



West Devon  
Borough  
Council

# West Devon Council

<b>Title:</b>	<b>Summons</b>																																													
<b>Date:</b>	<b>Tuesday, 4th December, 2018</b>																																													
<b>Time:</b>	<b>4.00 pm</b>																																													
<b>Venue:</b>	<b>Chamber - Kilworthy Park</b>																																													
<b>Full Members:</b>	<p style="text-align: center;"><b>Mayor</b> Cllr Davies <b>Deputy Mayor</b> Cllr Leech</p> <p><i>Members:</i></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Cllr Baldwin</td> <td style="width: 33%;">Cllr Musgrave</td> <td style="width: 33%;"></td> </tr> <tr> <td>Cllr Ball</td> <td>Cllr Oxborough</td> <td></td> </tr> <tr> <td>Cllr Cann OBE</td> <td>Cllr Parker</td> <td></td> </tr> <tr> <td>Cllr Cheadle</td> <td>Cllr Pearce</td> <td></td> </tr> <tr> <td>Cllr Cloke</td> <td>Cllr Ridgers</td> <td></td> </tr> <tr> <td>Cllr Edmonds</td> <td>Cllr Roberts</td> <td></td> </tr> <tr> <td>Cllr Evans</td> <td>Cllr Sampson</td> <td></td> </tr> <tr> <td>Cllr Hockridge</td> <td>Cllr Samuel</td> <td></td> </tr> <tr> <td>Cllr Jory</td> <td>Cllr Sanders</td> <td></td> </tr> <tr> <td>Cllr Kimber</td> <td>Cllr Sellis</td> <td></td> </tr> <tr> <td>Cllr Lamb</td> <td>Cllr Sheldon</td> <td></td> </tr> <tr> <td>Cllr McInnes</td> <td>Cllr Stephens</td> <td></td> </tr> <tr> <td>Cllr Moody</td> <td>Cllr Watts</td> <td></td> </tr> <tr> <td>Cllr Mott</td> <td>Cllr Yelland</td> <td></td> </tr> <tr> <td>Cllr Moyse</td> <td></td> <td></td> </tr> </table>	Cllr Baldwin	Cllr Musgrave		Cllr Ball	Cllr Oxborough		Cllr Cann OBE	Cllr Parker		Cllr Cheadle	Cllr Pearce		Cllr Cloke	Cllr Ridgers		Cllr Edmonds	Cllr Roberts		Cllr Evans	Cllr Sampson		Cllr Hockridge	Cllr Samuel		Cllr Jory	Cllr Sanders		Cllr Kimber	Cllr Sellis		Cllr Lamb	Cllr Sheldon		Cllr McInnes	Cllr Stephens		Cllr Moody	Cllr Watts		Cllr Mott	Cllr Yelland		Cllr Moyse		
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<b>Interests – Declaration and Restriction on Participation:</b>	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.																																													
<b>Committee administrator:</b>	Member.Services@swdevon.gov.uk																																													

**1. Apologies for Absence**

**2. Confirmation of Minutes**

To approve and adopt as a correct record the Minutes of the Meeting of Council held on 25 September 2018

**1 - 8**

**3. Declarations of Interest**

Members are invited to declare any personal or disclosable pecuniary interests, including the nature and extent of such interests they may have in any items to be considered at this meeting.

If Councillors have any questions relating to predetermination, bias or interests in items on this Summons, then please contact the Monitoring Officer in advance of the meeting.

**4. To receive communications from the Mayor or person presiding**

**5. Business brought forward by or with the consent of the Mayor**

**6. The Mayor or the person presiding to answer questions which people in West Devon can ask and to receive deputations or petitions under Council Procedure Rule 21**

**7. To consider motions (if any) of which notice has been duly submitted under Council Procedure Rule 21**

**8. To consider motions (if any) of which notice has been duly submitted by Members in accordance with Council Procedure Rule 15**

**9. To receive the Minutes of the following Committees, to note the delegated decisions and to consider the adoption of those Unstarred Minutes which require approval:**

**9 - 52**

**(i) Overview and Scrutiny Committee**  
Meeting held on 2 October 2018

Meeting held on 6 November 2018

**(ii) Audit Committee**

Meeting held on 9 October 2018

**AC 21 Six Monthly Update – Strategic Risk Assessment**

That Council be **RECOMMENDED** that:

1. The strategic risks (as outlined at Appendix 1 of the presented agenda report) had been reviewed and that no further action should be considered;
2. The Risk & Opportunity Management Strategy risks (as outlined at Appendix 3 of the presented agenda report) be adopted; and
3. The Joint Management Policy 2012 and the Joint Risk Management Strategy 2013 be rescinded.

**(iii) Development Management and Licensing Committee**

Meeting held on 16 October 2018

Meeting held on 13 November 2018

**DM&L 26 Three Yearly Review of Gambling Statement of Licensing Principles**

That Council be **RECOMMENDED** that the draft Statement of Principles, as amended, be adopted for the period 31 January 2019 to 30 January 2022.

**DM&L 28 Planning Scheme of Delegation**

That Council be **RECOMMENDED** that the amended Planning Scheme of Delegation (as set out in Appendix A of the agenda report presented to the Committee) be approved.

**(iv) Hub Committee**

Meeting held on 16 October 2018

Meeting held on 20 November 2018

**HC 46 Annual Review of Health and Safety Policy Statement**

That Council be **RECOMMENDED** that the revised policy be adopted and signed by the Head of Paid Service and the Leader of Council.

**HC 48 Brook Street Car Park Refurbishment Contract**

That Council be **RECOMMENDED** that, subject to the approval of the Section 151 Officer, in consultation with the lead Hub Committee Member, that the:

1. contract be awarded to the Bidder who scores highest during evaluation; and
2. 40% share of costs payable by the Council is funded from the Car Parking Maintenance Earmarked Reserve.

<b>10. Exclusion of Public and Press</b>	
<b>11. Frontline Services (Waste and Cleansing Procurement)</b>	<b>53 - 90</b>
<b>12. Re-admittance of Public and Press</b>	
<b>13. Supporting the Formation of South West Mutual</b>	<b>91 - 182</b>
<b>14. Heart of South West Joint Committee</b>	<b>183 - 198</b>
<b>15. General Data Protection Regulation (GDPR) &amp; Data Protection Policy Update</b>	<b>199 - 214</b>
<b>16. Regulation of Investigatory Powers Act 2000 Policy and Update</b>	<b>215 - 286</b>

Dated this 26<sup>th</sup> day of November 2018

Sophie Hosking  
Head of Paid Service

# Agenda Item 2

At the Meeting of the **WEST DEVON BOROUGH COUNCIL** held in the **COUNCIL CHAMBER, KILWORTHY PARK, TAVISTOCK** on **TUESDAY** the **25<sup>th</sup>** day of **SEPTEMBER 2018** at **4.00pm** pursuant to Notice given and Summons duly served.

## Present

Cllr M Davies – Mayor (In the Chair)  
Cllr A F Leech – Deputy Mayor

Cllr R E Baldwin      Cllr K Ball  
Cllr W G Cann OBE    Cllr R Cheadle  
Cllr D W Cloke        Cllr C Edmonds  
Cllr J Evans           Cllr L J G Hockridge  
Cllr N Jory            Cllr P Kimber  
Cllr B Lamb            Cllr J R McInnes  
Cllr J B Moody        Cllr C Mott  
Cllr D E Moyse        Cllr R J Oxborough  
Cllr G Parker          Cllr T G Pearce  
Cllr P J Ridgers       Cllr A Roberts  
Cllr R F D Sampson   Cllr L Samuel  
Cllr P R Sanders      Cllr D K A Sellis  
Cllr J Sheldon         Cllr L Watts  
Cllr J Yelland

Head of Paid Service  
Acting Lead Specialist Legal  
Senior Specialist – Democratic Services  
Section 151 Officer  
Group Manager – Commercial Services

## CM 27

### **KATE CASSAR**

Since this was the first Council meeting since Kate Cassar (the Council's former Head of Property Services) had sadly passed away, the Council proceeded to observe a moment's reflection in her memory.

## CM 28

### **APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllrs Musgrave and Stephens.

## CM 29

### **CONFIRMATION OF MINUTES**

It was moved by Cllr P R Sanders, seconded by Cllr L Samuel and upon the motion being submitted to the Meeting was declared to be **CARRIED** and "**RESOLVED** that the Council agree the Minutes of the Meeting held on 24 July 2018 as a true record."

**CM 30            DECLARATION OF INTEREST**

The Mayor invited Members to declare any interests in the items of business to be considered during the course of the meeting. These were recorded as follows:

Cllr L Samuel declared a personal interest in Unstarred Minute HC 30 'Civil Penalties for Breaches of Housing Standards Enforcement Notices' (Minute CM 34 d ii below refers) by virtue of being a landlord and she abstained from the vote on this recommendation.

**CM 31            MAYOR'S ANNOUNCEMENTS**

The Mayor confirmed that he had no formal announcements to make to this meeting.

**CM 32            URGENT BUSINESS**

The Mayor informed that he agreed for four items of urgent business to be raised for consideration at this meeting.

**1. To receive the minutes of the Development Management and Licensing Committee meeting held on 18 September 2018.**

The Mayor advised that it was his intention for these minutes to be dealt with during consideration of agenda item 10(iii) below (Minute CM 34 c below refers).

**2. Public Toilet Pay on Entry Contract Award**

The Council considered a report that sought to approve a recommendation to award the contract for the provision and installation of Public Toilet Pay on Entry equipment.

The lead Hub Committee Member for Commercial Services introduced the report and stressed that the process of consulting with those affected local town and parish councils was still to be completed. It was noted that the Business Plan for this initiative would not be finalised until this exercise had been completed.

In the ensuing debate, reference was made to:-

- a) the importance of the contents of the Business Plan;
- b) the process. Officers assured the Council that, in the event of the Council approving the recommendation, this would not commit the Council to anything beyond the award and all options would be left open pending the outcome of the dialogue with the local town and parish councils;

c) an amendment was **PROPOSED** and **SECONDED** as follows:

‘That the Council approves, *in principle*, the recommendation to award the contract for the provision and installation of Public Toilet Pay on Entry Equipment to the highest scoring bidder (‘Bidder B’).’

In response to some Members expressing their confusion over the agenda report and the number of unknown elements contained within it, an amendment to include the words ‘*in principle*’ was felt to be appropriate by the proposer and seconder.

In opposition to the amendment, other Members felt that the amendment did not add anything to the recommendation. In addition, the point was made that the details of the final Business Case would still be required to be presented back to Members.

When put to the vote, the amendment was declared **LOST**.

Having been moved by Cllr R F D Sampson, seconded by Cllr T G Pearce and, upon being submitted to the Meeting, it was declared to be **CARRIED** and “**RESOLVED** that:

1. the Council approves the recommendation to award the contract for the provision and installation of Public Toilet Pay on Entry equipment to the highest scoring bidder (‘Bidder B’); and
2. any changes considered necessary to the terms, or type of equipment used at each facility, be delegated to the Environment Services Community Of Practice Lead, in consultation with the lead Hub Committee Member for Commercial Services.”

### 3. Tavistock BID Outside Body

The Mayor advised that the Council had received a formal request to nominate a representative to serve on the Tavistock BID Outside Body. As a result, both Group Leaders had been invited to make their nominations to serve on this Body and Cllr Oxborough had subsequently been nominated.

It was then moved by Cllr P R Sanders, seconded by Cllr L Samuel and, upon being submitted to the Meeting, was declared to be **CARRIED** and “**RESOLVED** that Cllr R J Oxborough be nominated to serve on the Tavistock BID Outside Body for the remainder of the 2018/19 Municipal Year.”

### 4. Question from Cllr R F D Sampson to Cllr P R Sanders

Finally, the Mayor informed that, whilst it had been received after the eight clear days deadline, he had exercised his discretion to permit the following question to be raised at this meeting:-

*'In the light of the discussion of the Planning Advisory Service's (PAS) Review of West Devon Borough Council Development Management and Licensing (DM&L) Committee and draft Action Plan at the Informal Council Meeting on 3 September 2018, the Leader is asked, by immediate verbal reply, to:-*

- 1. Explain why an appointment to the Chairmanship of the DM&L Committee is not an Agenda Item today; and*
- 2. Advise the Council of the implications for the Council in the light of the comments in the PAS Review?'*

Prior to responding to the question, Cllr Sanders expressed his frustration and disappointment at the means by which this matter had been raised. Nonetheless, in addressing the question, Cllr Sanders made reference to:-

- the role of Chairman on the Development Management and Licensing Committee not being vacant at this present time; and
- there being no implications (to his knowledge) to the Council in light of the comments in the Review. The risk to the Council of being 'Designated' was felt to remain at exactly the same level irrespective of the comments that were contained within the Review report.

### **CM 33                    MEDIUM TERM FINANCIAL STRATEGY 2019/20 TO 2023/24**

The Council considered a report that sought to approve its Medium Term Financial Strategy from 2019/20 to 2023/24.

In discussion, the following points were raised:-

- (a) The importance of as many Members as practically possible attending the informal Budget Workshop on 8 October 2018 was stressed. It was noted that the overriding aim of the Workshop was to provide officers with a clear steer over options to close the 2019/20 Budget gap;

- (b) An additional recommendation was **PROPOSED** and **SECONDED** as follows:

*'That new measures to balance the 2019/20 Budget be brought forward in time for the Council Budget meeting in February 2019.'*

- (c) With regard to the recommendation to review the Council's pension position, Members requested that the message be relayed to staff that this proposal did not impact upon them and was only related to the Council's employer pension deficit contributions;

- (d) Some Members expressed their belief that the proposal to set an Upper Limit on External Borrowing at £50 million was overly restrictive and could potentially be a barrier to one method of the Council closing its Budget gap. As a result, an amendment was **PROPOSED** and **SECONDED** as follows:

‘That the Council sets an Upper Limit on External Borrowing (for all Council services) as part of the Medium Term Financial Strategy of £50 million (as outlined at exempt Appendix G of the presented agenda report). *However, this Upper Limit can be reviewed at any time*’;

Whilst there was some support expressed for this amendment, other Members felt that the Council should not overlook the external treasury management advice and considered the establishment of a cap to be good practice. In addition, these Members quoted the following two provisions in the Council Constitution and felt that the amendment was therefore unnecessary:

1. *Any motion can be revisited after six months of the decision being taken; and*
2. *Within the preceding six months, a motion to rescind a decision can be moved if it is recommended to Council by a Committee or notice of such a motion has been given by a quorum of Members of the Council.*

When put to the vote, the amendment was declared **LOST**.

It was then moved by Cllr P R Sanders, seconded by Cllr L Samuel and, upon being submitted to the Meeting, was declared to be **CARRIED** and **“RESOLVED** that:

1. the forecast budget gap for 2019/20 of £0.45 million and the position for future years be noted;
2. the current options identified and timescales for closing the Budget gap in 2019/20 and future years (to achieve long term financial sustainability) be noted;
3. the strategic intention be set to raise Council Tax by the maximum allowed in any given year, without triggering a Council Tax Referendum, to endeavour to continue to deliver services. (NB. the actual Council Tax for any given year will be decided by the Council in the preceding February);
4. an application be submitted for Business Rate Pilot status for 2019/20, with agreement being made to a 40% District / 34% Devon County Council / 1% Fire split for the 75% scheme. In the event of the Pilot bid not being successful, then the Council will remain part of the Devon Business Rates Pool;
5. Central Government and Devon MPs be actively lobbied to support a 2019/20 Devon Pilot bid;

6. Central Government, Devon MPs and other sector bodies (such as the District Councils Network and the Rural Services Network) be actively lobbied and engaged with for a realistic Business Rates baseline to be set for the Council for 2020 onwards;
7. the Council responds to the technical consultation in support of the Government eliminating Negative Revenue Support Grant. Furthermore, the Council continue to lobby for Rural Services Delivery Grant allocations that adequately reflect the cost of rural services provision;
8. for modelling purposes, £375,000 of New Homes Bonus funding for 2019/20 be used to fund the revenue base budget, with this reducing to £100,000 by 2020/21 and £50,000 by 2021/22;
9. the annual level of contribution to Earmarked Reserves (£50,000) and the adequacy of the existing level of Unearmarked Reserves (£1.2 million) and Earmarked Reserves (£4 million) be delegated to the Cross Party Member Working Group (the 'Financial Stability Review Group') to review and make recommendations by the end of October 2018. (NB. this will assess the adequacy of Reserves levels in light of future plans and pressures;
10. the Council takes specialist pension advice on the options for the Council's Pension position (informing the actuarial valuation) with the aim of reducing the current deficit contributions, increasing affordability, whilst best managing the pension deficit. Also, the Council recognises the need to have early dialogue with Devon County Council and the actuaries with regard to the Council having an input into the actuarial assumptions used for the 2019 Actuarial Valuation. (NB. options will be presented to the Audit Committee meeting on 22 January 2019 to consider);
11. the Council sets an Upper Limit on External Borrowing (for all Council services) as part of the Medium Term Financial Strategy of £50 million (as outlined at exempt Appendix G of the presented agenda report);
12. the Council continues with the Local Government terms and conditions of employment Green Book for at least 2019/20. That all options be reviewed for reducing staff costs by varying terms from the Green Book from 2020/21, with an initial report being presented back by the end of 2018/19; and
13. new measures to balance the 2019/20 Budget be brought forward in time for the Council Budget meeting in February 2019."

## CM 34

## MINUTES OF COMMITTEES

### a. **Audit Committee – 24 July 2018**

It was moved by Cllr M Davies, seconded by Cllr K Ball and upon being submitted to the Meeting was declared to be **CARRIED** and **"RESOLVED** that the Minutes of the 24 July 2018 meeting be received and noted".

**b. Overview and Scrutiny Committee – 31 July 2018 and 4 September 2018**

It was moved by Cllr J Yelland, seconded by Cllr R Cheadle and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 31 July 2018 and 4 September 2018 meetings be received and noted”.

**c. Development Management and Licensing Committee – 14 August 2018 and 18 September 2018**

It was moved by Cllr P R Sanders, seconded by Cllr A Roberts and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 14 August 2018 and 18 September 2018 meetings be received and noted, with the exception of Unstarred Minutes DM&L 11 and DM&L 16”.

In response to a Member expressing his concerns over some of the findings expressed in the Planning Advisory Service’s Review report, assurances were given that Committee Members and Substitutes would be given the opportunity to fully consider this report at a future meeting.

In respect of the Unstarred Minutes:

**i. DM&L 11 Public Participation Scheme**

It was moved by Cllr P R Sanders, seconded by Cllr A Roberts and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the:

1. proposed amendments to the Development Management Public Participation Scheme (as set out in Appendix 1 of the agenda report presented to the Committee) be approved, subject to inclusion of an additional sentence that ensures that speakers are aware that the meeting may be recorded; and
2. Public Participation Scheme be further amended so that local Ward Members are limited to speaking for a maximum of five minutes.”

**ii. DM&L 16 Adoption of Procedures and Fees in Relation to the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018**

It was moved by Cllr P R Sanders, seconded by Cllr A Roberts and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:

1. the Discretionary Powers contained within the Animal Welfare Act 2006 and the Animal Welfare (Licensing of Activities Involving Animals) (England) Regulations 2018 be adopted;

2. decisions in relation to the determination of licences and enforcement action be delegated to the Community Of Practice Lead for Environmental Health and Licensing by 1 October 2018;
3. the Council Constitution be amended to reflect a new Sub-Committee structure to consider objections to conditions on an Animal Licence; and
4. the fees and charges in relation to animal licensing (as outlined in the agenda report presented to the Committee) be adopted to come into effect from 1 October 2018.”

**d. Hub Committee – 11 September 2018**

It was moved by Cllr P R Sanders, seconded by Cllr L Samuel and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the Minutes of the 11 September 2018 be received and noted, with the exception of Unstarred Minutes HC 26, HC 30 and HC 32”.

In respect of the Unstarred Minutes:

**i. HC 26 Commercial Property Strategy Amendment**

It was moved by Cllr P R Sanders, seconded by Cllr L Samuel and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that:

1. the Commercial Property Strategy (as detailed in Appendix A of the presented agenda report to the Hub Committee) be approved and implemented; and
2. the currently adopted Commercial Property Acquisition Strategy (as detailed in Appendix E of the presented agenda report to the Hub Committee) be rescinded.”

**ii. HC 30 Civil Penalties for Breaches of Housing Standards Enforcement Notices**

It was moved by Cllr P R Sanders, seconded by Cllr N Jory and upon being submitted to the Meeting was declared to be **CARRIED** and “**RESOLVED** that the existing Enforcement Policy be updated with the Civil Penalty Policy.”

**iii. HC 32 IT Systems Procurement**

It was moved by Cllr P R Sanders, seconded by Cllr L Samuel, and upon being submitted to the Meeting, it was then declared to be **CARRIED** and “**RESOLVED** that the ICT Systems Procurement be endorsed and the recommendations that were outlined in the exempt reports that were presented to the Overview and Scrutiny and Hub Committees be approved.”

(The Meeting terminated at 5.50 pm)

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**Mayor**

# Agenda Item 9

At a Meeting of the **OVERVIEW & SCRUTINY COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **2<sup>nd</sup>** day of **OCTOBER 2018** at **2.00 pm**.

**Present:** Cllr J Yelland – Chairman

Cllr R E Baldwin	Cllr D W Cloke
Cllr J Evans	Cllr P Kimber
Cllr J B Moody	Cllr D E Moyse
Cllr C R Musgrave	Cllr G Parker
Cllr T G Pearce	Cllr J Sheldon

Group Manager – Customer First and Support Services  
Deputy Monitoring Officer  
Section 151 Officer  
Commissioning Manager  
Community Of Practice Lead – Place and Strategy  
Senior Specialist – Democratic Services

**Also in Attendance:** Cllrs W G Cann OBE, C Edmonds, N P Jory, B Lamb, A F Leech, C Mott, R F D Sampson and P R Sanders

\* **O&S 46**     **APOLOGIES FOR ABSENCE**  
Apologies for absence for this meeting were received from Cllrs R Cheadle, J R McInnes, P J Ridgers and D K A Sellis.

\* **O&S 47**     **CONFIRMATION OF MINUTES**  
The minutes of the Meeting of the Overview and Scrutiny Committee held on 4 September 2018 were confirmed and signed by the Chairman as a true and correct record.

\* **O&S 48**     **DECLARATIONS OF INTEREST**  
Members and officers were invited to declare any interests in the items of business to be considered during the course of this meeting, but there were none made.

\* **O&S 49**     **PUBLIC FORUM**  
There were one issue raised during the Public Forum session as follows:

**Question raised from Mrs Christine Marsh**

*‘What right do WDBC officers have to set up a legal document requiring a resident of the Borough to carry out work on behalf of WDBC and then, just*

*as that work was being completed, to totally walk away from that agreement?’*

In reply, the Deputy Monitoring Officer made the following statement:

*‘The agreement referred to is commercially confidential.*

*It would not be legal for the Council to ‘walk away’ from a binding agreement and that is not what West Devon BC has proposed.*

*Discussions are ongoing to find a mutually acceptable solution but at no point has the Council suggested that the other party cannot proceed with its obligations.*

*Any planning application which comes forward from the agreement will be assessed through the normal planning process which is transparent.’*

In response to a supplementary question from Mrs Marsh, the Deputy Monitoring Officer informed that detailed investigations of the site in question had revealed a different suitability of use.

Some Committee Members requested background information relating to the details that had generated this public question. Due to the exempt nature of elements of this information, it was then **PROPOSED** and **SECONDED** and when put to the vote declared **CARRIED** that:

#### **RESOLVED**

In accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item of business as the likely disclosure of exempt information as defined in paragraph 3 of Schedule 12A to the Act is involved.

At this point, the lead Hub Committee Member for Environment and Assets provided an update to the meeting before it was then **PROPOSED** and **SECONDED** and put to the vote declared **CARRIED** that:

#### **RESOLVED**

The public and press be re-admitted to the meeting.

\* O&S 50

#### **HUB COMMITTEE FORWARD PLAN**

Members considered the latest version of the Hub Committee Forward Plan. In so doing, the following points were made:-

- (a) It was noted that an additional Public Conveniences report would be presented to the next Hub Committee meeting on 16 October 2018;
- (b) Officers also confirmed that the agenda items entitled: 'Adoption of Clean Air Strategy' and 'Adoption of Business Continuity Plan' would now be deferred for consideration at a Hub Committee meeting during early 2019;
- (c) A Member of the Joint Local Plan (JLP) Joint Steering Group advised that a number of separate strands relating to the JLP and its Governance would need to be considered by the Hub Committee in the upcoming months;
- (d) A Member made reference to the current consultation exercise on the draft Tamar Valley Area of Outstanding Natural Beauty (AONB) Management Plan 2019/24. In highlighting the lack of a Council meeting before the deadline for responses (16 November 2018), a Member asked for this point to be formally noted. It was also agreed that lead officers would be available to discuss the nature of this consultation exercise with interested Members outside of this meeting;
- (e) Some Members also highlighted the current National Parks and AONBs Landscape review and acknowledged the intention for a report to be presented on this issue to the Council meeting on 4 December 2018.

**\* O&S 51      CONNECTING DEVON AND SOMERSET STAKEHOLDER ENGAGEMENT OFFICER**

The Connecting Devon and Somerset Stakeholder Engagement Officer conducted a presentation to Members that covered the following key areas:-

- Who were Connecting Devon and Somerset;
- Programme Objectives;
- Investment and Funding;
- Phase 1 of the Programme; and
- Phase 2 of the Programme.

In the ensuing discussion, particular reference was made to:-

- (a) a question from a Lamerton resident. Since the question had been received after the Public Forum deadline had expired, the Chairman exercised her discretion to ask the question as follows:

*'We would like superfast broadband in Lamerton. Some existing properties already get it, as do new builds. It seems unfair that some can get in excess of 30 mbps while the rest of us can barely achieve 2.*

*How do we get it for the whole village?*

*Is there a plan already in place and, if so, what time frame are we looking at?*

*Having first been promised in 2014, then 2016, then 2018 and now possibly 2021, why can't we get it now?*

*We fully understand the issue with the cabinets 3 and 14 and we also know Airband is potentially available; however it is expensive and not available to a lot of properties, as it is out of sight of their signal mast.*

In reply, the Engagement Officer confirmed his familiarity with this matter and provided some background context around the issues. The officer gave a commitment to check the infrastructure around the property owned by the questioner and reminded those in attendance that Airband was committed to providing superfast broadband to those premises that they had signed up to deliver (irrespective of how difficult this may prove to be).

Also, in the event of any of these properties not being connected upon the conclusion of the Airband contract, the officer advised that this would be a contract management issue that would need to be resolved;

- (b) the target for 100% of households to be connected to superfast broadband. Whilst remaining committed to this intention, the Committee was informed that 95-96% of properties should be connected upon the completion of Phase 2 of the Programme;
- (c) the economic impact of the West Devon Borough being in the bottom 10 in the United Kingdom for broadband coverage. In reply to a question, the officer stated that a report was currently being produced that would analyse the impact of Phase 2 on the Borough;
- (d) the original bidding process. A Member considered it to be really poor that, during the initial bidding submission, no account had been taken of the geo-physical layout of the landscape. As a consequence, the Member advised that local public opinion had really soured towards both Connecting Devon and Somerset and Airband. The officer acknowledged the points raised and stated that, in hindsight, the criticism was fair since the original bid had not taken sufficient account of the landscape;
- (e) Airband take up on Dartmoor. In reply to a question, the officer accepted that connectivity take up on Dartmoor had, to date, been disappointing. However, recent analysis had suggested that numbers were starting to increase more in line with the original projections;
- (f) the recruitment of a Marketing/Communications Officer. The Committee noted that the organisation was currently looking at employing an additional resource that would support the intention to increase

engagement and dialogue with both the Borough Council and local town and parish councils. At the time of this meeting, 85% of town and parish councils had not been spoken to and this was identified as being wholly inadequate.

In conclusion, it was requested that the Presentation slides be circulated to all Members of Council and the Chairman proceeded to thank the Engagement Officer for his informative presentation and detailed responses to Member questions.

**\* O&S 52 CORPORATE STRATEGY: DELIVERY AGAINST THEMES UPDATE**

The Committee considered a report that detailed work undertaken to date to develop key performance indicators for the Council's newly adopted Corporate Strategy.

In discussion, the following points were raised:-

- (a) It was confirmed that the Leader of Council was the designated lead Hub Committee Member for the Corporate Strategy;
- (b) In support of the proposed way forward, expressions of interest were invited from Committee Members to serve on the Task and Finish Group. In so doing, the Committee proceeded to nominate Cllrs Cheadle, Moody and Pearce.

It was then:

**RESOLVED**

That a Task and Finish Group (comprising of Cllrs Cheadle, Moody and Pearce) be established to work with officers to hone a set of Corporate Strategy key performance indicators based on: resident feedback, national benchmark and recent Institute of Customer Service findings.

**\* O&S 53 FINANCIAL STABILITY WORKING GROUP UPDATE: STANDING AGENDA ITEM**

The Committee received an update on the progress being made by the Financial Stability Working Group and noted that:

- the Medium Term Financial Strategy 2019/20 to 2023/24 had been approved by the Council at its meeting on 25 September 2018;
- attendance at the Member Budget Workshop on Monday, 8 October 2018 was important. It was intended that the next Group meeting would follow on from this Budget Workshop;
- potential projects to support the Council in the long term continued to evolve;

- the Group was confident that the Council would be able to deliver a balanced Budget for 2019/20;
- the Council's approach to its use of reserves was currently being reviewed by the Group.

**\* O&S 54      JOINT LOCAL PLAN: STANDING AGENDA ITEM**

By way of an update, the lead Hub Committee Member advised that:

- the Council was about to embark on a consultation exercise on the modifications to the Joint Local Plan (JLP). It was intended that the deadline for this exercise would be 5.00pm on 3 December 2018;
- the ongoing time slippages were attributed to the Inspector and not any of the three partner councils;
- there was every likelihood that the Plan would need to be presented to a meeting of the Council during Spring 2019 for adoption;
- it was intended that a Member Briefing on the JLP would be arranged before the end of November 2018;
- the five year housing land supply. When questioned, the lead Member felt that the Council would have a good indication of its current position by December 2018. However, the Council would not have a definitive answer on whether or not it had a five year housing land supply until the Plan had been formally adopted by each of the three councils.

**\* O&S 55      TASK AND FINISH GROUP UPDATES**

**(a) Okehampton Outreach Services**

By way of an update, Members felt that the title of the review should be broadened out to be re-named 'Northern Link Area' Outreach Services.

It was confirmed that a number of Members had expressed an interest in serving on this Task and Finish Group and the first meeting would be convened once the nominated Chairman had returned from annual leave.

Finally, it was recognised that the initial Review timetable was considered to be too restrictive and it was therefore agreed that the concluding report should be presented to the Committee meeting on 15 January 2019.

**\* O&S 56      ANNUAL WORK PROGRAMME 2018/19**

The Chairman introduced the latest version of the Work Programme for the next 12 months and noted its concerns.

**\* O&S 57 MEMBER LEARNING AND DEVELOPMENT OPPORTUNITIES ARISING FROM THIS MEETING**

In discussion, the importance of Members attending the Budget Workshop on 8 October 2018 was again reiterated.

(The meeting terminated at 3.30 pm)

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Chairman

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At a Meeting of the **OVERVIEW & SCRUTINY COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **6<sup>th</sup>** day of **NOVEMBER 2018** at **2.00 pm**.

