



ADUR & WORTHING  
COUNCILS

14 March 2022

**Joint Governance Committee**

<b>Date:</b>	<b>22 March 2022</b>
<b>Time:</b>	<b>6.30 pm</b>
<b>Venue:</b>	<b>Council Chamber, Worthing Town Hall</b>

**Committee Membership:**

**Adur District Council:** Councillors; Andy McGregor (Adur Chairman), Rob Wilkinson (Adur Vice-Chairman), Jim Funnell, Catherine Arnold, Kevin Boram, Lee Cowen, Gabe Crisp and Tania Edwards

**Worthing Borough Council:** Councillors; Roy Barraclough (Worthing Chairman), Steve Wills (Worthing Vice-Chairman), Mike Barrett, Cathy Glynn-Davies, Louise Murphy, Helen Silman, Emma Taylor and Steve Waight

**Agenda**

**Part A**

**1. Substitute Members**

Any substitute members should declare their substitution.

**2. Declarations of Interest**

Members and officers must declare any disclosable pecuniary interests in relation to any business on the agenda. Declarations should also be made at any stage such an interest becomes apparent during the meeting.

If in doubt contact the Legal or Democratic Services representative for this meeting.

### **3. Minutes**

To approve the minutes of the Joint Governance Committee meeting held on 25 January 2022, copies of which have been previously circulated.

### **4. Public Question Time**

To receive any questions from members of the public.

Questions should be submitted by noon on Friday 18 March 2022 to Democratic Services, [democratic.services@adur-worthing.gov.uk](mailto:democratic.services@adur-worthing.gov.uk)

*(Note: Public Question Time will operate for a maximum of 30 minutes)*

### **5. Items Raised under Urgency Provisions**

To consider any items the Chairman of the meeting considers to be urgent.

### **6. External Audit Verbal Update**

To consider reports from the External Auditors, copies attached as item 6.

### **7. Internal Audit Progress Report (Pages 5 - 38)**

To consider a report from the Acting Head of Internal Audit, copy attached as item 7.

### **8. 2022/23 Internal Audit Plan (Pages 39 - 52)**

To consider a report from the Acting Head of Internal Audit, copy attached as item 8.

### **9. Anti-Money Laundering Policy (Pages 53 - 76)**

To consider a report by the Monitoring Officer, copy attached as item 9.

### **10. The Councils' Surveillance Powers, Policy and Procedures (Pages 77 - 102)**

To consider a report by the Monitoring Officer, copy attached as item 10.

### **11. Proposed revisions to Contract Standing Orders (Pages 103 - 132)**

To consider a report by the Director for Digital, Sustainability and Resources, copy attached as item 11.

### **12. Scheme of Allowances for Adur District Council in 2022/23 (Pages 133 - 142)**

To consider a report by the Interim Director for Communities, copy attached as item 12.

**13. Scheme of Allowances for Worthing Borough Council in 2022/23** (Pages 143 - 148)

To consider a report by the Interim Director for Communities, copy attached as item 13.

**Part B Exempt Reports - Not for Publication**

None.

**Recording of this meeting**

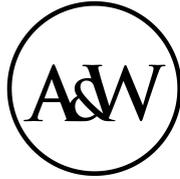
Please note that this meeting is being live streamed and a recording of the meeting will be available to view on the Council's website. This meeting will be available to view on our website for one year and will be deleted after that period. The Council will not be recording any discussions in Part B of the agenda (where the press and public have been excluded).

For Democratic Services enquiries relating to this meeting please contact:	For Legal Services enquiries relating to this meeting please contact:
Neil Terry Democratic Services Lead 01903 221073 neil.terry@adur-worthing.gov.uk	Geoff Wild Head of Legal Services and Monitoring Officer 01903 221011 <a href="mailto:geoff.wild@adur-worthing.gov.uk">geoff.wild@adur-worthing.gov.uk</a>

The agenda and reports are available on the Council's website, please visit [www.adur-worthing.gov.uk](http://www.adur-worthing.gov.uk)

**Duration of the Meeting:** Four hours after the commencement of the meeting the Chairperson will adjourn the meeting to consider if it wishes to continue. A vote will be taken and a simple majority in favour will be necessary for the meeting to continue.

This page is intentionally left blank



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
22 March 2022  
Agenda Item 7

Ward(s) Affected: All

## Internal Audit Progress Report

### Report by the Acting Head of Internal Audit

#### Officer Contact Details

Dave Phillips

Acting Head of Internal Audit (Mazars LLP)

Town Hall, Worthing

[dave.phillips@mazars.co.uk](mailto:dave.phillips@mazars.co.uk)

#### Executive Summary

##### 1. Purpose

- 1.1. This report provides the quarterly report on Internal Audit progress and key findings to the Committee.
- 1.2. This report also provides an updated Internal Audit Strategy.

##### 2. Recommendations

The Joint Governance Committee is recommended to:

- 2.1. Note the progress against the 2021/22 Internal Audit Plan and implementation of Internal Audit recommendations;
- 2.2. Note the updated Internal Audit Strategy; and
- 2.3. Approve that any further audit work on Theatres be deferred pending the outcome of the Joint Overview and Scrutiny Committee review of Theatres procurement and contract management.

### 3. Context

#### 3.1. Background

##### **Progress**

Each quarter, a report is produced for the Joint Governance Committee (Committee) which details the Internal Audit Section's performance against the Annual Internal Audit Plan as well as a summary of work carried out in the period. Internal Audit Services to the Councils, including the role of the Head of Internal Audit is outsourced to Mazars LLP.

Attached as Appendix 1 is the Internal Audit Progress report for the period to 28<sup>th</sup> February 2022.

##### **Internal Audit Strategy**

The fundamental role of Internal Audit is to provide senior management and Members with independent assurance on the adequacy, effectiveness and efficiency of the system of internal control and report major weaknesses together with recommendations for improvement. The role is fulfilled by carrying out appropriate internal audit work in accordance with the Annual Plan as approved by the Chief Finance Officer and this Committee. As Internal Audit is a major source of assurance that the Councils are effectively managing their risks, a key rationale for the development of the Internal Audit Plan is the Councils' own Corporate Risk Register and Service Risk Registers.

The Councils' Internal Audit Service is delivered in accordance with a regulatory framework comprising:

- The Local Government Finance Act 1972 which requires councils to 'make arrangements for the proper administration of their financial affairs';
- The Accounts and Audit Regulations 2015. These require that all local authorities must 'undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance'; and
- The UK Public Sector Internal Auditing Standards (PSIAS). These standards set out what is meant by appropriate internal audit practices. These are mandatory standards and replaced the former CIPFA Code of Practice for Internal Audit in Local Government 2006.

The Internal Audit Strategy is a high-level statement which outlines how the Internal Audit Service will be delivered to meet the requirements as set out above. The PSIAS no longer make specific reference to a strategy document, but they require that the information that it contains be communicated to the Audit Committee (or equivalent), to support discussion about audit planning and resources.

The proposed 2022-23 Internal Audit Plan is presented as a separate item for consideration and approval by this Committee at this meeting.

#### **4. Issues for consideration**

##### **4.1. Covid-19**

As reported within our previous progress reports to the Committee, Internal Audit continued to operate post the Covid-19 lockdown restrictions from 23 March 2020, but the progression of work from both the 2019/20 and 2020/21 plans was impacted. Our work re-commenced in July 2020 but due to the nature of remote auditing and our reliance on Council staff providing information there have been some delays in the completion of audits and for which there has been a further impact on the current 2021/22 plan.

4.2. Resourcing problems, due to unforeseen circumstances, impacted on performance in the earlier part of the year. Resources were focussed on completing 2020/21 work but there was a plan put in place to deliver audits in the 2021/22 Plan and the work is now substantially complete.

##### **4.3. Audit of Theatres**

The Committee had previously requested an audit of Theatres - Procurement & Contract Management. However in parallel to this request, Joint Overview and Scrutiny requested an almost identical review of the service which is currently in progress following a public request for Scrutiny. Consequently, it is recommended that the current audit be removed from the plan and that the outcome of the JOSOC review is presented to the Committee once complete to identify if any further audit work is required.

#### **5. Engagement and Communication**

5.1. Internal Audit hold monthly meetings with the Chief Financial Officer on progress against the plan. Issues arising and potential plan changes are discussed both at these meetings and whenever necessary. This has included specific discussions in relation to the ongoing Covid-19 situation and impact on Internal Audit work.

#### **6. Financial Implications**

6.1. There are no financial implications arising from this report.

#### **7. Legal Implications**

7.1. There are no legal matters arising as a result of this report.

**Background Papers**

None.

## **Sustainability & Risk Assessment**

### **1. Economic**

**1.1** Matter considered and no issues identified.

### **2. Social**

#### **2.1 Social Value**

Matter considered and no issues identified.

#### **2.2 Equality Issues**

Matter considered and no issues identified.

#### **2.3 Community Safety Issues (Section 17)**

Matter considered and no issues identified.

#### **2.4 Human Rights Issues**

Matter considered and no issues identified.

### **3. Environmental**

Matter considered and no issues identified.

### **4. Governance**

The report does not seek to meet any particular Council priority.



**Adur District & Worthing Borough Councils  
Internal Audit Progress Report  
March 2022**



01 Introduction	1
02 Internal Audit Progress	1
03 Audit Reports Issued	3
04 Follow-Ups	3
05 Other Matters	6
A1 Current Progress – 2021/22 Plan	7
A2 Outstanding Priority 1 Recommendations (Past Implementation Date)	10
A3 Definitions of Assurance	22

## Contents

### *Disclaimer*

This report (“Report”) was prepared by Mazars LLP at the request of Adur District & Worthing Borough Councils (Councils), and terms for the preparation and scope of the Report have been agreed with them. The matters raised in this Report are only those which came to our attention during our internal audit work. Whilst every care has been taken to ensure that the information provided in this Report is as accurate as possible, Internal Audit have only been able to base findings on the information and documentation provided and consequently, no complete guarantee can be given that this Report is necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

The Report was prepared solely for the use and benefit of the Councils, and to the fullest extent permitted by law, Mazars LLP accepts no responsibility and disclaims all liability to any third party who purports to use or rely for any reason whatsoever on the Report, its contents, conclusions, any extract, re-interpretation, amendment and/or modification. Accordingly, any reliance placed on the Report, its contents, conclusions, any extract, re-interpretation, amendment and/or modification by any third party is entirely at their own risk.

## 01 Introduction

Internal Audit is required to provide a quarterly report on progress and key findings to the Joint Governance Committee (Committee).

The purpose of this report is to outline the following in respect of Internal Audit Activity during the period:

- An update on progress in delivering the 2021/22 Plan;
- A summary of any Limited/No Assurance reports issued and high priority recommendations raised; and
- An update on follow up activity and any recommendations outstanding for implementation.

This report covers internal audit activity and performance since our last report to the Committee in November 2021.

## 02 Internal Audit Progress

The Committee considered and approved the 2021/22 Internal Audit Plan (Plan) on 23 March 2021.

The Plan provided for 28 internal audits totalling 500 days, including 70 days for IT audits, 27 days for Contract audit and 40 days for management which includes the Head of Internal Audit role. The audits in the Plan comprised a mixture of key financial systems, service-specific (operational and financial), corporate-wide, and IT reviews.

As reported previously to the Committee, changes had been made to the timings of the work within the Plan. Since the last Committee in November 2021, the following additional changes have been made:

- *Supply of Affordable Housing* – Senior Officers requested that this audit be postponed due to a post vacancy and the limited ability of other officers to assist in an audit. This was discussed with the Chief Financial Officer (CFO) and it has been agreed that the audit will be postponed to the 2022/23 Plan.
- *Welfare Reform* – This audit was scheduled for quarter 4, but following discussions with Senior Officers it was proposed that the audit be transferred to the 2022/23 in order that the scope could be clarified. This was further discussed, and the change agreed with the CFO.
- *Carbon Reduction Programme* - Due to Officers workload and finalising of projects, the Service Manager requested this audit be deferred and undertaken later in the year. We discussed and agreed with the CFO that this audit will be re-scheduled to the 2022/23 Plan.
- *Device Management & Security* – Officer request to implement recommendations of a recent third-party review of the security settings used for the mobile devices' software prior to the audit commencing. This was discussed with the CFO and it has been agreed that the audit will be postponed to the 2022/23 Plan.

- *Civica/Connect HR system* - Officer capacity to accommodate this was impacted due to staff shortages and officer involvement in other areas being audited. This was further discussed with the CFO and it has been agreed that the audit will be postponed to the 2022/23 Plan.
- *Contingency Days* – The balance of 30 unused contingency days has been discussed with the CFO and as these have not been required during the year, and are unlikely to be required, they have been removed from the Plan.
- *Procurement Cards* – This audit was added to the Plan at the request of the CFO and has been completed.
- *Theatres – Procurement & Contract management* – Senior Officer request to review the requirement for this audit due to ongoing review of this area by the Councils Joint Overview & Scrutiny Committee (JOSC). The background to this is that following the receipt of a Public scrutiny request a JOSC Working Group was set up in September 2019 to review the processes followed by the Council when making the decision to externalise the culture service in Worthing via Worthing Theatres and Museum and to assess whether or not the externalisation process was robust or not. The aim of the review has been to gain a better understanding of the decisions undertaken in reaching those decisions. The Working Group held evidence gathering meetings in late 2019 and early 2020 before the work was put on hold due to the Covid-19 pandemic. The JOSC Working Group reconstituted in 2021 to complete the work, held further meetings in Autumn 2021 and has recently met again to try and wrap this work up and agree recommendations. In view of the time taken on this, the Working Group has been advised to bring its' review to a close and report on findings to the next available JOSC meeting which will be June. Senior Officers have suggested that the work undertaken by the JOSC working group should be presented to JGC with a recommendation that it would not be a sensible use of resources to also undertake an internal audit.

The impact of these changes along with those previously reported to Committee mean there are now 27 reviews totalling 437.50 days in the Plan.

The table below provides a summary of current progress relevant to the 2021/22 Plan:

Audit Status	Number of reviews	Percentage %
Finalised/complete	7	26%
Draft report	7	26%
Fieldwork complete & audit under review	2	7%
Fieldwork in progress	11	41%
Scoping/Planning complete	0	0%
Not yet started	0	0%
<b>Total</b>	<b>27</b>	<b>100%</b>

For reference, additional detail of the audits, progress and timings, is included in Appendix A1 of this report.

### 03 Audit Reports Issued

We have four categories by which we classify internal audit assurance over the processes we examine: Full, Satisfactory, Limited or None.

Internal Audit categorises recommendations as Priority 1, 2 or 3 to differentiate between the types of recommendation made. These categories give management an indication of the importance and urgency of implementing the recommendations. Details on our Assurance Definitions are contained within Appendix A3.

The table below lists the internal audits for which final reports were issued since our last report to the Committee; all of which relate to prior year reports.

Internal Audit Title	Assurance Level	Planned Year	Previously Reported in Annual Report √ / X
Planning Policy	Satisfactory	2021/22	X
Out of Hours	Satisfactory	2021/22	X
Payroll	Satisfactory	2021/22	X

No Priority 1 recommendations were raised in these reports. Further details of the Priority 2 recommendations raised in each of these reports can be found in the summary briefing provided separately to Members.

## 04 Follow-Ups

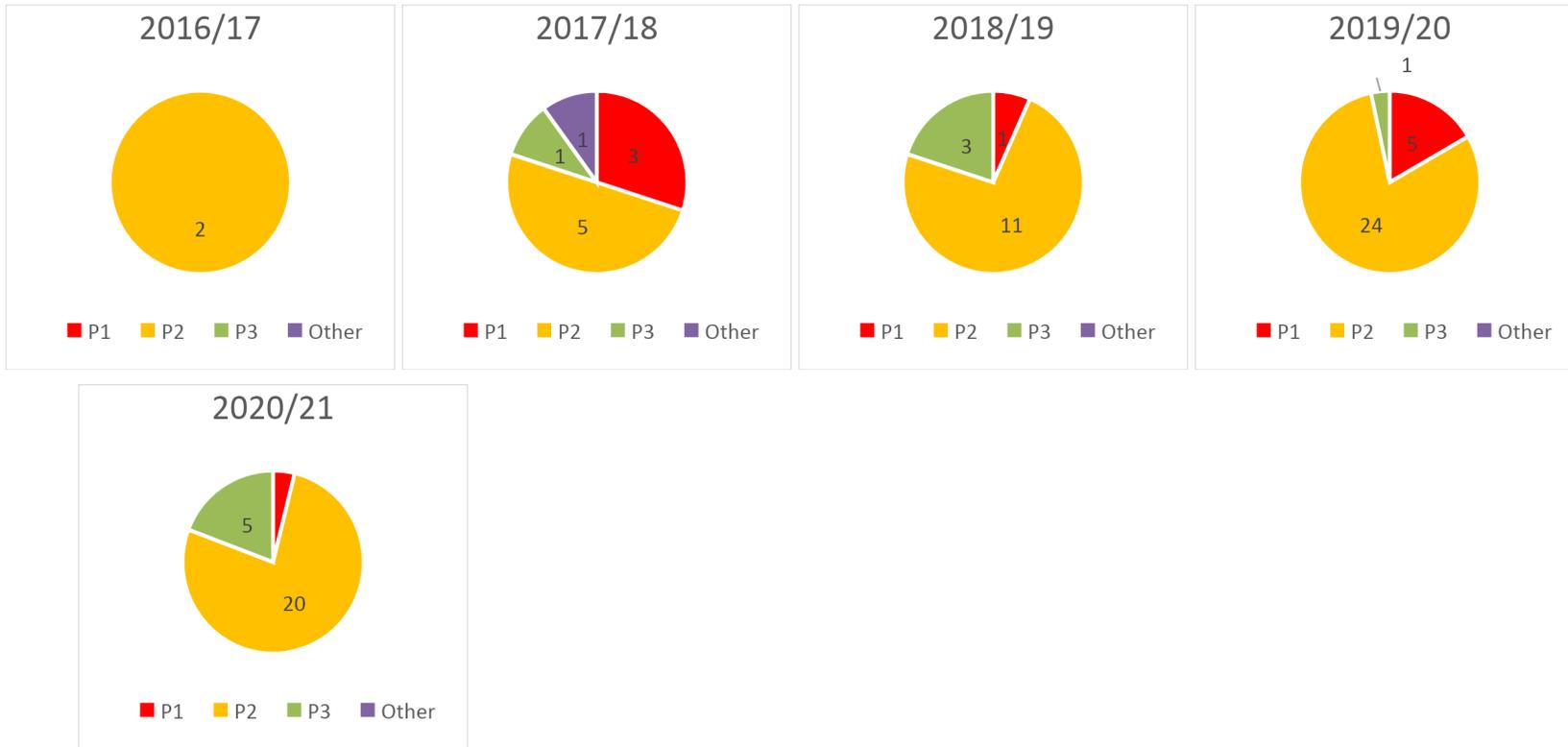
Since the last Committee meeting, the Councils' Audit App has continued to be populated with new recommendations from finalised internal audit reports.

Follow-up audits are undertaken to ensure that all the recommendations/issues raised have been successfully resolved according to the action plans agreed with the service managers. The Councils' target for internal audit recommendations/issues to be resolved at the time of the follow-up is 80% for all priority 2 & 3 recommendations/issues and 100% for priority 1 recommendations/issues.

Performance Objective	Target	Performance (to date)				
		2016/17	2017/18	2018/19	2019/20	2020/21
Percentage of Priority 1 actions implemented	<b>100%</b>	100%	92%	94%	71%	75%
Number of Priority 1 recommendations (for reference)		17	37	18	17	3
Percentage of all actions implemented	<b>80%</b>	99%	93%	91%	72%	54%

Specific details on follow-up performance are included in the briefing note provided separately to Members.

### Outstanding Recommendations by Priority Level



Following our last report to the Committee in November 2021, we met with the Director for Digital, Sustainability & Resources and the CFO and agreed an approach to assist with obtaining updates for the outstanding recommendations, particularly those that are overdue (i.e. past their originally agreed implementation date). This involved generating a report from the Audit App on all outstanding recommendations which was presented to CLT on 11 January 2022. At this meeting it was agreed that the report would be shared with Directors and Heads of Service and that the Internal Audit Manager would attend Departmental Management Team meetings (DMTs) in order to remind officers and to encourage the update of the Audit App on the status of outstanding recommendations.

Following attendance at the DMTs there was a lot of activity in updating the outstanding recommendations and an updated report the status of outstanding and overdue recommendations was presented to CLT on 8 February 2022. Since that meeting, we have continued to meet with



## 05 Other Matters

This section is used to set out other matters which may be of interest to the Committee.

### **Challenges and opportunities for the Public Sector in 2022**

As our economy and society move into an endemic state of virus management, local authorities have found themselves in an unenviable position. They must balance pre-COVID-19 service demand within a new normality that has exacerbated the need for public services, along with an emptying high street, hybrid working, environmental awareness, and increased personal debt.

Balancing the budget has never been more challenging, nor is internal audit so critical to an organisation's resilience. In this year's Horizon Scanning report, we have broken down the assurance requirements of a local authority into five categories: financial resilience, council services, IT, ESG, and fraud. Within these, we have broken down the detail and shared considerations for your internal audit plans.

Please note that this document was prepared at a point in time. Subsequent government announcements or changes should be considered when reading.

Download the full report below



The banner features a background image of a crocodile in a pond with lily pads. On the left, the text "Horizon Scanning" is displayed in a large blue font, with a blue button below it containing the text "Download here". On the right, there is a thumbnail of the report cover, which has a green background and a photo of a crocodile. The cover text reads "Horizon Scanning" and "Challenges and opportunities in 2022", with the Mazars logo at the bottom.

