particular, all reasonable efforts should be made to take account of information which supports or weakens the case for the authorisation;
- consider and, where appropriate, describe any meaningful collateral intrusion
- the extent to which the rights of any individual not under investigation may be infringed and why that intrusion is justified in the circumstances;
- consider and, where appropriate, describe any possible unintended consequences of the application; and where data is being sought from a telecommunications operator or postal operator, specify whether the telecommunications operator or postal operator may inform the subject(s) of the fact that an application has been made for their data.

Necessity

28-26. The Applicant must ensure that any application is necessary for the purpose of preventing or detecting crime or preventing disorder. In addition events data must only be sought for serious crime. See paragraph 13 above. The application should demonstrate how the investigation, the person and the communications data link together for the statutory purpose specified. Further detail on necessity is provided in the Communications Data Code of Practice.

Proportionality

~~29~~27. The Applicant must also ensure that the application is proportionate to what is sought to be achieved by obtaining the specified communications data and that the conduct is no more than is required in the circumstances. This involves balancing the interference with an individual's rights and freedoms against a specific benefit to an investigation or operation and that it is in the public interest. In particular the Council must consider:

- whether what is sought to be achieved could be reasonably achieved by other less intrusive means
- whether the level of protection to be applied should be higher because of the sensitivity of the information
- the public interest in the integrity of the postal or telecommunications system
- any other aspects of the public interest in the protection of privacy.
- Collateral Intrusion. When accessing communications data there is the potential to obtain information relating to individuals who are not the subject of the investigation. Therefore the degree of collateral intrusion must be considered particularly when applying for events data. Taking all things together it may be that an interference with the rights of an individual may still not be justified because the adverse impact on another individual or group is too severe. The relevance of the data being sought and how it will benefit the investigation should be demonstrated. Any time periods must be explained outlining how these are proportionate to the event under investigation.
- Overall a consideration should be given to the rights of the individual and balancing these rights against the benefit of to the investigation. Further detail on proportionality is given in the Communications Data Code of Practice.

~~30~~28. The application form will be reviewed by the National Anti-Fraud Network (NAFN) SPoC. If changes need to be made it will be referred back to the Applicant with suggestions, otherwise the NAFN SPoC will complete the relevant part and forward it to the Local Authority Verifier.

~~31~~29. Local Authority Verifier will confirm to the SPoC that they have been notified of the application via the NAFN electronic portal.

~~32~~30. When satisfied that the Council has completed the verification process the NAFN SPoC will forward the application to the Office for Communications Data for consideration by an Authoriser. The application will only be authorised if the officer is satisfied that the acquisition of communications data meets the requirements and is necessary and proportionate in the circumstances.

~~33~~31. An authorisation becomes valid on the date upon which the authorisation is granted. It is then valid for a maximum of one month.

34.32. In the event that the application is rejected the Council may decide to discontinue with the application, amend the application, or ask for a review of the decision. A review of the decision can only be requested with permission of the Senior Responsible Officer and will be instigated following the OCDA procedure.

35.33. An authorisation may authorise the NAFN SPoC to obtain the specific communications data, or to give notice to require a telecommunications operator to obtain and disclose the specific data if it is not already in their possession. The NAFN SPoC will proceed with the acquisition of communications data from the service provider on behalf of the Council in accordance with the authorisation.

36.34. Any valid authorisation may be renewed for up to a period of one month by the grant of a further authorisation. The applicant should prepare an addendum to the original application explaining why there is a continuing requirement to acquire data and again demonstrating that it is necessary and proportionate in the circumstances. A renewed authorisation takes effect upon the expiry of the original authorisation.

37.35. Where the Applicant identifies that a granted authorisation is no longer necessary for the statutory purpose or it is no longer proportionate it must be cancelled by notifying the NAFN SPoC. They will cease the authorised conduct and ensure that any notices are cancelled by advising the telecommunications operator and the authorising individual who will produce a record of the notice being cancelled.

Data Protection

38.36. Communications data obtained by the Council can only be held for the statutory purpose of preventing or detecting crime or of preventing disorder and should be adequate, relevant and not excessive for this purpose. In addition the specific requirements of data protection legislation should be adhered to.

39.37. Communications data held by the Council is classified marked 'OFFICIAL – SENSITIVE [LEGAL]' and only authorised personnel can have access to the material. Those persons are limited to the officers directly involved in the investigation of the specific case and those involved in the approval process.

40.38. Each Council enforcement team must ensure it has a secure, restricted access, electronic storage facility which is used for this purpose – being a prerequisite for making an application.

41.39. All material must be handled in accordance with Data Protection principles and all records should be securely destroyed as soon as they are no longer needed for any of the authorised purposes.

42.40. Any additional disclosure of data must be in accordance with the provisions of data protection legislation.

~~43.41.~~ The Council must keep a detailed record of all applications, authorisations, notices, renewals and cancellations so that they are available for inspection by the Investigatory Powers Commissioner or to allow the Investigatory Powers tribunal to carry out its functions. NAFN complies with these requirements on the Council's behalf.

~~44.42.~~ Where authorised conduct results in the acquisition of excess data, or its disclosure by a telecommunications operator or postal operator in order to comply with the requirement of a notice, the excess data acquired or disclosed should only be retained by the Council where appropriate to do so – for example in relation to a criminal investigation.

~~45.43.~~ The Council is responsible for the retention of records to comply with the statutory obligations of the Criminal Procedure and Investigations Act 1996. There is a requirement to record and retain data which is relevant to a criminal investigation, even if that data was disclosed or acquired beyond the scope of a valid authorisation. If a criminal investigation results in proceedings being instituted all material that may be relevant must be retained at least until the accused is acquitted or convicted or the prosecutor decides not to proceed

~~46.44.~~ If, having reviewed the excess data, it is intended to make use of the excess data in the course of the investigation or operation, an applicant must set out the reason(s) for needing to use that material in an addendum to the application upon which the authorisation or notice was originally granted or given. The senior responsible officer will then consider the reason(s) and review all the data and consider whether it is necessary and proportionate for the excess data to be used in the investigation or operation

Errors

~~47.45.~~ Proper application of IPA and Code of Practice in line with this policy including the careful preparation and checking of applications, and authorisations, should reduce the scope for making errors. However NAFN keep a records of any errors that have occurred and a report and explanation is sent by NAFN's Senior Responsible officer to the Commissioner as soon as is practicable.

Complaints

~~48.46.~~ The Council has a complaints procedure which can be accessed here <https://www.merton.gov.uk/council-and-local-democracy/complaints-compliments-and-comments> . In addition the Investigatory Powers Tribunal has power to investigate claims or complaints from anyone who believes they have been a victim of unlawful action by a public authority using covert investigative techniques.

Oversight

~~49.47.~~ The Senior Responsible officer shall establish and maintain regular meetings, as appropriate, to check and test processes and address any training requirements.

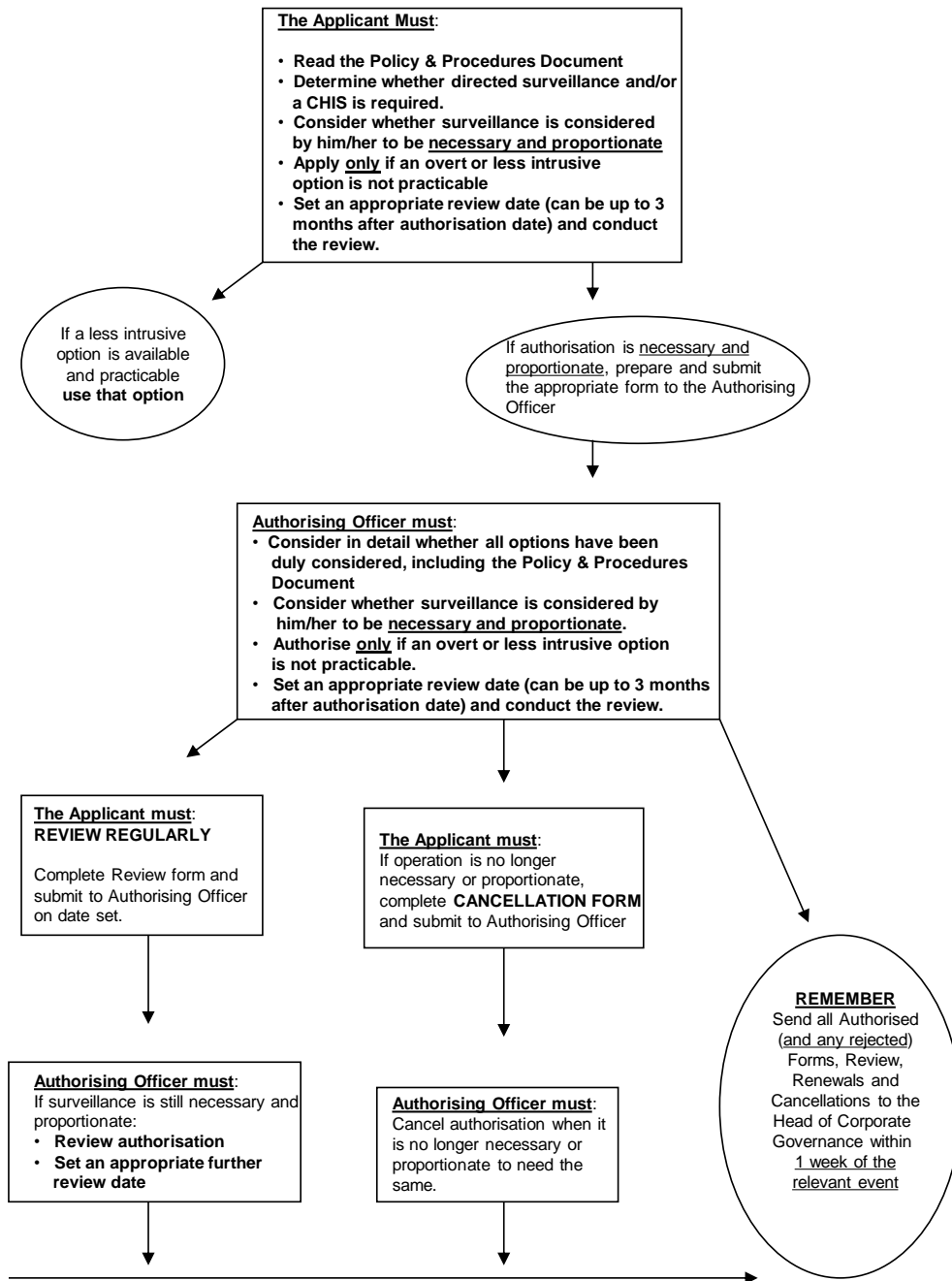
50.48. The SRO shall record any issues arising from these meetings or the process as it operates in practice and determine any actions necessary to ensure the proper application of this policy.

