

17 September 2013

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| Committee | Audit |
| Date | Wednesday, 25 September 2013 |
| Time of Meeting | 2:00 pm |
| Venue | Committee Room 1 |

ALL MEMBERS OF THE COMMITTEE ARE REQUESTED TO ATTEND



for Sara J Freckleton
Borough Solicitor

Agenda

1. ANNOUNCEMENTS

When the continuous alarm sounds you must evacuate the building by the nearest available fire exit. Members and visitors should proceed to the visitors' car park at the front of the building and await further instructions (staff should proceed to their usual assembly point). Please do not re-enter the building unless instructed to do so.

In the event of a fire any person with a disability should be assisted in leaving the building.

2. APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

To receive apologies for absence and advise of any substitutions.



| | Item | Page(s) |
|------------|--|----------------|
| 3. | DECLARATIONS OF INTEREST | |
| | Pursuant to the adoption by the Council on 26 June 2012 of the Tewkesbury Borough Council Code of Conduct, effective from 1 July 2012, as set out in Minute No. CL.34, Members are invited to declare any interest they may have in the business set out on the Agenda to which the approved Code applies. | |
| 4. | MINUTES | 1 - 8 |
| | To approve the Minutes of the meeting held on 26 June 2013. | |
| 5. | GRANT THORNTON PROGRESS REPORT | 9 - 21 |
| | To consider Grant Thornton's report on progress against planned outputs. | |
| 6. | GRANT CERTIFICATION WORK PLAN 2012/13 | 22 - 29 |
| | To consider the grant certification work plan. | |
| 7. | FINANCIAL RESILIENCE REPORT | To Follow |
| | To consider Grant Thornton's Financial Resilience Report. | |
| 8. | GRANT THORNTON AUDIT FINDINGS 2012/13 | To Follow |
| | To consider Grant Thornton's audit findings 2012/13. | |
| 9. | LETTER OF REPRESENTATION | 30 - 32 |
| | To consider the S.151 Officer's Letter of Representation on the closure of the accounts for the year ended 31 March 2013. | |
| 10. | STATEMENT OF ACCOUNTS 2012/13 | To Follow |
| | To approve the Statement of Accounts 2012/13. | |
| 11. | ANNUAL GOVERNANCE STATEMENT 2012/13 | 33 - 52 |
| | To approve the Annual Governance Statement 2012/13. | |
| 12. | UPDATE ON PLAYGROUND INSPECTIONS AUDIT | 53 - 56 |
| | To consider the update on the implementation of a playground management and inspection scheme to address concerns raised by the 2012/13 audit report. | |
| 13. | INTERNAL AUDIT PLAN MONITORING REPORT | 57 - 72 |
| | To consider the Internal Audit work undertaken and the assurance given on the adequacy of internal controls operating in the systems audited for the period April to August 2013. | |

| Item | Page(s) |
|---|-----------|
| 14. REGULATION OF INVESTIGATORY POWERS 2000 (RIPA) | 73 - 99 |
| To approve the amended RIPA Procedural Guide and to recommend to the Executive Committee that it be adopted; to approve the designation of the Borough Solicitor and Monitoring Officer as the Council's Senior Responsible Officer for the purposes of RIPA; and to note the Office of Surveillance Commission inspection due on 21 November 2013. | |
| 15. REVIEW OF DATA PROTECTION POLICY | 100 - 117 |
| To consider the revised Data Protection Policy and to recommend to the Executive Committee that it be adopted; and to consider the Personal Data Investigation Guidance Notes. | |
| 16. TIMING OF FUTURE MEETINGS | |
| To discuss the timings of future meetings. | |

DATE OF NEXT MEETING
WEDNESDAY, 11 DECEMBER 2013
COUNCILLORS CONSTITUTING COMMITTEE

Councillors: Mrs K J Berry, Dr A L Carter, B C J Hesketh, A L Mackinnon (Chairman), M G Sztymiak, A C Tugwell and D J Waters (Vice-Chairman)

The Council has a substitution procedure and any substitutions will be announced at the beginning of the meeting.

TEWKESBURY BOROUGH COUNCIL

**Minutes of a Meeting of the Audit Committee held at the Council Offices,
Gloucester Road, Tewkesbury on Wednesday, 26 June 2013
commencing at 2:00 pm**

Present:

Chairman
Vice Chairman

Councillor A L Mackinnon
Councillor D J Waters

and Councillors:

B C J Hesketh, Mrs J M Perez (Substitute for Mrs K J Berry), M G Sztymiak and A C Tugwell

AUD.3 ANNOUNCEMENTS

- 3.1 The Chairman welcomed Councillor M G Sztymiak to the meeting as a new Member of the Committee and introduced Peter Barber, Engagement Lead, and Peter Smith, Audit Manager, from Grant Thornton.
- 3.2 The evacuation procedure, as noted on the Agenda, was taken as read.

AUD.4 APOLOGIES FOR ABSENCE AND SUBSTITUTIONS

- 4.1 Apologies for absence were received from Councillors Mrs K J Berry and Dr A L Carter. Councillor Mrs J M Perez would be acting as a substitute for the meeting.

AUD.5 DECLARATIONS OF INTEREST

- 5.1 The Committee's attention was drawn to the Tewkesbury Borough Council Code of Conduct which was adopted by the Council on 26 June 2012 and took effect from 1 July 2012.
- 5.2 There were no declarations made on this occasion.

AUD.6 MINUTES

- 6.1 The Minutes of the meetings held on 20 March and 14 May 2013, copies of which had been circulated, were approved as correct records and signed by the Chairman.

AUD.7 GRANT THORNTON PROGRESS REPORT

- 7.1 Attention was drawn to Grant Thornton's progress report, circulated at Pages No. 9-21, which set out the progress which had been made in relation to the audit plan together with any emerging national issues and developments that might be relevant to the Borough Council. Members were asked to consider the report.

7.2 Members were advised that the interim accounts audit had been completed and no issues had been identified. The final accounts audit and value for money conclusion work was due to start shortly and would be completed in time for a report to be brought to the Audit Committee meeting on 25 September. In response to a query, the Director of Resources clarified that the Council would effectively retain 20% of the business rates which it collected. At one stage it had been thought that this could be as little as 4.2%, however, the Government had responded to lobbying and it had been agreed that there would be a minimum threshold which would equate to approximately 20%. This was frozen until 2012 and this had been taken into account in the Council's budget for future years. A Member queried whether the Council currently outsourced any ICT and was advised that most ICT was delivered in-house, however, the system used by Housing was hosted outside of the Council by the company which provided the system.

7.3 A Member drew attention to the challenge question, set out at Page No. 17 of the report, which asked 'How can you drive more organisational value from internal audit?' and sought clarification as to who this was aimed at. The Engagement Manager from Grant Thornton explained that the report included questions based on the issues raised which the Committee might feel would be appropriate to direct to Officers. In terms of this particular question, the Director of Resources indicated that Members would be discussing the Internal Audit Annual Report 2012/13 and the Annual Review of the Effectiveness of Internal Audit later on the Agenda.

7.4 It was

RESOLVED That Grant Thornton's progress report be **NOTED**.

AUD.8 GRANT THORNTON FEES LETTER 2013/14

8.1 Attention was drawn to Grant Thornton's fee letter, circulated at Pages No. 22-25, which set out the proposed fee together with the scope and timing of the work for 2013/14.

8.2 Members were informed that the Council's scale fee for 2013/14 was £58,995 which was unchanged from 2012/13 and had been fixed for the five year term during which Grant Thornton would be acting as the Council's external auditors, subject to annual review by the Audit Commission. The scale fee included an audit of the Council's financial statements and the issue of a value for money conclusion. The letter included details about the timing of payments and outputs throughout the course of the year.

8.3 A Member questioned whether any risk assessments of the Council's investments would be carried out as part of the audit. The Engagement Lead from Grant Thornton explained that consideration would be given as to whether the Council had arrangements in place for investing and that it was all done within budget. The Council was also required to demonstrate that it was achieving value for money for members of the public. It did depend on the size of the investment and, if it involved significant funds, the Council would have to demonstrate what it had done and that the basis for the decision was reasonable. The Member went on to query whether the Council's Icelandic Bank investment would have been considered and he was informed that, based on the timing of the event, it would have been reviewed as the value for money conclusion at that time was based on a whole raft of areas including investments. The Council would have been required to demonstrate that there was an investment strategy in place and that the money had been invested in accordance with that strategy.

8.4 Members were advised that, as part of the 2013/14 audit, following the audit of the accounts it was intended to produce a comparison of the Annual Governance Statements from all Government bodies in the South West; this would allow the Council to see where its own Annual Governance Statement sat in terms of compliance and thoroughness following the changes to Government guidance in relation to how it should be prepared. A similar comparison would also be produced for the explanatory forewords included in the accounts in terms of how they complied with the Code of Conduct. The Performance and Audit Manager confirmed that he was in the process of drafting the Annual Governance Statement which would be brought to the Audit Committee in September.

8.5 It was

RESOLVED That Grant Thornton's fee letter 2013/14 be **NOTED**.

AUD.9 INTERNAL AUDIT PLAN MONITORING REPORT

9.1 The report of the Performance and Audit Manager, circulated at Pages No. 26-51, summarised the work undertaken in relation to the 2012/13 Internal Audit Plan for the period January to March 2013. Members were asked to consider the audit work completed and the assurance given on the adequacy of internal controls operating in the systems audited.

9.2 Members were advised that this was the final monitoring report for the year 2012/13 and the work which had been completed was summarised at Appendix A to the report. 92% of the Audit Plan had been achieved and there were two outstanding audits as at 31 March 2013: Equalities and ICT. The Equalities audit had now been completed and the Performance and Audit Manager was in discussion with Grant Thornton in relation to carrying out a formal risk assessment of the ICT environment. This had never been done in the past and he felt that it would be beneficial to understand where the risks were in relation to ICT to ensure that resources could be directed appropriately, particularly given how quickly this was advancing. In addition to the work around key financial systems and service related audits, which included Housing Benefit, Council Tax and Sundry Debtors, corporate improvement work had also been carried out in respect of Playground Inspections and Business Continuity, which was included as a separate item later on the Agenda. Essential recommendations that remained outstanding as a result of follow-up audits were detailed at Appendix B to the report. In relation to the procurement of small building works which was part of a previous Creditors audit, Members were informed that tenders had been evaluated and a select list drawn up for each category of works which would be operational from 1 July 2013. In addition, the audit on the implementation of the property services database confirmed that maintenance files were now being retained and could be linked to each asset on the database, therefore the recommendation was considered to be implemented.

9.3 Limited assurance opinions had been given in relation to the audits of Creditors and Playground Inspections. In terms of Creditors, there had been found to be non-compliance with the Financial Procedure Rules as, from a selection of higher value invoices, five invoices had been found to have no purchase order raised and there were a number which had been authorised by Officers where the value had exceeded their approved signatory limit. These invoices had been retrospectively reviewed and authorised by the Director of Resources. In addition to the procedural issues identified, two of the sampled invoices had been found to be non-compliant with the Contract Procedure Rules: the corporate printing of Committee papers and the provision of bed and breakfast accommodation to homeless persons. In these cases the expenditure had been above the low value procurement threshold. In terms of Playground Inspections, the audit confirmed that the playgrounds currently being investigated were owned by the Council. Prior

to the commencement of the audit it had been identified that there were three playgrounds within the Wheatpieces area that were being inspected and maintained by the Council but which had not been formally adopted. Officers had agreed a recommendation to investigate the ownership of playgrounds detailed within the previous Play Strategy, which included non-Council owned playgrounds, to help give assurance that there were no playgrounds which the Council should be inspecting. A review of the inspection regime had identified a number of areas for improvement and had resulted in a limited assurance opinion being given for a number of reasons: the Royal Society for the Prevention of Accidents (RoSPA) set out that it was good practice for all playgrounds to be risk assessed, however, there was no evidence that risk assessments had been recorded; no historical documentation had been retained in relation to warranties, manufacturer equipment specifications and their associated maintenance requirements; annual inspections were carried out on behalf of the Council's insurers and a review of these inspection records compared to the internal inspections carried out at the same time identified defects that had not been picked up through the internal inspections; there was no clear audit trail to confirm that the defects identified by either the internal or external inspections had been resolved; the last training records for inspecting Officers were dated 2000; only informal inspections had been undertaken at The Finches, Winchcombe and no inspections had been documented; and The Finches and the Rollerblade Park, Link Road had not been included on the Council's engineering insurance policy, therefore they had never been subject to an annual independent inspection by the Council's insurers. The Performance and Audit Manager provided an assurance that, as part of the organisational review, responsibility for the management of the playgrounds would transfer to the Finance and Asset Management Team, supported by the Environmental Health Team which would physically inspect the playgrounds. The new Asset Manager had already carried out some improvements, prior to taking up his new post, and a management response to the issues identified would be circulated to the Committee following the meeting. Limited assurance statements for each of these two audits, providing more detail on the matters identified, were attached at Appendices C and D to the report.

- 9.4 A Member raised concern with regard to the numerous issues which had been identified during the audit of Playground Inspections. He considered that it was unacceptable that training had not been provided since 2000 and he questioned why the issues had not been picked up during previous audits. He felt that the Council had not been taking its responsibility seriously enough and, although he accepted that this would be addressed as a result of the management changes under the new organisational structure, he felt that it should be kept under review and brought back before the Committee as soon as possible. The Director of Resources explained that, if the Performance and Audit Manager carried out a follow-up audit there would not be time to implement the changes prior to the next Audit Committee meeting, however, he reiterated that the new Asset Manager had already done a lot of work in this area and it would be more effective for him to provide an update presentation at the Audit Committee meeting on 25 September 2013. The Performance and Audit Manager confirmed that a follow-up audit would then be undertaken in 6-12 months time.
- 9.5 In response to a Member query, clarification was provided that there had been no written procedures in place for inspecting the playgrounds and this had never been picked up in the risk assessments. The Performance and Audit Manager explained that, prior to consideration by the Overview and Scrutiny Committee, the summary service plans which formed part of the quarterly performance management reports, were considered by the Corporate Management Team. It was during this process that it had come to light that there was an issue with the inspection regime and it had subsequently been referred to the internal auditors. This demonstrated the advantage of combining the performance and audit

functions into one team. The Chairman indicated that, over the last three to four years, the Council had aimed to transfer the Tewkesbury Borough Council-owned playgrounds to Town and Parish Councils where possible; however, they had been reluctant to take them on in their existing condition. The Performance and Audit Manager explained that part of the management response to the audit was that all playgrounds would now be subject to RoSPA inspections to help to facilitate the transfer of The Finches, Winchcombe and Zinnia Close, Churchdown to their respective Parish Councils. A Member indicated that, in his experience, the concerns were more to do with long term funding and he felt that there was an opportunity for the Finance Team to provide advice to Parish Councils about how to use the initial pot of money and to make allowances for the future within their own precepts.

9.6 A Member sought a further explanation as to why consideration was being given to appointing Grant Thornton to undertake an audit of ICT. The Performance and Audit Manager advised that he was currently in discussion with another company in addition to Grant Thornton; if the total cost of the audit was more than £5,000 he would need to obtain three quotes in accordance with the Council's Contract Procedure Rules. He explained that a lot of small District Councils did not have the necessary ICT expertise in-house given that it was such a technical area. He did not have the knowledge to carry out the work and the CIPFA Code of Practice for Internal Audit in Local Government in the United Kingdom 2006 set out that any gaps should be bridged.

9.7 Having considered the information provided it was

- RESOLVED**
1. That the Internal Audit Plan Monitoring Report be **NOTED**.
 2. That a management response in relation to the issues identified as a result of the audit of playground inspections be circulated to the Committee following the meeting.

AUD.10 INTERNAL AUDIT ANNUAL REPORT 2012/13

10.1 Attention was drawn to the report of the Performance and Audit Manager, circulated at Pages No. 52-56, which provided Members with a summary of the internal audit work undertaken for the financial year 1 April 2012 to 31 March 2013, together with an opinion on the overall adequacy and effectiveness of the organisation's control environment. Members were asked to consider the report and the assurance that overall a satisfactory level of internal control existed within the systems audited during the year.

10.2 Members were referred to Page No. 53, Paragraph 2.2, of the report which explained that a number of days within the Internal Audit Plan had been allocated for corporate improvement work during 2012/13. In addition to the traditional assurance work undertaken by internal audit, this could be seen as 'added value' work. This had included: production of a new Procurement Strategy; update of the corporate signatory list; audit of Business Grants scheme; audit of inspection regime for Council-owned playgrounds; provision of initial administrative support for the office refurbishment project; production of a Tree Management Policy and methodology for the inspection of trees; and risk management. The Internal Audit Team was also represented on key corporate groups such as the Corporate Governance Group, Equalities Steering Group and Programme Board as well as the Procurement Group and Business Continuity Group which were to be reformed during 2013/14. The audits which had been undertaken in respect of key financial systems and service-related audits were set out at Paragraph 2.4 of the report.

- 10.3 In terms of the opinion on the overall adequacy of the control environment, Members were informed that internal audit provided a split opinion which meant that individual opinions were given for different parts of the system being audited. A total of 73 opinions had been issued during 2012/13, the majority of which were good or satisfactory. Four limited opinions had been issued; Playground Inspections and Creditors which had been discussed in detail under the previous Agenda Item, and Section 106 Agreements and Trade Waste which had previously been reported to the Committee. Follow-up audits would be carried out for all four of these areas during 2013/14. Although there had been no fraud issues identified or reported to internal audit during the year, there had been one minor incident at Cascades, the theft of a £20 float from the cash register, which had been reported to the Committee in September 2012.
- 10.4 A Member sought clarification as to what was meant by a satisfactory audit opinion and was informed that this was defined as ‘a sufficient framework of controls – provides satisfactory assurance – minimal risk’. In response to a Member query, the Director of Resources explained that the regime to control housing benefit fraud was specified by the Government. The Government set targets for local authorities and there was an additional item in the annual audit fee for claims and returns, the largest of which was the benefit return. This was scrutinised every year by external auditors on behalf of the Government and it was noted that the Council had never received a qualified opinion to date. The Council employed a Fraud Investigation Officer who looked at specific cases and compared lists from different organisations to identify any anomalies, for instance, claims for single person occupancy, and investigated these cases. The Audit Manager from Grant Thornton advised that the Audit Commission required the external auditors to review the progress made in respect of the responsibilities within the National Fraud Initiative and the matches of data which suggested a risk of fraud. Grant Thornton had recently returned its response and Tewkesbury Borough Council had been given a ‘green’ status which meant that adequate arrangements were in place.
- 10.5 It was
RESOLVED That the Internal Audit Annual Report 2012/13 be **NOTED**.

AUD.11 ANNUAL REVIEW OF THE EFFECTIVENESS OF INTERNAL AUDIT

- 11.1 The report of the Director of Resources, circulated at Pages No. 57-61, informed Members of the outcome of the annual review of the effectiveness of Internal Audit. Members were asked to approve the review process and to consider the outcome of the review.
- 11.2 The Accounts and Audit Regulations 2011 included the requirement for authorities to review the effectiveness of internal audit at least annually and CIPFA had established a Code of Practice for Internal Audit in Local Government which was ‘proper practice’ for the purpose of the regulations. A light touch review had been undertaken for this review on the basis that a new set of standards, the Public Sector Internal Audit Standards (PSIAS), had come into effect on 1 April 2013. The 2013/14 review of effectiveness would measure compliance against these standards and the outcome would be reported to the Committee in June 2014. A requirement of these standards was that an independent assessment of internal audits compliance be undertaken every five years and the Performance and Audit Manager would report back in the future as to how this would be approached.

11.3 The checklist provided with the CIPFA Code had been reviewed and the section remained broadly compliant. There were no areas of material non-compliance. The Council's previous auditors, the Audit Commission, had felt able to place reliance on the work of internal audit and it was hoped that this would continue with Grant Thornton. Members were advised that a formal review of the effectiveness of the Audit Committee had last been carried out in 2010 and it was considered prudent and timely to conduct a further review. Further details of this would be brought back to the Committee in due course. Details of the corporate improvement work and corporate support were set out at Paragraphs 2.4 and 2.5 of the report. Good scores had been achieved in relation to the two key performance indicators, percentage of Audit Plan completed and level of customer satisfaction, as set out at Paragraph 2.6 of the report. In terms of additional scrutiny, Members were reminded that performance was also reported to the Overview and Scrutiny Committee through the Council's performance management framework. Monthly meetings were held with the Lead Member for Corporate Governance and regular meetings were also held between the Performance and Audit Manager and the Director of Resources which would continue with the new Chief Finance Officer in the future. Taking all of this into consideration, it was concluded that the Council had an effective system of internal audit.

11.4 It was

RESOLVED That the review process for the annual review of the effectiveness of internal audit be **APPROVED** and that the outcomes of the review be **NOTED**.

AUD.12 CORPORATE BUSINESS CONTINUITY PLAN

12.1 The report of the Director of Resources, circulated at Pages No. 62-64, invited Members to consider the updated Corporate Business Continuity Plan and associated action plan and to recommend to the Executive Committee that the Plan be approved.

12.2 Attention was drawn to the revised Corporate Business Continuity Plan, attached at Appendix 1 to the report, and Members were informed that any amendments/additions to the previous plan were highlighted in yellow. The most significant change was in relation to service continuity risks. In the past the Business Continuity Plan had been based on what would happen if access to the Council Offices was lost, however, the latest guidance indicated that it was necessary to consider other issues e.g. loss of staff (flu pandemic, strike, severe weather, transport disruption etc.), loss of utilities (gas, electricity, water, fuel etc.), loss of ICT and communication systems (virus, hacking, theft, fire, flood etc.), loss of key suppliers. The Plan had also been amended to refer to the latest regulations. Members were advised that the Plan still contained references to the Council's existing organisational structure as the new structure had not yet taken effect. In addition, the Schedule of Departmental Business Continuity Plans, set out at Annex C of Appendix A to the report, needed to be reviewed as there were still decisions to be made as to where responsibility fell.

- 12.3 A Member queried whether the Council would be able to continue to do business if the computer system failed and assurance was provided that this would be the case. The data was well protected and this was reviewed on a regular basis. A Member drew attention to Page No. 83, Annex G of Appendix A to the report, which set out a list of corporate contacts and indicated that Star FM which was listed under Media was now called Breeze FM. It was subsequently

RESOLVED That the Corporate Business Continuity Plan and associated action plan be **NOTED** and it be **RECOMMENDED TO THE EXECUTIVE COMMITTEE** that the Plan be **APPROVED**, subject to an amendment at Page No. 83, Annex G, to replace Star FM with Breeze FM.

