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Contact Officer:

Ola Dejo-Ojomo Tel: 01483 444106

18 March 2015

Dear Councillor

Your attendance is requested at a meeting of the **CORPORATE GOVERNANCE AND STANDARDS COMMITTEE** to be held in the Committee Room 1 - Millmead House on **THURSDAY, 26 MARCH 2015** at **7.00 pm**.

Yours faithfully

Satish Mistry
Executive Head of Governance

MEMBERS OF THE COMMITTEE

Chairman: Councillor Andrew French
Vice-Chairman: Councillor Nick Sutcliffe

Councillor Adrian Chandler
Councillor Mark Chapman
Councillor Iseult Roche
Councillor David Wright

Ms Maria Angel
Mrs Isobel Atkinson-Flint
Mrs Pat Scott
Mr Ian Symes

*Independent member

^ Parish member

Authorised Substitute Members:

Councillor David Carpenter
Councillor David Goodwin
Councillor Jennifer Jordan

Councillor Anne Meredith
Councillor Mrs Jennifer Powell
Councillor Caroline Reeves

OFFICER REPRESENTATION:

Sue Sturgeon (Manager Director: Head of Paid Service and S151 Officer)
Satish Mistry (Executive Head of Governance and Monitoring Officer)
Martyn Brake (Deputy Monitoring Officer)
Joan Poole (Head of Internal Audit)

QUORUM 3



THE COUNCIL'S STRATEGIC FRAMEWORK

Vision – for the borough

For Guildford to be a town and borough:

- with strong infrastructure
- world-class businesses with capacity to expand and deliver growth
- an evolving and vibrant economy which creates a progressive and sustainable environment
- for people today and future generations living in an ever improving society.

Five fundamental themes that support the achievement of our vision

- **Infrastructure** – working effectively with partners to drive development and business growth that will expand our economy
- **Economy** – to grow a sustainable economy that will support all aspects of life in our borough.
- **Development** – to ensure that there is appropriate infrastructure, commercial space and a range of homes, built sensitively, without damaging our heritage or countryside.
- **Sustainability** – to ensure the services we provide and the borough develops and grows, in the most sustainable way.
- **Society** – to evolve a self-reliant and sustaining community, while supporting our most vulnerable residents.

Values for our residents

- We will strive to be the best Council.
- We will deliver quality and value for money services.
- We will help the vulnerable members of our community.
- We will be open and accountable.
- We will deliver improvements and enable change across the borough.

Mission – for the Council

A forward looking, efficiently run Council, working in partnership with others and providing first class services that give the community value for money, now and in the future.

Developing our Council

To be a well led, collaborative organisation that has customer care and top quality at its heart. To have highly trained and proficient staff and councillors who challenge and learn.

AGENDA

ITEM

1 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

2 LOCAL CODE OF CONDUCT - DISCLOSURE OF INTERESTS

In accordance with the revised local Code of Conduct, a councillor is required to disclose at the meeting any disclosable pecuniary interest (DPI) that they may have in respect of any matter for consideration on this agenda. Any councillor with a DPI must not participate in any discussion or vote regarding that matter and they must also withdraw from the meeting immediately before consideration of the matter.

If that DPI has not been registered, you must notify the Monitoring Officer of the details of the DPI within 28 days of the date of the meeting.

3 MINUTES (Pages 1 - 6)

To confirm the minutes of the meeting of the Corporate Governance and Standards Committee held on 27 November (attached).

4 COVERT SURVEILLANCE POLICY 2014 (Pages 7 - 48)

5 DATA PROTECTION ACTION PLAN (Pages 49 - 60)

6 CRIMINAL RECORDS CHECKS FOR COUNCILLORS (Pages 61 - 66)

7 EXTERNAL AUDIT PLAN 2014-15 AND EXTERNAL AUDIT UPDATE (Pages 67 - 102)

8 ENQUIRIES OF THOSE CHARGED WITH GOVERNANCE (Pages 103 - 114)

9 PROCUREMENT STRATEGY (Pages 115 - 152)

10 WORK PROGRAMME (Pages 153 - 162)

Meeting dates for 2015-16

- Thursday 4 June 2015
- Thursday 23 July 2015
- Thursday 24 September 2015
- Thursday 26 November 2015
- Thursday 14 January 2016
- Thursday 31 March 2016