## A1 Current Progress – 2021/22 Plan

Audit area	Progress	Assurance Opinion	Recommendations		
			High	Medium	Low
Compliance & Enforcement Grant	Complete	N/A – no opinion work	-	-	-
BEIS Grants - Post Assurance Plan work	Complete	N/A – no opinion work	-	-	-
NFI Testing	Complete	N/A – no opinion work	-	-	-
Street Naming & Numbering	<b>Final</b>	Satisfactory	-	-	1
Out of Hours Service	<b>Final</b>	Satisfactory	-	1	-
Payroll	<b>Final</b>	Satisfactory	-	-	2
Planning Policy	<b>Final</b>	Satisfactory	-	-	1
Governance of Property Purchases	<b>Draft</b>				
Corporate Governance	<b>Draft</b>				
Cash Collection	<b>Draft</b>				
IT Asset Management	<b>Draft</b>				
Anti-Social Behaviour	<b>Draft</b>				
Procurement Cards	<b>Draft</b>				
Key controls testing	WIP				
Housing - General Compliance	WIP				
Adur Homes - Regulatory Compliance - Fire Safety	WIP				
Staff Wellbeing	WIP				
Workspaces AW - Accommodation Review	WIP				
Adur Homes - Capital works programme	WIP				

Env Services - Risk Assessments	WIP				
Debt Management	WIP				
Equalities Act Compliance	WIP				
Allocation of Costs for Town Centre/Public Realm Improvements	WIP				
Risk Management	WIP				
Supply of Affordable housing	Postponed to 22/23 Plan				
Markets	Postponed to 22/23 Plan				
Welfare Reform	Postponed to 22/23 Plan				
Civica/Connect HR system	Postponed to 22/23 Plan				
Self-Isolation Grants	Postponed to 22/23 Plan	-	-	-	-
Carbon Reduction Programme	Postponed to 22/23 Plan				
<b>Contract Audit</b>					
Theatres - Procurement & Contract Management	CANCELLED				
Condition Surveys contract - vertical audit	WIP				
<b>IT</b>					
Disaster Recovery	<b>Draft</b>				
Device Management & Security	Postponed to 2022/23 Plan				
Cloud Computing	WIP		-	-	-
<b>Total</b>			<b>0</b>	<b>1</b>	<b>4</b>



## A2 Outstanding Priority 1 Recommendations (Past Implementation Date)

### Leaseholder Service Charges (2017-18 Final Report issued March 2018)

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
<p><b>3.1</b> The Council should document a Leasehold Management Policy, which outlines the legislative framework (and timescales) within which it is required to operate for the various leasehold functions and services that it provides.</p> <p>The policy should:</p> <ul style="list-style-type: none"> <li>Outline any local policy decisions in respect of the management of leaseholders, recovery of charges etc. and detail how these requirements will be achieved;</li> <li>Clearly state how the Council will deal with major repair costs, including outlining the statutory processes that have to be completed and the timescales to ensure the recovery of costs (e.g. invoice or issue S20B notice within 18 months of cost being incurred; and</li> <li>State at what level the cost of repairs will be pursued (e.g. minor costs above the £250 legislative rate may not be cost effective for the Council to pursue where there</li> </ul>	<p>There is currently no approved documented policy for Leasehold Management.</p> <p>Where an up to date documented and approved policy does not exist, there is a risk that the Council's objectives and/or responsibilities are not known and may not therefore be achieved.</p>	<p>An overarching policy will be developed. This will be supported by a set of detailed policies and procedures. Work has already begun on identifying those that are required and this will be used as an action plan to ensure all required actions are completed.</p> <p>Deadline - 30<sup>th</sup> September 2018</p>	<p>The last detailed update provided to IA suggested that a policy had been drafted and consulted upon.</p> <p>Since then, officer changes have occurred and there is a transformation project underway within Housing.</p> <p>IA have met with the Transformation Manager and an update in respect of the progress on this recommendation is awaited.</p>	<p>30<sup>th</sup> September 2021</p> <p>new date TBC</p>

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
<p>are only a few leaseholders, but if there were several then the costs and effort would be worth it).</p> <p>Once documented, the Policy should be approved by the relevant senior management, member and committee.</p>				
<p><b>3.32</b> The Council's Policy in respect of options available to leaseholders for payment of major works should be reviewed, approved by ADC Executive and then consistently applied.</p>	<p>On 15 June 2010, the ADC Cabinet decided the payment option arrangements for leaseholders, this includes the provision of ten year loans. Furthermore, on 13 July 2010 the ADC Cabinet decided additional deferred payment arrangements for works costing more than £5,000 in any financial year.</p> <p>We have not identified any other reports/decisions which revise the decisions taken by the ADC Cabinet in June/July 2010 therefore these decisions would appear to be the most recent and therefore constitute the current policy.</p> <p>These policy decisions are not, however accurately reflected in the current Leaseholders Handbook which states "If you are not able to pay for the cost of major works in full at the time of invoicing, then we offer an interest free loan up to five years depending on the size of the bill and individual circumstances. In this case you will pay</p>	<p>The arrangements will be reviewed with Finance and Legal.</p> <p>Deadline - 31<sup>st</sup> March 2019</p>	<p>As above.</p>	<p>30<sup>th</sup> September 2021  new date TBC</p>

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
	<p>in monthly instalments by either direct debit or payment card".</p> <p>The policy decisions were also not detailed correctly in the Paying for Major Works information that was sent to leaseholders in March 2017 with their invoices. The differences being:</p> <ul style="list-style-type: none"> <li>• The interest added column on the Paying for Major works information states 5.4% for all works costing more than £500 yet this is not what is detailed in the decision by Cabinet.</li> <li>• The Cabinet decision in June 2010 states that "for loans exceeding £1,500, a Land Registry charge would be taken out" the Land Registry requirement on the Paying for Major Works information states N/A for works costing £1,500-£5,000.</li> <li>• The Cabinet decision in July 2010 states the administration fee for deferred payments as £100 yet the Paying for Major Work information states £90.</li> </ul> <p>Our walkthrough of a loan arranged in 2015 has shown that he was advised that the charges added to the loan for £10,998 would be 4.4% interest</p>			

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
	<p>(reviewed annually), £50 admin fee, £40 Land Registry fee and £295 legal costs. This contradicts the Cabinet's decision which states an administration fee of £90 and a Land Registry fee of £50. Furthermore, the reports to the ADC Cabinet in 2010 made no mention of legal costs (nor did the information sent to leaseholders in 2017). The amounts actually invoiced to this leaseholder were £1209.59 interest (so no annual review), £295 legal costs and £40 Land Registry fee (so no admin fee and incorrect LR fee).</p> <p>We have further confirmed that as a result of invoices sent in February 2017, one leaseholder requested to pay their major works costs (£3,072.49) over a period of 24 months. The email sent to this leaseholder confirms that no interest has been added and that monthly standing order payments should be arranged by the leaseholder. The policy requires DD payments and there is no mention of admin or Land Registry costs that the policy requires and no evidence can be seen on HMS/I@W to confirm that costs have been invoiced.</p> <p>Where approved policies are not known or accurately and consistently applied, there is an increased risk that loans are</p>			

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
	incorrectly arranged or that incorrect fees are charged. This may result in financial loss to the Council.			
<p><b>3.33</b> Once the Major Works Payment Policy has been decided the Council should review how implementing payment loans/arrangements will for major works will be achieved.</p> <p>An agreed process, which reflects policy requirements should be effected to ensure that any future loans/arrangements are correctly actioned. Legal Services and Finance should be involved in any discussions to ensure that all legal and financial requirements are met.</p> <p>The agreed process should be formalised in a documented procedure which details the forms that need to be completed, by whom and when and how supporting information/documentation should be retained.</p>	<p>Proper arrangements are required to ensure that the Council effects payment arrangements correctly and in line with any policy and legal requirements.</p> <p>We found some procedures and forms (including a Service Charge Loan Application Form) on the N Drive and emails between the Finance and Leasehold teams going back several years. Our examination of this information suggests that the information provided by the leaseholder on the loan application form would seem to be the primary source for calculation of affordability.</p> <p>Any payment arrangements were effected by Finance until April 2016, when the arrangements transferred to the Adur Homes Leasehold Team.</p> <p>We were advised by the Leasehold Officers that they are very unsure regarding the procedures to be followed, whether they are up-to-date, lines of responsibility etc. They also had queries regarding:</p> <ul style="list-style-type: none"> <li>• how instalments and interest would be applied to Owner Accounts;</li> </ul>	<p>This will be reviewed with Finance and Legal.</p> <p>Deadline - 31<sup>st</sup> March 2019</p>	<p>As above.</p>	<p>30<sup>th</sup> September 2021</p> <p>new date TBC</p>

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
	<ul style="list-style-type: none"> <li>• monitoring;</li> <li>• how the Council would legally stand in recovering any arrears of interest etc. if charges were not made against properties; and</li> <li>• their ability to calculate interest on loans and setting-up loan/instalment agreements with interest;</li> </ul> <p>We have noted elsewhere in the audit inconsistencies with arranging loan agreements and lack of supporting information which would suggest that current arrangements are not effective.</p> <p>Where a defined process for effecting payment arrangements does not exist, there is an increased risk that arrangements are not correctly made or that legal requirements are not satisfied and this may impact on the Council's ability to recover all relevant costs leading to possible financial loss.</p>			

**Housing Repairs – Matsoft Processes 2018/19 - (Final Issued March 2020)**

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
3.24 Adur Homes' management should discuss with Digital how the system can be enhanced to require post inspection of repair projects costing over £1,000.	Adur Homes has a Post Inspections Policy requirement for all jobs with an invoiced value of £1,000 or more to be post inspected. The way that the Mats system is set up means that jobs are now known as Repair Projects which consist of "jobs", some of which are works whilst others are activities such as inspections. Through discussion with the Contracts Compliance Manager, we were advised that the Mats system only automatically selects jobs over £1,000 for post inspection and not Repair Projects, which may consist of smaller SOR elements that total £1,000. The service are not therefore post inspecting all works over £1,000 in line with their policy and there is a risk that projects costing over £1,000 are not being post inspected.	This issue has been raised with Digital and included within the requirements for Stage 2 development of the system.  30th September 2021 (for enhancement of system).	Update provided to IA by the Transformation Manager confirmed that this has been raised with Digital but that the work is currently paused due to resourcing.	30 <sup>th</sup> September 2022

**Rent in Advance/Rent Deposit Scheme 2019/20 (Final Issued March 2020)**

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
3.3 Every form used in the Rent in Advance/Rent Deposit (RiA/RD) process which is used to collect the personal data of the client (and/or their family members) needs to be reviewed and a relevant privacy notice added.	The Data Protection Act (DPA) 2018 and General Data Protection Regulation (GDPR) contain specific requirements that the Councils must comply with when collecting and processing a client's personal data, including	These forms are part of the homelessness prevention process and are therefore covered by the consents given when a homelessness application is made. The Homeless	No update has yet been provided to IA.  This has been raised with the Transformation Manager and an	TBC

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
<p>Furthermore, where personal data is collected and recorded within forms and the Councils are relying on a client's consent to process the information then the relevant consent(s) need to be obtained.</p> <p>The Housing Needs Manager should liaise with the Councils' Senior Information Governance Officer (SIGO) in order to effect this.</p>	<p>obtaining consent and providing privacy notices.</p> <p>From our examination of the 'In Principle Financial Assistance Approval' and 'Vulnerability &amp; Suitability' forms we noted that neither contain any details about consent or a privacy notice.</p> <p>As some of the information required to be provided in the 'Vulnerability &amp; Suitability' form can relate to disabilities or illnesses, the personal information being provided is considered sensitive personal data and is therefore subject to more rigorous requirements under the DPA 2018. Furthermore, as sensitive personal information relating to any other residents in the same dwelling as the client is also being requested, separate privacy notices for these other residents will also be required.</p> <p>Where the required consent and privacy notices are not contained on forms, the Council is in breach of the DPA 2018 and GDPR and should the ICO investigate this the Council may face significant fines.</p>	<p>application form also includes the link to the Councils privacy notice which specifically relates to homelessness related processes.</p> <p><b>Audit Comment</b> – Advice sought from the Councils SIGO has confirmed a privacy notice link is required on all forms which are used to collect personal data and that depending on the process, consent information may also be required. Therefore we recommend that the SIGO is contacted in order to review the process and confirm whether consents are required within these forms.</p> <p>Housing Needs Manager – Agreed</p> <p>Deadline – 30<sup>th</sup> June 2020</p>	<p>update in respect of the progress is awaited.</p>	

**Regulatory Compliance (Housing) – (Final Issued August 2020)**

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
<p>3.4 Adur Homes should review when the last Asbestos management surveys were undertaken and urgently progress any outstanding ones. Furthermore, the outcomes of the surveys should be recorded and monitored, and a monitoring process should be effected to ensure that assessments are undertaken every 12 months.</p>	<p>Section 4 of the CAR12 requires that every property has to have an asbestos management plan and that an asbestos register is retained. Asbestos surveys are required to be conducted every 12 months. An 'Asbestos Management Survey' spreadsheet exists to record where asbestos has previously been identified within housing properties. We tested a sample of ten properties to establish when the last asbestos survey had been completed and found that:</p> <ul style="list-style-type: none"> <li>• nine had not had a survey carried out within the last 12 months, (eight were last undertaken in 2017 with the remaining one in 2018), and</li> <li>• the outcomes of two surveys had not been recorded on the 'Asbestos Management Survey' spreadsheet. Where the Council does not carry out an asbestos survey every 12 months, the Council is in breach of the regulations and can face penalties. There is also a risk that residents health and safety is put at risk leading to potential lawsuits, financial penalties and reputational damage.</li> </ul>	<p>We have recently undertaken re-inspections on our blocks and this will continue to be done annually.</p> <p>We are still lacking data for many of the dwellings and do not have an up to date asbestos register that can be viewed and edited onsite, Adur and Worthing Councils are in the process of purchasing an asbestos management system called Alphatracker which will store all of our asbestos surveys and data and will be able to be viewed and edited from site so that records remain up to date.</p> <p>Deadline - 1<sup>st</sup> December 2020</p>	<p>Update provided to IA by the Transformation Manager confirmed that the surveys were last done two years ago and that a procurement process is in the last stages to commission new surveys.</p>	<p>30<sup>th</sup> April 2022</p>
<p>3.7 Management should monitor and record the outcomes of inspections and/or maintenance visits to ensure any rectification needed is identified. Management should also ensure that any rectifying actions undertaken address the issues originally</p>	<p>Any issues identified during regulatory inspections should be remedied in a timely manner to ensure that staff and the public are safe and that Council is compliant with relevant legislation. Testing of the inspections required across 60 properties (for the six different</p>	<p>Agreed, any actions arising from compliance inspections should be recorded and rectified in a timely manner.</p> <ul style="list-style-type: none"> <li>• Asbestos: We have recently undertaken re-inspections of all</li> </ul>	<p>Update provided to IA by the Transformation Manager confirmed that this recommendation is being actioned and information will be stored on the T100 system.</p>	<p>30<sup>th</sup> September 2022</p>

<b>Recommendation</b> <b>(Reference &amp; content)</b>	<b>Findings and Risk as outlined in Final Audit Report</b>	<b>Agreed Action, Comments &amp; Original Implementation deadline</b>	<b>Follow Up Comments</b>	<b>Proposed Completion Date</b>
<p>identified/raised. Where applicable, any documentation (inspection reports, new certificates etc) received which support the completion of rectification works should be retained. Rectification of recommended actions and/or issues identified should be performed in a timely manner and/or in line with established timescales (i.e. recommended by specialists or legislation).</p>	<p>key areas examined) found that: • Asbestos: Eight (out of ten) properties needed follow up works to be carried out as asbestos had been identified as part of the most recent inspections (2017/18) but no follow up works had been evidenced as carried out for these eight properties. • Electrical: Two (out of ten) properties tested included recommendations as a result of the most recent inspections undertaken. These were all 'C3' recommendations which are deemed to be 'best practice' and non-urgent. We confirmed that for one of the properties remedial actions were taken in December 2018 but for the remaining property no works had been undertaken. • Water/Legionella: All ten properties tested had recommendations raised as part of the most recent report obtained from Envirocure in January and February 2019 but none of these recommendations were acted upon until work notices were issued on 23 January 2020 for all properties. • Lifts: Two (out of ten) lifts tested where in need of further remedial actions. In one case this was undertaken 76 days from the report/inspection date. For the remaining case, there was no evidence of remedial works being undertaken. Both these cases were stair lifts and not</p>	<p>sites which have asbestos identified in the 2017/18 reports, any actions required as a result of these inspections will be recorded and prioritised accordingly. Mark Whitfield is assisting us with reviewing the re-inspections as Adur Homes does not currently have a member of staff with P405 qualification.</p> <ul style="list-style-type: none"> <li>• Electrical: Due to budget pressures we do not undertake C3 recommendations unless the property is in an overall state whereby it requires a rewire due to other C1 and C2 failures. It is not a regulatory requirement for the Council to undertake C3 recommendations.</li> <li>• Legionella and Lifts: All actions have now been completed, we are looking to increase staff resources in compliance so that each of the services has an assigned contract manager. Currently the Compliance Manager is responsible for all services within compliance which. A Compliance and asset management system would automate this and would highlight areas of noncompliance via</li> </ul>		

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
	<p>passenger lifts. • Gas: In all ten cases inspections had been undertaken and none of the properties tested had any follow-up actions noted. • Fire: Seven (out of ten) properties had a Fire Risk Assessment completed within the last year, the reports were retained and results recorded. The other three were in progress.</p> <p>Where issues identified from compliance checks are not rectified in a timely manner and management do not monitor these to ensure that rectification occurs in a timely manner, there is an increased risk that the Council continues to be non-compliant and risks the health and/or safety of the public/staff.</p>	<p>regular reporting. We currently have to manage action lists across compliance manually which can lead to actions being missed due to time pressures and human error.</p> <ul style="list-style-type: none"> <li>• FRA: There have been some minor delays with fire risk assessments but we are now on target to have all sites fire risk assessed within the required timescales (annual for Sheltered and Bi-annual for General needs).</li> </ul> <p>Maintenance Manager Deadline – 1<sup>st</sup> November 2020</p>		

**Project Management 2020/21 - (Final Issued June 2021)**

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
<p>2.5 The Scrutiny and Risk Officer must ensure that all necessary steps in the planning and executing of a project are followed, and documentation is retained.</p> <p>In addition to centralised document retention (which would make gaps in</p>	<p>As noted above, there were four projects in which no documentation was provided, despite repeated attempts to contact the named project managers.</p> <p>In addition, for the six projects that we did examine, there were various pieces of project documentation that the project</p>	<p>The Councils will do some follow up training for staff from Autumn 2021 to clarify the project cycles.</p> <p>Deadline 31<sup>st</sup> October 2021</p>	<p>Update provided to IA confirmed that a programme of Project Management training for staff is being investigated and details will be shared with staff when available.</p>	<p>31<sup>st</sup> March 2022</p>

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
<p>documentary evidence more obvious), the Scrutiny and Risk Officer should track the stages at which each project stands and ensure that all necessary documentation for that stage has been completed before projects progress.</p>	<p>managers were unable to provide. For example:</p> <p><i>Consideration and approval by a project board</i></p> <p>This was not provided for:</p> <ul style="list-style-type: none"> <li>• Coast Protection Works: Shoreham Harbour Wall Project</li> <li>• Crematorium: Provision of a walkway above the cremators to enable maintenance and ventilation to the roof area above the cremators</li> </ul> <p><i>Project evaluation</i></p> <p>This was not provided for:</p> <ul style="list-style-type: none"> <li>• Crematorium: Provision of a walkway above the cremators to enable maintenance and ventilation to the roof area above the cremators</li> <li>• Miscellaneous: Customers of concern: <ul style="list-style-type: none"> <li>• Moving to digital operating models: CRM</li> </ul> </li> <li>• Communities: Tascomi Environmental Health and Licensing</li> </ul> <p><i>Approval to close</i></p> <ul style="list-style-type: none"> <li>• Crematorium: Provision of a walkway above the cremators to enable maintenance and ventilation to the roof area above the cremators</li> </ul>			

Recommendation (Reference & content)	Findings and Risk as outlined in Final Audit Report	Agreed Action, Comments & Original Implementation deadline	Follow Up Comments	Proposed Completion Date
	<ul style="list-style-type: none"> <li>Moving to digital operating models: CRM Communities: Tascomi Environmental Health and Licensing</li> </ul> <p>In addition to there being an incomplete audit trail, this also leads to a risk of projects which are not progressing in line with agreed milestones not being identified and remedial actions being taken in a timely manner leading to failure of projects. This in turn could lead to significant financial and reputational damage to the Councils.</p>			

## A3 Definitions of Assurance

Definitions of Assurance Levels		
Level	Description	
Full	There is a sound system of control designed to achieve the system objectives and the controls are being consistently applied.	
Satisfactory	While there is a basically sound system, there are weaknesses that put some of the system objectives at risk, and/or there is evidence that the level of non-compliance with some of the controls may put some of the system objectives at risk.	
Limited	Weaknesses in the system of controls are such as to put the system objectives at risk, and/or the level of non-compliance puts the system objectives at risk.	
No	Control is generally weak, leaving the system open to significant error or abuse, and/or significant non-compliance with basic controls leaves the system open to error or abuse.	
Definitions of Recommendations		
Priority	Definition	Action required
Priority 1 (Fundamental)	Major issues for the attention of senior management and the Joint Governance Committee.	Remedial action must be taken urgently and within an agreed timescale.
Priority 2 (Significant)	Other recommendations for local management action.	Remedial action should be taken at the earliest opportunity and within an agreed timescale.

Priority 3 (Housekeeping)	Minor matters.	Remedial action should be prioritised and undertaken within an agreed timescale.
---------------------------	----------------	--



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
22 March 2022  
Agenda Item 8

Key Decision: No

Ward(s) Affected: N/A

## 2022/23 INTERNAL AUDIT PLAN

### Report by the Acting Head of Internal Audit

#### Executive Summary

#### 1. Purpose

- 1.1 This report Asks Members to consider and approve the 2022/23 Internal Audit Plan.

#### 2. Recommendations

##### 2.1 Recommendation One

That the Committee consider whether there are any specific internal audits which they would like to see progressed in 2022/23, which are not currently contained within the proposed plan.

##### 2.2 Recommendation Two

That the 2022/23 Internal Audit Plan be approved.

#### 3. Context

##### 3.1 Background

In accordance with professional internal auditing standards and the Internal Audit Charter, Internal Audit Plans are presented annually to Members for consideration and approval.

In order to focus internal audit resources on areas of high risk or where independent assurance is required, we have met with each Head of Service to discuss and identify potential audits by:

- Reviewing the risks contained within the Councils' corporate and service risk registers;
- Discussing areas of change or concern; and
- Considering current issues impacting on Local Government.

#### 4. Issues for Consideration

- 4.1 The proposed 2022/23 Internal Audit Plan, attached as **Appendix A**, consists of 27 audits and 515 days of work allocated as summarised below:

Category of Work	Type of Work	Number of Days
Audits of High Risk areas	System audits, annual testing of key financial and governance systems	211
Audits of High Risk areas	Cross service audits	47
Audits of Medium Risk areas	System and cross service audits	20
Audits of Low Risk areas	System audits	5
ICT Audits	Specialist ICT related audits and Application Reviews	55
Contract Audits	Specialist reviews & Contract examination	45
Covid-19 audits	Specific audits required for post assurance in respect of Covid grants provided by the Government	22
NFI	Co-ordination & investigation of matches	30
Follow Up	Follow up to confirm implementation of agreed audit recommendations	20
Other	Management & Contingency	60
<b>Total Days in Plan</b>		<b>515</b>

- 4.2 An ongoing system of monitoring the progress of internal audit work against the plan is in place. Monthly progress is reported to the Chief Financial Officer and quarterly reports on progress are presented to this Committee. In accordance with the Terms of Reference, other reports may be presented to the Committee as necessary during the year.
- 4.3 The Committee is asked to consider whether there are any specific areas of interest, which they would like to see covered in the 2022/23 Internal Audit Plan.

## **5. Engagement and Communication**

- 5.1 Following meetings with each Head of Service, the proposed draft 2022/23 Internal Audit Plan was presented to the Councils' Leadership Team for review and comment. Any comments received have been addressed within the proposed plan.

## **6. Financial Implications**

- 6.1 The costs for the provision of Internal Audit are included within the Councils budgets as presented by the Chief Finance Officer.

## **7. Legal Implications**

- 7.1.1 There are no legal matters arising as a result of this report.

### **Background Papers**

None

### **Officer Contact Details:**

Dave Phillips  
Acting Head of Internal Audit  
Town Hall, Worthing  
Tel: 01903 221255  
[Dave.phillips@mazars.co.uk](mailto:Dave.phillips@mazars.co.uk)

## **Sustainability & Risk Assessment**

### **1. Economic**

Matter considered and no issues identified.

### **2. Social**

#### **2.1 Social Value**

Matter considered and no issues identified.

#### **2.2 Equality Issues**

Matter considered and no issues identified.

#### **2.3 Community Safety Issues (Section 17)**

Matter considered and no issues identified.

#### **2.4 Human Rights Issues**

Matter considered and no issues identified.

### **3. Environmental**

Matter considered and no issues identified.

### **4. Governance**

The report does not seek to meet any particular Council priority.