The meeting closed at 2:55 pm

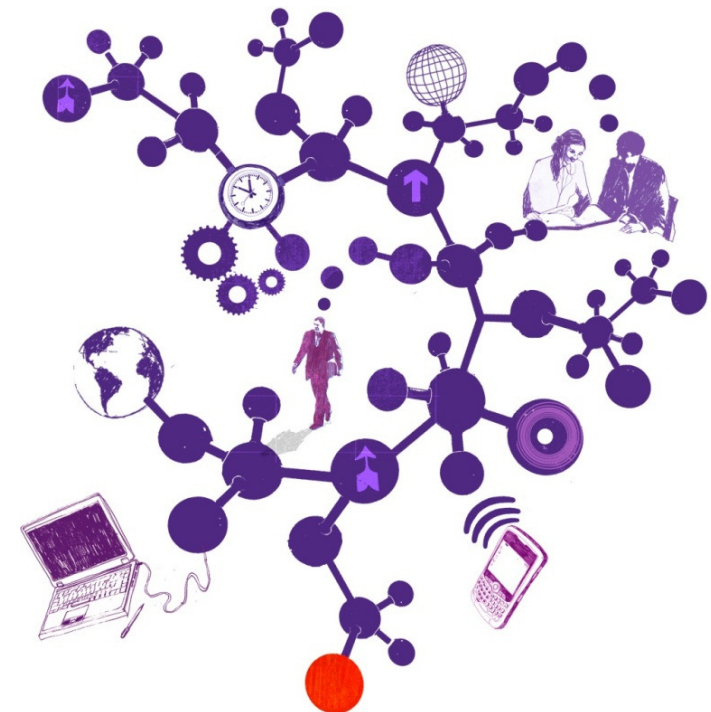
Year ended 31 March 2013

25 September 2013

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Agenda Item 5

Section**Page**

Introduction

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Progress at 25 September 2013

5

Emerging issues and developments

7

This paper provides the Audit Committee with a report on progress in delivering our responsibilities as your external auditors. The paper also includes:

- a summary of emerging national issues and developments that may be relevant to you as a Borough Council
- includes a number of challenge questions in respect of these emerging issues which the Committee may wish to consider.

Members of the Audit Committee can find further useful material on our website www.grant-thornton.co.uk, where we have a section dedicated to our work in the public sector. Here you can download copies of our publications:

- 'Local Government Governance Review 2012',
- 'The developing internal audit agenda',
- 'Preparing for the future',
- 'Surviving the storm: how resilient are local authorities?',
- 'Towards a tipping point?: Summary findings from our second year of financial health checks of English local authorities'

If you would like further information on any items in this briefing, or would like to register with Grant Thornton to receive regular email updates on issues that are of interest to you, please contact either your Engagement Lead or Audit Manager.

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| Work | Planned date | Complete? | Comments |
|--|--------------|-----------|--|
| <p>2012-13 Accounts Audit Plan We will issue a detailed accounts audit plan to the Council setting out our proposed approach in order to give an opinion on the Council's 2012-13 financial statements.</p> | 8 March 2013 | Yes | Our Audit Findings report will summarise our work. |
| <p>Interim accounts audit Our interim fieldwork visit will include:</p> <ul style="list-style-type: none"> • a review of the Council's control environment; • an update of our understanding of the key financial systems; • a review of Internal Audit reports on core financial systems; • early work on any emerging accounting issues; • early substantive testing; and • consideration of your Value for Money arrangements. | 8 March 2013 | Yes | Our Audit Findings report will summarise our work. |
| <p>2012-13 final accounts audit Including:</p> <ul style="list-style-type: none"> • audit of the 2012-13 financial statements • proposed opinion on the Council's accounts | August 2013 | Yes | Our Audit Findings report will summarise our work. |

| Work | Planned date | Complete? | Comments |
|--|--------------|-----------|---|
| <p>Value for Money (VfM) conclusion</p> <p>The scope of our work to inform the 2012/13 VFM conclusion comprises:</p> <ul style="list-style-type: none"> • a initial risk assessment; • a detailed review of arrangements against the criteria; • bringing forward knowledge from previous auditors; • reviewing key documents; and • discussion with officers. | August 2013 | Yes | Our Audit Findings report will summarise our work. |
| <p>Other areas of work</p> <p>→ Certification and Claims including Housing Benefits</p> | October 2013 | No | The NNDR claims work is complete but the work on Housing Benefits will be completed in October before the submission deadline for audited claims. |
| <p>Annual Audit Letter</p> | October 2013 | No | This will summarise our audit work and is circulated to all members of the Council. |

Local government guidance

'Auditing the Accounts 2011/12' report

In December, the Audit Commission published "Auditing the Accounts 2011/12". The report summarises the results of auditors' work on the financial statements of both principal and small bodies. The key finding in the report is that bodies have improved the quality and timeliness of their financial reporting in 2011/12.

Challenge questions:

- Has your Director of Resources identified the key risks for the authority in preparing the 2012/13 financial statements?
- Has your Director of Resources produced a robust and adequately resourced timetable for the production and submission of its 2012/13 financial statements?
- ↳ Has this been discussed and agreed with the External Auditors?

'Striking a balance: improving councils' decision making on reserves' In December, the Audit Commission published "Striking a balance: improving council's decision making on reserves". The report covers the findings from research undertaken by the Audit Commission on the level of reserves that councils hold and the decisions councils make on them.

The report encourages English councils to focus more attention on their reserves. It suggests that management should be providing more comprehensive information on reserves to elected members and councils should provide greater clarity on the reasons for holding reserves. The report includes questions for elected members that will help them in their decision making and scrutiny roles.

Challenge questions:

- Are your officers providing you with the right information about reserves?
- Have you considered the findings of the report and identified where actions are required?

Local government guidance

Council tax collection – data from the value for money profiles

The Audit Commission has released a briefing on Council Tax Collection which uses the data held in the VFM profiles tool. The VfM profiles can be used to consider:

- how the cost and rate of collection compares to different comparator groups
- how changes over time compare to the overall trends described in the briefing
- how council tax collection may be affected by local arrangements in the council tax reduction scheme.

Challenge questions:

- Has your Director of Resources reviewed the costs and performance of your authority against similar organisations?
- Where issues have been identified, has an action plan been implemented?

Local government guidance

Local Government Pension Scheme

The Department for Communities and Local Government has launched a call for evidence on the future structure of the Local Government Pension Scheme. The consultation is asking for feedback on the objectives for structural reform and how the Local Government Pension Scheme can best achieve accountability to local taxpayers through the availability of transparent and comparable data while adapting to become more efficient and to promote stronger investment performance.

The consultation closes on 27 September 2013.

Challenge question:

- Has your Director of Resources reviewed the consultation and assessed the potential impact?
- Is your authority intending to respond to the consultation?

Local government claims and returns 2011/12

In June, the Audit Commission published 'Local government claims and returns 2011/12 – The Audit Commission's report on certification work'. The report includes information and commentary on the number and value of certified claims and returns; auditors' findings; the cost of certification work; and future certification work.

The Audit Commission concluded that:

- while 2011/12 saw a fall in the value of amendments and number of qualification letters, this was largely due to fewer claims and returns requiring certification. Proportionally, the level of claims and returns amended or qualified rose, while the most significant scheme, housing and council tax benefits, saw both the value of amendments and number of qualification letters increase.
- authorities and grant-paying bodies should continue their work to ensure schemes' terms and conditions are complied with, particularly when schemes change significantly or are in their final year.

Challenge question:

- What procedures does your Director of Resources have in place to ensure that grant schemes terms and conditions are complied with?

Local government guidance

Confidentiality clauses and special severance payments

In June, the National Audit Office published 'Confidentiality clauses and special severance payments'.

The report concludes that 'there is a lack of transparency, consistency and accountability in how the public sector uses compromise agreements, and little is being done to change this situation. This is unacceptable for three reasons: the imbalance of power between the employer and employee leaves the system open to abuse; poor performance or working practices can be hidden from view, meaning lessons are not learned; and significant sums of public money are at stake.'

Challenge questions:

- ↘ Have you considered how confidentiality and special severance payments are used in your authority?
 - Have you identified issues and planned actions to improve HR procedures?

Grant Thornton

'Future Councillors – where next for local politics?'

Grant Thornton has sponsored the latest New Local Government Network (NLGN) research paper: Future Councillors – where next for local politics? Whilst more or less every aspect of what a council does is currently up for discussion, this is not the case for the role of local politicians. The report is a response to this discourse gap.

The report content is based on a series of workshops held earlier this year with a number of councillors from different local authority types, different regions and from different political parties. The workshops, which Grant Thornton attended, included a scenario-planning exercise which identified how councillors that fail to renew their democratic processes risk losing the support of their communities. The research also suggested that councils that did grasp the opportunities offered by technology and service redesign can become far more engaged with their communities, building efficient and co-operative models of local government focused on neighbourhood needs.

The report includes a chapter by Guy Clifton from Grant Thornton on the councillor's role in financial planning. The workshops identified that many elected members are keen to take a far greater role in financial planning at their authorities, particularly given the significant funding challenges being faced. During the workshops we explored the skills and capabilities that members need to effectively manage the budget setting process. These included: effective communication and stakeholder engagement, understanding financial planning tools and, perhaps most importantly, knowing what questions to ask.

Challenge question:

- Are your elected members taking a greater role in financial planning and has the authority ensured that members are trained for the task?

Grant Thornton

Spending Round 2013

It was announced in the June spending round that the local government resource budget will be reduced by 10 percent in 2015/16.

As Paul Dossett, Head of Local Government at Grant Thornton UK LLP, wrote on informationdaily.com, the Chancellor 'seemingly acknowledged local government's capacity to deliver the scale of savings achieved so far. No other spending department received such positive affirmation. The Chancellor's actions imply that local government leaders are more capable of meeting the national challenge than other parts of the public sector. Over the past three years, local government members and senior officers have tightened their organisational belts and most have shown they are able to deliver significant change. The government is placing continued reliance on their resourcefulness in order to help meet the fiscal shortfalls facing the broader public sector, and many in the sector recognise this.'

61 In his speech, the Chancellor recognised the benefits that more collaborative working can bring, although not on the lines subsequently suggested by the LGA. The Chancellor called for more joined-up working between police forces, and between police forces and local authorities - with a £50m innovation fund to be established to support this work. He also called for greater collaboration between health and social care services, with £200m to be transferred to local authorities from the NHS in 2014-15, and a £3.8bn pooled budget in 2015-16. In addition, £35m is to be made available to local authorities in 2015-16 to help prepare for reforms to the system of social care funding, including the cap on care costs from April 2016. There is also the £200m additional funding to the Troubled Families programme being managed by the department for Communities and Local Government.'

Challenge question:

- Has your authority reviewed your medium term financial plan in light of the Spending Round announcement and considered the action to be taken?
- How is your authority planning to work with other organisations in the public sector?

Accounting and audit issues

2014/15 Code of Practice on Local Authority Accounting

At the end of July, CIPFA/LASAAC released the 2014/15 Code of Practice on Local Authority Accounting in the United Kingdom (the Code) Exposure Draft (ED) and Invitation to Comment (ITC) for public consultation. The significant changes proposed in the ITC include:

- IFRS 13 fair value measurement: the proposed approach would result in authorities reviewing current measurements of property, plant and equipment and for some authorities, may require remeasurement of particular assets. CIPFA/LASAAC is proposing a relaxation of the measurement requirements of IFRS 13 and IAS 16 Property, Plant and Equipment for a three year period
- introduction of the new group accounting standards
- other amendments to standards issued by the International Accounting Standards Board (IASB): amendments to IAS 32 *Financial Instruments: Presentation* to clarify the application of the new disclosure requirements introduced in the 2013/14 Code and clarification on comparative information from amendments to IAS 1 *Presentation of Financial Statements*
- local government reorganisations and other combinations: clarification of the Code's requirements and alignment with other public sector bodies
- options for the "dry run" for the move to depreciated replacement cost for local authority transport infrastructure assets as set out in the CIPFA Code of Practice on Transport Infrastructure Assets to the (Local Authority Accounting) Code.

CIPFA/LASAAC have also launched a consultation on simplifying and streamlining the presentation of local authority financial statements.

Both consultations close on Friday 11 October 2013.

Challenge questions:

- Has your Director of Resources reviewed the proposed amendments and assessed the potential impact?
- Has your authority considered whether it wishes to respond to the consultation?



Grant certification work plan for Tewkesbury Borough Council

DRAFT

This version of the report is a draft. Its contents and subject matter remain under review and its contents may change and be expanded as part of the finalisation of the report.

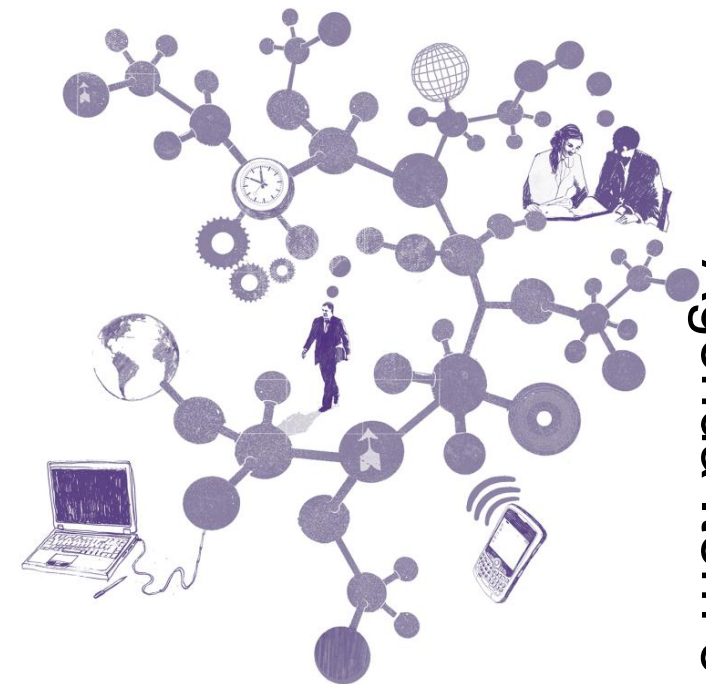
Year ended 31 March 2013

25 September 2013

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Agenda Item 6

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Our approach to grant certification work

Introduction

Various grant-paying bodies require external certification of claims for grant or subsidy and returns of financial information.

The Audit Commission makes certification arrangements with grant-paying bodies, including confirming which claims and returns require certification and issuing certification instructions. These instructions are tailored to each scheme and set out the specific procedures to be applied in examining the claim or return. The Audit Commission agrees the deadline for submission of each claim by authorities and the deadline for certification by auditors.

As the Council's appointed external auditor, we undertake grant certification work acting as an agent of the Audit Commission.

Certification arrangements

The Audit Commission's certification arrangements are designed to be proportionate to the claim or return. The arrangements for 2012-13 are:

- for claims and returns below £125,000, certification by us is not required, regardless of any statutory certification requirement or any certification requirement set out in grant terms and conditions
- for claims and returns above £125,000 and below £500,000, we are required to perform limited tests to agree entries on the claim or return to underlying records, but are not required to undertake any testing of the eligibility of expenditure or data
- for claims and returns over £500,000, we are required to assess the control environment for the preparation of the claim or return and decide whether or not to place reliance on it. Where reliance is placed on the control environment, we are required to undertake limited tests to agree entries on the claim or return to underlying records but not to undertake any testing of the eligibility of expenditure or data. Where reliance is not placed on the control environment, we are required to undertake all the tests in the relevant certification instruction and use our assessment of the control environment to inform decisions on the level of testing required.

In determining whether we place reliance on the control environment, we consider other work we have undertaken on the Council's financial ledger and any other relevant systems, and make appropriate use of relevant internal audit work where possible.

Role of all parties

The table below summarises the respective roles and responsibilities of the parties involved in the certification process.

| Party | Role & responsibility |
|-------------------|--|
| Grant paying body | Sets conditions of grant and deadline for submission for pre-certified and certified claims |
| Audit Commission | Issues certification instructions for auditor work |
| Council | Submits claims for certification to the Appointed Auditor within grant paying body submission deadlines |
| Appointed Auditor | Certifies claims in accordance with Audit Commission certification instructions and within certification deadlines |

The Council's role is set out in more detail below:

- the Director of Resources is responsible for ensuring that supporting accounting records are sufficient to document the transactions for which claims are made. These records should be maintained in accordance with proper practices and kept up to date, including records of income and expenditure in relation to claims and returns
- the Council should ascertain the requirements of schemes at an early stage to allow those responsible for incurring eligible expenditure to assess whether it falls within the scheme rules and to advise those responsible for compiling claims and returns to confirm any entitlement
- the Council should ensure all deadlines for interim and final claims are met to avoid sanctions and penalties from grant paying bodies
- grant-paying bodies usually require the Council's certificate to be given by an appropriate senior officer. This is typically Director of Resources or an officer authorised by written delegated powers
- the Council should monitor arrangements with any third parties involved in the certification process.

Claims history

The most significant claims and returns to be audited in 2011-12 are:

- housing and council tax benefit claim
- national non-domestic rates return

Our certificate

Following our work on each claim or return, we issue our certificate. The wording of this depends on the level of work performed as set out above, stating either the claim or return is in accordance with the underlying records, or the claim or return is not fairly stated and in accordance with the relevant terms and conditions. Our certificate also states that the claim has been certified:

- without qualification
- without qualification but with agreed amendments incorporated by the Council or
- with a qualification letter (with or without agreed amendments incorporated by the Council).

Where a claim is qualified because the Council has not complied with the strict requirements set out in the certification instruction, there is a risk that grant-paying bodies will retain funding claimed by the Council or claw back funding which has already been provided or has not been returned.

In addition, where claims or returns require amendment or are qualified, this increases the time taken to undertake this work, which may impact on the certification fee.

Certification work fees

The Audit Commission sets an indicative scale fee for grant claim certification based on 2010/11 actual certification fees for each Council. The indicative scale fee for the Council is £14,650 for 2011/12. This fee is based on the following assumptions:

- there will be no change in the scope of our work due to the control environment in place during the year
- the Council provides adequate working papers to support each entry in the claim/return
- the Council's staff are available to deal with our queries in a timely manner and provide such explanations and supporting evidence necessary to support entries.

Where there is any significant variation from these assumptions, we will discuss a variation to the indicative scale fee with the Council and the Audit Commission.

The Council has identified all claims and returns requiring certification and this information is incorporated into Appendix A to this plan.

Administration

When each expected claim or return is completed, a copy of the signed claim should be sent to Peter Smith at the following address:

Grant Thornton UK LLP
The Canterbury Business Centre
18 Ashchurch Road
Tewkesbury
GL20 8BT

- 27 The **original** claims and returns should be retained by the Council. If additional claims and returns are identified by either us or the Council they will be incorporated into the appendix in this plan
- All claims and returns listed in appendix A should be sent to us, even if below the de minimis limit so that we can confirm that no certification is required. We are required to report the value of these claims to the Audit Commission in our annual certification report.

Managing the certification process – our role

- We intend to certify all claims and returns in accordance within the deadlines set by the Audit Commission. If we receive any claims after the Council's submission deadline, we will endeavour to certify them within the Audit Commission deadline but, where this is not possible, within three months from receipt
- A copy of each certified claim or return will be sent to the relevant named contact when the certification process is complete, along with a copy of the qualification letter, where applicable
- Copies of the certification instructions can be provided on request for any new claims or returns
- We expect to complete the certification of all claims by late 2013 and will issue a grant certification report highlighting any issues that need to be brought to the Council's attention.

Appendix A: Summary of expected claims & returns for the year ended 31 March 2013

| Claim (CI reference) | Authority deadline | Certification deadline | Claim certified in prior year | Prior year outcome |
|---|--------------------|------------------------|-------------------------------|--------------------|
| Housing and council tax benefits scheme (BEN01) | 30/04/13 | 30/11/13 | Yes | |
| National non-domestic rates return (LA01) | 28/06/13 | 27/09/13 | Yes | |

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25 September 2013

Dear Sirs

Tewkesbury Borough Council

Financial Statements for the year ended 31 March 2013

This representation letter is provided in connection with the audit of the financial statements of Tewkesbury Borough Council for the year ended 31 March 2013 for the purpose of expressing an opinion as to whether the financial statements give a true and fair view in accordance with International Financial Reporting.

We confirm that to the best of our knowledge and belief having made such inquiries as we considered necessary for the purpose of appropriately informing ourselves:

Financial Statements

We have fulfilled our responsibilities for the preparation of the financial statements in accordance with proper practices as set out in the CIPFA/LASAAC Code of Practice on Local Authority Accounting in Great Britain ("the Code") as adapted for International Financial Reporting Standards; in particular the financial statements give a true and fair view in accordance therewith.

We have complied with the requirements of all statutory directions and these matters have been appropriately reflected and disclosed in the financial statements.

We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.

Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable.

We are satisfied that the material judgements used by us in the preparation of the financial statements are soundly based, in accordance with the Code, and adequately disclosed in the financial statements. There are no further material judgements that need to be disclosed.

We confirm that we are satisfied that the actuarial assumptions underlying the valuation of pension scheme liabilities for IAS19 disclosures are consistent with our knowledge. We confirm that all



settlements and curtailments have been identified and properly accounted for. We also confirm that all significant retirement benefits have been identified and properly accounted for (including any arrangements that are statutory, contractual or implicit in the employer's actions, that arise in the UK or overseas, that are funded or unfunded).

Related party relationships and transactions have been appropriately accounted for and disclosed in accordance with the requirements of International Financial Reporting Standards and the code.

All events subsequent to the date of the financial statements and for which International Financial Reporting Standards and the code requires adjustment or disclosure have been adjusted or disclosed.

We have adjusted the misstatements brought to our attention in the Audit Findings report, which had no impact on the Council's financial position at the year-end. The financial statements are free of material misstatements, including omissions.

We have no plans or intentions that may materially alter the carrying value or classification of assets and liabilities reflected in the financial statements.

We believe that the Council's financial statements should be prepared on a going concern basis on the grounds that current and future sources of funding or support will be more than adequate for the Council's needs. We believe that no further disclosures relating to the Council's ability to continue as a going concern need to be made in the financial statements.

Information Provided

We have provided you with:

- a. access to all information of which we are aware that is relevant to the preparation of the financial statements such as records, documentation and other matters;
- b. additional information that you have requested from us for the purpose of your audit; and
- c. unrestricted access to persons within the Council from whom you determined it necessary to obtain audit evidence.

We have communicated to you all deficiencies in internal control of which management is aware.

All transactions have been recorded in the accounting records and are reflected in the financial statements.

We have disclosed to you the results of our assessment of the risk that the financial statements may be materially misstated as a result of fraud.

We have disclosed to you all information in relation to fraud or suspected fraud that we are aware of and that affects the Council and involves:

- d. management;
- e. employees who have significant roles in internal control; or
- f. others where the fraud could have a material effect on the financial statements.



We have disclosed to you all information in relation to allegations of fraud, or suspected fraud, affecting the Council's financial statements communicated by employees, former employees, regulators or others.

We have disclosed to you all known instances of non-compliance or suspected non-compliance with laws and regulations whose effects should be considered when preparing financial statements.

We have disclosed to you the entity of the Council's related parties and all the related party relationships and transactions of which we are aware.

The holder of the Section 151 post retired in the period between the preparation of the draft accounts and the signing of the audited accounts. The new Section 151 Officer (previously the Finance Manager) did not play an active role in producing the accounts.

Annual Governance Statement

We are satisfied that the Annual Governance Statement (AGS) fairly reflects the Council's risk assurance and governance framework and we confirm that we are not aware of any significant risks that are not disclosed within the AGS

Approval

The approval of this letter of representation was minuted by the Council's Audit Committee at its meeting on 25 September 2013.