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CORPORATE GOVERNANCE AND STANDARDS COMMITTEE

27 November 2014

*Councillor Andrew French (Chairman)
Councillor Nick Sutcliffe (Vice-Chairman)

*Ms Maria Angel (Independent Member)	Councillor Iseult Roche
Mrs Isobel Atkinson-Flint (Independent Member)	Mrs Pat Scott (Parish member)
*Councillor Adrian Chandler	Mr Ian Symes (Parish member)
Councillor Mark Chapman	Councillor David Wright
Councillor Steve Freeman	

*Present

Councillor Paul Spooner, Lead Councillor for Licensing and Governance, was also in attendance.

CGS20 – APOLOGIES FOR ABSENCE were submitted on behalf of Councillors Mark Chapman, Steve Freeman, Iseult Roche, Nick Sutcliffe and David Wright and Mrs Isobel Atkinson-Flint, Mr Ian Symes and Mrs Pat Scott.

In accordance with Council Procedure 17(m), Councillor Anne Meredith attended as a substitute for Councillor Steve Freeman, and Councillor Jennifer Powell as a substitute for Councillor Nick Sutcliffe.

CGS21 – LOCAL CODE OF CONDUCT – DISCLOSURE OF INTERESTS

There were no disclosures.

CGS22 – MINUTES

The minutes of the meeting of the Corporate Governance and Standards Committee held on 25 September 2014 were confirmed and signed.

CGS23 – REVIEW OF THE CONSTITUTION: PHASE II

The Committee considered a report detailing the second part of Phase 2 of the Council's Constitution. Phase 1, which was completed in May 2014, comprised a review of Parts 1 to 3 of the Constitution. Phase 2, due to be completed by December 2014, considered Parts 4 (Procedure Rules) and 5 (Codes and Protocols) of the Constitution.

The report set out details of the review of the following procedure rules:

- Officer Employment Procedure Rules
- Procurement Procedure Rules
- Financial Procedure Rules
- Councillors' Code of Conduct
- Probity in Planning – Local Code of Practice
- Protocol on Appointments to Outside Organisations
- Arrangements for dealing with allegations of misconduct by councillors
- Protocol on Decision Making by Lead Councillors.

The Committee also considered the late sheet which detailed a number of minor amendments to Appendix 1, Officer Procedure Rules, and Appendix 7, Arrangements for dealing with

allegations of misconduct by councillors to the report. The Committee commented particularly on these as set out below.

Appendix 1: Officer Procedure Rules

The late sheet also set out a number of minor amendments, and the Executive Head of Governance also gave further verbal amendments which removed paragraph 5(c) (offer of employment in relation to a post reporting to an Executive Head of Service to require notice be given to the Executive) and the second half of paragraph 7(c) (dismissal of officers below the level of Executive Head of Service to require notice to be given to the Executive).

Appendix 7: Arrangements for Dealing with Allegations of Misconduct by Councillors

In addition to the report and the late sheet, the Committee also considered chapter 3 of *Standards Matter: A review of best practice in promoting good behaviour in public life* published by the Committee on Standards in Public Life, which set out the revised descriptions of the Principles of Public Life, and was circulated just before the meeting.

Annex 1 of Appendix 7 of the report detailed proposed arrangements for dealing with allegations of misconduct by councillors and co-opted members. Decision-making powers on such complaints had been delegated to the Monitoring Officer. The report proposed that the detailed assessment criteria by which the Monitoring Officer would consider a complaint before deciding whether it merits a formal investigation would be included within the body of the Arrangements document. However, the Committee felt the assessment criteria, particularly the proposal that any complaint received more than three months after the alleged misconduct had taken place would not be investigated, should be subject to further consultation with councillors. As such, the Committee requested that this, and the corresponding flowchart at Annex 2, be omitted from the recommendations for the time being pending such consultation.