**Adur District & Worthing Borough Councils  
Proposed 2022-23 Internal Audit Plan  
March 2022**



## Appendix 1 Proposed 2022/23 Internal Audit Plan

Audit area	Risk Register Issue (were relevant)	Notes	Audit Risk Rating	Indicative Days	Q1 (Apr-Jun)	Q2 (Jul-Sep)	Q3 (Oct-Dec)	Q4 (Jan-Mar)
<b>ECONOMY</b>								
<b>Planning &amp; Development</b>								
Community Infrastructure Levy		Cyclical review of CIL which only relates to Worthing.	L	5	5	-	-	-
Fire Safety		New income stream area - provision of service to other Councils and businesses.	H	12	-	-	12	-
<b>Place &amp; Economy</b>								
Economic Development - Small Business Growth Grants & Apprenticeship Grants		Grant monies of £70k provided to each Council by WSCC per year for allocating as grants.	M	10	-	-	-	10
Markets	PE04 - Risk of not achieving commercial income (Medium)	<b>AUDIT POSTPONED FROM 2021/22 PLAN.</b> Area was subject to fraud through theft of pitch fees in 2016. Changes made and a new officer is now in post, potential growth area both inside and outside of the District/Borough so assurance needed that processes are effective and will allow for growth.	H	15	-	15	-	-

Audit area	Risk Register Issue (were relevant)	Notes	Audit Risk Rating	Indicative Days	Q1 (Apr-Jun)	Q2 (Jul-Sep)	Q3 (Oct-Dec)	Q4 (Jan-Mar)
<b>Major Projects &amp; Investment</b>								
Governance of Property Disposals	MPI09 - Failure to develop and adhere to property management protocols for the Council's commercial property portfolio (Low)	Head of Service request - audit to look at ensuring compliance with disposal requirements in respect of the sale of freehold properties	H	12	-	-	12	-
Safety of Commercially Leased Buildings	MPI10 - Risk of commercially leased out premises - Need to ensure buildings are safe, lawful and compliant with requirements (Medium)	Head of Service request - audit to look at ensuring safety compliance is being managed.	H	12	-	-	-	12
<b>COMMUNITIES</b>								
<b>Environmental Services</b>								
Commercial Waste		Head of Service request - audit to look at strategy - price setting, roles & responsibilities, processes. Audit to include both commercial and garden waste.	H	25	-	25	-	-
<b>Housing</b>								
Complaints		Audit to examine how complaints regarding Housing (inc. Adur Homes) are received and managed.	H	15	15	-	-	-
Invoicing of Housing services		Audit to examine whether there is a consistent	M	10	-	-	10	-

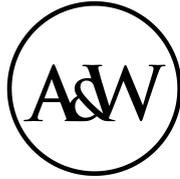
Audit area	Risk Register Issue (were relevant)	Notes	Audit Risk Rating	Indicative Days	Q1 (Apr-Jun)	Q2 (Jul-Sep)	Q3 (Oct-Dec)	Q4 (Jan-Mar)
		approach to invoicing within the department.						
<b>DIGITAL &amp; RESOURCES</b>								
Risk Management		Annual audit of arrangements.	H	10	-	-	-	10
Carbon Reduction Programme	Corp Risk - Climate Emergency (High)	<b>AUDIT (RESIDUAL DAYS) POSTPONED FROM 2021/22 PLAN.</b> Consideration of governance of programme and how the Councils ensure that the funding received will be spent be deadlines.	H	14	-	-	14	-
<b>Human Resources</b>								
Civica/Connect HR system	HR03 - Failure to implement the phase 2 of the HR Connect system effectively system (Medium)	<b>AUDIT POSTPONED FROM 2021/22 PLAN.</b>	H	12	-	-	12	-
Recruitment & Selection		Audit to look at recruitment & selection pre implementation of the new recruitment module of Civica Connect	H	12	12	-	-	-
<b>Financial Services</b>								
Creditors		Head of Service request to complete full audit of one	H	12	-	-	12	-

Audit area	Risk Register Issue (were relevant)	Notes	Audit Risk Rating	Indicative Days	Q1 (Apr-Jun)	Q2 (Jul-Sep)	Q3 (Oct-Dec)	Q4 (Jan-Mar)
		key financial system each year.						
Key control testing - financial systems		Ongoing testing of key financial controls (includes Revenues & Benefits systems).	H	40	10	10	10	10
<b>Legal Services</b>								
Information Governance	Corp Risk - Failure to comply with GDPR & DPA 2018 (Med) LS03 - Information Governance (Med)	Head of Service request to look at information governance across the Councils - scope to be agreed with SIGO	H	20	-	20	-	-
<b>COVID-19 AUDITS</b>								
Self-Isolation Grants	Corp Risk - Covid 19 (High)	<b>AUDIT POSTPONED FROM 2021/22 PLAN.</b>	H	12	-	12	-	-
BEIS Grants - Post Assurance Payment Plan	Corp Risk - Covid 19 (High)	Plan of work required to be completed following grants allocated by Gov	H	10	-	5	5	-
<b>COMPUTER AUDITS</b>								
Digital Strategy		Audit to look at Digital Strategy after Councils overall strategy has been refreshed.	H	15	-	-	15	-
Systems Development		Audit to look at the Digital service's development of systems.	H	20	-	20	-	-
Device Management & Security	CD04 - Data Breach	Noted as High Risk in revised IT Audit Needs Assessment (Sep 20)	H	20	20	-	-	-

Audit area	Risk Register Issue (were relevant)	Notes	Audit Risk Rating	Indicative Days	Q1 (Apr-Jun)	Q2 (Jul-Sep)	Q3 (Oct-Dec)	Q4 (Jan-Mar)
		<b>AUDIT POSTPONED FROM 2021/22 PLAN</b>						
<b>CONTRACT AUDITS</b>								
Adur Leisure - contract management	FS06 - Contract management (Medium)	New contract awarded in 20/21 to South Downs Leisure following demise of Adur Leisure Trust during Covid	H	15	-	15	-	-
Planned Maintenance programme	FS06 - Contract management (Medium)	New contract currently being procured for planned maintenance of corporate buildings	H	15	-	-	-	15
Energy Supplier - procurement & contract management	FS06 - Contract management (Medium)	New contract currently being procured	H	15	-	-	15	-
<b>CROSS SERVICE REVIEWS</b>								
Supply of Affordable Housing	Corp Risk - Housing Supply (High) H02 (B) - Failure to enable development of affordable homes	<b>AUDIT POSTPONED FROM 2021/22 PLAN.</b>	H	12	-	-	12	-
Workforce Planning	Corp Risk - Organisational Development (Low)	Audit to examine how departments and services plan their workforce requirements for the coming years. To include succession planning	H	20	-	-	20	-
Councils response and impacts of Welfare Reform, Cost of Living, Covid-19.	Corp Risks - Welfare Reform (High), Covid-19 (High)	was <b>WELFARE REFORM AUDIT POSTPONED FROM 2021/22 PLAN</b>	H	15	-	-	-	15

Audit area	Risk Register Issue (were relevant)	Notes	Audit Risk Rating	Indicative Days	Q1 (Apr-Jun)	Q2 (Jul-Sep)	Q3 (Oct-Dec)	Q4 (Jan-Mar)
<b>OTHER</b>								
Management & Admin		Ongoing contract management.	N/a	40	10	10	10	10
Ad-Hoc/Contingency		Resources for unplanned work, if required.	N/a	20	5	5	5	5
NFI Co-Ordination		NFI liaison.	N/a	10	2.5	2.5	2.5	2.5
NFI Testing		Continuing testing of NFI matches	N/a	20	5	5	5	5
Follow-Up		Follow up of prior year recommendations.	N/a	20	5	5	5	5
<b>Totals</b>				<b>515</b>	<b>89.5</b>	<b>141.5</b>	<b>169.5</b>	<b>114.5</b>

This page is intentionally left blank



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
22 March 2022  
Agenda Item 9

Ward(s) Affected: All

## Anti-Money Laundering Policy

### Report by the Monitoring Officer

**Officer Contact Details:** Geoff Wild, Head of Legal and Monitoring Officer,  
[geoff.wild@adur-worthing.gov.uk](mailto:geoff.wild@adur-worthing.gov.uk)

### Executive Summary

#### 1. Purpose

- 1.1. This report provides an Anti-Money Laundering Policy for approval.

#### 2. Recommendations

- 2.1. To note the requirements of the various regulations on local authorities.
- 2.2. To approve an Anti-Money Laundering Policy.

#### 3. Context

- 3.1 The Councils need to ensure that there are appropriate arrangements and processes in place for the monitoring and reporting of any instances of suspected money laundering operations.
- 3.2 The Joint Governance Committee is responsible for anti-fraud and corruption arrangements as part of its terms of reference.
- 3.3 In order to provide assurance that the councils' anti-money laundering procedures are consistent with relevant professional guidance and other

statutory and best practice requirements, a policy has been prepared for approval by the Joint Governance Committee.

- 3.4 The Anti-Money Laundering Policy will form part of the Councils' suite of anti-fraud and corruption policies in order to satisfy the relevant requirements.

#### **4. Issues, Options and Analysis of Options**

- 4.1 As part of the Chartered Institute of Public Finance and Accountability (CIPFA) Code of Practice, the Councils need to ensure there are appropriate processes in place for the reporting and investigation of allegations of fraud and corruption.
- 4.2 Whilst local authorities are not directly covered by the requirements of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, guidance from CIPFA and other professional bodies indicates that public service organisations should comply with the underlying spirit of the legislation and regulations, and put in place appropriate and proportionate anti-money laundering safeguards and reporting arrangements.
- 4.3 The Regulations apply to 'relevant persons' acting in the course of business carried on by them in the UK. Not all the council's business is 'relevant' for the purposes of the legislation. It is mainly accountancy and financial, company and property transactions.
- 4.4 However, the safest way to ensure compliance with the law is to apply them to all areas of work undertaken by the council and require all staff to comply with the policy.
- 4.5 The key requirement is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officer (MLRO).
- 4.6 The obligations on the council are to establish and maintain appropriate and risk-sensitive policies and procedures, including:
- 4.6.1 appoint the Chief Financial Officer as the MLRO to receive disclosures from employees of money laundering activity (their own or anyone else's);
  - 4.6.2 implement a procedure to enable reporting of suspicions of money laundering;

- 4.6.3 maintain client identification procedures in certain circumstances
- 4.6.4 maintain record keeping procedures;
- 4.6.5 conduct money laundering and terrorist funding risk assessment and adopt appropriate internal controls which are both proportionate and cost effective in relation to the risks;
- 4.6.6 make those staff most likely to be exposed to or suspicious of terrorist financing or money laundering aware of any requirements placed on the councils, their staff and on them as individuals; and
- 4.6.7 provide targeted training to those staff considered to be the most likely to encounter the financing of terrorism and money laundering.

## **5. Issues for Consideration**

- 5.1 Although local authorities are unlikely to be a prime target for money laundering, the size and scope of services is such that it is not possible to discount entirely the risks surrounding money laundering. The policy and the Councils' approach are designed to mitigate and minimise these risks..

## **6. Engagement and Communication**

- 6.1 Officers have consulted with the relevant departments to inform the data and Policy set out in this report.

## **7. Impact on corporate policies, priorities, performance and community Impact**

- 7.1 Preventing fraud and corruption supports the council's approach to corporate governance and will ensure the proper balance of maintaining order against protecting the rights of constituents.

## **8. Financial Implications**

- 8.1 The attached Policy and proposed approach to the anti-money laundering regulations meets the Councils' obligations and minimises the risk of this type of activity occurring. It also ensures that staff are aware of their responsibilities and who they should contact should they suspect money laundering transactions are taking place.

## **9. Legal Implications**

- 9.1 The processes and procedures proposed follow best practice guidance. Accordingly, there are no direct legal implications arising out of the # recommendations in the report.

### **Background Papers**

None

### **Appendices to the report**

Appendix 1 – Anti-Money Laundering Policy

### **Officer Contact Details:-**

Geoff Wild

Head of Legal and Monitoring Officer

[geoff.wild@adur-worthing.gov.uk](mailto:geoff.wild@adur-worthing.gov.uk)

## **Sustainability & Risk Assessment**

- 1. Economic**  
Matter considered and no issues identified.
- 2. Social**  
Matter considered and no issues identified.
  - 2.1 Social Value**  
Matter considered and no issues identified.
  - 2.2 Equality Issues**  
There are no such implications directly related to this report.
  - 2.3 Community Safety Issues (Section 17)**  
Matter considered and no issues identified
  - 2.4 Human Rights Issues**  
Matter considered and no issues identified
- 3. Environmental**  
Matter considered and no issues identified
- 4. Governance**  
Matter considered and no issues identified



ADUR & WORTHING  
COUNCILS

# **ANTI MONEY LAUNDERING POLICY**

**March 2022**

Document Information

<b>Title:</b>	<b>Anti-Money Laundering Policy</b>	
<b>Status:</b>	<b>DRAFT</b>	
<b>Current Version:</b>	<b>0.1</b>	
<b>Author:</b>	Geoff Wild, Head of Legal Services & Monitoring Officer <a href="mailto:geoff.wild@adur-worthing.gov.uk">geoff.wild@adur-worthing.gov.uk</a>	
<b>Sponsor:</b>	Paul Brewer, Director for Digital, Sustainability & Resources <a href="mailto:paul.brewer@adur-worthing.gov.uk">paul.brewer@adur-worthing.gov.uk</a>	
<b>Revision Consultation:</b>	Corporate Finance Legal Services	
<b>Approved by:</b>	Sarah Gobey, Chief Financial Officer	
<b>Approval Date:</b>	PENDING	
<b>Review Frequency:</b>	Triennially	
<b>Next Review:</b>	March 2025	

## Contents

Document Information	2
<b>1. Introduction</b>	<b>4</b>
<b>2. Scope of this policy</b>	<b>4</b>
<b>3. What is Money Laundering?</b>	<b>5</b>
<b>4. Obligations of the Councils</b>	<b>6</b>
<b>5. Nominated Officers</b>	<b>7</b>
<b>6. Reporting Arrangements</b>	<b>7</b>
<b>7. Consideration of the Disclosure by the Money Laundering Officer</b>	<b>8</b>
<b>8. Customer Due Diligence</b>	<b>9</b>
<b>9. Enhanced Due Diligence</b>	<b>11</b>
<b>10. Record Keeping</b>	<b>11</b>
<b>11. Guidance and Training</b>	<b>11</b>
<b>Appendix A</b>	<b>13</b>
<b>Appendix B</b>	<b>17</b>

## 1. Introduction

- 1.1 Adur & Worthing Councils (the Councils) will do all they can to prevent them and their staff from being exposed to money laundering, to identify the potential areas where it may occur, and to comply with all legal and regulatory requirements, especially with regard to the reporting of actual or suspected cases.
- 1.2 [The Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulation 2017](#), which transposed the 4<sup>th</sup> EU Money Laundering Directive into UK Law, commenced on 26 June 2017. Whilst these regulations are not directly imposed on local authorities, guidance provided from financial professions, including the Chartered Institute of Public Finance and Accounting (CIPFA), indicates that public service organisations should comply with the underlying spirit of the legislation and regulations and have in place internal procedures to prevent the use of their services for money laundering. Specific to these regulations is an enhanced risk-based approach in conducting due diligence reviews, which are detailed further in this policy.
- 1.3 Money Laundering Regulations apply to cash transactions in excess of 15,000 Euros (approximately £12,500). However, the [Proceeds of Crime Act 2002](#) (POCA) applies to all transactions and can include dealings with agents, third parties, property or equipment, cheques, cash or bank transfers.
- 1.4 Key points:
  - The Councils are committed to the prevention, detection and reporting of money laundering.
  - All employees and elected members must be vigilant for the signs of money laundering.
  - Any employee or elected member who suspects money laundering activity must report this promptly to the Chief Financial Officer as the officer delegated to receive such reports.
  - All payments to the Councils accepted in cash that exceed £12,500 should be reported to the Chief Financial Officer.
  - Where the Councils are carrying out certain regulated activities by way of business then the customer due diligence procedure must be followed.

## 2. Scope of this policy

- 2.1 This Policy applies to all officers and elected members of the Councils and aims to maintain the high standards of conduct that currently exist within the Councils by preventing criminal activity through money laundering. The policy sets out the procedures that must be followed, e.g. reporting of suspicions of money laundering activity, to enable the Councils and staff to comply with their legal obligations.

2.2 This Policy sits alongside the Councils' Whistleblowing, Anti-Fraud, and Bribery & Corruption Policies.

2.3 Failure to comply with the procedures set out in this Policy may lead to disciplinary action and may also lead to a conviction under POCA and Money Laundering Regulations 2017. Any disciplinary action will be dealt with in accordance with the Councils' Disciplinary Procedure or Member Code of Conduct.

### **3. What is Money Laundering?**

3.1 Money laundering can be defined as “a process that makes money with an illegal origin appear legal so that it may be used”. The aim is to legitimise the possession of such monies through circulation and this effectively leads to ‘clean’ funds being received in exchange.

3.2 A range of activities and offences concerning money laundering is included within the following legislation:

- a) The POCA (as amended by the Serious Organised Crime and Police Act 2005, Crime and Courts Act 2012, Serious Crime Act 2015 and Criminal Finances Act 2017);
- b) Money Laundering Terrorist Financing & Transfer of Funds (Information on the Payer) Regulations 2017 (as amended by the Money Laundering & Terrorist Financing (amendment) Regulations 2019);
- c) The Terrorism Act 2000 (as amended by the Criminal Finances Act 2017);
- d) Offences under the Bribery Act 2010 may also constitute money laundering.<sup>1</sup>

3.3 The legislation covers all criminal property where the alleged offender knows or suspects the property constitutes or represents benefit from any criminal conduct. Property is all property (including tax evasion) situated anywhere in the world.

3.4 Money laundering is the term used for a number of offences involving the proceeds of crime or terrorism funds. The following acts constitute acts of money laundering:

- a) Concealing, disguising, converting, transferring criminal property or removing it from the UK (s.327 of the POCA);
- b) Entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (s.328); or
- c) Acquiring, using or possessing criminal property (s.329).

---

<sup>1</sup> The Money Laundering and Terrorist Financing (Regulations) 2019 and Anti Money Laundering Act 2018 came into effect during 2020, but do not place any specific new requirements upon local authorities. Nevertheless, the Councils will have regard to these regulations when applying any actions in relation to his matter.

These are the primary money laundering offences and are thus prohibited acts under the legislation. There are two secondary offences:

- d) Failure to disclose any of the three primary offences; and
- e) Tipping off.

Tipping Off is where someone informs a person or people who are, or who are suspected of being involved in, money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation. A person found guilty of tipping off or prejudicing an investigation offence is liable to imprisonment (maximum five years), a fine or both under the legislation. In addition, a new criminal offence was created whereby, any individual who recklessly makes a statement in the context of money laundering that is false or misleading, commits an offence punishable by a fine and or up to two years imprisonment.

- 3.5 Any member of staff could potentially be caught by the money laundering provisions as noted above if they suspect money laundering and either become involved with it in some way and/or do nothing about it. This policy therefore sets out how any concerns should be raised.
- 3.6 It is impossible to give a definitive list of ways in which to spot money laundering or how to decide whether to make a report. Facts which tend to suggest that something 'odd' is happening may be sufficient for a reasonable suspicion of money laundering to arise. Risk factors which may, either alone or cumulatively with other factors, suggest the possibility of money laundering activity are provided at **Appendix B**.
- 3.7 While the risk to the Councils of contravening the legislation is low, it is important that all employees are familiar with their responsibilities. Serious criminal sanctions may be imposed for breaches of the legislation. The key requirement of employees is to promptly report any suspected money laundering activity to the Chief Financial Officer.

#### **4. Obligations of the Councils**

- 4.1 When complying with the obligations, the Councils are required to:
  - a) Appoint a Money Laundering Reporting Officer (MLRO) to receive disclosures from employees of money laundering activity.
  - b) Implement risk-sensitive policies and procedures relating to customer due diligence, reporting, record keeping, internal control, risk assessment and management, monitoring and management of compliance, along with the communication of policies and processes.
  - c) Apply due diligence measures in certain circumstances.
  - d) Know the intended nature of business relationships and undertake ongoing monitoring of them (to identify unusual transactions).

- e) Obtain information on the purpose and nature of transactions/business relationships.
- f) Conduct ongoing monitoring of certain business relationships.
- g) Maintain record keeping procedures. (e.g. for evidence of identity obtained, details of transactions undertaken, for at least 5 years).
- h) Train relevant staff.

## 5. Nominated Officers

- 5.1 The officer nominated as MLRO to receive such reports from staff within that Councils is the Chief Financial Officer. Alternatively and in the absence of the Chief Financial Officer you may also contact the Head of Legal.

## 6. Reporting Arrangements

- 6.1 If you become aware that your involvement in a matter may amount to money laundering, you must immediately report it to the MLRO using the report form at **Appendix A** and not take any further action until you have received consent from the MLRO, who may have to be granted such consent by the National Crime Agency (NCA). The disclosure should be within 'hours' of the information coming to your attention, not weeks or months later.
- 6.2 Cash payments to the Councils exceeding £12,500 must be reported immediately to the MLRO using the report form (**Appendix A**) regardless of whether money laundering activities are suspected or not.
- 6.3 You must follow any subsequent directions of the MLRO and must not yourself make any further enquiries into the matter. You must not disclose or otherwise indicate your suspicions to the person suspected of the money laundering. In addition, you must not discuss the matter with others, e.g. colleagues, or note on the file that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.
- 6.4 The MLRO must promptly evaluate any disclosure report, to determine whether it should be reported to the National Crime Agency via the [UK Financial Intelligence Unit](#) by means of a Suspicious Activity Report (SAR).
- 6.5 The MLRO or any member of staff will commit a criminal offence if they know or suspect, or have reasonable grounds to do so, through a disclosure being made to them, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the National Crime Agency.
- 6.6 Any information containing personal and/or sensitive data which is supplied during the course of a money laundering investigation shall not be processed wider than is absolutely necessary for the purposes of determining whether a money laundering offence has been committed.

## **7. Consideration of the Disclosure by the Money Laundering Officer**

- 7.1 Upon receipt of a disclosure report, the MLRO must note the date of receipt on the report form and advise you of the timescale within which you will receive a response.
- 7.2 The MLRO will consider the report and other relevant available internal material, e.g.
- a) reviewing other transaction patterns and volumes
  - b) the length of any business relationship involved
  - c) the number of any one-off transactions and linked one-off transactions
  - d) any identification evidence held
- 7.3 The MLRO will undertake such other reasonable enquiries as are necessary to ensure that all available information is taken into account in deciding whether a report to the National Crime Agency is required (such enquiries being made in such a way as to avoid any appearance of tipping off those involved). The MLRO may also need to discuss the report with you.
- 7.4 Once the MLRO has evaluated the disclosure report and any other relevant information, they must make a timely determination as to whether:
- a) There is actual or suspected money laundering taking place;
  - b) There are reasonable grounds to know or suspect that is the case;
  - c) The identity of the money launderer or the whereabouts of the property involved is known or could be identified or the information may assist in such identification; and
  - d) Whether it is necessary to seek consent from the National Crime Agency for a particular transaction to proceed.
- 7.5 Where the MLRO does so conclude, they must then disclose the matter as soon as practicable to the National Crime Agency on their standard report form or via SAR online and in the prescribed manner, unless they have a reasonable excuse for non-disclosure (e.g. if you are a lawyer and wish to claim legal professional privilege for not disclosing the information).
- 7.6 Where the MLRO suspects money laundering but has a reasonable excuse for non-disclosure, then they must note the report form accordingly; they can then immediately give consent for any ongoing or immediate transactions to proceed.
- 7.7 In cases where legal professional privilege may apply, the MLRO shall liaise with the Monitoring Officer/Deputy Monitoring Officer to decide whether there is a reasonable excuse for not reporting the matter to the National Crime Agency.
- 7.8 Where consent is required from the National Crime Agency for a transaction to proceed, then the transactions in question must not be undertaken or

completed until the National Crime Agency has specifically given consent, or there is deemed consent through the expiration of the relevant time limits without objection from the National Crime Agency.

- 7.9 Where the MLRO concludes that there are no reasonable grounds to suspect money laundering then they shall mark the report accordingly and give consent for any ongoing or imminent transactions to proceed.
- 7.10 All disclosure reports referred to the MLRO and reports made to the National Crime Agency must be retained by the MLRO in a confidential file kept for that purpose for a period of five years.

## 8. Customer Due Diligence

- 8.1 Customer due diligence means that the Councils must know their clients and understand their businesses. This is so that the Councils are in a position to know if there is suspicious activity that should be reported.
- 8.2 The 2017 Regulations require that the Councils identify their customers and verify their identity on the basis of documents, data or information obtained from a reliable source. Where there is a beneficial owner<sup>2</sup> who is not the customer, then the Councils must identify that person and verify the identity; and where the beneficial owner is a trust or similar, then the Councils must understand the nature of the control structure of that trust. Finally, the Councils must obtain information on the purpose and intended nature of the business relationship. Here are some simple questions that will help you decide if customer due diligence is necessary:
- a) Is the service a regulated activity? Note: Regulated activity is defined as the provision 'by way of business' of advice about tax affairs, accounting services, treasury management, investment or other financial services, audit services, legal services, estate agency, services involving the formation, operation or arrangement of a company or trust or dealing in goods wherever a transaction involves a cash payment of £12,000 or more.
  - b) Are the Councils charging for the service, i.e. is it by way of business?
  - c) Is the service being provided to a customer other than a UK public authority?

If the answer to any of these questions is **no**, then you do not need to carry out customer due diligence.

If the answer is **yes**, then you do not need to carry out customer due diligence before any business is undertaken for that client, but as soon as practicable after instructions are received.

---

<sup>2</sup> A beneficial owner is any individual who holds more than 25% of the shares, voting rights or interest in a company, partnership or trust.