**Present:** Cllr J Yelland – Chairman  
Cllr R Cheadle – Vice-Chairman

Cllr R E Baldwin	Cllr D W Cloke
Cllr J Evans	Cllr P Kimber
Cllr J B Moody	Cllr D E Moyse
Cllr C R Musgrave	Cllr G Parker
Cllr T G Pearce	Cllr P J Ridgers
Cllr D K A Sellis	Cllr J Sheldon

Group Manager – Customer First and Support Services  
Group Manager – Business Development  
Deputy Monitoring Officer  
Section 151 Officer  
Commissioning Manager  
COP Lead – Environment Services  
Case Management Manager  
Localities Team Leader  
Senior Specialist – Democratic Services

**Also in Attendance:** Cllrs W G Cann OBE, M Davies, C Edmonds, B Lamb, A F Leech, C Mott, A Roberts, R F D Sampson and P R Sanders

**\* O&S 58 APOLOGIES FOR ABSENCE**

An apology for absence for this meeting was received from Cllr J R McInnes.

**\* O&S 59 CONFIRMATION OF MINUTES**

The minutes of the Meeting of the Overview and Scrutiny Committee held on 2 October 2018 were confirmed and signed by the Chairman as a true and correct record.

**\* O&S 60 DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of this meeting. These were recorded as follows:

Cllr T G Pearce declared a personal interest in agenda item 6: 'Scrutiny Call-in: Minute HC 39 – Public Conveniences: Clarification for Parishes' (Minute \* O&S 62 below refers) by virtue of being the Acting Chairman of

Brentor Parish Council and remained in the meeting and took part in the debate and vote thereon.

**\* O&S 61 PUBLIC FORUM**

There were no issues raised during the Public Forum session.

**\* O&S 62 SCRUTINY CALL-IN: MINUTE 'HC 39 – PUBLIC CONVENIENCES: CLARIFICATION FOR PARISHES'**

The Chairman introduced this agenda item and highlighted that, in accordance with the Overview and Scrutiny Procedure Rules, three Members of the Committee had invoked a Call-in on Hub Committee Minute HC 39 'Public Conveniences: Clarification for Parishes'.

Upon the conclusion of the debate on the Call-in, the Chairman advised that there would be three options available to the Committee. These were:

1. that the Committee was content with the original Hub Committee resolution and the decision would therefore take immediate effect;
2. that the Committee refer the decision back to the next Hub Committee meeting (on 20 November 2018) for further consideration; and
3. that the Committee opt to refer the decision to the next full Council meeting (on 4 December 2018).

At this point, the Chairman invited the three signatories of the Call-in to explain their reasoning behind this decision. In so doing, the key focus of their concerns related to the belief that the process that had been undertaken to reach this Hub Committee decision had been deeply flawed and had been handled really poorly. In expanding upon their process related concerns, particular reference was made to:-

- (a) non-Hub Committee Members having effectively been bypassed throughout the decision-making process. For such a key issue, the Members felt that this decision should have been referenced up to the full Council for an ultimate decision;
- (b) the justification for the speed of the decision being to enable town and parish councils to set their annual precepts accordingly being a weak argument. Furthermore, this speed had been to the detriment of an open and transparent decision-making process;
- (c) clarification being sought over exactly when the decision was taken to bring the report forward from the Hub Committee meeting on 20 November 2018 to the meeting on 16 October 2018;
- (d) recommendation 2 (i.e. that the 75% contribution from town and parish councils be increased over three years to the point where full costs were covered by them). In citing Brentor Parish Council as an example, the

local Ward Member highlighted that consultation meetings had been carried out prior to the Hub Committee meeting. However, neither he nor the local Parish Council had been made aware of this proposal during these meetings or before the report had been published with the Hub Committee meeting agenda. The Member advised that this had created a great deal of ill-feeling and resentment amongst the Parish Council;

- (e) the lack of reference in the Hub Committee agenda report to the impact of Discretionary Business Rate Relief; and
- (f) the lack of any mention of these proposals at the all Member Budget Workshop that had been held on 8 October 2018.

The Chairman then proceeded to invite the lead Hub Committee Member for Commercial Services to respond to the concerns raised. During which, the lead Member informed that:-

- the speed of the decision had been largely determined by the town and parish councils themselves seeking clarification at the earliest opportunity;
- there was absolutely no intention to bypass the wider membership;
- there had been a number of Member meetings during which the principle of this matter had been discussed, including an opportunity at the full Council meeting on 25 September 2018 during consideration of the Medium Term Financial Strategy (Minute CM 33 refers);
- the feedback from the town and parish councils had been generally understanding. In reply to a question, the lead Member did inform that, since the Hub Committee had taken its decision, one parish council had formally declined the offer;
- the proposals had been generated as a means to achieve the necessary £50,000 savings that had been approved by the Council at its Budget meeting on 20 February 2018 (Minute CM 57 refers).

The Section 151 Officer was also invited to respond and confirmed that Public Conveniences had been part of the documentation for the Budget Workshop that had been sent to all Members.

During the ensuing debate, the following points were raised:-

- (a) For clarity, the Committee noted that these proposals only related to rural parishes;
- (b) In agreement with the experiences of Brentor Parish Council, another Member highlighted the consultation meetings held with representatives of Buckland Monachorum Parish Council. The Member stated that it was his understanding that further dialogue would take place between the two councils before any decision was taken. However, no further

dialogue had been undertaken prior to the Hub Committee making its decision;

- (c) Notwithstanding the decision of the Council to obtain £50,000 of savings, a Member retained the view that any public conveniences closures would be to the detriment of the local economy and the tourism industry;
- (d) A Member expressed the view that there were instances of locally managed public conveniences that were run both effectively and efficiently;
- (e) To improve communication links between the Hub Committee and the wider membership, a Member again made the request for lead Members to provide (and circulate) regular brief written update reports from their portfolio areas to all Members;
- (f) A number of Members expressed sympathy with the process concerns that had been highlighted. That being said, these Members also stressed the extent of the ongoing budgetary pressures being faced by the Council and, whilst the Council had already set a target of £50,000 savings to be made in the service, unfortunately, there had been no alternative suggestions made to deliver these savings. As a consequence, these Members each expressed their support for the original Hub Committee decision and the following motion was then **PROPOSED** and **SECONDED**:-

*‘That the Committee expresses its concern and dissatisfaction over the process adhered to yet does endorse the decision arising from Hub Committee Minute HC 39: ‘Public Conveniences: Clarification for Parishes’.*

Such were the extent of his governance concerns, that a Member **PROPOSED** an alternative recommendation as follows:-

*‘That the 75% contribution be increased annually in line with inflation.’*

However, this alternative recommendation was not seconded.

Prior to the vote on the motion, some Members requested that a recorded vote be undertaken in accordance with Council Procedure Rule 19. However, when expressions of interest were sought, there was an insufficient number of Members who supported a recorded vote.

It was then:

**RESOLVED**

That the Committee expresses its concern and dissatisfaction over the process adhered to yet does endorse the decision arising from Hub Committee Minute HC 39: 'Public Conveniences: Clarification for Parishes'.

**\* O&S 63 HUB COMMITTEE FORWARD PLAN**

Members considered the latest version of the Hub Committee Forward Plan. In so doing, the following points were made:-

- (a) Officers advised that two additional items had been added to the Plan for consideration at the next Hub Committee meeting on 20 November 2018. These items were: 'Heart of the South West Joint Committee Update' and 'Supporting the Formation of South West Mutual' and it was confirmed that both would also be presented as standalone agenda items to the Council meeting on 4 December 2018;
- (b) The Panel noted that the agenda item titled: 'Council Tax Reduction New Scheme' had been deferred to the Hub Committee meeting on 4 December 2018;
- (c) To avoid any future confusion, a Member asked that the column titled 'Service' be re-named 'Portfolio Area' on the published Plan.

**O&S 64 CUSTOMER SATISFACTION SURVEY**

The Committee considered a report that presented the outcome of the recent Customer Satisfaction Survey that had been undertaken by the Council and recommended next steps to improve the Council's performance.

In her introduction, the lead Hub Committee Member advised that, once approved, it was her hope that the Customer Satisfaction Action Plan would become a standing agenda item at future meetings of the Hub Committee. In addition, the lead Member also informed that the ambition would be to over achieve on the proposed targets and she highlighted the opportunity for the Committee to undertake detailed reviews into individual and collective elements of the Action Plan.

In the ensuing discussion, particular reference was made to:-

- (a) the cost of the recent staff away days that focused on Customer Satisfaction. Having been informed that the recent all staff away days had cost a combined £7,500 for both councils, some Members felt that, given the current financial pressures being faced by the Council, this was excessive. However, other Members were of the view that the spend was justifiable if it resulted in improvements in the Council's Customer Service performance. A Member did question the need to facilitate a staff training event off-site and requested that, in the future, consideration be given to using Kilworthy Park for such sessions;

- (b) the draft Customer Service Standards. To ensure that these Standards were reflected in the Council's Performance Indicators, it was agreed that this would be discussed at the meeting of the Task and Finish Group that was to be held on 7 November 2018;
- (c) reviewing the Standards. In light of some concerns over the proposed Standards, the Committee recognised that they would evolve and be subject to regular review;
- (d) the impressions of Members. Based upon their current caseload, it was the impression of some Members that the Survey was accurate and the Council had significant strides to make in terms of its Customer Satisfaction levels. As a consequence, these Members were of the view that this impression was not sufficiently borne out in the published agenda report. In response to a specific question, officers gave a categorical assurance that the results of the survey were consistent across both the Council and South Hams District Council;

In conclusion, the majority of Members welcomed the direction of travel outlined in the presented agenda report and recognised the corporate commitment and emphasis that was being given to improving Customer Satisfaction.

It was then:

### **RECOMMENDED**

That the Hub Committee be **RECOMMENDED** that:-

1. the results from the Council's recent Customer Satisfaction Survey be noted and the proposed actions (as detailed in Section 5 of the presented agenda report) be endorsed;
2. the proposed Customer Service Standards (as detailed in Appendix D of the presented agenda report) be supported; and
3. the Forward Plan be amended to include 'Progress Against the Customer Service Action Plan' as a standing agenda item for consideration at every meeting of the Hub Committee.

\* O&S 65

### **LOCALITIES TEAM UPDATE**

The Committee considered a progress report that outlined how the Localities Service had been operating in the previous twelve months. The report also set out how the Service had evolved from its initial inception in 2015.

In discussion, the following points were raised:-

- (a) By way of an update, officers confirmed that the new mobile technology had been successfully trialled and, whilst there still remained a few black spots in the Borough, overall coverage was much improved;
- (b) A number of Members expressed their support for the Service and some questioned whether it was adequately resourced to be able to meet increased demands. In reply, the Localities Team Leader reported that the Service had dealt with 400% more issues in comparison to the previous year and, whilst the Team was very busy, he was confident that the Service was appropriately resourced. Despite these reassurances, some Members still wished to express their concerns over the work demands on the Team;
- (c) With regard to the support provided by the Development Management service, it was confirmed that the Service had affixed 1,550 planning notices and continued to take on-site photographs;
- (d) The Committee was informed that, as a reactive service, the Team was always open to Member suggestions over its work priorities. In response to this point, some Members were of the view that there was a need for consideration to be given to an increased visibility and presence in those areas that were seeing repeated instances of dog fouling.

It was then:

### **RESOLVED**

That, pending ongoing monitoring, the progress of the Locality Team be noted, with a further update report being presented to the Committee in twelve months.

#### **\* O&S 66 OMBUDSMAN ANNUAL REVIEW LETTER 2018**

The Committee was presented with a report that sought to review the Annual Letter 2018 from the Ombudsman. In addition, the report asked for consideration to be given to any corporate lessons that have been learnt (or could be learnt) from the outcome of the complaints and whether further service improvements could be made.

In discussion, a number of Members welcomed the performance improvements in complaint handling that were felt to reflect the increased corporate emphasis that had been given to complaint management. In addition, Members were also assured that the Council was reviewing (and taking learning points) from each complaint received.

It was then:

### **RESOLVED**

That the Ombudsman Annual Review Letter for 2018, as presented at Appendix A, be reviewed, corporate lessons learnt and whether service improvements are required had been considered.

**O&S 67      GENERAL DATA PROTECTION REGULATION (GDPR) AND DATA PROTECTION POLICY UPDATE**

Members considered a report that sought to approve an amended Data Protection Policy.

During discussion, the following points were raised:-

- (a) The Committee acknowledged the excellent work that was being undertaken by the Council's Information Governance Group;
- (b) In respect of occasions when forwarding emails that had been received from a resident, officers advised that it would be good practice for Members to obtain consent from their constituents before they share their details with Council officers and that Members should not share information about constituents (including their personal details) with fellow Members without obtaining consent;
- (c) A Member expressed his concern that the Committee should not be tasked with reviewing Policy and that this had been reflected in the most recently adopted revisions to the Overview and Scrutiny Committee Terms of Reference. In response, this point was acknowledged, but it was also confirmed that this agenda item had been scheduled for consideration (and was ultimately approved) by the Committee when it had adopted its most recent Work Programme.

It was then:

**RESOLVED**

That the Committee **RECOMMEND** to Council to:

1. approve the amended Data Protection Policy (as detailed in Appendix A of the presented agenda report);
2. delegate approval of the related Codes of Practice and Protocol documents (as summarised in Section 3 of the presented agenda report) to the Council's Data Protection Officer; and
3. note and support the approach and progress made towards GDPR readiness by the Information Governance Group.

**O&S 68      REGULATION OF INVESTIGATORY POWERS ACT (RIPA) 2000 POLICY AND UPDATE**

A report was considered that sought to:

- review and approve the Council's RIPA Policy;
- provided an update on the use of RIPA; and
- report on training for Officers.

In discussion, the previously raised points relating to the appropriateness of this Policy report being presented to the Committee for consideration were noted. In taking this view a step further, a Member asked that, for next year, this matter be presented to the Hub Committee for its consideration as opposed to this Committee.

It was then:

### **RESOLVED**

That the Committee **RECOMMEND** to Council that:

1. the IPCO (Investigatory Powers Commissioner's Office) report and recommendations (as attached at Appendix A) be noted;
2. the updated policy (as attached at Appendix B) be approved;
3. it be noted that there have been no RIPA Authorisations since the annual update to the Committee in September 2017; and
4. the amendments to the RIPA Act 2000 (effective from 1 November 2018) be noted.

## **O&S 69**

### **QUARTER 2 PERFORMANCE MEASURES**

The Lead Member for Support Services presented a report that set out the performance levels against target as communicated in the Balanced Scorecard and the performance figures supplied in the presented background and the exception report.

In conjunction with the presented agenda report, the Specialist – Performance and Intelligence conducted a presentation that outlined to the Committee the proposed revisions to the performance dashboards. In so doing, the officer asked that, in the event of any Members experiencing access difficulties, he be made aware of these problems outside of this meeting.

During discussion, reference was made to:-

- (a) the general positivity of the measures. Members highlighted the customer satisfaction survey results (which had been considered earlier in this meeting) and felt that these suggested a disconnect between the perception of customers and the performance information being

reported. In accepting the point, it was noted that this would be a key consideration for the Corporate Strategy Performance Measures Task and Finish Group review that was about to commence;

- (b) access to performance information. Some Members stated that, in comparison to when they were first elected in May 2015, it was now much easier for Members to obtain and access performance information. As a result, these Members wished to put on record their thanks to the lead officer and lead Hub Committee Member for their work to reach this point.

## **RESOLVED**

That the performance levels against target communicated in the Balanced Scorecard and the performance figures supplied in the background and the exception report be noted.

## **O&S 70 FINANCIAL STABILITY WORKING GROUP UPDATE: STANDING AGENDA ITEM**

At the invitation of the Chairman, the Section 151 Officer provided the following statement on behalf of the Chairman of the Working Group:

*‘Two very informative and useful budget workshops have been organised recently. These have been both well received and productive.*

*The Group met on 16 October 2018 to discuss the implications and to pull together projections and forecasts following those meetings.*

*The current assumption of the Working Group is that, assuming:*

- 1. All of the potential income and savings identified to date and, added to during the workshop, can be delivered; and*
- 2. No major unforeseen cost pressures develop.*

*The Council should be in a position to contribute to Reserves (£50,000) in the current financial year and should be able to produce at least a balanced Budget in 2019/20.*

*The position following that is less clear, but is manageable with good financial control and continued emphasis on adopting a commercial approach and generating income.*

*One key aspect of the future position is the Government’s view about the negative Revenue Support Grant. This element constitutes a major cost to the Council in the period from 2020 onwards and its removal would go a long way towards balancing the books in 2020/21. The Council, and all*

*Members, should maintain pressure on the Government and our MPs in this respect.*

*The next piece of the jigsaw that we await is the settlement figures due in December 2018 and the position will become much clearer once they are known. In the meantime, the FSG will concentrate on ensuring that savings and income identified to date are monitored and secured.'*

**\* O&S 71      JOINT LOCAL PLAN: STANDING AGENDA ITEM**

By way of an update, the lead Hub Committee Member advised that:

- the Council was in the midst of the consultation exercise on the modifications to the Joint Local Plan (JLP);
- 16 Members had attended the recent Workshop held on 31 October 2018. In addition, the Committee was reminded that a further JLP Workshop had been scheduled to take place on 13 November 2018 and all Members were encouraged to attend this session;
- the drafting of a Development Planning Document on Settlement Boundaries was making good progress and Members were asked to keep a close watching brief over how this evolved.

**\* O&S 72      TASK AND FINISH GROUP UPDATES**

**(a) Northern Link Area Outreach Services**

By way of an update, it was noted that the first Group meeting would be taking place on the rising of this Committee meeting.

**(b) Corporate Strategy Performance Measures**

It was noted that the Group would be holding its inaugural meeting on 7 November 2018.

**\* O&S 73      ANNUAL WORK PROGRAMME 2018/19**

The Chairman introduced the latest version of the Work Programme for the next 12 months and noted its content without any further debate.

**\* O&S 74      MEMBER LEARNING AND DEVELOPMENT OPPORTUNITIES ARISING FROM THIS MEETING**

In discussion, the Committee requested that:

- there was a number of lessons that should be learned from the earlier Call-in (\* O&S 62 above refers);
- a Member Drop-in Session should be set up for the General Data Protection Regulations;
- as good practice, officers who were intending to undertake presentations to Member meetings should test the equipment before the meeting started.

(The meeting terminated at 4.55 pm)

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Chairman

At a Meeting of the **AUDIT COMMITTEE** held in the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **9th** day of **October 2018** at **2.00pm**

**Present:** Cllr M Davies (Chairman)

Cllr K Ball  
Cllr B Lamb

**Officers in attendance:**

Section 151 Officer  
Internal Auditor Manager  
Group Manager Business Development  
COP Lead Assets  
Specialist – Democratic Services

Investment Manager – Peninsula Pensions  
Engagement Lead – Grant Thornton  
Audit Manager – Grant Thornton

**Also in attendance:** Cllr C Edmonds (lead Hub Committee Member)

\* **AC 13**      **APOLOGIES FOR ABSENCE**  
Apologies for absence were received from Cllrs W Cann OBE, J Hockridge, B Stephens and L Watts.

\* **AC 14**      **CONFIRMATION OF MINUTES**  
The Minutes of the Committee Meeting held on 24 July 2018 were confirmed and signed by the Chairman as a correct record.

\* **AC 15**      **PRESENTATION ON THE PENSION FUND ADMINISTERED BY DEVON COUNTY COUNCIL**  
The Committee received a presentation from the Investment Manager Peninsula Pensions setting out the latest position of the pension fund.

Following the detailed presentation, the Investment Manager responded to questions and the s151 Officer outlined the background to the current position.

\* **AC 16**      **KPMG ANNUAL AUDIT LETTER 2017/18**  
Members were presented with the Annual Audit Letter 2017/18. The s151 Officer explained that the letter was a shortened version of the final report, and that the letter confirmed that there were no concerns over risks and the Accounts had been completed before the end of July in line with government requirements.

It was then **RESOLVED** that:

The Annual Audit letter 2017/18 be noted.

**\* AC 17 KPMG AUDIT CLOSURE LETTER**

The s151 Officer confirmed that the Closure Letter was a procedural matter.

It was then **RESOLVED** that:

The Audit Closure letter be noted.

**\* AC 18 GRANT THORNTON – AUDIT PROGRESS REPORT AND SECTOR UPDATE**

The Engagement Lead presented the report, and took Members through each section. She advised Members of her intention to present a report to each Committee meeting. In respect of the Audit Deliverables section, the Fee Letter had been issued in April and would be presented to the next meeting of the Audit Committee. The second part of the report would cover Emerging Issues.

It was then **RESOLVED** that:

The Audit Progress Report and Sector Update be noted.

**\* AC 19 INTERNAL AUDIT CHARTER AND STRATEGY 2018/19**

The Internal Audit Manager presented a report, the purpose of which was to allow the Audit Committee to review and comment upon the Internal Audit Charter and Strategy for 2018/19.

Internal audit management was provided by the Devon Audit Partnership via a contracted arrangement. The standards for proper practice for internal audit were contained in the Public Sector Internal Audit Standards. Both the Charter and Strategy complied with the mandatory requirements of the Public Sector Internal Audit Standards.

There being no further comment, it was then **RESOLVED** that the Internal Audit Charter and Strategy 2018/19 be approved.

**\* AC 20 UPDATE ON PROGRESS ON THE 2018/19 INTERNAL AUDIT PLAN REVIEW OF FINANCE PROCEDURE RULES**

The Internal Audit Manager presented a report that set out to inform Members of the principle activities and findings of the Council's Internal Audit team for 2018/19 to 14 September 2018 by:

- Showing the progress made by Internal Audit against the 2018/19 annual Internal Audit Plan, as approved by the Audit Committee in March 2018; and
- Highlighting any revisions to the 2018/19 Internal Audit Plan.

It was then **RESOLVED** that the progress made against the 2018/19 Internal Audit Plan, and any key issues arising, be approved.

**\* AC 21          SIX MONTHLY UPDATE – STRATEGIC RISK ASSESSMENT**

The Group Manager Business Development presented a report that set out the required six monthly update to Members, including the current corporate strategic risk assessment and a summary of the management and mitigating actions to address the identified risks. Appendix 3 to the report contained a revised Risk and Opportunity Management Strategy 2013. Members were being asked to approve this document.

The Group Manager Business Development responded to questions.

It was then **RESOLVED** that Council be **RECOMMENDED** that:

1. The strategic risks (Appendix 1) had been reviewed and that no further action should be considered;
2. The Risk & Opportunity Management Strategy (Appendix 3) be adopted; and
3. The Joint Management Policy 2012 and the Joint Risk Management Strategy 2013 be rescinded.

**\* AC 22          COMMERCIAL INVESTMENT PROPERTY – UPDATE AND MONITORING REPORT**

The COP Lead Assets presented a report that set out the performance and risks associated with the commercial property portfolio, arising from the Commercial Property Acquisition Strategy. The Strategy had envisaged an upper borrowing limit of £75m, but in light of external advice sought by the s151 officer, the Strategy was updated with a capped borrowing limit of £50m made up of a blend of in area development and out of area investments.

The COP Lead Assets updated Members with detail on the purchases made so far, and confirmed that they were a mix of tenants and sectors.

It was then **RESOLVED** that the performance and risks of the commercial property portfolio to date be noted.

**\* AC 23          SUNDRY DEBT**

The Lead Member for Performance and Resources presented a report that provided Members with a further update of the position in respect of progress in monitoring and administering the recovery of Sundry Debts.

During discussion, Members agreed that the Lead Member and the debt recovery team should be congratulated on progress.

It was then **RESOLVED** that the progress made in monitoring and administering the recovery of Sundry Debts be noted.

**\* AC 24      AUDIT COMMITTEE WORK PROGRAMME 2018/19**

The Chairman confirmed that the External Audit Fee Letter would be added to the agenda for the January 2019 meeting, and noted that the agenda for the March meeting was already full. The External Audit Plan would be presented to the January 2019 meeting rather than March 2019.

(The Meeting terminated at 3.00 pm)

Dated this

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Chairman

At a Meeting of the **DEVELOPMENT MANAGEMENT & LICENSING COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **16<sup>th</sup>** day of **OCTOBER 2018** at **10.00am**

**Present:** Cllr P R Sanders – Chairman  
Cllr A Roberts – Vice Chairman

Cllr R E Baldwin	Cllr W G Cann OBE
Cllr L J G Hockridge	Cllr B Lamb
Cllr J McInnes	Cllr C Mott
Cllr T G Pearce	Cllr J Yelland

COP Lead Development Management (PW)  
Planning Specialists (CS, MJ, JH)  
DCC Highways Officer (PT)  
Solicitor (BF)  
Specialist Democratic Services (KT)

**\*DM&L 17 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllr D E Moyse for whom Cllr J McInnes substituted and Cllr G Parker for whom Cllr B Lamb substituted.

**\*DM&L 18 DECLARATION OF INTEREST**

Members were invited to declare any interests in the items of business to be considered and the following were made:

Cllr J Yelland declared a Personal Interest in application **1635/18/OPA**: Outline application (with all matters reserved) for erection of 2no. dwellings – Biddicombe, Park Road, Hatherleigh, by virtue of having received correspondence from one of the objectors and she remained in the meeting and took part in the debate and vote thereon;

Cllr T G Pearce declared a personal interest in all applications by virtue of being a Member of the Devon Building Control Partnership. He remained in the meeting and took part in the debate and vote on the item.

**\*DM&L 19 URGENT BUSINESS**

The Chairman advised that application **2701/18/FUL**: Development of new farm shop and ancillary café with supporting secondary areas consisting of storage, WCs, offices and kitchen space (resubmission of 1255/18/FUL) – Land North of A30 Junction, Whiddon Down Drewsteignton, was deferred from the agenda and would be presented to a later Committee meeting.

**\*DM&L 20 CONFIRMATION OF MINUTES**

The Minutes of the Development Management and Licensing Committee Meeting held on 18 September 2018 were confirmed and signed by the Chairman as a correct record.

**\*DM&L 21 PLANNING, LISTED BUILDING, TREE PRESERVATION ORDER AND ENFORCEMENT REPORTS**

The Committee considered the applications prepared by the Development Management Specialists and considered also the comments of Town and Parish Councils together with other representations received, which were listed within the presented agenda reports and summarised below, and **RESOLVED**:

**(a) Application No: 4168/17/FUL Ward: Drewsteignton**

**Site Address: Skywood, Spreyton, Crediton EX17 5AF**

**Retention of existing building, retrospective application for hedge removal and replacement to north of barn to be retained**

Case Officer Update: None

Speakers included: Objector - Dr Sarah Barker: local Ward Member – Cllr Ridgers

**RECOMMENDATION:** Conditional Approval

During discussion on this application, Members raised a number of questions regarding the need for an agricultural building of this size on this site. The Council had appointed an agricultural consultant to assess the application, who was in attendance at the meeting. He confirmed that a desktop exercise had been undertaken and that an agricultural building of this size was commensurate with the size of the holding. However, following the site inspection undertaken by Members, a number felt that the size of the building was not appropriate, did not feel that the proposals set out within the application could be undertaken on this site in view of the different landscape areas within the site, and noted the absence of any agricultural and forestry use on site. Members also raised concerns over the proximity of the barn to the neighbour's amenity area and were of the view that the forestry use within the barn would cause excessive noise nuisance and be detrimental to the neighbour's amenity.

**COMMITTEE DECISION:** Refusal

Reasons:

Agricultural and forestry need not demonstrated, detrimental impact on neighbour's amenity

At the conclusion of discussion on this proposal, the COP Lead DM advised that as the application was retrospective and had now been refused, it would be referred to the Enforcement Team for action.

**(b) Application No: 1635/18/FUL      Ward: Hatherleigh**

**Site Address: Biddicombe, Park Road, Hatherleigh**

**Outline application (with all matters reserved) for erection of 2no. dwellings**

Case Officer Update:      The Town Council had requested a condition that an archaeologist 'watching brief' be in place throughout the moving of the ancient hedgerow however officers did not feel this was necessary; one late letter had been received and the points raised would be covered as part of the presentation

Speakers included: Objector - Dr Sam Walters: Supporter Mr Ian Little: local Ward Member – Cllr McInnes

**RECOMMENDATION:** Delegate to CoP Lead Development Management, in conjunction with Chairman, to conditionally grant planning permission, subject to a Section 106 legal obligation

During discussion, and notwithstanding the presentation by the Planning Officer, the participating Ward Member suggested a site inspection take place so that Members could assess the proposal. A site inspection was **PROPOSED, SECONDED** and on being put to the vote declared **LOST**.

**COMMITTEE DECISION:** Delegate to CoP Lead Development Management, in conjunction with Chairman, to conditionally grant planning permission, subject to a Section 106 legal obligation

Conditions:

1. Time (reserved matters)
2. Submission of reserved matters
3. Accords with plans
4. Materials samples prior to installation
5. No dwelling to be occupied until highway, footway and associated infrastructure has been laid out
6. Pre-commencement – detailed design of surface and foul water management system to be agreed
7. Removal of PD rights
8. Unsuspected contamination
9. Landscape and Ecology Management Plan to be agreed
10. Accord with recommendations of ecological report
11. Construction Environment Management Plan prior to commencement

**(c) Application No: 1326/17/FUL      Ward: Okehampton North**

**Site Address: Lower Eastwood Farm, Okehampton**

**Single eco-dwelling to replace 2No. residential dwelling houses given prior approval under LPA Ref: 00954/2015**

Case Officer Update: None

Speakers included: Supporter – Mr Martin Lee: Parish Council representative – Cllr David Sykes: local Ward Member – Cllr Leech

**RECOMMENDATION:** Conditional Approval

During discussion, and notwithstanding the presentation by the Planning Officer, one Member suggested a site inspection take place so that Members could assess the proposal. A site inspection was **PROPOSED, SECONDED** and on being put to the vote declared **LOST**.

**COMMITTEE DECISION:** Conditional Approval

Conditions:

1. Time
2. Accord with Plans
3. Accord with materials schedule
4. Accord with landscaping plan
5. Removal of existing buildings prior to occupation
6. Drainage details prior to commencement
7. Removal of Permitted Development Rights
8. No external lighting unless otherwise agreed
9. Unsuspected contamination

**(d) Application No: 1923/18/FUL Ward: Buckland Monachorum**

**Site Address: Land south of Whistley Down, Crapstone, Yelverton**

**Provision of an American Barn for equestrian use**

Case Officer Update: None

Speakers included: Supporter – Mrs Amanda Burden: local Ward Member – Cllr Sanders

**RECOMMENDATION:** Conditional Approval

During discussion, Members queried the wording of Condition 3 and whether 'DIY Livery' would be permitted. Following some debate, Members agreed that the wording should be amended for clarity, to ensure use was restricted only to the landowner or a tenant. Following a request, it was also agreed that a condition be added that the building be removed if not in equestrian use for a continuous period of 12 months.

**COMMITTEE DECISION:** Conditional Approval

Conditions:

1. Time
2. Accord with Plans
3. Use for private equestrian
4. Landscape plan prior to first

5. No external lighting unless otherwise agreed
6. Removal of building if not in equestrian use for a continuous period of 12 months

**(e) Application No: 2336/18/FUL    Ward: Buckland Monachorum**

**Site Address: Land adjacent to Tyller Tythy, Crapstone, Yelverton**

**Erection of two storey dwelling**

Case Officer Update: None

Speakers included: Objector – Dr Rachel Perry: Supporter – Mr Ken Farnham: local Ward Member – Cllr Sanders

**RECOMMENDATION:**    Conditional Approval

**COMMITTEE DECISION:** Conditional Approval

Conditions:

1. Time limit
2. Accord with Plans
3. Samples of materials
4. Remove PD rights
5. Landscaping condition to retain existing landscaping and reinforce, but have consideration of the neighbours garden
6. Unsuspected contamination

**\*DM&L 22    PLANNING APPEALS UPDATE**

The Committee received and noted the updated list of Planning Appeals including Enforcement Appeals.