Having considered the report, the late sheet and the Executive Head of Governance's verbal update, the Committee

RESOLVED

to recommend to Council (9 December 2014):

- (1) That the proposed amendments to Officer Employment Procedure Rules referred to in Appendix 1 to the report, the late sheet, and the verbal amendments at the meeting, be approved.
- (2) That the proposed new Procurement Procedure Rules, as set out in Appendix 2 to the report, be approved and substituted in place of the current Procurement Procedure Rules in the Constitution.
- (3) That the proposed new Financial Procedure Rules, as set out in Appendix 3 to the report, be approved and substituted in place of the current Financial Procedure Rules in the Constitution.
- (4) That the proposed amendments to the Councillors' Code of Conduct referred to in Appendix 4 to the report, be approved.
- (5) That the proposed amendments to Probity in Planning – Local Code of Practice, as set out in Appendix 5 to the report, be approved.
- (6) That the proposed amendments to the Protocol on Appointments to Outside Organisations referred to in Appendix 6 to the report, be approved.

- (7) That, with the exception of Annexes 1 and 2, the proposed amendments to the arrangements for dealing with allegations of misconduct by councillors referred to in Appendix 7 to the report and the late sheet, be approved.
- (8) That the proposed amendments to the Protocol on Decision Making by Lead Councillors referred to in Appendix 8 to the report, be approved.
- (9) That the proposed amendments to the scheme of delegation to officers, in respect of the non-executive functions set out in Appendix 9 to the report, be approved.
- (10) That the Pay Policy Statement be included as part of the Council's Policy Framework.
- (11) That the Constitution be kept under review on an annual basis.

Reasons for decision:

To ensure that the Constitution is up to date and fit for purpose.

CGS24 – PROPOSED GUIDANCE FOR COUNCILLORS ON THE USE OF SOCIAL MEDIA AND MOBILE DEVICES

The Committee considered a report proposing guidance on councillor use of social media and mobile devices, particularly at meetings. This was further to a consultation workshop in September 2014 where councillors requested formal guidance on their use of social media in their capacity as councillors.

Further to comments from the Committee, it was noted that this Committee was the appropriate Committee for the guidance to be considered prior to reference to Council, rather than an overview and scrutiny committee.

There was also some concern regarding reference in the guidance to councillors exchanging electronic communications during meetings in respect of matters relevant to the debate at hand on the same basis as circulating paper notes to other councillors. However, the guidance also advised councillors to use mobile devices "sparingly, discreetly and with common sense at meetings".

It was noted that the Council's Acceptable Use of ICT Equipment and Systems Policy, which covers the Council's policy of appropriate use of mobile devices in terms of software and technology, was due to be updated by January 2015

It was suggested that the guidance be reviewed in 12 months' time.

Having considered report, the Committee

RESOLVED to recommended that the Council approves the guidance.

Reason for decision

To provide practical advice and assistance to councillors on their use of social media and mobile devices.

CGS25 – ANNUAL AUDIT LETTER

The Committee considered the Annual Audit Letter issue by the independent auditor for 2013-14. The Annual Audit Letter summarised key findings arising from:

- auditing the 2013-14 accounts and Whole of Government Accounts return
- assessing the Council's arrangements for securing economy, efficiency and effectiveness in its use of resources

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- certification of grants claims and returns.

The Council received an unqualified opinion on the accounts and its arrangements for securing economy, efficiency and effectiveness and its assurance statement on the Whole of Government Accounts. The auditors had certified one grant claim and were still working on the housing benefit claim.

The chairman congratulated Financial Services on the successful audit.

Having considered the external auditor's Annual Audit Letter, the Committee did not have any comments to forward to the Executive.

CGS26 – SUMMARY OF INTERNAL AUDIT REPORTS APRIL 2014 – SEPTEMBER 2014

The Committee considered a report summarising the audit work carried out in the period April 2014 to September 2014. The report also included a schedule on the progress against the audit plan for the first six months.

There had been three reviews classified as 'limited assurance' over this period, four classified as 'reasonable assurance', and three classified as 'substantial assurance'.

Further to a query from the Committee, the Head of Internal Audit advised that her team regularly liaised with officers to ensure that recommendations are delivered, and that this forms part of the work plan that is considered by this committee.

Having considered the report, the Committee noted the report.

CGS27 – OFFICE OF SURVEILLANCE COMMISSIONERS INSPECTION REPORT

The Committee considered a report by HH David Hodson, Assistant Surveillance Commissioner, on his findings further to a routine visit to review the Council's use of covert activities powers under the Regulation of Investigatory Powers Act 2000 (RIPA). The Committee also considered an action plan proposed by officers to meet the recommendations in the Assistant Surveillance Commissioner's report.