- 8.3 Where you need to carry out customer due diligence then you must seek evidence of identity, e.g.
- a) Checking with the customer's website to confirm their business address;
  - b) Conducting an on-line search via Companies House to confirm the nature and business of the customer and confirm identities of any directors;
  - c) Seeking evidence from the key contacts or Individuals of their personal identity, for example their passport, and position within the organisation.
- 8.4 If satisfactory evidence of identity is not obtained at the outset of the matter, then the business relationship or transaction(s) cannot proceed any further.
- 8.5 The requirement for customer due diligence applies immediately for new customers and should be applied on a risk sensitive basis for existing customers.
- 8.6 Ongoing customer due diligence must also be carried out during the life of a business relationship but should be proportionate to the risk of money laundering, based on your knowledge of the customer and a regular scrutiny of the transactions involved. Particular scrutiny should be given to the following:
- a) complex or unusually large transactions;
  - b) unusual patterns of transactions which have no apparent economic or visible lawful purpose; and
  - c) any other activity likely by its nature to be related to money laundering or terrorist financing.
- 8.7 If, at any time, you suspect that a client or customer for whom you are currently or are planning to carry out a regulated activity is carrying out money laundering or terrorist financing, or has lied about their identity, then you must report this to the MLRO.

## **9. Enhanced Due Diligence**

- 9.1 In certain circumstances, enhanced customer due diligence must be carried out, e.g. where:
- a) The customer has not been physically present for identification.
  - b) The customer is a politically exposed person<sup>3</sup>.
  - c) There is a beneficial owner who is not the customer.
- 9.2 Enhanced customer due diligence could include additional documentation, data or information that will confirm the customer's identity and/or source of the funds to be used in the business relationship/transaction. If you believe that

---

<sup>3</sup> A 'politically exposed person' is an individual who at any time in the preceding year has held a prominent public function outside the UK and EU or international institution/body, their immediate family members or close associates.

enhanced customer due diligence is required you must consult the MLRO prior to carrying it out, to ensure that the checks are completed.

## **10. Record Keeping**

- 10.1 Where 'relevant business' is carried out, then the customer due diligence records and details of the relevant transactions for that client must be retained for at least five years after the business relationship.
- 10.2 An electronic copy of every customer due diligence record must be sent to the MLRO to meet requirements of the Regulations and in case of inspection by the relevant supervising body.
- 10.3 The precise nature of the records is not prescribed by law, however, they must be capable of providing an audit trail during any subsequent investigation, e.g. distinguishing the client and the relevant transaction and record in what form funds were received or paid.

## **11. Guidance and Training**

- 11.1 In support of the policy and procedure, the Councils will:
  - a) Endeavour to make all staff aware of the requirement and obligation placed on the Councils and on themselves as individuals by the anti-money laundering legislation; and
  - b) Provide targeted training where it has been identified staff are most likely to encounter money laundering.

**REPORT TO MONEY LAUNDERING REPORTING OFFICER (CHIEF FINANCIAL OFFICER): RE: MONEY-LAUNDERING ACTIVITY**

**CONFIDENTIAL**

**To:** Chief Financial Officer (Money Laundering Reporting Officer)

**From:** \_\_\_\_\_  
(Insert employee name and post title)

**Service:** \_\_\_\_\_

**Tel No/Email address:** \_\_\_\_\_

**DETAILS OF SUSPECTED OFFENCE:**

<b>Name(s) and address(es) of person(s) involved</b> (If a company/public body please include details of their nature of business if known)

<b>Nature, value and timing of activity involved</b> (Please include full details e.g. dates; what the payment was for and if this is a single transaction or has been identified as one of a series of transactions. Include all available evidence of the activity).
Date(s):
Description of activity:
Amount(s):
Where activity took place:
Evidence: (Please list and attach if possible)
Reasons for suspicion of activity:

**Has any investigation been undertaken to the best of your knowledge?**

(If yes, please include full details)

**Have you discussed your suspicions with anyone else?**

If yes, please explain who with and why such discussion was necessary:

**Please detail below any other information you feel is relevant.**

For example, do you feel you have a reasonable excuse for not disclosing the matter to the National Crime Agency (e.g. are you a lawyer and wish to claim legal professional privilege)?

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

**IMPORTANT: Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity either directly or indirectly with anyone else who could alert the suspect(s) that they are under investigation. If you do, this may be considered as a 'tipping off' offence under the legislation, which carries a maximum penalty of 5 years' imprisonment.**

---

**THIS SECTION FOR MONEY LAUNDERING REPORTING OFFICER USE ONLY**

Date Report Received: \_\_\_\_\_

Date Acknowledged: \_\_\_\_\_

Reference Number Allocated: \_\_\_\_\_

**CONSIDERATION OF DISCLOSURE TO THE NATIONAL CRIME AGENCY**

**Action Plan:**

--

**OUTCOME OF CONSIDERATION OF DISCLOSURE:**

<b>Are there reasonable grounds for suspecting money laundering activity?</b>
Yes/No – State reasons

<b>If there are reasonable grounds for suspicion, will a Suspicious Activity Report (SAR) be made to the NCA?</b> If yes, please state date report submitted: _____
--

<b>If no, please state below the reasons for non-disclosure to the NCA:</b> (Please include details of any discussions with other officers e.g. Legal Services, together with name(s) and advice given).
---

<b>Is consent required from the NCA to any on-going or imminent transactions which would otherwise be prohibited acts?</b>  If Yes, please confirm full details
---

<b>Details of liaison with the NCA</b>
Consent Not Required:  Date SAR Report Acknowledged: _____
<b>Consent Requested:</b>  <b>Notice Period: From:</b> _____ <b>To:</b> _____
(The NCA has 7 working days starting the first working day after the consent request is made to refuse continuation of the activity. If no refusal has been received, consent is deemed to have been given and the activity may continue).

**Moratorium Period: From:** \_\_\_\_\_ **To:** \_\_\_\_\_

(If consent is refused during the notice period, a further 31 days starting with the day on which the consent is refused must elapse before the activity may continue. In the absence of any action to restrain the activity by law enforcement during the moratorium period the activity may continue).

**Date and time consent given by the NCA:** \_\_\_\_\_

(Telephone consent will often be given, which can be relied upon, and followed up in writing several days later).

**SOCA Consent Reference:** \_\_\_\_\_

**Name and Contact Number of NCA Officer:**

\_\_\_\_\_

**Date consent given by you to the employee:** \_\_\_\_\_

**Any other relevant information:**

--

**Signed:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**IMPORTANT: This report and all other records relating to an investigation of suspected Money Laundering activity whether or not reported to the NCA must be kept in a confidential file for that purpose and retained for at least 5 years from the conclusion of the investigation.**

## POSSIBLE SIGNS OF MONEY LAUNDERING

Types of risk factors which *may*, either alone or along with other factors suggest the possibility of money laundering activity:

### General

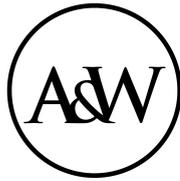
- a) A new customer with no previous 'history' with the Council;
- b) A secretive customer: for example, one who refuses to provide requested information without a reasonable explanation;
- c) Concerns about the honesty, integrity, identity of a customer;
- d) Illogical third party transactions, e.g. unnecessary routing or receipt of funds from third parties or through third party accounts;
- e) Involvement of an unconnected third party without logical reason or explanation;
- f) Payment of a substantial sum in cash (but it's reasonable to be suspicious of any cash payments, particularly those over £1,000);
- g) Overpayments by a customer;
- h) Absence of an obvious legitimate source of the funds;
- i) Movement of funds to/from overseas, particularly to and from a higher risk country;
- j) Where, without reasonable explanation, the size, nature and frequency of transactions or instructions is out of line with normal expectations;
- k) A transaction without obvious legitimate purpose or which appears uneconomic, inefficient or irrational;
- l) Cancellation or reversal of an earlier transaction;
- m) Requests for release of customer account details other than in the normal course of business;
- n) Poor business records or internal accounting controls;
- o) A previous transaction for the same customer which has been, or should have been, reported to the MLRO.
- p) Unusual property investment transactions with no apparent investment purpose;
- q) Instructions to receive and pay out money where there is no linked substantive property transaction involved (surrogate banking);
- r) Regarding property transactions, funds received for deposits or prior to completion from an unexpected source or where instructions are given for settlement funds to be paid to an unexpected destination.

The following table sets out the types of activities that might be suspicious and where the council may be susceptible to money laundering activities. It is not intended to be exhaustive, and just because something is not on the list, it doesn't mean that it shouldn't be reported.

<b>ACTIVITY</b>	<b>The types of activity that may be affected</b>
New customers with high value transactions	<ul style="list-style-type: none"> <li>• Selling property to individuals or businesses</li> <li>• Renting out property to individuals or businesses</li> <li>• Entering into other lease agreements</li> <li>• Undertaking services for other organisations</li> </ul>
Secretive clients	<ul style="list-style-type: none"> <li>• Housing benefit claimants who have sums of money entering into /out of their bank account (even if we do not award them benefit, we should still consider money laundering implications)</li> <li>• People buying or renting property from the council who may not want to say what it is for</li> <li>• People receiving grant funding who refuse to demonstrate what funding was used for</li> </ul>
Customers who we think are acting dishonestly or illegally	<ul style="list-style-type: none"> <li>• People paying for council services who do not provide details about themselves</li> <li>• People making odd or unusual requests for payment arrangements Illogical transactions</li> <li>• People paying in cash then requesting refunds</li> <li>• Requests for the council to pay seemingly unconnected third parties in respect of goods/services provided to the council</li> <li>• Requests for the council to pay foreign currencies for no apparent reason</li> <li>Payments of substantial sums by cash</li> <li>• Large debt arrears paid in cash</li> <li>• Refunding overpayments</li> <li>• Deposits/payments for property</li> <li>Movement of funds</li> </ul>
Payments of substantial sums by cash	<ul style="list-style-type: none"> <li>• Large debt arrears paid in cash</li> <li>• Refunding overpayments</li> <li>• Deposits/payments for property</li> </ul>
Movement of funds overseas	<ul style="list-style-type: none"> <li>• Requests to pay monies overseas, potentially for “tax purposes”</li> </ul>
Cancellation of earlier transactions	<ul style="list-style-type: none"> <li>• Third party “refunds” grant payment as no longer needed/used</li> </ul>

	<ul style="list-style-type: none"> <li>• No payment demanded even though goods/services have been provided</li> <li>• Sudden and unexpected termination of lease agreements</li> </ul>
Requests for client account details outside normal course of business	<ul style="list-style-type: none"> <li>• Queries from other companies regarding legitimacy of customers</li> <li>• Council receiving correspondence /information on behalf of other companies</li> </ul>
Extensive and overcomplicated client business structures/arrangements	<ul style="list-style-type: none"> <li>• Requests to pay third parties in respect of goods/services</li> <li>• Receipt of business payments (rent, business rates) in settlement from seemingly unconnected third parties</li> </ul>
Poor accounting records and internal financial control	<ul style="list-style-type: none"> <li>• Requests for grant funding/business support indicates third party not supported by financial information</li> <li>• Companies tendering for contracts unable to provide proper financial information/ information provided raises concerns</li> <li>• Tender for a contract which is suspiciously low</li> </ul>
Unusual property investment or transactions	<ul style="list-style-type: none"> <li>• Requests to purchase Council assets/land with no apparent purpose</li> <li>• Requests to rent Council property with no apparent business motive</li> </ul>
Overcomplicated legal arrangements/multiple solicitors	<ul style="list-style-type: none"> <li>• Property transactions where the Council is dealing with several different parties</li> </ul>

This page is intentionally left blank



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
22 March 2022  
Agenda Item 10

Ward(s) Affected: All

## The Councils' Surveillance Powers, Policy and Procedures

### Report by the Monitoring Officer

**Officer Contact Details:** Geoff Wild, Head of Legal and Monitoring Officer,  
[geoff.wild@adur-worthing.gov.uk](mailto:geoff.wild@adur-worthing.gov.uk)

### Executive Summary

#### 1. Purpose

- 1.1. Provides an update on the usage and activity of RIPA requests during 2021/22.
- 1.2. Provides an update following on from an inspection by the Investigatory Powers Commissioner's Office.
- 1.3. Provides a refreshed RIPA Policy for approval.

#### 2. Recommendations

- 2.1. To note the statistical information relating to the use of RIPA for the period 2021/22.
- 2.2. To note the findings of the RIPA inspection.
- 2.3. To agree a revised RIPA Policy.

#### 3. Context

- 3.1. The Regulation of Investigatory Powers Act 2000 (RIPA), and the Protection of Freedoms Act 2012, legislates for the use of local authorities of covert methods of surveillance and information gathering to assist in the detection and prevention of crime in relation to an authority's core functions.
- 3.2. On 1 September 2017, The Office of Surveillance Commissioners, The Intelligence Services Commissioner's Office and The Interception of

Communications Commissioner's Office were abolished by the Investigatory Powers Act 2016. The Investigatory Powers Commissioner's Office (IPCO) is now responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.

#### **4. Issues for consideration**

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

4.1.1. There was no Adur or Worthing RIPA surveillance authorisation processed during 2021/22.

##### **4.2. Inspection by the Investigatory Powers Commissioner's Office**

4.2.1. The last physical inspection of Adur and Worthing Councils took place during March 2018. This was a follow-up visit after a remote inspection in 2017 and was deemed necessary to ensure the recommendations arising from the report had been addressed. These related to:

- a) the need to revise policy to provide guidance to all staff on use of the internet and social media when carrying out research and conducting investigations;
- b) develop a means of audit to evaluate the nature and volume of Internet investigation being conducted across both organisations;
- c) ensuring that elected members are provided with sufficient information to ensure compliance with their obligations under the Codes of Practice; and
- d) to make arrangements for regular refresher training and RIPA awareness.

Action was taken soon after the 2017 inspection to remedy these issues; a matter that was confirmed by the inspector in their report of 2018.

A further remote desktop inspection by an IPCO inspector was carried out on both Adur and Worthing Councils during autumn 2021. The inspector examined the councils' use of powers under Part II of RIPA in relation to directed surveillance and CHIS. This process was facilitated by Maria Memoli (former Head of Legal Services and Monitoring Officer), on behalf of the Senior Responsible Officer (Paul Brewer, Director for Digital, Sustainability & Resources). The inspection demonstrated a level of compliance that removed the requirement for a physical visit.

Discussions with Ms Memoli revealed that the structures and processes

described within the last inspection report have altered very little. Neither council has opted to use RIPA powers since the last inspection in 2018 nor is there any intention to do so in the near future. The Chief Executive and Executive Directors, except for Mr Brewer as SRO, are all nominated Authorising Officers.

The key findings of the surveillance authorisation inspection are summarised below:

- e) Due to the time that has elapsed since the last internal RIPA training course was delivered (2017) and the appointment of Dr Howe as the new Chief Executive, the requirement for refresher training is pressing, particularly as the relevant Codes of Practice were updated in 2018. The inspector was reassured that steps have been taken to ensure this is delivered in early 2022 and a RIPA e-learning course now forms part of the learning hub on the councils' intranet. HR colleagues will remind staff to undertake the relevant training.
- f) Council members should be provided with regular updates on RIPA usage (in accordance with paragraph 4.47 of the 2018 Home Office Covert Surveillance and Property Interference Code of Practice), even where the powers have not been used. The last such report was made to Members of the Joint Governance Committee in July 2019 and, as such, a refresher report is overdue. This paper therefore fulfils the requirement for a report to be submitted concerning the use of RIPA and the associated policy. Annual updates will be provided hereafter.
- g) Responsibility for ensuring the RIPA policy remains up to date and for maintaining the statutorily-required central record of RIPA authorisations lies with Legal Services (under the oversight of the SRO), albeit it is some time since RIPA powers were utilised in Adur or Worthing, and as such, no substantive records exist. The Inspector reviewed the RIPA policy and found it to be fit for purpose (it was internally reviewed in December 2021 by Ms Memoli to correct minor typographical errors concerning terminology).
- h) Following the last inspection, it was directed that regular audit activity be conducted to ensure the councils had oversight of internal internet use by staff to ensure that they were not inadvertently drifting into surveillance when going about investigative activity. The inspector was reassured that there remains in place guidance for staff highlighting how the internet should be used in conjunction with their professional functions, and that compliance with this is subject to local audit by managers.
- i) Following updates to both the Covert Surveillance and CHIS Codes of Practice in 2018, including safeguards to ensure that data obtained from RIPA activity is suitably managed and protected, if RIPA powers are used in the future, suitable mechanisms will be put in place to ensure the information obtained is treated in compliance with these statutory requirements.

## **Policy Changes**

The RIPA Policy has been amended slightly following on from the inspection by adding a review date of December 2021 to the policy and changing “collateral damage” to “collateral intrusion” at paragraph 27.

### **5. Engagement and Communication**

5.1. The RIPA SPOC has consulted with the relevant departments to obtain the data set out in this report.

### **6. Financial Implications**

6.1. There are no direct financial implications arising from the agreement of the revised policy.

### **7. Legal Implications**

7.1. There are no legal implications directly related to this report. It is noted that following the IPCO inspection a number of practice and policy changes have been introduced as outlined above. This is in accordance with the recommendations of the IPCO and their role in the judicial oversight of the use of covert surveillance by public authorities.

## **Background Papers**

None

## **Appendices to the report**

Appendix A – RIPA Policy

## **Sustainability & Risk Assessment**

### **1. Economic**

Matter considered and no issues identified.

### **2. Social**

#### **2.1 Social Value**

Matter considered and no issues identified.

#### **2.2 Equality Issues**

Matter considered and no issues identified.

#### **2.3 Community Safety Issues (Section 17)**

Matter considered and no issues identified.

#### **2.4 Human Rights Issues**

Matter considered and no issues identified.

### **3. Environmental**

Matter considered and no issues identified.

### **4. Governance**

Matter considered and no issues identified.

**ADUR DISTRICT COUNCIL  
AND  
WORTHING BOROUGH COUNCIL**

**SURVEILLANCE POLICY  
AND PROCEDURE**

**Adopted: 27 September 2017  
Reviewed: 30 July 2019  
Reviewed: December 2021**

## Table of Contents

<b>PART 1 : POLICY</b>	<b>3</b>
1	INTRODUCTION 3
2	WHAT IS DIRECTED SURVEILLANCE? 4
3	SURVEILLANCE OF RESIDENTIAL PREMISES AND PRIVATE VEHICLES 5
4	WHEN WILL DIRECTED SURVEILLANCE BE AUTHORISED? 6
5	CONFIDENTIAL INFORMATION 7
6	VULNERABLE AND JUVENILE SOURCES 7
7	LAWFULNESS 8
8	COMPLAINTS 8
<b>PART 2 : PROCEDURE</b>	<b>9</b>
9	APPLICATIONS 9
10	WHO ARE THE AUTHORISING OFFICERS AT THE COUNCILS? 9
11	DURATION OF AUTHORISATIONS 10
12	APPLICATION FOR JUDICIAL APPROVAL 10
13	REVIEWS 11
14	RENEWALS 11
15	CANCELLATION 12
16	HANDLING, STORAGE, USE AND DESTRUCTION OF MATERIAL AS EVIDENCE 13
17	CENTRAL RECORD OF ALL AUTHORISATIONS 13
18	RECORD KEEPING 14
<b>PART 3 : USE OF COVERT HUMAN INTELLIGENCE SOURCES</b>	<b>15</b>
19	DEFINITION 15
20	TASKING AND SUPERVISION 16
21	SECURITY AND WELFARE 17
22	TELEPHONE INTERCEPTION 17
23	USE OF TECHNICAL EQUIPMENT 17
<b>PART 4: USE OF SOCIAL MEDIA IN INVESTIGATIONS</b>	<b>18</b>
24	BACKGROUND 18
25	WHAT IS MEANT BY SOCIAL MEDIA? 18
26	WHEN WOULD THE USE OF SOCIAL MEDIA REQUIRE AUTHORISATION? 19
27	COLLATERAL INTRUSION 20
28	RETENTION AND DESTRUCTION OF INFORMATION 20
<b>PART 5 : REFERENCES</b>	<b>21</b>
<b>APPENDIX</b>	<b>22</b>

## **PART 1 : POLICY**

### **1 INTRODUCTION**

1.1 The Councils are each responsible for the enforcement of a wide range of legislation affecting their areas. Such enforcement may have an impact upon individuals, as the Councils gather evidence and decide what action to take in relation to suspected offences. There may be some effect upon the private lives of individuals who may be the subject of surveillance which is unknown to them.

1.2 It is important that such surveillance of individuals and gathering of evidence is carried out in accordance with established legal rules. Also, that it is undertaken only when it is necessary and that the effect on the individuals concerned is taken into account before it goes ahead.

1.3 Failing this, there is a risk that evidence obtained by the Councils may be inadmissible in legal proceedings and/or the Councils may face civil or criminal action for breach of statutory or common law rules relating to the privacy of individuals.

1.4 The Regulation of Investigatory Powers Act 2000 provides a legal framework under which surveillance of individuals for evidence-gathering purposes can be authorised by the Councils. This document sets out a policy for such authorisation (Part 1) and associated procedures (Part 2), together with further information on Covert Human Intelligence Sources (Part 3) and a specific section relating to the use of social media in investigations (Part 4).

1.5 The Councils have appointed the Director for Digital and Resources as the Senior Responsible Officer (SRO) for matters relating to the Regulation of Investigatory Powers Act 2000. In accordance with paragraph 3.34 of the Home Office Code of Practice, the Senior Responsible Officer must be a member of the Corporate Leadership Team and is responsible for ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of the Surveillance Commissioner. Where an inspection report highlights concerns about the standards of Authorising Officers, this individual will be responsible for ensuring the concerns are addressed. The Senior Responsible Officer is not an Authorising Officer under RIPA as it is unlikely that he could be regarded as objective if he oversaw his own authorisations.

1.6 The Councils have appointed the Head of Legal and Monitoring Officer as the RIPA Co-ordinator. The RIPA Co-ordinator shall maintain a central register of all authorisations which will be retained by the Councils for a period of three years from the ending of any authorisation.

1.7 In accordance with paragraph 3.35 of the Home Office Code of Practice, Elected Members of the Council should review the Authority's use of RIPA and set the Council's Policy, at least once a year. They should also consider internal reports on the use of RIPA on a regular basis, to ensure that it is being used consistently

with the Council's Policy and that the Policy remains fit for purpose. The Councils' Joint Governance Committee will consider such matters on an annual basis.

## **2 WHAT IS DIRECTED SURVEILLANCE?**

2.1 Surveillance is

- (a) monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications,
- (b) Recording anything monitored, observed or listened to in the course of surveillance, and
- (c) Surveillance by or with the assistance of a surveillance device.

2.2 To be covert surveillance, the surveillance must be carried out in a manner that is calculated to ensure that the persons who are subject to the surveillance are unaware that it is or may be taking place. For example, use of CCTV systems may be overt in many cases, and the public may be made aware of their use. This would be distinct from a case in which CCTV is used covertly for a particular operation and may require authorisation.

2.3 Private information includes any information relating to an individual's private or family life.

2.4 "Directed Surveillance" is surveillance which is:

2.4.1 covert (but not intrusive; see paragraph 3),

2.4.2 conducted for the purposes of a specific investigation or operation, and

2.4.3 is conducted in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation).

2.5 The 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 that, or any other, person.

For example, if a Council Officer wanted to drive past a café for the purposes of obtaining a photograph of the exterior, no private information about any person is likely to be obtained or recorded and therefore this is unlikely to amount to Directed Surveillance nor require authorisation. However, if the Council wished to conduct 'drive bys', 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.

2.6 Directed Surveillance does not extend to those cases where an immediate response is necessary to an occurrence and it would not be reasonably practicable

to obtain an authorisation (e.g. due to the time involved in obtaining an authorisation).

2.7 General observations undertaken and not linked to any specific investigation would fall outside the definition of Directed Surveillance. Such observations may involve the use of equipment to merely reinforce normal sensory perception, such as the use of binoculars or cameras when this does not involve the systematic surveillance of individuals. For example, routine patrols and observation at trouble 'hotspots' would not constitute Directed Surveillance and would not require authorisation.

2.8 Occasionally, the Councils may authorise the gathering of information by the use of Covert Human Intelligence Sources (CHIS). This is where a person covertly uses an existing or newly-established relationship with an individual in order to provide information to the Council. The purpose behind the relationship is not known by the individual who is being reported on. More information on the use of such sources is set out in Part 3.

2.9 Social Media can be a useful tool when investigating alleged offences but its use can, in some circumstances, amount to covert direct surveillance. More information on the use of Social Media in investigations is set out in Part 4.