Signed on behalf of the Board

Simon Dix

Group Manager – Finance & Asset Management

16th September 2013



TEWKESBURY BOROUGH COUNCIL

| | |
|------------------------------|-------------------------------------|
| Report to: | Audit Committee |
| Date of Meeting: | 25 September 2013 |
| Subject: | Annual Governance Statement 2012/13 |
| Report of: | Corporate Governance Group |
| Corporate Lead: | Sara Freckleton, Borough Solicitor |
| Lead Member: | Councillor J M Perez |
| Number of Appendices: | One |

| |
|---|
| <p>Executive Summary:</p> <p>Every Council must ensure that its business is conducted within the law and proper standards, public money is safeguarded and used economically, efficiently and effectively. Governance of the Council is reviewed regularly by the Corporate Governance Group, and is formally assessed through an annual governance statement by that Group. The Annual Governance Statement (AGS) is produced in accordance with CIPFA/SOLACE guidance.</p> |
| <p>Recommendation:</p> <p>To APPROVE the Annual Governance Statement 2012/13.</p> |
| <p>Reasons for Recommendation:</p> <p>The Accounts and Audit (England) Regulations 2011, regulation 4 (3) requires all relevant bodies to prepare an Annual Governance Statement.</p> |

| |
|--|
| <p>Resource Implications:</p> <p>None arising directly from the report.</p> |
| <p>Legal Implications:</p> <p>Contained in report.</p> |
| <p>Risk Management Implications:</p> <p>If the Council does not produce an Annual Governance Statement then it is not compliant with legislation.</p> |
| <p>Performance Management Follow-up:</p> <p>Significant governance issues will be subject to review throughout the year by the Corporate Governance Group and by the Audit Committee.</p> |

Implications for Biodiversity:

None

1.0 INTRODUCTION/BACKGROUND

- 1.1 Every Council has to ensure that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively. The Council also has a duty under the Local Government Act 1999 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.
- 1.2 In discharging this overall responsibility, the Council is responsible for putting in place proper arrangements for the governance of its affairs, facilitating the effective exercise of its functions, and which includes arrangements for the management of risk. The Council has approved and adopted a code of corporate governance, which is consistent with the principles of the CIPFA/SOLACE Framework *Delivering Good Governance in Local Government*. The Annual Governance Statement explains how the Council has complied with the code and also meets the requirements of Accounts and Audit (England) Regulations 2011, regulation 4 (3), which requires all relevant bodies to prepare an Annual Governance Statement.
- 1.3 As a matter of best practice, the Annual Governance Statement should normally be approved at the same time as, and certainly no later than, the Statement of Accounts.
- 1.4 To ensure the framework remains fit for purpose, the CIPFA/SOLACE Joint Working Group has reviewed the framework and in December 2012 issued an addendum. The supplement to the framework includes an example Governance Statement which has been updated to give an increased emphasis on strategic approach. The Statement should provide a brief communication regarding the review of governance that has taken place and the role of the governance structures involved. It should be high level, strategic and written in an open and readable style.
- 1.5 The Good Governance Framework is based on six principles of corporate governance which are set out below and which are underpinned by supporting principles and requirements.
- (a) defines and updates a vision for the area;
 - (b) enables Members and Officers to work together to achieve a common purpose;
 - (c) demonstrates good governance by upholding high standards of conduct and behaviour;
 - (d) manages risk and takes informed and transparent decisions, which are subject to effective scrutiny;
 - (e) develops the capacity and capability of members and officers to be effective; and
 - (f) engages with stakeholders to promote public accountability.
- 1.6 The addendum identifies the key elements of the systems and processes that comprise an authority's governance arrangements and these support the delivery of the six principles above. The Council's 2012/13 Annual Governance Statement has been produced in accordance with the requirements of the addendum.

2.0 REVIEWING THE GOVERNANCE ARRANGEMENTS

2.1 The requirements of the CIPFA/SOLACE Framework have been reviewed by the Corporate Governance Group. Evidence to support the Council's compliance with the Framework has been documented and areas for improvement in processes and procedures have been identified. This has enabled the production of the draft Annual Governance Statement for 2012/13 which is attached at Appendix 1. The significant areas for improvement are reflected in the Annual Governance Statement and the proposed action and timescale for these to be addressed has also been developed.

2.2 The documents, procedures and processes which have informed the Annual Governance Statement are summarised in diagrammatic within the statement itself. The Statement has also been reviewed by the Council's external auditors who have given verbal assurance that it has been produced in compliance with guidance.

3.0 TEWKESBURY BOROUGH COUNCIL'S ANNUAL GOVERNANCE STATEMENT 2012/13

3.1 The draft Annual Governance Statement for 2012/13 is attached at Appendix 1 and has been prepared in line with the CIPFA /SOLACE guidance.

4.0 OTHER OPTIONS CONSIDERED

4.1 None.

5.0 CONSULTATION

5.1 Corporate Governance Group and the Corporate Leadership Team.

6.0 RELEVANT COUNCIL POLICIES/STRATEGIES

6.1 Tewkesbury Borough Council's Local Code of Corporate Governance.

7.0 RELEVANT GOVERNMENT POLICIES

7.1 None.

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 None arising directly from this report.

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 None.

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 None.

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 None.

Background Papers: Delivering Good Governance in Local Government CIPFA / SOLACE
2007

Tewkesbury Borough Council's Local Code of Corporate Governance

Contact Officer: Sara Freckleton, Borough Solicitor
01684 272011 sara.freckleton@tewkesbury.gov.uk

Appendices: Appendix 1 – Draft Annual Governance Statement 2012/13

TEWKESBURY BOROUGH COUNCIL

ANNUAL GOVERNANCE STATEMENT 2012-13

1. SCOPE OF RESPONSIBILITY

- 1.1 Tewkesbury Borough Council is responsible for ensuring that its business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively. Tewkesbury Borough Council has a duty under the Local Government Act 1999 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.
- 1.2 In discharging this overall responsibility, Tewkesbury Borough Council is responsible for putting in place proper arrangements of its affairs, facilitating the effective exercise of its functions, and which includes arrangements for the management of risk.
- 1.3 Tewkesbury Borough Council has approved and adopted a code of corporate governance, which is consistent with the principles of the CIPFA/SOLACE Framework *Delivering Good Governance in Local Government*. A copy of the authority's code is on our website at or can be obtained from This statement explains how Tewkesbury Borough Council has complied with the code and also meets the requirements of Accounts and Audit (England) Regulations 2011, regulation 4 (3), which requires all relevant bodies to prepare an annual governance statement.

2. THE PURPOSE OF THE GOVERNANCE FRAMEWORK

- 2.1 The governance framework comprises the systems and processes, culture and values by which the authority is directed and controlled and its activities through which it accounts to, engages with and leads its communities. It enables the authority to monitor the achievement of its strategic objectives and to consider whether those objectives have led to the delivery of appropriate services and value for money.
- 2.2 The system of internal control is a significant part of that framework and is designed to manage risk to a reasonable level. It cannot eliminate all risk of failure to achieve policies, aims and objectives and can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is based on an ongoing process designed to identify and prioritise the risks to the achievement of Tewkesbury Borough Council's policies, aims and objectives, to evaluate the likelihood and potential impact of those risks being realised, and to manage them efficiently, effectively and economically.
- 2.3 The governance framework has been in place at Tewkesbury Borough Council for the year ended 31 March 2013 and up to the date of approval of the annual report and statement of accounts.

3. THE GOVERNANCE FRAMEWORK

3.1 *Delivering Good Governance in Local Government* identifies six core principles which should guide the organisation in its operations. These are: -

- **Focusing on the purpose of the authority and on outcomes for the community and creating and implementing a vision for the local area**
- **Members and Officers working together to achieve a common purpose with clearly defined functions and roles**
- **Promoting values for the authority and demonstrating the values of good governance through upholding high standards of conduct and behaviour**
- **Taking informed and transparent decisions which are subject to effective scrutiny and managing risk**
- **Developing the capacity and capability of members and officers to be effective**
- **Engaging with local people and other stakeholders to ensure robust public accountability**

3.2 These principles are outlined in the Council's Local Code of Corporate Governance. To support the six principles, the Chartered Institute of Public Finance & Accountancy (CIPFA) have identified key elements of the typical systems and processes that comprise an authority's governance arrangements. These are: -

- identifying and communicating the authority's vision of its purpose and intended outcomes for citizens and service users
- reviewing the authority's vision and its implications for the authority's governance arrangements
- translating the vision into objectives for the authority and its partnerships
- measuring the quality of services for users, for ensuring they are delivered in accordance with the authority's objectives and for ensuring that they represent the best use of resources and value for money
- defining and documenting the roles and responsibilities of the executive, non-executive, scrutiny and officer functions, with clear delegation arrangements and protocols for effective communication in respect of the authority and partnership arrangements
- developing, communicating and embedding codes of conduct, defining the standards of behaviour for members and staff
- reviewing the effectiveness of the authority's decision-making framework, including delegation arrangements, decision making in partnerships and robustness of data quality
- reviewing the effectiveness of the framework for identifying and managing risks and demonstrating clear accountability

- ensuring effective counter-fraud and anti-corruption arrangements are developed and maintained
- ensuring effective management of change and transformation
- ensuring the authority's financial management arrangements conform with the governance requirements of the *CIPFA Statement on the Role of the Chief Financial Officer in Local Government (2010)* and, where they do not, explain why and how they deliver the same impact
- ensuring the authority's assurance arrangements conform with the governance requirements of the *CIPFA Statement on the Role of the Head of Internal Audit (2010)* and, where they do not, explain why and how they deliver the same impact
- ensuring effective arrangements are in place for the discharge of the monitoring officer function
- ensuring effective arrangements are in place for the discharge of the head of paid service function
- undertaking the core functions of an audit committee, as identified in CIPFA's *Audit Committees: Practical Guidance for Local Authorities*
- ensuring compliance with relevant laws and regulations, internal policies and procedures, and that expenditure is lawful
- whistleblowing and for receiving and investigating complaints from the public
- identifying the development needs of members and senior officers in relation to their strategic roles, supported by appropriate training
- establishing clear channels of communication with all sections of the community and other stakeholders, ensuring accountability and encouraging open consultation
- enhancing the accountability for service delivery and effectiveness of other public service providers
- incorporating good governance arrangements in respect of partnerships and other joint working as identified by the Audit Commission's report on the governance of partnerships, and reflecting these in the authority's overall governance arrangements

4. The Council's Governance Framework

An overview of the Council's assurance framework is shown in diagram 1. The key elements of the governance framework the council has in place are detailed below: -

4.1 Council Plan

4.1.1 A new Council Plan (2012-16) was approved at Council on 15 May 2012. On approval, it was promised that the plan would be a live document. Consequently, the plan has been refreshed for 2013/14 to recognise the progress made in implementing the council plan actions. The refresh has reaffirmed the council's vision, five priority themes and key objectives supporting the themes. The Council Plan (2012-16 Year 2) was approved at Council on 16 April 2013.

4.1.2 We are a council that has a vision for the Borough as ‘a place where a good quality of life is open to all’ and also sets out the values which we hold as we work towards the vision. We are a council which puts its customers first, is positive about working with others and one which values its employees. In delivering the vision, the council will:

- Use resources efficiently and effectively
- Promote economic development
- Improve recycling and care for the environment
- Provide customer focussed community support
- Develop housing relevant to local needs

4.1.3 Each priority theme is supported by a number of objectives and key operational actions and delivery of these actions are monitored through our performance management framework. Our key achievements are summarised in the refreshed council plan and in the annual ‘State of the Borough’ address by the Leader to full Council.

4.2 Performance Management

4.2.1 The progress of Council Plan actions is monitored and reported through the Council’s performance management framework. In particular, a performance tracker has been implemented during 2012/13, specifically to monitor these actions. The tracker has been reported on a regular basis to the Overview and Scrutiny Committee. The tracker has also promoted accountability and transparency as the local media have used it for media releases.

4.2.2 Each service area also produces a service plan prior to the commencement of the financial year. Quarterly updates on financial and business performance are reported to Overview and Scrutiny Committee and their comments considered by the Executive Committee by way of further challenge.

4.2.3 Also introduced during 2012/13, is a Direction of Travel statement for our performance indicators. This enables us to compare the performance of the indicators over the last 3 years. We have re-instigated the benchmarking of comparable indicators with other Gloucestershire Districts and look forward to extending this with other councils during 2013-14. Prior to this, a review of our performance indicators will be undertaken to ensure they align to our priorities.

4.2.4 As part of our data quality arrangements, Internal Audit has a rolling programme to ensure the accuracy of what is being reported. An overarching data quality protocol is also in place.

4.3 Complaints

4.3.1 The council has an established complaints framework which is published on the website. A six monthly report is presented at Overview and Scrutiny Committee which provides a breakdown of the complaints received and summarises them by type, contact channel, parish and remedy. 18 formal complaints were received for the period July-December 2012 compared with 42 formal complaints for the period January-June 2012.

4.3.2 A report on complaints received by the Local Government Ombudsman (LGO) is also reported on a six monthly basis at Overview and Scrutiny Committee.

The annual review letter for 2012/13 published by the LGO confirms they did not receive any complaints about the council. This compares to a national average of 10 complaints for a district/borough council.

4.4 Resident's survey

4.4.1 In previous years we have relied upon service specific user surveys and our complaints system to understand the views of our residents. During 2012/13 we worked towards the undertaking of a resident's satisfaction survey to help strengthen our knowledge and understanding of how the council is performing. The survey was structured in accordance with the Local Government Association's 'Are you being served?' guidance and provides the opportunity to benchmark results.

4.4.2 689 questionnaires were returned from a mailing of 3000. Results are currently being analysed but top line results are positive, for example; 91% of residents are fairly satisfied or very satisfied with their local area as a place to live and 78% are fairly satisfied or very satisfied with how the council runs things.

4.5 Quality of services

4.5.1 The council is committed to further developing its public service centre which is located at the council offices. We currently share our offices with the following public service partners Tewkesbury Borough Police, Gloucestershire County Council's Children and Young People Services, and Adult Care Services, Citizens Advice Bureau and Fairshares.

4.5.2 Having related public services based in the same building has resulted in reducing the cost of public service delivery through shared assets, improving service effectiveness and locality partnerships and providing public access to a wide range of services under one roof through a common reception.

4.5.3 This shared centre is helping us to work with our partners to develop a locality based approach to community issues such as troubled families, anti-social behaviour and enviro crimes. This partnership with all key partners sharing the same district boundary is unique. Following ministerial sign off, Jobcentre Plus is also to relocate to these offices during 2013. More than £150,000 of savings for the public services has been achieved to date.

4.5.4 Supporting the public service concept and acting as a driver to make it happen, there are two further projects running alongside each other: the office rationalisation and office refurbishment projects. The £1.388m office refurbishment commences in July 2013 and will transform the building into one that staff and customers can enjoy and work comfortably in for years to come. Members and staff are working together to develop our aim of moving all staff onto a refurbished and rationalised first floor. This will enable the second floor to be let to generate additional income. To enable this rationalisation, we are introducing increased use of ICT solutions and new HR policies which promote flexible working. All these projects are monitored through our project management framework.

4.6 Value for money

4.6.1 The council's budget has been prepared against a background of the most significant budget pressures for the last 20 years, mainly due to the changes to Local Government finance. As a result, the council is prioritising its

resources within restricted budgets by achieving cost reductions and improving efficiency and productivity. For example, the implementation of the organisational review will generate an annual saving of £500,000, the council is committed to joining the Local Authority owned company (UBICO), thereby outsourcing the council's delivery of its depot services and generating savings of approximately £150,000 per annum (from year 3). The office rationalisation programme moves into its most significant stage which will result in potential additional rental income of £100,000. At a service level, the procurement of a print contract for Revenues has been established which should help generate savings of approximately £35,000 and with the potential to roll this out corporately.

4.6.2 Despite the financial climate, the council continues to deliver value for money while freezing council tax for the third year running. The Band D equivalent of £99.36 is the lowest in Gloucestershire and the 5th lowest in the country. From our residents survey 52% either tend to agree or strongly agree that the council provides value for money with 32% neither agreeing nor disagreeing. The council's focus for 2013/14 is to ensure it continues to have robust systems in place to manage effectively financial risk and opportunities and secure financial resilience.

4.6.3 There is good collaboration between officers and members through the Budget Working Group (BWG) to bridge the budget deficit. The BWG has been divided into two separate groups: a BWG and an Income Group, in order to give renewed focus and strengthen member engagement in the budget process. The two groups will help prepare the Medium Term Financial Strategy for 2014/15-2019/20 and the 2014/15 budget. They will also monitor the challenging savings programme of £1.5 million which was approved for 2013/14. This was in response to a 2012/13 year end budget deficit of £300,660. To further strengthen the monitoring arrangements of the savings programme, the 2013/14 programme has a nominated CLT sponsor and below this, each strand of the programme will be assigned to a Group Manager.

4.6.4 The financial resilience of the council is recognised as a significant risk which has been consistently reported during the year, for example through the BWG and through the performance management framework. The **delivery of the 2013/14 savings programme** should therefore be flagged as a **significant governance issue**. Aligned to the savings programme and a significant governance issue from the previous year is to demonstrate effective procurement. A key action was to update the Procurement Strategy and then produce an action plan to deliver the strategy. A new strategy and supporting action plan was approved at Executive Committee on 5 December 2012. In order to demonstrate effective procurement, it will be essential to **deliver the action plan** during 2013/14. This is therefore carried forward as a **significant governance issue** from the previous year.

4.7 Communications

4.7.1 Communicating effectively is really important to us. To ensure we reach out to as many of our communities and stakeholders as possible, we use a wide range of communication channels. Tewkesbury Borough News is our residents' newspaper, which gets delivered to all 37,000 households in the borough. The paper, which is also available in large print and online, communicates information and news about our services, and includes a community news page which focuses on updates from organisations and

parish councils from across the borough. Our latest residents' satisfaction survey revealed that Tewkesbury Borough News is the main way in which residents find out about the council, and 80 per cent of residents read it in full or in part.

- 4.7.2 Other forms of communication include press releases to the media, which are reported online, through print, and on radio and television. Alongside these traditional forms of communication, we are also communicating via social media and through e-newsletters. We have three Twitter accounts, one for council news generally, one for business news and one for tourism. We also have a Facebook page which is specific for our sports development service. Each of our social media accounts is continuing to grow and offer us a way of communicating to people and groups that may not have used the more traditional methods to find out about our services.
- 4.7.3 We also produce two main e-newsletters. Parish Matters is our quarterly electronic newsletter, which communicates the latest news from the council to our parish councils. Borough in Business is our e-newsletter to businesses, which provides the latest relevant information to our businesses across the borough. We also value our partnership working with our 50 town and parish councils and twice yearly host a seminar to discuss topical issues.
- 4.7.4 Earlier this year we launched our new website. The site is much quicker and easier to use, and we are currently working to ensure it contains all the required information from the Information Commissioner's Office. Through all of our channels of communication, and in line with our communications strategy, we are open, honest and transparent, which ensures accountability. A new communications strategy will be introduced later this year which will continue to ensure that we are communicating as effectively and openly as possible to all members of our community.

4.8 Change and transformation

- 4.8.1 The council is currently undergoing significant change and as a result will need to develop creative and innovative solutions to continue delivering affordable, high quality services to local residents, businesses and visitors to the borough. In order to meet this challenge we intend to find new ways to deliver services.
- 4.8.2 The process has started, a number of services have already been subject to significant review, revised service and management structures, premises, processes service standards and technologies. All significant projects have been managed and monitored through the project management framework and have involved joint collaboration between officers, members and where appropriate, our partners e.g. the organisational review, office rationalisation and office refurbishment projects. With regards to the organisational review the robustness of the governance framework for delivering the review was identified as a significant governance issue within the previous year's AGS. This was mitigated through the approval and delivery of a detailed project plan.
- 4.8.3 Our ambitious programme of change continues, and within the new organisational structure is a Business Transformation function. The vision is to 'drive improvement through change' This will involve organisational and cultural change, supported where appropriate with ICT solutions. A draft Business Transformation Strategy has been developed, for finalisation in

2013 and will inform the council's improvement programme, DRIVE, which is to be refreshed in light of the organisational changes. Leading on from the previous year's significant governance issue of implementing the organisational review, **delivering organisational and cultural change** is recognised as a significant governance issue for this year.

4.9 Defining function and roles

- 4.9.1 The Council's constitution provides a clear statement on the roles and responsibilities of members and senior officers. In light of the organisational review, the Scheme of Delegation to officers requires revisions and a revised scheme will need to be implemented during 2013/14.
- 4.9.2 Other internal governance issues will also need to be addressed as a result of the organisational review. These will range from financial governance issues such as updating the scheme of budget delegation and corporate signatory list through to general operational governance such as the roles, responsibilities and empowerment of the new Corporate Leadership Team and Group Managers. **An effective governance framework is critical to support the new organisational structure.** This is deemed to be a **significant governance issue.**
- 4.9.3 The Council operates a fourth option form of political governance and, since May 2009, has operated an Executive Committee with an Overview & Scrutiny Committee and a separate Audit Committee. The Council is responsible for determining the most significant plans, policies and strategies (the Policy Framework). All other matters relating to operational delivery within the budget and policy framework are delegated to the Executive Committee or to officers. The Executive Committee consists of Lead Members who oversee their individual portfolios and as necessary communicate matters of specific interest to the wider Council membership.
- 4.9.4 The Overview & Scrutiny Committee provides challenge and assists with policy formulation. A review of the effectiveness of this committee was due to be undertaken in 2012/13 but has now been programmed for 2013/14. This is a good practice exercise and not a significant governance issue. It is the intention to use the Centre for Public Scrutiny to help facilitate this review. The Council has two committees which deal with governance, internal control and ethical arrangements (Audit Committee and Standards Committee). Additionally, there are two quasi-judicial committees dealing with licensing and planning.

4.10 Risk Management

- 4.10.1 The review of risk management arrangements was undertaken during the year leading to the update of the risk management strategy and implementation of a new risk register template. Key risks will be reported as part of the 2013/14 quarter 1 performance management framework. Risk management training was provided to members and senior managers during the year.
- 4.10.2 Business continuity is a strand of risk management. The Council's business continuity arrangements were identified as a significant governance issue within the 2011/12 Annual Governance Statement. The corporate business

continuity plan has been reviewed and updated and will be presented to Executive Committee in July 2013. The reformation of the Business Corporate Group (BCG) was a key action during the year in order to facilitate the review of individual service continuity plans, prioritise critical systems and test the arrangements. **The BCG has yet to be reformed so a number of business continuity related actions remain outstanding** and will therefore be carried forward as a **significant governance issue**.