The officer's first recommendation proposed an amendment to the delegation to officers to reflect the Executive Head of Governance undertaking to role of the Senior Responsible Officer (SRO) for surveillance. As such, the Committee agreed an amendment, as set out in the late sheet, to recommend to Council this proposed additional delegation.

Having considered the report and the proposed amendment as set out in the late sheet, the Committee

RESOLVED

- a) to recommend to Council (9 December 2014) that the Executive Head of Governance be authorised to undertake the role of the Senior Responsible Officer (SRO) in respect of surveillance;
- b) that officers submit the amended Covert Surveillance Policy for approval to the Corporate Governance and Standards Committee scheduled for 15 January 2015; and
- c) that officers, with immediate effect, use a simple spreadsheet format as the central register for all future authorisations, as recommended by HH David Hodson.

CGS28 – INSTANT MESSAGING

At its meeting on 5 June 2014, the Committee considered a report on compliance with information rights legislation. At that meeting, the Committee then requested a further report setting out the policy for use and training to be offered to officers in relation to the instant messaging system, prior to its implementation (reference CGS10).

The Committee considered this second report, which explained the use and retention of instant messaging on Council systems, and how it related to business requirements and information rights legislations. Officers made clear to the Committee that the instant message system would not include decisions or other records. Instead, it would serve as informal communication, similar to leaving written notes on desks, but electronically. It was anticipated that most instant messages would be deleted by the end of the working day. Officers advised that the use of instant messages would greatly reduce the number of emails sent, hence would help staff locate information required when we receive a subject access request.

Having considered the report, the Committee RESOLVED to note the retention arrangements for instant messaging as set out in the report.

CGS29 – WORK PROGRAMME

The Committee received and noted a report detailing its work programme until March 2015.

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Corporate Governance and Standards Committee Report
Report of Executive Head of Organisational Development

Author: Vincenzo Ardilio

Tel: 01483 444053

Email: vincenzo.ardilio@guildford.gov.uk

Lead Councillor responsible: Paul Spooner

Tel: 01252 341666

Email: paul.spooner@guildford.gov.uk

Date: 26 March 2015

Update to Covert Surveillance Policy

Executive Summary

Further to the Assistant Surveillance Commissioner's visit in September 2014, officers produced an action plan in order to address his recommendations. The action plan, approved by the Committee in November 2014, included updating the Council's Covert Surveillance Policy. The draft updated policy is attached at Appendix 1 for the Committee's endorsement prior to its consideration by the Executive in February 2015.

Recommendation

That the Committee endorse the updated Covert Surveillance Policy prior to its consideration by the Executive, in particular, that the delegations to the Executive Head of Governance include the Senior Responsible Officer role.

Reason for recommendation:

To ensure that any covert surveillance activity carried out by the Council remains proportionate and in line with current legislation and good practice.

Purpose of Report

- 1.1 This report seeks the committee's endorsement of the Council's updated Covert Surveillance Policy further to the recent Office of Surveillance Commissioner's visit.

Strategic Framework

- 2.1 Approval of the updated Covert Surveillance Policy will ensure the Council remains compliant with the Regulation of Investigatory Powers Act 2000, which regulates the Council's use of covert surveillance powers, informants and communications data. Compliance with this legislation will contribute to a safe and vibrant community and in particular will ensure that residents within our community can live in dignity.

Background

- 3.1 Further to the Assistant Surveillance Commissioner's visit on 12 September 2014, officers produced an action plan in order to address his recommendations, which the Corporate Governance and Standards Committee considered at its meeting on 27 November 2014.
- 3.2 The action plan included the submission of an updated Covert Surveillance Policy for Committee approval and the updated draft is attached to this report as Appendix 1.
- 3.3 The update takes into account the following:
 - a. the recommendations included in the Office of Surveillance Commissioners (OSC) Inspection Report (considered by the Committee on 27 November 2014) including the designation of Senior Responsible Officer,
 - b. the recent revocation of individual Single Point of Contacts (SPoC) in individual local authorities in favour of the National Anti-Fraud Network (this is in relation to communications data)
 - c. ensuring that the changes that arose from the Protection of Freedoms Act 2012 are set out more clearly in the Policy.