### **3 SURVEILLANCE OF RESIDENTIAL PREMISES AND PRIVATE VEHICLES**

3.1 There is a form of surveillance known as "intrusive surveillance" which is

3.1.1 carried out in relation to anything taking place on any residential premises or in any private vehicles; and

3.1.2 involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

3.2 A surveillance device is one which consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the vehicle.

3.3 The Council cannot authorise Intrusive Surveillance.

### **4 WHEN WILL DIRECTED SURVEILLANCE BE AUTHORISED?**

4.1 The Councils may only grant an authorisation for Directed Surveillance if it is necessary for the purpose of preventing or detecting conduct which:

a) constitutes:

i) one or more criminal offence; or

ii) is, or corresponds to, any conduct which, if it all took place in England and Wales would constitute one or more criminal offences; and

- b) is an offence which:
- i) is punishable on summary conviction, or indictment, by a maximum term of at least 6 months imprisonment; or
  - ii) is an offence under S.146 of the Licensing Act 2003; or
  - iii) is an offence under S.147 of the Licensing Act 2003; or
  - iv) is an offence under S.147A of the Licensing Act 2003; or
  - v) is an offence under S.7 of the Children and Young Peoples Act 1933.

For example, Directed Surveillance is not an option for the Councils when investigating minor offences such as dog fouling and littering, nor for tackling anti-social behaviour (unless the behaviour constitutes a criminal offence carrying a maximum sentence of 6 months or more), but may still be authorised for investigations into underage sales of alcohol and tobacco.

This provision does not apply to the Councils' use of a Covert Human Intelligence Source (see part 3).

4.2 There is a formal application process for authorisation referred to in Part 2 of this document.

4.3 The person granting the authorisation must consider whether its effect would be proportionate to what is sought to be achieved by the surveillance. This involves balancing the intrusive effect on the person under investigation and others who might be affected (referred to as collateral intrusion) against the need for the surveillance. The surveillance will not be authorised if it is excessive in the circumstances of the case or if the information could be obtained by less intrusive means.

4.4 In considering the grant of the authorisation and in carrying out any subsequent surveillance the risk of intrusion upon the privacy of persons not being investigated must be taken into account. Measures must be taken wherever possible to avoid or minimise such intrusion.

4.5 It is the responsibility of the Council Officer applying for the authorisation to justify the use of it and set this out fully on the relevant documentation referred to in Part 2.

4.6 Any authorisation granted by the Council must be submitted to a Justice of the Peace for consideration. The Justice of the Peace may either confirm or quash the authorisation. The authorisation cannot take effect until such time as an Order has been obtained approving the grant.

4.7 During the course of an investigation the type and seriousness of offences may change. If during the investigation it becomes clear that the activity being investigated does not amount to a criminal offence or that it would be a less serious offence that does not meet the threshold, the use of Directed Surveillance should

stop and if a Directed Surveillance authorisation is already in force, it should be cancelled.

## **5 CONFIDENTIAL INFORMATION**

5.1 Some information is likely to be particularly confidential or sensitive, including:

5.1.1 communications with a legal adviser;

5.1.2 information relating to the physical or mental health of an individual;

5.1.3 information relating to the spiritual counselling of an individual by a Minister of Religion;

5.1.4 confidential journalistic material.

Where such information is likely to be obtained, the authorisation should only be granted in exceptional and compelling circumstances (see paragraph 10.1).

## **6 VULNERABLE AND JUVENILE SOURCES**

6.1 An authorisation for a Covert Human Intelligence Source (CHIS) who is in need of community care services by reason of mental or other disability, age or illness should only be granted in exceptional circumstances.

6.2 An authorisation for a Covert Human Intelligence Source (CHIS) who is under 18 years should only be granted after taking advice from the Head of Legal and Monitoring Officer as to the effect of the Regulation of Investigatory Powers (Juveniles) Order 2000 including the necessity for relevant risk assessments.

6.3 The use must not be authorised for a person under 16 years to provide information against his/her parents or any person who has parental responsibility for him/her.

## **7 LAWFULNESS**

7.1 Surveillance will be lawful for all purposes if:

a) an authorisation, which has been confirmed by a Justice of the Peace, confers an entitlement to engage in the surveillance on the person(s) who carried it out; and

b) the surveillance is in accordance with the authorisation.

## **8 COMPLAINTS**

8.1 The Investigatory Powers Tribunal (“IPT”) is an independent body made up of senior members of the judiciary and the legal profession. It is independent of the Government.

8.2 An individual who is affected by surveillance undertaken by the Council may complain to the Tribunal at:

The Investigatory Powers Tribunal  
PO Box 33220  
London  
SW1H 9ZQ  
Tel: 0207 273 4514

8.3 More information about the IPT can be found at <http://www.ipt-uk.com>

8.4 The Councils also have an internal process for dealing with complaints. Any complaint recorded relating to surveillance should be referred to the Head of Legal and Monitoring Officer at:

Adur and Worthing Councils  
Town Hall  
Chapel Road  
Worthing  
West Sussex  
BN11 1HA

## **PART 2 : PROCEDURE**

### **9 APPLICATIONS**

9.1 Authorisations may be applied for by any Officer of the Council who is carrying out, or is planning to carry out, an investigation in relation to suspected crime or disorder.

9.2 Authorisations are applied for on the forms set out in the Appendix, and have to be authorised, in writing, by an Authorising Officer.

9.3 Authorising Officers should usually avoid authorising their own activities. If this is unavoidable, then the authorisation record should be transparent by highlighting this.

9.4 Authorising Officers are to complete the authorisation or rejection in handwriting, and not typed script, so that if it is challenged they can identify their own writing and it can be clear that there has not been a “cut and paste” decision.

9.5 Following the granting of an authorisation by the Authorising Officer the authorisation must be submitted to a Justice of the Peace for consideration.

9.6 The Justice of the Peace may either confirm or quash the authorisation.

## **10 WHO ARE THE AUTHORISING OFFICERS AT THE COUNCILS?**

10.1 When knowledge of confidential information is likely to be acquired (paragraph 5 above) or when a vulnerable individual or juvenile is to be used as a CHIS (paragraph 6) then only the Chief Executive or in his absence, his nominated Deputy, who shall be a Director, who has undertaken the appropriate training and is not the Senior Responsible Officer, can consider and grant the application, subject to judicial approval.

10.2 In all other cases, applications may be considered and granted, subject to Judicial approval, by:

- a) the Chief Executive; or
- b) a Director, who has undertaken the appropriate training on RIPA, other than the Senior Responsible Officer.

## **11 DURATION OF AUTHORISATIONS**

### **11.1 Directed Surveillance**

A written authorisation will cease to have effect (unless renewed) at the end of a period of three calendar months beginning with the day on which it took effect. An authorisation is to be cancelled at that time, but it can be renewed for a further three months, subject to Judicial approval. (See paragraph 14 below).

### **11.2 Covert Human Intelligence Source**

A written authorisation will cease to have effect (unless renewed) at the end of a period of twelve calendar months beginning with the day on which it took effect. An authorisation is to be cancelled at that time. Subject to Judicial approval, an authorisation can be renewed for twelve months. (See paragraph 14 below).

An authorisation in respect of a juvenile is limited to one month's duration.

## **12 APPLICATION FOR JUDICIAL APPROVAL**

12.1 Once the application, whether for Directed Surveillance or for the use of a CHIS, has been authorised by the Councils' Authorising Officer the Authorising Officer shall contact the Sussex Magistrates Administration Centre on:

ss-sussexadmin@hmcts.gsi.gov.uk  
01273-670888

The best Officer to make the application for judicial approval is the Authorising Officer as only they can answer questions about his reasoning on necessity, proportionality, collateral intrusion and risk.

12.2 A straightforward application will be listed before a presiding Magistrate.

12.3 Complicated applications are to be listed before District Judge Crabtree when sitting at Worthing Magistrates' Court.

12.4 The authorisation, whether for Directed Surveillance or for the use of a CHIS, cannot take effect until an Order has been obtained from a Justice of the Peace approving the renewal or grant of an authorisation. If the Justice of the Peace is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate, they will issue an order approving the grant or renewal for the use of the technique as described in the application.

## **13 REVIEWS**

### **13.1 Directed Surveillance**

The Authorising Officer must, in relation to each authorisation, determine how often the authorisation is to be reviewed, taking into account the nature and purpose of the surveillance authorised. Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. The results of a review should be recorded on the central record of authorisations. Particular attention is drawn to the need to review authorisations frequently when the surveillance provides access to confidential information or involves collateral intrusion.

The forms in the Appendix are to be used.

### **13.2 Covert Human Intelligence Source**

Regular reviews of authorisations should be taken to assess the need for the use of a source to continue. The review should include the use made of the source during the period authorised, the tasks given to the source and the information obtained from the source. The results of the review should be recorded on the authorisation record. Particular attention is drawn to the need to review authorisations frequently where the use of a source provides access to confidential information or involves collateral intrusion.

The forms in the Appendix are to be used.

## **14 RENEWALS**

### **14.1 Directed Surveillance**

14.1.1 If, at any time before an authorisation would cease to have effect the Authorising Officer considers it necessary for the authorisation to continue for the

purposes for which it was given, they may renew it, in writing, for a further period of three months, subject to further Judicial approval.

14.1.2 Applications for renewal shall be in writing on the form set out in the Appendix.

14.1.3 Following the granting of a renewed authorisation by the Authorising Officer the authorisation must be submitted to a Justice of the Peace for consideration.

14.1.4 The Justice of the Peace may either confirm or quash the authorisation.

14.1.5 Authorisations may be renewed more than once, if necessary, and the renewal should be kept/recorded as part of the central record of authorisations.

## 14.2 Covert Human Intelligence Source

14.2.1 If, at any time before an authorisation would cease to have effect the Authorising Officer considers it necessary for the authorisation to continue for the purposes for which it was given, he may renew it, in writing, for a further period of twelve months, subject to further Judicial approval.

14.2.2 Applications for renewal shall be in writing on the form set out in the Appendix.

14.2.3 Before an Authorising Officer renews an authorisation they must be satisfied that a review has been carried out of the use of the source.

14.2.4 Following the granting of an authorisation by the Authorising Officer the authorisation must be submitted to a Justice of the Peace for consideration.

14.2.5 The Justice of the Peace may either confirm or quash the application.

14.2.6 Authorisations may be renewed more than once, if necessary, and the renewal should be kept/recorded as part of the central record of authorisation.

## 15 CANCELLATION

15.1 The Authorising Officer who granted, or last renewed, the authorisation must cancel it if they is satisfied:-

15.1.1 that the Directed Surveillance or use of the source no longer meets the criteria upon which it was authorised, or

15.1.2 that satisfactory arrangements for the source used no longer exist.

Where the Authorising Officer is no longer available, this duty will fall to the person who has taken over the role of Authorising Officer, or the person who is acting as Authorising Officer.

The forms in the Appendix are to be used.

15.2 As soon as the decision is taken that Directed Surveillance or use of a source should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject(s). The date and time when such an instruction was given should be recorded in the central record of authorisations and the notification of cancellation where relevant.

The forms in the Appendix are to be used.

## **16 HANDLING, STORAGE, USE AND DESTRUCTION OF MATERIAL AS EVIDENCE**

16.1 All materials or records of information obtained as a result of Directed Surveillance, or the use of a source, must be stored for no longer than is necessary. Authorising Officers must ensure compliance with appropriate Data Protection requirements and any relevant guidance produced by the Councils relating to the handling and storage of material.

16.2 The product of surveillance described in this Policy must be retained until a decision is made whether or not to take proceedings. If proceedings are instituted, material must be retained until the matter is disposed of. If the subject of the surveillance is prosecuted in criminal proceedings and is convicted the material must be retained until:

16.2.1 the completion of any appeal process;

16.2.2 if sentenced to custody or a hospital Order, until his/her release, if more than 6 months after conviction;

16.2.3 in other cases, 6 months after any Order made is discharged or expires by effluxion of time.

16.3 There is a duty to disclose in criminal proceedings information which has been gathered as part of the investigation and may be relevant to it.

16.4 If civil proceedings are taken, then material is to be kept until 6 months after any Order made is discharged or expires by effluxion of time.

## **17 CENTRAL RECORD OF ALL AUTHORISATIONS**

17.1 The Head of Legal and Monitoring Officer, the RIPA Co-ordinator, shall maintain a central register of all authorisations, which is regularly updated whenever

an authorisation is granted, renewed or cancelled. The entry in the register shall be retained for a period of three years from the ending of the authorisation.

17.2 The central register shall contain the information listed in the Appendix.

17.3 Within 24 hours of taking any action in relation to an authorisation that is to be recorded in the register the Authorising Officer shall provide sufficient details of that action, in writing, to the Head of Legall and Monitoring Officer.

## **18 RECORD KEEPING**

### **18.1 Directed Surveillance**

The Authorising Officer shall maintain the following documentation, which shall be cross-referenced with the central register by use of a unique reference number:-

18.1.1 a copy of the application and a copy of the authorisation, together with any supplementary documentation and notification of the approval given by the Authorising Officer;

18.1.2 a record of the period over which the surveillance has taken place;

18.1.3 the frequency of reviews prescribed by the Authorising Officer;

18.1.4 a record of the result of each review of the authorisation;

18.1.5 a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested.

18.1.6 the date and time when any instruction was given by the Authorising Officer.

### **18.2 Covert Human Intelligence Sources**

The Authorising Officer shall maintain the following documentation, which shall be cross-referenced with the central register by use of a unique reference number:-

18.2.1 a copy of the application and the authorisation, together with any supplementary documentation and notification of the approval given by the Authorising Officer;

18.2.2 a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;

18.2.3 the reason why the person renewing the authorisation considered it necessary to do so;

18.2.4 any authorisation which was granted or renewed orally (in an urgent case) and the reason why the case was considered urgent;

18.2.5 any risk assessment made in relation to the source;

18.2.6 the circumstances in which tasks were given to the source;

18.2.7 the value of the source to the investigating authority;

18.2.8 a record of the results of any reviews of the authorisation;

18.2.9 the reasons, if any, for not renewing the authorisation;

18.2.10 the reason for cancelling an authorisation;

18.2.11 the date and time when any instructions were given by the Authorising Officer to cease using a source.

The records kept should:

- a. Hold the name of the source and the information in different places.
- b. The information file should only identify the source by way of a unique reference number.
- c. The file identifying the source must be retained in secure storage and be held by the relevant Authorising Officer.
- d. With each source the relevant Authorising Officer shall direct which Head of Service shall have responsibility for maintaining a record of the use made of the source.

### **PART 3 : USE OF COVERT HUMAN INTELLIGENCE SOURCES**

#### **19 DEFINITION**

19.1 A person is a Covert Human Intelligence Source if:

19.1.1 they establish or maintain a personal or other relationship with a person for the covert purposes of facilitating the doing of anything falling within paragraphs 19.1.2 or 19.1.3 below.

19.1.2 they covertly uses such a relationship to obtain information or to provide access to any information relating to any person, or

19.1.3 they covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

19.2 A relationship or disclosure is covert if it is conducted in a manner which is calculated to ensure that one party to it is unaware of its use and purpose.

19.3 For a person to come into the category of a CHIS there is no requirement for the Councils to actively engage the person in that role. The question to be asked is whether a person is using a relationship to covertly obtain information which they are passing to the Councils.

For example, if Mr. Y volunteers information to the Councils about a work colleague then he is not a CHIS. However, if the Councils go back to Mr. Y and ask him to ascertain information about the work colleague and Mr. Y attempts to ascertain that information then he is a CHIS and an authorisation should be obtained.

Further, if Mr. Y. volunteers information to the Councils about a work colleague, then on the initial passing of information he is not a CHIS. However, if he then continues to gather information covertly and passes it to the Councils, there is a point at which he will become a CHIS and therefore Officers should be aware that if a person is providing information about another person on more than one occasion it is necessary to consider whether or not the person providing the information is exploiting their relationship with the third party to covertly obtain information. If so, then a CHIS authorisation is to be obtained.

## **20 TASKING AND SUPERVISION**

20.1 A Council Officer must be designated to have day-to-day responsibility for:

20.1.1 dealing with the source;

20.1.2 directing his/her day-to-day activities;

20.1.3 recording the information supplied by the source;

20.1.4 monitoring his/her security and welfare.

20.2 A separate Officer, at Head of Service level, must also be given responsibility for the general oversight of the use of the source.

## **21 SECURITY AND WELFARE**

21.1 The Councils must take into account the safety and welfare of the source when carrying out actions in relation to an authorisation or tasking. It should also have regard to any foreseeable consequences to others of the tasking of the source.

21.2 Prior to authorisation, a risk assessment must be carried out to determine the risks to the source of any tasking and the likely consequences should the role of the

source become known. The ongoing security and welfare of the source after the end of the authorisation should also be considered at the outset. Records disclosing the identity of the source will not be available to persons unless there is a proven need to disclose them for operational reasons.

21.3 If the Officer having day-to-day responsibility for the source (paragraph 20.1) has any concerns about the personal circumstances of the source in so far as they might effect

- The validity of the risk assessment;
- The conduct of the source;
- The safety and welfare of the source;

they shall draw these to the attention of the Supervising Officer (paragraph 20.2). A decision must be made whether to (1) refer these concerns to the Authorising Officer and (2) seek a review of the authorisation.

## **22 TELEPHONE INTERCEPTION**

Where one party to a telephone communication consents to its interception by a third party, it is treated as Directed Surveillance and may be authorised as such.

## **23 USE OF TECHNICAL EQUIPMENT**

23.1 A source may be present on residential premises or in a private vehicle. If they are using a surveillance device, no authorisation for intrusive surveillance would be required to record any activity taking place on those premises or in the vehicle if it is in his/her presence. In other circumstances an authorisation for intrusive surveillance would be required and this is outside the powers of the Council.

## **PART 4: USE OF SOCIAL MEDIA IN INVESTIGATIONS**

### **24 BACKGROUND**

24.1 Social Media accumulates a sizable amount of information about a person's life and can provide incredibly detailed information about a person and their activities. Social Media can therefore be a very useful tool when investigating alleged offences.

24.2 Whilst the use of Social Media to investigate is not automatically considered covert surveillance, its misuse when conducting investigations can mean that it crosses over into the realms of covert surveillance even when that misuse is inadvertent. It is therefore crucial that the provisions of RIPA, as it relates to covert and directed surveillance, are followed at all times when using Social Media information in investigations.

24.3 It is possible for the Councils' use of Social Media in investigating potential offences to cross over into becoming unauthorised surveillance, and in so doing, breach a person's right to privacy under Article 8 of the Human Rights Act. Even if surveillance without due authorisation in a particular instance is not illegal, if authorisation is not obtained, the surveillance carried out will not have the protection that RIPA affords and may mean it is rendered inadmissible.

24.4 Council Officers embarking on any form of investigatory action should always do so with RIPA in mind. Whilst RIPA will not always be relevant to every investigation, it is vital that Officers involved in investigative practices against individuals, regularly review their conduct with respect to investigatory actions. Any investigation is capable of evolving from being one that does not require RIPA authorisation, to one that does, at any point.

## **25 WHAT IS MEANT BY SOCIAL MEDIA?**

25.1 Social Media can take many forms but will always be a web-based service that allows individuals and/or businesses to construct a public or semi-public profile. It will often have some, or all, of the following characteristics:

- The ability to show a list of other users with whom they share a connection, often termed 'friends' or 'followers';
- The ability to view and browse their list of connections and those made by others within the system;
- Hosting capabilities allowing users to post audio, photographs and/or wide content that is viewable by others.

The number and type of social media available to the public is fluid but currently includes Facebook, Twitter, Instagram, LinkedIn, Pinterest, Tumblr, Reddit, Flickr and Google+.

## **26 WHEN WOULD THE USE OF SOCIAL MEDIA REQUIRE AUTHORISATION?**

### **26.1 Privacy settings**

26.1.1 The majority of Social Media services will allow its users to decide who can view their activity, and to what degree, through the use of privacy settings. Many users will purposely use Social Media with no privacy settings applied whatsoever and this information publicly available is known as an individual's public profile. Whilst the content or information shared by individuals on Social Media remains the property of that individual, it is nonetheless considered to be in the public domain.

### **26.2 Private Profile**

26.2.1 By setting a profile to private, a user does not allow everyone to access and use their content, and respect should be shown to that person's right to privacy

under Article 8 of the Human Rights Act. If access controls are applied, the individual has a reasonable expectation of privacy. This does not, however, extend to instances where a third party takes it upon themselves to share information which originated on a private profile on their own social media profile.

26.2.2 However, if it is necessary and proportionate for the Councils to covertly breach access controls, the minimum requirement is an authorisation for Directed Surveillance.

26.2.3 An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a Council Officer or by a person acting on the Councils' behalf, for example where there is interaction and two way communication rather than merely reading of the social media site's content. Should a Council Officer set up a false identity for a covert purpose with a view to conducting Directed Surveillance to obtain private information, an authorisation would certainly be required. Should a Council Officer adopt the identity of a person known, or likely to be known, to the individual, authorisation would be required, along with the explicit written consent of the person whose identity is being used, and careful thought would need to be given as to how to protect that person.

### 26.3 Public Profile

26.3.1 Where a person publishes content on a public profile they allow everyone, including those not on that particular Social Media platform, to access and use that information whilst allowing it to be associated with them. In practice, this means that things such as photographs, video content or any other relevant information posted by individuals and businesses to a public profile on any given Social Media platform can be viewed, recorded and ultimately used as evidence against them should the matter end in legal proceedings, subject to the usual rules of evidence.

26.3.2 Where privacy settings are available but not applied the data may be considered open source and RIPA authorisation is not usually required. However a distinction is made between one-off and repeated visits to an individual's Social Media profile. Whilst one-off visits, or otherwise infrequent visits spread over time, cannot be considered to be Directed Surveillance, repeated or frequent visits may cross over into becoming Directed Surveillance requiring RIPA authorisation. A person's Social Media profile should not, therefore, be routinely monitored on a daily or weekly basis in search of updates, as that would, in all likelihood constitute Directed Surveillance and require authorisation.

## 27 COLLATERAL INTRUSION

27.1 Due to the nature of Social Media, there is a significant risk of collateral intrusion in the form of other, innocent parties' information being inadvertently captured alongside that of the suspected offender's. When capturing evidence from a social media profile, steps should be taken to minimise this collateral intrusion either before capturing the evidence, or subsequently through redaction. This might

be particularly prevalent on social media profiles promoting certain events, where users are encouraged to interact with each other by posting messages or on photographs where other users may be making comments.

## **28 RETENTION AND DESTRUCTION OF INFORMATION**

28.1 Due to the nature of Social Media, it is important to remember that when information produced as a hard copy is destroyed in line with this Policy, that all digital copies of that evidence is likewise destroyed.

## **PART 5 : REFERENCES**

- a) Regulation of Investigatory Powers Act 2000 (Chapter 2, Part 2).
- b) Home Office codes of practice on Directed Surveillance and Covert Human Intelligence Sources.
- c) Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2003 SI 2003/3171.
- d) Regulation of Investigatory Powers (Juveniles) Order 2000 – SI 2000/2793.
- e) Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010
- f) The Office of the Surveillance Commissioner at [www.surveillancecommissioners.gov.uk](http://www.surveillancecommissioners.gov.uk)
- g) Protection of Freedoms Act 2012
- h) Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010, SI 2010/521
- i) The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, SI 2012/1500

## **Appendix**

<b>Forms</b>	<b>Located</b>
Directed Surveillance	
Application for authorisation	Councils' intranet
Review	Councils' intranet

Renewal	Councils' intranet
Cancellation	Councils' intranet
Covert Human Intelligence Source	
Application for authorisation	Councils' intranet
Review	Councils' intranet
Renewal	Councils' intranet
Cancellation	Councils' intranet
Judicial Application	
Application for judicial approval	Councils' intranet
Draft Judicial Order	Councils' intranet
Register of Authorisations	Held by Head of Legal and Monitoring Officer

This page is intentionally left blank



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
22 March 2022  
Agenda Item 11

Ward: All

## Proposed revisions to Contract Standing Orders

### Report by the Director of Sustainability, Digital & Resources

#### 1. Purpose

- 1.1. This report proposes some revisions to the Joint Contract Standing Orders to reflect the latest guidance from government on procurement matters and any changes to procurement legislation.

#### 2. Recommendations

2.1 The Joint Governance Committee is recommended to :

- i) Recommend to Adur and Worthing Councils that the amendments to the Contract Standing Orders be approved;
- ii) Delegate authority to the Chief Financial Officer in consultation with the Monitoring Officer to make minor and statutory revisions to the Contract Standing Orders to ensure their continued alignment with legislative changes or changes to the Public Procurement Notices.