51.49. In addition the SRO shall arrange an oversight meeting as soon as possible following an inspection to discuss issues and outcomes as appropriate.

Review

52.50. This policy will be reviewed annually or sooner if legislation changes.

RIPA FLOW CHART- Directed Surveillance and CHIS



Direct Surveillance Forms

These forms may be downloaded from <http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>

Application <http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/application-directed-surveillanc>

Renewal <https://www.gov.uk/government/publications/renewal-form-for-directed-surveillance>

Review <https://www.gov.uk/government/publications/review-of-use-of-directed-surveillance>

Cancellation <https://www.gov.uk/government/publications/cancellation-of-use-of-directed-surveillance-form>

CHIS Forms

These forms may be downloaded from <http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-forms/>

Application <http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/chis-application>

Renewal <http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/chis-renewal>

Review <http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/chis-review>

Cancellation <http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa-forms/chis-cancellation>

USE OF COVERT SURVEILLANCE EQUIPMENT - Technical Guidance

1. Introduction

The use of covert CCTV systems across the London Borough of Merton is governed by law and policy. The Enforcement and Inspection Team EOI has to comply with the provisions of the Data Protection Act ~~2018~~ 1998, the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000. Compliance with these Acts, their associated Codes of Practice and the council's RIPA Policy will assist the users of the surveillance equipment in meeting their legal obligations.

2. Initial Assessment Procedures

Before installing and using covert surveillance equipment users will need to ENSURE authorisation to install surveillance had been obtained and establish the purpose or purposes for which they intend to use the equipment, as the First Data Protection Principle requires Data Controllers to have a legitimate basis for processing personal data, in this case images of individuals. Hence the following procedures should be carried out:

1. Assess the appropriateness of, and reasons for, using CCTV or similar surveillance equipment and document this process.
2. Establish the purpose of the operation.
3. Establish the person or persons responsible for ensuring the day-to-day compliance with this Code of Practice.
4. Establish the associated security and disclosure policies.
5. ~~5.~~ Obtain the approval of the Authorising Officer for this activity by using the specified forms and processes set out in the RIPA Policy.

Equipment

The team currently has access to 5 surveillance systems. The system consist of 22 bullet cameras of varying sizes, x 3- 35mm zoom cameras and 18 hard disc cartridges of varying sizes. All the equipment is kept in a locked cupboard and can only be accessed by key, which is managed by a diary. All equipment being removed MUST be logged out in the dairy.

3. Deploying the Systems/cameras

1. The equipment should be sited in such a way that it monitors only the area intended, i.e. where the incident of fly-tipping is likely to occur.
2. The user/s should only use the covert system/s as set out in the authorisation document.
3. Investigating officers must be aware of the purpose(s) for which the operation has been established.

4. Investigating officers are expected to fill in the appropriate risk assessment and premises consent forms when necessary.

4. Handling of the Images

It is important that the images produced by the equipment are as clear as possible in order that they are effective for the purpose(s) for which they are intended. The following standards should therefore be observed:

1. Carry out an initial check on installation to ensure that the equipment performs properly.
2. Ensure that, where tapes are used they are of good quality.
3. Images should be retained until prosecution is completed.
4. ALL storage discs must be kept in the metal locked cupboard except in the case of viewing, production as evidence of court proceeding.
5. Media should not continue to be used once it becomes clear that the quality of the images has begun to deteriorate.
6. All systems and cameras should be properly maintained and serviced to ensure that clear images are recorded and a maintenance log kept.
7. Cameras should be protected from vandalism in order to ensure that they remain in working order.

5. Processing the Images

To maintain the integrity of the images and to protect the rights of the individual, the following standards should be maintained:

1. Access to recorded images should be restricted to the person responsible for managing the investigation (the Data Owner) or ~~his/her~~their nominee who will decide whether to allow requests for access by third parties.
2. Where images are retained, it is essential that their integrity be maintained, whether to ensure their evidential value or to protect the rights of the people whose images may have been recorded.
3. Images should not be retained for longer than is necessary; once the retention period has expired, the images should be removed or erased. If in doubt. Speak to the Information Governance Team or Legal Services.
4. If the images are retained for evidential purposes, they should be kept in a secure place (locked metal cupboard) to which access is controlled.
5. On removing the medium on which images have been recorded for use in legal proceedings, the operator should ensure that s/he has documented the date on which the images were removed from the general system for such use, the reason for doing so, any crime incident number to which the images may be relevant, the new location of the images and the signature of the

person collecting the images. In such instances this will only be officer from the Metropolitan Police or an authorised officer within the Council.

6. Access to and Disclosure of Images to Third Parties

It is important that access to, and disclosure of, the images recorded by CCTV and similar surveillance equipment is restricted and carefully controlled, not only to ensure that the rights of the individual are preserved, but also to ensure that the chain of evidence remains intact should the images be required for evidential purposes. Staff should maintain the following standards:

1. Access to recorded images should be restricted to those staff who need to have access in order to achieve the purpose(s) of using the recording equipment.
2. All access to the medium on which images are recorded should be documented.
3. Disclosure of recorded images to third parties, whether officers of the Enforcement Team or not, should only be made in limited and prescribed circumstances.
4. All requests for access or for disclosure should be recorded and, if access is denied, the reason should be documented.
5. If access to or disclosure of images is allowed, then the following should be recorded:
 - The date and time access was allowed or disclosure made.
 - The identification of any third party who was allowed access or to whom disclosure was made.
 - The reason for allowing access or disclosure.
 - The extent of the information to which access was allowed or which was disclosed.

8. Monitoring Compliance with this Code of Practice

1. The Enforcement and Inspection Manager will undertake regular reviews of the documented procedures and the above processes to ensure that the provisions of this Code are being complied with.

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Committee: Standards and General Purposes Committee

Date: 28 July March 2020

Subject: Proposed Review of the Council's Constitution and interim Amendments to the Appointments Committee Terms of Reference and the Employee Procedure Rules

Lead officer: Louise Round, Managing Director South London Legal Partnership

Lead member: Councillor Mark Allison, Deputy Leader and Cabinet Member for Finance

Contact officer: Louise Fleming, Senior Democratic Services Officer

Recommendations:

- A. That the Committee recommends that Council approves the amended Terms of Reference for the Appointments Committee and Officer Employment Procedure Rules, as set out in Appendices 1 and 2 respectively;
 - B. That Council be recommended to delegate authority to the Monitoring Officer to amend the Council's constitution to incorporate any direct or consequential changes resulting from the approval of recommendation A above; and
 - C. That the Committee agrees to commence a review of the Council's constitution and appoints a working group of members to carry out that review in conjunction with the Monitoring Officer.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. At its meeting in March, this Committee deferred a report recommending some changes to the Council's processes for appointing chief officers, partly because they wanted further to consider the suggestion that the final decision on the appointment of the Monitoring Officer should lie with the Appointments Committee. Currently, although the position is not entirely clear cut, that decision lies with full Council if the salary package exceeds £100,000. The recommendations followed the recent appointment of the Managing Director of the South London Legal Partnership when it became apparent that the current procedure rules were ambiguous. Other recommended changes included formalising the custom and practice of establishing a panel of the Appointments Committee dealing with chief officer appointments to make it clear in that committee's terms of reference that there is the power to establish a sub-committee for that purpose.
- 1.2. Some limited changes to the employment procedure rules and terms of reference of the Appointments committee are still being recommended for submission to Council at this stage, in order to ensure that the process is clear for any future appointments. However, the previous proposal to change the decision-making body for monitoring officer appointments is being put on hold pending a wider review of the constitution.