(The Meeting terminated at 1.30 pm)

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**Chairman**

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At a Meeting of the **DEVELOPMENT MANAGEMENT & LICENSING COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **13<sup>th</sup>** day of **NOVEMBER 2018** at **10.00am**

**Present:** Cllr P R Sanders – Chairman

Cllr R E Baldwin	Cllr W G Cann OBE
Cllr J Evans	Cllr B Lamb
Cllr C Mott	Cllr D E Moyse
Cllr T G Pearce	Cllr J Yelland

COP Lead Development Management (PW)  
Specialist Licensing (NS)  
Solicitor (SN)  
Specialist Democratic Services (KT)

**\*DM&L 23 APOLOGIES FOR ABSENCE**

Apologies for absence were received from Cllr A Roberts for whom Cllr B Lamb substituted and Cllr G Parker for whom Cllr J Evans substituted.

**\*DM&L 24 DECLARATION OF INTEREST**

Members were invited to declare any interests in the items of business to be considered but none were made.

**\*DM&L 25 CONFIRMATION OF MINUTES**

The Minutes of the Development Management and Licensing Committee Meeting held on 16 October 2018, the Licensing Sub Committee Minutes of 27 June 2018, 18 July 2018 and 18 July 2018 (Premises Licence) were confirmed and signed by the Chairman as a correct record.

**DM&L 26 THREE YEARLY REVIEW OF GAMBLING STATEMENT OF LICENSING PRINCIPLES**

Members were presented with a report that sought recommendation to Council of approval of the Statement of Principles, following a public consultation period.

The Licensing Specialist introduced the report and outlined how the amendments to the previous Statement of Licensing principles were set out in Appendix C, and responses to the consultation at Appendix D of the presented agenda report.

In response to a question from the Chairman, the Licensing Specialist confirmed that the Council had received a letter from the Gambling Commission, querying why the authority had not undertaken inspections of gambling premises in the Borough over the previous year. The Commission had concerns that vulnerable people could be at risk of gambling addiction.

A response would be sent advising that the priority for licensing monitoring in the Borough was alcohol premises and taxi drivers, and that there were only three gambling premises in West Devon. However, the Council did take issues around gambling seriously, and inspections would be carried out in due course.

It was then:

**RESOLVED** that Council be **RECOMMENDED** that the draft Statement of Principles, as amended, is adopted at the meeting on 4 December 2018 for the period 31 January 2019 to 30 January 2022.

#### **\*DM&L 27 PLANNING PERFORMANCE INDICATORS**

Members were presented with the latest Performance Indicator data. The COP Lead DM introduced the report and responded to queries. Members raised queries regarding enforcement statistics and the COP Lead DM suggested that further drop in sessions be arranged with appropriate officers. The COP Lead DM also updated Members on the latest position in terms of staffing levels within the planning service.

It was then:

**RESOLVED** that the Performance Indicators be noted.

#### **DM&L 28 PLANNING SCHEME OF DELEGATION**

Members were presented with a report that sought approval of an amendment to the Scheme of Delegation with respect to applications for discharge of conditions on planning approvals.

It was then:

**RESOLVED** that Council be **RECOMMENDED** to approve the amended Planning Scheme of Delegation as set out in Appendix A of the presented report.

(The Meeting terminated at 10.50am)

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Chairman

At a Meeting of the **HUB COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **16<sup>th</sup>** day of **OCTOBER, 2018** at **3.00pm**

**Present:** Cllr P R Sanders – Chairman  
Cllr L Samuel – Vice Chairman

Cllr C Edmonds	Cllr N Jory
Cllr A F Leech	Cllr C Mott
Cllr R Oxborough	Cllr A Roberts
Cllr R F D Sampson	

**In attendance:** Head of Paid Service  
Group Manager Customer First and Support Services  
Section 151 Officer  
Group Manager Commercial Services  
COP Lead Assets  
Specialist Democratic Services

**Other Members in attendance:**  
*Cllrs Lamb, Musgrave, Pearce and Yelland*

**\*HC 33      DECLARATIONS OF INTEREST**

Members were invited to declare any interests in the items of business to be discussed and the following were made:

Cllr P R Sanders declared a personal interest in Agenda Item 8: Public Conveniences – Clarification for Parishes (Minute \*HC 39 below refers), by virtue of being a Member of Dartmoor National Park Authority. He remained in the meeting and took part in the debate and vote thereon.

**HC 34      URGENT BUSINESS**

The Chairman had agreed to a late agenda item, being a presentation from a representative of the South West Mutual Bank. The item was deemed urgent as the Chairman sought views from the wider membership to report on to the forthcoming meeting of the Devon Districts Forum which would take place on Friday 26 October 2018 and at which the matter of the South West Mutual Bank was an agenda item.

Mr Tony Greenham of the South West Mutual Bank gave his presentation to Members and responded to a number of questions of clarity. Members were generally supportive of the Bank, and it was then **PROPOSED** and **SECONDED** and on being put to the vote declared **CARRIED** that:

Subject to a report to full Council containing details, to be presented to the meeting on 4 December 2018, the Hub Committee **RECOMMENDS** that this Council support the South West Mutual Bank.

**\*HC 35      MINUTES**

The Minutes of the Hub Committee meeting held on 11 September 2018 were confirmed and signed by the Chairman as a correct record.

**\*HC 36**

**FINANCIAL STABILITY REVIEW GROUP UPDATE**

In accordance with the Council decision at its meeting on 27 March 2018 (Minute CM 73 refers) for updates to be included as a standing agenda item, the Lead Member Assets and Environment and s151 Officer jointly presented an update on the work of the Financial Stability Review Group. The Lead Member for Assets and Environment had circulated an update to Members following the recent Member Budget Workshops that had taken place.

**\* HC 37**

**NEXT STEPS – ENABLING HOMES TO MEET THE NEEDS FOR ALL**

Members were presented with a report that provided an up to date position following Members request for a detailed business case for the formation of a Housing Wholly Owned Company (WOC) (Minute HC 6 refers).

The Lead Member for Assets and Environment introduced the report. He and the COP Lead Assets responded to questions of clarity.

It was then **RESOLVED** that the Hub Committee agree the following principles:

1. That there is no requirement to form a West Devon Borough Council Housing Wholly Owned Company at this time;
2. That Council borrowing in order to acquire or develop affordable homes is acceptable in principle;
3. That Affordable homes may be acquired or developed via the community housing strategy OR through existing work with Registered Providers or Developers. These properties will be allocated in accordance with local lettings plans and may be managed via the Council's Direct Lets service; and
4. To guide the Council's affordable housing development/acquisition plans as detailed in section 5 of the presented report.

**\*HC 38**

**BERE PENINSULA NEIGHBOURHOOD PLAN**

Members were presented with a report that sought approval to 'make' the Bere Peninsula Neighbourhood Development Plan.

The Lead Member for Customer First introduced the report, and the Lead Member for Strategic Planning and Housing responded to questions. One of the local Ward Members wished to record thanks to officers, in particular the Specialist (Elections) for her hard work and professionalism during the Referendum. Members noted the hard work required to achieve an adopted Neighbourhood Plan, and the Chairman wished to record thanks to the parish council. Finally, a number of Members wished to pay tribute to the late Cllr Mike Benson, for all his hard work in getting the Neighbourhood Plan started, and asked that his family be sent a formal letter of thanks.

It was then **RESOLVED** that:

The Bere Peninsula Neighbourhood Development Plan be made (adopted).

**PUBLIC CONVENIENCES – CLARIFICATION FOR PARISHES**

Members were presented with a report that requested consideration of the options for implementing the decision of the Hub Committee in July 2018 (Minute \*HC 19 refers) to approve and deliver efficiencies of £50,000 (or more) in 2019/20 in operating the current public toilet service.

The Lead Member for Commercial Services presented the report. During discussion, Members expressed concerns over some parishes being unable to take on the financial liability as set out in the presented report, and smaller parishes within the Dartmoor National Park area being disadvantaged as the public conveniences were used by visitors and tourists rather than for the benefit of residents. In response, the Lead Member for Commercial Services advised that discussions would take place with affected parish and town councils and a report brought back to the Hub Committee at a later date.

In response to concerns from the Lead Member for Health and Wellbeing about the health and wellbeing implications of closure of public conveniences, assurances were given that a full Comprehensive Impact Assessment would be undertaken on any proposed public convenience closures where that closure affected the overall provision in an area and the appropriate Lead Member would be kept informed.

In view of the concerns over affordability for parishes, an amendment to the presented recommendations was put forward as follows:

1. ii. Make a contribution towards the cost of running public toilets equivalent to **50%** of all direct costs
2. that the **50%** contribution be increased . . . . .

The amendment was **PROPOSED, SECONDED** and on being put to the vote declared **LOST**.

It was then **RESOLVED** that the Hub Committee:

1. in respect of the rural public toilets (listed in Appendix A), resolve that Parish and Town Councils are requested to either:
  - i. Assume responsibility for the public toilets in their area including a transfer of the freehold or leasehold property; or
  - ii. Make a contribution towards the cost of running public toilets equivalent to 75% of all direct costs (which includes staff and management costs).
2. that the 75% contribution be increased over the following three years based upon actual spend as per the payment profile shown in Appendix A, to reach a point where full costs are covered by the Parish and Town Councils.
3. that where a Parish or Town Council agrees neither to accept a transfer of the facility nor make the requested contribution (as set out in Recommendation 1 (i) and (ii)) it will be recommended to Council that the facility will be closed before the end of the financial year 2018/19.

4. that where any facility will benefit from pay on entry equipment in order to reduce overall costs, the council will work with the relevant Town or Parish Council on a business case and implementation programme to achieve best value.

(The meeting terminated at 4:35pm)

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Chairman

**(NOTE: THESE DECISIONS, WILL BECOME EFFECTIVE FROM WEDNESDAY 24 OCTOBER 2018 UNLESS CALLED IN, IN ACCORDANCE WITH SCRUTINY PROCEDURE RULE 18).**

At a Meeting of the **HUB COMMITTEE** held at the Council Chamber, Council Offices, Kilworthy Park, Drake Road, **TAVISTOCK** on **TUESDAY** the **20<sup>th</sup>** day of **NOVEMBER, 2018** at **2.00pm**

**Present:** Cllr P R Sanders – Chairman  
Cllr L Samuel – Vice Chairman

Cllr C Edmonds	Cllr N Jory
Cllr A F Leech	Cllr C Mott
Cllr R Oxborough	Cllr A Roberts
Cllr R F D Sampson	

**In attendance:** Head of Paid Service  
Group Manager Customer First and Support Services  
Section 151 Officer  
Group Manager Commercial Services  
Group Manager Business Development  
COP Lead Environmental Health  
COP Lead Assets  
Specialist Place Making  
Commissioning Manager  
Specialist Democratic Services

**Other Members in attendance:**  
Cllrs Lamb and Moyse

**\*HC 40      DECLARATIONS OF INTEREST**

Members were invited to declare any interests in the items of business to be discussed and the following were made:

Cllr Edmonds declared a personal interest in item 16: 'Supporting the Formation of a South West Mutual' (Minute HC 52 below refers) by virtue of one of the trustee directors being a former bank colleague and living near him, and he remained in the meeting and took part in the debate and vote thereon;

Cllr Leech declared a personal interest in item 11: 'Okehampton Land Disposal' (Minute \*HC 47 below refers) by virtue of being a member of Okehampton Town Council and he remained in the meeting and took part in the debate and abstained from taking part in the vote.

**\*HC 41      MINUTES**

The Minutes of the Hub Committee meeting held on 16 October 2018 were confirmed and signed by the Chairman as a correct record.

**\*HC 42 EXCLUSION OF PUBLIC AND PRESS**

**RESOLVED**

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting during consideration of the following item of business as the likely disclosure of exempt information as defined in paragraph 3 of Schedule 12A to the Act is involved.

**\*HC 43 WASTE PROCUREMENT – VERBAL UPDATE**

*(Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information))*

The Lead Member for Commercial Services provided an exempt verbal update to Members on the progress of the Waste Procurement project. A report would be presented to the next full Council meeting on Tuesday, 4 December 2018.

**\*HC 44 READMITTANCE OF PUBLIC AND PRESS**

**RESOLVED**

That the public and press be re-admitted to the meeting.

**\*HC 45 FINANCIAL STABILITY REVIEW GROUP UPDATE**

In accordance with the Council decision at its meeting on 27 March 2018 (Minute CM 73 refers) for updates to be included as a standing agenda item, the Lead Member for Assets and Environment presented Members with a briefing note that provided an update on the recent work of the Financial Stability Review Group. He also confirmed that a further note would be circulated to Members setting out cost savings to date.

During discussion, the Lead Member and the s151 Officer responded to a number of questions and provided updates as follows:

- The s151 Officer would be corresponding with colleagues at Devon County Council and the Actuary to discuss options related to the pension strategy e.g. affordability considerations. Currently, the Council's pension deficit would be repaid in 17 years, whilst other authorities within Devon had a longer payback time.
- The s151 officer had met with the Treasury Minister for Local Government, who had intimated that negative revenue support grant would be eliminated for 2019/20.
- 16 Members had completed the budget survey and the results would be incorporated into the budget savings that would be reported to the next meeting of the Hub Committee on 4 December 2018. One of the outcomes of the survey was that the majority of Members were not minded to support the investment with the CCLA.

- The s151 officer expected the New Homes Bonus baseline threshold to rise from 0.4% to 0.6%. If this was the case, it would mean that New Homes Bonus would only be paid after the building of approximately 150 properties.
- The s151 officer confirmed that training would be arranged for Members on Treasury Management, in advance of the full Council meeting in January 2019.

**HC 46 ANNUAL REVIEW OF HEALTH AND SAFETY POLICY STATEMENT**

Members were presented with a report that sought recommendation to full Council of the adoption of the revised Health and Safety Policy Statement. The Council was required to prepare a written health and safety policy statement by the Health and Safety at Work Act 1974. The policy should be agreed and signed off by the Head of Paid Service and Leader of Council.

The Leader of Council introduced the report and outlined the importance of the document. One Member confirmed that at no point had she been asked to complete a risk assessment, despite Members being exposed to the same risks as officers. In response, the COP Lead Environmental Health confirmed that health and safety training would be included in the Member Induction Programme in May 2019. He also confirmed that the focus had been on high risk activities as per the agreed health and safety work programme, but there would be further work on all elements of health and safety. The Head of Paid Service confirmed that prior to presentation at Council, the Policy Statement would be amended to ensure reference to Members.

It was then **RESOLVED** that the Hub Committee **RECOMMEND** to Council that the revised policy be adopted and signed by the Head of Paid Service and Leader of Council.

**\*HC 47 OKEHAMPTON LAND DISPOSAL**

Members were presented with a report that set out details of land transfers from the Borough Council to Okehampton Hamlets Parish Council and Okehampton Town Council. It was presented to Hub Committee because one of the transfers had included a public toilet.

The Lead Member for Assets and Environment introduced the report. In response to a query regarding change of use, the COP Lead Assets confirmed that the transfer would state that the land could not be used for another use, without the permission of the local authority. He did not feel it was an explicit condition, but rather an implied one.

It was then **RESOLVED** that the land transfers to Okehampton Hamlets Parish Council and Okehampton Town Council (as set out in the presented agenda report) be noted.

**HC 48****BROOK STREET CAR PARK REFURBISHMENT CONTRACT**

Members were presented with a report that sought approval to tender for works to refurbish Brook Street Car Park, and to recommend to full Council that the contract be awarded to the bidder who scored highest, and to fund the share of the cost that was the responsibility of the Council from the Car Parking Maintenance Earmarked Reserve.

The Lead Member for Commercial Services presented the report. Some Members felt it may not be appropriate for the Hub Committee to make recommendations to Council without knowledge of the cost of the work, and therefore recommendations 2 and 3 were amended to include 'with the approval of the s151 officer in consultation with the Lead Hub Member'.

It was then **RESOLVED** that:

1. to tender for the work required to refurbish Brook Street car park and stairwells be approved;

That Hub Committee **RECOMMEND** to Council that, subject to the approval of the s151 officer, in consultation with the Lead Hub Member, that:

2. the contract be awarded to the bidder who scores highest during evaluation; and
3. the 40% share of cost payable by the Council is funded from the Car Parking Maintenance Earmarked Reserve.

**\*HC 49****RELEASE OF S106 FUNDS FOR OPEN SPACE, SPORT AND RECREATION PROJECTS**

Members were presented with a report that anticipated expenditure of funds already held by West Devon Borough Council, and those committed in s106 agreements yet to be triggered by development. Approval would enable a long term and comprehensive approach to be taken to projects and allow Town and Parish Councils, community groups and other organisations to plan and phase projects and maximise chances to gain match funding from other sources.

The Lead Member for Customer First presented the report and the Specialist Place Making responded to questions.

It was then **RESOLVED** that:

1. The release or allocation of s106 funds for Open Space, Sport and Recreation projects as set out in the report be approved;
2. Where a project is identified, that agreement of specific details be delegated to the relevant Specialist in consultation with the local Ward Member(s) and the Portfolio Holder for Customer First;
3. Where an Open Space, Sport and Recreation Plan is proposed, that agreement of details of specific projects within the plan be delegated to the relevant Specialist in consultation with the local Ward Members(s) and the Portfolio Holder for Customer First; and

4. Agreement to any substitution of alternative projects to those identified in Table 1 of the presented agenda report shall be delegated to the relevant Specialist in consultation with the local Ward Member(s) and Portfolio Holder for Customer First, subject to the alternative being in accordance with the s106 agreement and meeting pooling restrictions.

**\*HC 50 CUSTOMER SATISFACTION SURVEY**

Members were presented with a report that detailed the scores achieved by the Council as part of a recent Institute of Customer Service customer satisfaction benchmark survey. It also included recommended next steps to improve the Council's customer satisfaction scores.

The Lead Member for Customer First introduced the report. During discussion some Members felt that the presented recommendation 3, stating that progress against the Customer Service Action Plan should be a standing agenda item at every Hub Committee, should be amended, as this monitoring was a scrutiny function. It was **PROPOSED, SECONDED** and on being put to the vote declared **CARRIED**, that recommendation 3 be amended to Overview and Scrutiny Committee rather than Hub Committee.

It was then **RESOLVED** that:

1. The results from the recent Customer Satisfaction Survey be noted and the proposed actions as detailed in section 5 of the report be endorsed;
2. The proposed Customer Service Standards as detailed in Appendix D of the report be supported; and
3. The Overview and Scrutiny Committee be asked to amend its Work Programme whereby 'Progress against the Customer Service Action Plan' be included as a standing agenda item for consideration.

**HC 51 HEART OF THE SOUTH WEST JOINT COMMITTEE UPDATE**

The Heart of the South West Joint Committee was formally established in January 2018 by the councils and organisations involved since 2015 in the devolution partnership. The Committee was tasked with improving productivity across the Heart of the South West (HotSW) area in collaboration with the HotSW LEP and other organisations as necessary.

Members were presented with a report that summarised the progress made by the Joint Committee over recent months in key areas of activity and set out actions proposed in the coming months. The report included specific recommendations for consideration.

The Leader introduced the report.

It was then **RESOLVED** that the Hub Committee **RECOMMEND** to Council to:

- (a) Note the progress report setting out the work of the Heart of the South West (HotSW) Joint Committee since its establishment in March 2018;

- (b) Agree to delegate the development and endorsement of the HotSW Local Industrial Strategy (LIS) to the HotSW Joint Committee (noting that final approval of the HotSW LIS rests with the HotSW Local Enterprise Partnership (LEP) and the Government);
- (c) Note the Heart of the South West Joint Committee Budget statement for 2018/19 (as set out in Appendix B of the presented agenda report) and that in accordance with the decisions taken at the time the Committee was established the Council will be asked to make an annual budgetary provision (£1,400 for West Devon Borough Council) to meet the support costs of the Joint Committee in line with the 2018/19 contribution. Final clarification on any additional 2019/20 Heart of the South West Joint Committee budget requirement will be provided following the completion of the review of the Joint Committee's role, function and management support arrangements and development of its work programme for 2019/20; and
- (d) Agree the Budget and Cost-sharing Agreement (as set out in Appendix B of the presented agenda report).

## **HC 52 SUPPORTING THE FORMATION OF THE SOUTH WEST MUTUAL**

Members were presented with a report that sought a recommendation to full Council to support the formation of the South West Mutual. A previous presentation had outlined to Members the benefits that a South West Mutual Bank would bring to the community. The report clearly set out the potential risks of investment at this stage.

The Lead Member for Economy presented the report and explained that the investment requested should be considered as a grant. During discussion, some Members confirmed their support for the principle of the South West Mutual, but had reservations regarding financial support at this time as the benefits to Small and Medium sized Enterprises (SMEs) would take some time to materialise and whether this was the best use of these funds at the current time.

It was noted that a number of authorities across Devon intended to support the proposal, and, on balance, the positive outcomes from supporting the proposal would outweigh the reservations.

It was then **RESOLVED** that Hub Committee **RECOMMEND** to Council to:

1. Approve the granting of £49,995 from the 2018/19 business rate pilot gain in order to support the formation of South West Mutual as detailed in section 3 and Appendix 2 of the report;
2. If recommendation 1 is approved, Delegate authority to the Group Manager, Business Development, to conclude the ordinary share acquisition; and
3. Agree that, where possible, officers support the formation of the mutual by promoting it to local authorities within the South West.

## **\*HC 53 LEAD MEMBER UPDATE – CLLR ROBERTS**

Cllr Roberts updated the Committee on the latest position with a number of services within her area, including the following:

Customer Contact Centre – the number of calls to the Contact Centre was decreasing, and the wait time for calls to be answered was also declining but this was more variable.

A pilot had been running since August 2018 that saw Customer Contact Centre staff sitting with Benefits Case Managers, and this had reduced the call waiting time for Benefits calls from seven minutes to one minute.

Localities – a briefing had been presented to the last Overview and Scrutiny Committee meeting, which gave full information on the service.

A further Localities issue was the Okehampton ‘office’ which currently provided a service for two days a week. Initial figures showed that there was a customer visiting every 35 minutes, but if collection of recycling boxes is taken out of the figures, then there is a customer every one hour and forty eight minutes. The Member confirmed that a Task and Finish Group would be reviewing this provision in the upcoming months and there was Hub Committee Member representation on this Group.

Finally, there had been a dip in Development Management performance during August 2018 as a result of a staff shortage. One post had now been filled but this employee would not start until February 2019, and in the meantime agency staff were being used. In spite of this, performance for October 2018 had improved.

There were no questions arising from the update, and the Chairman thanked the Lead Member for a succinct and comprehensive update.

(The meeting terminated at 4:20pm)

---

Chairman

**(NOTE: THESE DECISIONS, WITH THE EXCEPTION OF HC46, HC48 (2), (3), HC51 AND HC52, WHICH ARE RECOMMENDATION TO FULL COUNCIL ON 4 DECEMBER, 2018 WILL BECOME EFFECTIVE FROM WEDNESDAY 28 NOVEMBER 2018 UNLESS CALLED IN, IN ACCORDANCE WITH SCRUTINY PROCEDURE RULE 18).**

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Appendix B of this report contains exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972

Report to: **Council**

Date: **4 December 2018**

Title: **Supporting the formation of South West Mutual**

Portfolio Area: **Economy – Cllr Robert Oxborough**

Wards Affected: **All**

Relevant Scrutiny Committee: **Overview & Scrutiny Committee**

Approval and clearance obtained: **Yes**

Urgent Decision: **No**

Date next steps can be taken: **Immediately following this meeting**

Authors: **Darren Arulvasagam**  
Group Manager, Business Development  
[Darren.Arulvasagam@swdevon.gov.uk](mailto:Darren.Arulvasagam@swdevon.gov.uk)

## **Recommendations:**

### **That the Council:**

- 1. APPROVE the granting of £49,995 from the 2018/19 business rate pilot gain in order to support the formation of South West Mutual as detailed in section 3 and Appendix 2 of this report;**
- 2. (If 1 approved) DELEGATE authority to the Group Manager, Business Development, to conclude the ordinary share acquisition; and**
- 3. AGREE that, where possible, officers support the formation of the mutual by promoting it to local authorities within the South West.**

## **1.0 Executive Summary**

- 1.1 On 16<sup>th</sup> October, Tony Greenham of South West Mutual, provided a briefing to West Devon Borough Council Members about the proposal to form South West Mutual – regional banking for inclusive growth. A copy of the presentation can be found at Appendix A.
- 1.2 In order to progress, the new mutual is seeking £500,000 of initial funding, through the issuing of Founder Shares. These shares will receive a dividend of 7.5% once the new bank becomes profitable and this dividend will rise over time if South West Mutual is successful.
- 1.3 In view of the higher risk of investment at this early stage, if a banking licence is obtained and the bank starts trading, Founder Shareholders will also receive an additional 2 shares for every share held. The combination of these two returns generates an estimated 'internal rate of return' (being a measure of investment returns widely used within business and finance) of approximately 20% per annum.

- 1.4 However, it must be understood that there is a risk that there will be no financial return and the entire initial investment will be lost if the plan to launch the mutual is unsuccessful or a banking licence is not granted. Accordingly, officers do not recommend investing in the mutual with the primary purpose of deriving a financial return as that is deemed too much of a financial risk. Instead, it is proposed that the Council uses funds from the predicted business rate pilot gain to fund a grant to South West Mutual. This grant will equate to an initial investment of £49,995 in return for 3,333 ordinary shares.
- 1.5 The pilot gain resulted in one-off monies received in 2018/19 and the Council determined that these should be used to fund initiatives to support the local economy.
- 1.6 Appendix A explains how the new mutual would help support the local economy and promote inclusive growth. In particular, it will help make banking more local, provide branch facilities in rural locations, recycle the savings of local people and businesses back into the regional economy, promote financial inclusion and improve access to credit for small and medium sized business.
- 1.7 The ethos behind the new mutual is consistent with the Council's corporate strategy objectives of communities and enterprise.
- 1.8 Members are requested to support the recommendations and utilise business rate pilot gains to help support the formation of the new mutual. In doing so, it recognises that the funds utilised may not necessarily be returned to the Council.
- 1.9 The Council's Hub Committee considered a version of this report at its meeting on 20 November 2018 and, following a detailed debate, proceeded to recommend approval to the Council of each of the three recommendations outlined above.
- 2.0 **Background**
- 2.1. On 16<sup>th</sup> October, Tony Greenham of South West Mutual, provided a presentation to West Devon Borough Council Members about the proposal to form South West Mutual – regional banking for inclusive growth. A copy of the presentation can be found at Appendix A.
- 2.2. It is envisaged that this economic grant meets the Council's Enterprise (Creating places for enterprise to thrive and business to grow) and Communities (Council and Residents working together to create strong and empowered communities) objective.

- 2.3. It is anticipated that the new mutual will help derive the following benefits for the South West:

Economic	Supporting local enterprises, business rates and employment Boosting economic resilience during recessions, protecting jobs and incomes Inclusive growth: spreading opportunities for locally driven business and employment Recycling more spending and savings back into the Devon economy
Social & environmental	Tackling financial exclusion and problem debt Improving financial capability and wellbeing Restoring trust and building civic participation Improved environmental and social performance

### 3. Proposals

- 3.1. The mutual is seeking an initial investment of £500,000 in order to progress its banking licence application. It will then need to find an estimated £2.5m in 2019 to set up operations and complete the banking authorisation process, and finally secure a further investment of £17.5m in 2020 to capitalise the bank and enable it to commence trading.
- 3.2. It is envisaged that local authorities within the South West, who believe in the ethos behind the mutual and the benefits this will bring to the local economy, may wish to participate in all stages of investment including capitalising the bank once a provisional banking licence has been granted and the investment carries a much lower risk.
- 3.3. South West Mutual is launching its initial fundraising on 19<sup>th</sup> November 2018 seeking investment from private and institutional investors within the region. It is considered that the commitment of local authorities to invest in the initial Founder Share Offer will reinforce the confidence of private sector investors, make a significant statement of support for the social and economic mission of South West Mutual, and potentially shorten the timetable to opening branches and commencing trading within West Devon and the wider South West region.
- 3.4. The Council has benefitted from being a business rates pilot area for 2018/19, which has allowed the Council to keep a higher share of business rates income in 2018/19 to fund its services. The Council is determined that this funding should be used to fund initiatives to support the local economy.
- 3.5. It is proposed that the 2018/19 business rate pilot gain is used to assist with the formation of the mutual, with the Council granting £49,995 to the mutual – this equates to approximately 10% of the amount of initial funding required by the mutual.
- 3.6. At this stage, officers **do not recommend investing** in the mutual in order to derive a financial return as that is deemed too much of a financial risk. Independent financial advice regarding a financial investment has not been sought.
- 3.7. It is proposed that the Council uses funds from the predicted business rate pilot gain to **grant fund** the mutual. In return for this grant of £49,995, the Council will receive 3,333 ordinary shares. Members recognise that the grant funds utilised may not necessarily be returned to

the Council. This should not be viewed as a normal investment made for purely financial return but a grant to support the local economy.

These shares will receive a dividend of 7.5% IF the new bank becomes profitable and this dividend will rise over time if South West Mutual is successful. In view of the higher risk of investment at this early stage, IF a banking licence is obtained and the bank starts trading, Founder Shareholders will also receive an additional 2 shares for every share held. The combination of these two returns generates an estimated 'internal rate of return' (being a measure of investment returns widely used within business and finance) of approximately 20% per annum.

- 3.8. Members appreciate that this grant (investment) is risky, but without the grant funding, the proposed benefits to the local economy may never be realised.
- 3.9. It is envisaged that the Council would be one of the first to provide financial support to the mutual. It is anticipated that this will help the mutual obtain the remaining funding it requires from other South West authorities.
- 3.10. A similar report and recommendation is to be considered by South Hams District Council in November.

#### **4.0 Options available and consideration of risk**

- 4.1. Members could opt to follow, amend or reject the recommendations.
- 4.2. There are risks that should not be discounted. Members will need to be satisfied that the granting of £49,995 to South West Mutual, in return for 3,333 ordinary founder shares is consistent with the Council's corporate strategy.
- 4.3. As the Council will receive ordinary shares, over the long term this initiative could be considered as an investment. However, this transaction should be viewed immediately as an economic grant.
- 4.4. Members recognise that this transaction is not without risk and therefore do not expect to re-coup the grant, nor a profit on any shares acquired. Exempt Appendix B contains the detailed Founder Share Offer document.
- 4.5. By making this "investment", the council will be forgoing an investment return on the business rate pilot gain monies. The current investment return achieved by the Council is circa. 0.8% per annum. This equates to forgoing £400 per annum, if interest rates and returns were to remain the same.

#### **5.0 Proposed Way Forward**

- 5.1 It is proposed that the Council ratify this decision at its meeting on 4 December 2018. Assuming this is approved, delegated authority will be given to the Group Manager, Business Development to conclude the acquisition of 3,333 ordinary shares in South West Mutual – as per the offer document shown in Exempt Appendix B.
- 5.2 Support will also be given to the mutual in order to promote the council's decision to other South West local authorities – with the aim that other authorities provide the remaining funding required in order to progress the banking licence application (as described in Appendix A).