#### 3. Background

- 3.1. The Joint Contract Standing Orders provide the framework for procuring goods, services and works on behalf of the Councils. They apply to all Members, Council Officers, Consultants, and any person procuring on behalf of the Councils.
- 3.2. The proposed Contract Standing Orders at Appendix 1 reflect the latest legislative guidance and have been restructured to make the Contract Standing Orders easier for Officers to use and understand.

- 3.3. Since Brexit, there have been a number of developments which have affected the Council's approach to procurement, including new Procurement Policy Notes which provide guidance on best practice within public sector procurements.
- 3.4. Members will note that the most significant proposed amendments are:
- 3.4.1. The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 and PPN 10/21, require the total value of all public contracts to be calculated including VAT, although the Council is generally able to recover the VAT element of a contract payment.
  - 3.4.2. Updating the advertising requirements for contract opportunities and Find a Tender system which replaces the OJEU TED system. For contract awards, updating Cabinet Office PPN09/21 which requires Officers to publish a Contract Award Notice for all contracts with a value of, or greater than, £25,000 (inclusive of VAT) regardless of how the contract was procured and whether or not a contract opportunity was advertised.
  - 3.4.3. Taking account of Social value in local government contracts as required by PPN 06/20. Social value should be explicitly evaluated in all central government procurement, where the requirements are related and proportionate to the subject-matter of the contract, rather than just 'considered' as currently required under the Public Services (Social Value) Act 2012.
  - 3.4.4. Below threshold procurements can be reserved by supplier location, or for suppliers that are Small and Medium sized Enterprises (SMEs); or for Voluntary, Community and Social Enterprises (VCSEs) as enabled by the Cabinet Office PPN 11/20, for the benefit of local businesses and communities.
  - 3.4.5. Enabling contracts below £250,000.00 to be signed electronically by legal services. Contracts above this amount are to be sealed, and maybe sealed electronically providing the Monitoring Officer approves the method used.
  - 3.4.6. Explaining with more detail, the decisions pathway, key decisions and the requirement to ensure authority has been properly obtained.
  - 3.4.7. A general change to the structure of the document to make it more user friendly; updating the index; a general check that procedures to be followed are robust; updating language used.
- 3.5. Once approved, the Council proposes to re-commence Contract Standing Order training to Officers ensuring consistency in procurement processes throughout the Council.

#### **4. Proposals**

- 4.1. Members are asked to consider the proposed amendments as highlighted in the attached draft Contract Standing Orders.

#### **5. Legal**

- 5.1. These Contract Standing Orders are made pursuant to the Local Government Act 1972 Section 151 which requires the Chief Financial Officer to ensure the proper administration of the Councils' financial affairs, and to ensure officers act lawfully when purchasing works goods or services for the Council.
- 5.2. The Contract Standing Orders must be compliant with the Public Contract Regulations 2015, the Regulations are retained law post brexit. They must also be compliant with Cabinet Office Procurement Policy Notes (PPN) issued from time to time.
- 5.3. Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- 5.4. s1 Local Government (Contracts) Act 1997 confers power on the Council to enter into a contract for the provision of making available assets or services for the purposes of, or in connection with, the discharge of the function by the Council.

#### **6. Financial Implications**

- 6.1. Agreement of a revised set of Contract Standing Orders will improve the internal control environment of both Councils as the revision addresses any concerns raised by audit.

#### **Local Government Act 1972**

##### **Background Papers:**

Adur District Council and Worthing Borough Council Contract Standing Orders

##### **Contact Officer:**

Sarah Gobey

Chief Financial Officer

01903 221221

[Sarah.gobey@adur-worthing.gov.uk](mailto:Sarah.gobey@adur-worthing.gov.uk)

## **Sustainability & Risk Assessment**

### **1. Economic**

Matter considered and no issues identified.

### **2. Social**

#### **2.1 Social Value**

Matter considered and no issues identified.

#### **2.2 Equality Issues**

Matter considered and no issues identified.

#### **2.3 Community Safety Issues (Section 17)**

Matter considered and no issues identified.

#### **2.4 Human Rights Issues**

Matter considered and no issues identified.

### **3. Environmental**

Matters considered and no issues identified.

### **4. Governance**

The report concerns the revision of the Contract Standing Orders which should enhance our governance arrangements.

# Contract Standing Orders

# Contents

<b>Standing Order 1</b>	<b>3</b>
1.1 Introduction and Purpose	3
1.2 Creating a Contract	3
1.3 Pre-procurement considerations	3
1.4 Incorporating Social Value in all procurement procedures	6
<b>Standing Order 2: Authorisation to Contract</b>	<b>8</b>
<b>Standing Order 3: Special Circumstances and Emergencies</b>	<b>8</b>
<b>Standing Order 4: Publishing Contract Notices</b>	<b>9</b>
4.1 Publishing a Contract Opportunity Notice	9
4.2 Publishing a Contract Award Notice	10
<b>Standing Order 5: Financial Limits and Procedures</b>	<b>11</b>
5.1 Contracts for a value up to but not including £25,000 (inclusive of VAT)	11
5.2 Exemption from Obtaining Two Written Quotes	11
5.3 Contracts for a value of £25,000 (inclusive of VAT) up to but not including £100,000 (inclusive of VAT)	11
5.4 Exemption to Obtaining Three Quotes or Tenders	12
5.5 Contracts for a value of £100,000 (inclusive of VAT) up to but not including the Public Procurement Threshold	12
5.6 Exemption to the Open Process	12
<b>Standing Order 6: Above Threshold Procurements</b>	<b>13</b>
6.1 Tendering Procedures	13
6.2 Maintaining a Record of the Procurement Process	13
<b>Standing Order 7: Frameworks, Dynamic Purchasing Systems and Consortia Organisations</b>	<b>14</b>
7.1 Framework Agreements	14
7.2 Dynamic Purchasing Systems (DPS)	14
7.3 Consortia Procurements	14
<b>Standing Order 8: Preparation of the Procurement Documents</b>	<b>15</b>
8.1 Request for Quotation and Specification Documents	15
8.2 Invitation to Tender and Specification Documents	15
8.3 Establishing MEAT or other approved Assessment	16
8.4 Examples of criteria for establishing MEAT:	16
<b>Standing Order 9: Using e-Procurement Portal</b>	<b>17</b>
9.1 Publishing and Accepting Quotations and Tenders on the Portal	17
9.2 Exemption to publishing on the Council's Portal	17
<b>Standing Order 10: Evaluation and Notifications to Bidders</b>	<b>18</b>
10.1 Evaluation of Quotations and Tenders	18

10.4	Notification to Unsuccessful Bidders	18
10.5	Notification to Successful Bidders	19
10.6	Standstill Period	19
	<b>Standing Order 11: Subcontracting</b>	<b>20</b>
	<b>Standing Order 12: Contract Formalities</b>	<b>20</b>
12.1	The Form of Contract	20
12.2	Required Terms	21
12.3	Execution of Contracts	21
12.4	Electronic Signatures	21
	<b>Standing Order 13: Engagement of Consultants</b>	<b>22</b>
	<b>Standing Order 14: Contract Performance Monitoring</b>	<b>23</b>
	<b>Standing Order 15: Extensions to Contracts</b>	<b>23</b>
	<b>Standing Order 16: Variations to Contracts</b>	<b>24</b>
	<b>Standing Order 17: Termination of Contracts</b>	<b>25</b>

# Standing Order 1

## 1.1 Introduction and Purpose

These Contract Standing Orders (CSO) are applicable to all the Council's Officers (and its appointed consultants) when procuring contracts for works, services and goods. They provide a framework to ensure a uniform and transparent approach to procurement, and enable the Council to achieve best value for money.

## 1.2 Creating a Contract

A contract is created where there is an offer, acceptance, consideration and a legal intention between the parties; where these criteria exist a contract can be created orally or in writing. Officers entering into pre-contract negotiations with a Supplier, should declare all communications whether by telephone or by email to be 'subject to executed contract'. For the form of contract see CSO 12.1.

## 1.3 Pre-procurement considerations

### 1.3.1 Request for Quote or Tender

A request for quotation (RFQ) is the process used by Officers who know what they want and are seeking pricing information to achieve best value, for a defined scope of work, services, or goods. An RFQ can be used providing the value is below £100,000 (inclusive of VAT) and the processes set out at CSOs 8, 9 and 10 are followed.

An invitation to tender (ITT) is used when the Council wants to invite suppliers to bid on the delivery of works, services or goods and enables the Council to evaluate additional criteria such as the supplier's technical solutions, delivery methodology, skill sets, as well as quality and price. See CSOs 8.3 and 8.4.

### 1.3.2 Assessing the total Contract Value

Prior to procuring, Officers must assess the total contract value of their contract.

The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 and [PPN 10/21](#), require the total value of all public contracts to be calculated including VAT, although the Council is generally able to recover the VAT element of a contract payment.

The total contract value includes the whole life-cycle cost, including any recurring revenue or capital expense, as well as all one-time charges including professional service fees, onboarding and exit fees.

Where the Council is procuring on behalf of other public bodies as well as itself, then the contract value shall be determined as the combined sum for all public bodies even if our Council is only paying one part of the overall cost.

Where the contract is procured in "lots", e.g. based on geographical area or by particular type of requirements, then the contract value shall be the total value of all the combined lots.

### **1.3.3 Budget**

Officers must ensure that they have a sufficient and approved budget in place prior to commencing the procurement project. If the contract involves the supply of assets under lease finance arrangements, the Lease must be signed off by the Chief Financial Officer or their appointed deputy.

### **1.3.4 Authority**

Officers must have Member Authority to enter into the contract (see CSO 2). The type of Member authority required will depend upon the value of the contract, and whether or not budget is already in place. If in doubt, Officers should take advice from the Council's Legal, Finance, or Procurement Services.

### **1.3.5 Decisions Pathway**

In addition to the requirement for budget and authority, Officers must consider good governance and the decision making process and always make sure that they have taken advice from Democratic or Legal Services. A Member or Officer Decision notice will need to be published prior to your contract, and any delay in following the decisions pathway will delay the execution of the contract.

Some decisions will also be a [Key Decision](#) and will require additional information to be placed on the forward plan for a minimum of 28 days prior to the publication of a decision notice.

### **1.3.6 TUPE Transfers**

Where the Council outsources services and re-procures for those services, TUPE may apply to that procurement with eligible staff being able to transfer from the outgoing service provider to the incoming service provider. Sufficient information (compliant with data protection legislation) will need to be included in the procurement process with an assessment of the cost impact on the incoming supplier. If in doubt, always contact Legal Services and Human Resources for advice.

### **1.3.7 Council Policies**

Depending upon the nature of the procurement, the Council may require the contractor to adopt or mirror certain policies during contract performance. Specific provisions may need to be built into the contract documents e.g. additional clauses, Health and Safety, Safeguarding, or Data Protection where personal data may be transferred.

### **1.3.8 Reserving below threshold procurement by Location, SME, VCSEs**

Below threshold procurements can be reserved by supplier location, or for suppliers that are Small and Medium sized Enterprises (SMEs); or for Voluntary, Community and Social Enterprises (VCSEs) as enabled by the Cabinet Office [PPN 11/20](#), for the benefit of local businesses and communities.

These options should be considered on a case-by-case basis, and can be exercised on their own or together. For example, Officers may wish to reserve a procurement for suppliers based in a particular location as well as for SMEs and VCSEs, or may choose to reserve to location only or to SMEs only.

Reserving by location could also be UK-wide to support domestic supply chains and promote resilience and capacity, or where appropriate, by county to tackle economic inequality and support local recruitment, training, skills and investment. Where a county

reservation is to be applied, only a single county (or borough for London) may be reserved. Supplier location should be described by reference to where the supplier is based or established and has substantive business operations and not by location of corporate ownership.

Any requirement to reserve the procurement under this CSO must follow up to date Cabinet Office guidance, and must be clearly set out in the tender documents, using the standardised definitions of SME/VCSE and supplier location outlined in the associated guidance.

### 1.3.9 Financial Thresholds (inclusive of VAT)

**All figures referred to in these CSO are inclusive of VAT.**

The following table provides VAT exclusive figures for the financial thresholds within these CSOs.

Thresholds inclusive VAT	Thresholds exclusive VAT	VAT
£5,000.00	<b>£4,166.67</b>	£333.33
£10,000.00	<b>£8,333.33</b>	£1,666.67
£25,000.00	<b>£20,8333.33</b>	£4,166.67
£100,000.00	<b>£83,333,33</b>	£16,666.67
£250,000.00	<b>£208,333.33</b>	£41,666.67

Public Procurement Thresholds as of 1<sup>st</sup> January 2022 (always check the thresholds as they are subject to change).

Category	Thresholds inclusive VAT	Thresholds exclusive VAT	VAT
Goods and Services	£213,477.00	<b>£177,897.50</b>	£35,579
Works	£5,336,937.00	<b>£4,447,447.50</b>	£889,489.50

### 1.3.10 Procurement Procedures Chart

Total Value (inclusive of VAT)	Procurement Route	Receipt of Quotes / Tenders	Delegated Authority for Contract Approval and Award	Method of Contract Completion	Transparency Code Obligations
Up to £25,000 (unless CSO 5.2 applies)	Two written quotations or if impractical one quote with evidence of value for money.	Via post or email to department by Head of Service or appointed deputy.	Head of Service	Signature and/or purchase order raised	Publish details of all contracts over £5,000 in Council's Contracts Register.
From £25,000 up to but not including £100,000	Three written quotations or tenders. Opportunity (open) to be published on Contracts Finder.	Quotes/Tenders submitted via portal and electronically opened after closed date and time has passed. Evaluated by a minimum of two officers.	Head of Service	Signed by one Council officer with Authority.	Advertise an opportunity on Contracts Finder; Publish details of the Contract Award on Contracts Finder and complete the Council's Contracts Register.
From £100,000 up to but not including the public procurement thresholds	Advertise Open invitation to tender (ITT) on the Council's portal and Contracts Finder. Other media can also be used. Unless the exemption to the Open process in CSO 5.5 applies.	Tenders submitted via portal and electronically opened once closing date and time has passed. Evaluated by a minimum of two officers.	Where provision has been made in the approved budget. For contracts below £250,000, in consultation with Executive Members. For contracts of or greater than £250,000 with Executive Member authority pursuant to delivery of an Executive Member Report.	Sealed and signed by one Council officer with Authority and a witness or Signed by two Council officers with Authority.	Advertise the opportunity on Contracts Finder. Publish details of the Contract Award on Contracts Finder and complete the Council's Contracts Register.
From the Public Procurement Threshold and above	Relevant Procurement Procedure by advertisement on the Council's portal, Contracts Finder and Find a Tender system. Other media may also be used.	Tenders submitted via Council's portal and electronically opened once closing date and time has passed. Evaluated by a minimum of two officers.	Executive Member, Executive or relevant Committee.	Sealed and signed by one Council officer with Authority or signed by two Council officers with Authority.	Advertise all tenders on FTS and then Contracts Finder. Publish details of Contract Award on FTS and on Contracts Finder, and complete the Council's Contracts Register.

## 1.4 Incorporating Social Value in all procurement procedures

1.4.1 For all above threshold contracts, social value and the ability to improve the economic, environmental and social wellbeing of the Council's area is mandatory and must be given not less than 10% of the total evaluation score.

1.4.2 For below threshold procurements social value must be considered, and incorporated, where the social value requirements are related and proportionate to the subject matter of the contract.

1.4.3 Examples of what can be incorporated as social value are set out in the table below.

Social Value Themes and Outcomes examples (Procurement Policy Note – Taking Account of Social Value in the Award of Central Government Contracts Action Note <a href="#">PPN 06/20</a> September 2020)		
Themes (for social value)	Policy Outcomes (what can be achieved)	Delivery objectives - what good looks like (consider for evaluation criteria)
COVID-19 recovery	Help local communities to manage and recover from the impact of COVID-19	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> <li>- Create employment, re-training and other return to work opportunities for those left unemployed by COVID-19, particularly new opportunities in high growth sectors.</li> <li>- Support people and communities to manage and recover from the impacts of COVID-19, including those worst affected or who are shielding.</li> <li>- Support organisations and businesses to manage and recover from the impacts of COVID-19, including where new ways of working are needed to deliver services.</li> <li>- Support the physical and mental health of people affected by COVID-19, including reducing the demand on health and care services.</li> <li>- Improve workplace conditions that support the COVID-19 recovery effort including effective social distancing, remote working, and sustainable travel solutions.</li> </ul>
Tackling economic inequality	Create new businesses, new jobs and new skills	<p>Activities that, in the delivery of the contract:</p> <ul style="list-style-type: none"> <li>- Create opportunities for entrepreneurship and help new, small organisations to grow, supporting economic growth and business creation.</li> <li>- Create employment opportunities particularly for those who face barriers to employment and/or who are located in deprived areas.</li> <li>- Create employment and training opportunities, particularly for people in industries with known skills shortages or in high growth sectors.</li> <li>- Support educational attainment relevant to the contract, including training schemes that address skills gaps and result in recognised qualifications.</li> <li>- Influence staff, suppliers, customers and communities through the delivery of the contract to support employment and skills opportunities in high growth sectors.</li> </ul>
	Increase supply chain resilience and capacity	<p>Activities that:</p> <ul style="list-style-type: none"> <li>- Create a diverse supply chain to deliver the contract including new businesses and entrepreneurs, start-ups, SMEs, VCSEs and mutuals.</li> <li>- Support innovation and disruptive technologies throughout the supply chain to deliver lower cost and/or higher quality goods and services.</li> <li>- Support the development of scalable and future-proofed new methods to modernise delivery and increase productivity.</li> <li>- Demonstrate collaboration throughout the supply chain, and a fair and responsible approach to working with supply chain partners in delivery of the contract.</li> <li>- Demonstrate action to identify and manage cyber security risks in the delivery of the contract including in the supply chain.</li> <li>- Influence staff, suppliers, customers and communities through the delivery of the contract to support resilience and capacity in the supply chain</li> </ul>

Fighting climate change	Effective stewardship of the environment	Activities that: - Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions. - Influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement.
Equal opportunity	Reduce the disability employment gap	Activities that: - Demonstrate action to increase the representation of disabled people in the contract workforce. - Support disabled people in developing new skills relevant to the contract, including through training schemes that result in recognised qualifications. - Influence staff, suppliers, customers and communities through the delivery of the contract to support disabled people.
	Tackle workforce inequality	Activities that: - Demonstrate action to identify and tackle inequality in employment, skills and pay in the contract workforce. - Support in-work progression to help people, including those from disadvantaged or minority groups, to move into higher paid work by developing new skills relevant to the contract. - Demonstrate action to identify and manage the risks of modern slavery in the delivery of the contract, including in the supply chain.
Wellbeing	Improve health and wellbeing	Activities that: - Demonstrate action to support the health and wellbeing, including physical and mental health, in the contract workforce. - Influence staff, suppliers, customers and communities through the delivery of the contract to support health and wellbeing, including physical and mental health.
	Improve community integration	Activities that: - Demonstrate collaboration with users and communities in the co-design and delivery of the contract to support strong integrated communities. - Influence staff, suppliers, customers and communities through the delivery of the contract to support strong, integrated communities.

## Standing Order 2: Authorisation to Contract

2.1. The Director, Heads of Service or their delegated nominee shall have authority to enter into contracts provided that:

2.1.1 There is sufficient approved revenue or capital budget to fund the proposed contract throughout its duration (see CSO 1.3.2 and 1.3.3);

2.1.2 That the processes under these CSO have been followed correctly;

2.1.3 That the Procurement Department has been consulted in advance for contracts over £25,000 (inclusive of VAT);

2.1.4 That Member authority has been obtained (this may be from the Joint Strategic Committee; Executive Members for the particular service; or under a delegated authority).

2.1.5 The contract formalities have been compiled with at CSO 12;

2.1.6 That the Decisions Pathway has been followed (see CSO 1.3.5).

## Standing Order 3: Special Circumstances and Emergencies

3.1 This CSO cannot be used for a contract that is over the public procurement threshold. For urgent contracts over the threshold Officers would need to consult with the Monitoring Officer and the Chief Executive Officer.

3.2 A 'Special Circumstance' or 'Emergency' is defined as a situation which poses an immediate risk to Council services or the wellbeing of residents, for which urgent action is needed and which cannot be dealt with using the Councils usual processes and procedures.

3.3 Exemption from any of the provisions of these Standing Orders may only be made as follows:

3.3.1 **For contracts under £100,000 (inclusive of VAT)** approval must be sought from the Monitoring Officer and the s151 Finance Officer and the Director for Service should publish an Officer Decision Notice;

3.3.2 **For contracts over £100,000 (inclusive of VAT) and below the Public Procurement Threshold** the Monitoring Officer, the s151 Finance Officer must approve the award and the Director for Service (or their delegated nominee) must consult with appropriate Executive Members or their Leader, (or the Joint Strategic Committee) who must be satisfied that the matter is Urgent or is a Special Circumstance having regard to the above definition, and if so satisfied, a direct award under this CSO exemption will be authorised.

3.3.3 Where the exemption at b) is so authorised, the Director for Service or their delegated nominee must ensure that:

- a) An Officer Decision awarding the contract is recorded by Democratic Services on the Decisions Pathway and/or in the minutes of the Committee giving the approval; and
- b) Unless committee approval is already obtained, the use of this CSO is to be reported as soon as practicable to the next Joint Strategic Committee following the consultation with the Executive Members and the publication of the Officer Decision.

3.4 If it is impracticable for the Director or their delegated nominee to consult with the relevant Members, then the Director shall, when submitting the report to the next Joint Strategic Committee to explain the emergency, additionally give reasons as to why the Director was not able to consult with the relevant Members at the time.

3.5 Advice should always be taken from the Monitoring Officer and Democratic Services as to the requirement to make any public notice in the Forward Plan of Key Decisions/28 Day Notice.

3.6 For the avoidance of doubt, recruitment of temporary or agency staff to cover sickness or vacancies is included under this CSO.

## Standing Order 4: Publishing Contract Notices

### 4.1 Publishing a Contract Opportunity Notice

4.1.1 The Council advertises a contract opportunity when it carries out an **open** invitation to tender (ITT) or **open** request for quotation (RFQ) for a contract with a value of, or greater than £25,000 (inclusive of VAT).

**Open** means that the opportunity is advertised to all suppliers whether nationally or within a geographic location and in these circumstances the contract must be published on the UK's National Contracts Finder website.

Where the Council advertises a contract opportunity it shall publish the information on the UK National Contracts Finder website within 24 hours of the time when it first advertises the contract opportunity on the Council's portal, see Regulation 110 (3) Public Contract Regulations 2015.

4.1.2 The Council does not advertise an opportunity (and shall not be required to publish an opportunity on UK National Contracts Finder) where it carries out a **closed** ITT or **closed** RFQ process and only makes the opportunity available to a number of particular suppliers who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a framework agreement or DPS) and regardless of how it draws that opportunity to the attention of those suppliers.

4.1.3 If you need guidance on publishing a contract opportunity, always seek advice from the Procurement Department or Legal Services.

### 4.2 Publishing a Contract Award Notice

4.2.1 **UK National Contracts Finder** - Cabinet Office PPN09/21 requires Officers to publish a Contract Award Notice for all contracts with a value of, or greater than, £25,000 (inclusive of VAT) regardless of how the contract was procured and whether or not a contract opportunity was advertised. The Notice must be published within 90 calendar days from the date of completion.

4.2.2 Officers are responsible for notifying the Procurement Department when a Contract Award Notice is to be published and must provide all information required for the award notice to the Procurement Department.

4.2.3 **The Council's Contracts Register** - in addition to the requirement to publish on UK National Contracts Finder, a Council Contract Register for all contracts of, or greater than, £5,000 (inclusive of VAT) shall be kept and maintained by the Council's Procurement Department on behalf of the Director for Digital, Sustainability and Resources. The Register shall be open to inspection by any Member of the Council or public.