2 DETAILS

Appointments committee

- 2.1. The Council has established an Appointments Committee for the purposes of interviewing chief officers. In some cases, the Committee is authorised to make the appointment itself and in the case of the Chief Executive, it can only recommend that appointment to full Council. It has been custom and practice for the appointment of the Monitoring Officer also to be approved by full Council although the constitution is somewhat ambiguous in this respect.
- 2.2. The Committee also considers the terms and conditions on which officer level and above. The terms of reference are set out in Part 3B, paragraph 1.2 of the Council's Constitution.
- 2.3. The Appointments Committee meets prior to the commencement of the recruitment process to agree the job description, person specification, timetable for recruitment. Custom and practice in Merton has been to establish a panel of members to carry out the shortlisting and interviews, with the Appointments Committee meeting at the end of the process to ratify the decision of the panel. It is legally possible for that panel to make the final decision in respect of some appointments but a formal sub-committee must be established if this is to happen. Depending on the appointment in question, it may be appropriate for the decision to be made by such a smaller group of members.
- 2.4. It is therefore proposed to amend the terms of reference of the Appointment Committee to allow for the establishment of a sub-committee for the purposes of shortlisting and interviewing candidates for chief officer positions. The sub-committee would also have delegated authority to make the final appointment, without requiring the parent committee to meet again to ratify the decision. In the event of the appointment of the Chief Executive, the sub-committee would make a recommendation to Council, as required by statute to appoint the Head of Paid Service. This will also be the case in relation to the appointment of the Monitoring Officer, although this is not a legal requirement. There would be no absolute requirement for the Appointments Committee to establish a sub-committee for specific individual appointments, if it considered it wished to reserve the appointment to itself.
- 2.5. A committee or sub-committee responsible for shortlisting and interview panels must, as a matter of law, have at least one member of the Cabinet sitting. Ideally, the membership should be the same at each stage and the strenuous efforts should be made to ensure the panel is diverse. The sub-committee should as far as practicable reflect the overall political balance of the council. In the event of a joint appointment with a neighbouring borough, an amended process would need to be agreed with that borough.

- 2.6. No member should sit on such a committee or sub-committee without first having received appropriate recruitment and selection training by HR.

Officer Employment Procedure Rules

- 2.7. The Council's Officer Employment Procedure Rules are set out at Part 4H of the Council's constitution. The Officer Employment Procedure Rules have been amended to reflect the proposed changes to the process and the Appointments Committee Terms of Reference and are attached at Appendix 2. A number of other drafting changes have been for clarity but they do not substantively change the process to be followed. As currently drafted, there were inconsistencies between the terms of reference of the Appointments Committee and the Employment Procedure Rules.

Proposed Review of the Constitution

- 2.8. While considering these parts of the constitution and in other contexts, it has become apparent to the Monitoring Officer that some provisions of the constitution are not as clear as they can be. Ad hoc amendments made from time to time have not always taken account of knock on consequences elsewhere in the document. It is good governance for a Council to review its constitution at regular intervals. Elsewhere on this agenda is a report on a proposed new national model code of conduct for members and any consideration of whether to adopt the new model code could therefore take place in the context of a wide constitutional review.

It is not suggested that the constitutional review should seek fundamentally to change the overarching governance structures and decision-making processes of the council; the purpose of any review would be to ensure that the constitution reflects recent legislative change, is easy to use, publicly accessible and allows the Council to take sound decisions without risk of challenge.

- 2.9. As a minimum, the review should consider the following:

Is the constitution internally coherent?

Is the structure right and does it work (length/articles/summary etc.)?

Are the rules of procedure for the conduct of meetings clear and do they reflect actual practice?

Are complaints and other processes clear, including in relation to standards complaints?

Have new legislative requirements been incorporated?

Are all "local choice" functions, e.g. outside appointments or secondments under s.113 LGA 1972, allocated?

Are the schemes of delegation up to date, understandable and all encompassing?

- 2.10. In order to ensure that a revised draft constitution has cross party support, a small member working group is being proposed to work with the Monitoring Officer and colleagues from Democracy Services to agree a draft for approval by this committee and then onward submission to the full Council.

3 ALTERNATIVE OPTIONS

- 3.1. There are no alternative options proposed.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. None for the purposes of this report.

5 TIMETABLE

- 5.1 Subject to consideration by the Standards and General Purposes Committee, it is proposed to report the amended Terms of Reference and Employee Procedure Rules to Council when it next meets.

- 5.1. The member working group would sit through the Autumn and Winter with a view to a revised version being approved by full Council on 3 February 2021, in good time for the new municipal year.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None for the purposes of this report.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The procedure complies with the statutory and regulatory requirements relating to the appointment of the head of paid service, statutory chief officers, non-statutory chief officers and deputy chief officers.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. All appointments must be made on merit and taking account of the protected characteristics.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. None for the purposes of this report.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None for the purposes of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix 1 – Revised Appointments Committee Terms of Reference
- Appendix 2 – Revised Officer Employment Procedure Rules and Appointments Committee procedure

12 BACKGROUND PAPERS

12.1. None

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1.2 Appointments Committee

(a) **Membership:** 10 Members

(b) **Functions:**

- (i) To recommend the appointment of a Chief Executive and Head of Paid Service and the Monitoring Officer to the Council
- (ii) To interview and appoint Chief Officers as defined by the Officer Employment Procedure Rules and to approve statements specifying:
 - the duties of the officer concerned;
 - any qualifications or qualities to be sought in the person to be appointed;
 - to make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it;
 - to make arrangements for a copy of the statements mentioned in sub paragraph (ii) to be sent to any person on request; and
 - to make arrangements to shortlist applicants for these posts and agree the assessments to be taken by shortlisted applicants.
- (iii) To determine the terms and conditions on which officers hold office (including the terms of dismissals), restructures, exits, statutory discretion relating to termination payments, reorganisations involving changes to staff responsibilities at Deputy Chief Officer and above.
- (iv) All other staffing matters that have not been delegated to any other decision maker
- (v) To establish a sub-committee to perform any of these functions as appropriate

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Part 4 – H

OFFICER EMPLOYMENT PROCEDURE RULES

Any mandatory standing orders issued in respect of senior appointments will be incorporated into these rules, as they become available.

References to Chief Officers and Deputy Chief Officers in these rules shall be construed in accordance with the provisions of section 2 of the Local Government and Housing Act 1989 and shall include both statutory and non statutory chief officers as defined by that section. A list of all employees falling within the definition of deputy chief officer shall be maintained by the Head of Human Resources.

For the purposes of these rules, the Proper Officer shall be the Head of Democracy Services

For the avoidance of doubt, the following provisions of these rules do not apply to the appointment of officers on an interim basis.

1. Recruitment and Appointment

(a) Declarations

The Council will draw up a statement requiring any candidate for appointment as an officer to state, in writing, whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.

Where a candidate has declared such a relationship, any offer of employment shall be subject to approval by the relevant Chief Officer or his/her nominee.

(b) Seeking support for appointment

The Council will disqualify any applicant who directly or indirectly seeks the support of any councillor or officer for any appointment with the Council. The content of this paragraph will be included in any recruitment information.

No councillor or officer will seek support for any person for any appointment with the Council.

2. Recruitment of the Chief Executive Paid Service and Chief Officers

- 2.1 Where the Council proposes to appoint a Chief Officer and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:
- (a) draw up a statement specifying:
 - (i) the duties of the officer concerned; and
 - (ii) any qualifications or qualities to be sought in the person to be appointed;
 - (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
 - (c) make arrangements for a copy of the statement mentioned in paragraph (a) to be sent to any person on request.
- 2.2 For any new appointment where the salary is £100k per annum or more approval should be obtained from Full Council prior to the commencement of the recruitment process

3. Appointment of Chief Executive and the Council's Monitoring Officer

- 3.1 Full Council must, before an offer of appointment is made, approve the appointment of the Chief Executive and the Monitoring Officer, following the recommendation of such an appointment by the Council's Appointments Committee or Sub Committee. That Committee must include at least one member of the Cabinet.
- 3.2 Full Council may only make or approve the appointments of the Chief Executive and the Monitoring Officer where no material or well-founded objection has been made by any member of the Cabinet (see paragraph 6 below).

4. Appointment of Chief Officers

- 4.1 The Appointments Committee or Sub-Committee (the appointer) will appoint Chief Officers. That committee must include at least one member of the Cabinet.
- 4.2 An offer of employment as a Chief Officer or the Monitoring Officer shall only be made where no material or well-founded objection from any member of the Cabinet has been received (see Para 6 below).
- 4.3 Where the salary package relating to a post exceeds £100,000, prior approval from full Council must be obtained before that post is advertised but with the exception of the Chief Executive and the Monitoring Officer, the actual appointment to that post does not require Council approval.

5. Other Appointments

- 5.1 Appointment of officers at or below deputy chief officer (other than assistants to political groups and an assistant to the Mayor and the Monitoring Officer) is the responsibility of the Head of Paid Service or his/her nominee(s), (the appointer) and may not be made by members. However, appointments of deputy chief officers are subject to the procedure set out in paragraph 6, even though the appointment is being made by officers.

6. Offers of Appointment

- 6.1 An offer of an appointment to the following posts shall comply with the following provisions of this rule:

- a) the Chief Executive;
- b) the Director of Communities and Housing*;
- c) the Director of Children, Schools and Families*;
- d) the Director of Public Health*;
- e) the Director of Corporate Services*;
- f) the Director of Environment and Regeneration**;
- g) a deputy chief officer (including the post designated as the Council's Monitoring Officer);

* statutory chief officer

** non statutory chief officer

- 6.2 Such an appointment shall not be made by the appointor until

- a) the appointer has notified the Proper Officer of the name of the person to whom the appointor wishes to make the offer and any other particulars which the appointor considers are relevant to the appointment;
- b) the Proper Officer has notified every member of the Cabinet of the authority of –
 - (i) the name of the person to whom the appointor wishes to make the offer;
 - (ii) any other particulars relevant to the appointment ; and
 - (iii) the period within which any objection to the making of the offer is to be made by the Leader on behalf of the Cabinet to the Proper Officer; and
- c either –
 - (i) the Leader has, within the period specified in the notice under subparagraph (b)(iii), notified the Proper Officer that neither he nor any other member of the Cabinet has any objection to the making of the offer; and

- (ii) the Proper Officer has notified the appointor that no objection has been received by him within that period from the Leader; or
- (iii) the appointor is satisfied that any objection received from the Leader within that period is not material or is not well-founded

6.3 Appointment of an assistant to a political group under section 9 of the Act shall be made in accordance with the wishes of that group.