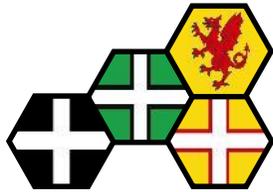
## 6.0 Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/ Governance	Y	<p>Appendix 2 of this report is exempt from publication because it contains information about the Council's financial and proposed commercial affairs as defined in Paragraph 3 of Schedule 12A to the Local Government Act 1972. The information is the intellectual property of a third party and cannot be divulged further without their prior approval. In particular, South West Mutual is bound to comply with the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 which regulates the promotion of investments to the general public and hence places legal restrictions on the publication of Appendix 2 which the Council wishes to respect.</p> <p>The public interest test has been applied and it is considered that the public interest lies in not disclosing this report at this time because it contains financial and commercially sensitive information which could prejudice the Council and the third party if such information was disclosed at this time.</p> <p>This proposal is consistent with the Council's powers to invest under the Local Government Act 2003 and section 1 Localism Act 2011 (the general power of competence).</p> <p>Investments made by local authorities can be classified into one of two main categories:</p> <ul style="list-style-type: none"> <li>i) Investments held for treasury management purposes; and</li> <li>ii) Other investments</li> </ul> <p>Local Authorities should disclose the contribution that all <b>other investments</b> make towards the service delivery objectives and/or place making role of that local authority.</p> <p>Officers are confident that the proposed economic grant will help establish and promote the success of South West Mutual. The formation of such an institution, as described in Appendix A is consistent with the Council's Enterprise (Creating places for enterprise to thrive and business to grow) and Communities (Council and Residents working together to create strong and empowered communities) objectives.</p> <p>There is an overriding duty toward prudent management of risk, and officers, including the Council's section 151 officer, owe a fiduciary duty in relation to given transactions.</p>
Financial	Y	<p>The Council has benefitted from being a business rates pilot area for 2018/19, which has allowed the Council to keep a higher share of business rates income in 2018/19 to fund its services. The Council is determined that this funding should be used to fund initiatives to support the local economy.</p> <p>The Council is forecasting a business rates pilot gain of £460,000 for 2018/19. This money was intended to support local economic initiatives and therefore this report's proposals are consistent with that aim. Officers do not recommend investing in the mutual in order to derive a financial return as</p>

		that is deemed too much of a financial risk. However, it is proposed that the Council uses funds from the business rate pilot gain to fund a grant of £49,995 to the Mutual. In return, the Council will receive 3,333 ordinary shares.
Risk	Y	<p>Members will need to be satisfied that the granting of £49,995 to South West Mutual, in return for 3,333 ordinary founder shares not only delivers best value but is also consistent with the Council's corporate strategy.</p> <p>Whilst the Council will receive ordinary shares as a result of its economic grant and the initiative could therefore be considered an investment, the Council views this transaction as an economic grant. In doing so, it recognises that this transaction is risky and therefore does not expect to re-coup any of the grant, nor profit from the shares acquired. Appendix B sets out the share offer.</p> <p>For the avoidance of doubt – there are several key differences between a grant contribution and a share purchase:</p> <ul style="list-style-type: none"> <li>• If the venture fails the investment by either method may be lost.</li> <li>• The financial liability as shareholders is limited to the value of the share-holding – The Council stands to lose 100% if the venture has debts equal to or greater than its investment. There should be some proportionality if the debts were less than the venture's total share capital.</li> <li>• The only way that the Council could have additional liability (upward of its investment) would be if there has been some individual negligence. Officers of the Council have set out that funding is to be provided as a grant, not an investment and therefore the entire £49,995 is at risk. Independent financial advice has not been taken. The shares acquired will be shown in the Council's accounts as a financial investment.</li> <li>• As a shareholder, the Council will have votes (= some control) but will not have that as a <i>pure</i> grant funder.</li> </ul>
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity	N	Not Applicable
Safeguarding	N	Not Applicable
Community Safety, Crime and Disorder	N	Not Applicable
Health, Safety and Wellbeing	N	Not Applicable
Other implications	N	Not Applicable

### **Supporting Information**

- Appendix 1: "South West Mutual – Regional banking for inclusive growth" A copy of the informal briefing made to West Devon Borough Council on 16<sup>th</sup> October 2018
- EXEMPT Appendix 2: DRAFT Founder Share Offer Document

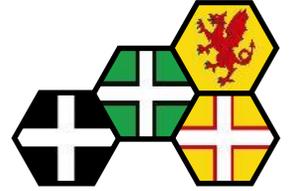


# South West Mutual

Regional banking for inclusive growth

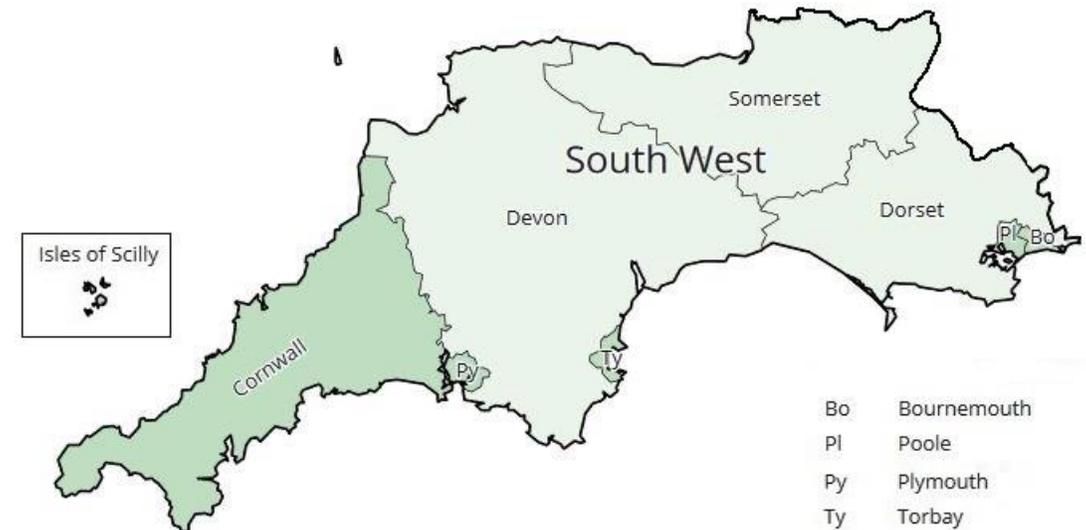


# Introducing South West Mutual



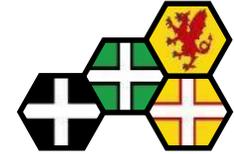
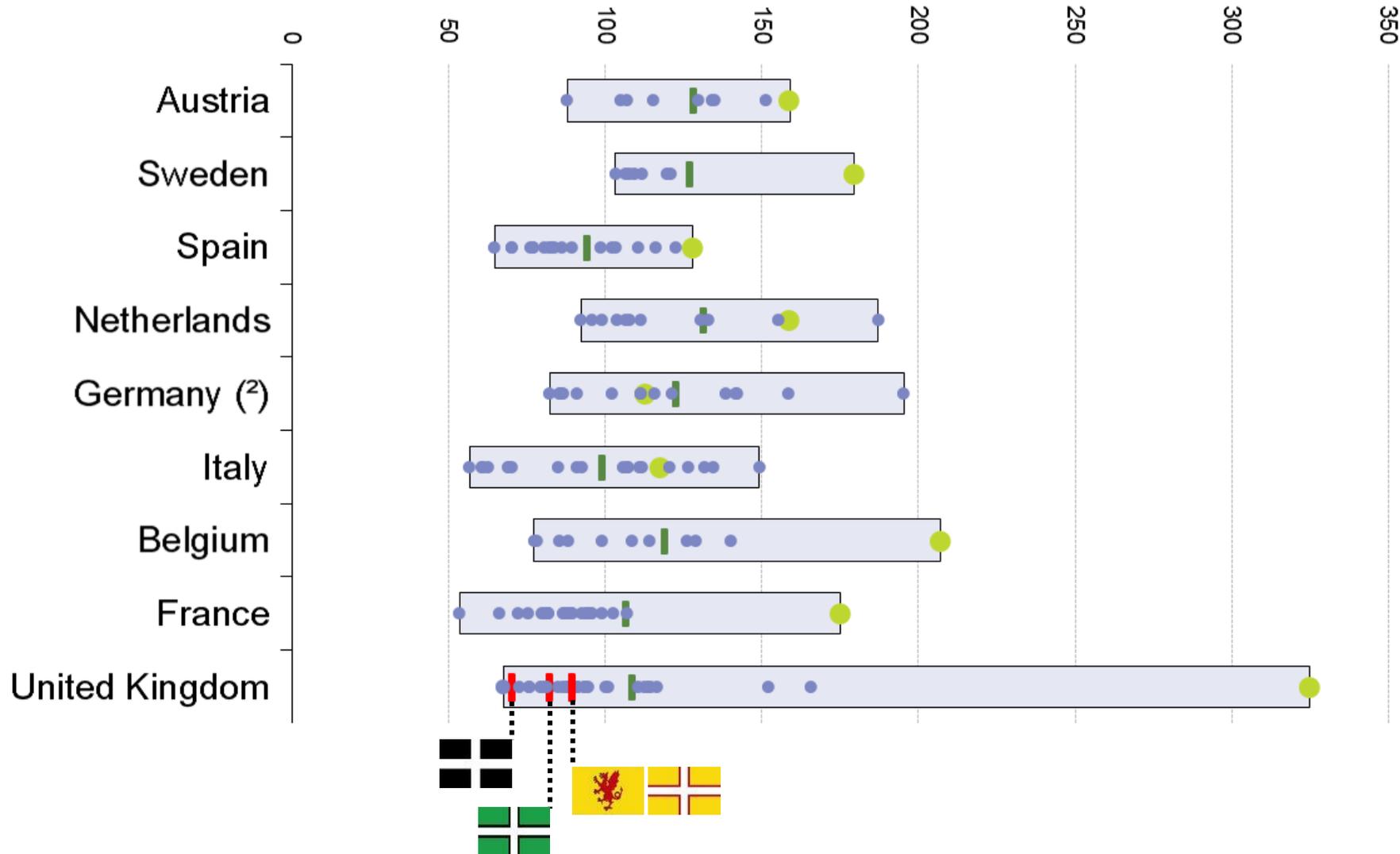
**Mission-led business promoting sustainable and equitable prosperity for the South West**

- First **customer-owned** full service bank
- **Financial inclusion** in the rules
- **SME and social enterprise** focus
- Multi-channel, committed to **branches** and **relationship banking**
- **Scale and efficiency** – part of the CSBA network
- **Financial strength:** Profits £15m pa / loan book £380m by year 9



# Helping tackle regional inequalities

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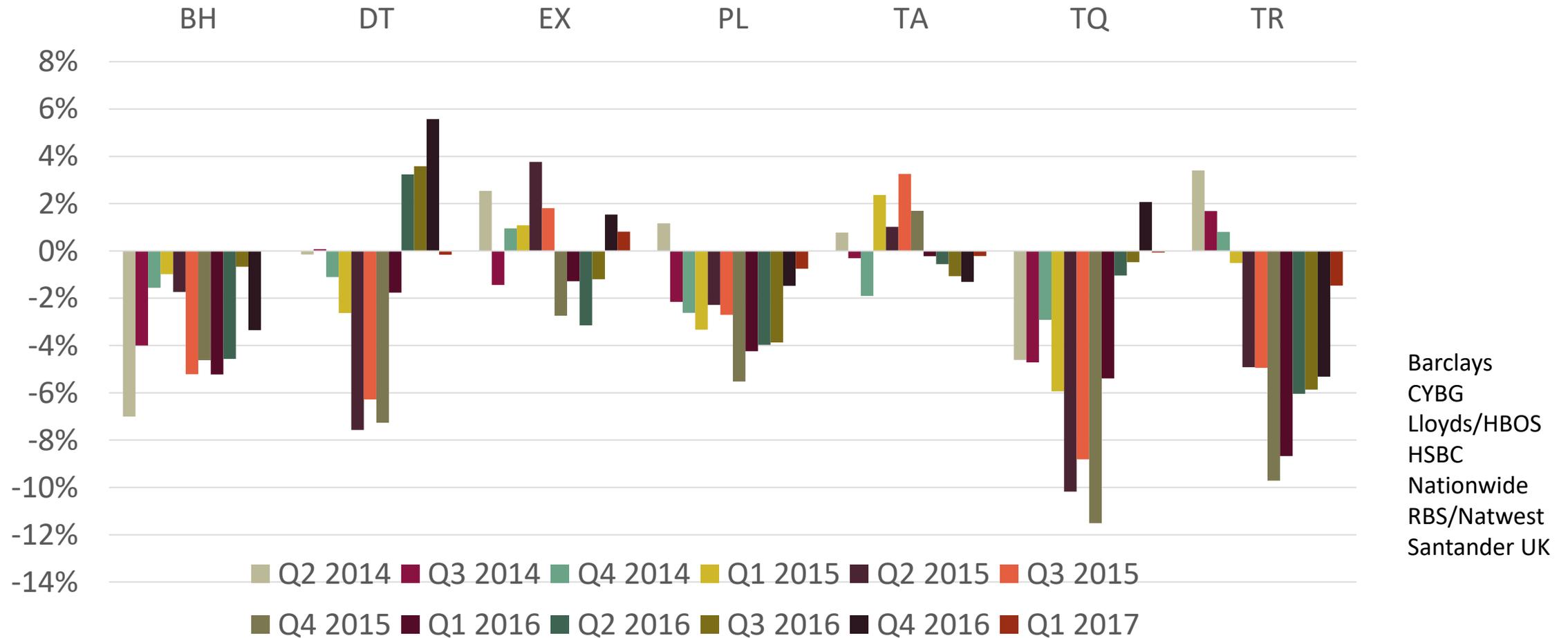
**SWM is an anchor institution**

**Supporting equitable and sustainable prosperity for the South West is our mission**

# SME finance is an ongoing issue

YoY change in total SME loans by postcode area

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# Lending to the real economy where you live

SME deposits and loans in  
Devon districts

Deposits **£853m**

Loans **£462m**

Net outflow **£390m**

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**SWM keeps money  
flowing within the  
region's economy**

*Real economy impact – SWM lending vs UK Big 4*



# Commitment to financial inclusion

In Devon districts there are approximately\*:

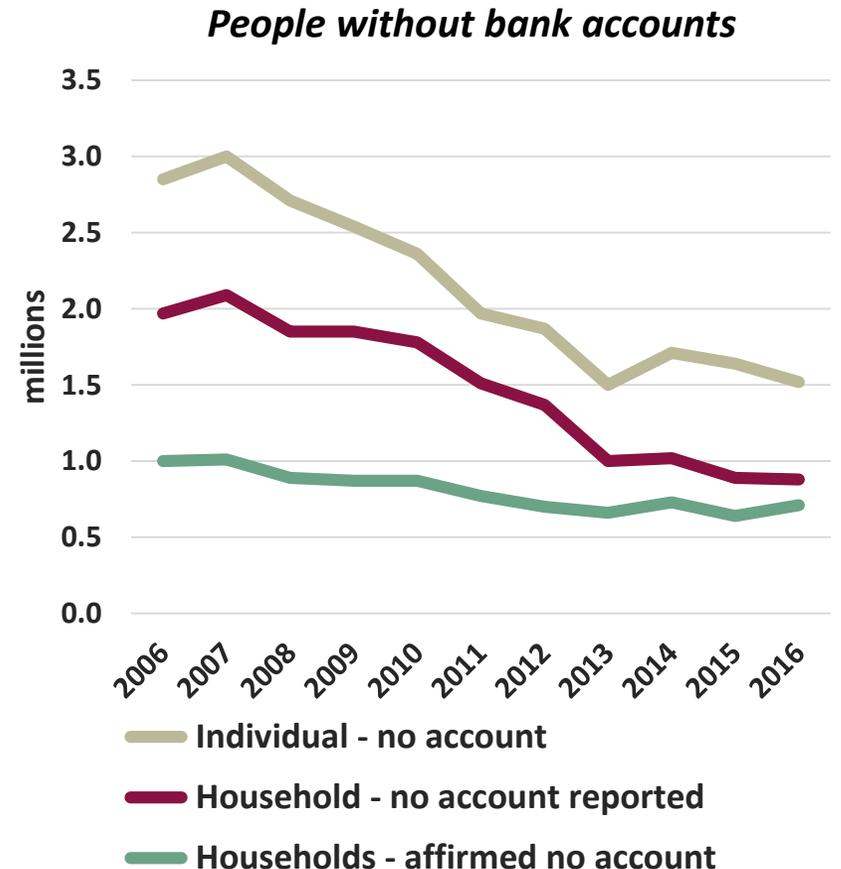
- 21,000 individuals without bank account
- 106,000 non-users of the internet
- 33,000 entirely dependent on cash
- 46% uncomfortable using digital only banks
- £8 million poverty premium

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**SWM will provide full current account to any resident**

*\*Source: Pro-rata on population of 642,000 adults , from HMT report on cash March 2018, and CHASM Financial Inclusion Report 2016*



Source: FINANCIAL INCLUSION ANNUAL MONITORING REPORT 2017

# Branches and local managers

- Losing 60 branches / 300 cash machines a month
- Branch access still important for many customers
  - eg trading businesses; some older/vulnerable people
- Evidence confirms 'soft information' is vital for safe local lending

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- **SWM has Branch Directors and staff with decision making power**
- **We use modern technology to deliver a low-cost branch solution**

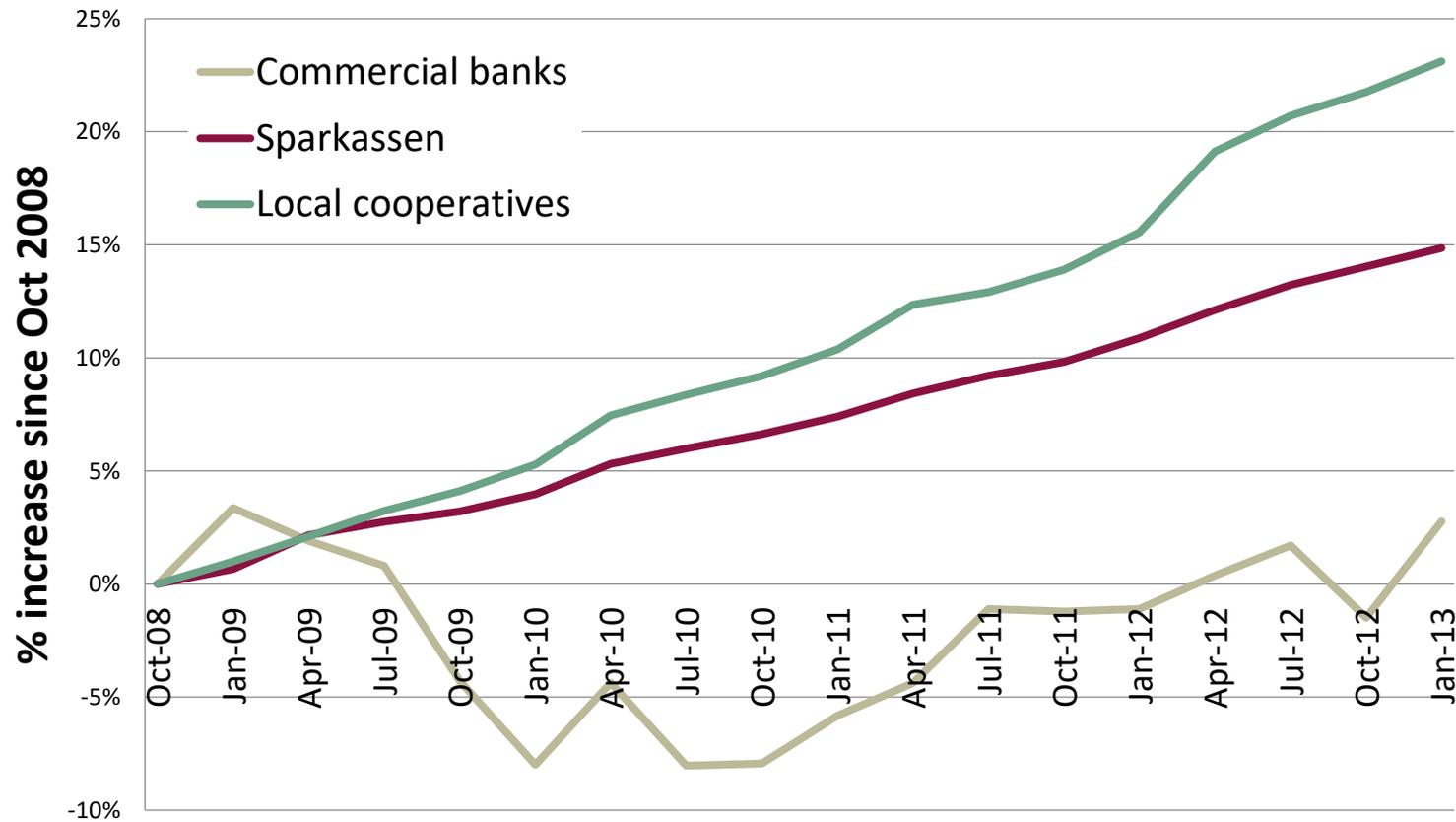
**Branch Closures 2015-18**



	RBS/ NW	Lloyds	Barc- lays	HSBC	Co-Op	Other	Total
East Devon	5	2	3	1	1		12
Exeter	2	4		1		1	8
Mid Devon	2	1	2				5
North Devon	3	4	1	2	1		11
South Hams	4	4	1	2		2	13
Teignbridge	3	4		1	1		9
Torridge	3	1	2				6
West Devon	3	1	1	1	1		7
<b>Grand Total</b>	<b>25</b>	<b>21</b>	<b>10</b>	<b>8</b>	<b>4</b>	<b>3</b>	<b>71</b>

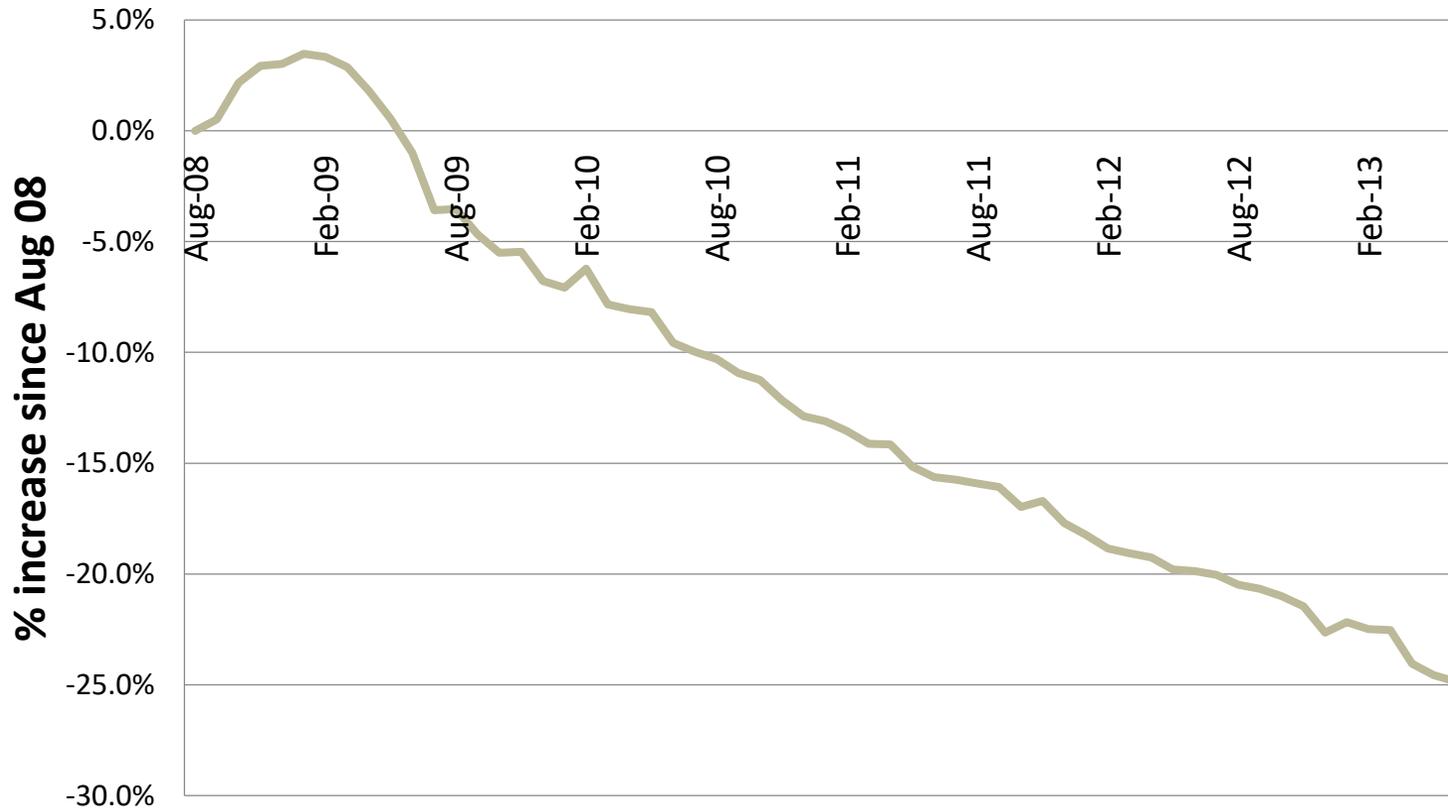
# Economic resilience: 'no more boom and bust'?

## German bank lending to domestic enterprises and self-employed



# Economic resilience: the UK's Achilles heel?

Total UK bank lending to non-financial corporates



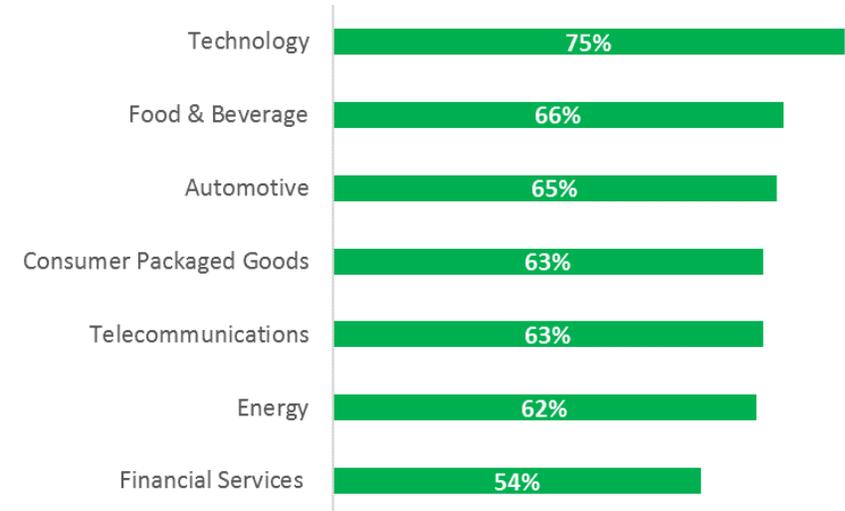
**SWM is committed to the region. We won't chase the booms so we are still there during the busts.**

# Restoring trust in banking

- Our customers are our shareholders
- We will not engage in financial trading and speculation
- No bonuses or sales incentives paid to staff
- Living wage employer
- Maximum 10x pay ratio
- Board directly accountable to customers
- One member one vote
- Simple, honest and transparent charging structure
- No pressure to cross-sell financial products

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Edelman Trust Barometer  
2017 Results



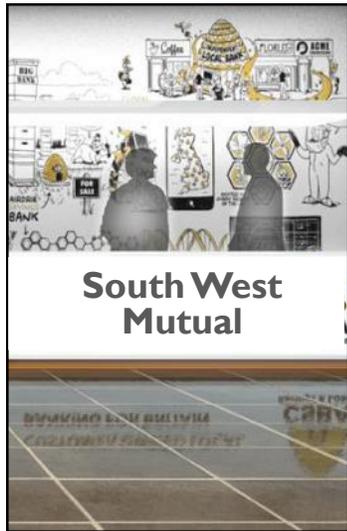
Do you trust your bank?	TRUST
Keeping my money safe	48%
Protecting my personal and financial information	43%
Providing me with truly unbiased advice suited to my needs	25%
Telling me if there is a better product for my needs/ situation even it means less money for them	21%

Source: EY Global bank survey 2016: Without it you're just another bank

# Full range of services competing with high street banks

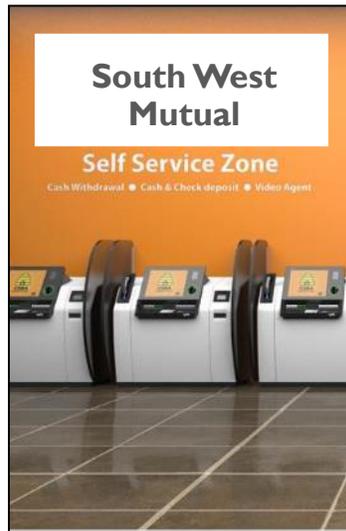
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## Local HQ



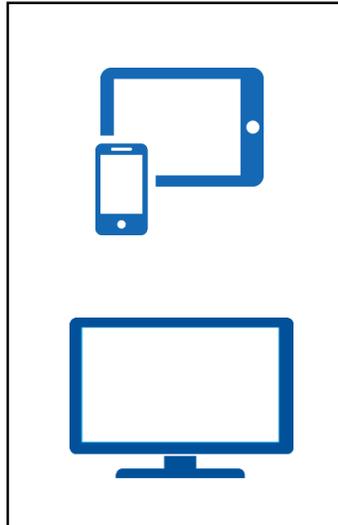
Sub-regional hub with staff and Branch Director.  
Safety deposit boxes.

## Satellite branches



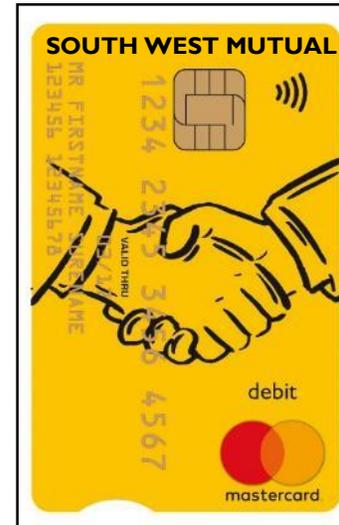
24/7 video linked full service automated branch.  
Some staffed times

## Digital channels



Online and app.

## Current accounts



Fixed, transparent and simple membership fee:

Personal: £5 pcm  
Organisation: £10 pcm

- Expense analysis
- 'Jam jar' functionality
- Interest on whole balance
- Additional member benefits tbc

# Why a monthly charge? Free banking does not exist

- Free-if-in-credit (FIIC) accounts are NOT free
- 90% of customers with FIIC accounts effectively pay charges
- Our model simple, transparent and honest
- Allows us to be inclusive
- and to maintain branch access
- Better value for money for many customers

“I do not advocate the ending of free-if-in credit banking. Why? Because there is no such thing to start with, so it cannot be abolished as such.

Nothing in life is free  
– sorry to disappoint.”