4.2.4 All Officers completing contracts over £5,000 (inclusive of VAT) are responsible for providing the following information (as appropriate) to the Council's Procurement Department to ensure the Contracts Register is kept up to date:

- a) Contract Reference Number
- b) Title of Agreement
- c) Department Responsible
- d) Description of Contract

- e) Contract Start Date
- f) Contract End Date
- g) Contract Extension period (if applicable)
- h) Contract Review Date
- i) Contract Value
- j) Irrecoverable VAT
- k) Supplier Name
- l) Supplier Type (legal standing of the organisation)
- m) Procurement process used

4.2.5 A regular report presenting information from the Contracts Register shall be presented to the Council's Procurement Working Group by the Director for Service or their nominated representative identifying all those contracts due to expire and the proposed action to be taken. The report identifying these contracts should be presented in a timely fashion to allow for sufficient time to re-procure, if necessary.

## **Standing Order 5: Financial Limits and Procedures**

### **5.1 Contracts for a value up to but not including £25,000 (inclusive of VAT)**

5.1.1 For purchases up to (but not including) £25,000 (inclusive of VAT), two written quotes are to be obtained. Where it is impracticable to obtain two written quotes due to the specialist nature of supply, one quote can be obtained providing there is written evidence that the quote represents value for money.

5.1.2 A written contract is required (see CSO 12). Any Finance Lease or Finance arrangement, must also be checked in advance by Financial Services.

5.1.3 Contracts under CSO 5.1 do not need to be signed by Legal Services and can be signed by an Officer with sufficient budget, authority and has followed the Decisions Pathway (see CSO 1.3.5).

### **5.2 Exemption from Obtaining Two Written Quotes**

5.2.1 Where the proposed purchase is for works, goods or services is below £5,000 (inclusive of VAT) and the purchase is for planned minor works or reactive maintenance to Council buildings or structures within the Council's ownership and responsibility, the procuring officer need only obtain one written quote.

5.2.2 Use of the exemption at clause 5.2.1 is to be monitored. Where the aggregate value of the contracts for planned minor works or reactive maintenance with any one supplier exceeds £25,000 (inclusive of VAT) in the aggregate or in any four year period, then the procuring officer will obtain three quotes prior to any further instruction to the same supplier to ensure value for money.

5.2.3 In the event the aggregate spend has exceeded £25,000 (inclusive of VAT) and the procuring officer has obtained three quotes to ensure value for money as required by CSO 5.2.2, if the same supplier has provided the most economically advantageous quote, the procuring officer may re-apply the procedure at clause 5.2.1 up to a further spend of £25,000 (inclusive of VAT) for reactive maintenance and repairs.

### **5.3 Contracts for a value of £25,000 (inclusive of VAT) up to but not including £100,000 (inclusive of VAT)**

5.3.1 Where the estimated value of a contract is from and including £25,000 (inclusive of VAT) but below £100,000 (inclusive of VAT), the Director or their delegated nominee is to obtain three written quotes or carry out a tender process. The Procurement Department can advise on the most appropriate route.

5.3.2 Unless the exemption at CSO 5.4 applies to this CSO, all quotations and tenders must be published on the Council's e-portal.

5.3.3 All quotes or tenders pursuant to this CSO shall be invited and received through the e-portal in accordance with CSO 9.

5.3.4 Quotes or tenders should only be evaluated in accordance with the criteria stated by the Council in the original RFQ or ITT documentation. The evaluation process and reasons for the evaluation decision should be clearly documented and retained on file. If in doubt, seek advice from the Procurement Department.

### **5.4 Exemption to Obtaining Three Quotes or Tenders**

5.4.1 Where in the opinion of the relevant Director, Head of Service, or their delegated nominee, it is impracticable to follow the procedure set out at CSO 5.3, due to the specialist nature of supply or the nature of any warranty that exists, then an exemption to obtaining three quotes will apply providing the reasoning for reaching the decision to use the exemption is recorded by the relevant Officer and approved by Legal, Finance, and Procurement Services in advance of the contract.

### **5.5 Contracts for a value of £100,000 (inclusive of VAT) up to but not including the Public Procurement Threshold**

5.5.1 Where the estimated value of the contract is from £100,000 (inclusive of VAT) but below the procurement threshold, the Director for Service or their delegated nominee shall follow an open tender process unless the exemption to the open process at 5.6 applies.

5.5.2 For below threshold contracts, an open process can be reserved by supplier location; small and medium sized enterprises (SMEs); voluntary and community groups and Social Enterprises (VCSEs). See CSO 1.3.8.

5.5.3 An open procedure under this CSO requires the publication of:

- a) A notice on the Council's Portal;
- b) A contract opportunity notice on Contracts Finder within 24 hours of the publication on the Portal. The contract opportunity notice will be automatically created through the Portal using the information provided.

5.5.4 In addition to the mandatory notices, Officers may consider giving notice of the procurement in a local publication, trade journal and/or on the Council's web site.

5.5.5 Instead of an open procurement a Framework Agreement may be used see CSO 7.1 and 7.2. When using a framework or a dynamic purchasing system there is no need to publish a contract opportunity notice on National Contracts Finder.

## 5.6 Exemption to the Open Process

5.6.1 This exemption is only to be used in limited circumstances where approval is obtained from the Chief Financial Officer and the Head of Legal Services.

5.6.2 An Open Process need not be followed, nor will a contract opportunity notice need to be published on National Contracts Finder, if it has been agreed by the Chief Financial Officer **and** Head of Legal Services that the invitation to tender is to be made available to only a limited number of suppliers who have been selected for the purpose. In such circumstances, the tender process should invite a minimum of **five tenderers** unless the Chief Financial Officer and Head of Legal Services agree that it is impractical to do so.

## Standing Order 6: Above Threshold Procurements

### 6.1 Tendering Procedures

6.1.1 When awarding public contracts, the Council shall apply one of the following procedures, always contact the Procurement Department for advice on the appropriate procedure:

#### 6.1.2 Open Procedure

In which all interested suppliers may respond to the advertisement published on the Council's Portal and the UK Find a Tender website by submitting a tender for the contract.

#### 6.1.3 Restricted Procedure

The Council will publish a qualitative selection questionnaire and only those tenderers that pass the selection are invited to submit a tender for the contract.

#### 6.1.4 Competitive Dialogue Procedure (for developing solutions in dialogue)

A qualitative selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.

#### 6.1.5 Competitive Procedure with Negotiation (for improving bidders' offers)

A qualitative selection is made of those who respond to the advertisement. The Council may then open negotiations with the tenderers to seek improved offers and evaluate modified tender responses.

#### 6.1.6 Innovation Partnership Procedure (for developing innovative solutions)

A qualitative selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing 'product' on the market. The contracting authority is allowed to award partnerships to more than one supplier.

### 6.2 Maintaining a Record of the Procurement Process

6.2.1 Whichever above threshold procedure is to be used the procuring Officer must keep a **Regulation 84 Report** detailing each step of the procurement. The Report should be ongoing and specify:

- a) What process was used;
- b) Which stage has been reached;
- c) The names of selected and rejected tenderers;
- d) how the tenderers were evaluated and why;
- e) reasons for selection and rejection;
- f) details of any known subcontractors;
- g) circumstances justifying the use of the tender procedure chosen;
- h) conflicts of interest identified and action taken;
- i) all details specific to negotiation or dialogue with the supplier.

6.2.2 The Procurement Department will provide a template for the Report and it is the Officer's responsibility to ensure the Report is kept up to date.

6.2.3 These mandatory Regulation 84 Reports may be fully disclosable in any procurement challenge, or may also be requested by a Cabinet Office Minister. Officers should not disclose any information from the Report, without first obtaining legal advice.

6.2.4 The Report is not required for contracts under a framework agreement.

6.2.5 For contracts below threshold the Regulation 84 Report is not mandatory, but it is deemed good practice for Officers to keep a Report for reasons of transparency.

## **Standing Order 7: Frameworks, Dynamic Purchasing Systems and Consortia Organisations**

### **7.1 Framework Agreements**

A Framework Agreement is a collective of suppliers that have already tendered through a compliant procurement process, and have been selected (on quality and cost criteria) for their ability to provide either works, goods or services to the Council. The Framework will enable the Council to hold a mini-competition to obtain best value, or it will enable a direct call-off to a single supplier.

The Framework Agreement has established call-off contract terms to be used between the Council and the Supplier, and there will be Framework rules and guidance on how to use the Framework and what amendments if any can be made to the call-off terms.

### **7.2 Dynamic Purchasing Systems (DPS)**

The DPS is similar to a Framework Agreement but new suppliers can apply to join at any time providing they meet the DPS criteria. A mini competition must always be held with the DPS.

### **7.3 Consortia Procurements**

Consortia bidding is the term used to describe the situation where a number of economic operators come together to submit a bid for a contract in a procurement process and could be a useful process for major projects requiring a mix of professional skills.

## Standing Order 8: Preparation of the Procurement Documents

### 8.1 Request for Quotation and Specification Documents

8.1.1 **The Request for Quotation (RFQ)** - Officers must ensure that they are using the most current version of the RFQ document which has been approved by the Procurement Department as it contains necessary protections to the Council during the RFQ process.

The RFQ document can be varied from being 100% price based or can be reviewed on a combined price and quality assessment. The Procurement Department can give a guidance on using and completing the RFQ.

8.1.2 **The Specification** accompanies the RFQ and must clearly and concisely set out the Officer's needs, having regard to the nature of the works goods or services to be procured.

8.1.3 **Contract Terms and Conditions** - it is preferable for each RFQ to attach the Council's terms and conditions of contract which are appropriate to the nature of the works, goods or services being procured. Officers will need to contact legal services in advance of publishing the RFQ for advice on contract terms and conditions.

### 8.2 Invitation to Tender and Specification Documents

8.2.1 **The Invitation to Tender (ITT)** - Officers must ensure that they are using the most current version of the ITT document which has been approved by the Procurement Department as it contains necessary protections to the Council during the tender process. The Procurement Department can give guidance on completing the ITT.

In all cases, every invitation to tender shall include the following:

- a) A statement that the tendering process will be conducted through the Council's Portal;
- b) Full instructions on how to submit a tender to this system;
- c) The deadline for submission of tenders to this system;
- d) A Tender submission schedule which contains:
  - FOI Exemption Form
  - Form of Tender
  - Collusive Tendering Certificate
  - Mandatory and Discretionary Exclusion Grounds
  - Supplier's selection questionnaire
- e) The ITT shall also include the evaluation criteria against which the tenderers will be scored and the weighting (or score) to be applied to each criterion with an explanation of the scoring mechanism. All criteria must be capable of being objectively assessed, clear and concise. Criteria will include price (which usually carries a score of not less than 30%) and Social Value (with a score of 10%). The remaining criteria (60%) usually address the quality of the goods works or services to be delivered. Please see CSO 10.3 for example evaluation criteria.

8.2.2 **Fully detailed Specification** - Officers must ensure that they have a fully detailed specification setting out exactly what it is the Council wants to purchase which provides all specific and technical requirements.

8.2.3 **Contract Terms and Conditions** - Each ITT is to attach an appropriate form of contract as approved by Legal Services.

## **8.3 Establishing MEAT or other approved Assessment**

8.3.1 The criteria for considering MEAT must:

- a) Be agreed in advance and applied equally to all tenders;
- b) Be relevant and appropriate to the subject matter of the tender;
- c) Be objectively identifiable capable of being objectively scored;
- d) Not be anti-competitive or capable of distorting competition;
- e) Be listed in a decreasing order of importance having regard to the weightings attributed to them starting with the highest scoring criteria first.

8.3.2 Weighting must be given to each criterion used, which reflects the importance of each element of the contract.

8.3.3 Where any weighted criterion has sub-criteria to be considered this must be disclosed in advance in the ITT and relevant sub-weightings attributed to the sub-criteria.

8.3.4 Price must be a criterion and normally must have a weighting of not less than 30%. Where the award requires adopting a price weighting of less than 30%, this will need to be justified to, and agreed with, the Procurement Department.

8.3.5 Social value is to be given a weighting of not less than 10% unless the Procurement Department agrees otherwise.

8.3.6 The remaining criteria used must reflect the quality and available social value of the purchase, and be broken down appropriately to consider all aspects of required quality appropriate for the tender.

*An example evaluation scoring could be 30% price, 60% quality and 10% social value totalling 100%. Quality and Social Value would most likely have sub-criteria with their total weightings not exceeding 60% and 10% respectively.*

## **8.4 Examples of criteria for establishing MEAT:**

8.4.1 Costs - the whole lifecycle cost should be evaluated - see CSO 1.3.2

8.4.2 Social value - for Social Value criteria - see CSO 1.4

8.4.3 Quality - Examples include: technical and professional merit, aesthetic and functional characteristics, environmental characteristics, service delivery, after-sales service and technical assistance, customer service and support, contract mobilisation, implementation and management, experience, and risk management.

## **Standing Order 9: Using e-Procurement Portal**

### **9.1 Publishing and Accepting Quotations and Tenders on the Portal**

9.1.1 Unless the exemption at paragraph 9.3 below applies, all requests for quotations (RFQ) and invitations to tenders (ITT) are to be published and accepted on the Council's portal.

9.1.2 All quotations and tenders will be stored electronically by the portal in a secure inbox until opened after the deadline.

9.1.3 Officers must ensure bids received are compliant by checking that the appropriate information detailed in the RFQ/ITT documents is completed and submitted by suppliers as requested in those documents.

9.1.4 Bidders must return their submissions on or before the deadline set out in the RFQ/ITT documents. Submissions returned after the time and date must be rejected by the Council, although the Council may extend the deadline for a late submission if there is evidence available to demonstrate that the bidder has made an attempt to submit to the portal before the expiration of the deadline, or if an extension is afforded to all those bidding. All information regarding quotations or tenders received, their submission date, time and their opened date and time will be stored by the system.

## **9.2 Exemption to publishing on the Council's Portal**

9.2.1 For below-threshold procurements, where the Head of Legal Services and the Chief Financial Officer agree that due to the specialist nature of the supply it is impractical for potential suppliers to be asked to quote or tender using the portal (i.e. due to a lack of technical knowledge and experience or availability) then the quotes or tenders can be obtained as set out below:

- a) The Director or their delegated nominee shall obtain at least three **sealed** written quotes or **sealed** tenders from persons or bodies who in the opinion of the Director or their delegated nominee are capable of performing the contract.
- b) An agreed form of standard contract should be used and Legal Services should be instructed in advance of the procurement.
- c) All quotes and tenders received pursuant to this CSO shall either be opened by electronic means or if written sealed quotes or sealed tenders in the presence of the Director for Service and a Procurement Officer.
- d) The Head of Service or their delegated nominee shall then have delegated authority to accept such a quote or tender, but in the case of a quote other than the lowest, then the Head of Service must establish MEAT as set out in CSO 8.3.
- e) Details of the quotes or tenders received and how the successful contractor was chosen should be submitted to the Procurement Department for approval for all contracts.

9.2.2 Where this exemption applies the procuring officer must still comply with any requirement to publish the contract award notice on Contracts Finder and on the Council's contracts register.

## **Standing Order 10: Evaluation and Notifications to Bidders**

### **10.1 Evaluation of Quotations and Tenders**

10.1.1 The members of an evaluation panel should be carefully considered and all members must declare any conflicts of interests in the procurement and its outcome prior to commencing any evaluation.

10.1.2 Members of the evaluation panel should only receive that part of the tender response which they are required to score. This prevents undue influence on the scoring of their specified section.

10.1.3 Submissions must be evaluated objectively and strictly in accordance with the criteria stated in the original request for quotation (RFQ) or invitation to tender (ITT) and in compliance with the Public Contract Regulations 2015 or other relevant legislation.

10.1.4 The evaluating panel members must clearly document and record the reasons for their decision and any other relevant matter arising during the evaluation. Where the tender process is above threshold, panel members must continue to keep this information up to date see CSO 6.2 (Maintaining a Record of the Procurement Process).

10.1.5 Unless seeking an RFQ based on price only, the award must be based on the most economically advantageous tender (MEAT) which uses a cost-effective approach for price/quality ratio, offering best price (which will not necessarily be the lowest price). Or, if approved by the Procurement Department, another recognised evaluation assessment method (see CSO 8.3 MEAT or other Approved Assessment).

10.1.6 A tenderer's submission may not be altered after the time and date specified for the return of tenders. If an error in the submission is discovered, the tenderer shall be given the opportunity to confirm or withdraw the tender as it is submitted. If, in the opinion of the Head of Finance, there are exceptional circumstances, a tenderer may be allowed to correct any arithmetical error in the tender or clarify its tender, but not add to or enhance it.

## **10.4 Notification to Unsuccessful Bidders**

10.4.1 Following an evaluation of a request for quotation or an invitation to tender, the procuring officer will ensure that they liaise with the Procurement Department to ensure that all bidders are simultaneously notified in writing through the Council's portal with the evaluation outcome by providing the information below. Supplying the following information is mandatory for above-threshold tenders and for below-threshold tenders is good transparent practice:

- a) The tender evaluation criteria;
- b) The reasons for the decision, including the characteristics and relative advantages of the successful tender;
- c) The evaluation scores of the tenderer receiving the notice and the scores of the successful tenderer;
- d) The reasons (if any) why the tenderer did not meet the technical specification and/or the areas where the tenderers submission was weaker than that of the successful tenderer;
- e) The name of the tenderer(s) to be awarded the contract
- f) A statement on the date the standstill period is expected to end (see 10.6 Standstill Period).

## **10.5 Notification to Successful Bidders**

10.5.1 Successful tenderers will be sent a Notification of an Intention to Award Letter, which will usually be subject to a ten day standstill period (see 10.6). Officers must ensure that they do not create a binding contract with the supplier until the contract has been finalised and executed. This is in keeping with the request for quotation or invitation to tender, which confirms the Council will not be bound until the contract is executed.

## **10.6 Standstill Period**

10.6.1 **Above Threshold** - The standstill period must run for a minimum of 10 calendar days commencing the day after the notice was emailed to the tenderer and expires at

midnight on the 10<sup>th</sup> day. If the expiry date of the standstill period falls on a weekend or public holiday then the expiry date shall be midnight on the next working day.

10.6.2 Should a Tenderer request further information or debrief during the standstill period, the Officer should immediately consult with the Procurement Department and Head of Legal Services for advice. The Council may extend the standstill period for further days until the tenderer has received and considered the information.

10.6.3 If the Council receives notification from a tenderer that it intends to challenge a contract award decision, then the Head of Legal Services must be notified immediately and the Council must automatically refrain from entering into the contract until legal advice has been received (failure to comply with this CSO may result in the court making a declaration of ineffectiveness with damages payable by the Council). Inform the Council's Freedom of Information Officer if a challenge is received to ensure that commercially sensitive information is not released without prior consideration and authority.

10.6.4 Upon satisfactory conclusion of the standstill period the Officer may advise the successful tenderer(s) that the standstill period has passed and instruct the Head of Legal Services to draw up a formal contract with the successful tenderer(s).

10.6.5 Once the standstill period has concluded a Contract Award Notice should be placed in the Find a Tender (FTS) by the Procurement Department within **30 days** of the contract award.

10.6.6 **Below Threshold** - tenders below the public procurement threshold are not covered by the full requirements laid out in Section 10.4 (Notification to Unsuccessful Bidders). However, it is best practice to follow the same principles of notifying unsuccessful tenderers and, if requested by the tenderer, providing feedback on the outcome of the procurement exercise.

10.6.7 It is not necessary to have a standstill period for a below threshold contract, but it is good practice to apply one and only in limited circumstances will the Procurement Department agree to reduce the standstill period.

## **Standing Order 11: Subcontracting**

11.1 Where it is anticipated that the successful tenderer will want to subcontract out an element of delivery to a third party the Director for Service must ensure that:

11.1.1 The subcontractor is not a supplier that would have been excluded in the tender process;

11.1.2 The main supplier has carried a best value exercise in line with these CSO and that best value for the subcontractor has been approved by the Procurement Department; and

11.1.3 Any subcontractor is paid on the same payment terms as the supplier in the main contract and on terms no less favourable than those agreed with the supplier, i.e. on payment terms within 30 days;

11.2 Consideration must be given as to whether or not a collateral warranty between the subcontractor and the Council is required. A collateral warranty is most often required where there is no direct contractual relationship between the Council and the subcontractor.

11.3 There shall be inserted in every contract a clause detailing the subcontracting arrangements.

## **Standing Order 12: Contract Formalities**

### **12.1 The Form of Contract**

12.1.1 All contracts should be made in writing and on the Council's standard written terms unless Legal Services approves otherwise. Contracts made on the supplier's written terms must be reviewed and approved by Legal Services. In advance of the tender process, the procuring Officer must seek advice from Legal Services on the form of contract to be used.

12.1.2 Advice from the Finance Department must be obtained where the contract involves a finance leasing arrangement.

12.1.3 Every contract shall specify the goods, materials or services to be supplied and the work to be executed; the price to be paid together with a statement as to the amount of any discount(s) or other deduction(s); the period(s) within which the contract is to be performed and such other conditions and terms as may be agreed between the parties and are required by law.

12.1.4 Consideration must be given as to whether or not a performance bond, parent company guarantee, or other form of security (see 12.2.2 below Liquidated Damages) acceptable to the S151 officer and the Legal Services, is required from the supplier.

### **12.2 Required Terms**

12.2.1 **Boilerplate Clauses** - The Council is required to include statutory terms, for example: Anti Bribery; Anti-Money Laundering; Freedom of Information; Data Protection; Safeguarding of Vulnerable Adults and Children; Transparency; Prevention of Terrorism; Audit; Anti-Discrimination Equality and Diversity; Payment of Subcontractors; Termination and Exit of Above Threshold Contracts; Compliance with Anti-Slavery and Human Trafficking laws; Force Majeure; Health and Safety.

If Officers consider one of the above clauses is more appropriate to their contract, they must notify Legal Services when asking them to consider the contract terms. For example, where personal data is being controlled or processed by a third party on the Council's behalf, an additional data sharing agreement may be required.

12.2.2 **Liquidated Damages** - Officers must consider the effect on the Council of any delay in performance of the contract, and whether that delay is likely to cause the Council financial loss which requires protection. If so, the Officer must estimate the reasonable and genuine loss that the Council is likely to suffer as a result of the delay and provide to Legal Services a figure which would fairly compensate the Council, usually at a daily or weekly rate for that loss.

12.2.3 **Standards** - Where an appropriate British Standard or code of practice (or other applicable standard) applies to the procurement, the procuring Officers are required to notify Legal Services so the relevant standard is included in the contract.

## **12.3 Execution of Contracts**

12.3.1 Where any contract is required as a result of any legal procedure or legal proceedings on behalf of the Council, it will be signed by the Head of Legal Services or another person authorised by them, unless any enactment otherwise authorises.

12.3.2 Contracts with a value of less than £25,000 (inclusive of VAT) can be executed by the Head of Service or their delegated nominee. Contracts of £25,000 (inclusive of VAT) or above, are to be executed in Legal Services, unless Legal Services approves otherwise.

12.3.3 Any contract for an amount of or greater than £250,000 (inclusive of VAT) is to be executed as a deed using the common seal of the Council, signed by an authorised signatory and witnessed as formality requires.

## **12.4 Electronic Signatures**

12.4.1 For all contracts below £250,000 (inclusive of VAT), the Council may execute the contract via a method of e-signature which has been pre-approved by Legal Services. Any contract with a value of £25,000 (inclusive of VAT) or above, must be authorised, signed and completed by Legal Services.

12.4.2 For contracts that require a seal, the Monitoring Officer may adopt such means of sealing as from time to time they consider appropriate. This may include allowing electronic sealing in accordance with section 7A(1) of the Electronic Communications Act 2000 (or other subsequent legislation). Affixing of an electronic seal approved in this way shall be of the same legal effect as affixing the common seal of the Council. Any additional formality relating to the witnessing of such contracts are complied with.

## **Standing Order 13: Engagement of Consultants**

13.1 The financial limits in these CSOs apply to the engagement of consultants, the appointment must be based on MEAT or other approved evaluation (see CSO 8.3). If a consultant is to provide services over the lifetime of a project then the whole lifetime cost should be taken into account when procuring the consultant.