4.11 Fraud and Whistle blowing

- 4.11.1 A requirement of our external auditors is that a fraud risk assessment is completed in order to gain reasonable assurance that the council's financial statements are free from material misstatement due to either fraud or error. The assessment was noted by Audit Committee on 20 March 2013 and we deem our arrangements to be satisfactory.
- 4.11.2 The anti-fraud and corruption policy has recently been updated and approved by the Executive Committee. Internal Audit routinely considers the likelihood of fraud occurring within the systems being audited and where appropriate makes recommendations to improve internal control. There have been no instances of internal fraud reported during 2012/13. There is a dedicated Housing Benefit team to investigate Housing Benefit related fraud. During the year, a crackdown on benefit fraud has resulted in more successful prosecutions than ever before. Action was taken against more than 100 benefit cheats, uncovering approximately £114,000 of benefit overpayments due to fraud. The Council is also a member of the National Anti-Fraud Network and participates in the Audit Commission's National Fraud Initiative (NFI). With regards to NFI, Internal Audit has reviewed the matches relating to potential fraudulent or duplicate creditor payments. This work concluded there was a good level of assurance to mitigate the potential for duplicate or fraudulent payments occurring.
- 4.11.3 The council has a Whistle Blowing Policy which was approved in 2011/12 and is advertised on the council's website and intranet. Whistle blowing posters are strategically placed in council buildings and an overview of the policy was provided at staff briefings, alongside the anti bullying and harassment policy. There have been no whistle blowing incidents reported during 2012/13.

4.12 Audit Committee

- 4.12.1 The Audit Committee has received training on the new Public Sector Internal Audit Standards. This helps to supplement its terms of reference and undertake the core functions of an audit committee as identified within CIPFA guidance *Audit Committees Practical Guidance for Local Authorities*. The committee is also broadly compliant with the CIPFA Better Governance Forum publication '*A Toolkit for Local Authority Audit Committees*'. It is understood that CIPFA is planning to produce a new publication on audit committees in the latter part of this year and this may contain an updated evaluation tool.

4.13 Role of the Chief Financial Officer

- 4.13.1 The council's 2012/13 financial management arrangements conform to the governance requirements of the CIPFA *Statement on the Role of the Chief Financial Officer in Local Government* (2010). The governance arrangements are an inherent part of the role and responsibilities of the Director of Resources (DoR) and are fulfilled in a number of ways, for example:

- The DoR is a key member of the Corporate Management Team, helping it to develop and implement strategy and to resource and deliver the authority's strategic objectives.
- The establishment of a Medium Term Financial Strategy. This is updated on a rolling basis and is supported by a robust annual budget setting and monitoring process, developed in conjunction with the Budget Working Group.
- The level of reserves and balances is provided in line with good practice guidance.
- On-going compliance with CIPFA's Code on a Prudential Framework for Local Authority Capital Finance and CIPFA's Treasury Management Code.
- The provision of clear, well presented, timely, complete and accurate information and reports to budget managers and senior officers on budgetary and financial performance.
- The continued publication of accurate and timely accounts, in compliance with IFRS.
- Supported by a finance team with the resources, expertise and systems necessary to perform its role effectively.

4.14 Role of the Monitoring Officer

4.14.1 The Council designated the Borough Solicitor as Monitoring Officer. The post is shared with Cheltenham Borough Council. This function is to ensure compliance with established policies, procedures, laws and regulations. The Monitoring Officer must report to the Council, after consulting with the Head of Paid Service (Chief Executive) and Chief Finance Officer, if any proposal, decision or omission would give rise to unlawfulness or maladministration. No cases have been reported during the year by the Monitoring Officer. The roles and responsibilities of the Monitoring Officer are defined within the Council's constitution.

4.15 Member and senior officer development

4.15.1 During 2012/13, Members have received extensive training and development with a particular focus on planning which has included a plan-making workshop, seminars on the National Planning Policy Framework and a programme of development events in relation to the Joint Core Strategy. Other development work has included Chairing Skills and Meeting Management training, the new Standards Regime, Understanding Scrutiny Processes and Techniques, Social Media training, risk management training, budget and business rates pooling and a Community Infrastructure Levy and Place Planning seminar. During the latter part of 2012/13, a Training Needs Review Survey was conducted, the results of which are currently being analysed to inform further development work.

4.15.2 Officer development needs are traditionally identified through the annual Joint Annual Review (JAR) process. This process provides the link between the high level council plan priorities, service plans and individual development needs. With regards to senior officers, their development needs are currently being assessed, in light of any new roles and responsibilities as a result of the new management structure.

4.16 Standards Committee

4.16.1 This is a newly established committee whose role it is to help promote and ensure high standards of member conduct and behaviour including those in town/parish councils and to assist members and co-opted members to observe the Code of Conduct. The Council adopted a new conduct regime, effective from July 2012, as required by the Localism Act 2011. The Standards Committee has monitored implementation of the new arrangements.

4.17 Role of Head of Internal Audit

4.17.1 The council's internal audit arrangements conform to the governance requirements of the CIPFA document '*the role of the head of internal in public service organisations Statement on the Role of the Chief Financial Officer in Local Government (2010)*'. An annual review of the effectiveness of Internal Audit is carried out and the results of this were reported to Audit Committee on 26 June 2013. This concluded that the Council's Internal Audit function is effective.

4.17.2 Annually, the Performance and Audit Manager produces a report summarising the work of Internal Audit. This report provides an overall opinion on the level of control that exists within the systems audited. The 2012/13 annual report, presented at Audit Committee on 26 June 2013, concluded that a satisfactory level of control exists.

4.17.3 This conclusion was based upon 73 'split' audit opinions. Of these, only 4 opinions were of a 'limited' assurance nature: - Trade Waste (accuracy of database and receipt of waste transfer notices), Creditors (ordering and purchase of goods and services - non-compliance with Financial Procedure Rules), S106 agreements (monitoring arrangements) and **Playground Inspections (regularity and recording of)**. In respect of the latter, the council takes its health & safety responsibilities seriously and the audit findings would support this being identified as a **significant governance issue**.

4.18 Head of Paid Service function (Chief Executive)

4.18.1 This post is required by the Local Government and Housing Act 1989 with the function and duties detailed within the council's constitution. For 2012/13 this post was supported by a Corporate Management Team (CMT) consisting of 3 directors and the Borough Solicitor. The review of this management structure formed part of the organisational review. The restructure was approved at Council on 21 February 2013 and has created a new Corporate Leadership Team (CLT) with the Chief Executive being supported by a Deputy Chief Executive and Borough Solicitor.

4.18.2 Effective arrangements are in place for the discharge of the Head of Paid Service. For example, the post holder has a 6 monthly appraisal by members, is subject to peer mentoring, regularly meets with Group Leaders to discuss key strategic issues and leads CMT which meets on a weekly basis.

4.19 Partnership working

4.19.1 The council recognises that it cannot achieve its priorities without effective partnership working. We are positive about working with others and this is a core value within our council plan. This includes working with communities,

including the voluntary sector, town and parish councils and neighbourhood groups to achieve common goals.

4.19.2 The council is receptive to exploring opportunities for service delivery options and further shared services development. We currently have two shared service arrangements, legal services (One Legal) and building control which are both shared with Cheltenham Borough Council (CBC). CBC is the lead authority for building control and TBC the lead for One Legal. Each arrangement is supported with a robust governance structure. On an annual basis, as part of the evidence to support the AGS, each council provides a certificate of assurance to the other. The 2012/13 certificates indicate there are no significant issues to report.

4.19.3 CBC also provides operational management of our Depot Services function. This arrangement together with sharing CBC depot has been extended whilst the proposed governance arrangements for TBC to join the Local Authority Company are considered further. Ensuring effective governance arrangements for delivery of the Depot Services function was identified as a significant governance issue in 2011/12. This would be implemented as and when the governance issues are resolved.

4.19.4 A programme of strategic service reviews were programmed for 2012/13 but were deferred in light of the organisational review. These will be re-instigated following implementation of the organisational review and will be considered as part of the new and dynamic business transformation programme. A Business Transformation Strategy is currently being drafted, for presentation at Executive Committee in September.

5. REVIEW OF EFFECTIVENESS

5.1 Tewkesbury Borough Council has responsibility for conducting, at least annually, a review of the effectiveness of its governance framework including the system of internal control. The review of effectiveness is informed by the work of senior management within the authority who have responsibility for the development and maintenance of the governance environment, the head of internal audit's annual report, and also by comments made by the external auditors and other review agencies and inspectorates. The Council's process for maintaining and reviewing the effectiveness of the governance framework included the following (but is not an exhaustive list):

- Quarterly performance reports, including business and financial performance being presented to Overview & Scrutiny Committee, and the outcome of their review taken to Executive Committee.
- External audit reporting and any issues identified brought to the attention of the Audit Committee.
- Internal Audit reporting and any issues identified brought to the attention of the Audit Committee.
- Audit Committee monitoring of significant governance issues.
- Annual review of the effectiveness of Internal Audit.

- Regular monitoring of the corporate improvement programme by the DRIVE board.
- Programme board of senior officers who monitor delivery of key corporate projects.
- Member representation and where appropriate, independent representation on key projects e.g. organisational review, office refurbishment projects.
- Strong political structure and good Member/officer relationships to support accountability and transparency
- Regular meetings of the Budget Working Group to help deliver a sustainable budget.
- The work of the Standards Committee in promoting and maintaining high standards of conduct by councillors.
- Monitoring of and outcomes from key policies and procedures such as the Whistleblowing Policy, anti-fraud and corruption policy and complaints framework, including Local Ombudsman reports.
- Early results from the resident's satisfaction survey.
- Assurance from key partnerships.
- Corporate Governance Group which consists of senior officers and Lead Member and oversees matters relating to the governance of the Council.

5.2 We have been advised on the implications of the result of the review of the effectiveness of the governance framework by the Corporate Governance Group and endorsement by the Audit Committee, and that the arrangements continue to be regarded as fit for purpose in accordance with the governance framework. The areas already addressed and those to be specifically addressed with new actions planned are outlined below.

Governance Framework – Key Documents/Functions

- Council Plan
- Performance Management Framework
- Constitution & scheme of delegation
- DRIVE Improvement Programme
- Communication Strategy
- Human Resources Strategy
- Council Procedure Rules
- Record of Decisions
- Code of Conduct (Employees and Members)
- Officer and Member Protocols
- Code of Corporate Governance
- Risk Management Framework
- Anti-Fraud and Corruption Policy
- Whistleblowing Policy
- Project management framework
- ICT Policy and ICT Governance
- Procurement Strategy
- Contract Procedure Rules
- Medium Term Financial Plan/Budgets
- Treasury Management Framework
- Annual Statement of Accounts
- Financial Procedure Rules
- Complaints Framework
- Equalities
- Internal and External Audit
- One Legal
- Data Quality

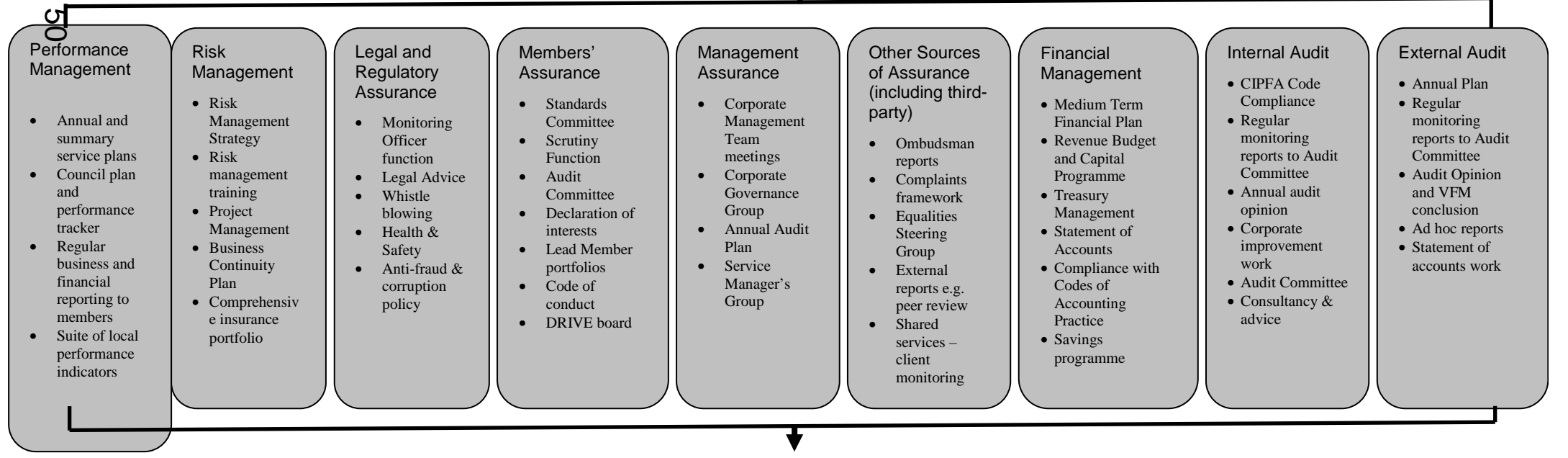
Annual Governance Statement
Signed by the Leader of the Council and Chief Executive and published with the Statement of Accounts

Review and approval of AGS by Audit Committee

Review of the effectiveness of the system of Internal Audit

Council's assurance framework

Corporate Governance Group – responsible for drafting AGS after evaluating assurance framework



On-going assurance on adequacy and effectiveness of controls over key risks

6. SIGNIFICANT GOVERNANCE ISSUES

6.1 We propose over the coming year to take steps to address the above matters to further enhance our governance arrangements. We are satisfied that these steps will address the need for improvements that were identified in our review of effectiveness and will monitor their implementation and operation as part of our next annual review.

| No | Governance Issue | Proposed Action | Timescale | Responsible officer/group |
|----|---|---|---|--|
| 1 | Delivery of the 2013/14 Savings Programme | <ul style="list-style-type: none"> Nominated CLT project sponsor Individual strands of the programme allocated to a lead officer Regular monitoring by Budget Working Group | July 2013 July 2013 March 2014 | Corporate Leadership Team |
| 2 | Demonstrating effective procurement | Deliver the supporting action plan including: <ul style="list-style-type: none"> Re-establish the procurement group Provide procurement training Develop a programme based on spend analysis Publish a 'selling to the council' guide | March 2014 | Group Manager Business Transformation |
| 3 | Delivering effective organisational and cultural change | <ul style="list-style-type: none"> Approval of Business Transformation Strategy Development of Business Transformation Programme | March 2014 | Chief Executive |
| 4 | Effectiveness of governance framework to support the new organisational structure | <ul style="list-style-type: none"> Update scheme of delegation Update scheme of budget delegation Update corporate signatory list Realign budgets and payroll | December 2013 Aug 2013 September 2013 | Group Manager Democratic Services/Group Manager Finance & Asset Management |
| 5 | Demonstrating effective Business Continuity | <ul style="list-style-type: none"> Reform the Business Continuity Group Review and update service continuity plans Identify and prioritise the council's critical systems Test the effectiveness of the Business Continuity arrangements | March 2014 | Business Continuity Group |
| 6 | Maintaining adequate Health & Safety arrangements | In relation to the management of playground inspections: - <ul style="list-style-type: none"> Training for inspectors Introduction of good practice RoSPA inspection template Playgrounds to be risk assessed Improved documentation of defect resolution | September 2013 | Group Manager Finance & Asset Management |

Signed on behalf of Tewkesbury Borough Council

Councillor Robert Vines
Leader of the Council

Date

Mike Dawson
Chief Executive

Date

TEWKESBURY BOROUGH COUNCIL

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|------------------------------|---|
| Report to: | Audit |
| Date of Meeting: | 25 September 2013 |
| Subject: | Update on Playground Inspections Audit |
| Report of: | Simon Dix, Financial Services Group Manager |
| Corporate Lead: | Rachel North, Deputy Chief Executive |
| Lead Member: | Councillor A L Keyte |
| Number of Appendices: | None |

Executive Summary:

This report is to update Members of the implementation of a playground management and inspection scheme. The implementation of the scheme is to address concerns raised by the 2012/13 audit report. Officers have opted to where practically possible to introduce procedures based upon the BS EN 1176:2008 management of play equipment guidelines and this report outlines progress to date and work streams for the future.

Recommendation:

To CONSIDER the update on the implementation of a playground management and inspection scheme.

Reasons for Recommendation:

The report outlines the response made by Officers in relation to the concerns raised by Internal Audit.

Resource Implications:

The identified work programme can be met from existing resources.

Legal Implications:

None

Risk Management Implications:

The implementation of the scheme reduces the risk of litigation within Tewkesbury Borough Council owned playgrounds

Performance Management Follow-up:

A documented inspection routine and maintenance programme has now been agreed and will provide essential ongoing management information in order to provide an ongoing quality service to the public.

Environmental Implications:

The programme established by Officers will ensure that the Council's playground offering is of a good standard providing a clean and safe environment for users.

1.0 INTRODUCTION/BACKGROUND

- 1.1** An internal audit of Tewkesbury Borough Council playgrounds was completed reviewing ownership, risk assessments, inspections, defects recording, maintenance programming and prompt repairs.
- 1.2** Following the audit report and recommendations, a number of work streams were developed to ensure the authority meets its 'duty of care' to provide safe play equipment with a robust maintenance, inspection and repair programme. This programme was developed by the Asset Manager as part of the re-assignment of responsibilities in the new management structure.
- 1.3** BS EN 1176:2008 the European standard for play equipment is considered best practice within the industry. Officers have introduced a number of work streams to ensure the Council, where practically possible, adhere to this guidance.

2.0 WORK PROGRAMME FOLLOWING AUDIT

- 2.1** Playsafe was appointed to complete the annual inspection of the playgrounds and this was completed in March 2013. In a majority of cases all defects were minor and a work programme was implemented to complete or monitor the findings. All items that were judged to be high risk have been completed.
- 2.2** Ownership of the playgrounds was reviewed and subsequently the following changes have been made:
- two playgrounds in the Wheatpieces have now been formally adopted;
 - the Finches is now part of the inspection programme; and
 - the Tudor Mead playground is under licence to Churchdown Parish and will be included in the annual inspection scheme.
- 2.3** Following a visit to all sites and in line with BS EN 1176:2008 risk assessments have been completed to establish the frequency of visits based upon location, repair history and the risk of injury from the equipment on site. This has reduced the number of inspections in a majority of sites to one inspection per week therefore reducing resources required for inspections.
- 2.4** A service level agreement has been developed and agreed between Property Services and Environmental Health to provide the weekly and quarterly routine and operational inspections. 12 Officers from Environmental Health and Property Services have completed the relevant qualifications to carry out the routine inspections and in October will have completed the operational inspection training. Property Services will be procuring the annual independent inspections to ensure best value. Possible savings may be realised as the Council's insurers will no longer be required to complete similar inspections.

- 2.5** The inspection programme and risk assessment process categorises repairs from very low risk to high requiring immediate attention. This therefore gives clear work programmes, objectives and timescales for the Property team to provide safe play equipment. Current work streams are to develop a robust repair programme to meet with the current and future demands of the playgrounds. The costs of this programme are likely to be met from current budget allocations.
- 2.6** In addition to the weekly inspections and operational inspections, a maintenance programme of grass cutting and litter picking is in place. Frequency of these visits is adapted with seasonal issues and changes i.e. school holidays and increased usage. The weekly inspections are reviewed periodically to ascertain any change in trends and to insure the maintenance schedule meets with the service delivery.
- 2.7** A playground file has been introduced and a monitoring and a review programme is currently being set up to ensure all playgrounds continue to be maintained in line with the BS EN 1176:2008.
- 3.0 OTHER OPTIONS CONSIDERED**
- 3.1** None.
- 4.0 CONSULTATION**
- 4.1** All service areas directly involved with the service provision were consulted along with advice being sought from the industry regulators.
- 5.0 RELEVANT COUNCIL POLICIES/STRATEGIES**
- 5.1** None
- 6.0 RELEVANT GOVERNMENT POLICIES**
- 6.1** None
- 7.0 RESOURCE IMPLICATIONS (Human/Property)**
- 7.1** Ongoing training for staff to ensure inspection routine is maintained.
- 8.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)**
- 8.1** None
- 9.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)**
- 9.1** None

10.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

10.1 None

Background Papers: None

Contact Officer: Andy Noble, Asset Manager
01684 272023 andy.noble@teWKesbury.gov.uk

Appendices: None

TEWKESBURY BOROUGH COUNCIL

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|------------------------------|--|
| Report to: | Audit Committee |
| Date of Meeting: | 25 September 2013 |
| Subject: | Internal Audit Plan Monitoring Report |
| Report of: | Graeme Simpson, Policy and Performance Group Manager |
| Corporate Lead: | Mike Dawson, Chief Executive |
| Lead Member: | Councillor Mrs J M Perez |
| Number of Appendices: | 2 |

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| <p>Executive Summary:</p> <p>This report summarises the work undertaken by the Internal Audit team for the period April 2013 – August 2013.</p> |
| <p>Recommendation:</p> <p>To CONSIDER the audit work undertaken, and the assurance given on the adequacy of internal controls operating in the systems audited.</p> |
| <p>Reasons for Recommendation:</p> <p>Internal Audit Work should comply with the Public Sector Internal Audit Standards (PSIAS). These standards state that the Chief Audit Executive (CAE) must report functionally to the 'board' (Audit Committee). This includes reporting on Internal Audit's activity relative to its Plan.</p> |

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| <p>Resource Implications:</p> <p>None.</p> |
| <p>Legal Implications:</p> <p>None.</p> |
| <p>Risk Management Implications:</p> <p>If the CAE does not report functionally to the Board then this does not comply with the PSIAS.</p> <p>If there are delays in response to the acceptance/implementation of essential audit recommendations then this potentially increases the risk of fraud or error occurring.</p> |

Performance Management Follow-up:

All recommendations made by Internal Audit are followed-up within appropriate timescales to give assurance they have been implemented. The outcome of the follow-up audit is formally reported to the Audit Committee.

Outstanding recommendations made by Internal Audit that are categorised as essential will be proactively monitored through the recommendation template detailed in Appendix B.

Environmental Implications:

None.

1.0 INTRODUCTION/BACKGROUND

1.1 The 2013/14 Internal Audit Plan was approved at Audit Committee on 20 March 2013. . This is the first monitoring report for the year and summarises Internal Audit work undertaken for the period April 2013 – August 2013. It is a requirement of the Public Sector Internal Audit Standards (PSIAS) that the Chief Audit Executive (Group Manager Policy and Performance) reports formally to the 'board' (Audit Committee).

2.0 INTERNAL AUDIT WORK FOR THE PERIOD

2.1 As at 31 August 2013, good progress is being made towards completion of the annual Audit Plan. The work undertaken in the period is detailed in Appendix 1. This provides a summary of the activity audited, the control objectives for each activity and the audit opinion for each control objective. Also included is the outcome of any follow-up audits undertaken in the period and whether the audit recommendations have been implemented.

2.2 When reporting, a 'split' opinion is given. This means individual opinions are given for different parts of the system being audited. This approach enables Internal Audit to identify to management specific areas of control that are operating or not. Assurance opinions are categorised as 'good', 'satisfactory', 'limited' and 'unsatisfactory'. It is pleasing to report that of the systems audited there are no audit opinions of a 'limited' or 'unsatisfactory' nature.

2.3 The Committee also receive information on 'essential' audit recommendations that have not been implemented. These have been identified through the undertaking of follow-up audits. Essential recommendations that remain outstanding as a result of follow-up work are detailed in Appendix 2. Additional comments relating to the progress of implementing the recommendations have been obtained from the appropriate Manager(s) and are included in the table. Changes from the previously reported position are shown in bold type.

3.0 CORPORATE IMPROVEMENT WORK

3.1 Included within the 2013/14 Internal Audit plan is a pot of days to undertake corporate improvement work. As reported previously to the Committee, the Policy and Performance Team can collectively identify corporate type activities that may have 'stagnated' or need resolving. Corporate Leadership Team and Group Managers are aware of this allocation of days and have been encouraged to put forward suggestions where the team may help. Work undertaken during the period can be found in Appendix 1.