Andrew Bailey, Chief Executive FCA  
29th June 2017

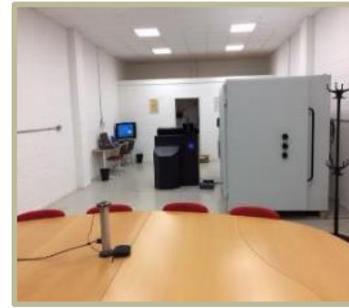


Bank	SWM	Lloyds	NW
		Classic	Select
Monthly membership fee	(5.00)	-	-
Interest on £1,000 in current a/c	1.22	-	-
Interest on £4,000 in current a/c	4.88	-	-
Cost of £500 overdraft for 15 days	(1.94)	(10.65)	(9.74)

- 44% of Free-If-In-Credit accounts attract overdraft charges
- 80% of consumers do not know what their overdraft charges are
- £2.9 billion paid in overdraft fees in 2014
- £4.3 billion interest foregone in 2014

# Community Savings Bank Association

- Highly experienced Board
- 'Bank in a box' service
- 18 regional banks
- Test and training facility



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# Investment in Shares of South West Mutual

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<b>RETURNS</b>	<b>Financial</b>	Dividend of 7.5% by year 6 Growing dividend yield as profits rise Moderate share price growth over the medium term
	<b>Economic</b>	Supporting local enterprises, business rates and employment Boosting economic resilience during recessions, protecting jobs and incomes Inclusive growth: spreading opportunities for locally driven business and employment Recycling more spending and savings back into the Devon economy
	<b>Social &amp; environmental</b>	Tackling financial exclusion and problem debt Improving financial capability and wellbeing Restoring trust and building civic participation Improved environmental and social performance
<b>EXIT ROUTE</b>		Trade with approx. 90,000 members projected by year 9 on a share trading platform

*This is not investment advice; it is non-binding and it is subject to T&Cs that are to be agreed separately*

# Strategic alignment

## Community land trusts

## Community businesses and social enterprise

Access to banking facilities, credit and supporting high streets



Environmental protection integrated in risk assessment. Supporting community energy

# Local authority investment

Guidance from Arlingclose (Treasury Advisors)

## Local Government Act 2003

“Investments made by local authorities can be classified into one of two main categories:

- Investments held for treasury management purposes; and
- Other investments”

“Local authorities should disclose the contribution that all **other investments** make towards the **service delivery objectives** and/or **place making role** of that local authority.”

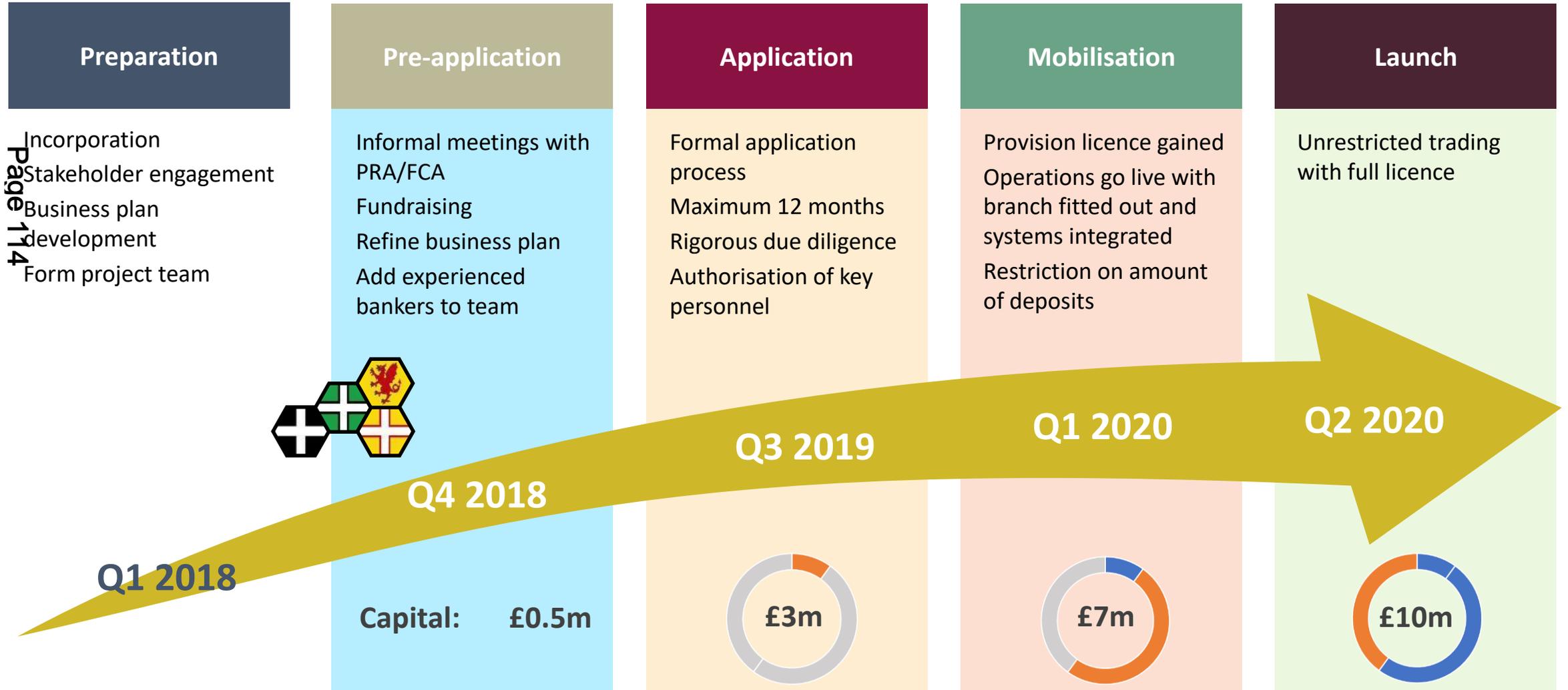
## Localism Act 2011

The general power of competence allows local authorities in England to do “**anything that individuals generally may do**”

# Local authority investment - precedents

Bank	Authority	Notes
<b>Hampshire Community Bank (Note 1)</b>	Portsmouth BC - £5m Winchester - £250k Test Valley - £500k	Capex funded by unsupported Prudential Borrowing / Capital receipts reserve. 'Spend to save' project. Economic development powers / general power of competence in S1 Localism Act 2011
<b>Cambridge and Counties Bank</b>	Cambridgeshire Local Government Pension Scheme	£8m in deferred shares for 50% 50:50 with Trinity College Cambridge
<b>Cambridgeshire Building Society</b>		£15 million core capital deferred shares carrying only 1 vote
<b>Redwood Bank</b>	Warrington BC £30m	Bank will open a northern regional office in Warrington. Shortlisted in 'Innovation in Finance' category of 2017 MJ Local Government Achievement Awards

# Timeline for banking licence and launch



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Report to: **Council**

Date: **4 December 2018**

Title: **Heart of the South West Joint Committee Update**

Portfolio Area: **Strategy & Commissioning, Leader of the Council**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **Immediately**

Author: **Darren Arulvasagam** Role: **Group Manager, Business Development**

Contact: [darren.arulvasagam@swdevon.gov.uk](mailto:darren.arulvasagam@swdevon.gov.uk)

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## **RECOMMENDATION**

**That Council be RECOMMENDED to:**

- (a) Note the progress report setting out the work of the Heart of the South West (HotSW) Joint Committee since its establishment in March 2018;**
- (b) Agree to delegate the development and endorsement of the HotSW Local Industrial Strategy (LIS) to the HotSW Joint Committee (noting that final approval of the HotSW LIS rests with the HotSW Local Enterprise Partnership (LEP) and the Government);**
- (c) Note the Heart of the South West Joint Committee Budget statement for 2018/19 set out in Appendix B and that in accordance with the decisions taken at the time the Committee was established the Council will be asked to make an annual budgetary provision (£1,400 for West Devon Borough Council) to meet the support costs of the Joint Committee in line with the 2018/19 contribution. Final clarification on any additional 2019/20 Heart of the South West Joint Committee budget requirement will be provided following the completion of the review of the Joint Committee's role, function and management support arrangements and development of its work programme for 2019/20; and**
- (d) Agree the Budget and Cost-sharing Agreement set out in Appendix B to this report.**

### **1. Executive summary**

- 1.1 In January 2018, the HotSW Joint Committee was formally established by the councils and organisations involved since 2015 in the devolution partnership. The Committee is tasked with improving productivity across

the HotSW area in collaboration with the HotSW LEP and other organisations as necessary.

- 1.2 The Committee has met formally three times in 2018, in March, June and October. In addition to this the management structure that sits behind the Committee and involves Chief Executives and senior officers from across the partnership has met regularly to drive the business of the Committee. The Committee is chaired by Cllr David Fothergill, Leader of Somerset County Council and the Vice-Chair is Cllr John Tucker, Leader of South Hams District Council.
- 1.3 This report summarises the progress made by the Committee over recent months in key areas of activity and sets out actions proposed in the coming months. As part of this report there are specific recommendations for the constituent authorities to consider.
- 1.4 The Council's Hub Committee considered a version of this report at its meeting on 20 November 2018 and, following a detailed debate, proceeded to recommend approval to the Council of each of the four recommendations outlined above.

## 2. **Key achievements**

- 2.1 At each of our meetings the Committee has been briefed on recent inward investment successes achieved through the work of the local authorities and the LEP and it is these successes that we wish to add to through the work of the Joint Committee.

### (a) Influencing government

The partnership's original focus in 2015 was to explore opportunities on offer through devolution to improve productivity. Since the Committee was created the influencing role has continued to be central to the work of the Joint Committee and recent months have seen successes in this area. Government policy changes and Brexit have required the partnership to be flexible to present a united front to Government and respond to the changes.

As an example, the Government has increasingly moved away from its devolution policy approach of 2015 and the partnership is now engaged in more flexible and targeted dialogues with Government. This approach is proving successful so demonstrating the benefits of presenting a single compelling partnership vision between the business and public sectors.

The Committee is keen to demonstrate its ability to deliver Government objectives as well as local priorities so accessing help beyond our boundaries is critical to the success of the partnership. It is already apparent that the Joint Committee / LEP Partnership carries a critical mass that the Government is responding to through policy announcements and on-going dialogue with Government officials.

The most significant announcement is the recent inclusion of the HotSW LEP area in wave 2 of developing Local Industrial Strategies (LIS). This success is due in large part to the close alignment of the Joint Committee and the LEP on the Productivity Strategy [see (b) below]. Much of the

activity detailed below has resulted directly from discussions with Government.

- (b) Approval of the HotSW Productivity Strategy
- (i) In March the Committee and the LEP Board agreed a challenging HotSW Productivity Strategy which set an ambition of “Doubling the size of the Heart of the South West’s economy over 20 years” with a vision of “Productivity and prosperity for all”.
- (ii) The Strategy identifies three strategic themes to improve productivity by strengthening and developing:
- a. the leadership and ideas within businesses in our area
  - b. the housing, connectivity and infrastructure our people and businesses rely on for living, moving goods, accessing jobs and training, and exploiting new opportunities.
  - c. the ability of people in our area to work, learn and improve their skills in a rapidly changing global economy, and to maximise their economic potential.
- (iii) In addition, there are three cross-cutting themes, referred to throughout the Strategy:
- a. Inclusive growth for our people, communities and places
  - b. Capitalising on our distinctive assets
  - c. Maximising the potential from digital technology

The Strategy can be viewed at:

<https://heartofswlep.co.uk/about-the-lep/how-we-work/productivity-strategy/>

- (c) Endorsement of the Delivery Plan.

This document is key to the delivery of the Productivity Strategy and will be further developed as explained below. It is a live action plan that will be used to track performance locally and may also form the basis of annual progress reports to Government, as required under the recent national review of LEPs.

It is broadly divided into two sections – a ‘core offer’ focussing on programmes that deliver Business Support and Employment and Skills, as well as ‘enablers’ including housing delivery, transport, and other infrastructure that is essential to support economic growth. These activities apply across the whole of the HotSW area. A further section focuses on programmes of activity linked to the agreed set of ‘opportunities’ that are specific to the HotSW area.

The Plan incorporates current as well as future, planned activity, and is being produced in stages depending on how well developed the programmes of activity for each theme are. The current version features the opportunities that are at the most advanced stage, namely: Digital (Photonics); Advanced Engineering (marine and nuclear); High Value Tourism; Farming, Fishing and Food. By spring 2019 it will be expanded to include: Healthy Ageing; further Digital (Creative and Big Data); Advanced Engineering (aerospace); Construction; and Defence. Place

markers have also been included for inclusive growth and natural capital to be developed as part of the next phase of work. The current version of the Delivery Plan can be viewed at:

<http://www.hotswjointcommittee.org.uk/wp-content/uploads/2018/10/HotSW-Draft-Delivery-Plan-October-2018.pdf>

- (d) An Opportunities Prospectus has been extracted from the Delivery Plan and will be used with local MPs, Ministers and senior Government officials as part of continuing to raise the profile of the HotSW area at a critical time ahead of the 2019 Spending Review and the anticipated launch of the UK Shared Prosperity Fund towards the end of 2019. The document will be circulated to MPs prior to the Chancellor's autumn statement as part of the influencing approach.

To ensure that the Prospectus document has some longevity, the key strategic 'asks' of Government have been set out in a covering letter, jointly signed by the Chairs of the Joint Committee and the LEP. As we develop the Delivery Plan, further asks will emerge and be submitted to Ministers. The list of asks submitted in October is attached as Appendix A to this report. The Prospectus document can be viewed at:

<http://www.hotswjointcommittee.org.uk/wp-content/uploads/2018/11/HotSW-Prospectus-November18.pdf>

- (e) Housing is a key enabling opportunity for the Joint Committee. Following a housing audit to gauge Local Plan progress on targets and delivery rates, a HotSW Housing Summit was held in September with key agencies including Homes England. The outcome of this successful event was an agreement to work closely with Homes England to develop a bespoke package of offers and asks with Government which will help us to successfully deliver the ambitious housing programmes we have across our area. A Housing Sector Task Force of strategic leaders and officers has been established to develop our proposition to Government and to work with Homes England which will report to the Joint Committee.
- (f) National Infrastructure Commission (NIC)

The Joint Committee is seeking to secure a growth corridor study following helpful discussions with the NIC. Initial discussions with the Chair of the Commission were well received and the Joint Committee was encouraged to submit a business case to the Chancellor who will ultimately make a decision as to whether to fund a study.

A proposal was submitted to the Chancellor in October. The study would be similar to the one conducted by the NIC for Cambridge-Milton Keynes-Oxford. It would help the HotSW partnership to better understand the constraints to higher levels of productivity by highlighting where investment in strategic infrastructure could unlock faster growth over the long term. The initial focus for the study would be along the A38/M5 transport spine, recognising that investment would have benefits for the whole of the HotSW area and wider south west.

- (g) Brexit Resilience Opportunities Group.

The Joint Committee has consistently lobbied Government that any powers that move back from the EU under Brexit must not stop at Whitehall. This senior officer group was established by the Joint

Committee to research and advise on the opportunities and risks to the HotSW.

The Group has been collating evidence on some of the key risks and opportunities for our unique economy and has conducted research in the following areas: workforce, construction industry, agriculture and land management; food and farming, fisheries and post Brexit funding to support the economy. The Group is also collating the risk and impact analysis of Brexit on local government such as service delivery and community resilience.

The Group has fed directly into the Local Government Association briefing papers and to key Government departments to raise the profile of the area. With the Brexit departure date looming and several 'deal' scenarios still possible, this work has become ever more important. A Brexit Joint Regional Sounding Board event planned, as part of the 12<sup>th</sup> November LEP Conference, will be an opportunity for business and public sector to engage with Government representatives from Defra, BEIS, and MHCLG on preparedness. The Group is working with Cornwall on issues of mutual interest and concern.

(h) Sub-National Transport Body

Linked to the Joint Committee's work on infrastructure is the imminent establishment of a South West Peninsula Shadow Sub-National Transport Body (covering Somerset, Devon, Cornwall, Plymouth and Torbay) which will develop a sub-national Transport Strategy to work with Government to deliver investment in our major transport infrastructure.

In the short-term this will be an informal partnership, however a current 'ask' of Government is that they endorse the creation of a statutory Sub-National Transport Body for the Peninsula, and a separate body for the South West around the east of the region. These two new transport bodies will provide a platform for strategic discussions with Government on priorities for the region over the long term.

2.2 **Next steps:**

In addition to what is outlined above, the Joint Committee / LEP partnership will:

- (a) Develop an Investment Framework for the Delivery Plan so that priorities for delivery and project opportunities can be delivered via investment from a range of sources.
- (b) Review the roles and functions of both bodies through a governance review to acknowledge the revised and enhanced focus given to LEPs by the Government. This work will include a review of the management support arrangements. The Joint Committee and the LEP will continue to share responsibilities across the Productivity Strategy and the Delivery Plan with the LEP leading on areas closely linked to the LIS and the Joint Committee leading on other areas such as housing and infrastructure. The need for close collaboration between the two has never been more important as we look to further influence Government policy and actions over the next 12 months and beyond.

### **3. Local Industrial Strategy (LIS)**

- 3.1 The inclusion of the HotSW LEP area in the second wave of areas to benefit from working with the Government to develop their Local Industrial Strategies (LIS) is a considerable achievement for the Joint Committee and the LEP. The first wave 'trailblazers' were the urban conurbations of Greater Manchester, the West Midlands and Cambridge-Milton Keynes-Oxford. The partnership had been pushing to be in the second wave and had raised the ask with Government Ministers and officials over a number of months. It was therefore very welcome that HotSW was announced in July as being part of wave 2.
- 3.2 By working closely with Government to develop our Local Industrial Strategy we will be able to jointly agree the long term transformational opportunities that will help deliver the asks specific to our area and influence wider Government policy and delivery.
- 3.3 Local Industrial Strategies will focus on the foundations of productivity and identify transformational opportunities with partners across Ideas, People, Infrastructure, Business Environment and Place. The Strategy will be led by local people and businesses, allowing local leaders to harness the strengths of their own areas; ensure that the benefits of growth are realised by all; and provide the right conditions for improving the prosperity of communities throughout the area.
- 3.4 Ultimate approval of the LIS rests with the LEP in collaboration with the Government. The LIS guidance requires the LEP to collaborate on the development of the LIS with a range of stakeholders including the local authorities and other partners.
- 3.5 The LEP's proposed timetable is to have the final LIS agreed between the LEP and the Government by June 2019. Fortunately, HotSW partners are better placed than many areas to meet this timetable as the work done by the Joint Committee and the LEP to build and test the evidence base for the Productivity Strategy and Delivery Plan has set the foundation; the LIS will be a natural extension of this.
- 3.6 The Joint Committee is ideally placed to provide both collective and council level input into the development of the LIS, although final approval rests with the LEP. The validity and positioning of the document would be immeasurably strengthened by the involvement and general endorsement of all the constituent authorities, and by other partners including the business community. To enable the development of the LIS to be taken forward at pace, and to demonstrate alignment with partners across the area, it is proposed that local authority input is developed, coordinated and signed off by the Joint Committee. The powers of (and delegations to) the Committee are tightly focussed around the Productivity Strategy under the current governance arrangements, so approval needs to be sought from the constituent authorities to formally delegate the Council's responsibilities for contributing to and signing off the HotSW Local Industrial Strategy (LIS) to the Joint Committee. The recommendations provide the opportunity for the Council to influence and shape the LIS as well as provide content. To ensure that there is wide buy-in to the development of the LIS across the constituent authorities, a portfolio holder engagement event is planned for 23 November 2018

#### **4 Heart of the South West Joint Committee Budget and Cost Sharing Agreement**

- 4.1 The Joint Committee has been kept informed of its budgetary position to provide assurance that it is operating within its budget. This section of the report includes:
- (a) a summary of the Heart of the South West Joint Committee's current budget position for 2018/19 - see Appendix B
  - (b) a Heart of the South West Joint Committee Budget and Cost Sharing Agreement (B&CSA) which is a development of the Inter-Authority Agreement agreed by the constituent authorities at the time the Committee was established - see Appendix B
  - (c) An indicative Heart of the South West Joint Committee budget request for 2019/20 to the constituent authorities.
- 4.2 Appendix B summarises the position on the operating and support budget of the Heart of the South West Joint Committee. It shows a variation of the income for 2018/19 expected at the time of the Committee's establishment with a larger than anticipated underspend carried forward from the work on devolution during the 2015 to 2018 period. This together with the contributions agreed by the constituent authorities have given the Committee a larger than anticipated budget for 2018/19.
- 4.3 In terms of the anticipated Heart of the South West Joint Committee spend for 2018/19 the current position suggests that the Committee will be able to operate within budget and should achieve an underspend to be carried forward to 2019/20 to help offset the future budget requirement for the Joint Committee. The current underspend is around £40k. It should be noted however that not all commitments for 2018/19 have yet been identified.
- 4.4 At the time of the Committee's establishment the Inter Authority Agreement referred to the development of a B&CSA and included some headings to be included within it. Appendix B sets out the draft B&CSA. It is a relatively simple document proportionate to the small size of the Heart of the South West Joint Committee budget and the limited financial risk to each constituent authority. It explains the role of the administering authority as well as the responsibilities of the constituent authorities. The Joint Committee has approved the B&CSA and all Section 151 Officers of the constituent authorities have been consulted on its contents. The document now requires the formal approval of the constituent authorities.
- 4.5 In terms of the Joint Committee's budget for 2019/20 the work programme is unknown at this stage although a busy year is expected for the Committee to respond to Government policy initiatives and to support the Delivery Plan. To assist the constituent authorities to plan budget commitments for 2019/20, the minimum contribution levels for 2019/20 are set out below and are at the same level as for 2018/19. These contributions will generate sufficient budget to cover the costs of the administering authority to service the Joint Committee and leave a small surplus. Dependent on the underspend carried forward from the current year and the outcome of the review of the management support arrangements, this may not be sufficient to fully cover any additional

work, for example secondments, or externally commissioned work. The funding requirements will be clarified, as far as is possible, in advance of the 2019/20 financial year following the governance review and through a costed work programme and applied on a pro-rata basis.

- County Councils - £10,500
- Unitary Councils - £4,000
- District Councils and National Parks £1,400

## **5. Consultation, communication and engagement**

- 5.1 Under the Communications and Engagement Plan, members of the constituent authorities, partners and the public have been kept informed of developments with the Joint Committee through newsletters published after each formal meeting and press releases on significant issues of interest. As we move towards Christmas, the Committee’s engagement plans include seeking the support of relevant Ministers and all local MPs for the Communications document and specifically our ‘asks’ of Government. This engagement campaign will continue and accelerate as we move into 2019.
- 5.2 In addition the Committee has a website providing background information, links to latest news and publications and details of the membership. This can be accessed at: <http://www.hotswjointcommittee.org.uk/>

## **6. Proposed Way Forward**

- 6.1 It is essential that the local authorities contribute to the development and approval of the LIS working in collaboration with the LEP. The LIS will be a natural development of the Productivity Strategy and Delivery Plan for which the Joint Committee already has delegated authority, and therefore it would seem appropriate to formally extend this authority to the development and approval of the LIS to the Joint Committee on behalf of the constituent authorities.
- 6.2 It is important that the constituent authorities are kept up to date on the Committee’s budget situation and make provision for the 2019/20 budget commitment. It is also important that the Budget and Cost Sharing Agreement is formally agreed by the constituent authorities as part of the Committee’s governance arrangements.

## **7. Implications**

<b>Implications</b>	<b>Relevant to proposals Y/N</b>	<b>Details and proposed measures to address</b>
Legal/ Governance		<p>The HotSW Joint Committee is a Joint Committee of the local authorities across Devon and Somerset that comprise the HotSW area and established under Sections 101 to 103 of the Local Government Act 1972 and all other enabling legislation to undertake the following:</p> <p>The key purpose of the Joint Committee is to be the vehicle through which the HotSW partners will ensure</p>

		<p>that the desired increase in productivity across the area is achieved.</p> <p>The Committee is a single strategic public sector partnership providing cohesive, coherent leadership and governance to ensure delivery of the Productivity Strategy for the HotSW area. The specific objectives of the Joint Committee are to:</p> <ul style="list-style-type: none"> <li>- Improve the economy and the prospects for the region by bringing together the public, private and education sectors;</li> <li>- Increase our understanding of the economy and what needs to be done to make it stronger;</li> <li>- Improve the efficiency and productivity of the public sector;</li> <li>- Identify and remove barriers to progress and maximise the opportunities/benefits available to the area from current and future government policy.</li> </ul>
Financial		<p>As per section 4.5, the contribution level for West Devon Borough Council towards the Heart of the South West Joint Committee's budget is £1,400.</p> <p>In addition to this the constituent authorities and partners continue to input considerable amounts of officer time into the partnership on an 'in kind' basis. The LEP continues to make a significant contribution to the work of the Committee and has met some direct costs.</p> <p>The constituent authorities are reminded that the Joint Committee continues to provide a relatively low-cost option to meet the partnership's objectives compared to the Combined Authority alternative.</p>
Risk		<p>Given the participation in the Joint Committee as one of the constituent Local Authorities, the main risks are around failing to participate actively in this or any other related process, thus manifesting a failure of sub-regional or regional awareness of the Council's specific economic and productivity concerns. The risk from failing to participate is most likely to be a loss of the Council's influence at regional level and an inability to draw attention to the area's economic needs (across such areas as productivity, skills, infrastructure and related inward investment). It would also weaken the wider partnership proposition, so affecting the ability of the HotSW partnership to speak with one voice and influence Government policy for the benefit of the wider area and including our residents, businesses and visitors.</p>
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity		No adverse impact on any protected groups.
Safeguarding		N/A

Community Safety, Crime and Disorder		N/A
Health, Safety and Wellbeing		There are no direct public health impacts of these recommendations. However, public health considerations will be an important consideration in the development of the LIS recognising that there is a strong correlation between economic prosperity and health of the population.
Other implications		N/A

**Appendices:**

- APPENDIX A: Heart of the South West Partnership's key strategic asks of Government
- APPENDIX B: BUDGET STATEMENT – 2018/19

**Supporting Information**

- Heart of the South West Devolution Update, Presented to WDBC on 28<sup>th</sup> February 2017
- Heart of the South West Formal Devolution Bid – Combined Authority Principle, Presented to WDBC on 26<sup>th</sup> July 2016
- Heart of the South West Formal Devolution Bid, Presented to WDBC on 16<sup>th</sup> February 2016
- Driving Productivity in the Heart of the South West Consultation Paper (Green Paper) January 2017 (Available to view / download at <http://www.torbay.gov.uk/devolution>)

## **APPENDIX A: Heart of the South West Partnership's key strategic asks of Government**

As part of the partnership's increased lobbying with MPs and with reference to the Great South West Partnership several 'policy asks' of Government have been identified to coincide with party conferences and the Autumn Budget. These will be socialised over the next few months and are:

1. Recognition of the Great South West Partnership in the Autumn Budget Statement together with a commitment to co-design a Rural Deal - a 'Rural Productivity Partnership' with GSW following publication of Rural Productivity Commission Report earlier in the year
2. Strategic Connectivity
  - a. Confirmation of Sub National Transport Body/ (ies)
  - b. Peninsula Rail priorities – e.g. commitment for funding Dawlish
  - c. Funding commitment for A303 improvements
  - d. Superfast Broadband and 5G trials
  - e. Joint working with the National Infrastructure Commission on an A38/M5 corridor study to explore how we can unlock our full potential and accelerate growth to transform our region.
3. Transforming Cities and Strength in Places bids agreed
4. EU Fisheries underspend proposal: an offer to work with Government to develop a proposal to utilise the projected underspend in the current EU Fisheries budget.
5. Nuclear Sector Deal (and others specifically Maritime and Defence) to have clear place-based elements/funding, recognising the HotSW opportunities.
6. Local Industrial Strategy specific: encourage joint working with WECA on Wave 2 Local Industrial Strategies particularly around connectivity and Smart specialisations e.g. Nuclear and Aerospace.

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## APPENDIX B:

### Heart of the South West Joint Committee Budget Statement – 2018/19

#### Costs

At the time the Joint Committee was established it was estimated that its operating and support **costs** for 2018/19 (and to cover the remainder of 2017/18) would be £89,000 - excluding in-kind officer support. This estimate comprised:

1. £25,000 for work the Joint Committee would wish to commission to support the delivery of its work programme
2. £24,000 for the Brexit Resilience and Opportunities Group Secretariat
3. £40,000 for the Administering Authority to undertake its duties.

#### Heart of the South West Joint Committee Budget 2018/19

Current Heart of the South West Joint Committee budget position summary:

18/19 Budget = <u>£117k</u> (an increase of £25k over the original estimate)	18/19 Expenditure - <u>£76.4k</u> (as at 24/10/18)
<ol style="list-style-type: none"><li>1. £67k - devolution budget carry forward (as against the estimate of £42k) – transferred from PCC to SCC</li><li>2. £50k - funding contributions from the constituent authorities</li></ol>	<ol style="list-style-type: none"><li>1 £40k - for Administrative Authority costs including: direct meeting costs (including refreshments); staffing costs directly relating to HotSW meetings; JC communications and marketing; micro-site development</li><li>2 £11.3k - support costs of the Brexit Resilience Opportunities Group (BROG) including seconded part-time officer support (against an original budget allocation of £24k)</li><li>3 £6k – costs of Housing Summit</li><li>4 £9.8k – housing consultancy support</li><li>5 £9.3k – national corridor infrastructure corridor consultancy support</li></ol>

## **HEART OF THE SOUTH WEST JOINT COMMITTEE BUDGET AND COST SHARING AGREEMENT**

As part of the new Joint Committee working arrangements, the following clause was agreed in relation to the costs of operation of the Joint Committee. This clause was

### **4.0 JC Finance**

4.1 The JC's budgetary arrangements shall be detailed in a budget and cost sharing agreement to be agreed by all the Constituent Authorities annually on the recommendation of the JC and in advance of the financial year. The only exception to this will be in the JC's first year of operation when the JC shall recommend a budget and cost sharing agreement to the Constituent Authorities for approval at the first opportunity following its establishment.

4.2 The budget and cost sharing agreement shall cover:

- (a) The responsibilities of the Constituent Authorities for providing funding for the JC
- (b) The anticipated level of expenditure for the JC for the year ahead
- (c) The cost sharing mechanism to be applied to the Constituent Authorities
- (d) Details of how the budget will be set and agreed each year
- (e) Who is to be responsible for maintaining financial records on behalf of the JC (the 'accountable body');
- (f) What financial records are to be maintained;
- (g) What financial reports are to be made, to whom and when;
- (h) What arrangements and responsibilities are to be made for:
  - auditing accounts;
  - insurance including ensuring all partners have sufficient cover;
- (i) How any financial assets held by the JC on behalf of the Constituent Authorities will be redistributed to the CAs in the event of the dissolution of the JC or in the event of a CA formally withdrawing from the CA.

in the Inter-Authority Agreement.

### **How is the Heart of the South West Joint Committee budget set and agreed each year?**

In the February preceding each financial year, in consultation with the Somerset County Council Finance Advisory Team, the SCC Strategic Manager - Partnership Governance on behalf of the PMO will detail a Heart of the South West Joint Committee budget plan for the JC income and expenditure. This will establish estimated amounts for that financial year and the timing of those financial transactions. This will be submitted by the administering authority to the Joint Committee for recommendation to the Constituent Authorities (CA) for approval.

Each CA will pay their agreed contribution to the Administering Authority (AA) in a timely manner on receipt of invoice details.

### **Who is to be responsible for maintaining financial records on behalf of the JC?**

SCC Finance Advisory Team – Ian Tier, Finance Manager.

**What Heart of the South West Joint Committee financial records are to be maintained?**

Financial records, i.e. orders for supplies and services, payments made, invoices raised and receipts, will be kept electronically on the SCC financial system. This incorporates purchase orders, invoice scans, cashiers receipts and sales invoices.

**What Heart of the South West Joint Committee financial reports are to be made, to whom and when?**

SCC Finance Advisory will present a quarterly income and expenditure report to the SCC Strategic Manager – Partnership Governance. This will be reported to the CEx Advisory Group for information. An income and expenditure report will be presented to the JC for information on at least an annual basis.

**What arrangements and responsibilities are to be made for?**

**Auditing Heart of the South West Joint Committee Accounts:** The AA's accounts and audit arrangements will apply to JC business.