6.4 No appointment of an assistant to a political group under section 9 of the Local Government and Housing Act 1989 shall be made until the Council has allocated such a post to each of the political groups that qualify for one.

6.5 No post as an assistant to a political group under section 9 of the Local Government and Housing Act 1989 shall be made in respect of any party group which does not qualify for one under that Act.

6.6 Determination of qualification for posts under section 9 of the Local Government and Housing Act 1989 shall be the responsibility of the Monitoring Officer.

6.7 No more than one post as a political assistant shall be allocated to any one political group.

7. Suspension

The Chief Executive, the Chief Finance Officer, and the Monitoring Officer may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months beginning on the day on which the suspension takes effect.

8. Disciplinary action

8.1 No disciplinary action to dismiss may be taken in respect of the Chief Executive, the Director of Corporate Services (s.151 officer) or the Monitoring Officer except after having taken into account any advice, views or recommendations of a panel, the conclusions of any investigation and any recommendations of the relevant officer i.e. as set out in the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015.

8.2 **Involvement of Councillors.** Subject to paragraph 8.1 above in the case of the Monitoring Officer, Councillors will not be involved in the disciplinary action against any officer at or below Deputy Chief Officer except where such involvement is necessary for any investigation or inquiry into alleged misconduct.

9. Dismissal

- 9.1 Where a committee, sub-committee or officer is discharging, on behalf of the Council, the function of the dismissal of an officer designated as the Council's Chief Executive, the Council must approve that dismissal before notice of dismissal is given to him/her.
- 9.2 Where a committee or a sub-committee of the Council is discharging, on behalf of the Council the function of the dismissal of any officer referred to in paragraph 6.1(a-f) or the Monitoring Officer, at least one member of the Cabinet must be a member of the committee or sub-committee.
- 9.3 Notice of the dismissal of an officer referred to in paragraph 6.1 must not be given by the dismissor until:
- (a) the dismissor has notified the Proper Officer of the name of the person who the dismissor wishes to dismiss and any other particulars which the dismissor considers are relevant to the dismissal;
 - (b) the proper officer has notified every member of the Cabinet of:
 - (i) the name of the person who the dismissor wishes to dismiss;
 - (ii) any other particulars relevant to the dismissal which the dismissor has notified to the Proper Officer ; and
 - (iii) the period within which any objection to the dismissal is to be made by the Leader on behalf of the Cabinet to the proper officer; and
 - (c) either:
 - (i) the Leader has, within the period specified in the notice under sub-paragraph (b)(iii) notified the dismissor that neither he nor any other member of the Cabinet has any objection to the dismissal;
 - (ii) the Proper Officer has notified the dismissor that no objection was received by him within that period from the Leader; or
 - (iii) the dismissor is satisfied that any objection received from the Leader within that period is not material or is not well-founded.
- 9.4 Termination payments – for Chief Officers, termination payments are subject to approval by the Standards General Purposes Committee and all severance packages over £100,000 shall be reported to full Council for approval.

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Committee: Standards and General Purposes Committee

Date: 23 July 2020

Wards: All

Subject:

Lead officer: Barbara Batchelor

Lead member: Cllr Peter McCabe

Contact officer: Barbara Batchelor Ext.3638

Recommendations:

- A. That the Committee agrees that additional proposed training sessions and any remaining development activities identified as mandatory/priority for members are undertaken from August 2020 onwards
 - B. That Committee considers ways to encourage increased member take-up for development activities including whether a lead champion should be appointed to support an increase in members' attendance at training events.
 - C. That Committee approves in principle that sessions for prospective elected members are planned for November 2020.
 - D. That Committee approve the agenda for candidates who would wish to be elected members, and that final decision will be the responsibility of Louise Round/Barbara Batchelor
 - E. That Committee approves that names/nominations of peer support for the engagement sessions of newly elected members will be sought through Group Officer.
 - F. That Committee approve the Members Induction Training pathway.
-

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The Council has committed itself to ensuring that all Members have access to learning and development that supports them and allows them to develop the necessary skills to fulfil their varied roles.
- 1.2. The purpose of this report is to update the Committee on the Development Programme offered to members from May 2018 to date and explore ways to improve attendance at development events.

2 DETAILS

- 2.1 The provision of member development is managed within the HR division through close collaboration with Democracy Services.
- 2.2. Member development is based on the following principles:

- Elected Members contribute to the identification of their individual development needs.
- Development will be delivered through a variety of methods and at times that ensure equality of access for Elected Members diverse personal circumstances, backgrounds and learning styles
- The Council has a learning culture that views continuous development for all its staff and elected Members as vital to its success.
- The Council acknowledges that Elected Members may have transferable skills from their work place and/or life experiences that can be used to help them perform their Council role.

The proposal for managing and delivering member development consists of three main components outlined below:

- (1) Training delivered post-election
- (2) Ongoing personal/generic development
 - delivered to date
 - proposed August 2020 onwards
- (3) Sessions for potential candidates

2.3 Training delivered post-election

All newly elected members are required to attend induction. Induction was offered as six sessions over a number of weeks. In addition to the Council offer LGA produces Councillors workbooks which are particularly useful for new councillors. These are available from LGA website <http://www.local.gov.uk/councillor-workbooks>. A list of the topics included is listed in Appendix A.

Appendix B outlines the 2018 Induction Programme that was provided.

2.4 Ongoing personal/generic development

Delivered May 2018 to Date

- 2.5 Most councillors have very busy lives and many work during the day. The development activities for members have been arranged in the evening and sometimes at the weekend (induction). The appropriate training was offered to councillors to enable them to fulfill their statutory obligation. There are some committees where members have to be trained before they are able to sit on these committees such as planning and licensing.

Groups or members may require specific training based on the roles that they hold or are required to fulfil such as Cabinet or Opposition. Development may

also be provided and arranged within parties, such as mentoring and coaching by more experienced elected members.

2.6 It is recognised that in addition to generic needs, members will have differing and specific needs which need to be addressed through specific and individual learning interventions. To ascertain development needs members were invited to meet with a council officer to discuss them or are asked to complete a Personal Development Form – (See Appendix C). This would specifically include support for new Chairs and to the incoming Mayor each year to ensure they are confident in these roles, and may include advice on chairing or public speaking.

2.7 In May 2018, a development programme was issued to members, with a request to identify which training programmes they wished to attend. A summary of this training, (with titles and dates offered) has been prepared for the Committee's comments – (See Appendix B).

15 completed forms have been received. In the past, it has proved difficult to get members to complete personal development plans.

2.8 In order to provide focus to the development offer it was agreed that elements of the member development programme should be mandatory and be undertaken by each councillor at least once during the 4-year municipal period:

- safeguarding (adults and children)
- equalities
- information security

And additionally:

- Planning (for Planning Committee members)
- Licensing (for Licensing Committee members)

This has also been progressed into a recommended Members Induction Training Pathway which can be found at Appendix D.

It is recommended that the Committee approve the Members Induction Training pathway.

The numbers of Members who attended these course is detailed in Appendix B

2.9 Members also had the opportunity to attend development offered by the Local Government Association, London Councils. Examples of the courses offered from the LGA are outlined in Appendix A. These opportunities were circulated to members. The LGA reports that 4 Merton Members have registered to the LGA's newsletter and 4 Members have attended LGA training since 2018.

Learning and Development proposed August 2020 onwards

As a result of COVID-19 the Learning and Development team have been working with our training providers to commission/deliver training via E-Learning or webinars.

It is proposed that further training should include:

- Autism Awareness*
- Cultural Awareness*
- Communicating with constituents – Keeping yourself safe
- Equalities and Diversity (Available as E-Learning)
- Finance / Budget Briefing (October)
- Information Security- Purplephish
- Information Security Refresher
- Media and Press training
- Social Media (e.g. Facebook, Twitter, Instagram)
- Office 365
- Time Management*
- Mental Health First Aid*
- Stress and Resilience*
- Mindfulness*

*NB - * Represents externally commissioned training*

- 2.10 If Committee agree to these proposed programmes, they will be commissioned and advertised (six weeks) in advance of the event taking place to provide Councillors with adequate time to book themselves on sessions. The sessions will be booked using dates from the corporate calendar – avoiding meetings and committees.
- 2.11 The Committee are asked to comment on any further training that members require.
- 2.12 As part of this report, Committee's views are being sought on the best way to encourage take-up of member development activities. The process currently is to email members with upcoming events through calendar invites directly to their Merton email address.
- 2.13 The Committee are asked to comment on any other method members would like training events to be communicated to them.

2.14 Encouraging members to attend a development session is not unique to Merton, as this has been raised on several occasions at the London Member Development Network

2.15 The Committee are asked to comment on whether they would like to elect a lead member champion to work with HR L&D to liaise on training and development plans to maximise attendance at events.