4.0 OTHER OPTIONS CONSIDERED

4.1 None.

5.0 CONSULTATION

5.1 All Managers are consulted prior to the commencement of the audit to agree the scope and each Manager has the opportunity to complete a client survey at the end of the audit.

6.0 RELEVANT COUNCIL POLICIES/STRATEGIES

6.1 Internal Audit Charter and Internal Audit Annual Plan.

7.0 RELEVANT GOVERNMENT POLICIES

7.1 None.

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 None.

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 None.

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 Internal Audit contributes to VFM through its improvement work.

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 None.

Background Papers: None

Contact Officer: Graeme Simpson, Policy and Performance Group Manager
01684 272002 graeme.simpson@teWKesbury.gov.uk

Appendices: Appendix 1 – Audit work undertaken April – August 2013
Appendix 2 – Outstanding audit recommendations categorised as 'essential'

List of Audits Completed as part of the 2013-14 Audit Plan (April 2013-August 2013)

| Audit | Audit Objective & Opinion | | | | | | |
|---------------------------|--|---|-----------------|---------|---|------|---|
| National Fraud Initiative | <p>Control Objectives (CO):</p> <p>1. To check NFI matches, report findings and complete NFI return in respect of creditors.</p> <p>Audit Opinion</p> <table border="1" data-bbox="403 591 1463 1429"> <thead> <tr> <th data-bbox="403 591 488 692">CO</th> <th data-bbox="488 591 683 692">Assurance Level</th> <th data-bbox="683 591 1463 692">Opinion</th> </tr> </thead> <tbody> <tr> <td data-bbox="403 692 488 1429">1</td> <td data-bbox="488 692 683 1429">Good</td> <td data-bbox="683 692 1463 1429"> <p>The controls within the creditor's system provide a good level of assurance to mitigate the potential for duplicate or fraudulent payments. All 212 NFI matching queries were reviewed during the audit which related to payments made during 2011/12 and 2012/13.</p> <p>207 of these queries were closed as 'no issue'; the remaining 5 closed as 'already known' where the wrong creditor had been paid in error, these had subsequently been identified and rectified with the erroneous payment returned and repaid to the correct creditor. This is compared to a total of approximately 11,100 payments processed during this period.</p> <p>A review of the matching queries did however identify a number of creditor accounts that require consolidation, it is therefore recommended that these accounts are reviewed and consolidated where appropriate. As recommended in the 2012/13 creditor's audit; in order to proactively identify possible duplicate payments, the duplicate payments report should be run on a regular basis.</p> </td> </tr> </tbody> </table> | CO | Assurance Level | Opinion | 1 | Good | <p>The controls within the creditor's system provide a good level of assurance to mitigate the potential for duplicate or fraudulent payments. All 212 NFI matching queries were reviewed during the audit which related to payments made during 2011/12 and 2012/13.</p> <p>207 of these queries were closed as 'no issue'; the remaining 5 closed as 'already known' where the wrong creditor had been paid in error, these had subsequently been identified and rectified with the erroneous payment returned and repaid to the correct creditor. This is compared to a total of approximately 11,100 payments processed during this period.</p> <p>A review of the matching queries did however identify a number of creditor accounts that require consolidation, it is therefore recommended that these accounts are reviewed and consolidated where appropriate. As recommended in the 2012/13 creditor's audit; in order to proactively identify possible duplicate payments, the duplicate payments report should be run on a regular basis.</p> |
| CO | Assurance Level | Opinion | | | | | |
| 1 | Good | <p>The controls within the creditor's system provide a good level of assurance to mitigate the potential for duplicate or fraudulent payments. All 212 NFI matching queries were reviewed during the audit which related to payments made during 2011/12 and 2012/13.</p> <p>207 of these queries were closed as 'no issue'; the remaining 5 closed as 'already known' where the wrong creditor had been paid in error, these had subsequently been identified and rectified with the erroneous payment returned and repaid to the correct creditor. This is compared to a total of approximately 11,100 payments processed during this period.</p> <p>A review of the matching queries did however identify a number of creditor accounts that require consolidation, it is therefore recommended that these accounts are reviewed and consolidated where appropriate. As recommended in the 2012/13 creditor's audit; in order to proactively identify possible duplicate payments, the duplicate payments report should be run on a regular basis.</p> | | | | | |
| Data Quality | <p>Control Objectives (CO):</p> <p>1. The following local performance indicators have been calculated and reported accurately through the 2012/13 Qtr4 service plans:</p> <p>Commercial Services</p> <ul style="list-style-type: none"> - Percentage of food establishments broadly compliant with food legislation. <p>Financial Services</p> <ul style="list-style-type: none"> - Percentage of supplier invoices paid within 30 days of receipt. <p>Property Services</p> <ul style="list-style-type: none"> - Electricity usage. - Gas usage. | | | | | | |

| | | | |
|---------------|--|---|--|
| | Audit Opinion | | |
| CO | Assurance Level | Opinion | |
| 1 | Satisfactory | <p>In respect of the local performance indicators reviewed during the audit, there is a satisfactory level of assurance that these have been reported accurately through the 2012/13 Qtr4 service plans.</p> <p>Minor anomalies were identified in relation to the percentage of supplier invoices paid within 30 days and the electricity and gas usage reported; however, these were found to have no significant impact on the performance indicator. The descriptions of these particular LPI's were updated during the audit in order to give a more accurate representation of the figures reported.</p> <p>With regard to Property Services indicators, it has been recommended that a clear definition be established in order to provide clarity in respect of the data used within the indicators and in respect of Commercial Services, a previous recommendation remains outstanding whereby the total number of food establishments should be reconciled to the individual reports for 'broadly compliant', 'non-compliant' an 'unrated' premises.</p> | |
| Planning Fees | <p>Control Objectives (CO):</p> <ol style="list-style-type: none"> 1. Planning fees have been calculated and received in accordance with the fees schedule and planning performance indicators have been accurately reported. 2. The processes relating to the pre-planning application advice provides assurance that the fees are accurate and appropriately allocated to the general ledger. | | |
| | Audit Opinion | | |
| CO | Assurance Level | Opinion | |
| 1 | Satisfactory | <p>Fees in respect of planning applications are promptly banked and allocated to the correct ledger code. In respect of the 20 applications sampled, all were found to have been calculated in accordance with the statutory fee schedule with the exception of 2, which resulted in a minor overpayment to the authority.</p> <p>Planning performance was found to have been fairly stated through the Development Control service plan and the 2012/13 Qtr 3 PS2 return. In respect of the PS2 return, minor variances in the total number of days applications took to be determined were identified; these were in relation to the date of valid application having been incorrectly stated and were found to have no effect on the overall PS2 calculation.</p> | |

| | 2 | Good | <p>Pre-planning application fees have been correctly calculated, in accordance with the approved fee schedule, promptly banked and allocated to the correct ledger code with VAT having been correctly allocated to VATT/8294.</p> <p>The previous audit carried out in 2010/11 made 2 recommendations in respect of the pre-application process; both of which were found to have been implemented.</p> | | | | | | | | | | | | |
|------------|---|---|--|----|-----------------|---------|---|------|--|---|--------------|---|---|------|--|
| HB Debtors | <p>Control Objectives (CO):</p> <ol style="list-style-type: none"> 1. Invoices are raised promptly and for the correct amount. 2. Payments are allocated correctly and appropriate recovery action is undertaken in respect of unpaid invoices. 3. HB debtor income is reconciled to the general ledger. <p>Audit Opinion</p> <table border="1" data-bbox="403 801 1469 1848"> <thead> <tr> <th data-bbox="403 801 486 904">CO</th> <th data-bbox="486 801 689 904">Assurance Level</th> <th data-bbox="689 801 1469 904">Opinion</th> </tr> </thead> <tbody> <tr> <td data-bbox="403 904 486 1070">1</td> <td data-bbox="486 904 689 1070">Good</td> <td data-bbox="689 904 1469 1070">Where there is no ongoing entitlement to benefit, overpayments are issued in the form of invoices to the relevant debtor. These invoices are raised promptly and for the correct amount.</td> </tr> <tr> <td data-bbox="403 1070 486 1744">2</td> <td data-bbox="486 1070 689 1744">Satisfactory</td> <td data-bbox="689 1070 1469 1744"> <p>Payments are appropriately allocated to the general ledger and suspense items are cleared during the monthly reconciliation process.</p> <p>Recovery action is undertaken on unpaid invoices and the outstanding debt is escalated through the County Court process. However, the promptness of this recovery needs to be enhanced particularly in respect of instalment arrangements that have failed and ensuring that county court judgements are entered into during the 6 month grace period. For efficiency purposes consideration should be given to enhancing the work practices which allow for recovery of Council Tax and benefit debt to be performed at the same time.</p> <p>The write-off of debt was found to be appropriately authorised and accounted for. The write-off policy does require amendment to take into account changes in the organisation restructure and authorisation limits as stated within the Council's Financial Procedure Rules.</p> </td> </tr> <tr> <td data-bbox="403 1744 486 1848">3</td> <td data-bbox="486 1744 689 1848">Good</td> <td data-bbox="689 1744 1469 1848">A reconciliation between the HB Debtor benefits system and the general ledger is performed on a monthly basis.</td> </tr> </tbody> </table> | | | CO | Assurance Level | Opinion | 1 | Good | Where there is no ongoing entitlement to benefit, overpayments are issued in the form of invoices to the relevant debtor. These invoices are raised promptly and for the correct amount. | 2 | Satisfactory | <p>Payments are appropriately allocated to the general ledger and suspense items are cleared during the monthly reconciliation process.</p> <p>Recovery action is undertaken on unpaid invoices and the outstanding debt is escalated through the County Court process. However, the promptness of this recovery needs to be enhanced particularly in respect of instalment arrangements that have failed and ensuring that county court judgements are entered into during the 6 month grace period. For efficiency purposes consideration should be given to enhancing the work practices which allow for recovery of Council Tax and benefit debt to be performed at the same time.</p> <p>The write-off of debt was found to be appropriately authorised and accounted for. The write-off policy does require amendment to take into account changes in the organisation restructure and authorisation limits as stated within the Council's Financial Procedure Rules.</p> | 3 | Good | A reconciliation between the HB Debtor benefits system and the general ledger is performed on a monthly basis. |
| CO | Assurance Level | Opinion | | | | | | | | | | | | | |
| 1 | Good | Where there is no ongoing entitlement to benefit, overpayments are issued in the form of invoices to the relevant debtor. These invoices are raised promptly and for the correct amount. | | | | | | | | | | | | | |
| 2 | Satisfactory | <p>Payments are appropriately allocated to the general ledger and suspense items are cleared during the monthly reconciliation process.</p> <p>Recovery action is undertaken on unpaid invoices and the outstanding debt is escalated through the County Court process. However, the promptness of this recovery needs to be enhanced particularly in respect of instalment arrangements that have failed and ensuring that county court judgements are entered into during the 6 month grace period. For efficiency purposes consideration should be given to enhancing the work practices which allow for recovery of Council Tax and benefit debt to be performed at the same time.</p> <p>The write-off of debt was found to be appropriately authorised and accounted for. The write-off policy does require amendment to take into account changes in the organisation restructure and authorisation limits as stated within the Council's Financial Procedure Rules.</p> | | | | | | | | | | | | | |
| 3 | Good | A reconciliation between the HB Debtor benefits system and the general ledger is performed on a monthly basis. | | | | | | | | | | | | | |

Recycling
(incl follow
up)

Control Objectives (CO):

1. Credits in respect of recycling have been invoiced to the County for all appropriate waste activities, the correct tonnages and charges have been applied and invoices raised on a prompt basis.
2. The performance indicator 'total recycled, composted and reused waste' for year end 2012/13 has been accurately reported

Audit Opinion:

| CO | Assurance Level | Opinion |
|----|-----------------|--|
| 1 | Satisfactory | <p>In respect of recycling credits, the monthly invoices have been raised promptly and have been accurately stated. Payments have been received in respect of all invoices issued to the County for 2012/13.</p> <p>In relation to seven previous audit recommendations, two have been negated by change in processes involving MRF sample testing and the intended introduction of recycling tender for bring sites. A further two recommendations relating to recovery of debt and a review of variances in weighbridge data reported from Printwaste and the MRF, are considered implemented.</p> <p>The remaining three recommendations (which encompass elements of the Waste County Audit requirements and were agreed with the Waste Policy Officer who is no longer with the Council), relate to obtaining assurance that waste has been recycled together with checks concerning waste licences and tonnage calibration. Due to the current retendering of the MRF contract these are anticipated to be completed by the end of the current financial year.</p> |
| 2 | Satisfactory | <p>The year-end LPI '% total recycled, composted and reused waste' has been fairly stated at 53.14%.</p> |

| Land Charges | <p>Control Objective (CO) ;</p> <ol style="list-style-type: none"> Income in respect of searches has been received and banked in accordance with the agreed scale of fees. Expenditure made to the County Council in respect of search information received is accurate. <p>Audit Opinion</p> <table border="1" data-bbox="405 434 1466 1357"> <thead> <tr> <th data-bbox="405 434 488 533">CO</th> <th data-bbox="488 434 699 533">Assurance Level</th> <th data-bbox="699 434 1466 533">Opinion</th> </tr> </thead> <tbody> <tr> <td data-bbox="405 533 488 1189">1</td> <td data-bbox="488 533 699 1189">Good</td> <td data-bbox="699 533 1466 1189"> <p>The Land Charges fee setting process has been undertaken in accordance with statutory legislation. Both the actual values for 2012/13 and estimate values for 2013/14 have been approved by the Council's S151 Officer.</p> <p>Income in respect of local land charge searches is promptly banked and allocated to the correct ledger code. In respect of the land searches sampled; all fees were found to have been calculated in accordance with the agreed scale of charges. Information in response to each search question is provided by various departments from across the council and third parties (Gloucestershire County Council). With regard to those questions answered by Tewkesbury Borough Council; a sample of questions were traced back to the service area providing the response and checked for accuracy. This provided reasonable assurance that data reported within the searches is accurate.</p> </td> </tr> <tr> <td data-bbox="405 1189 488 1357">2</td> <td data-bbox="488 1189 699 1357">Good</td> <td data-bbox="699 1189 1466 1357"> <p>Upon receipt of invoices from the County Council in respect of search fees; assurance was obtained during the audit that these charges are verified by Land Charges prior to payment.</p> </td> </tr> </tbody> </table> | CO | Assurance Level | Opinion | 1 | Good | <p>The Land Charges fee setting process has been undertaken in accordance with statutory legislation. Both the actual values for 2012/13 and estimate values for 2013/14 have been approved by the Council's S151 Officer.</p> <p>Income in respect of local land charge searches is promptly banked and allocated to the correct ledger code. In respect of the land searches sampled; all fees were found to have been calculated in accordance with the agreed scale of charges. Information in response to each search question is provided by various departments from across the council and third parties (Gloucestershire County Council). With regard to those questions answered by Tewkesbury Borough Council; a sample of questions were traced back to the service area providing the response and checked for accuracy. This provided reasonable assurance that data reported within the searches is accurate.</p> | 2 | Good | <p>Upon receipt of invoices from the County Council in respect of search fees; assurance was obtained during the audit that these charges are verified by Land Charges prior to payment.</p> |
|-------------------------|--|--|-----------------|---------|---|------|--|---|------|--|
| CO | Assurance Level | Opinion | | | | | | | | |
| 1 | Good | <p>The Land Charges fee setting process has been undertaken in accordance with statutory legislation. Both the actual values for 2012/13 and estimate values for 2013/14 have been approved by the Council's S151 Officer.</p> <p>Income in respect of local land charge searches is promptly banked and allocated to the correct ledger code. In respect of the land searches sampled; all fees were found to have been calculated in accordance with the agreed scale of charges. Information in response to each search question is provided by various departments from across the council and third parties (Gloucestershire County Council). With regard to those questions answered by Tewkesbury Borough Council; a sample of questions were traced back to the service area providing the response and checked for accuracy. This provided reasonable assurance that data reported within the searches is accurate.</p> | | | | | | | | |
| 2 | Good | <p>Upon receipt of invoices from the County Council in respect of search fees; assurance was obtained during the audit that these charges are verified by Land Charges prior to payment.</p> | | | | | | | | |
| Follow-Up Audits | | | | | | | | | | |
| One Legal | <p>Control Objective (CO);</p> <ol style="list-style-type: none"> To follow-up previous audit recommendations made within the One Legal (S101 agreement) audit 2012/13. To follow-up previous audit recommendations made within the Data Quality audit 2012/13 in respect of One Legal. <p>Audit Opinion</p> <p>The previous One Legal (S101 agreement) audit made 5 recommendations; all of which were found to have been implemented. The previous Data Quality audit made 3 recommendations in respect of One Legal; all of which were found to have been implemented.</p> | | | | | | | | | |

| Previous Recommendations Reference | Findings |
|------------------------------------|--|
| <i>ONE LEGAL (S101 AGREEMENT)</i> | |
| 1 | Recommendation implemented. The One Legal service delivery standards have been revised to reflect the current structure operated and approved by the JMLG. |
| 2 | Recommendation implemented. Voting rights of each officer on the JMLG are now formally acknowledged within the minutes of each meeting (item 1). |
| 3 | Recommendation negated. Decision taken by the JMLG not to receive details of individual complaints or compliments as of November 2012; but to monitor feedback through the relevant LPI on client satisfaction. |
| 4 | Recommendation implemented. Approval of an annual survey rather than bi-annual survey was obtained from the Joint Management Liaison Group on 6 July 2012. |
| 5 | Recommendation implemented. An initial discussion by the JMLG regarding the benefits of maintaining an account showing the value of the functions took place on 8 November 2012. At this meeting it was agreed that the current proportionate split (50:50) would remain in place until 2014/15. |
| <i>DATA QUALITY</i> | |
| 1 | Recommendation implemented. This recommendation was implemented during the audit. Within the calculation of the LPI, the target hours for part time employees is now calculated based upon their contracted hours and pro-rata'd leave entitlement. |
| 2 | Recommendation implemented. A baseline chargeable hours target has been established by which to measure productivity. |
| 3 | Recommendation implemented. A definition of the performance indicator 'percentage savings made through the avoidance of external legal provision' has now been established. |

Out of the Hat Shop

Control Objectives (CO):

1. To follow-up previous audit recommendations made within the Heritage and Visitor Centre audit 2012/13.

Audit Opinion

The 2012/13 Heritage and Visitor Centre audit made 7 recommendations, 6 of which were found to have been implemented; with 1 remaining outstanding.

| Previous Recommendations Reference | Findings |
|------------------------------------|--|
| 1 | Recommendation implemented. Delegated authority for the Economic Development and Tourism Manager to set entrance fee charges and for the Heritage & Visitor Centre manager to set resale charges has been approved by the Director of Community. |
| 2 | Recommendation implemented. A regular reconciliation is now carried out between the cash register and the agency/ events returns. |
| 3 | Recommendation implemented. A record of the issue and return of alarm key fobs at the Heritage & Visitor Centre is now maintained by the HVCM. |
| 4 | Recommendation negated. A review of the SecurityPlus contract was undertaken by the Economic Development and Tourism Manager in consultation with One Legal and Financial Services. This concluded that no variation to the contract would be made as current arrangements were deemed to be acceptable and charges were not being made for collections due on a Bank Holiday. |
| 5 | Recommendation implemented. Reasons for refunds and ticket numbers in respect of bus refunds are now stated within the refund log sheets. |
| 6 | Recommendation outstanding. Although the HVCM could provide assurance that ad-hoc stock takes are undertaken, there is limited evidence to demonstrate the regularity of these checks. It is therefore recommended that an appropriate programme of stock taking be introduced based on the cost value of the items. |
| 7 | Recommendation implemented. The annual review of the inventory list maintained at the Heritage and Visitor Centre is now documented. |

| Business Grant Scheme | <p>Control Objectives (CO):</p> <p>1. To follow-up previous audit recommendations made within the 2012/13 Business Support Grants audit.</p> <p>Audit Opinion :</p> <p>The 2012/13 Business Support Grants audit made 2 recommendations, both of which were found to have been implemented.</p> <table border="1" data-bbox="416 434 1474 1104"> <thead> <tr> <th data-bbox="416 434 722 600">Previous Recommendations Reference</th> <th data-bbox="722 434 1474 600">Findings</th> </tr> </thead> <tbody> <tr> <td data-bbox="416 600 722 869">1</td> <td data-bbox="722 600 1474 869">Recommendation implemented. A retrospective approval in respect of Miracle Dynamic Solutions has been obtained from both Lead Members. Assurance was obtained that any changes to a business support grant application are now clearly documented and approved by the relevant Lead Members in accordance with the scheme.</td> </tr> <tr> <td data-bbox="416 869 722 1104">2</td> <td data-bbox="722 869 1474 1104">Recommendation implemented. A process is in place whereby a reconciliation is carried out against the new financials system in respect of awarded business grants. This provides assurance that any variances are identified, giving a true picture of expenditure against the allocated business grants budget.</td> </tr> </tbody> </table> | Previous Recommendations Reference | Findings | 1 | Recommendation implemented. A retrospective approval in respect of Miracle Dynamic Solutions has been obtained from both Lead Members. Assurance was obtained that any changes to a business support grant application are now clearly documented and approved by the relevant Lead Members in accordance with the scheme. | 2 | Recommendation implemented. A process is in place whereby a reconciliation is carried out against the new financials system in respect of awarded business grants. This provides assurance that any variances are identified, giving a true picture of expenditure against the allocated business grants budget. |
|------------------------------------|---|------------------------------------|----------|---|--|---|--|
| Previous Recommendations Reference | Findings | | | | | | |
| 1 | Recommendation implemented. A retrospective approval in respect of Miracle Dynamic Solutions has been obtained from both Lead Members. Assurance was obtained that any changes to a business support grant application are now clearly documented and approved by the relevant Lead Members in accordance with the scheme. | | | | | | |
| 2 | Recommendation implemented. A process is in place whereby a reconciliation is carried out against the new financials system in respect of awarded business grants. This provides assurance that any variances are identified, giving a true picture of expenditure against the allocated business grants budget. | | | | | | |
| Corporate Improvement Work | Summary of work undertaken | | | | | | |
| Business Continuity | The update of the Corporate Business Continuity Plan was completed during the period. The Plan was presented to Audit Committee in June for comment and subsequently approved at Executive Committee on 3 July 2013. It is anticipated the team will now help review and update individual service continuity plans. | | | | | | |
| Tree Inspection Programme | Members will recall that the team helped develop a Tree Management Policy on behalf of the Environmental Services Manager (UBICO) and this was approved by Executive Committee on 3 October 2012. The Grounds Maintenance Team was to carry out inspections of all high risk locations by March 2013. There has been slippage in the programme and the team has now worked with the ESM to implement a programme that will ensure delivery by March 2014. | | | | | | |