**Insurance:**

Each CA will ensure that it has sufficient insurance cover in place to provide protection for their members and officers participating in the work of the JC and in their capacity as officers or members of that authority. The AA will ensure that it has sufficient insurance cover in place to cover the AA role.

**How any financial assets held by the JC on behalf of the CA will be redistributed to the CAs in the event of the dissolution of the JC or in the event of a CA formally withdrawing from the CA?**

Itemised records of contributions made by each of the CAs will be kept over the life of the JC. In the event of the dissolution of the JC or in the event of a CA formally withdrawing from the CA having given the required notice, financial assets will be returned to the CA or CAs on a proportionate basis.

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Report to: **COUNCIL**

Date: **4 December 2018**

Title: **General Data Protection Regulation (GDPR) & Data Protection Policy Update**

Portfolio Area: **Cllr Chris Edmonds**

Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/A**

Date next steps can be taken: **Immediately**

Author: **Darren Arulvasagam** Role: **Data Protection Officer & Group Manager Business Development**

Contact: [Darren.Arulvasagam@swdevon.gov.uk](mailto:Darren.Arulvasagam@swdevon.gov.uk) or 01803 861222

## **RECOMMENDED**

**That the Council RESOLVES to:**

- 1. APPROVE the amended Data Protection Policy as detailed in Appendix A;**
- 2. DELEGATE approval of the related codes of practice and protocol documents (as summarised in section 3 of this report) to the Council's Data Protection Officer; and**
- 3. NOTE and SUPPORT the approach and progress made towards GDPR readiness by the Information Governance Group.**

### **1. Executive summary**

- 1.1 On 25 May 2018 new rules came into force in respect of Data Protection – these are referred to as the General Data Protection Regulation (GDPR - EU regulation) and the Data Protection Act 2018 (UK Law).
- 1.2 This report provides an overview of the key requirements of the GDPR, outlines the approach that the Council has taken and recommends the adoption of an updated policy and associated guidance for the Council.
- 1.3 In order to be compliant with the new regulations, the Council has undertaken a comprehensive review of its policies, processes and procedures. This has resulted in the need to update the current, adopted policy (see appendix A).
- 1.4 GDPR places great emphasis on the documentation that the Council must maintain in order to demonstrate accountability. Compliance requires a detailed review of our approach to information governance, data protection and how we collect and process data.
- 1.5 A series of related codes of practice have also been prepared, which will underpin the work that the Council, its staff and Members will need to adhere to. These codes will be updated on a regular basis and can be viewed on the Council's intranet and ultimately, internet. Responsibility for keeping these documents updated will fall to the Council's Data Protection Officer and, as such, it is recommended that the approval of these documents is delegated to the Data Protection Officer.

- 1.6 A summary of the codes of practice is shown in section 3 of this report.
- 1.7 The Council's Overview and Scrutiny Committee considered a version of this report at its meeting on 6 November 2018 and, following a detailed debate, proceeded to recommend approval to the Council of each of the three recommendations outlined above.

## **2. Background**

- 2.1 Data protection law changed from 25 May 2018. The previous law had been in place for twenty years - since before the use of the internet, emails and cloud storage services. The General Data Protection Regulation (GDPR) is an EU regulation drafted to be fit for purpose in the digital age.
- 2.2 GDPR is an EU sourced regulation. In the UK, the existing Data Protection Act which was developed in 1995 has been updated to adopt many of the GDPR requirements and is known as the Data Protection Act 2018. This move will ensure that 'Brexit' will necessarily lead to later changes in the law.
- 2.3 The new regulation enhances the rights of data subjects and gives them more control over what happens with their data. It also allows for financial penalties to be imposed on any organisation that breaches those rights or does not comply with the accountability principle.
- 2.4 Organisations need to put technical and organisational measures in place to protect data from loss, unauthorised access, etc. and to ensure the rights of data subjects are protected.
- 2.5 Under the GDPR, the Council is required to appoint a Data Protection Officer. The regulation states that the appointment must be made on an individual's professional qualities and expert Data Protection knowledge, laws and practices. The Data Protection Officer must also have a direct reporting line to the senior tier of management, and be able to act independently of the Council. The Senior Leadership Team appointed the Group Manager, Business Development to this role and specific training has been undertaken to ensure compliance.
- 2.6 The Council has an Information Governance Group which is responsible for ensuring the Council is compliant with all information regulation and laws (Data Protection Act, Freedom of Information Act, and Environmental Information Regulations, Data Security) as well as ensuring that suitable good practice advice and training is in place for staff. This group of officers meets regularly to monitor progress against plans. The comprises the Data Protection Officer, Monitoring Officer, Case Management Manager, Support Services Specialist Manager, and the ICT Specialist for Information Security.
- 2.7 The six general principles under the new legislation are:
  - 2.7.1 Personal information shall be processed lawfully, fairly and in a transparent manner.
  - 2.7.2 Personal information shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes.
  - 2.7.3 Personal information shall be adequate, relevant, and limited to what is necessary.
  - 2.7.4 Personal information shall be accurate and, where necessary, kept up-to-date.

- 2.7.5 Personal information shall be retained only for as long as necessary.
- 2.7.6 Personal information shall be processed in an appropriate manner to maintain security.
- 2.8 Personal information under GDPR includes:
- an identifier, e.g. a name, email address, phone number
  - personal identification numbers, e.g. bank account or national insurance numbers
  - factors specific to an individual's physical, physiological, genetic, mental, economic, cultural or social identity. This would include anything relating to a disability
  - location data - data that has any kind of geographic position attached to it, e.g. data collected by wireless networks, swipe cards and smart mobile devices that provide location tracking
  - online identifiers, e.g. mobile device IDs, browser cookies, IP addresses
- 2.9 Special Categories of Data are those which are particularly sensitive, e.g. race, ethnicity, political opinion, genetic or health related data and sexual orientation.
- 2.10 GDPR applies to 'controllers' and 'processors' – the controller says how and why personal data is processed and the processor acts on the controller's behalf. In most cases, WDBC (Officers and Members) is the controller and processor, but in some cases the data is processed by third parties.
- 2.11 The rights of individuals under the GDPR have seen some significant enhancements. Since May, individuals have:
- the right to be informed;
  - the right of access;
  - the right to rectification;
  - the right to erasure;
  - the right to restrict processing;
  - the right to data portability;
  - the right to object; and
  - the right not to be subject to automated decision-making including profiling
- 2.12 The biggest change that the Council needed to address is the ability to locate and delete individual's data across all of the Councils systems when legally required under the rules.
- 2.13 **Subject Access Requests (SARs).** The new regulations mean that we cannot charge for complying with SAR's and we have to comply with the request within a month rather than the previous 40 days allowed. Since January 2018 the Council has received seven SARs.
- 2.14 **Lawful basis for processing personal data.** For each processing activity that the Council undertakes, the Council needs to identify the lawful basis for the processing. It is important to assess this particularly in light of the right for data to be deleted – if the only lawful basis for processing is 'Consent' then the information must be deleted on request. The lawful basis for processing the information must also be included within the Privacy Notice.

- 2.15 **Consent.** The Council has reviewed how it seeks, records and manages consent. Consent for the Council processing data must be freely given, specific, informed and unambiguous. Consent must not be inferred. Consent for data processing must be separate for any other terms and conditions in documents, web pages or other data capture means.
- 2.16 **Children.** For the first time, GDPR brought in special protection for children's personal data. If the Council obtains personal data in respect of children, the privacy notice must be written in a language that children will understand.
- 2.17 **Data Breaches.** The GDPR introduces a duty to report certain types of data breach to the ICO, and in some cases, to individuals. The Council will only have to report a breach to the ICO where it is likely to result in a risk to the rights and freedoms of individuals. Additionally, where there is a high risk to these rights and freedoms, resulting in potential for discrimination, reputational damage, financial loss, loss of confidentiality, etc. there is an additional requirement for the individual concerned to be notified. Not all breaches need to be reported to the ICO, but the potential breach must be assessed within the first 72 hours.
- 2.18 **Data Protection by design and Data Protection Impact Assessment.** GDPR makes 'privacy by design' an express legal requirement. It also makes Privacy Impact Assessments mandatory where a new technology is being deployed, where a profiling operation is likely to significantly affect individuals or where there is processing on a large scale of the special categories of data.
- 2.19 The Council has:
- 2.19.1 Prepared a compliant General Data Protection Regulation Policy (see Appendix A)
- 2.19.2 Delivered online training for Data Protection to all employees
- 2.19.3 Delivered face to face training sessions for Information Asset Owners and key processing staff (60 staff already received training, with regular updates programmed to ELT and SLT)
- 2.19.4 Prepared an information asset register for all processing activities and identified the lawful basis for such processing
- 2.19.5 Prepared & communicated an information / training checklist for Members to advise how they should deal with personal data
- 2.19.6 Updated its Privacy Notices to be compliant with the new regulation & prepared a data protection impact assessment for all relevant areas of data processing – these are viewable on the Council's website
3. **Outcomes**
- 3.1 In order to ensure that the Council is compliant, the Information Governance Group commissioned an external "readiness" audit. A GDPR specialist visited the Council and interviewed key officers in order to ascertain priority areas for consideration. An action plan was created to address the points raised in the readiness audit. The first actions completed have been to appoint a Data Protection Officer (the author of this report) and to instigate a review of all of the Council's data protection policies and procedures. The updated policy has been finalised. Updated codes of practice and procedural documents have been produced and these are in the process of being rolled out across the organisation.

- 3.2 It is requested that delegated authority is given to the Data Protection Officer, in consultation with the Information Governance Group, to finalise and keep updated the codes of practice and procedures relation to GDPR and Data Protection compliance.
- 3.3 The Codes of Practice can be found on the Council's intranet. In time, these will be published on the Council's website (as appropriate). A communications and training plan will be delivered to ensure staff understand and engage with the new and updated processes and forms. In actuality, there is little significant change from existing working practices. Operationally the Council has been working to the new regulations and following the recommended guidance since before the inception of GDPR, as the Council readied itself for the new legislation.
- 3.4 The Council has prepared and updated a series of Codes of Practice in accordance with GDPR and the Data Protection Act 2018 – these are the guidelines by which information is obtained, stored, shared and accessed. The following codes of practice have been prepared / updated:
- 3.4.1 Obtaining Personal Information
  - 3.4.2 Managing Personal Information
  - 3.4.3 Accountability and Governance
  - 3.4.4 Individuals Rights
  - 3.4.5 Disclosures and Information Sharing
  - 3.4.6 Information Security
  - 3.4.7 Privacy and Electronic Communications Regulations
  - 3.4.8 Code of Practice for Elected Members
  - 3.4.9 Security in Procurement
  - 3.4.10 Use of Surveillance Cameras and CCTV
  - 3.4.11 Processing for Law Enforcement Purposes
  - 3.4.12 Law Enforcement Policy Document for Sensitive Processing
  - 3.4.13 Special Category Information Processing Policy Document
- 3.5 These codes of practice and policy documents are intended to be living documents and will need to be updated as further guidance is received from the Information Commissioners Office. It is therefore recommended that the responsibility for the approval and review of these documents (and the addition of any further relevant codes and documents) is delegated to the Council's Data Protection Officer, in consultation with the Information Governance Group.
- 4 Options available and consideration of risk**
- 4.1 Members could opt to follow, amend or reject the recommendations.
- 4.2 The updated Data Protection Policy has been designed to incorporate changes to the law, which came into force during 2018. Adoption of this updated policy will reflect the Council's compliance with this law. Operationally, the Council has already taken steps to ensure compliance. It is not considered that the Council is at risk of non-compliance.

- 4.3 Delegating approval to finalise the codes of practice will ensure that the Council retains the agility to update its operating procedures in light of changes to working practices, complaints or breaches.
- 4.4 Since January 2018, eight Data Protection investigations have been undertaken by the Council, two of which have been referred to the ICO for investigation by the complainants themselves. The Council has not considered, based on the regulations, that any of the investigations have warranted reporting to the ICO.

## 5 Proposed Way Forward

- 5.1 If the Council approves this report's recommendations and adopts the updated policy and guidance (as shown in Appendix A), officers will finalise the codes of practice and policy documents and ensure these are embedded within the organisation, in order to maintain council compliance with the new act. The existing data protection policy will be replaced with the new policy.

## 6.0 Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>Compliance with the regulations is critical in ensuring that the reputation of the Council is upheld and that the rights of individuals are protected.</p> <p>Our existing Data Protection policy required updating in order to be compliant – this work has been completed and the recommended policy is shown in Appendix A.</p>
Financial	Y	<p>There are no significant financial implications from achieving compliance – however, there is risk of significant financial penalties for non-compliance. At present, resources have been absorbed / pooled from Support Services, Customer First and Strategy &amp; Commissioning to prepare for and implement the new regulations, with no new budget pressures created.</p>
Risk	Y	<p>A significant amount of work has been undertaken to ensure compliance with the regulations. An action plan is in place and is monitored regularly. A project team has been formed which meets regularly, with oversight by the Information Governance Group and SLT.</p> <p>Training has been and will continue to be arranged for individuals at an appropriate level based on their role in the organisation to ensure awareness of the new regulation &amp; the impact that this has on their activities.</p>
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	<p>There are no Equality and Diversity implications. The regulations apply to all individuals equally.</p>
Safeguarding	N	<p>None – Compliance with GDPR has implicit improvement impacts on safeguarding</p>

Community Safety, Crime and Disorder	N	None
Health, Safety and Wellbeing	N	This is implicit with GDPR and will be dealt with through compliance and revised policies.
Other implications	N	Policies will be updated as a result of compliance with GDPR

**Supporting Information**

**Appendices:**

Appendix A – Data Protection Policy (2018)

**Background Papers:** General Data Protection Regulation (GDPR) – Readiness & Impact, presented to Audit Committee, 22<sup>nd</sup> March 2018

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**South Hams District Council**

**&**

**West Devon Borough Council**



# **Data Protection Policy (2018)**

# Data Protection Policy (2018)

## 1. What is Data Protection?

**The General Data Protection Regulation 2016 (GDPR) and Data Protection Act 2018 (DPA)** apply to personal information that is held by the Council about living, identifiable individuals of any age. Examples of personal information includes an individual's contact information, details of the service we provide to the individual, recordings or photographs.

This personal information may be automatically processed, such as on a computer, smartphone, recording device or CCTV system, or in manual paper records, for example, hand-written meeting notes application forms, or printouts of what is held on computer.

Personal information includes information that has been 'pseudonymised' (a term used introduced by the GDPR where personal information has been removed from data); for example, information which has been given a reference number or code so that an individual cannot be identified, and the identifiable information is kept separately.

This Policy and associated Codes of Practice and Procedures are designed to promote and maintain compliance with the GDPR and the DPA. These two pieces of legislation work together in tandem; for example, the principles and requirements for handling personal information are set out in the GDPR, and exemptions, enforcement and penalties are set out in the DPA. The DPA also includes our obligations for processing personal information for law enforcement purposes.

## 2. When do the Data Protection rules apply?

The Data Protection rules apply to personal information about living, identifiable individuals who can be identified, directly or indirectly **wherever** that personal information is held, such as:

- Computer systems
- Audio recordings (such as telephone) or video recordings (such as CCTV)
- Mobile or smart phones
- Tablets or any device that can operate automatically in response to a set of instructions (such as a computer program). It does not matter whether the device is privately owned or owned by the Council. If the information held on it is used for Council purposes, then the Data Protection rules apply.
- Paper files that are structured (for example, alphabetically or in date order) and information can be easily accessed by looking up the name/address/postcode or other information about an individual.

- Paper records that are intended to be filed or transferred to computer, such as application forms.
- Unstructured paper records (for example, handwritten notes and jottings of a meeting that are not neatly filed away or indexed, nor transferred to computer).
- Expressions of opinion and intentions (for example, views expressed about someone in an email message).

Ultimately, if the Council obtains, holds or does something with personal information the Data Protection rules apply.

The Data Protection rules **do not apply** to:

- De-personalised, anonymised or statistical information where individuals cannot be identified;
- Businesses or organisations (unless it relates to a sole trader or partner in a business partnership)
- People who are deceased, although the DPA applies to those who remain. For example, there is a duty of confidentiality to those who may be named on the deceased's records.

### **3. The Data Protection Principles**

These are legally enforceable principles and requirements which are the foundation of good information management and help us to respect the rights of individuals.

The **GDPR Principles** require that personal information must be:

- Processed lawfully, fairly and in a transparent manner
- Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes (purpose limitation)
- Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')
- Accurate and, where necessary, kept up to date
- Kept in a form which permits identification of individuals for no longer than is necessary for the purposes for which the information is processed ('storage limitation').
- Processed in a manner that ensures appropriate security of the personal data (including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage) using appropriate technical or organisational measures ('integrity and confidentiality').
- Accountability: the controller (the Council) is responsible for, and must demonstrate compliance with the Principles.

- Individuals' rights and access to personal information must be upheld, including the right to:
  - be informed about what we do with his/her information
  - rectification
  - erasure / right to be forgotten
  - restriction of processing
  - data portability (i.e. the right to be provided with personal information in a structured, commonly used machine-readable format)
  - make an objection
  - Not to be subject to a decision based on automated individual decision-making and profiling
- Only transferring personal data to countries, territories or international organisations outside the European Union if there are adequate protections in place or safeguards.

#### **4. How do the Regulations and Data Protection Act affect me?**

The GDPR and DPA rules apply to anyone in the Council who has access to, uses or passes on personal information in his/her day-to-day work.

Breaches of the Principles may result in the Council facing substantial monetary penalties, being publicly named-and-shamed, and would result in the loss of trust from the people we provide services to.

For employees, it is a criminal offence to:

- Obtain, procure, handle, disclose or retain personal information without the Council's authorisation or consent
- Sell (or offer to sell) personal information that has been unlawfully obtained, which includes advertising it for sale.
- Re-identify personal information that has been de-identified.
- Alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure of all or part of the information that the requestor is entitled to receive.
- Force someone to make a subject access request to see information about their convictions, cautions, health records or Disclosure Barring Service information, as a method of vetting them.

#### **5. What is the Council's Data Protection Policy?**

The Council's aims are to make every effort to ensure:

- Compliance with the GDPR and DPA is maintained

- Personal information is well-managed, held securely and that the rights of individuals are respected.
- Data protection is integrated into the Council's working practices and information systems from the moment information is collected through to its destruction.
- Compliance with the accountability principle, being responsible for and able to demonstrate compliance with the other principles and requirements, such as:
  - Implementing appropriate technical and organisational measures such as internal data protection policies, procedures and codes of practice, staff reporting, provision of staff training, internal audits of processing activities, and reviews of internal Human Resources policies.
  - Maintaining documentation of our processing activities.
  - Appointing a Data Protection Officer.
  - Implementing measures that include:
    - Data minimisation
    - Pseudonymisation
    - Transparency
    - Allowing individuals to monitor processing
    - Creating and improving security features on an ongoing basis.
  - Conducting Data Protection Impact Assessments where appropriate.

This Policy is supported by the Senior Leadership Team (SLT) and commits the Council to providing the necessary resources to ensure that this Policy's aims can be achieved.

Procedures that describe the arrangements and processes for the implementation of this policy will be available on the Council's intranet.

## **6. Who is Responsible for Data Protection?**

### **Data Protection Officer**

The Council has appointed a Data Protection Officer (the DPO), Darren Arulvasagam.

The DPO reports to the Audit Committee (who will make any necessary recommendations to the Council) and is responsible for:

- Ensuring the objectives of the Data Protection Act 2018 and related legislation are achieved and assisting the Council with its compliance and maintaining standards of good practice.

- Ensure the objectives of the Information Governance Group are achieved, managing it and reporting progress to SLT.
- Providing advice to the Council for the resolution of queries and maintaining the accuracy of the Council's internal **Record of Processing Activities** and keeping it up to date.
- Managing data protection procedures, policies, codes of practice and revised documentation.
- Arranging training opportunities for employees and elected Members.
- Constructing and reviewing compliance monitoring programmes; ensuring their completion and reporting findings

### **Information Governance Group**

To ensure that the Council complies with all relevant legislation and best practice in relation to:

- Data Protection
- Freedom of Information
- Environmental Information
- Records Management / Document Retention
- Data Security

The Information Governance Group will meet regularly to maintain an overview, consider issues, monitor compliance and arrange for necessary action to be taken.

The Information Governance Group will:

- Ensure consistency and compliance with legislation and best practice
- Ensure that the Council develops and maintains corporate policy, procedures, and codes of practice
- Develop guidance for staff and Members
- Commission training for all Officers and Members
- Obtain specialist help when required
- Monitor and review performance to ensure compliance and improvement
- Devise a work plan

### **Managers and Service Area Leads**

Have overall responsibility for ensuring that personal information held within their service area is managed in a way which meets the aims of the Council's Data Protection Policy.

They should ensure that all staff responsible for managing personal information are appropriately trained or experienced and understand the need for Data Protection.

## **All Staff**

All staff who create, receive and use personal information have responsibilities under this Policy, Council Codes of Practice and to comply with the requirements of the GDPR and DPA.

It is the responsibility of managers to ensure that anyone who is sub-contracted or employed on a temporary or voluntary basis is made aware of this Policy, Codes of Practice and any relevant supporting procedures that are available.

Where personal data is disclosed to our service providers or anyone else acting on our behalf, they will ensure that there is a written contract in place that includes the requirement for them to comply with the GDPR and DPA (in particular the Security Principle).

## **7. What happens if I contravene this policy?**

Disciplinary action, including dismissal, may be taken against any member of staff who contravenes this Data Protection Policy and supporting Codes of Practice and Procedures.

On discovering that this Policy is not being complied with, or if an intentional breach of the Data Protection Principles, Undertaking, or criminal offence has taken place under the GDPR and DPA, the Data Protection Officer shall have full authority to take such immediate steps as considered necessary.

## **8. Is this policy linked to any other policies and procedures?**

This policy is linked to the following policies and information which are available on the Council's website:

- ICT Policy
- Freedom of Information Policy
- Regulation of Investigatory Powers Act Policy
- Records Management Policy
- Complaints Policy

## **Is there any guidance to help?**

You can find further help by:

- Looking at the various Codes of Practice on different aspects of Data Protection which are available on the Council's website
- Look at the guidance on the Information Commissioner's website
- Ask for further guidance from the Information Governance Group
- Contacting the Data Protection Officer via email to [data.protection@swdevon.gov.uk](mailto:data.protection@swdevon.gov.uk)

**9. Will this policy be monitored or reviewed?**

Compliance with the Data Protection Policy will be monitored by the DPO and Information Governance Group and reviewed every three years or earlier if required.

This Data Protection Policy has been authorised by the Data Protection Officer and approved by Members on *tbc* date 2018

Signed ..... Date .....

Data Protection Officer

Report to: **COUNCIL**

Date: **6 November 2018**

Title: **Regulation of Investigatory Powers Act 2000 (RIPA) Policy and Update**

Portfolio Area: **Support Services**

Wards Affected: **All**

Relevant Scrutiny Committee: N/A

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken:  
(e.g. referral on of recommendation or implementation of substantive decision) **Immediately following this meeting**

Author: **Sue Nightingale** Role: **Deputy Monitoring Officer**

Contact: [sue.nightingale@swdevon.gov.uk](mailto:sue.nightingale@swdevon.gov.uk)

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## RECOMMENDATIONS

### That the Council:

1. notes the IPCO report and recommendations attached at Appendix A;
2. approves the updated policy attached at Appendix B;
3. notes that there have been no RIPA Authorisations since the annual update to the Overview and Scrutiny Committee in November 2018 and makes any recommendations arising from this report; and
4. notes the amendments to the RIPA Act 2000 effective from 1 November 2018.

## 1. Executive summary

1.1. The purpose of this report is to:

- 1.1.1. review and approve the Council's RIPA policy.
- 1.1.2. update Members on the use of RIPA, and
- 1.1.3. report on training for Officers

- 1.2. The Regulation of Investigatory Powers Act 2000 (RIPA) was designed to regulate the use of investigatory powers, and its effect is that formal authorisation must be obtained before carrying out certain surveillance, monitoring and other evidence gathering activities. RIPA ensures that the right balance is achieved between public interest and individual human rights.
- 1.3. RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary, proportionate and is properly authorised. These procedures are set out in the RIPA Policy attached to this report (Appendix A) and they are designed to protect the Council against a claim of a breach of Article 8 of the Human Rights Act if correctly followed (right to respect for private and family life, home and correspondence).
- 1.4. The last report by the Investigatory Powers Commissioner's Office was produced by the Assistant Surveillance Commissioner His Honour Norman Jones QC on 7 September 2017 (Appendix A) following a 'paper review' of the Council's procedures and records. The report contained a number of recommendations set out at paragraph 30 of the report.
- 1.5. The Surveillance Commissioner's guidance requires an annual update on RIPA is brought to the Council's Overview & Scrutiny Committee; the last report was brought to that Committee at its last meeting on 6 November 2018.
- 1.6. The Council's Overview and Scrutiny Committee considered a version of this report at its meeting on 6 November 2018 and, following a detailed debate, proceeded to recommend approval to the Council of each of the four recommendations outlined above.

## **2. RIPA Policy**

- 2.1. The Council's revised RIPA Policy is attached at Appendix B. It has been amended following the 2017 report to reflect the amendments recommended by the Inspector, and to also reflect further changes to the Authorising Officers
- 2.2. From the 1st November 2018 two changes are being made to the RIPA Act.

### Change One.

Three statutory removals – involving reasons for which data can be retained or acquired;

Data can no longer be acquired or retained for;

S 22 (2) (e) - for the purpose of public health

S 22(2) (f) – for the purpose of assessing or collecting any tax, duty, levy or other impositions or contributions payable to a government department.

S22 (2) (j) – for the purposes of exercising functions relating to the regulations of financial services and markets or to financial stability.

## Change Two

Where the statutory purpose is crime, there is a new serious crime threshold for the acquisition of service or traffic data. Subscriber data can still be acquired for any crime – where necessary and proportionate to do so.

Serious crime is described in the guidance and includes offences punishable by 12 months imprisonment or more – for example Fly-tipping.

### **3. RIPA activity**

3.1. No RIPA authorisations have been applied for, or granted, since the report to Members in September 2017

3.2. The reasons are due a combination of factors, including the fact that for local authorities, the only statutory reason for a RIPA authorisation was for the purposes of preventing or detecting a criminal offence where that offence is punishable by a minimum term of at least 6 months imprisonment. In the past the OSC has also cited reduced resources, greater access to data-matching and overt, rather than covert law enforcement.

### **4. OSC report**

Inspections by the OSC are scheduled every three years but recent changes mean that the Commissioner's inspectors can conduct this by a 'paper' review (as was the last inspection in August 2017) rather than a visit; the Commissioner can decide to repeat the paper review or make a planned visit for the next inspection due in 2020.

### **5. Training**

5.1. The Senior Leadership Team (the Authorising Officers) together with the Monitoring Officer, and officers who would be responsible for carrying out any RIPA investigations, attended RIPA training in February 2017.

5.2. The relevant Officers will need to attend annual refresher and further training has been arranged for February 2019.

In addition the Deputy Monitoring Officer and RIPA Co-ordinating Officer are attending annual refresher training on November 28<sup>th</sup> 2018. . The training will include a review and update of;

- RIPA and Local Authorities
- Surveillance
- CHIS
- Communications Data
- Role of authorising officers

- Necessity and proportionality
- Judicial Approval
- Social Networks
- The Investigatory Powers Act 2016
- 2018 amendments to RIPA

## 6. Outcomes/outputs

- 6.1. The Council aims to achieve compliance with the RIPA requirements and where authorisations are granted, that these are authorised as necessary and proportionate and in accordance with Policy.
- 6.2. Regular reviews of Council Policy, monitoring and reporting of any RIPA activity will ensure that compliance is achieved.

## 7. Options available and consideration of risk

- 7.1. The Council is obliged under the Regulation of Investigatory Powers Act, a series of regulations and Home Office guidance, to have a RIPA Policy in place and ensure compliance with that Policy. Home Office guidance also requires that officers are trained in RIPA in the future event that the Policy needs to be applied and authorisations granted.
- 7.2. Failure to review the Policy and non-compliance with the Policy, exposes the Council to the risk that it breaches the Human Rights Act, and is unable to legally enforce against unlawful activity.

## 8. Proposed Way Forward

- 8.1. To consider the current Policy attached at Appendix B in line with the 2017 IPCO report.

## 9. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	The Council's duties for covert surveillance are set out in RIPA and these requirements are reflected in the Council's RIPA Policy at Appendix A. The Home Office guidance on covert surveillance recommends that Members should review the RIPA policy annually, and regularly consider reports on the use of RIPA. Reports on the use of RIPA will be brought to O&S if the Council grants any authorisations.
Financial	N	There are no direct financial implications to this

		report.
Risk	Y	Adoption of (and compliance with) a RIPA policy will minimise any risk to the Council of breaches of the Human Rights Act in any future investigations involving covert surveillance. Regular review of Policy and RIPA use, together with reporting to O&S will further mitigate that risk and ensure consistent application of the policy.
Comprehensive Impact Assessment Implications		
Equality and Diversity		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Safeguarding		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Community Safety, Crime and Disorder		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Health, Safety and Wellbeing		There are no direct implications to this report but these issues are considered in each individual application and RIPA authorisation
Other implications		N/a

### **Supporting Information**

#### **Appendices:**

**Appendix A:** IPCO Report November 2017 (exempt); and

**Appendix B:** Draft revised RIPA Policy

#### **Background Papers:**

Report to Overview & Scrutiny 5 September 2017

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**SOUTH HAMS DISTRICT Council  
And  
WEST DEVON BOROUGH COUNCIL**

**Regulation of Investigatory Powers Act 2000  
Joint Policy**

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# Introduction

## **Overview**

The Regulation of Investigatory Powers Act 2000 (RIPA) means that formal authorisation from a senior officer must be obtained before carrying out certain surveillance, monitoring and other evidence-gathering activities. The Council may not carry out any other types of surveillance at all.

It is important to remember that RIPA must always be complied with, regardless of whether the information obtained is to be used as evidence in court proceedings. Failure to comply with RIPA doesn't just mean that the evidence cannot be used in court; it means that the whole procedure is illegal and that the officers concerned do not benefit from the above protection.

This Policy applies to South Hams District Council and West Devon Borough Council.

## **What is this document for and why is it needed?**

The Councils' are allowed and required to carry out investigations in relation to their duties. Such investigations may require surveillance or information gathering of a covert nature.

Article 8 of the European Convention on Human Rights provides:

- Article 8.1: Everyone has the right to respect for his private and family life, his home and his correspondence.
- Article 8.2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others.

This right is not absolute, it is a qualified right. This means that in certain circumstances the Council *may* interfere with the right if the interference is:

- in accordance with the law
- necessary, and
- proportionate

Covert Surveillance and information gathering may constitute an interference with the right to respect for private and family life. To ensure that such an action is not unlawful under the Human Rights Act 1998, the Council needs to meet the requirements of the Regulation of Investigatory Powers Act 2000 (RIPA).

In simple terms, RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary and is properly authorised. Surveillance is usually a last resort that an investigator will use to prove or disprove an allegation. RIPA sets out a statutory mechanism for authorising covert surveillance and the use of covert human intelligence sources (see below). RIPA seeks to ensure that any interference with

an individual's rights under Article 8 is necessary and proportionate and that, therefore, there is a balance between public interest and an individual's human rights. Covert surveillance will only be undertaken where there is no reasonable and effective alternative means of achieving the desired objective.