2.16 Potential candidates

2.17 The Council in the past has run sessions for candidates who would wish to be elected members. The sessions are usually advertised in the local press. Each political party is invited to present.

2.18 The session covered the following areas:

- (i) The London Borough of Merton
- (ii) The role of the Council Committees
- (iii) Benefits of being a councillor
- (iv) Skills needed to be a Councillor
- (v) Talk to Merton Councillors about 'Being a Councillor'
- (vi) Member allowances and support available

2.19 It is recommended that these sessions are offered to prospective councillors 18 months prior to elections. i.e. November 2020. Committee are asked to agree this time frame in principle. Nominees to present will be contacted in due course.

2.20 Committee are asked to consider the proposed agenda (See Appendix E) and nominate speakers

2.21 It is recommended that the Committee receive a report early in 2021 on proposed induction programme for new councillors post the May 2022 election

3 CONSULTATION UNDERTAKEN OR PROPOSED

- 3.1. It is proposed that updates are supplied to this committee and CMT.

4 TIMETABLE

- 4.1. To be agreed by the committee

5 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 5.1. Delivery of the development plan will be undertaken using existing resources.

6 LEGAL AND STATUTORY IMPLICATIONS

6.1. There are no specific legal implications arising from the report

7 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

7.1. Member development enables members to make decisions which can impact the communities they serve.

8 CRIME AND DISORDER IMPLICATIONS

8.1. None

9 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

9.1. None

10 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- **Appendix A** - LGA Councillor Induction Programme Workbooks
- **Appendix B** - Member's Training Plan
- **Appendix C** - Personal Development Form (provided as a separate document)
- **Appendix D** - Training and Development Induction Pathway (provided as a separate document)
- **Appendix E** - Proposed Agenda (provided as a separate document)

11 BACKGROUND PAPERS

11.1 None

Appendix A

Councillor workbooks

The workbooks are aimed at all councillors and will be particularly useful to new councillors. They are available to download on the LGA website <http://www.local.gov.uk/councillor-workbooks>. Topics include:

- Business planning
- Councillors guide to the health system
- Charing skills
- Climate change
- Community leadership
- Community safety
- Creating a 'fit for the future organisation'
- Effective member-officer relations
- Engaging young people
- Facilitation and conflict resolution
- Handling casework
- Health and safety in the council
- Influencing skills
- Introduction to planning- councillors guide
- Joining the chain gang- preparing for the role of civic mayor
- Media and communications
- Neighbourhood & community engagement
- Neighbourhood planning- ward councillors
- Performance management
- Scrutiny of finance
- Stress management & resilience
- Supporting constituents with complex issues
- The effective ward councillor
- Working with town and parish councils

For more information on our community leadership offer please contact Grace Collins grace.collins@local.gov.uk Tel: 0207 664 3054

Appendix B

Member's Training Plan (2018 Induction)

Title	Core /Optional /Specialist	Delivery Internal External	Number of Training Events Offered	Total Number of Attendees
Budget Scrutiny	Optional	Internal	3	31
Chairing Skills	Specialist	Internal	1	5
Communication skills	Optional	Internal	0	n/a
Corporate Parenting	Specialist	Internal		
Dementia Friends	Optional	Internal	1	10
Effective questioning skills	Optional	Internal	0	n/a
Equalities (included within Induction)	Specialist	Internal	1	27
Health Champions	Specialist	Internal	0	n/a
How to participate effectively in Committee meetings	Optional	Internal	0	n/a
ICT skills and the use of technology	Optional	Internal	1	Attendance figures not taken
Induction	Core	Internal	1	27
Induction- Community Leadership	Core	Internal	1	11
Induction- Finance and Business Planning	Core	Internal	1	15
Induction- Keeping our people safe (Corporate Parenting, Safeguarding)	Core	Internal	1	8
Induction- The role of a Councillor Part 1	Core	Internal	1	19
Induction- The role of a Councillor Part 2	Core	Internal	1	17
Information Security	Core	Internal (e-learning)	0	
Keeping you and your constituents safe	Core	Internal	2	6+ Attendance not taken
Licensing	Specialist	Internal	2	10+ Attendance not taken for one session

Managing in a political environment	Optional	Internal	0	n/a
Mind Mapping and Speed reading	Optional	Internal	0	n/a
Overview and Scrutiny	Specialist	Internal	0	n/a
Planning for Committee Members	Specialist	Internal	2	14+ Attendance not taken
Planning for Ward Members	Specialist	Internal	2	22
Public Speaking	Optional	Internal	1	6
Resilience	Optional	Internal	0	n/a
Safeguarding	Core	Internal	1	4
Social media	Optional	Internal	0	n/a
Speed Reading	Optional	Internal	1	
Tools and Techniques to cope with paperwork	Optional	Internal	0	n/a
Understanding Budgets	Optional	Internal	1	Attendance figures not taken
Universal Credit and Housing	Specialist		0	n/a
Using the Councils new website	Optional	Internal	0	n/a

Prospective Councillor Presentations

Date	Time
Saturday XXX November 2020	10am- 1pm
Wednesday XXX November	6pm-9pm

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Member Personal Development Questionnaire – Please return this form by Friday 4th October 2019

Member Name: _____

Date: _____

I would / would not be happy to discuss this further with an Officer Representative.
(Please delete as appropriate)

<p>Achievements – What do you feel you have been able to achieve in your role as councillor in the last 12 months as a result of your attendance at any learning and development event (at any level – Ward, Community, Council, etc)?</p>
<p>List in order of achievement:</p>

<p>Areas of Special Interest - Please list those areas of Council work in which you would wish to develop further (i.e., culture, planning, traffic, equalities, HR, etc).</p>
<p>List in order of preference:</p>

<p>Areas of Expertise / Training – that you consider would be helpful to the Council in a particular area, including skills, experience qualifications training - This would be in support/advisory role to officers/Members.</p>
<p>List in order of expertise:</p>

Member Development Needs

Please confirm those areas in which you have received development and/or would like further/refresher development. Please note, all courses below may not have current training dates scheduled however, can be arranged following high demand.

Ward Councillor role	Development Delivered to Date	Further/Refresher Development Requested
Knowledge/Information of “How the Council Works”		
Complaints procedure/s		
Corporate Parenting		
Equality and Diversity (e-learning)		
Equality and Diversity (Workshop)		
Freedom of Information/Data Protection Act		
Induction		
Knowledge of organisational structure and key contact officers		
Local and national policies and their impact on the Council		
Overview and Scrutiny process		
Policies to which Members must adhere (e.g. Dignity at Work, Smoking Policy, etc)		
Political decision-making structures (standing orders/how Council meetings work)		
Strategic priorities and key policies of Council (and their development)		
Understanding local government finance/scrutinising budgets – (Basics for beginners)		
Understanding local government finance/scrutinising budgets (Standard)		
Understanding of ethics and standards (Code of Conduct)		
Compulsory Training for Specific Committee Members	Development Requested	Further Development Requested
Licensing		
Planning		
Skills for Effective Meetings	Development Requested	Further Development Requested
Active listening		
Chairing skills and ability to facilitate discussions		
Confidence in speaking in public and answering		

questions		
Effective contribution to meetings		
Effective Questioning Skills		
Influencing and persuading		
Managing conflict		
Negotiation		
Questioning skills		
IT Skills	Development Requested	Further Development Requested
Information Security (E-Learning - Mandatory)		
IT skills- Internet, Word, email		
Communication Skills	Development Requested	Further Development Requested
Ability to communicate with a range of audiences		
Ability to develop effective relationships with officers		
Ability to give presentations to Groups, Schools etc		
Ability to manage informal meetings/community events		
Ability to put into practice: community engagement, participation and involvement principles, Community Planning, consultation techniques		
Assertiveness		
Creative thinking		
Leadership skills		
Making a presentation		
Making a speech		
Managing change		
Media relations/press/interviews		
Motivating people		
Partnership working		
Self confidence		
Team working		
Self Management	Development Requested	Further Development Requested
Ability to identify risk situations		
Defusing Situations		
Keeping Constituents Safe		
Keeping Yourself Safe		
Managing casework (including IT)		

Managing stress		
Managing workload		
Note-taking		
Project management		
Report writing		
Resilience		
Speed Reading		
Time management		
Public Health Courses	Development Requested	Further Development Requested
Autism Awareness		
Dementia Friends		
Mental Health Awareness e-learning		
Mental Health First Aid Adult		
Mental Health First Aid Champion		
Mental Health First Aid Youth		
Suicide Explained		
Suicide Prevention (e-learning)		

Any Other Comments/Requests – Is there anything that you would like training upon in relation to the Council’s Corporate Objectives that does not appear elsewhere in this form.