Financial Implications

- 4.1. There are no financial implications to this report.

Legal Implications

- 5.1 The Council must comply with the Regulation of Investigatory Powers Act 2000 and associated legislation such as the Protection of Freedoms Act 2012. Addressing the recommendations made by the Assistant Surveillance Commissioner will help the Council to remain compliant.

Human Resource Implications

- 6.1 There are no human resource implications arising from this report.

Conclusion

- 7.1 Approval of the updated Covert Surveillance Policy will ensure that the Council remains compliant with the prevailing laws when conducting covert surveillance and the good practice recommended by the Office of Surveillance Commissioners.

Background Papers

- Code of practice for covert surveillance and property interference (Home Office 2010)
- Code of practice for the use of human intelligence sources (Home Office 2010)

- Office of Surveillance Commissioner's Inspection Report 12 September 2014

Appendices

Guildford Borough Council Covert Surveillance Policy 2015:1

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GUILD F O R D
B O R O U G H

Covert surveillance policy and procedure note

DOCUMENT INFORMATION

Origination/author:	Vincenzo Ardilio, Information Rights Officer
Version:	2015: 1 (Draft)
This document replaces:	Covert Surveillance Policy 2008 3.4
Parent Policy:	N/A
Date/detail of consultation:	September 2014: Office of Surveillance Commissioner November 2014: Legal Services December 2014: Management Team December 2014: Lead Councillor
Approved by:	
Date of approval:	
Last reviewed:	N/A
Next review date:	October 2015
Target Audience:	All staff
Method of communication:	NETconsent (Targeted mailing list)

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 - 8.4. Authorising the acquisition of Confidential Material
 - 8.5. Authorisation for the use of sources
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 - 8.7. Communications Data - special procedure
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- Appendix B: Definitions
- Appendix C: Further guidance on types of surveillance
- Appendix D: Further examples to help you decide whether your activities are covered by this policy
- Appendix E: Covert Human Intelligence Sources – using minors
- Appendix F: List of approved forms

PART 1 - POLICY

1. Background and summary

- 1.1. The Regulation of Investigatory Powers Act 2000 (RIPA) and associated legislation set out a regulatory framework for the use of covert investigatory techniques by public authorities. It does not provide any powers to carry out covert activities but regulates them in a manner that is compatible with the Human Rights Act 1998, particularly Article 8 – the right to respect for private and family life (“Article 8 rights”).
- 1.2. RIPA limits local authorities to using three covert investigation techniques, which are allowed only for the purpose of preventing or detecting crime or preventing disorder. The techniques are:
 - directed surveillance - this is essentially covert surveillance in places other than residential premises or private vehicles, where the investigation is likely to obtain information about any aspect of a person’s private life or personal relationships with others, including family and professional or business relationships,
 - covert human intelligence sources (CHIS) – this includes informants using a relationship with the individual under investigation or another person to obtain and pass on any information (not just private information). This can therefore include undercover officers, public informants and, in some circumstances, people who make test purchases,
 - ‘communications data’ – specifically ‘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 or telephone or internet services).
Note: there is a third type of communications data, referred to as ‘traffic data’ (which includes information about where the communications are made or received) – *under no circumstances can the Council authorise the acquisition of traffic data under RIPA nor may the Council intercept the content of any person’s communications.*
- 1.3. The use of the above techniques must be authorised internally by a designated authorising officer and then by a magistrate. Directed surveillance can only be used where (1) *necessary* to investigate a suspected crime or disorder with a maximum sentence of at least six months’ imprisonment and (2) *proportionate* (balancing the seriousness of the intrusion into privacy against the seriousness of the offence and whether the information can be obtained by other means). Where unauthorised evidence-gathering activity interferes with the right to respect for private and family life, and where there is no other source of lawful authority for it, the consequence may be that the evidence has been gathered unlawfully. The courts may therefore disallow the evidence, a complaint of maladministration could be made to the Ombudsman or the Investigatory Powers Tribunal, and the Council could be ordered to pay compensation.
- 1.4. The Council has provided this policy and procedural document to ensure that any covert surveillance activity undertaken by Guildford Borough Council officers is necessary, proportionate, authorised and carried out legally. This will help to ensure that any evidence gained during any operation is lawful and permissible in Court and meets the aims of the investigation.