13.2 External legal consultants must be appointed through Legal Services in accordance with the Council's constitution.

13.3 Prior to the engagement of the consultant the Officer must:

- a) Prepare a business case in advance of the appointment which as a minimum, should detail the reason for seeking external expertise, for example, lack of internal capacity or capability due to the specialist nature of services;
- b) This business case should be approved by either the Director or the Head of Service or their delegated nominee;
- c) Financial checks of lead consultants' financial stability and professional indemnity insurance should be made (which should also include any sub-consultants);
- d) Insurance expiry date should be monitored by project managers except in those cases where the insurance Section is directly responsible for such insurance. Ongoing checks of valid insurance renewals should be undertaken during the lifetime of contracts;

- e) Where the consultant is an individual, check with Payroll and Procurement to find out if the consultant is acting in the capacity of an employee and therefore subject to IR35 (tax and national insurance payments at source)

13.4 It shall be a condition that the consultancy contract shall require the consultant to:

- a) Comply with these CSO in consultation with the relevant Head of Service or Director if the consultant is procuring goods works or services on the Council's behalf.
- b) Produce to the Head of Service or Director on request, all the records maintained by them in relation to the contract; and
- c) On completion of the contract, transmit all such records to the Head of Service or Director or to any other Head of Service duly authorised by the Council for this purpose.
- d) Consider and deal with ownership of intellectual property rights created by the instruction of the consultant.

13.5 The terms of engagement of a consultant (not being an Officer of the Council) shall be set down in a form approved by Legal Service.

13.6 Previous employees should not be engaged as consultants until a period of at least 6 months has elapsed since they ended their employment with the Council.

## **Standing Order 14: Contract Performance Monitoring**

14.1 The procuring Officer should ensure that the contractor's performance is monitored against the contractually agreed terms, by an appropriate Officer responsible for contract management in their department. The extent of the monitoring should be proportionate to the nature, duration and associated cost of the contract.

14.2 Heads of Service and managers are required to ensure Officers carry out proper contract management and that any issues in contract performance are brought to their attention. For higher value contracts, Members may also require an updating report on contract performance.

14.3 Contract managers are to periodically revise how delivery and processes under ongoing contracts might be improved and to ensure that those improvements are implemented by the supplier and monitored by the contract manager.

14.4 Where further goods, works, or services will be required at the end of an existing contract term, contract managers must consult with the Procurement Department prior to the expiration of the existing contract in sufficient time to plan the re-procurement to avoid disruption to Council services.

## **Standing Order 15: Extensions to Contracts**

15.1 This Standing Order is only to be used in the following circumstances:

- a) The extension is required to undertake an evaluation of the future requirement of the existing contract/service/service delivery;
- b) There has been no previous extension of the original contract (other than an extension, or option to extend, which was agreed as a term of the original contract);
- c) There is approved budget;

- d) The proposed extension has been approved by Procurement and Legal Services having consideration to these CSO and the public procurement rules;

15.2 Where the Director for Service or Officer acting with delegated authority on their behalf proposes to extend a fixed-term contract to include additional works, services, goods they shall only do so in accordance with this CSO and CSO 2.1 (Authorisation to Contract).

15.3 For above-threshold contracts, the terms of the contract extension must not breach the requirements of Regulation 72 of the Public Contract Regulations 2015 (Modification of Contracts).

15.4 In addition:

- a) The extension must be on the same terms as the original contract including terms as to price, although an increase in the price payable for the goods, services or works, which reflects an RPI increase is acceptable;
- b) The original contractor has agreed the additional goods, services or works will be supplied on the same terms;
- c) The extension is necessary and a legitimate business case for it has been approved and recorded in writing by the Director for Service or Officer with delegated authority to extend the contract;
- d) The extension must be made during the term of the original contract or continue immediately following the expiration of the original contract without any break in continuity between the expiration of the original contract and the extension of it;
- e) In the case of construction works, the proposed additional works are on the same site as the original contract or of a similar nature;
- f) The procurement for the original contract complied with these CSOs;
- g) The extension is for no more than 24 months;
- h) The decisions pathway has been followed prior to awarding the extension.

15.3 In all cases, consideration should be given as to whether approval should be obtained from the relevant Executive Member(s) before any extensions are granted.

## **Standing Order 16: Variations to Contracts**

16.1 The effect of the proposed variation on the contract value must be fully assessed and recorded in writing prior to the variation being made. Officers must ensure that there is an authorised budget sufficient to meet the value of the variation in place, and the decisions pathway must be followed.

16.2 Officers must consult Procurement, Financial and Legal Services for advice on the proposed variation prior to making the variation. Any contract variation with a value of £25,000 (inclusive of VAT) or above, is to be signed by Legal Services.

16.2 For above-threshold contracts, the terms of the contract variation must not breach any rule under Public Contract Regulations 2015 or other updating legislation.

16.3 All of the following clauses shall apply to a contract variation.

16.3.1 All contract variations must be within the scope of the original contract. The variation will be in scope if it is within a similar range of goods, services or works supplied under the original contract and the variation is required in order to complete an aim or purpose of the original contract.

16.3.2 In all cases, there should be a clear statement recorded in writing setting out the business justification, the cost, the benefits and the duration of the variation (whether temporary or for the remaining term of the contract) which is to be shared with Procurement Financial and Legal Services, as well as to inform the audit trail.

16.3.3 All contract variations must be authorised by the Director for Service or have relevant Member approval having regard to the business case and any comments made by the Procurement, Financial and Legal Departments. The variation must be in writing and signed by both the Council and the contractor. Where the value of the contract variation exceeds £25,000 it must be executed by Legal Services.

16.3.4 In all circumstances at the time the variation is proposed, Officers must follow the decisions pathway and if required to do so by that pathway, seek authorisation from (or consult with) Executive Member(s).

## **Standing Order 17: Termination of Contracts**

17.1 No contract with a value greater than £250,000 (inclusive of VAT) which has been entered into under the authority of the Council's Executive or appropriate Executive Members, shall be terminated either by agreement or by unilateral action without the approval of the Chief Financial Officer and the Head of Legal Services, and consultation with Executive Members in advance of terminating the contract.

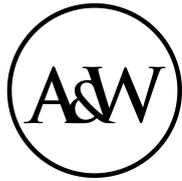
17.2 Where in the opinion of the Chief Financial Officer and the Head of Legal Services, the termination will have a significant financial impact on the Council or will cause a significant disruption to Council services, then the Director for Service is to provide a full report to Executive Members or the Joint Strategic Committee (as advised by the Head of Legal Services) and obtain Member authority to terminate the contract in advance of the termination.

17.3 Where, in the opinion of the Director for Service, termination of the contract is urgent and delay would have an adverse impact on services, assets, or the public; and there is insufficient time to take a report to Members (as required by paragraph 17.2), then providing the Chief Financial Officer and Head of Legal Services agree, the Director may terminate the contract and report as soon as possible after the termination providing full details of the circumstances, financial effect and/or disruption to services.

17.4 For all contracts below £100,000 (inclusive of VAT), the Director for Service can terminate the contract without Member consultation providing that the Chief Financial Officer and Head of Legal Services agree there is no significant financial impact or disruption to Council services.

17.5 Legal advice shall be sought before terminating any contract.

This page is intentionally left blank



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
22 March 2022  
Agenda Item 12

Ward(s) Affected: All Adur

## **Scheme of Allowances for Adur District Council in 2022/23**

### **Report by the Director for Communities**

#### **Executive Summary**

##### **1. Purpose**

- 1.1. The Joint Governance Committee is asked to consider the report of the Joint Independent Remuneration Panel and make recommendations to Adur District Council on the level of Members' Allowances for the municipal year 2022/23.
- 1.2. Recommendations from the Committee on the level of allowances will be considered at the Full Council meeting in April 2022.

##### **2. Recommendations**

- 2.1. That the Joint Governance Committee recommend to Adur District Council that Members Basic Allowance be linked to the outcome of the Officers' NJC Pay bargaining agreement for the year 2022/23.

##### **3. Context**

- 3.1. The Local Authorities (Members' Allowances) Regulations 2001 requires local authorities to establish an Independent Remuneration Panel to make recommendations about the levels of allowances payable to Members.

- 3.2. Adur District Council last reviewed its allowances in 2019 and the Panel's findings were reported to the Joint Governance Committee on 23 November 2019 and subsequently to Full Council at its meeting on 12 December 2019.
- 3.2.1. The Joint Governance Committee recommended that the Council adopt option 3 of the Joint Independent Remuneration Panel's report which recommended
- i) that the basic allowance be referenced to the outcome of the Officers' NJC Pay bargaining agreement for a period of two years until March 2022;
  - ii) that the Special Responsibility Allowance for Chairmen of the Joint Overview and Scrutiny Committee and Joint Governance Committee be raised in line with what is offered at Worthing; and
  - iii) that an additional 1% increase be added for 2020/21 in view of the panel's view that Adur and Worthing Councillors should be remunerated the same.
- 3.2.2. The Council at its meeting on the 12 December 2019 approved the recommendation made by the Joint Governance Committee.
- 3.3. The Adur and Worthing Joint Independent Remuneration Panel began its review of Adur Allowances at the beginning of September 2021 and the review concluded in early March 2022. Panel Members were advised and supported by Officers from Finance and Democratic Services and have submitted a report that is attached as Appendix A.

#### **4. Issues for consideration**

- 4.1. The Committee is asked to make a recommendation to Adur District Council in respect of setting the level of allowances for 2022/23.
- 4.2. The Panel has set out 1 costed option for Members to consider which is that the basic allowance be linked to the outcome of the Officers' NJC Pay bargaining agreement for the year 2022/23.

#### **5. Engagement and Communication**

- 5.1. The Panel contacted group Leaders to ask for any comments they may have prior to the commencement of the review.
- 5.2. As a Panel of independent advisors, the JIRP is the body that the council engages with and consults on setting the level of its allowances.

## 6. Financial Implications

- 6.1 The Councils have the following budgets available in 2022/23 to fund member allowances:

Adur: £225,010  
Worthing : £285,780

- 6.2 The budget strategy allows for a 2% inflation on all salary budgets which would include members allowances for 2022/23. Consequently, the options proposed by the independent remuneration would have the following financial impacts if the NJC agreement is 2%:-

	Adur £
Estimated 2022/23 budget	225,010
Option 1 : NJC pay award (2% total)	225,353
Growth / saving (-) against budget	343

- 6.3 Any small shortfall will be funded from the Council's inflation contingency budget.

## 7. Legal Implications

- 7.1 An Independent Remuneration Panel is a requirement of the Local Authorities (Members' Allowances) Regulations 2003 (The 2003 Regulations).
- 7.2 The 2003 Regulations states that before an authority makes or amends a scheme, the authority shall have regard to the recommendations made in relation to it by an independent remuneration panel
- 7.3 The 2003 Regulations sets out the role of the independent remuneration panel to make recommendations to the authority as to the amount of basic allowance which should be payable to its elected members. There is also the authority to make recommendations regarding special responsibility

allowances (SRA) – and the roles and responsibilities for which the SRA applies, expenses or arranging the care of children and dependants.

### **Background Papers**

- Previous reports of the Joint Independent remuneration Panel
- Report and Minutes of the meeting of the Joint Governance Committee and Adur Full Council
- LGA National Local authority census - local government councillors
- South East Employers allowance survey 2021
- Results of internal survey of Adur Councillors August 2016/ 17 and 2018/19

### **Officer Contact Details:-**

Chris Cadman-Dando

Democratic Services Officer

01903 221364

[chris.cadman-dando@adur-worthing.gov.uk](mailto:chris.cadman-dando@adur-worthing.gov.uk)

## **Sustainability & Risk Assessment**

### **1. Economic**

- 1.1 The panel has recognised that the Members' Allowances scheme recognises that public service, rather than material reward, should remain the primary motivation for involvement in local government, whilst at the same time, it should aim to attract and retain Members who are representative of the demographic make-up of the District.

### **2. Social**

#### **2.1 Social Value**

- 2.1.1 Matter considered but no issue identified

#### **2.2 Equality Issues**

- 2.2.1 Having an allowance scheme that supports all members in covering the costs of being a member allows the Councils to attract and retain Members who are representative of the demographic make-up of the District.

#### **2.3 Community Safety Issues (Section 17)**

- 2.3.1 Matter considered but no issues identified

#### **2.4 Human Rights Issues**

- 2.4.1 Matter considered but no issues identified

### **3. Environmental**

- 3.1 Matter considered but no issues identified

### **4. Governance**

- 4.1 Having a fair scheme of allowances can enable a more diverse pool of candidates and reflect a wider demographic of the District.

**REPORT OF ADUR AND WORTHING COUNCILS  
JOINT INDEPENDENT REMUNERATION PANEL  
ADUR DISTRICT COUNCIL**

**1.0 Introduction**

The Local Government Act 2000 and the Local Authority (Members' Allowances) (England) Regulations 2001 require local authorities to set up an independent panel to review Member Allowances. These regulations specifically abolished the payment of Attendance Allowances and also allowed for a dependent carers' allowance. These regulations have been subsequently updated by further acts and regulations.

**2.0 Composition of the Panel**

2.1 The current composition of the Council's Joint Independent Remuneration Panel (JIRP) is:-

Mr Barry Hillman (Chairman)  
Ms Verity Lockhart  
Mr Andrew Murton  
3 x Vacancy

**3.0 Terms of Reference**

3.1 The Panel's terms of reference are set out below:-

The Panel shall, unless a Council has adopted a scheme under (f) below which has been in place for less than 4 years, by 31<sup>st</sup> January 2015 and thereafter by the 30<sup>th</sup> November each year, including 2015, produce a Report making recommendations to each of the Borough, District and Parish Councils as to:

- a) the amount of the basic allowance which should be payable to its Elected and Co-opted Members;
- b) the responsibilities, roles or duties where special responsibility allowance should be payable and the amount of such allowances (District and Borough Councils only);
- c) the amount of any traveling and subsistence allowance which should be payable to its Elected and Co-opted Members;
- d) whether dependants' carers' allowance should be payable and the amount of such allowance;
- e) whether payment of allowances may be backdated in cases where a scheme is amended at a time which would affect allowances payable in that year;

- f) whether adjustments to the level of allowances may be determined according to an index, and which index and for how long before its use is reviewed (subject to a maximum of 4 years);
- g) those items of expenditure that Elected and Co-opted Members may reclaim as expenses; and
- h) any other Members' allowances or reimbursement matters reasonably falling within the remit of the Panel; this may include to relevant bodies on matters of joint working and parity;
- i) such other functions as may be allocated to the Panels by Statute.

3.2 The Panel's Reports shall be submitted to the Councils by way of the Joint Governance Committee.

#### **4.0 Background Papers**

4.1 In preparing its recommendations the Panel considered the following research provided by the Council's Officers which detailed:-

- the current budget provision made for Members' Allowances;
- the current scheme of Members' Allowances paid to Members;
- the previous report of the joint independent remuneration panel;
- Members Allowances paid by other local authorities in the south east were obtained from South East Employers (SEE);
- Part Four of the Constitution of Adur District Council;
- Fees and charges for babysitting and caring.

4.2 Group Leaders were canvassed on their views regarding levels of allowance and were invited to give their views to the Panel.

4.3 Members of the Panel are aware that the scheme is late coming forward this year. The review was slowed by a number of factors including availability of officer time, the delay in the NJC pay bargaining agreement (for 2021/22) and the proposed creation of a new committee adding uncertainty to the scheme overall.

#### **5.0 General Principles**

5.1 The Panel last undertook a review in late 2019 for the years 2020/21 and 2021/22 as a result of it's recommendations the council agreed that the basic allowance be referenced to the outcome of the Officers' NJC Pay bargaining agreement for a period of two years until March 2021/2022 as well as a change to the Special Responsibility Allowance for Chairmen of the Joint Overview and Scrutiny Committee and Joint Governance Committee that it be raised in line with what was offered at Worthing. An additional 1% for 2020/21 was also agreed. At the time the panel acknowledged that they could have referenced the level of allowance to the NJC pay bargaining agreement for a period of four years, however they chose to do this for two years in case something significant arose in the intervening period (i.e the NJC levels fluctuated significantly).

5.2 The level of the NJC bargaining agreement has stayed close to the 2% budgeted for over the previous two years

- 5.1 The Members' Allowances scheme recognises that public service, rather than material reward, should remain the primary motivation for involvement in local government, whilst at the same time, it should aim to attract and retain Members who are representative of the demographic makeup of the District.
- 5.2 The panel recognised the functions of Councillors and the hard work, long hours and sometimes significant pressures involved.
- 5.2 That the level of Basic Allowance paid to Adur Councillors is lower than that of other Authorities in the West Sussex Area and less than its close partner, Worthing Borough Council. This gap in basic allowance has been reduced over the past five years (between Worthing and other West Sussex Authorities) and both authorities maintain the same multipliers to determine special responsibility allowances.

## **6.0 Basic Allowance**

- 6.1 The basic allowance on average pays less than the current minimum wage. The Panel felt that a paid similar role, given the levels of responsibility, would attract a higher than minimum wage rate. Therefore the panel was of the view that (if looking at hard figures) Councillors performing their role give a significant public discount rate for the hours that they put in. However, as stated before in the report, the Panel is minded that the members' allowances scheme recognises that public service, rather than material reward, should remain the primary motivation for involvement in local government. The allowance should be in place so that members are 'not out of pocket' for taking up the responsibility.
- 6.2 Given comparisons regionally the level of allowance for Adur District Council is slightly below average when compared with other Boroughs and Districts in the South East. It is also lower than its partner authority to the West, Worthing Borough Council. The panel has held a long standing belief that members from both authorities should be paid the same or similar amounts. This finding led from a previous survey in 2016/17 which showed that members from both authorities spent similar amounts of time on their work for the councils. A further Survey in 2020/21 had shown that Adur Councillors on average spend similar amounts of time as Worthing Councillors and in some areas more time. The panel acknowledges that this issue is complex and that other factors could be taken into account such as the larger population and budget of Worthing or the Housing stock maintained by Adur.
- 6.5 Previous decisions of Adur District Council have led the panel to believe and acknowledge that there is little desire for the level of basic allowance to increase significantly and be brought into line with the level of allowance in Worthing.
- 6.6 Given what is set out above and the fact that inflation is a pressure on personal finance, on balance the Committee felt that it was reasonable for members to expect some increase in the level of allowances.
- 6.7 The Panel has noted that over the previous six years that the basic allowance had been indexed to the Officer's NJC National Pay Bargaining agreement and believed that the principle of linking the basic allowance to raises in Officer remuneration is a fair method and should be retained.

- 7.1 As previously stated, the Panel feels that the basic allowance across Adur and Worthing should be equal. Having said that, the panel has for this review given more weight than in previous reviews to the wider financial environment and also to the previous decision of Council for the 2020/21 and 2021/22 review of allowances.
- 7.2 The Panel has noted that the Authority has increased its level of allowance and although it is still lower than other authorities in West Sussex it is not as grossly low in comparison as it has been in the past.
- 7.3 After consideration of the matters listed above the panel is putting forward one costed option for the council to consider
- 7.4 The Panel is aware that the creation of a new committee is imminent and that recruitment will be undertaken for the panel in the next municipal year. Given these facts the panel believe that there needs to be a fresh review in the next municipal year

## **8.0 Proposals**

- 8.1 That the basic allowance be linked to the outcome of the Officers' NJC Pay bargaining agreement for the year 2022/23

### **8.2 Childcare Allowance / Carers Allowance / Travel and Subsistence Allowance**

- 8.2.1 The panel is satisfied that the current scheme is satisfactory and is therefore not proposing any changes.

### **8.3 Special Responsibility Allowances**

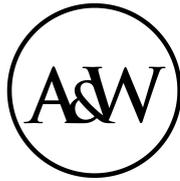
- 8.3.1 The panel is satisfied that no changes need to be made to the levels of special responsibility allowances.

## **9.0 Recommendation**

- 9.1 The Panel recommends that the Council determine the level of allowances for 2022/23 based upon the options given above.

**Mr Barry Hillman (Chairman)**  
**Ms Verity Lockhart**  
**Mr Andrew Murton**

This page is intentionally left blank



ADUR & WORTHING  
COUNCILS

Joint Governance Committee  
22 March 2022  
Agenda Item 13

Ward(s) Affected: All

## **Scheme of Allowances for Worthing Borough Council in 2022/23**

### **Report by the Interim Director of Communities**

#### **Executive Summary**

##### **1. Purpose**

- 1.1. The Joint Governance Committee is asked to consider the report of the Joint Independent Remuneration Panel and make recommendations to Worthing Borough Council on the level of Members' Allowances for the municipal year 2022/23.
- 1.2. Recommendations from the Committee on the level of allowances will be considered at the Full Council meeting in April 2022.

##### **2. Recommendations**

- 2.1. That the Joint Governance Committee recommend to Worthing Borough Council that Members Basic Allowance be linked to the outcome of the Officers' NJC Pay bargaining agreement for the year 2022/23.

##### **3. Context**

- 3.1. The Local Authorities (Members' Allowances) Regulations 2001 requires local authorities to establish an Independent Remuneration Panel to make recommendations about the levels of allowances payable to Members.

- 3.2. Worthing Borough council last reviewed its allowances in 2019 and linked Members allowances to the NJC award index for two years until the 2022/23 municipal year. The Council also approved an allowance for the Worthing Deputy Mayor as the post had previously not received a special responsibility allowance.
- 3.3. The Adur and Worthing Joint Independent Remuneration Panel began its review of Worthing Allowances at the beginning of September 2021 and the review concluded in early March 2022. Panel Members were advised and supported by Officers from Finance and Democratic Services and have submitted a report that is attached as Appendix A.

#### **4. Issues for consideration**

- 4.1. The Committee is asked to make a recommendation to Worthing Borough Council in respect of setting the level of allowances for 2022/23.
- 4.2. The Panel has set out 1 costed option for Members to consider which is that the basic allowance be linked to the outcome of the Officers' NJC Pay bargaining agreement for the year 2022/23.

#### **5. Engagement and Communication**

- 5.1. The Panel contacted group Leaders to ask for any comments they may have had prior to the commencement of the review.
- 5.2. As a Panel of independent advisors, the JIRP is the body that the council engages with and consults on setting the level of its allowances.

#### **6. Financial Implications**

- 6.1. The Councils have the following budgets available in 2022/23 to fund member allowances:
  - Adur: £225,010
  - Worthing : £285,780
- 6.2. The budget strategy allows for a 2% inflation on all salary budgets which would include members allowances for 2022/23. Consequently, the options proposed by the independent remuneration would have the following financial impacts if the NJC agreement is 2%:-

	Worthing
	£
Estimated 2022/23 budget	285,780
Option 1 : NJC pay award (2% assumed)	286,507
+ Allowance for the deputy mayor	
Growth / saving (-)against the budget	727

6.3. Any small shortfall will be funded from the Council's inflation contingency budget.

## 7. Legal Implications

- 7.1 An Independent Remuneration Panel is a requirement of the Local Authorities (Members' Allowances) Regulations 2003 (The 2003 Regulations).
- 7.2 The 2003 Regulations states that before an authority makes or amends a scheme, the authority shall have regard to the recommendations made in relation to it by an independent remuneration panel
- 7.3 The 2003 Regulations sets out the role of the independent remuneration panel to make recommendations to the authority as to the amount of basic allowance which should be payable to its elected members. There is also the authority to make recommendations regarding special responsibility allowances (SRA) – and the roles and responsibilities for which the SRA applies, expenses or arranging the care of children and dependants.

### Background Papers

- Previous reports of the Joint Independent remuneration Panel
- Report and Minutes of the meeting of the Joint Governance Committee and Full Council
- LGA National Local authority census - local government councillors
- South East Employers allowance survey 2021
- Results of internal survey of Worthing Councillors August 2016/ 17 and 2018/19

### Officer Contact Details:-

Chris Cadman-Dando

Democratic Services Officer

01903 221364

[chris.cadman-dando@adur-worthing.gov.uk](mailto:chris.cadman-dando@adur-worthing.gov.uk)



## **Sustainability & Risk Assessment**

### **1. Economic**

- 1.1 The panel has recognised that the Members' Allowances scheme recognises that public service, rather than material reward, should remain the primary motivation for involvement in local government, whilst at the same time, it should aim to attract and retain Members who are representative of the demographic make-up of the District.

### **2. Social**

#### **2.1 Social Value**

- 2.1.1 Matter considered but no issue identified

#### **2.2 Equality Issues**

- 2.2.1 Having an allowance scheme that supports all members in covering the costs of being a member allows the Councils to attract and retain Members who are representative of the demographic make-up of the District.

#### **2.3 Community Safety Issues (Section 17)**

- 2.3.1 Matter considered but no issues identified

#### **2.4 Human Rights Issues**

- 2.4.1 Matter considered but no issues identified

### **3. Environmental**

- 3.1 Matter considered but no issues identified

### **4. Governance**

- 4.1 Having a fair scheme of allowances can enable a more diverse pool of candidates and reflect a wider demographic of the District.

This page is intentionally left blank