### **What is meant by necessary?**

It is essential to consider whether an investigation requiring surveillance or information gathering can be done overtly rather than covertly. What would the result be if you carried out the investigation overtly?

If an investigation can be reasonably carried out by any means other than by using covert surveillance, then the use of covert surveillance is not necessary.

It must then be considered whether it is necessary to conduct covert surveillance or use covert human intelligence sources in the circumstances of the particular case for the **purpose of preventing or detecting crime where the offence is punishable by imprisonment of a term of six months or more.**

### **What is meant by proportionate?**

This is an important concept, and it means that any interference with a person's rights must be proportionate to the intended objective. The action must be aimed at pursuing a legitimate aim. Interference will not be justified if the means used to achieve the aim are excessive in all the circumstances.

The use of surveillance must be designed to do no more than meet the objective in question; it must not be unfair or arbitrary, and the impact on the individual (or group of people) concerned must not be too severe. In deciding whether the use or action is proportionate, the risk of intrusion into the privacy of persons other than those who are the object of the investigation must be considered, and the measures proposed to minimise such intrusion must be properly assessed. You must be satisfied that, on balance, the principle of the subject's right to privacy is outweighed by the purpose of the investigation. Clearly, the more serious the matter being investigated, the more likely that surveillance will be proportionate.

The proportionality test will also require you to consider whether there are any other appropriate means of obtaining the information and whether there is a risk of collateral intrusion. The least intrusive method will be proportionate. Some of the things you may also wish to consider in terms of proportionality are whether covert surveillance is the only option, what other options have been considered, the intended length of the investigation, the number of officers to be deployed in the investigation.

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.

### **What is covered by the Regulation of Investigatory Powers Act 2000?**

The main purpose of the Regulation of Investigatory Powers Act 2000 is to ensure that the relevant investigatory powers are used in accordance with human rights. The Act sets out

these powers in more detail. Part II of the Act sets out the powers available to local authorities.

The Council is able to carry out investigations using covert surveillance and/or by using a covert human intelligence source under RIPA following the formal authorisation procedures and codes of practice as set out in this document. RIPA applies to the Council's core functions. Please ask the RIPA Co-ordinating Officer for advice if you are unsure as to whether RIPA will apply.

RIPA not only covers the surveillance of members of the public but would also cover the observation of staff and members as part of an internal investigation.

### **Do we need to follow these rules?**

Although RIPA does not impose a requirement for local authorities to comply with it, it is essential for the Council to do so to ensure that:

- it is less vulnerable to a challenge under the Human Rights Act and
- any material gathered is admissible by the civil and criminal courts.

Following the requirements of RIPA and acting in accordance with this Policy, will therefore protect the Council against potential challenges to its decisions and procedures. Not following the procedures specified in this document could also lead to a complaint of maladministration or a complaint to the independent Tribunal set up under RIPA, details of which are to be found at the end of this document.

### **What is the relevant legislation?**

- The Regulation of Investigatory Powers Act 2000
- The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010
- Protection of Freedom Act 2012
- Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment ) Order 2012, SI 2012/1500

Authorisation may only be granted if it is necessary for the reason permitted by RIPA. For local authorities the only statutory reason is **for the purposes of preventing or detecting a criminal offence where that offence is punishable (whether on summary or indictment) by a minimum term of at least 12 months imprisonment.**

These penalties only apply to the authorisation of *directed surveillance* and not CHIS

This means that directed surveillance cannot be used for minor offences.

### **What is the Council's Policy on RIPA?**

This document is the Council's policy on RIPA. As such, it should be adhered to unless it is in conflict with either of the Government Codes of Practice which have been made under RIPA. The Codes of Practice are admissible as evidence in court and **must** be complied with.

Copies of the Codes of Practice are available on the Home Office site:  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk). These are:

- Covert Surveillance Code Of Practice
- Covert Human Intelligence Sources Code Of Practice

### **When will this document be reviewed?**

This document shall be subject to review once a year. An earlier review may take place should circumstances in the law so require it. Minor amendments may be made from time to time.

### **Who is responsible for reviewing and monitoring this document and the use of RIPA?**

West Devon Borough Council's **Overview and Scrutiny Committee** and South Hams District Council's **Corporate Performance & Scrutiny Panel** are responsible for the overview of the RIPA policy and the Councils' use of RIPA. The Committees will not be involved in making decisions on specific authorisations.

The RIPA Co-ordinating Officer is responsible for;

1. Training and awareness across the Councils
2. Oversight of Authorisations
3. Maintaining and storing records including a retrievable Central Register of authorisations
4. Annual reports to the relevant scrutiny committees
5. Updates and implementation of the RIPA Policy
6. Quarterly reports to the Community Safety Committee (do we have one of these?)

### **How do I find out more?**

General guidance on RIPA may be found on the Home Office site:  
<http://www.homeoffice.gov.uk/>

Please contact the Council's Legal Section if you require any further advice on RIPA, this document or any of the related legislative provisions.

For the Benefits Section – further guidance may be found in the DWP Circulars.

# Surveillance

## What is Surveillance?

“**Surveillance**” includes

- monitoring, observing, listening to persons, watching or following their movements, listening to their conversations and other such activities or communications
- recording anything mentioned above in the course of authorised surveillance
- surveillance, by or with, the assistance of appropriate surveillance device(s)
- the interception of a communication in the course of its transmission by means of a postal service or telecommunication system if it is one sent by, or intended for, a person who has consented to the interception of the communication.

Surveillance can be overt or covert.

### **Overt Surveillance**

Most of the surveillance carried out by the Council will be done overtly.

General observations made by officers in the course of their duties constitutes overt surveillance.

Warning the person about the surveillance (preferably in writing) constitutes overt surveillance. Consideration should be given to how long the warning should last. This must be a reasonable length of time (three months may be appropriate in many cases), but each case must be assessed as to what is reasonable having regard to the circumstances. Whatever period is chosen, this **must** be set out in the written warning. At the expiry of the period, further written warning should be given otherwise the surveillance will become covert.

Overt surveillance does not require authorisation under RIPA.

### **Covert Surveillance**

“Covert Surveillance” means surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.

Covert surveillance does require authorisation under RIPA.

## What are the different types of covert surveillance?

RIPA regulates two types of covert surveillance:

- Directed Surveillance, and
- Intrusive Surveillance;

RIPA also regulates the use of Covert Human Intelligence Sources.

### **Directed Surveillance**

Directed surveillance is defined as surveillance which is:

- covert,
- not intrusive (see definition below)
- undertaken for the purposes of a specific investigation or specific operation;
- carried out in such a manner as is likely to result in the obtaining of private information about a person (whether or not that person is the target of the investigation or operation); and
- undertaken in a planned manner, and not as an immediate response to events or circumstances.

### **Intrusive surveillance**

Intrusive surveillance is surveillance of any activities on any residential premises or in any private vehicle by a person (other than a Covert Human Intelligence Source) on those premises or in that vehicle or is carried out by means of a surveillance device on the premises or in the vehicle or which provides information of the same quality and details as if it was on the premises or in the vehicle

However, directed surveillance authorisation may be granted for parts of residential premises, such as gardens or driveways which can be observed from the public highway. Further guidance on this point may be obtained from the Council's Legal Section.

It is important to get this right because:

## **COUNCIL OFFICERS CANNOT CARRY OUT INTRUSIVE SURVEILLANCE**

### **Covert Human Intelligence Sources (CHIS)**

The term Covert Human Intelligence Sources is used to describe people who are more commonly known as informants or officers working "undercover". Throughout this document these people are referred to as "Sources"

This does not include members of the public who volunteer information to the Council as part of their normal civic duties or to contact numbers set up to receive information.

A person is a Source if he/she:

- establishes or maintains a covert personal or other relationship for the purposes of:
    - obtaining information; or
    - providing access to information to another person; or
  - discloses information obtained by the use or existence of that covert relationship
- RIPA authorisation is required for using a Source.

There are special rules for using juvenile or vulnerable persons as sources, and only the Director (HoPS) or in his/her absence the appointed deputy can authorise such surveillance. Further advice should be sought from the Council's Legal Section in such cases.

### **Interception of Communications**

Local authorities can carry out interception of communications in a restricted number of circumstances.

These are:

#### **In the course of normal business practice**

The Councils are permitted without authorisation under RIPA to lawfully intercept its employees' e-mail or telephone communications and monitor their internet access for the purposes of prevention or detection of crime or the detection of unauthorised use of these systems.

The Councils' policies on use of the internet and e-mail are set out on the intranet site under Policies and Procedures/ICT policies.

The Council also has regard to the Employment Practices Data Protection Code – Part 3: Monitoring at Work produced by the Information Commissioner. A copy of this code and its supplementary guidance can be found at: [www.ico.org.uk](http://www.ico.org.uk)

#### **Interception with the consent of both parties.**

Such interception does not require RIPA authorization, but should be properly recorded.

#### **Interception with the consent of only one of the parties.**

Such interception would require RIPA authorisation because it would fall within the definition of surveillance (either directed or using a Source). The main type of interception

envisaged here is the recording of telephone calls where either the caller or the receiver has given consent to the recording.

Where as part of an already authorised Directed Surveillance or use of a Source a telephone conversation is to be recorded by the Officer or the Source then no special or additional authorisation is required.

### **Interception without the consent of either of the parties**

The recording of telephone calls between two parties when neither party is aware of the recording **CANNOT BE UNDERTAKEN**, except under a Warrant granted by the Secretary of State 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.

## Procedures

### What is the procedure for obtaining authorisation under RIPA?

Directed surveillance and the use of a Source can only be lawfully carried out if properly authorised, and in strict accordance with the terms of the authorisation.

All directed surveillance and use of a Source operations shall be:

- Applied for in writing or verbally in cases of urgency
- Approved
- Monitored
- Renewed when necessary
- Cease when no longer authorised

All the above actions will be carried out in accordance with this document and the relevant Codes of Practice and will be recorded on the Standard Forms listed below:

The Standard Forms are available from the Home Office web-site [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

### Directed Surveillance

- Application for directed surveillance authorisation
- Review of directed surveillance authorisation
- Application for cancellation of directed surveillance authorisation
- Application for renewal of directed surveillance authorisation

### Use of a Source

- Application for conduct-use of a CHIS authorisation
- Review of use of a CHIS authorisation:
- Application for renewal of use of a CHIS authorisation
- Application for cancellation of conduct-use of a CHIS authorisation

Copies of all these documents will be retained and kept on the investigation file as part of the evidence to show that the information gained by directed surveillance or the use of a Source has been obtained legally.

This document provides guidance on the Procedures required to be undertaken by the Investigating Officer and the Authorising Officer for the different stages specified above.

## • **The Senior Responsible Officer's Duties**

### **Who is the Senior Responsible Officer?**

The Councils' Senior Responsible Officer is listed in the annex to this document.

### **What are my duties?**

In accordance with the recommendations of the Codes of Practice, you are responsible for the following areas:-

- the integrity of the process in place within the Council for the management of Covert Human Intelligence Sources and Directed Surveillance
- compliance with Part II of RIPA and the Codes of Practice
- oversight of the reporting of errors to the relevant oversight Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors
- engagement with the OSC inspectors when they conduct their inspections
- oversight of the implementation of any post-inspection action plan approved by the relevant oversight Commissioner
- ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations in the inspection reports by the Office of the Surveillance Commissioner

- **The Investigating Officer's Duties under RIPA.**

### The Application

The application for authorisation is the responsibility of the Investigating Officer

#### What do I need to do?

You will need to consider:

- Whether covert surveillance is needed
- Whether directed surveillance or use of a Source is needed
- Whether directed surveillance or use of a Source is necessary for statutory reasons
- Whether directed surveillance or use of a Source is proportionate
- The risk of collateral intrusion
- Safety and welfare arrangements (use of Source only)

These are discussed in more detail below.

#### What do I need to consider?

- **Consideration: Whether covert surveillance is needed**

Consideration must be given as to whether covert surveillance is needed. You are advised to discuss the need to undertake directed surveillance or the use of a Source with your line manager before seeking authorisation. All options for the use of overt means **must** be fully explored. Remember: if the investigation can be carried out by overt means, then covert surveillance is not necessary.

- **Consideration: Whether directed surveillance or use of a Source is needed**

You must establish which type of "surveillance" is required for the investigation or operation having regard to the guidance contained in this document. The type of surveillance you require affects which application forms you need to complete. Additional considerations are needed for using a Source. Further detail is found below. Combined authorisations for both directed surveillance and the use of a Source may be applied for where appropriate.

- **Consideration: Whether directed surveillance or use of a Source is necessary for the statutory reason**

Authorisation may only be granted if it is necessary for the reason permitted by RIPA. For local authorities the only statutory reason is **for the purposes of preventing or detecting a criminal offence where that offence is punishable (whether on summary or indictment) by a minimum term of at least 12 months imprisonment.**

This means that directed surveillance cannot be used for minor offences.

You must set out this ground in your application form and provide details of the reasons why it is necessary to use covert surveillance.

- **Consideration: Whether directed surveillance or use of a Source is proportionate**

You must consider why it is proportionate to use covert methods to collect evidence. Please see the definitions set out on page 2 “what is proportionate?” Remember, the use of covert methods must do no more than meet your objective. The proportionality test will also require you to consider whether there are any other appropriate means of obtaining the information and whether there is a risk of collateral intrusion (see consideration below). The least intrusive method will be proportionate. The following aspects of proportionality must be considered and evidenced:-

- 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 target and others
  - considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result
  - evidencing, as far as reasonably practicable, what other methods have been considered and why these were not implemented.
- **Consideration: The risk of collateral intrusion**

Collateral intrusion is the risk of intrusion into the privacy of persons other than the target. You are required to assess the risk of collateral intrusion. Details of any potential collateral intrusion should be specified. Measures must be taken wherever practicable to avoid or minimise collateral intrusion and a plan should be included in your application specifying how the potential for collateral intrusions will be minimised. You should give as much detail as possible, insufficient information may lead to the rejection of the application.

- **Consideration: Surveillance from private premises**

It is preferable for surveillance to be carried out from a public place, such as a public highway. However, there may be circumstances where private premises may be required for the carrying out of surveillance. In which case, it is essential that you obtain the consent of the owner and/or occupier of the premises prior to authorisation being sought. You should seek further guidance from the Council’s Legal Section on this point.

- **Consideration: safety and welfare arrangements – use of a Source**

You must provide a risk assessment as to the likely risks to be faced by an officer or other person both during the conduct of the investigation and after the cancellation of the authorisation. Details must also be included setting out the arrangements for the safety of the Source, this should include:

- the name of the Officer who has day to day responsibility for:
  - Dealing with the Source
  - Directing the day to day activities of the Source

- Recording the information supplied by the Source
- The Source's security and welfare
- The name of the Officer responsible for recording and monitoring the use made of the Source
- Arrangements for ensuring the security of the records which identify the Source
- Records relating to the Source meet the requirements of the Statutory Instrument: The Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI 2000 No. 2725) – please see either the Home Office website: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) or the Office of Public Sector Information website: [www.opsi.gov.uk](http://www.opsi.gov.uk)

### **How do I apply?**

All applications must be made in writing on the standard forms as set out in this document. The relevant forms are:

- An application for directed surveillance authorisation, and/or
- An application for use of a Source

The considerations set out above, form part of the application form.

The application form must be fully completed and passed to the Authorising Officer. The annex to this document contains details of the Council's Authorising Officers.

**NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.**

### **What if authorisation is urgent?**

The 2012 Home Office Guidance states that in most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. Therefore local councils may need to work with the police if faced with an emergency.

NB. Urgent authorisation may not be necessary if, under section 26(2) of the Act, an officer suddenly sees something relevant to his duties and takes an immediate note, observation of follow-up activity (within reason).

### **Monitoring**

#### **How long will an authorisation last for?**

The authorisation for Directed Surveillance will last for **three months** from the date of authorisation unless renewed.

The authorisation for use of a Source will last for **12 months** from the date of authorisation (i.e. date of Magistrates' Order) unless renewed.

Review dates for the authorisation will be set by the Authorising Officer.

## **I now have my authority for surveillance, is there anything else I should be aware of?**

It will be the responsibility of the Investigating Officer to ensure that any Directed Surveillance or use of a Source is only undertaken under an appropriate and valid authorisation.

During the surveillance, you should ensure:

- Surveillance is carried out in accordance with the approval
- Collateral intrusion is minimised as far as possible
- Intrusive surveillance is not carried out
- All information obtained is recorded contemporaneously or as soon as possible thereafter

During the use of a Source, you should also ensure:

- That the source is aware that:
  - Only the tasks authorised are carried out
  - Third party collateral intrusion is minimised as far as possible
  - Intrusive surveillance is not carried out
  - Entrapment is not committed
  - They must regularly report to you

You should also be mindful of the date when authorisations and renewals will cease to have effect. Please see the notes on Renewals and Cancellation below.

## **What do I do if circumstances change during the investigation?**

You must inform the Authorising Officer if the investigation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation or if there is another change in circumstances usually brought about by unforeseen action.

When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised (for minor amendments only) or whether it should be cancelled and a new authorisation obtained. The relevant forms should be used.

Particular care should be taken when using a Source to ensure that authorisation is sufficient. It is difficult to predict what might occur each time a meeting with a Source takes place. If unforeseen action takes place, the occurrence should be recorded as soon as possible after the event and the sufficiency of the authorisation must be considered.

You must bring to the attention of the Authorising Officer any concerns about the personal circumstances of the Source in relation to: the validity of the risk assessment; the conduct of the source; the safety and welfare of the Source.

## **Renewals**

## **Why are renewals important?**

Once the authorisation expires, surveillance must cease unless a renewal has been applied for and approved. Renewals must be authorised prior to the expiry of the original authorisation but will run from the date and time of expiry of the original authorisation.

## **What should I do?**

If it appears that the directed surveillance or use of a Source is needed beyond the authorisation date, you must seek a renewal of the authorisation.

You must consider whether covert methods are still necessary and proportionate.

An application for renewal for either Directed Surveillance and/or use of Source should be made on the relevant form and passed to the Authorising Officer for consideration.

Authorisation for renewal may be sought verbally, but only in exceptional circumstances.

**NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.**

## **Cancellations**

### **Why are cancellations important?**

All authorisations, including renewals, must be cancelled if the reason why Directed Surveillance or use of a Source was required no longer exists or is no longer proportionate. This will occur in most instances when the purpose for which surveillance was required has been achieved and officers must be mindful of the need to cancel any authorisation which has been issued. A cancellation should be issued at the expiry date if not before.

### **How do I cancel an authorisation?**

To cancel an authorisation, you should complete the Cancellation of Authorisation form and submit it to the Authorising Officer for endorsement.

# Authorising Officer Responsibilities under RIPA

## The Approval

### Who are the Authorising Officers?

The Council's Authorising Officers are listed in the annex to this document.

If the investigation may involve the acquisition of confidential or religious material, or require an authorisation for using juveniles or vulnerable persons as sources, the Authorising Officer is, by law, the Head of Paid Service (or in his/her absence the appointed deputy ).

Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved. If this is the case, the application form for authorisation should be noted to this effect.

**NB. All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.**

### What are my responsibilities?

Responsibility for authorising the carrying out of directed surveillance or using a Source rests with the Authorising Officer and requires the personal authority of the Authorising Officer.

You must be satisfied that a defensible case can be made for surveillance. Authorisation is a safeguard against the abuse of power by public authorities. Full consideration of necessity and proportionality will make the action less vulnerable to challenge under the Human Rights Act 1998.

### What do I need to consider?

You are required to consider the application for authorisation in relation to the following:

#### **Consideration: Is the directed surveillance or use of a Source necessary?**

**Firstly**, you must consider whether it is necessary to carry out the investigation by covert methods. This is an important consideration and must be recorded on the form. Please see "what is meant by necessary?" on Pages 1 and 2 of the Policy.

**Secondly**, as authorisation may only be granted if it is necessary for the reason permitted by RIPA. You should consider, having regard to the outline of the case provided by the Investigating Officer, whether authorisation is necessary for the purposes of preventing and detecting crime or of preventing disorder

### **Consideration: Is the directed surveillance or use of a Source proportionate?**

This involves balancing the intrusiveness of the activity on the target and others who may be affected by it (see “consideration: risk of collateral intrusion” below) against the need for the activity in operational terms. Please refer to “what is proportionate?” on page 2 of this Policy.

### **Consideration: The risk of collateral intrusion**

You must take into account the risk of interfering with the privacy of persons other than the target (collateral intrusion). Full details of potential collateral intrusion and the steps to be taken to minimise such intrusion must be included in the form. If there are insufficient details further information should be sought. Collateral intrusion forms part of the proportionality test and is therefore very important. Remember: the least intrusive method should be chosen otherwise the surveillance activity will not be proportionate.

### **Consideration: confidential material**

In cases where through the use of directed surveillance or the use of a Source it is likely that knowledge of confidential information will be acquired, authorisation may only be granted by the Chief Executive.

Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material.

Authorisation involving the acquisition of confidential information should only be given in exceptional and compelling circumstances having full regard to the proportionality issues involved.

Further details about the type of information covered under this category are to be found in the Chapter 3 of the relevant Code of Practice. Further advice may be sought from the Council’s Legal Section.

### **Consideration: Safety and welfare arrangements of a Source**

When authorising the conduct or use of a Source, you must be satisfied:

- That the conduct and/or use of the Source is proportionate to what is sought to be achieved;
- That arrangements exist for the management and oversight of the Source, particularly the health and safety of the Source including:
  - Identifying the person who will have day to day responsibility for dealing with the Source
  - Security and welfare arrangements of the Source both during and after the investigation/operation.
  - Monitoring and recording the information supplied by the Source
  - Ensuring records disclosing the identity of the Source will not be made available to persons except where there is a need for access to them

- Records relating to the Source meet the requirements of the Statutory Instrument: The Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI 2000 No. 2725) – please see either the Home Office website: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) or the Office of Public Sector Information website: [www.opsi.gov.uk](http://www.opsi.gov.uk)

### **Consideration: local community**

You should consider whether there any particular sensitivities in the local community where surveillance will be taking place.

**Having taken all these factors into consideration, you may either approve the application or refuse it.**

### **What do I do if I have refused the application?**

You must complete the form and give your reasons for refusal. Then follow the procedures below (“I have completed the form what do I do with it?”)

### **What do I do if I have approved the application?**

You need to follow the rest of the procedure set out below.

Regular review should be undertaken to assess the need for surveillance or use of a Source to continue and whether it is still proportionate. Where the surveillance or use of a Source provides access to confidential information or involves collateral intrusion, review should be more frequent.

You will therefore need to consider a Review Date(s). Both types of authorisation require you to specify a date when the authorisation should be reviewed (the Review Date) and the frequency of the review thereafter. This must be stated on the form.

### **What do I do if the authorisation is urgent?**

The 2012 Home Office Guidance states that in most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. Therefore local councils may need to work with the police if faced with an emergency. NB. Urgent authorisation may not be necessary if, under section 26(2) of the Act, an officer suddenly sees something relevant to his duties and takes an immediate note, observation of follow-up activity (within reason).

### **What do I do with the completed form?**

You must send the completed application form(s) to the RIPA Co-ordinating Officer as soon as you are able. This includes any forms in which you have refused authorisation. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

### **Monitoring**

## **How long will an authorisation last for?**

The authorisation for **Directed Surveillance** will last for **three months** from the date of authorisation unless renewed.

The authorisation for use of a **Source** will last for **12 months** from the date of authorisation unless renewed.

It is important to set a review date which gives the opportunity to cancel if the authorisation is no longer required. If the surveillance is still required, set another review date (see below)

## **I have now given the authority for surveillance, what should I do next?**

After authorisation the Authorising Officer is responsible for continuing to oversee the progress of the investigation. You must ensure that whatever was authorised does actually happen, and that actions do not exceed the boundaries of the authorisation.

Progress of the investigation or operation should be reviewed in accordance with the review dates set by the authorisation using the relevant review form. In any case, as soon as the investigation or operation objectives have been achieved the authority should be cancelled.

You will regularly monitor the surveillance to ensure:

- Surveillance is being carried out in accordance with the authority given
- There is still a need for the approved surveillance or use of the Source
- The surveillance is achieving the intended results
- The risks of collateral intrusion are still minimal
- The risks associated with the surveillance or use of the Source are within an acceptable level
- The security and/or welfare of the Source has not been jeopardised. You must consider any concerns raised by the Investigating Officer relating to the personal circumstances of the Source.

You should record the outcome of such monitoring and take whatever action is appropriate.

## **Renewals**

### **Why are renewals important?**

Once the authorisation expires, surveillance must cease unless a renewal has been applied for and approved.

**NB.** All authorisations and renewals must have the prior approval of the Magistrates' before they take effect.

**What are my responsibilities in respect of renewals?**

You may renew an authorisation before it expires if it is necessary for the authorisation to continue for the purpose for which it was given.

You must consider the application for renewal in relation to the original purpose for which authorisation was granted, taking into account any change in circumstances. You should be satisfied that:

- There is a need to renew the authorisation (applying the test of necessity)
- That such a renewal is likely to contribute to the investigation or operation (it is proportionate to the aim)
- That the information could not be reasonably obtained by other less intrusive means.
- The risk of collateral intrusion is minimal – you should consider what collateral intrusion has occurred
- The risks associated with the use of a Source have not increased beyond an acceptable level

The outcome of a consideration for renewal may lead to:

- Approval
- A new application
- Refusal

### **Approval**

If you decide to approve a renewal you will need to provide details of why in your opinion you believe the renewal is justified, and state the date and time when the renewed authorisation will commence and expire on the application form.

The maximum time that renewal of authorisation can be approved for, is three months at a time for directed surveillance and 12 months for the use of a Source, but you may consider shorter periods if this is more appropriate to the circumstances.

You should also set Review Dates and continue to monitor the progress of the investigation or operation.

### **A new application for authorisation**

If the reason for requiring the authorisation has changed from the purpose for which it was originally granted, then the outstanding authorisation should be cancelled and new authorisation sought by way of a new application. You will need to note the refusal to renew the application on the renewal form setting out the reasons for your decision. You will also need to follow the procedures for cancellation see below and advise the Investigating Officer to seek new authorisation.

### **Refusal**

If in your opinion surveillance is no longer required, or justified, or proportionate, the renewal should be refused and the authorisation cancelled. See the paragraph on cancellation below. You will need to note on the renewal form your reasons for refusal.

### **What do I do with the completed form?**

You must send the completed renewal form to the RIPA Co-ordinating Officer as soon as you are able. This includes forms where you have refused a renewal. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

## **Cancellations**

### **Why are cancellations important?**

All authorisations, including renewals, must be cancelled if the reason why directed surveillance or use of a Source was required no longer exists or is no longer proportionate. This will occur in most instances when the purpose for which surveillance was required has been achieved and officers must be mindful of the need to cancel any authorisation which has been issued. A cancellation should be issued at the expiry date if not before.

### **What are my responsibilities in respect of cancellations?**

The responsibility to ensure that authorisations are cancelled rests with the Authorising Officer. If you think cancellation should have been applied for, then you should make enquiries of the Investigating Officer as part of your monitoring of the authorisation. On receipt of the cancellation form from the Investigating Officer, you must consider the reasons for cancellation and if acceptable endorse the form.

As soon as the decision is taken that directed surveillance or use of a Source should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject. The date and time when such an instruction was given should be recorded on the cancellation form.

Where necessary the safety and welfare of the Source should continue to be taken into account after the authorisation has been cancelled.

### **What do I do with the completed form?**

You must send the completed renewal form to the RIPA Co-ordinating Officer as soon as you are able. This includes forms where you have refused a renewal. You should retain a copy of the form and send a further copy to the relevant Investigating Officer for retention on the investigation file.

## **Working with or through other Agencies**

### **What do I do if I want to instruct another organisation to carry out surveillance?**

When some other agency has been instructed on behalf of the Council to undertake some action under RIPA, this Document and the forms in it, must be used in the normal way and the agency advised as necessary of the various requirements. They must be made aware explicitly what they are authorised to do.

### **What do I do if I want to carry out an investigation with another organisation?**

It is possible for two public authorities to carry out a joint directed surveillance investigation or use of a Source. It must be decided which of the authorities is to take the lead role. The Authorising Officer from the lead organisation must make the decisions on the necessity and proportionality of the surveillance or use of a Source. The Investigating Officer must make it clear on the application form that it is a joint investigation and provide details of Officers involved from both authorities.

Where joint surveillance is authorised by the lead organisation, it is good practice for the Investigating Officer of the other organisation to advise their Authorising Officer of the surveillance activity. It is important for each organisation's Authorising Officer to be aware of all surveillance activity being undertaken by their own Investigating Officers, regardless of which organisation authorised the activity.

# Record-Keeping

## What records must I keep?

The Council must keep a detailed record of all authorisations, renewals, cancellations and rejections in Departments and a Central Register of all these forms will be maintained and monitored by the RIPA Coordinating Officer.

In all cases, the relevant department should maintain the following documentation:

- a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- The Magistrates' Order
- a record of the period over which the surveillance has taken place;
- the frequency of reviews prescribed by the Authorising Officer;
- a record of the result of each review of the authorisation;
- a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- the date and time when any instruction was given by the Authorising Officer.
- A record of the use made of any Source

## How long must I keep these records?

The Council will retain records in accordance with the Council's Record Management Policy. Retention of a record will therefore depend on an assessment of the need to retain the record.

## How should the records relating to a Source be maintained?

Records kept relating to an investigation or operation using a Source should be maintained in such a way as to preserve the confidentiality of the Source and the information provided by the Source. Regard should be had to the Council's Record Management Policy.

## **Material obtained from Directed Surveillance and/or use of a Source operations**

### **How should material be handled and stored?**

Material, or product, such as: written records (including notebook records); video and audio tape; photographs and negatives; and electronic files, obtained under authorisation for Directed Surveillance or use of a Source investigations or operations should be handled, stored and disseminated according to the following guidance and with regard to the Council's Records Management Policy, which is available on the intranet.

Where material obtained during the course of an investigation may be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with the established disclosure requirements having regard to the Criminal Procedure and Investigations Act 1996 and Civil Procedure Rules.

Where material is obtained which is not related to a criminal or other investigation, or to any person who is the subject of the investigation, and there is no reason to suspect that it will be relevant to any future civil or criminal proceedings, it should be assessed for retention or destruction under the Council's Record Management Policy.

Material may be used in investigations other than the one which authorisation was issued for. However, use of such material outside the Local Authority or the Courts should only be considered in exceptional circumstances.

### **What about confidential material?**

This is privileged information from, for example, lawyers, doctors, priests etc. Where such persons are involved, and there is a possibility that you maybe obtaining confidential material, then further additional precautions must be taken. If this is the case, please seek appropriate advice from the Legal Section or from the statutory RIPA Code of Practice.

(Lord Coleville advised that reference only to confidential material is needed, as we are very unlikely to ever use these provisions.)

## **Complaints**

The Regulation of Investigatory Powers Act has established an Independent Tribunal. This Tribunal is made up of senior members of the judiciary and the legal profession and is independent of the Government. The Tribunal has full powers to investigate and decide any cases within its jurisdiction. It also has the power to award compensation.

Details of the relevant complaints procedure can be obtained from the following address:

Investigatory Powers Tribunal  
PO Box 33220  
London  
SW1H 9ZQ

Other actions that could be taken against the Council for failing to meet the requirements of RIPA are civil proceedings under the Human Rights Act 1998 or a complaint to the Ombudsman.

## **Annex A**

### **AUTHORISING OFFICERS**

The following Officers shall be designated Authorising Officers on behalf of West Devon Borough Council and South Hams District Council under the Regulation of Investigatory Powers Act 2000.