- 1.5. All involved with covert investigations must comply with this document and any further guidance that may be issued, from time to time, by the Executive Head of Governance, who is the Senior Responsible Officer (SRO) in respect of the Council's compliance with RIPA and its associated legislation.
- 1.6. In addition to this policy and guidance, officers must take into account the Codes of Practice issued under RIPA (the Codes of Practice are at www.security.homeoffice.gov.uk).

2. POLICY STATEMENT

- 2.1. Guildford Borough Council may use covert surveillance to carry out certain statutory functions. In order to do this in a fair and lawful manner, and in accordance with Human Rights legislation, the Council is committed to complying with the Regulation of Investigatory Powers Act 2000 (RIPA) and its associated legislation. Therefore, directed surveillance will only take place if it is to prevent or detect a criminal offence punishable by a maximum custodial sentence of at least six months or relates to the underage sale of alcohol and tobacco and where it has been authorised by an appointed Authorising Officer and a magistrate.
- 2.2. Officers shall seek an authorisation where the directed surveillance, the use of a source or the obtaining of communications data is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about a person (whether or not that person is the subject of the investigation or operation). Obtaining an authorisation will ensure that the action is carried out in accordance with law and subject to stringent safeguards against abuse.
- 2.3. Guildford Borough Council will comply with the Covert Surveillance Codes of Practice Pursuant to Section 71 of RIPA (the Code). All officers who carry out covert surveillance activity will be required to follow the procedures and guidance set out in this policy document.
- 2.4. Guildford Borough Council will provide training for all staff that are, or may become, involved with covert evidence-gathering operations, as identified by the relevant head of service. The Council will also monitor its own working practice on a regular basis.
- 2.5. This Council is subject to periodical inspections by the Office of Surveillance Commissioners (OSC) to ensure compliance with RIPA and to review the Council's policies, procedures, and individual authorisations. Further details about inspections can be found at www.surveillancecommissioners.gov.uk
- 2.6. There is a statutory complaints system, which is welcomed by the Council. The Investigatory Powers Tribunal deals with complaints from members of the public about the use of the powers by public authorities. The Tribunal is separate from the OSC. The Council welcomes this external scrutiny. It expects its officers to co-operate fully with these statutory bodies and to bring forward any proposals for improvement that may follow on from an inspection report or a Tribunal hearing.

3. SCOPE OF THIS POLICY AND PROCEDURAL DOCUMENT

- 3.1. This policy and procedural document relates to the authorisations of directed surveillance, sources (CHIS) and acquisition of communications data.
- 3.2. An authorisation under RIPA will provide lawful authority for the investigating officer to carry out the investigation as described in the application form and in accordance with any further direction given by the authorising officer and the magistrate.
- 3.3. Some investigations may not relate to the Council's core functions, such as the monitoring of the Council's e-mails and internet usage. It is important to recognise the interplay and overlaps with the Council's Acceptable Use policies and guidance, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 ("Lawful Business Practice Regulations") and the Data Protection Act 1998. Authorisations under RIPA should be made **where relevant** and they will only be relevant where the **criteria** listed on the authorisation forms are fully met.
- 3.4. In particular, RIPA is not relevant to the following activities:
 - (a) covert surveillance by way of an immediate response to events;
 - (b) covert surveillance as part of general observation activities at trouble 'hotspots' and routine patrols;
 - (c) covert surveillance that does not relate to core functions, which should be conducted under legislation other than RIPA;
 - (d) overt use of CCTV and ANPR systems, which are regulated by the Data Protection legislation and associated codes of practice
 - (e) certain other specific situations
- 3.5. Where RIPA is not relevant, other empowering legislation will apply instead. In addition, the Data Protection Act 1998 is likely to regulate the use and obtaining of any evidence relating to any living individual. In these cases, the officer responsible must carry out a privacy impact assessment (PIA) and seek advice from the Information Rights Officer (IRO).

4. REVIEW OF THIS POLICY AND PROCEDURAL DOCUMENT

- 4.1. RIPA and this document are important for the effective and efficient operation of the Council's actions with regard to surveillance. Therefore, the SRO, will keep this document under review. Authorising Officers must bring any suggestions for continuous improvement of this document to the attention of the SRO at the earliest possible opportunity.