NEW STARTERS TRAINING PATHWAY – MEMBERS

WITHIN FIRST SIX MONTHS

WITHIN FIRST 12 MONTHS

WITHIN FIRST 18 MONTHS

NSG LEVEL 1

MEMBERS
INDUCTION

EQUALITY AND
DIVERSITY E-
LEARNING

HEALTH & SAFETY
AWARENESS

ONLINE FRAUD
AWARENESS

INTRODUCTION TO
FINANCE AND
BUSINESS
PLANNING

THE ROLE OF A
COUNCILLOR
PART 1

THE ROLE OF A
COUNCILLOR
PART 2

COMMUNITY
LEADERSHIP

KEEPING YOU AND
YOUR
CONSTITUENTS
SAFE

MENTAL HEALTH
FIRST AID

SPEED READING

RESILIENCE

CORPORATE
PARENTING

MENTORING

EFFECTIVE
QUESTIONING
SKILLS

PAIRING
MEETINGS

SOCIAL MEDIA

IT SKILLS

BUDGET
SCRUTINY

PUBLIC SPEAKING

PUBLIC SPEAKING

CASEWORK

PLANNING FOR
COMMITTEE/WARD
MEMBERS

LICENSING

KEY

CORE
(ALL MEMBERS)

OPTIONAL

SPECIALIST
BY ROLE

Core modules are
MANDATORY and must be
completed by all employees

These modules are
not mandatory

Specialist modules
which may be required
for you to do your job

Optional and specialist modules do not have to be attended if you are able to provide sufficient evidence of applied learning or have previously attended a similar course recently.

Working to be
LONDON's
BEST COUNCIL

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Appendix E

Open Evening for Potential Candidates

XX November 2020

Venue: TBC

Time <i>(e.g. for Evening meeting)</i>	Duration	Activity
19.00 pm	15 mins	Coffee and Tea on arrival
19.15 pm	10 mins	Welcome TBC – Cllr •Stephen Alambritis - Deputy Leader of the Council Or Cllr Mark Allison - Deputy Leader of the Council
19.25 am	5 mins	Overview
19.30 pm	30 mins	TBC - XXX - Director / Assistant Director Corporate Governance Being a councillor <ul style="list-style-type: none"> • Local government powers • Local government structures • Council services • How the council works • The councillor's role • Standards and Ethics <p>Presentation on the Council, Members' work and support from the Council.</p>
20.00	15 mins	TBC - Cllr. Peter Southgate , Chair of Overview and Scrutiny Commission <ul style="list-style-type: none"> • Overview and scrutiny holding the executive to account <p>The Member dimension to scrutiny</p>
20.15	30 mins	Cllr. TBC Cllr. TBC Cllr. TBC

		<ul style="list-style-type: none"> • Civic life • Representing the ward • Understanding the ward Experience when first elected • The Responsibilities of Being a Councillor and the Support Available • Working with others • Surgeries and casework
20.45	15 mins	Question and Answer session
21.00		End

DRAFT

Standards and General Purposes Committee Forward work plan 2020-21

September

- External Audit – Fee Letters for the Council and Pension Fund Accounts
- External Audit of the Council and Pension Fund Accounts
- Final Accounts
- Internal Audit progress report on annual audit plan
- Changes to the Merton Pension Board – Terms of Reference
- Update on RIPA authorisations (March and September)
- Revisions to Contract Standing Orders
- Code of Conduct Annual Review
- Complaints against Members
- Work programme

November

- External Audit Annual Letter
- Internal Audit progress report on annual audit plan
- Annual Gifts and Hospitality report (members)
- Annual Gifts and Hospitality report (officers)
- Annual Complaints report
- Report on dispensations issued by Monitoring Officer
- Risk management
- Complaints against Members
- Temporary and Contract Staff update
- Work programme

March

- External Audit Plans for Council and Pension Fund accounts
- Internal Audit Plan
- Internal Audit progress report
- Update on RIPA authorisations (March and September)
- Complaints against Members
- Work programme

Add as required:

- Polling Places

- Constitutional amendments
- Review of members' interests
- Independent / co-opted members
- Reports on dispensations issued by Monitoring Officer
- Report on payment exceeding £1000 as a result of maladministration as directed by the LGO.

Committee: Standards and General Purposes Committee

Date: May 2020

Subject: Report on the use of temporary workers and consultants

Lead officer: Liz Hammond, HR Lead

Lead member: Councillor Mark Allison, Deputy Leader and Cabinet Member for Finance

Contact officer: Liz Hammond, HR Lead, 0208 545 3152

Recommendations:

- A. To note progress made to monitor and control the use of temporary workers and consultants
 - B. To review the frequency with which this Committee should receive this report
-

1. Purpose of report and executive summary

The Committee has received regular progress reports in relation to the number of interim appointments in the council and the mechanisms in place to monitor the use of such workers. At the meeting in July 2019 the Committee agreed to review the frequency of the report coming to this Committee which is currently every other meeting.

2. Details

- 2.1 The central monitoring database consists of all types of interim/temporary placement (over £30 pounds per hour).
- 2.2 The database is updated on a monthly basis and double-checked with departmental management teams (DMTs) for accuracy, with quarterly reports as at the end of October, November, December, January, February, March, April and May being reported to this committee.
- 2.3 As at the end of May 2020, the Council employed 162 interim/temporary workers at £30 per hour (or more) compared to 139 in September 19, which is an increase of 23 workers. Appendix 1 refers to the detail and composition of the interim workforce. Where possible, corporate contracts are used as they provide better value for the Council.

- 2.4 The committee on 30th July 2018 requested additional information for interims/temporary worker placements (as defined in para 2.1):
- the costs and numbers over a three year period
 - the number of temporary workers who have converted to permanent roles with the Council also know as ‘temp to perm’.
- 2.5 The engaging of most interim workers is via Comensura or the LGRP, which is a London wide contract for interim appointments. Even within the aforesaid existing contracts the Council has sought to get the best ‘price’ and in doing so have attracted high quality interims at 10% of the mark-up price. There have been instances due to market supply issues, although very few, when the Council has not used either of these contracts and has had to go ‘off contract’. There are robust processes in place to manage this process, which requires a business case and financial checks to ensure there is a budget to pay for the assignment, as well as sign off by the Director of Corporate Services.
- 2.6 The Council is currently exploring a framework agreement with a designated supplier for the provision of Professional services for project related work. Each project will be evaluated on an individual basis to determine its needs, establish key milestones and deliverables upon which payments will be made on successfully meeting these targets. Adopting this approach to managing projects would generate greater Value for Money and deliver on project objectives. It is recognised that this is a skill set that we do not have sufficient resources of in the organisation because of the technical skills required. We have met with Comensura and Matrix who both offer the Statement of Works service. We will be including this into the new Agency Tender in June 2021
- 2.7 The previously reported situation continues with by far the largest group of temporary workers being “on contract” agency and temporary staff appointed through the Council’s corporate contract with Comensura for the supply of agency staff. Whilst there is an increase in the costs of interims via Comensura this represents a reduction in appointments, which are off contract or through LGRP. Interims are engaged with the involvement and oversight of the HR function by way of a database that supplies monthly spend and usage reports to Council managers, DMTs and the Corporate Management Team.
- 2.8 The Council has different delivery models to ensure services are able to realise efficiencies, become more resilient and effective by sharing services with other London Boroughs. In October 2016, the Legal shared services expanded to include Wandsworth and a year later Regulatory Services followed. As a result of the expansions a number of interims with pay rates over £30 per an hour transferred to Merton – the costs of these appointments are shared across the service and rechargeable to partner boroughs.
- 2.9 The Council introduced a temp to perm procedure to reduce the reliance on agency workers and allowed conversions from agency to permanent staff when certain conditions were met. One hundred and sixteen (116) agency workers have transferred to permanent employment from September 2017 to May 2020. From October 2019 to May 2020 we have transferred twenty (20)

2.10 Within the services career pathways are being developed through the creation of apprenticeships schemes (where standards are available) and ensuring that that the apprenticeship levy is used to meet the development element.

2.11 The total spend for interim and temporary workers from 2017 to date are listed below: interims via Comensura Graph 1 and Table 1, LGRP and off contract Graph 2 and Table 2

Graph 1 – List totals for 17/18, 18/19, 19/20 and year to date for interim and temporary workers – Comensura

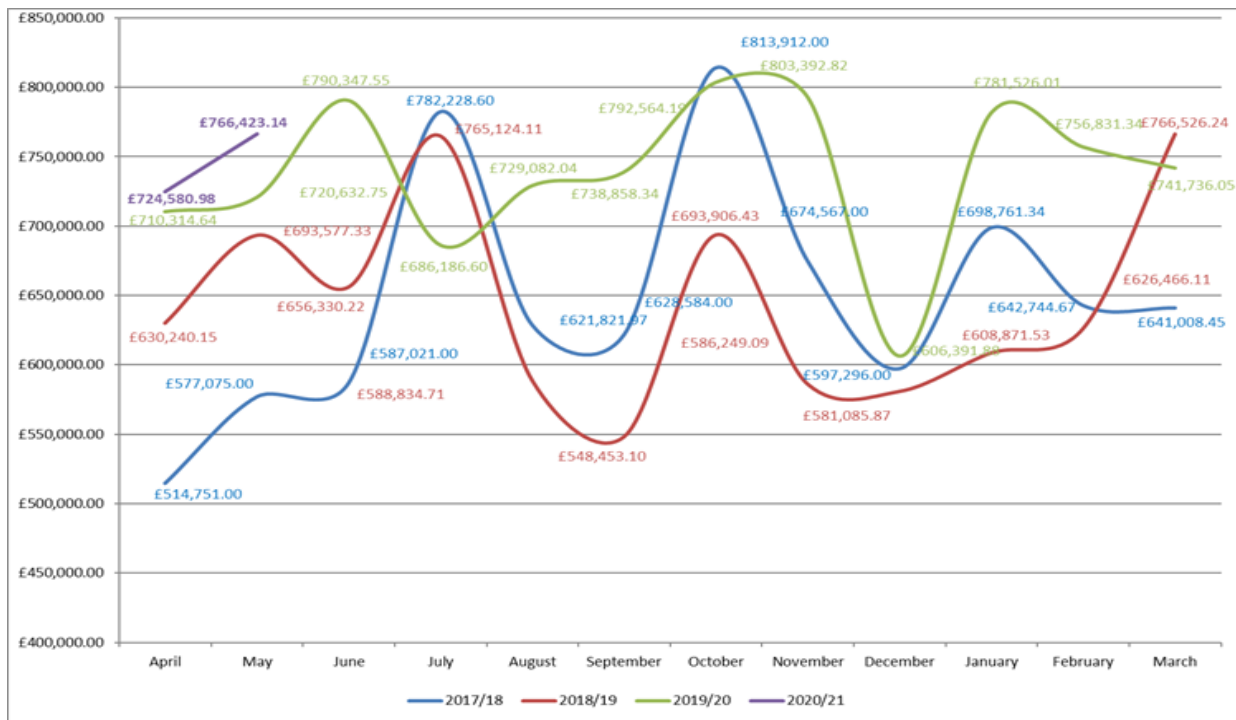


Table 1 - List totals for 17/18, 18/19, 19/20 and year to date for Interim and temporary workers – Comensura