The level of internal control operating within systems will be classified in accordance with the following definitions:-

| LEVEL OF CONTROL | DEFINITION |
|------------------------------|---|
| <i>Good</i> | Robust framework of controls – provides substantial assurance. |
| <i>Satisfactory</i> | Sufficient framework of controls – provides satisfactory assurance – minimal risk. Probably no more than one or two ‘Necessary’ (Rank 2) recommendations. |
| <i>Limited</i> | Some lapses in framework of controls – provides limited assurance. A number of areas identified for improvement. A number of ‘Necessary’ (Rank 2) recommendations, and one or two ‘Essential’ (Rank 1) recommendations. |
| <i>Unsatisfactory</i> | Significant breakdown in framework of controls – provides unsatisfactory assurance. Unacceptable risks identified – fundamental changes required. A number of ‘Essential’ (Rank 1) recommendations. |

Recommendations/Assurance Statement

| CATEGORY | | DEFINITION |
|-----------------|-----------|---|
| 1 | Essential | Essential due to statutory obligation, legal requirement, Council policy or major risk of loss or damage to Council assets, information or reputation. Where possible it should be addressed as a matter of urgency. |
| 2 | Necessary | Could cause limited loss of assets or information or adverse publicity or embarrassment. Necessary for sound internal control and confidence in the system to exist and should be pursued in the short term, ideally within 6 months. |

APPENDIX 2 - INTERNAL AUDIT RECOMMENDATIONS CATEGORISED AS ESSENTIAL THAT HAVE YET TO BE IMPLEMENTED – THESE HAVE BEEN IDENTIFIED THROUGH THE FOLLOW-UP PROCESS

| Ref | Service Area | Audit | Date of Audit | Recommendation | Original Implementation Date | Assigned To | Agreed Action | Audit Comments | Comments of manager /responsible officer |
|----------|-----------------|-------------|---------------|--|------------------------------|-----------------------|--|--|--|
| 69 1. | Direct Services | Trade Waste | Dec 06 | R2/3/4/5/6/8/9/11/13/14 (10 recommendations) Ensuring an up to date database of trade waste collections is maintained incl the implementation of a recovery policy. | April 2007 | Assistant DSO Officer | <ul style="list-style-type: none"> • Implementation of new database. • Introduction of hire agreements. • Village hall collections to be quantified and included on database. • Survey of collections to be carried out and cross referenced to database and Powersolve debtors. • Provision of crew lists. • Implementation of a recovery policy. | <p>A number of audits have been undertaken since the original audit with a 'limited' opinion reached in each case. A further follow-up audit completed in February 2012 concluded : -</p> <p>Good progress has been made to reduce the level of arrears.</p> <p>A recovery policy has been adopted to ensure there is a consistent and robust approach.</p> <p>As reported to previous Audit Committees a follow-up audit was undertaken in relation to the receipt of waste transfer notes. 461 waste transfer notes have been received through the annual renewal. Only 13 remain outstanding and collections have been suspended for these</p> | <p>The recommendations have been implemented with the exception of the physical inspections of bins. It was agreed this would be a service improvement if and when resources become available.</p> |

APPENDIX 2 - INTERNAL AUDIT RECOMMENDATIONS CATEGORISED AS ESSENTIAL THAT HAVE YET TO BE IMPLEMENTED – THESE HAVE BEEN IDENTIFIED THROUGH THE FOLLOW-UP PROCESS

| Ref | Service Area | Audit | Date of Audit | Recommendation | Original Implementation Date | Assigned To | Agreed Action | Audit Comments | Comments of manager /responsible officer |
|-----|---------------------|-------------------------|---------------|---|------------------------------|-------------|--|---|---|
| 70 | | | | | | | | customers. A further trade waste follow-up audit is programmed for Qtr 2 to follow up all previous recommendations. The outcome of this will be reported to Audit Committee in December. | |
| 2. | Grounds Maintenance | Creditors (Procurement) | August 2009 | R4./5.Expenditure should comply with the Council's Contract Procedure Rules | March 2010 | Various | Agreed. The following activities should be subject to formal tender :- Tree maintenance (Grounds Maintenance) | Follow-up audit undertaken in March 2010 with a revised implementation date of November 2010 agreed. | With regards to tree maintenance a formal tender exercise will be undertaken once the tree inspection programme has been complete. |

APPENDIX 2 - INTERNAL AUDIT RECOMMENDATIONS CATEGORISED AS ESSENTIAL THAT HAVE YET TO BE IMPLEMENTED – THESE HAVE BEEN IDENTIFIED THROUGH THE FOLLOW-UP PROCESS

| Ref | Service Area | Audit | Date of Audit | Recommendation | Original Implementation Date | Assigned To | Agreed Action | Audit Comments | Comments of manager /responsible officer |
|-----|-------------------|---------------------------------------|---------------|---|------------------------------|---------------------------|---|---|--|
| 3. | Corporate | ICT Physical & Environmental Controls | May 2011 | <p>R1. With regards to corporate Business Continuity: -</p> <p>The reformation of the Corporate Business Continuity Group.</p> <p>Review and update the Corporate Business Continuity Plan.</p> <p>Review and update of service continuity plans.</p> <p>Review and prioritisation of critical systems.</p> | July 2011 | Director of Resources | <p>Agreed to implement the reformation of the Corporate Group. This would fulfil the first requirement of the audit recommendation. Implementation dates for other agreed actions would need to be agreed by the Group.</p> | <p>The follow-up audit confirmed the Group had been reformed but has not met on a regular basis. As a result, agreed audit actions have not progressed.</p> <p>The Corporate Business Continuity Plan has been updated and approved at Executive Committee. Included is an action plan to deliver the remaining issues identified.</p> | <p>Following the organisational review, the Business Transformation and Policy and Performance Group Managers have agreed to co-ordinate delivery of the action plan.</p> |
| 4. | Property Services | ICT Physical & Environmental Controls | May 2011 | <p>R.4 A one stop shop approach to fire management should be implemented with all activities rolled up into one contract and let in accordance with the Council's Contract Procedure Rules.</p> | July 2011 | Property Services Manager | <p>Agreed. A property services procurement programme is to be implemented and fire management will be included in this programme.</p> | <p>The follow-up audit confirms the original implementation date has not been achieved but the process has now commenced. A revised implementation date of Nov 2012 has been confirmed.</p> | <p>The Asset Manager will take this forward as a priority.</p> |

TEWKESBURY BOROUGH COUNCIL

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|------------------------------|--|
| Report to: | Audit Committee |
| Date of Meeting: | 25 September 2013 |
| Subject: | Regulation of Investigatory Powers Act 2000 (RIPA) |
| Report of: | Sara Freckleton, Borough Solicitor |
| Corporate Lead: | Sara Freckleton, Borough Solicitor |
| Lead Member: | Councillor Mrs J M Perez |
| Number of Appendices: | 1 |

Executive Summary:

To update Audit Committee on the changes to the Regulation Investigatory Powers Act 2000 (RIPA) and codes of practice; to summarise the new duties and responsibilities this legislation places on local authorities, their Officers and Members; and to recommend amendments to the procedural guide to meet these.

Recommendation:

1. To **APPROVE** the amended RIPA Procedural Guide set out at Appendix 1 and **RECOMMEND TO THE EXECUTIVE COMMITTEE** that it be **ADOPTED**.
2. To **APPROVE** the designation of the Borough Solicitor and Monitoring Officer as the Council's Senior Responsible Officer for the purposes of RIPA.
3. To **NOTE** the Office of Surveillance Commission inspection due on 21 November 2013.

Reasons for Recommendation:

The revisions set out in the draft Procedural Guide is required to implement the recommendations made by the OSC inspection report in 2010 and to take into account legislative changes that have come into effect.

Resource Implications:

Minimal – considered at Paragraph 7.0.

Legal Implications:

These are set out in the main body of the report.

Risk Management Implications:

Having a procedural guide that complies with the legislation and guidance and ensuring that Officers using RIPA powers are fully trained in the use of the powers will help to reduce the risk of the Council using its RIPA powers unlawfully.

Performance Management Follow-up:

N/A

Environmental Implications:

None

1.0 INTRODUCTION

- 1.1** The Regulation of Investigatory Powers Act 2000 (RIPA) provides a legal framework for the control and regulation of surveillance and information gathering techniques which public authorities undertake as part of their duties.
- 1.2** The use of covert surveillance by the Council is rare and since 2010 the Council has not undertaken any covert surveillance or information gathering techniques that would fall under the scope of RIPA. There may, however, be cases such as benefit fraud cases where the use of covert surveillance is necessary and proportionate.
- 1.3** It is necessary, therefore, for the Council to have an up to date procedural guide to ensure that Officers comply with RIPA requirements before they undertake any covert surveillance or information gathering techniques.
- 1.4** The Council's use of its RIPA powers is subject to annual reporting and triennial inspection by the Office of Surveillance Commissioners (OSC). The Council received its most recent inspection by the OSC on 9 August 2010 and the OSC's report following the inspection made a small number of suggestions for amendment and improvement of the Council's RIPA Procedural Guide and these have been incorporated into the draft Procedure Guide at Appendix 1. The next visit from the OSC is due on the 21 November 2013.

2.0 KEY CHANGES

- 2.1** The Home Office carried out a review of Counter-Terrorism and Security Powers in 2010 and the outcomes were included in the Protection of Freedoms Act 2012. The Act has changed the Council's RIPA powers as follows:
- (i) Magistrates' approval is now required for Directed surveillance and Covert Human Intelligence Source (CHIS) surveillance before any authorisation granted by Authorising Officers within the Council can take effect;
 - (ii) urgent oral authorisations are no longer available, because of the judicial approval process; and
 - (iii) RIPA directed surveillance can only be authorised when the offence carries a maximum custodial sentence of 6 months or more or the offence relates to underage sales of tobacco and alcohol.
- 2.2** The effect of the changes is that an authorisation made by the Authorising Officers within the Council will not come into effect until it has been approved by a Magistrate. The Magistrate will be required to consider whether it is, reasonable for the local authority to believe that the use of the covert technique in question is necessary and proportionate. A Magistrate is able to exercise his or her own discretion and judgement when deciding whether to approve the authorisation.

- 2.3** Under the new arrangements, a Magistrate may approve the application if satisfied that it:
- is necessary for the purposes set out in RIPA (for local authorities this is the prevention or detection of crime) and proportionate in human rights terms to what it seeks to achieve;
 - has been authorised by a person in the authority at the level designated in RIPA (that is, at Director level for Directed Surveillance and Chief Executive level for a CHIS);
 - meets any other restriction imposed by order – such as the serious crime threshold that applies to directed surveillance;
 - sets out, in the case of a CHIS, that the relevant procedures and supporting Officers are in place to protect the welfare and safety of the CHIS.
- 2.4** Where a Magistrate refuses a local authority application he or she will have the power to quash the local authority authorisation and the proposed surveillance will not be possible. Judicial approval is also now required for renewal of authorisations, but not for reviews and cancellations.
- 2.5** In view of the changes to the Council's RIPA powers, refresher training will be provided at regular intervals to ensure that Officers' knowledge of RIPA is kept up-to-date and that Officers are aware of the factors they need to take into account in requesting or authorising use of the Council's surveillance powers.
- 2.6** It is also recommended that the Borough Solicitor and Monitoring Officer be designated as the Senior Responsible Officer for the purposes of RIPA in accordance with the Home Office Covert Surveillance Code of Practice. It is considered good practice that a Senior Responsible Officer should be responsible for:
- the integrity of the process in place within the Council to authorize directed surveillance;
 - compliance with the legislation and the Code of Practice;
 - engagement with the Commissioners and inspectors when they conduct their inspections; and
 - where necessary, overseeing the implementation of any post-inspection action plans recommended by the OSC.
- 2.7** It is also proposed that Members of the Council's Audit Committee review the use of RIPA and this Policy. In order to facilitate this, the Senior Responsible Officer will provide yearly reports to Audit Committee on how RIPA has been used in the previous year and whether there are any concerns as to the Policy.

3.0 OTHER OPTIONS CONSIDERED

3.1 None.

4.0 CONSULTATION

4.1 All Group Managers, the Borough Solicitor and the Chief Executive have been asked to consider the draft procedural guide and comment.

5.0 RELEVANT COUNCIL POLICIES/STRATEGIES

5.1 None

6.0 RELEVANT GOVERNMENT POLICIES

6.1 Home Office Guidance on the use of 5 Directed Surveillance and Covert Human Intelligence Source surveillance.

7.0 RESOURCE IMPLICATIONS (Human/Property)

7.1 There are no direct financial implications arising out of this report. At present, there is no fee payable to the Magistrates' Court for the judicial approval process. The authorisation process now has additional steps - the application for judicial approval will have to be prepared and at least one Officer will need to attend the Magistrates' Court to make the application – and these will be met from within existing resources. As the Council uses its RIPA powers sparingly, it is not anticipated that the additional steps will be particularly burdensome.

8.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

8.1 The use of RIPA powers by the Council can contribute to ensuring community safety.

9.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

9.1 Ensuring that the Council complies with the Act and the Code of Practice will ensure that covert surveillance is used only as a last resort in respect of preventing and detecting crime and only if it is necessary and proportionate to crime being committed.

10.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

10.1 None

Background Papers: The Regulation of Investigatory Powers Act 2000.
The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521)
Home Office Guidance on the use of 5 Directed Surveillance and Covert Human Intelligence Source surveillance
The Criminal Procedure Rules 2012 (SI 2012/1726)

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Appendices: Appendix 1 – Procedural Guide – Regulation of Investigatory Powers Act 2000 (with appendices)

TEWKESBURY BOROUGH COUNCIL
PROCEDURAL GUIDE
REGULATION OF INVESTIGATORY POWERS ACT
2000

Forward

The purpose of this Procedural Guide ("the Guide") is to ensure that Tewkesbury Borough Council ("the Council") complies with the Regulation of Investigatory Powers Act 2000 (RIPA).

The introduction of the Human Rights Act 1998 means that the Council by law has to respect the rights of everyone. In particular Article 8 guarantees everyone the right to respect for their private and family life, their home and correspondence. This right can only be interfered with when the interference is in accordance with the law and necessary. RIPA provides the framework for public authorities to carry out surveillance and the lawful means whereby rights can be infringed by the Council. If the correct procedures are put in place and followed by officers the Council will earn the protection of RIPA and our actions will be lawful.

1. INTRODUCTION

- 1.1 This document sets out the policies and procedures adopted by Tewkesbury Borough Council ("the Council") in relation to the Regulation of Investigatory Powers Act 2000 ("RIPA").
- 1.2 RIPA regulates the Council's powers to use covert surveillance and covert human intelligence sources ("CHIS") in carrying out its functions. Under RIPA, the Council must have procedures in place that ensure surveillance is properly authorised, with full consideration given to the necessity and proportionality of the covert surveillance or CHIS in the context of individual's rights under the Human Rights Act 1998 ("the HRA") and other relevant legislation. The policies and procedures set out in this document are based on the provisions of RIPA, the Home Office Codes of Practice on Covert Surveillance and Property Interference and Covert Human Intelligence Sources and guidance issued by the Office of the Surveillance Commissioner.
- 1.3 This guide shall be readily available at the Council Offices. A copy can be obtained from the RIPA co-ordinator, One Legal, Tewkesbury Borough Council, Council Offices, Gloucester Road, Tewkesbury GL20 5TT. It is also available on the Council's website at www.tewkesbury.gov.uk.
- 1.4 The HRA requires the Council and any organisations working on its behalf to respect the private life and family of citizens, their home and their correspondence. This is not an absolute right, but interference will only be justified if it is:-
 - a) in accordance with the law,
 - b) necessary, for one of the purposes defined in the HRA, and
 - c) proportionate.
- 1.5 The Council may need, where it is deemed necessary and proportionate, to make use of covert surveillance or CHIS. The use of any covert surveillance should only be used as a last resort and any covert surveillance will have to be authorised and conducted in accordance with RIPA, the statutory codes of practice and this Guide and shall only be for one of the purposes set out in this Guide and for a purpose which the Council is legally required or empowered to investigate as part of its functions.
- 1.6 Any covert surveillance or use of a CHIS by or on behalf of the Council must be carried out in accordance with these policies and procedures, and must be authorised in advance by an Authorising Officer ("AO")(Appendix A) on the appropriate form (see Appendix B).

Both staff directly employed by the Council and external agencies working for the Council are subject to RIPA whilst they are working for the Council in a relevant investigatory capacity.

- 1.7 Compliance with the provisions of RIPA, the Home Office Codes of Practice and these policies and procedures should protect the Council, its officers and agencies working on its behalf against legal challenge.
- 1.8 In addition to setting out the procedures that must be followed, this document aims to provide guidance to officers about the circumstances in which they are permitted to embark on covert surveillance or use a CHIS. The forms set out in the Appendices B contain relevant guidance notes; however, officers are encouraged to contact One Legal for advice or assistance if required. Useful guidance can also be found via the web-sites of the Office of Surveillance Commissioners at www.surveillancecommissioners.gov.uk and the Home Office RIPA web-site at www.homeoffice.gov.uk
- 1.9 Appropriate training will be arranged at regular intervals for all officers likely to make applications or authorise them. The Council's Senior Responsible Officer (SRO)(see section 7) will ensure that they and all relevant members of their staff undertake this training and that appropriate records are kept.
- 1.10 It is important to keep full records of all applications and authorisations relating to activities covered by RIPA, in accordance with the requirements of the relevant Codes of Practice and the procedures set out in this document.

2. THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

2.1 THE BACKGROUND TO RIPA

- 2.1.1 RIPA provides a legal framework for the control and regulation of surveillance and information techniques which public authorities undertake as part of their duties. As was highlighted in the introduction to the Guide the need for such control arose as a result of the Human Rights Act 1998. Article 8 of the European Convention on Human Rights states that:

Everyone has the right of respect for his private and family life, his home and his correspondence.

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

- 2.1.2 The right under Article 8 is a qualified right and authorities can interfere with this right for the reasons given in paragraph 2 of Article 8. RIPA provides the legal framework for lawful interference.

3. THE SCOPE OF THIS GUIDE

3.1 SURVEILLANCE

3.1.1 This Guide intends to cover the surveillance and information gathering techniques which are most likely to be carried out by the Council.

3.1.2 Local Authorities can only approve authorisations under RIPA when performing its core functions. Those are the specific public functions undertaken by the Local Authority as opposed to its ordinary functions which are undertaken by all public authorities. For example, an authorisation under RIPA cannot be used when the principal purpose of an investigation is for taking disciplinary action against an employee, as the disciplining of an employee is not a core function. It may, however, be appropriate to seek an authorisation under RIPA if there are associated criminal investigations. If you are unsure about whether you can seek RIPA authorisation please contact the RIPA co-ordinator before you seek approval or undertake surveillance.

3.2 OVERT SURVEILLANCE

3.2.1 Neither RIPA nor this Guide covers the use of overt surveillance, any general observation that forms part of the normal day to day duties of officers (for example, where a planning officer drives past a site to check whether planning conditions are being complied with), the use of equipment to merely reinforce normal sensory perception such as binoculars or circumstances where members of the public who volunteer information to the Council. Surveillance is also overt if the subject has been told it will happen i.e. a noisemaker is warned that noise may be recorded if a noise nuisance continues.

3.2.2 Most investigations carried out by the Council will not involve covert surveillance as other investigative means will be used. For example the evidence will be collected overtly i.e. there will be nothing secretive, clandestine or hidden about it i.e. an officer of the Council in a council uniform walking around a car park or visiting a site to collect evidence where you make your presence known to the owner of the land or you will have collected evidence such as a food sample brought in good faith from a shop and you will take a witness statement from a person about the food sample.

3.2.3 The use of equipment such as binoculars or cameras will be intrusive if it consistently provides information of the same quality as might be expected to be obtained from a device actually present on the premises or in the vehicle concerned. It is, therefore, the quality of the image obtained rather than the duration of the observation that is determinative as to whether or not an authorisation should be obtained.

3.2.4 There may be occasions when officers come across events unfolding which were not pre planned which then requires them to carry out some form of observation. This will not amount to Directed Surveillance. However it will amount to surveillance outside of RIPA and must still be necessary and proportionate and take account of the intrusion issues. Officers must not abuse the process and be prepared to explain their decisions in court should it be necessary. It is important when conducting surveillance in these circumstances that officers still understand that they have obligations to ensure that their actions are HRA compliant and are therefore necessary and proportionate and take account of the intrusion issues. Investigating Officers (IO) should document their decisions, what took place, and what evidence or information was obtained.

3.3.5 IO should be careful if they start to undertake more specific and targeted investigations into a matter. Repeated visits may amount to systematic, and therefore, directed surveillance and require authorisation: If in doubt, legal advice should be sought in advance of any visit.

3.2.6 RIPA does not normally cover the use of overt CCTV surveillance systems since members of the public are aware that such systems are in place. There may however be times when the Council uses the CCTV for a specific investigation or operation. If the CCTV system is going to be used for this purpose the CCTV should only be used in accordance with the Council's policy on CCTV use.

3.3 COVERT SURVEILLANCE

3.3.1 Covert surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place.

3.3.2 RIPA regulates two types of covert surveillance - Directed Surveillance, Intrusive Surveillance and the use of Covert Human Intelligence Sources (CHIS).

3.4 DIRECTED SURVEILLANCE

3.4.1 Directed Surveillance (DS) is surveillance which:-

- is covert; and
- is not intrusive surveillance (see definition below and please also note that the Council is prohibited by law from carrying out any intrusive surveillance);
- is not carried out in an immediate response to events which would otherwise make seeking authorisation under RIPA unreasonable e.g. spotting something suspicious and continuing to observe it; and
- is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for purposes of an investigation).

3.4.2 Private information in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that covert surveillance occurs in a public place or on business premises may not mean that it cannot result in the obtaining of private information about a person. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others that s/he comes into contact or associates with.

3.4.3 Surveillance that is unforeseen and undertaken as an immediate response to a situation normally falls outside the definition of DS and therefore authorisation is not required. However, if a specific investigation or operation is subsequently to follow, authorisation must be obtained in the usual way before it can commence. In no circumstance will any covert surveillance operation be given backdated authorisation after it has commenced.

3.5 INTRUSIVE SURVEILLANCE

3.5.1 Intrusive surveillance can be carried out only by police and other law enforcement agencies. **Council officers must not carry out intrusive surveillance.** This information is only included in this guide as information and to inform Investigators of what is Intrusive Surveillance so it can be avoided.

3.5.2 Intrusive Surveillance occurs when surveillance:-

- is covert;

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

3.6 COVERT HUMAN INTELLIGENCE SOURCES

3.6.1 The use of a covert human intelligence source (CHIS), and his or her conduct, also requires authorisation under RIPA. The Council is only likely to use a CHIS under very exceptional circumstances, and advice should be sought from One Legal before any authorisation is applied for or granted.

3.6.2 A CHIS is defined as someone who establishes or maintains a personal or other relationship for the purpose of: -

- covertly using the relationship to obtain information or provide access to any information to another person
- covertly disclosing information obtained by means of that relationship
- where the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of its purpose.

3.6.3 These provisions would cover the use of professional witnesses to obtain evidence or information, or officers operating “undercover”. Great caution should be exercised in these circumstances, and further advice should be sought from One Legal before using professional witnesses.

3.6.4 Special safeguards apply to the use or conduct of juvenile sources (i.e. under 18 years of age). On no account can a child under 16 years of age be authorised to give information against his or her parents. Similar safeguards also apply to the use of vulnerable individuals as sources. (A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation.). Further advice must be sought from One Legal before using juveniles or vulnerable individuals as sources, to ensure that all necessary legal requirements are complied with.