**EXECUTIVE DIRECTOR (Head of Paid Service) – Sophie Hosking**

**COMMERCIAL SERVICES GROUP MANAGER – Helen Dobby**

**CUSTOMER FIRST & SUPPORT SERVICES GROUP MANAGER – Steve  
Mullineaux**

**BUSINESS SUPPORT GROUP MANAGER – Darren Arulvasagam**

NB. Only the Executive Director (Head of Paid Service) or in his/her absence the appointed deputy has the authority to grant authorisation for the acquisition of confidential information or where the authorisation would involve juvenile or vulnerable CHIS.

### **SENIOR RESPONSIBLE OFFICER**

The following Officer shall be designated Senior Responsible Officer on behalf of the Councils' under the Codes of Practice.

**EXECUTIVE DIRECTOR (Head of Paid Service) – Sophie Hosking**

### **RIPA CO-ORDINATING OFFICER**

**Legal Specialist and Solicitor – Becky Fowlds**

## ANNEX B

### Guidance on the use of Social Networking Sites for investigations

It is recognised that the use of the internet and, in particular, social networking sites, can provide useful information for South Hams District Council and West Devon Borough Council staff carrying out investigations. These investigations may relate to the various enforcement roles within the council – for example Fraud, Planning Enforcement, Licensing or Environmental Health, but will equally apply to some non-enforcement teams, such as Debt Collection or Housing. The use of the internet and social networking sites may fall within the definition of covert directed surveillance. This is likely to result in the breaching of an individual's Article 8 rights under the Human Rights Act (the right to privacy).

#### Social Networking Sites

There is a fine line between general observation, systematic observation and research and it is unwise to rely on a perception of a person's reasonable expectations or their ability to control their personal data.' The Councils' policy in relation to the use of social media for the gathering of evidence to assist in its enforcement activities is set out below:

- Officers of South Hams and West Devon must not 'friend' individuals on social networks as part of undertaking their roles and should not use their own private social networking accounts to view the social networking accounts of other individuals as part of their professional role
- officers viewing an individual's profile on a social networking site should do so only once in order to obtain evidence to support or refute their investigation
- further viewing of open profiles on social networking sites to gather evidence or to monitor an individual's status, must only take place once RIPA authorisation has been granted and approved by a Magistrate
- officers should be aware that it may not be possible to verify the accuracy of information on social networking sites and, if such information is to be used as evidence, steps must be taken to ensure its validity.

The **purpose** of this guidance note is to provide clarity on the Councils' position:

9. It is not possible to provide a definitive list of social networking sites, so this should be taken to mean any site which involves individuals creating a profile which contains personal information and is viewable by others, whether accepted as 'friends' or otherwise.

This might include sites such as 'Facebook' and 'LinkedIn'.

9. As the definition of 'private information' under RIPA includes:

'any information relating to a person's private or family life and should be taken generally to include any aspect of a person's private or personal relationship with others, including family and professional or business relationships'

Sites used to advertise goods and services should be included within the definition. Although there is likely to be a reduced expectation of privacy with this type of site, there is still the possibility of obtaining private information which may be subsequently used in any enforcement proceedings.

9. If an allegation is received or, as part of an investigation into an individual, it is necessary to view their social networking site, officers may access the main page of the individual's profile once in order to take an initial view as to whether there is any substance to the allegation or matter being investigated.
4. The initial viewing must be reasonable – for example, it would not be reasonable to spend any significant amount of time searching through various pages of the individual's profile or to print out several pages just in case they may reveal something useful.
5. In some cases where, for example, a link to a site is provided by a complainant, it may be relevant for the receiving officer to view the link before passing it onto the investigating officer to also view. This would count as one viewing. However, it would not be reasonable for each officer in a team to view the site in turn so that they may each gather some information.
6. Each single viewing of an individual's social networking site must be recorded on the log maintained by Legal Services (RIPA Co-ordinating Officer). This is to enable the reporting of the number of viewings to the Overview & Scrutiny Committee of each Council.
7. If it is considered that there is a need to monitor an individual's social networking site, authorisation must be obtained from an Authorising Officer.
8. If the offence being investigated falls under RIPA, a formal RIPA application must be completed, authorised by one of the Councils' Authorising Officers and then approved by a Magistrate.
9. If the offence being investigated falls outside of RIPA (for example if the offence does not carry a custodial sentence of at least 12 months imprisonment or is not a core function of the council) a non-RIPA form must be completed. General guidance on RIPA and appropriate forms can be found on the Councils' Intranet and in the main RIPA Policy document.

**Annex C**

**Procedure to be adopted for obtaining the approval of a magistrate**

The government guidance for obtaining authorisation from a magistrate for surveillance is contained in full at Annex D.

The relevant form is set out below as Form 1.

**FORM 1**

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

.....

.....

.....

.....

.....

.....

.....

.....

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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## Appendix D

# Protection of Freedoms Act 2012 – changes to provisions under the Regulation of Investigatory Powers Act 2000 (RIPA)

Home Office guidance to local  
authorities in England and Wales  
on the judicial approval process for  
RIPA and the crime threshold for  
directed surveillance



Home Office

October 2012

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# 1. INTRODUCTION: HOW THE LAW HAS CHANGED

1. On 1 November 2012 two significant changes will take effect governing how local authorities use RIPA.
  - **Approval of Local Authority Authorisations under RIPA by a Justice of the Peace:** The amendments in the Protection of Freedoms Act 2012<sup>1</sup> will mean that local authority authorisations and notices under RIPA for the use of particular covert techniques can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace (JP).
  - **Directed surveillance crime threshold:** Amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (“the 2010 Order”)<sup>2</sup> mean that a local authority can now only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.
2. This guidance is non-statutory but provides advice on how local authorities can best approach these changes in law and the new arrangements that need to be put in place to implement them effectively. It is supplementary to the legislation and to the statutory Codes of Practice. If a local authority has any doubts about the new regime they should consult their legal advisers. This guidance is intended for local authority investigation teams that may use covert techniques, including Trading Standards, Environmental Health and Benefit Fraud Officers. However, it will also be of use to authorising officers and designated persons and to those who oversee the use of investigatory techniques in local authorities including elected members.
3. Separate guidance is available for Magistrates’ Courts in England and Wales and local authorities in Scotland.

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<sup>1</sup> Sections 37 and 38 of the Protection of Freedoms Act 2012 amend RIPA and will come into force on 1 November 2012.

<sup>2</sup> The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 [SI 2010/521] will be amended by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 [SI 2012/1500] on 1 November 2012. See Section 5 for links.

## 2. LOCAL AUTHORITY USE OF RIPA

### THE EXISTING REGULATORY FRAMEWORK

4. RIPA sets out a regulatory framework for the use of covert investigatory techniques by public authorities. RIPA does not provide any powers to carry out covert activities. If such activities are conducted by council officers, then RIPA regulates them in a manner that is compatible with the European Convention on Human Rights (ECHR), particularly Article 8, the right to respect for private and family life.
5. RIPA limits local authorities to using three covert techniques (details set out below) for the purpose of preventing or detecting crime or preventing disorder.
6. Use of these techniques has to be authorised internally by an authorising officer or a designated person. They can only be used where it is considered necessary (e.g. to investigate a suspected crime or disorder) and proportionate (e.g. balancing the seriousness of the intrusion into privacy against the seriousness of the offence and whether the information can be obtained by other means). The relevant Codes of Practice should be referred to for further information on the scope of powers, necessity and proportionality.<sup>3</sup>

### THE TECHNIQUES WHICH LOCAL AUTHORITIES MAY USE

7. **Directed surveillance** is essentially covert surveillance in places other than residential premises or private vehicles<sup>4</sup>.
8. Local authorities cannot conduct 'intrusive' surveillance (i.e. covert surveillance carried out in residential premises or private vehicles<sup>5</sup>) under the RIPA framework.
9. A **covert human intelligence source (CHIS) includes** undercover officers, public informants and people who make test purchases.
10. **Communications data (CD)** is the 'who', 'when' and 'where' of a communication, but not the 'what' (i.e. the content of what was said or written). RIPA groups CD into three types:
  - 'traffic data' (which includes information about where the communications are made or received);
  - 'service use information' (such as the type of communication, time sent and its duration); and
  - 'subscriber information' (which includes billing information such as the name, address and bank details of the subscriber of telephone or internet services).
11. Under RIPA a local authority can only authorise the acquisition of the less intrusive types of CD: service use and subscriber information. Under **no circumstances** can local authorities be authorised to obtain traffic data under RIPA.
12. Local authorities are **not** permitted to intercept the content of any person's communications and it is an offence to do so without lawful authority.

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3 See section 5 for links to the relevant legislation and codes of practice.

4 Further information on directed surveillance can be found in the Covert Surveillance and Property Interference Code of Practice.

5 Places where legal consultations are likely to take place will also be treated as intrusive surveillance.

## **RANK OF LOCAL AUTHORITY AUTHORISING OFFICERS/DESIGNATED PERSONS**

13. Local authority authorising officers/designated persons will remain as designated by RIPA consolidating orders SI 2010 Nos.480 and 521:
  - Director, Head of Service, Service Manager<sup>6</sup> or equivalent.
14. The authorisation of directed surveillance or use of a CHIS likely to obtain confidential information or the deployment of a juvenile or vulnerable person (by virtue of mental or other condition) as a CHIS requires authorisation by the most senior local authority officer – Head of Paid Service or, in his/her absence, the acting Head of Paid Service.
15. If there is any doubt regarding sufficiency of rank you should contact your Local Authority Monitoring Officer who will be able to advise you.

## **TIME LIMITS**

16. The current time limits for an authorisation or notice will continue<sup>7</sup>. That is: 3 months for directed surveillance and 12 months for a CHIS (1 month if the CHIS is 18). Authorisations and notices for CD will be valid for a maximum of one month from the date the JP has approved the grant. This means that the conduct authorised should have been commenced or the notice served within that month.
17. A renewal must be authorised prior to the expiry of the original authorisation, but it runs from the expiry date and time of that original authorisation. Authorisations may be renewed more than once if still considered necessary and proportionate and approved by the JP.
18. Applications for renewals should not be made until shortly before the original authorisation period is due to expire but local authorities must take account of factors which may delay the renewal process (e.g. intervening weekends or the availability of the relevant local authority authorising officer and a JP to consider the application).

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<sup>6</sup> For CD RIPA applications, the Local Government Group and the Interception of Communications Commissioner's Office have advised that a Principal Trading Standards Officer is not considered to be of sufficient seniority to act as the Designated Person.

<sup>7</sup> See section 43 RIPA.

# 3. DIRECTED SURVEILLANCE CRIME THRESHOLD

19. The crime threshold applies only to the authorisation of **directed surveillance** by local authorities under RIPA, not to the authorisation of local authority use of CHIS or their acquisition of CD. The threshold will come into effect on 1 November 2012.
20. The amendments to the 2010 Order have the following effect:
  - Local authorities can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment **or** are related to the underage sale of alcohol and tobacco. The offences relating to the latter are in article 7A of the 2010 Order<sup>8</sup>.
  - Local authorities **cannot** authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence(s) punishable (whether on summary conviction or indictment) by a maximum term of at least 6 months' imprisonment.
  - Local authorities may therefore continue to authorise use of directed surveillance in more serious cases as long as the other tests are met – i.e. that it is necessary and proportionate and where prior approval from a JP has been granted. Examples of cases where the offence being investigated attracts a maximum custodial sentence of six months or more could include more serious criminal damage, dangerous waste dumping and serious or serial benefit fraud.
  - Local authorities may also continue to authorise the use of directed surveillance for the purpose of preventing or detecting specified criminal offences relating to the underage sale of alcohol and tobacco where the necessity and proportionality test is met and prior approval from a JP has been granted.
  - A local authority **may not authorise** the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.
21. The change will affect authorisations or renewals which are granted on or after 1 November. It will not affect authorisations or renewals granted before that date.

## IMPACT ON INVESTIGATIONS

22. At the start of an investigation, council officers will need to satisfy themselves that what they are investigating is a criminal offence. Directed surveillance is an invasive technique and at the point it is decided whether or not to authorise its use it must be clear that the threshold is met and that it is necessary and proportionate to use it.
23. During the course of an investigation the type and seriousness of offences may change. The option of authorising directed surveillance is dependent on the offence under investigation attracting a sentence of a maximum six months imprisonment or more or being related to the underage sale of alcohol and tobacco. Providing the offence under investigation is one which appears on the statute book with at least a maximum six months term of imprisonment or is related to the specific offences listed in the order concerning the underage sale of alcohol and tobacco an application can be made. However, if during the investigation it becomes clear that the activity being investigated does not amount to a criminal offence or that it would be a less serious offence that does not meet the threshold the use of directed surveillance should cease. If a directed surveillance authorisation is already in force it should be cancelled.

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<sup>8</sup> See section 5 for links to the relevant legislation

24. Directed surveillance will be authorised against a specific offence which meets the threshold, and the type and the timing of the deployment of the surveillance will always reflect this. There may be cases where it is possible, with the same evidence obtained by the same deployment, to substantiate a variety of different charges, some of which fall below the threshold, it will be for the courts to decide whether to admit – and what weight to attach to – the evidence obtained in the lesser charges.
25. Local authorities will no longer be able to use directed surveillance in some cases where it was previously authorised. But this does not mean that it will not be possible to investigate these areas with a view to stopping offending behaviour. The statutory RIPA Code of Practice on covert surveillance makes it clear that routine patrols, observation at trouble ‘hotspots’, immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.<sup>9</sup>

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<sup>9</sup> See paragraphs 2.21-2.29 of the Covert Surveillance and Property Interference Code of Practice.

## 4. JUDICIAL APPROVAL

### WHAT THE CHANGES MEAN FOR LOCAL AUTHORITIES

26. From 1 November 2012, sections 37 and 38 of the Protection of Freedoms Act 2012 will commence. This will mean that a local authority who wishes to authorise the use of directed surveillance, acquisition of CD and use of a CHIS under RIPA will need to obtain an order approving the grant or renewal of an authorisation or notice from a JP (a District Judge or lay magistrate) before it can take effect. If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an order approving the grant or renewal for the use of the technique as described in the application.
27. The new judicial approval mechanism is in addition to the existing authorisation process under the relevant parts of RIPA as outlined in the Codes of Practice. The current local authority process of assessing necessity and proportionality, completing the RIPA authorisation/application form and seeking approval from an authorising officer/designated person will remain the same.
28. The inspection regimes of the independent RIPA oversight Commissioners will continue to apply to local authorities and the frequency and nature of their independent inspections of local authorities is not expected to change.
29. The judiciary is independent and it is not the role of the Commissioners to inspect the decision of the JP.<sup>10</sup> However the Commissioners will continue to have an important oversight role and will continue to inspect local authority use of RIPA. If the Commissioners identify an error in the authorisation process they will, as now, need to consider the best course of action. This may include asking the local authority to cancel the authorisation in question and, if appropriate, complete a new authorisation addressing their concerns which will need to be approved by the JP in the usual way. When an error is brought to the attention of a local authority they should cease the activity authorised.
30. The Commissioners will continue to advise local authorities of the procedures and training to adopt, on what is best practice and will continue to report to Parliament on relevant trends and findings.

### PROCEDURE FOR APPLYING FOR JUDICIAL APPROVAL

#### Making the Application

31. The flowchart at Annex A outlines the procedure for applying for judicial approval. The application must be made by the public authority that has granted the authorisation<sup>11</sup>. Following approval by the authorising officer/designated person the first stage of the process is for the local authority to contact Her Majesty's Courts and Tribunals Service (HMCTS) administration team at the magistrates' court to arrange a hearing.

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<sup>10</sup> See section 62(2A) RIPA.

<sup>11</sup> Some local authorities may enter into arrangements to form a regional group with other local authorities but the group cannot itself make the application. Only local authority officers in local authorities described in Ss 2010 Nos.480 and 521 are able to authorise under RIPA.

32. The local authority will provide the JP with a copy of the original RIPA authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the JP and **should contain all information that is relied upon**. For communications data requests the RIPA authorisation or notice may seek to acquire consequential acquisition of specific subscriber information. The necessity and proportionality of acquiring consequential acquisition will be assessed by the JP as part of his consideration (see Annex C for considerations relating to CD authorisations and notices).
33. The original RIPA authorisation or notice should be shown to the JP but will be retained by the local authority 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). The court may wish to take a copy.
34. In addition, the local authority will provide the JP with a partially completed judicial application/order form (at Annex B).
35. Although the local authority is required to provide a brief summary of the circumstances of the case on the judicial application form, this is supplementary to and does not replace the need to supply the original RIPA authorisation as well.
36. The order section of this form will be completed by the JP and will be the official record of the JP's decision. The local authority will need to obtain judicial approval for all initial RIPA authorisations/ applications **and renewals** and the local authority will need to retain a copy of the judicial application/ order form after it has been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.

### **Arranging a Hearing**

37. It will be important for each local authority to establish contact with HMCTS administration at the magistrates' court. HMCTS administration will be the first point of contact for the local authority when seeking a JP approval. The local authority will inform HMCTS administration as soon as possible to request a hearing.
38. On the rare occasions where out of hours access to a JP is required then it will be for the local authority to make local arrangements with the relevant HMCTS legal staff. In these cases the local authority will need to provide two partially completed judicial application/order forms so that one can be retained by the JP. The local authority should provide the court with a copy of the signed judicial application/order form the next working day.
39. In most emergency situations where the police have power to act, then they are able to authorise activity under RIPA without prior JP approval. No RIPA authority is required in immediate response to events or situations where it is not reasonably practicable to obtain it (for instance when criminal activity is observed during routine duties and officers conceal themselves to observe what is happening).
40. Where renewals are timetabled to fall outside of court hours, for example during a holiday period, it is the local authority's responsibility to ensure that the renewal is completed ahead of the deadline. Out of hours procedures are for emergencies and should not be used because a renewal has not been processed in time.

## Attending a Hearing

41. The hearing is a 'legal proceeding' and therefore local authority officers need to be formally designated to appear, be sworn in and present evidence or provide information as required by the JP.
42. The hearing will be in private and heard by a single JP who will read and consider the RIPA authorisation or notice and the judicial application/order form. He/she may have questions to clarify points or require additional reassurance on particular matters.
43. Local authorities will want to consider who is best able to answer the JP's questions on the policy and practice of conducting covert operations and detail of the case itself. It is envisaged that the case investigator will be able to fulfil this role. The investigator will know the most about the investigation and will have determined that use of a covert technique is required in order to progress a particular case. The local authority may consider it appropriate for the SPoC (single point of contact) to attend for applications for CD RIPA authorisations or notices (see Annex C for considerations relating to CD authorisations and notices). This does not, however, remove or reduce in any way the duty of the authorising officer to determine whether the tests of necessity and proportionality have been met. Similarly, it does not remove or reduce the need for the forms and supporting papers that the authorising officer has considered and which are provided to the JP to make the case (see paragraphs 47-48).
44. The usual procedure would be for local authority Standing Orders to designate certain officers, including SPoCs, for the purpose of presenting RIPA cases to JPs under section 223 of the Local Government Act 1972. A pool of suitable officers could be designated at the start of the year when the Orders are examined and adjusted as appropriate throughout the year.
45. It is not envisaged that the skills of legally trained personnel will be required to make the case to the JP and this would be likely to, unnecessarily, increase the costs of local authority applications.

## Decision

46. The JP will consider whether he or she is satisfied that at the time the authorisation was granted or renewed or the notice was given or renewed, there were reasonable grounds for believing that the authorisation or notice 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 local authority and the authorisation was made in accordance with any applicable legal restrictions, for example that the crime threshold for directed surveillance has been met.<sup>12</sup>

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<sup>12</sup> Further information on these restrictions can be found in the Regulation of Investigatory Powers Act 2000: Consolidating Orders and Codes of Practice, SI 2012 No.1500 (The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment), SI 2000 No.2793 (The Regulation of Investigatory Powers (Juveniles) Order 2000) and the OSC Procedures and guidance manual, available to public authorities on request from the Office of Surveillance Commissioners.

47. **The forms and supporting papers must by themselves make the case. It is not sufficient for the local authority to provide oral evidence where this is not reflected or supported in the papers provided.** The JP may note on the form any additional information he or she has received during the course of the hearing but information fundamental to the case should not be submitted in this manner.
48. If more information is required to determine whether the authorisation or notice has met the tests then the JP will refuse the authorisation. If an application is refused the local authority should consider whether they can reapply, for example, if there was information to support the application which was available to the local authority, but not included in the papers provided at the hearing.
49. The JP will record his/her decision on the order section of the judicial application/order form. HMCTS administration will retain a copy of the local authority RIPA authorisation or notice and the judicial application/order form. This information will be retained securely. Magistrates' courts are not public authorities for the purposes of the Freedom of Information Act 2000.
50. The local authority will need to provide a copy of the order to the communications the SPoC (Single Point of Contact) for all CD requests. SPoCs must not acquire the CD requested, either via the CSP or automated systems until the JP has signed the order approving the grant.

## Outcomes

51. Following their consideration of the case the JP will complete the order section of the judicial application/order form (see form at Annex B) recording their decision. The various outcomes are detailed below and reflected on the flowchart at Annex A.
52. The JP may decide to<sup>13</sup> –

- **Approve the Grant or renewal of an authorisation or notice**

The grant or renewal of the RIPA authorisation or notice will then take effect and the local authority may proceed to use the technique in that particular case.

In relation to CD, the local authority will be responsible for providing a copy of the order to the SPoC.

- **Refuse to approve the grant or renewal of an authorisation or notice**

The RIPA authorisation or notice will not take effect and the local authority may **not** use the technique in that case.

Where an application has been refused the local authority may wish to consider the reasons for that refusal. For example, a technical error in the form may be remedied without the local authority going through the internal authorisation process again. The local authority may then wish to reapply for judicial approval once those steps have been taken.

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<sup>13</sup> See sections 23B(3) and 32B(3) of the Regulation of Investigatory Powers Act 2000.

- **Refuse to approve the grant or renewal and quash the authorisation or notice**

This applies where a magistrates' court refuses to approve the grant, giving or renewal of an authorisation or notice and decides to quash the original authorisation or notice.

The court must not exercise its power to quash that authorisation or notice unless the applicant has had at least 2 business days from the date of the refusal in which to make representations.

### **Complaints/Judicial Review**

53. There is no complaint route for a judicial decision unless it was made in bad faith. Any complaints should be addressed to the Magistrates' Advisory Committee.
54. A local authority may only appeal a JP decision on a point of law by judicial review. If such a concern arises, the local authority should consult their legal advisers.
55. The IPT will continue to investigate complaints by individuals about the use of RIPA techniques by public bodies, including local authorities. If, following a complaint to them, the IPT does find fault with a RIPA authorisation or notice it has the power to quash the JP's order which approved the grant or renewal of the authorisation or notice.

## 5. OTHER SOURCES OF REFERENCE

- The Regulation of Investigatory Powers Act 2000  
<http://www.legislation.gov.uk/ukpga/2000/23/contents>
- RIPA Explanatory Notes  
<http://www.legislation.gov.uk/ukpga/2000/23/notes/contents>
- RIPA statutory codes of practice
  - Covert Surveillance and Property Interference  
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa/forms/code-of-practice-covert>
  - Covert Human Intelligence Sources  
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa/forms/code-of-practice-human-intel>
  - Acquisition & Disclosure of Communications Data  
<http://www.homeoffice.gov.uk/publications/counter-terrorism/ripa/forms/code-of-practice-acquisition>
- SI 2000 No.2793 (The Regulation of Investigatory Powers (Juveniles) Order 2000)  
<http://www.legislation.gov.uk/uksi/2000/2793/made>
- SI 2010 No.480 – Regulation of Investigatory Powers (Communications Data) Order 2010  
<http://www.legislation.gov.uk/uksi/2010/480/contents/made>
- SI 2010 N0.521 – Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010  
<http://www.legislation.gov.uk/uksi/2010/9780111490365/contents>
- SI 2010 No.461 (The Regulation of Investigatory Powers (Extension of Authorisation Provisions: Legal Consultations) Order 2010)  
<http://www.legislation.gov.uk/uksi/2010/461/contents/made>
- SI 2012 No.1500 (The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012)  
<http://www.legislation.gov.uk/uksi/1500/contents>

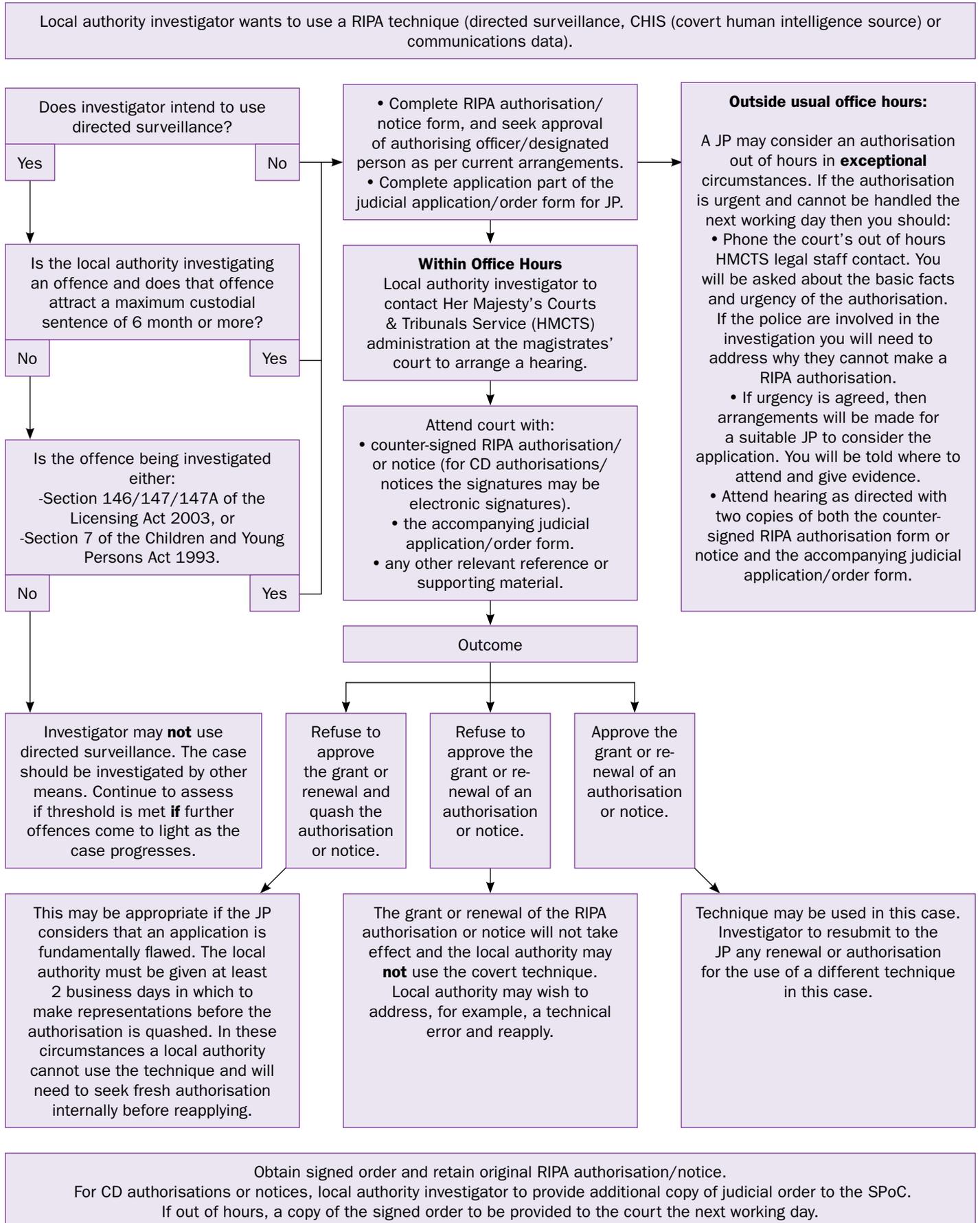
## 6. HOME OFFICE POINT OF CONTACT

Further information is available on request from:

RIPA Team  
Home Office  
5th Floor Peel Building  
2 Marsham Street  
London SW1P 4DF  
Email: [commsdata@homeoffice.x.gsi.gov.uk](mailto:commsdata@homeoffice.x.gsi.gov.uk)

# ANNEX A

## LOCAL AUTHORITY PROCEDURE: APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE GRANT OF A RIPA AUTHORISATION OR NOTICE



# ANNEX B

## **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:

# ANNEX C

## COMMUNICATIONS DATA (CD) RIPA AUTHORISATIONS OR NOTICES

### Single Point of Contact (SPoC)

1. For CD requests, a Single Point of Contact (SPoC) undertakes the practical facilitation with the communications service provider (CSP) in order to obtain the CD requested. They will have received training specifically to facilitate lawful acquisition of CD and effective co-operation between the local authority and communications service providers.
2. Local authorities unable to call upon the services of an accredited SPoC should not undertake the acquisition of CD.
3. For CD requests the Home Office envisages that the local authority may also choose to authorise, under section 223 of the Local Government Act, their SPoC in order that they may appear in front of the JP. In cases where the type of CD or its retrieval is technically complex and the JP wants to satisfy him/herself that the CD sought meets the test, then the SPoC may be best placed to explain the technical aspects.
4. Following the hearing the SPoC may acquire the data. SPoCs must not acquire the data via a CSP or using automated systems until after the JP has signed the order approving the grant. The one month time limit will commence from the date of the JPs signature giving approval.

### The National Anti Fraud Network (NAFN)

5. The National Anti-Fraud Network provides a SPoC service to local authorities, precluding each authority from the requirement to maintain their own trained staff and allowing NAFN to act as a source of expertise. Local authorities using the NAFN SPoC service will still be responsible for submitting any applications to the JP and a designated person in the local authority is still required to scrutinise and approve any applications. The accredited SPoCs at NAFN will examine the applications independently and provide advice to applicants and designated persons to ensure the local authority acts in an informed and lawful manner.
6. The local authority investigator (i.e. the applicant) will then submit the relevant judicial application/order form, the RIPA application (authorisation or notice) and any supporting material to the JP. As above, following a private hearing, the JP will complete the order section of the judicial application/order form, reflecting their decision. The local authority investigator will then upload a copy of this order to the NAFN SPOC.
7. The NAFN SPoC will then acquire the CD on behalf of the local authority in an efficient and effective manner.

## Consequential Acquisition

8. Section 3.31 of the Code of Practice for the Acquisition and Disclosure of CD outlines that a designated person may, at the time of granting an authorisation or notice for service usage data, also authorise the consequential acquisition of specific subscriber information. The designated person may only do so to the extent where it is necessary and proportionate. The consequential acquisition may only be for subscriber data, not traffic data, which local authorities may not acquire nor service usage data. Where a SPoC has been authorised to engage in conduct to obtain details of a person to whom a service has been provided and concludes that data is held by a CSP from which it cannot be acquired directly, the SPoC may provide the CSP with details of the authorisation granted by the designated person in order to seek disclosure of the required data<sup>14</sup>.
9. In cases where an authorisation or notice seeks to acquire consequential acquisition of specific subscriber information the JP will assess this as part of his/her consideration. The local authority investigator should be prepared to explain to the JP the reasoning behind the request for consequential acquisition and be able to show how it meets the necessity and proportionality tests.
10. In cases where consequential acquisition is approved, but where a notice is required (which must specify the name of the CSP to whom it is given, and be signed by the designated person), a further grant of a notice will be required. This is a new legal instrument and therefore will require further approval to the designated person and the JP, despite authority for the human rights interference having already been given.

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<sup>14</sup> Acquisition and Disclosure of Communications Data Code of Practice, Paragraph 3.30.



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