	2017/18	2018/19	2019/20	2020/21
April	£514,751.00	£630,240.15	£710,314.64	£724,580.98
May	£577,075.00	£693,577.33	£720,632.75	£766,423.14
June	£587,021.00	£656,330.22	£790,347.55	
July	£782,228.60	£765,124.11	£686,186.60	
August	£628,584.00	£588,834.71	£729,082.04	
September	£621,821.97	£548,453.10	£738,858.34	
October	£813,912.00	£693,906.43	£803,392.82	
November	£674,567.00	£586,249.09	£792,564.19	
December	£597,296.00	£581,085.87	£606,391.88	
January	£698,761.34	£608,871.53	£781,526.01	
February	£642,744.67	£626,466.11	£756,831.34	
March	£641,008.45	£766,526.24	£741,736.05	
Total	£7,779,771.03	£7,745,664.88	£8,857,864.21	£1,491,004.12

Graph 2 - Total of LGRP and Off Contract assignments over £30 for each financial year

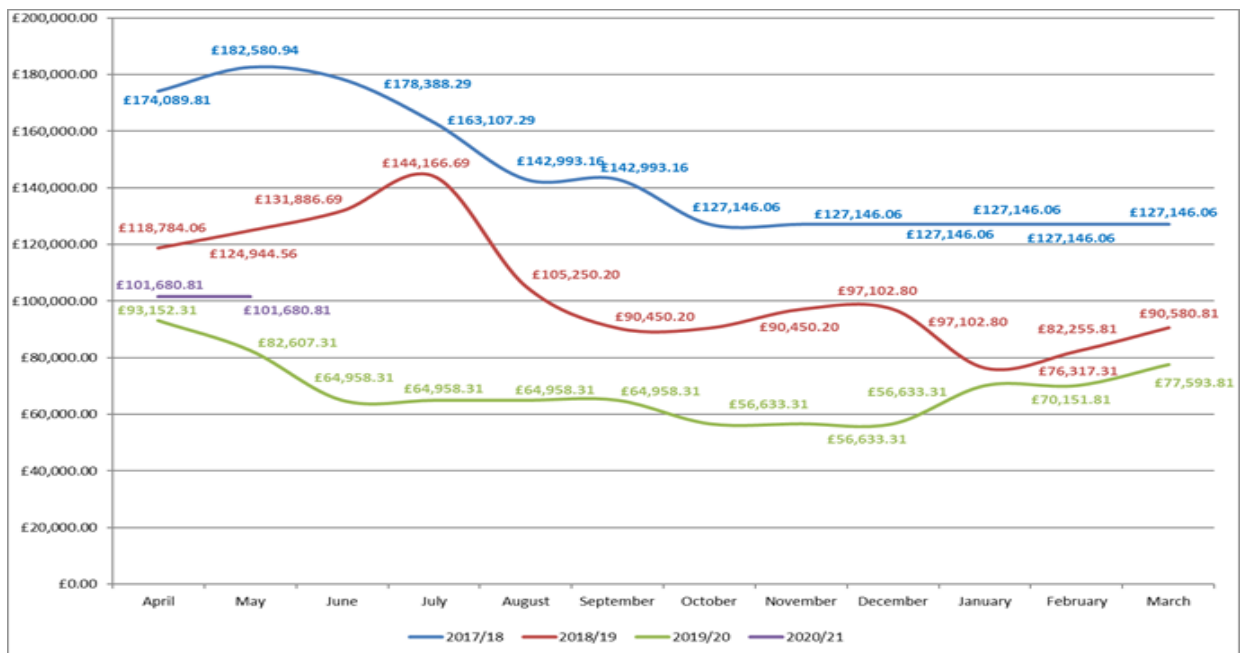


Table 2 - Total of LGRP and Off Contract assignments over £30 for each financial year

2017/18				2018/19			
	LGRP	Off Contract	Total		LGRP	Off Contract	Total
Apr-17	£60,869.63	£113,220.19	£174,089.81	Apr-18	£33,961.38	£84,822.69	£118,784.06
May-17	£80,368.26	£102,212.69	£182,580.94	May-18	£49,371.88	£75,572.69	£124,944.56
Jun-17	£83,205.60	£95,182.69	£178,388.29	Jun-18	£56,314.00	£75,572.69	£131,886.69
Jul-17	£67,924.60	£95,182.69	£163,107.29	Jul-18	£72,594.00	£75,572.69	£144,166.69
Aug-17	£58,170.48	£84,822.69	£142,993.16	Aug-18	£71,950.20	£33,300.00	£105,250.20
Sep-17	£58,170.48	£84,822.69	£142,993.16	Sep-18	£71,950.20	£18,500.00	£90,450.20
Oct-17	£42,323.38	£84,822.69	£127,146.06	Oct-18	£71,950.20	£18,500.00	£90,450.20
Nov-17	£42,323.38	£84,822.69	£127,146.06	Nov-18	£78,602.80	£18,500.00	£97,102.80
Dec-17	£42,323.38	£84,822.69	£127,146.06	Dec-18	£78,602.80	£18,500.00	£97,102.80
Jan-18	£42,323.38	£84,822.69	£127,146.06	Jan-19	£67,067.31	£9,250.00	£76,317.31
Feb-18	£42,323.38	£84,822.69	£127,146.06	Feb-19	£73,005.81	£9,250.00	£82,255.81
Mar-18	£42,323.38	£84,822.69	£127,146.06	Mar-19	£81,330.81	£9,250.00	£90,580.81
2019/20				2020/21			
	LGRP	Off Contract	Total		LGRP	Off Contract	Total
Apr-19	£83,902.31	£9,250.00	£93,152.31	Apr-20	£94,650.81	£7,030.00	£101,680.81
May-19	£75,577.31	£7,030.00	£82,607.31	May-20	£94,650.81	£7,030.00	£101,680.81
Jun-19	£57,928.31	£7,030.00	£64,958.31	Jun-20			
Jul-19	£57,928.31	£7,030.00	£64,958.31	Jul-20			
Aug-19	£57,928.31	£7,030.00	£64,958.31	Aug-20			
Sep-19	£57,928.31	£7,030.00	£64,958.31	Sep-20			
Oct-19	£49,603.31	£7,030.00	£56,633.31	Oct-20			
Nov-19	£49,603.31	£7,030.00	£56,633.31	Nov-20			
Dec-19	£49,603.31	£7,030.00	£56,633.31	Dec-20			
Jan-20	£63,121.81	£7,030.00	£70,151.81	Jan-21			
Feb-20	£63,121.81	£7,030.00	£70,151.81	Feb-21			
Mar-20	£70,563.81	£7,030.00	£77,593.81	Mar-21			

2.12 From October 19 to May 20 we have increased the number of staff paid £30 per hour and above (Graph 3 / Table 3) by 15. Due to covid-19 we saw an increase from April to May as Merton Council begin to implement Recovery Projects to be able to get the workforce back to work