3.6.5 There are also specific legal rules which must be followed in relation to the management of sources. Details are given in the relevant Home Office Code of Practice, and further advice can be obtained from One Legal.

4. AUTHORISATION PROCEDURES

4.1 BACKGROUND

4.1.1 Any DS or the use of a CHIS undertaken by or on behalf of the Council must be carried out in accordance with RIPA and must not commence until authorisation has been granted. A flow chart of the procedures to be followed appears at Appendix D.

4.1.2 Officers are advised to discuss the need to undertake DS or the use of a CHIS with their manager before seeking an authorisation. All other reasonable and less intrusive options to gain the required information should be considered before an authorisation is applied for. If it is intended that both DS and the use of a CHIS will take place on the same

surveillance subject, the respective applications forms and procedures should be followed and both activities should be considered separately on their own merits.

4.2 INVESTIGATING OFFICERS (IO) RESPONSIBILITIES

4.2.1 All the relevant sections on an application form (see Appendix B) must be completed with sufficient information for the AO to consider necessity, proportionality and the collateral intrusion issues. Risk assessments should take place prior to the completion of the application form. Each application should be completed on its own merits of the case. Cutting and pasting or using template entries should not take place as this would leave the process open to challenge.

4.3 PRE AUTHORISATION STEPS

4.3.1 Before submitting an application for authorisation, an Investigating Officer must firstly contact One Legal, who will issue a Unique Reference Number ("URN"). This should be in the form: Year/Group/Team/Number of Application. Any subsequent forms (e.g. renewals or cancellations) relating to the same investigation or operation should be identified by means of the same URN. AO's should not authorise any application which does not feature an URN. The RIPA Coordinator will require the following information from the Investigating Officer when issuing a URN: -

- Type of activity
- Identity of subjects (if known)
- Location of camera (if appropriate) (if identity of subjects not known)
- Name of Investigating Officer and Team
- Ward where surveillance is likely to take place
- AO to whom the application will be submitted

4.3.2 When issuing the URN, the RIPA Coordinator can provide advice to the Investigating Officer in relation to the activity to be authorised including any issues of necessity, proportionality and collateral intrusion.

4.4 AUTHORISING OFFICERS

4.4.1 Only those officers employed in the designated "Authorised Officer" posts (AOs) set out in Appendix A can authorise DS or the conduct or use of a CHIS. AOs may not sub-delegate their powers in relation to RIPA to other officers. AOs should also not authorise investigations in which they are directly involved. If however this is unavoidable the reasons for this should be recorded.

4.4.2 Before giving authorisation an AO must be satisfied that the reason for the request is for the prevention and detection of crime and that the crime attracts a custodial sentence of a maximum of 6 months or more or is an offence relating to the underage sale of alcohol or tobacco under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933.

4.4.3 An AO must also be satisfied the surveillance in each case is necessary and proportionate in those particular circumstances. Obtaining an authorisation under the 2000 Act, the 1997 Act and 1994 Act will only ensure that there is a justifiable interference with an individual's Article 8 rights if it is necessary and proportionate for these activities to take place.

4.4.4 When considering an application, AOs must:-

- (a) be satisfied that the desired result of the covert surveillance cannot reasonably be achieved by other means;
- (b) have regard to the contents of this document, the training provided on RIPA and any other guidance or advice given by the RIPA co-ordinator;
- (c) satisfy his/herself that the RIPA authorisation will be;
 - (i) in accordance with the law;
 - (ii) necessary in the circumstances of the particular case for the purpose mentioned in paragraph 4.4.8 below; and
 - (iii) proportionate to what it seeks to achieve
- (d) assess whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information, and particularly whether any other means would be less intrusive (the least intrusive means of obtaining the necessary information should always be preferred);
- (e) take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (called 'collateral intrusion'), and consider whether any measures should be taken to avoid or minimise collateral intrusion as far as possible (the degree of likely collateral intrusion will also be relevant to assessing whether the proposed surveillance is proportionate);
- (f) consider whether there is the possibility of collecting confidential personal information. If there is a possibility of collecting personal information the matter should be passed to the Chief Officer for consideration
- (g) consider any issues which may arise in relation to the health and safety of Council employees and agents, and ensure that a risk assessment has been undertaken if appropriate.

4.4.5 When authorising the conduct or use of a CHIS, the AO must also:

- (a) be satisfied that the conduct and/or use of the CHIS is proportionate to the objective sought to be achieved;
- (b) be satisfied that appropriate arrangements are in place for the management and oversight of the CHIS. These arrangements must address health and safety issues by the carrying out of a formal and recorded risk assessment;
- (c) consider the likely degree of intrusion for all those potentially affected;
- (d) consider any adverse impact on community confidence that may result from the use or conduct of the CHIS or the information obtained; and
- (e) ensure that records contain the required particulars of the CHIS and that these are not available except on a 'need to know' basis.

4.4.6 In all cases the AO must record a clear description of what the authority is being granted for by reference to subjects, property or location and the type of surveillance permitted. This may not be the same as what is being requested.

4.4.7 When the AO has considered if the surveillance is necessary and proportionate they must complete the relevant section of the form explaining why in his/her opinion the surveillance is necessary and proportionate.

Necessity - RIPA first requires that the person granting an authorisation believes that the authorisation is necessary in the circumstances of the particular case for one or more of the statutory grounds in section 28(3) of the 2000 Act for DS. The applicant and AO must also be able to demonstrate that there were no other means of obtaining the same information in a less intrusive method.

Proportionality - Then, if the activities are necessary, the person granting the authorisation must believe that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

4.4.8 The codes provide guidance relating to proportionality which should be considered by both applicants and AOs:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result; and
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

4.4.9 The AO will provide the details of when reviews will take place. The review periods will be decided by the AO based on the circumstances contained within the application.

4.5 COLLATERAL INTRUSION

4.5.1 Before authorising applications for DS an AO must also take into account the risk of obtaining private information about persons who are not the subject/s of the surveillance. Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the privacy of those who are not the intended subjects of the surveillance activity. Where collateral intrusion is unavoidable, activities may still be authorised, provided the intrusion is proportionate to what is sought to be achieved.

4.5.2 All applications should include an assessment of the risk of collateral intrusion and the details of any measures taken to limit the intrusion. An AO must consider these risks and the proportionality of proposed actions.

4.6 CONFIDENTIAL INFORMATION

4.6.1 If an IO or AO believes that confidential information may be obtained as a result of surveillance, the advice of One Legal should be sought in advance of any authorisation or surveillance. In any case where it is likely that confidential information may be acquired by

the use of a CHIS, the only AO who may grant authorisation is the Head of Paid Service, who is the Chief Executive, or in his absence the person acting as the Chief Executive, "Confidential information" is defined for the purposes of RIPA as: -

- matters subject to legal privilege, for example, communications between legal advisers and their clients
- confidential personal information, for example. Information about someone's health or spiritual counseling or other assistance given or to be given to them or
- confidential journalistic material (this includes related communications), that is, material obtained or acquired for the purposes of journalism and subject to an undertaking to hold in confidence

4.7 COURT APPROVAL

4.7.1 After the AO has authorised the surveillance the IO must seek judicial approval before they conduct any surveillance. Any application to the Court must be made in consultation with One Legal. The IO (applicant) will complete the relevant forms and seek advice from One Legal. A copy of the application form/order form is attached at Appendix C. The applicant must complete the required sections of the application/order form.

4.7.2 Any application to a JP must be made in consultation with One Legal. Unless otherwise agreed One Legal will contact Her Majesty's Courts & Tribunals Service (HMCTS) to arrange a hearing. The hearing will be in private and heard by a single JP. The IO and an officer from One Legal will attend the Magistrates' Court to seek a Justice of the Peace's (JP) approval before commencing any surveillance.

4.7.3 Officers who may present the application at these proceedings may need to be formally designated by the Council under section 223 of the Local Government Act 1972 to appear, be sworn in and present evidence or provide information as required by the JP.

4.7.4 Upon attending the hearing, the officer must present to the Court the partially completed judicial application/order form, a copy of the RIPA application/authorisation form, together with any supporting documents setting out the case, and the original application/authorisation form.

4.7.5 The original RIPA application/authorisation should be shown to the Court but will be retained by the Council so that it is available for inspection by the Commissioners' offices and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT).

4.7.6 The Court will consider the RIPA application/ authorisation and the judicial application/order form (Appendix C). They may have questions to clarify points or require additional reassurance on particular matters. These questions are supplementary to the content of the application form. The forms and supporting papers however must by themselves make the case. It is not sufficient for the Applicant to provide oral evidence where this is not reflected or supported in the papers provided.

4.7.7 The Court will consider whether he or she is satisfied that at the time the authorisation was granted or renewed, there were reasonable grounds for believing that the authorisation was necessary and proportionate. They will also consider whether there continues to be reasonable grounds. In addition they must be satisfied that the person who granted the authorisation or gave the notice was an appropriate designated person within the Council and the authorisation was made in accordance with any applicable

legal restrictions, for example that the crime threshold for directed surveillance has been met.

4.7.8 The Court may decide to: (1) Approve the grant or renewal of an authorisation in which case the grant or renewal of the RIPA authorisation will then take effect and the Council may proceed to use the technique in that particular case. (2) Refuse to approve the grant or renewal of an authorisation in which case the RIPA authorisation will not take effect and the Council may not use the technique in that case.

4.7.9 Whatever the decision the Court will record their decision on the order section of the judicial application/order form. The court administration will retain a copy of the Council's RIPA application and authorisation form and the judicial application/order form. The Applicant will retain the original application/authorisation and a copy of the judicial application/order form.

4.7.10 If approved by the Court, the date of the approval becomes the commencement date and the three months duration will commence on this date, the officers are now allowed to undertake the activity. The original application and the copy of the judicial application/order form should be forwarded to the Central Register and a copy retained by the applicant and if necessary by the AO

4.8 REFUSALS

4.8.1 If the Court does not approve the grant or renewal the authorisation will not take effect and the IO must not use technique in the case.

4.8.2 Where an application has been refused the applicant may wish to consider the reasons for that refusal. An IO and/or AO may wish to discuss this matter with One Legal.

4.8.3 Where the Court does not approve the grant or renewal and decides to quash the original authorisation the Court must not exercise its power to quash the application/authorisation unless the applicant has had 2 business days from the date of refusal to make representations. Any further representations will be made to the Court in consultation with One Legal.

4.9. DURATION AND RENEWALS OF AUTHORISATIONS

4.9.1 Authorisations will have effect until the date for expiry specified on the relevant application form. If approved by a JP applications will last for 3 months from the approval date. No further operations should be carried out after the expiry of the relevant authorisation unless it has been renewed. It will be the responsibility of the IO to ensure that any DS or use of a CHIS is only undertaken under an appropriate and valid authorisation, and therefore, he/she should be mindful of the date when authorisations and renewals will cease to have effect. The SRO ("Senior Responsible Officer") will perform an auditing role in this respect but the primary responsibility rests with the IO and AO.

4.9.2 Authorisations should be reviewed at appropriate intervals, as set by the AO. Reviews should normally take place on a monthly basis unless the AO considers that they should take place more or less frequently (if so, the reasons should be recorded). If the surveillance provides access to confidential information or involves collateral intrusion, there will be a particular need to review the authorisation frequently. The results of reviews should be recorded on the appropriate form as set out in Appendix B. There is no requirement for a review form to be submitted to a JP.

4.9.3 Should it be necessary to renew a DS or CHIS application authorisations must be made to a JP. Authorisations shall be renewed in writing. Applications for renewal should be made on the appropriate form in good time (at least seven working days if possible) before the authorisation is due to expire. The AO must consider the matter afresh, including taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred. Renewals of an authorisation may be granted more than once, provided the criteria for granting that authorisation are still met. However, if the reason for requiring the authorisation has changed from the purpose for which it was originally granted, then it should be cancelled and new authorisation sought.

4.9.4 Authorisations must be cancelled as soon as they are no longer necessary. Even if an authorisation has reached its time limit and has ceased to have effect, it does not lapse and must still be formally cancelled. The responsibility to ensure that authorisations are cancelled rests primarily with the officer in charge of the investigation, who should submit a request for cancellation on the appropriate form as set out in Appendix B. If the AO who authorised any DS or the use or conduct of a CHIS (or any AO who has taken over their duties) however is satisfied that it no longer meets the criteria upon which it was authorised, s/he must cancel it and record that fact in writing even in the absence of any request for cancellation.

5. RECORD MANAGEMENT

5.1 The Council must keep a detailed record of all applications for authorisations, grants, refusals, renewals, reviews and cancellations. A central register of all authorisations will be maintained by One Legal containing the information required from time to time by the relevant Home Office Code of Practice, and records will be retained for a period of at least three years from the ending of each authorisation.

5.2 The RIPA co-ordinator will monitor authorisations to ensure compliance with the relevant law and guidance, and with these policies and procedures. The Office of Surveillance Commissioners (OSC) can audit and review the Council's policies and procedures, and individual authorisations.

5.3 Copies of all completed RIPA forms, including applications (whether granted or refused), authorisations, renewals, cancellations and reviews, must be forwarded by the AO to the RIPA co-ordinator within five working days of the date of the relevant decision. All documents should be sent in sealed envelopes marked "Confidential".

5.4 The following information and documents must be maintained by relevant Group Manager in relation to each operation or investigation where RIPA authorisation is requested by officers within their team:

- the URN for the operation or investigation;
- the originals of all completed RIPA application forms indicating whether the application was granted or refused, together with any supplementary documentation, and a copy of any notification of approval given by the AO;
- details of any authorisation which was granted or renewed orally (in an urgent case) and the reason why the case was considered urgent;
- a record of the period over which the surveillance has taken place;
- details of the frequency of reviews prescribed by the AO;
- a record of the result of each review of the authorisation;

- the original of any request for a renewal of an authorisation, together with any supporting documentation submitted when the renewal was requested, details as to whether the request was granted or refused, and the reasons for doing so;
- the original of any cancellation of an authorisation, including the reasons for cancellation;
- the date and time when any instruction was given by the AO, (including any instruction to cease directed surveillance or to cease using a CHIS) and a note of that instruction and
- the date and time when any other instruction was given by the AO

5.5 The following additional information should also be maintained by the relevant Group Manager and RIPA co-ordinator in relation to any CHIS:

- any risk assessment in relation to the source;
- the circumstances in which tasks were given to the source;
- the value of the source to the investigating authority;

5.6. An AO must not grant authority for the use of a CHIS unless s/he believes that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the CHIS. Certain particulars must be included in the records relating to each CHIS, and the records must be kept confidential. Further advice should be sought from One Legal on this point if authority is proposed to be granted for the use of a CHIS.

6. TELECOMMUNICATIONS DATA AND INTERCEPTION OF COMMUNICATIONS

6.1 Under the RIPA (Communications Data) Order 2003, the Council is permitted to acquire information defined as **communications data**. This includes subscriber details and service data, but not traffic data (as these terms are defined in the legislation). These powers are outside the scope of this guidance document, but officers who consider that they may need to exercise these powers in the course of any investigation, or who require further information, should contact One Legal.

6.2 The recording of telephone calls between two parties when neither party is aware of the recording **cannot be undertaken**, except under a warrant granted under Part 1 of RIPA. Such warrants are only granted by the Secretary of State and it is not envisaged that such activity would fall within the remit of local authority investigations. However, there may be situations where either the caller and receiver consent to the recording of the telephone conversation and, in such circumstances a Part 1 warrant may not be required. Such interception should be treated as directed surveillance.

6.3 Part 1 of RIPA does not, however, prevent a local authority in certain circumstances from lawfully intercepting its employees' e-mail or telephone communications, or monitoring their internet access, for the purposes of prevention or detection of crime, or the detection of unauthorised use of these systems. This is authorised under Part 1 of the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

6.4 The legislation referred to above is complex, and further advice should be sought from One Legal before any investigations are undertaken involving the interception of communications.

7 PROCEDURE FOR MONITORING RIPA AND OVERSIGHT

7.1 SENIOR RESPONSIBLE OFFICER (SRO)

7.1.2 The Council's Borough Solicitor is the designated SRO and shall be responsible for the following:-

- the integrity of the process in place within the Council to authorise Directed Surveillance;
- compliance with Part II of RIPA 2000 and any associated Codes of Practice;
- acting as liaison with the Commissioners and Inspectors and engaging with them as appropriate; and
- overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner.

7.1.3 The SRO shall ensure that all AOs are provided with copies of current and updated Codes of Practice and OSC Guidance and Procedure Notes as they are released from time to time.

7.1.4 The SRO shall maintain a Central Record of Authorisations.

7.2 OVERSIGHT PROCEDURES

7.2.1 The SRO shall establish and maintain regular meetings not less than twice a year with the AOs to check and test processes and address any training requirements. These meetings shall form part of the Corporate Management Team business. The SRO shall arrange an oversight meeting as soon as practicable following an inspection to discuss issues and outcomes as appropriate.

7.2.2 The SRO shall record any issues arising out of authorisation applications, the statutory considerations, reviews and cancellations and shall review the quality of authorisations granted from time to time.

7.2.3 The SRO shall carry out analysis of such issues and shall decide appropriate feedback to the AO. Such information and conclusions shall also inform the reports to Audit Committee as required under paragraph 7.3 below.

7.2.4 The SRO is the point of contact in respect of any covert activity that takes place that was not properly authorised. The SRO will report any such activity to the OSC in writing as soon as the error is recognised (See Appendix B for the correct form). This includes activity which should have been authorised but wasn't or which was conducted beyond the directions provided by the AO.

7.3 MEMBER REVIEW

7.3.1 The members of the Council's Audit Committee shall review the use of RIPA and this policy. In order to facilitate this, the SRO shall provide yearly reports to Audit Committee on how RIPA has been used in the previous year and whether there are any concerns as to the policy.

7.4 AMENDMENTS TO THIS POLICY AND PROCEDURES

7.4.1 The Council's SRO is duly authorised to keep this guidance document up to date, and to amend, delete, add or substitute any provisions as s/he deems necessary. For

administrative and operational effectiveness, s/he is also authorised to amend the list of 'AO Posts" set out in Appendix A, by adding, deleting or substituting any posts.

Appendix A

Role

Senior Responsible Officer

Authorising Officers

RIPA Co-ordinator

Designated Officer

Borough Solicitor

Chief Executive

Deputy Chief Executive

Group Manager Environment and Housing

Group Manager Development Services

Group Manager Business Transformation

Group Manager Finance and Asset
Management

Group Manager Revenues and Benefits

Group Manager Policy and Performance

One Legal

Appendix B

AUTHORISATION FORMS

All of the forms necessary for RIPA are available from the Home Office website these forms are a mandatory part of the process and must be used in line with the guidance.

All decisions about using regulated investigatory powers must be recorded as they are taken on the required form.

This is the case for applicants seeking authority to undertake regulated conduct and for Authorising Officers and designated persons who consider and decide whether to grant authority or give notice for that conduct. Select the form that you require from the hyperlinked lists below:-

Directed Surveillance

[Application for the use of directed surveillance](#)

[Renewal of directed surveillance](#)

[Review of the use of directed surveillance](#)

[Cancellation of the use of directed surveillance](#)

Covert Human Intelligence Sources

[Application for the use of covert human intelligence sources](#)

[Renewal of authorisation to use covert human intelligence sources](#)

[Reviewing the use of covert human intelligence sources](#)

[Cancellation of covert human intelligence sources](#)

Reporting errors to the IOCCO

[Reporting an error by a CSP to the IOCCO](#)

[Reporting an error by a public authority to the IOCCO](#)

Appendix C

Application for judicial approval for authorisation to obtain or disclose communications data, to use a Covert Human Intelligence Source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Local authority:.....

Local authority department:.....

Offence under investigation:.....

.....

Address of premises or identity of subject:.....

.....

.....

Covert technique requested: (tick one and specify details)

Communications Data

Covert Human Intelligence Source

Directed Surveillance

Summary of details

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Note: this application should be read in conjunction with the attached RIPA authorisation/RIPA application or notice.

Investigating Officer:.....
Authorising Officer/Designated Person:.....
Officer(s) appearing before JP:.....
Address of applicant department:.....
.....
Contact telephone
number:.....
Contact email address
(optional):.....
Local authority
reference:.....
Number of
pages:.....

Order made on an application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Magistrates' Court:

Having considered the application,

I (tick one):

am satisfied that there are reasonable grounds for believing that the requirements of the Act were satisfied and remain satisfied, and that the relevant conditions are satisfied and I therefore approve the grant or renewal of the authorisation/notice

refuse to approve the grant or renewal of the authorisation/notice

refuse to approve the grant or renewal and quash the authorisation/notice

Notes

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Reasons

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Signed:

Date:

Time:

Full name:

Address of Magistrates' Court:

Requesting Officer ('The Applicant') must:

- Read the Corporate Policy & Procedures Document and be aware of any other guidance issued by the Legal Section.
- Determine that directed surveillance and/or a CHIS is required.
- Assess whether authorisation will be **in accordance with the law**.
- Assess whether authorisation is **necessary** under RIPA and whether it could be done overtly.
- Consider whether surveillance will be **proportionate**.
- If authorisation is approved – review regularly.

If a less intrusive option is available and practicable

If authorisation is necessary and proportionate, prepare and submit an approved form to an Authorised Officer

Authorising Officer must:

- Consider in detail whether all options have been duly considered, including the Corporate Policy Document and any other guidance issued by the Legal Section.
- Consider whether surveillance is considered by him/her to be necessary and proportionate.
- Authorise only if an overt or less intrusive option is not practicable.
- Set an appropriate review date (can be up to 3 months after authorisation date) and conduct the review.

The Applicant MUST: REVIEW REGULARLY
(complete Review form) and submit to Authorised Officer on date set.

The Applicant MUST:
If operation is no longer necessary or proportionate, complete **CANCELLATION FORM** and submit to Authorised Officer.

Authorised Officer MUST: If surveillance is still necessary and proportionate:

- Review authorisation.
- Set an appropriate further review date.

Authorised Officer MUST:
Cancel authorisation when it is no longer necessary or proportionate to need the same.

and to the Legal Section

ESSENTIAL
Send all **rised (and any rejected)** Forms, Review, Renewals and Cancellations to

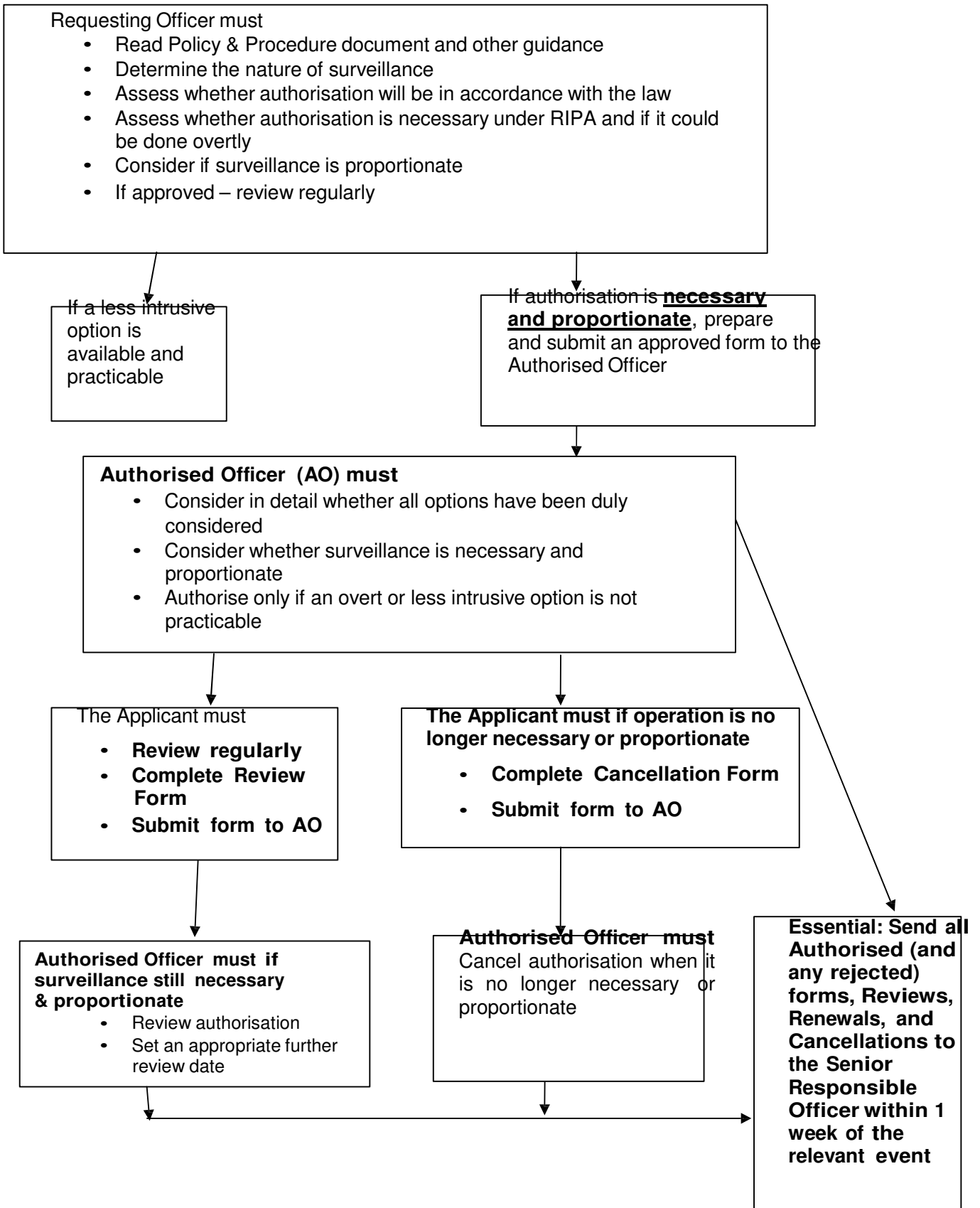
within 1 week of the relevant event.

NB: If in doubt, ask the Legal Section BEFORE any directed surveillance and/or CHIS is authorised, renewed, cancelled, or rejected.

Requesting Officer ('The Applicant') must:

- Read the Corporate Policy & Procedures Document and be aware of any other guidance issued by the Legal Section.
- Determine that directed surveillance and/or a CHIS is required.
- Assess whether authorisation will be **in accordance with the law**.
- Assess whether authorisation is **necessary** under RIPA and whether it could be done overtly.
- Consider whether surveillance will be **proportionate**.
- If authorisation is approved – review regularly.

RIPA Flow Chart



TEWKESBURY BOROUGH COUNCIL

| | |
|------------------------------|------------------------------------|
| Report to: | Audit Committee |
| Date of Meeting: | 25 September 2013 |
| Subject: | Review of Data Protection Policy |
| Report of: | Sara Freckleton, Borough Solicitor |
| Corporate Lead: | Sara Freckleton, Borough Solicitor |
| Lead Member: | Councillor Mrs J M Perez |
| Number of Appendices: | 2 |

| |
|--|
| <p>Executive Summary:</p> <p>To ask Audit Committee to consider and to recommend to Executive Committee any changes to the revised Data Protection Policy (Appendix 1) and to note the Personal Data Investigation Guidance Notes (Appendix 2) which will assist officers to investigate potential breaches of the Data Protection Act 1998 (DPA).</p> |
| <p>Recommendation:</p> <ol style="list-style-type: none"> 1. To CONSIDER the revised Data Protection Policy set out at Appendix 1 and to RECOMMEND TO THE EXECUTIVE COMMITTEE that it be ADOPTED. 2. To CONSIDER the Personal Data Investigation Guidance Notes set out at Appendix 2. |
| <p>Reasons for Recommendation:</p> <p>It is good practice to review and revise existing policies to take into account recent developments. The Data Protection Policy set out at Appendix 1 has been updated and the Personal Data Investigation Guidance Notes have been prepared to assist Officers to thoroughly investigate potential breaches of the Data Protection Act 1998 (DPA).</p> |

| |
|---|
| <p>Resource Implications:</p> <p>None</p> |
| <p>Legal Implications:</p> <p>These are set out in the main body of the report</p> |
| <p>Risk Management Implications:</p> <p>Having a Policy and Procedural Guidance Notes helps to reduce the risk of breaches of the DPA.</p> |
| <p>Performance Management Follow-up:</p> <p>N/A</p> |

Environmental Implications:

None

1.0 INTRODUCTION/BACKGROUND

1.1 The current Data Protection Policy was adopted by the Council in 2002.

2.0 KEY ISSUES

2.1 The DPA legislation is complex and involves the use of technical terminology and comprehensive definitions. The current Policy focuses on the eight DPA principles and adopts 10 Corporate Data Protection Policy Statements. Having reviewed the Data Protection Policy it is considered that it is still 'fit for purpose' and that only minor changes are required to update it. The updated Policy is set out in Appendix 1.

2.2 Since the adoption of the current Policy in 2002 the Information Commissioner has introduced robust monitoring processes and has increased the level of enforcement against local authorities. In view of these changes it is considered prudent to develop guidance notes for officers to assist them in the event of a potential breach of the DPA. The proposed Personal Data Investigation Guidance Notes are set out in Appendix 2.

2.3 Members are advised that over the last 3 years there has been 1 formal complaint to the Information Commissioner. The complaint related to the manner in which personal data was made available to the complainant/data subject. The data subject requested copies of her personal data. The Council decided, given the quantity of data required to be disclosed, to make her personal data files available at the Council offices rather than copying the contents of each file (much of which had been provided by email). The Information Commissioner found against the Council on the basis that the data subject's request was reasonable. The personal data was accordingly copied and provided to the data subject as required by the Information Commissioner's decision.

2.4 During October and November 2013 One Legal will offer training on the Data Protection Policy, the DPA and the Guidance Notes to staff nominated by Group Managers.

3.0 OTHER OPTIONS CONSIDERED

3.1 None

4.0 CONSULTATION

4.1 None

5.0 RELEVANT COUNCIL POLICIES/STRATEGIES

5.1 None

6.0 RESOURCE IMPLICATIONS (Human/Property)

6.1 There are no direct financial implications arising out of this report.

7.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

7.1 None

8.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

8.1 Ensuring that the Council complies with the DPA will assist with the reduction of DPA breaches.

9.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

9.1 None

Background Papers: The Data Protection Act 1998

Contact Officer: Shirin Wotherspoon, Principal Solicitor
01684 272017 Shirin.wotherspoon@tewkesbury.gov.uk

Appendices: Appendix 1 – Data Protection Policy
Appendix 2 - Personal Data Investigation Guidance Notes



DATA PROTECTION POLICY

DATA PROTECTION ACT 1998

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Revised October 2013

DATA PROTECTION POLICY

Introduction

This Policy is intended to assist the Council to comply fully with the requirements set out in the Data Protection Act 1998. It is the aim of the Council that all staff are properly trained, fully informed of their obligations under the Act and are aware of their personal liabilities.

The advice and policy statements it contains are applicable to all Council staff and non-Council staff who have access to Council-owned personal data.

The Council may take disciplinary action in the case of any employee acting in breach of the Data Protection legislation and/ or this Policy.

This Policy document applies only to information covered by the Data Protection Act 1998 and will be updated/amended as necessary. A monitoring process will also be developed to ensure compliance with this Policy.

The Freedom of Information Act 2000 also gives rights of access to all types of recorded information (personal and non-personal information) held by the Council (subject to 23 exemptions). This Policy takes into account the requirements of the Freedom of Information Act 2000 as appropriate.

In preparing this Policy the provisions of the Human Rights Act 1998 have been taken into account.

Applicability

This Policy applies to every individual in the Council who has access to personal data about other individuals such as Council clients, customers, employees, Members and third parties, such as suppliers or contractors.

The Council's Responsibility – A Summary

There are a series of definitions that need to be understood in the context of the data protection. These definitions derive from the Data Protection Act 1998 and are set out in full in Appendix 1.

The following chart summarises the provisions of the Act. The Council has a duty to comply with the data protection principles in relation to all data that is defined as personal. The Act gives individuals various rights in respect of personal data held about them by the Council.

WHAT'S IT ALL ABOUT

We have a duty to comply with

in relation to all

DATA

ie. information that is (or is intended to be) processed

- automatically eg. questionnaires, computer records

or

- as part of a relevant filing system eg. index cards/cabinet.

that is

PERSONAL

ie. relates to a living individual identifiable either from DATA or from DATA and any other information which the Council possesses.

THE DATA PROTECTION PRINCIPLES

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless consent is obtained, it is in the interest of the individual or in the public interest.
2. Personal data shall be obtained only for one or more specified and lawful purposes and shall not be further processed in any manner incompatible with that purpose (we register "purposes" with the Registrar).
3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
4. Personal data shall be accurate and, kept up to date.
5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.
6. Personal data shall be processed in accordance with the rights of data subjects under the Act.
7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
8. Personal data shall not be transferred to a country or territory outside the European Economic Area unless certain protection is in place.



DATA PROTECTION POLICY

It is essential that the Council handles personal data that it holds on its customers, employees, Members and third parties responsibly and with integrity.

1.0 Responsibilities

- 1.1 All Council employees who have access to personal data in any form must comply with the requirements as set out in the Data Protection Act 1998.

Corporate Data Protection Policy – Employee Responsibilities

All Council employees are personally responsible and accountable for ensuring compliance with the provisions of the Data Protection Act 1998, in particular with the eight data protection principles. This applies to all personal data that is processed by the Council.

- 1.2 All managers are responsible for the application of this Policy within their areas of responsibility and must ensure that their staff and any other persons for whom they are responsible who have access to personal data are aware of and understand their responsibilities with regard to the Act.

Corporate Data Protection Policy – Manager Responsibilities

All managers are directly responsible for implementing this Policy within their areas of responsibility and for compliance with it by their staff.

2.0 Education and Training

- 2.1 It is intended that education and training on data protection issues will be provided on a regular basis, to all Council staff. It is a management responsibility to ensure that all staff receive sufficient data protection education and training to enable them to fulfil their data protection responsibilities.

Corporate Data Protection Policy – Education and training

All managers must ensure that all staff for whom they are responsible who process personal data receive education and training in data protection issues and have up to date knowledge in this area.

3.0 Off-Site Working

- 3.1 Personal data relating to Council customers, clients, employees, Members or third parties such as suppliers or contractors must not be removed from the Council offices by staff without the express authorisation of the appropriate manager. When Council-owned data is away from the Council offices, staff are solely responsible for the security of the data and must take reasonable precautions to prevent unauthorised persons gaining access to it.

Corporate Data Protection Policy – Off-site working

Council staff working off-site with Council-owned personal data must ensure that they abide by the provisions of the Data Protection Act 1998. In particular, Council-owned data which is taken off-site must be transferred and held securely, not transferred to a third party and must be used only for official Council business.

4.0 Notification

- 4.1 The Information Commissioner maintains a public register of data controllers. Each register entry includes the name and address of the data controller and a general description of the processing of personal data by a data controller. The Council has a number of register entries. Notification is the process by which a data controller's (the Council's) details are added to the register. The Data Protection Act 1998 requires that the Council notify all personal data. Failure to notify is a criminal offence.

Corporate Data Protection Policy – Notification

All managers must ensure that any additional purposes, other than those contained in their register entry, for which they are processing personal data are notified to the Data Protection Officer who can then amend the Council's register entries as appropriate.

5.0 Individuals' Rights

- 5.1 The Act gives rights to individuals (data subjects) in respect of personal data held about them by data controllers. These are mainly concerned with the:-
- right of information about the processing of personal data
 - right of access to their personal data
 - right to prevent processing likely to cause damage or distress
 - right to prevent processing for the purposes of direct marketing
 - right to prevent decision-making solely by automatic means
 - right to seek compensation for damage or distress arising from any breach of the Act and, having established damage, to seek compensation for any associated distress
 - right of rectification, blocking, erasure or destruction of personal data that are inaccurate or which contain an opinion which appears to be based on the inaccurate data
 - right to request the Commissioner to assess whether or not it is likely that any processing of personal data by a data controller has been carried out in compliance with the Act
- 5.2 Depending on the circumstances, the penalties for any breach of the rights of data subjects may be as significant to individuals and organisations as the penalties for criminal offences.

Corporate Data Protection Policy – Individual Rights

The Council will, as far as practicable, ensure that all individuals whose details are held by the Council are aware of the way in which that information is held, used and disclosed.

6.0 Subject Access

- 6.1 An individual has the right to access a copy of their personal data held by a data controller. This is called the subject access right. A request for subject access has to be made in writing (which includes transmission by electronic means) and must be complied with within 40 days. The Data Protection Officer will issue guidance on how subject access requests are to be handled, to take account of local circumstances. Any officer who receives a subject access request must immediately contact the Data Protection Officer and provide details of the request.

Corporate Data Protection Policy – Handling of Subject Access Requests

Managers must be aware of the procedure for handling subject access requests within their department. All subject access requests shall be dealt with in the way that the Data Protection Officer prescribes.

7.0 Sensitive Personal Data

Sensitive data may be included in the personal data the Council processes, for instance data which reveals racial or ethnic origin, political opinions, religions, beliefs, trade union membership or concerning health or sex life. The Council will process such data in such a way as to ensure that privacy is maintained and will only be processed with the explicit consent of the Data Subject.

Corporate Data Protection Policy – Sensitive Data

The Council will ensure that adequate security measures are taken so that privacy is preserved whenever and wherever processing of sensitive data takes place and such processing will only take place with the explicit consent of the Data Subject.

8.0 Technical and Organisational Security

- 8.1 The Council has implemented appropriate security measures as required under the Data Protection Act 1998. In particular, unauthorised staff and other individuals are prevented from gaining access to personal information. Appropriate physical security is in place, with visitors being received and supervised at all times within the Council's building where information about individuals is stored. The general public visiting the Council's building should not feel that the measures are restrictive or oppressive, the measures are there to protect the Council's data.
- 8.2 Computer systems are installed with user profile-type password controls and, where necessary, audit and access trails to establish that each user is fully authorised. In addition, employees are fully informed about overall security procedures and the importance of their role within those procedures. Security arrangements are reviewed regularly. All reported breaches or potential weaknesses are investigated and, where necessary, further or alternative measures will be introduced to secure the data. Such reports are received by the Data Protection Officer for the Council, who will liaise with IT and/or building Security staff as necessary.
- 8.3 All staff are informed and frequently reminded about the limits of their authority on disclosing information both inside and outside the Council. Details will only be

disclosed on a need-to-know basis within the Council. Where details need to be passed outside the Council it will, in general, be done with the person's consent, except where this is not possible or where it is required by law, allowed under the Data Protection Act exemptions (such as crime prevention/detection, to prevent injury, etc), or where it is in the person's vital interest. Any unauthorised disclosure will be dealt with under the Council's disciplinary procedures.

Corporate Protection Policy – Technical and Organisational Security

The Council will take sufficient steps to secure the Council's data through IT and organisational measures.

9.0 Offences

9.1 The Act creates a number of offences. A data controller is liable to commit an offence under the Act if he or she:-

- fails to notify processing of personal data, where required
- fails to notify changes to processing of personal data
- fails to comply with an enforcement notice
- makes a statement in purported compliance with an information notice which he or she knows to be false or recklessly makes a statement which is false in a material respect
- unlawfully obtains personal data
- unlawfully sells personal data
- unlawfully offers personal data for sale
- unlawfully obtains personal data by requiring someone to exercise their subject access rights in connection with employment or the provision of services
- obstructs a person in the execution of a warrant
- fails without reasonable excuse to give any person executing such a warrant such assistance as he or she may reasonably require

9.2 Failure to comply with the requirements of the Act could result in Council employees being held liable under the Act for their actions. If an employee of the Council is found guilty of committing an offence they could be liable for a fine of up to £5,000 in the Magistrates' Court or an unlimited fine in the Crown Court.

Corporate Data Protection Policy – Offences

Any member of staff receiving notice of prosecution regarding offences under the Data Protection Act 1998 must immediately notify the Data Protection Officer

10.0 Further Information

10.1 If you require further information or guidance on data protection issues contact the Data Protection Officer, Sara J Freckleton, on extension 2010, or at Tewkesbury Borough Council, Council Offices, Gloucester Road, Tewkesbury, Gloucestershire, GL20 5TT.

CORPORATE DATA PROTECTION POLICY STATEMENTS

1. Employees Responsibilities

All Council employees are personally responsible and accountable for ensuring compliance with the provisions of the Data Protection Act 1998, in particular with the eight data protection principles. This applies to all personal data that is processed by the Council.

2. Managers Responsibilities

All managers are directly responsible for implementing this Policy within their areas of responsibility and for compliance with it by their staff.

3. Education and Training

All managers must ensure that all staff for whom they are responsible who process personal data receive education and training in data protection issues and have up to date knowledge in this area.

4. Off-site Working

Council staff working off-site with Council-owned personal data must ensure that they abide by the provisions of the Data Protection Act 1998. In particular, Council-owned data which is taken off-site must be transferred and held securely, not transferred to a third party and must be used only for official Council business.

5. Notification

All managers must ensure that any additional purposes, other than those contained in their register entry, for which they are processing personal data are notified to the Data Protection Officer who can then amend the Council's register entries as appropriate.

6. Individual Rights

The Council will, as far as practicable, ensure that all individuals whose details are held by the Council are aware of the way in which that information is held, used and disclosed.

7. Handling of Subject Access Requests

Managers must be aware of the procedure for handling subject access requests within their department. All subject access requests shall be dealt with in the way that the Data Protection Officer prescribes.

8. Sensitive Data

The Council will ensure that adequate security measures are taken so that privacy is preserved whenever and wherever processing of sensitive data takes place and such processing will only take place with the explicit consent of the Data Subject.

9. Technical and Organisational Security

The Council will take sufficient steps to secure the Council's data through IT and organisational measures.

10. Offences

Any member of staff receiving notice of prosecution regarding offences under the Data Protection Act 1998 must immediately notify the Data Protection Officer

APPENDIX 1

Data

Data means information which:-

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose
- (b) is recorded with the intention that it should be processed by means of such equipment
- (c) is recorded as part (or with the intention that it should form part) of a relevant filing system (i.e. any set of information relating to individuals relating to information to the extent that, although not processed as in (a) above, the set is structured by reference to individuals or by reference to criteria relating to individuals, in, or
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible health record as defined by Section 68 and which can be summarised here as a health record, educational record (local education authority schools and special schools only).

Personal Data

Personal data means data which relate to a living individual who can be identified:-

- from those data, or
- from those data and other information which is in the possession of or is likely to come into the possession, of the data controller,
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual

Data Controller

Data controller means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed. (The Council in this policy is the Data Controller.)

Data Subject

Data subject means an individual who is the subject of personal data.

Processing

Processing, in relation to information or data, means obtaining, recording or holding the information or data (which includes, in relation to personal data, obtaining or recording the information to be contained in the data) or carrying out any operation or set of operations on the information or data, including:-

- organisation, adaptation or alteration of the information or data
- retrieval, consultation or use of the information or data (which, in relation to personal data, includes disclosing the information contained in the data) by transmission, dissemination or otherwise making available, or
- alignment, combination, blocking, erasure or destruction of the information or data

Relevant Filing System

The relevant filing system means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

Sensitive Personal Data

Sensitive personal data means personal data consisting of information as to -

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992,
- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

**Tewkesbury Borough Council
Personal Data Investigation Guidance Notes
October 2013**

There is no legal obligation on the council as a data controller to report breaches of security which result in the loss, release, corruption of personal data. The council, does, however, need to consider whether to notify those persons whose data has been lost, released or corrupted and/or whether to notify the Information Commissioners Office (ICO).

Although not an exhaustive list when assessing what action should be taken following a data security breach you (in consultation with One Legal) will need to consider the following:-

| | Matters to consider | Response |
|---|--------------------------------------|---|
| | General points | |
| 1 | What has happened? | |
| | | |
| | Type of data | If the breach involves sensitive personal data relating to easily identifiable individuals, the greater the presumption will be that the data subject and the ICO are informed of the breach |
| 2 | What type of data is involved? | |
| 3 | What is the volume of data involved? | |

| | | |
|----|---|--|
| 4 | Are there any protections in place in relation to the data such as encryption? | |
| 5 | Is the information easily recoverable? | |
| 6 | Does the data relate to specific identifiable individuals? | |
| 7 | Does the detail contained in the data mean that an individual can be identified? | |
| 8 | If the information does not specifically identify an individual what information does the data contain? | |
| 9 | Does the information allow a third party to build up a more detailed picture of an individual? | |
| 10 | Is the data that has been lost private information or information that is publically available elsewhere? | |

| | | |
|----|---|---|
| 11 | How sensitive the data? Data will be sensitive if it is of a personal nature (i.e. information about racial or ethnic origin, political opinions or persuasion, religious beliefs or other beliefs of a similar nature, Trade Union membership or affiliation, physical or mental health or condition, sexual life, commissioned or alleged commission of offences, any proceedings for any offence, committed or alleged, including any sentencing decisions made by the court or sensitive because of what might happen if misused for example could be used for fraud or to assess financial information or accounts etc.) | |
| | Risk to the data subjects | The greater risk to the data subject the greater the presumption should be that the data subject and the ICO should be informed. |
| 12 | Who are the individuals whose data has been breached? | |
| 13 | What has happened to the data? | |
| 14 | Has the loss been contained? | |

| | | |
|----|---|--|
| 15 | Is the data in a form that could be easily replicated or passed onto other third parties? | |
| 16 | Is the data in a form that could be copied and misused i.e. electronic signatures? | |
| 17 | What harm could come to those individuals? Could they suffer financial loss, reputational risks, risk to their physical safety? | |
| 18 | Would notification of the breach assist the individuals to mitigate any potential risk or harm? | |

If you, in consultation with One Legal, decide to report the breach to the data subjects, they should be informed of what has been lost, the circumstances surrounding the loss, any steps they should take to mitigate the loss and a contact name at the council who can deal with queries regarding the loss.

If you, in consultation with One Legal, decide to report the breach to the ICO, One Legal will assist with the process.

You may also want to consider:-

- Any weak points in existing security measures that lead to the loss of data on this occasion.
- Are sufficient measures in place in relation to the security and retention of material of data?
- Revisit whether the training is sufficient