Graph 3 - Total no. of interim workers over £30 in each financial year

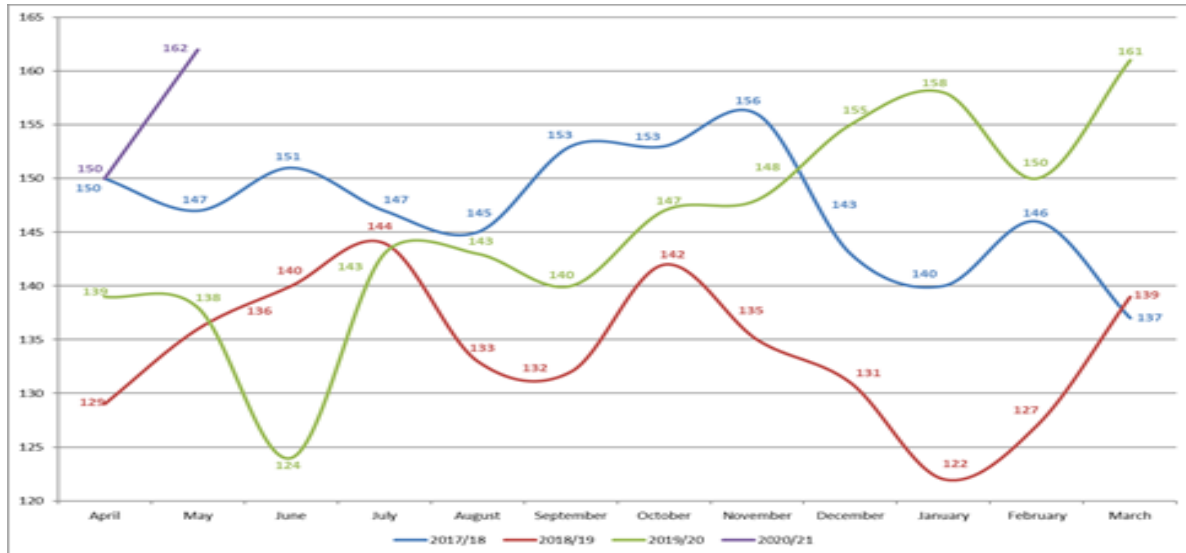


Table 3 - Total no. of interim workers over £30 in each financial year

No. of workers over £30/hr					No. of workers over £30/hr				
Month	Comensura	LGRP	Off Contract	Total	Month	Comensura	LGRP	Off Contract	Total
Apr-17	124	8	18	150	Apr-18	112	2	15	129
May-17	123	8	16	147	May-18	119	3	14	136
Jun-17	128	7	16	151	Jun-18	122	4	14	140
Jul-17	126	5	16	147	Jul-18	129	5	10	144
Aug-17	124	5	16	145	Aug-18	117	7	9	133
Sep-17	131	6	16	153	Sep-18	120	7	5	132
Oct-17	132	5	16	153	Oct-18	130	7	5	142
Nov-17	135	5	16	156	Nov-18	122	8	5	135
Dec-17	122	5	16	143	Dec-18	118	8	5	131
Jan-18	120	4	16	140	Jan-19	112	6	4	122
Feb-18	127	4	15	146	Feb-19	115	7	5	127
Mar-18	118	4	15	137	Mar-19	127	8	4	139
No. of workers over £30/hr					No. of workers over £30/hr				
Month	Comensura	LGRP	Off Contract	Total	Month	Comensura	LGRP	Off Contract	Total
Apr-19	127	7	5	139	Apr-20	140	9	1	150
May-19	128	7	3	138	May-20	152	9	1	162
Jun-19	118	5	1	124	Jun-20				
Jul-19	137	5	1	143	Jul-20				
Aug-19	137	5	1	143	Aug-20				
Sep-19	134	5	1	140	Sep-20				
Oct-19	141	5	1	147	Oct-20				
Nov-19	142	5	1	148	Nov-20				
Dec-19	149	5	1	155	Dec-20				
Jan-20	149	8	1	158	Jan-21				
Feb-20	141	8	1	150	Feb-21				
Mar-20	151	9	1	161	Mar-21				

- 2.13 Most Interims are on a day rate which is a specified rate for the job no matter how many hours the interim works. This is often cost effective for the Council as many of our interims work well in excess of what would be considered a normal working day. Agency workers tend to be paid by the hour and we closely monitor actual hours worked so that we can measure actual cost against expected cost. Any hours worked over 35 hours must be agreed in advance by the Manager. Where this affects the over £30 per hour workers they have been highlighted in yellow on the appendix and the actual hours worked shown.
- 2.14 There has been a reduction in the use of off contract appointments due to monitoring and the introduction of IR35 tax legislation in April 2017. IR35 is tax legislation designed to combat tax avoidance by workers supplying their services to clients via an intermediary, such as a limited company, but who would be an employee if the intermediary was not used.
- 2.15 The purpose of IR35 is to prevent contractors, consultants and freelancers from trading via their own limited company in order to pay less tax and national insurance contributions (NIC) than if they were employed directly by their end client or agency. This has only been rolled out to the Public sector; the rollout to the private has been scheduled for 1st April 2020 but has been delayed until April 2021 due to COVID-19..
- 2.16 HR monitors suppliers and contractors to ensure they are IR35 compliant and the IR35 process for off payroll workers was recently audited and received a substantial assurance.

3. Directorate feedback

Directors have been invited to provide short overall summary comments on agency/consultant usage and action being taken in their area and these are:

3.1 Children, Schools and Families

CSF currently have 2 agency workers via Comensura, which have been here over 24 months

Positive action continues to be taken to reduce the CSF reliance on agency workers and agency costs continue to be relatively low for this service. CSF actively recruits to permanent roles, reducing the use and duration of agency workers. In particular, the use of consultants has decreased significantly.

In all but a few exceptions, the CSF agency workers and consultant are covering management and frontline posts discharging statutory functions which require a qualified social worker. To safely and effectively discharge the

Council's statutory duties social worker's must have appropriate management supervision and manageable caseloads. This requires interim agency social worker cover for vacancies pending permanent recruitment.

However, we anticipate that as 'lockdown' ends and children become more visible to schools and other agencies outside their families, there may be a surge in children's social care activity, which may need additional temporary staffing to respond within children's timescales.

The other agency workers are for specialist posts such as speech and language therapy which is also a statutory requirement as part of children's Education, Health and Care Plans. Because of growth funding applied to this area in the 2020/21 budget, we anticipate more permanent recruitment in this area, which should assist in reducing the reliance on agency workers in SEND services.

HR works closely with the social care leadership team to review vacancies and use of agency social workers. This financial year, we have been successful in transferring agency social workers and senior social work managers onto permanent contracts. Our involvement in regional programmes to offer student and newly qualified social workers training placements has continued providing a pipeline of newly qualified social workers seeking permanent contracts with Merton.

A contract with the national Guardian online for recruitment advertising is now in place to raise Merton's profile and awareness of social work opportunities. Retention packages continue as part of the recruitment strategy, to retain existing permanent social workers and to provide continuity of service to some of our most vulnerable clients.

3.2 Community and Housing

C&H currently have 4 agency workers via Comensura, which have been here over 24 months

Within Community and Housing, use of agency staff is predominantly within adult social care and in specialist, hard to recruit to posts. A high number of agency staff have been in post covering permanent vacancies due to the service restructure in adult social care which was delayed due to Covid 19 but is now near completion. We will be undertaking a large recruitment campaign to fill these vacancies shortly. In addition there are service redesigns being conducted for the Mental Health and Learning Disability service which will establish the final permanent staffing requirement. Covid 19 and the revised working practices has necessitated the need for extra resources.

C&H currently have 4 agency workers via Comensura, which have been here over 24 months. A number of initiatives have been implemented to focus on recruiting and retaining staff. We have implemented an apprenticeship scheme and offered enhanced training and development opportunities to attract and retain staff. We are working with the Teaching Partnership to get Assessed and supported year in employment (ASYE) social work applicants who can convert to permanent staff. We expect to significantly reduce our reliance on agency staff by October 2020.

3.3 Corporate Services

CS currently have 11 agency workers via Comensura, which have been here over 24 months and 1 from LGRP

Of the 11 agency workers, 10 are lawyers in the Shared Legal Service (SLLP) paid for by the five participatory boroughs; mainly in the property and procurement team where we compete with the private sector. We have an ongoing recruitment campaign but still have limited success in attracting permanent staff. We are looking at further temp to perm within SLLP and there is one in the pipeline. For the other Comensura agency worker, the work is demand based on the schools capital programme. For the LGRP interim, there have been difficulties in recruiting to vacant posts and whilst there has been some relaxation in government timescales for the accounts, we have worked closely with our External Auditor to ensure original deadlines are kept.

3.4 Environment and Regeneration

E&R currently have 11 agency workers via Comensura, which have been here over 24 months, 1 consultant and 1 from LGRP

Numbers have not reduced as much as anticipated because of the impact of Covid 19. This reflects Government advice and support for staff on interim / agency contracts. We shall be reviewing all positions as we move out of Lockdown and into recovery

Others are providing specialist skills or are covering [often short term] externally funded roles including capital schemes. There are a number of professional areas where there is an extremely competitive market in which all London boroughs are struggling to recruit and retain permanent staff. This includes Traffic engineers, Planning officers and Building control surveyors where the emergence of a strong interim market as well as private sector competition [in building control particularly] has changed employment patterns and our ability to recruit and retain staff.

E&R DMT reviews this matter on a regular basis in order to manage risk including the financial impact.

4 Timetable

- 4.1 Regular monthly reports of all interim/temporary placements are sent to departments and suitable “challenge” meetings are held with DMTs on a monthly basis. Agency spend and number of agency staff forming part of the workforce are reported to CMT on a monthly basis as part of the HR Metrics.
- 4.2 We will endeavour to give the most up to date information we have available.

5 Financial, resource and property implications

- 5.1 The aim is to challenge hiring managers’ interim/temporary placements and reduce overall costs associated with interim workers where possible, noting that in many cases the Council has to cover statutory functions.

6 Legal and statutory implications

- 6.1 There are no specific legal implications arising from the report

7 Human rights, equalities and community cohesion implications

- 7.1 The amendments that have been made to the Council’s HR policies and processes will improve confidence in the Council’s HR recruitment procedure and the maintenance of the interim position database to provide the means to ensure compliance with Members’ requirements.

8 Crime and Disorder implications

- 8.1 None

9 Risk management and health and safety implications

- 9.1 These are detailed in the Ernst and Young report of 12 March 2014 and subsequent reports.

10 Appendices – the following documents are to be published with this report and form part of the report

- 10.1 Temporary Worker Register – May 2020

11 Background papers

- 11.1 None

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