- 4.2. Officers will review the policy annually in consultation with councillors. The associated procedures will also be reviewed regularly to reflect changes in legislation and good practice.

5. GOVERNANCE ROLES, RESPONSIBILITIES AND COMMUNICATION

Senior Responsible Officer (SRO)

5.1. The Executive Head of Governance is the Senior Responsible Officer (SRO). The SRO is responsible for:

- the integrity of the process in place for the management of sources and directed surveillance;
- compliance with Part 2 of RIPA and the associated Codes;
- 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 the repetition of errors;
- engagement with the OSC inspectors when they conduct their inspections, where applicable; and
- where necessary, oversight of the implementation of post-inspection action plans approved by the relevant oversight Commissioner
- ensuring appropriate training is available for Authorising Officers and relevant staff.

RIPA Coordinating Officer

5.2. The IRO is the RIPA Coordinating Officer. The RIPA Coordinating Officer will:

- (a) monitor and keep the central record of authorisations,
- (b) provide day-to-day advice on the use of covert surveillance and
- (c) will provide a quarterly report to the Corporate Governance Group and the Leader of the Council. This report will set out the number and nature of covert surveillance authorisations under RIPA, highlighting any areas of concern.
- (d) provide governance support to the SRO as required or directed

Single Point of Contact (SPoC) for communications data

5.3. The Council will use the SPoC service provided by the National Anti-Fraud Network (NAFN) and the Investigations Manager or the Information Rights Officer are the designated contacts.

5.4. The SPoC:

- a) where appropriate, assesses whether access to the communications data is reasonably practical for the postal or telecommunications operator;
- b) advises applicants and Authorising Officers on the practicalities of accessing different types of communications data from different postal or telecommunications operators;
- c) provides safeguards for authentication;
- d) assesses the cost and resource implications to both the authorisation and postal or telecommunications operator.

Corporate Governance Group

5.5. The Corporate Governance Group will consider internal reports on the use of RIPA on a quarterly basis to ensure that the Council is using its powers consistently with this policy and that the policy remains fit for purpose. However, they will not be involved in making decisions on specific authorisations.

Councillors

- 5.6. Officers will consult councillors during the annual review of this policy. The Leader will receive a copy of the quarterly report to Corporate Governance Group.

6. COMPLAINTS

- 6.1. Complaints regarding Covert Surveillance must be directed to the SRO.
- 6.2. In order to maintain separation of duties, the officer who authorised the Covert Surveillance activity subject to a complaint must not carry out the investigation into the complaint.
- 6.3. The SRO may review the conduct of particular operations at any time.

PART 2

7. SUMMARY OF THE AUTHORISATION PROCEDURE

7.1. The following is an overview. A more detailed description, together with an explanation of specific terms, is contained in the detailed procedures that follow.

i.	Investigating officers must obtain a unique reference number from the RIPA Coordinating Officer for any planned, covert operation for which they intend to apply for authorisation.
ii	<p>Directed surveillance and sources</p> <p>Wherever possible, investigating officers must submit applications for authority to the Executive Head of Finance. If the Executive Head of Finance is not available, the investigating officer should contact the RIPA Coordinating Officer for an up-to-date list of alternative managers who have been designated as Authorising Officers.</p> <p>Where a likely consequence of surveillance is the acquisition of Confidential Material, the investigating officer must, always seek authority from the Managing Director or, in his or her absence, the Acting Managing Director.</p> <p>Applications for the renewals and cancellations of surveillance must be authorised by the same authorising officer where this is possible.</p> <p>Communications Data</p> <p>Investigating officers must pass applications for communications data to the IRO or the Investigations Manager, who will administer the application and liaise with the Authorising Officer.</p> <p>In all cases, the current forms provided by the Home Office must always be used.</p>
iii	Authorising Officers (<i>not the investigating officer</i>) must document, on the authorisation form, their consideration of the proportionality and necessity of each exercise.
iv	Once authorised, the Authorising Officer will ensure that the administration at the Magistrates Court is contacted to arrange a hearing for judicial approval (the current <i>Application for judicial approval</i> form, as published by the Home Office, must be used for this purpose.
v	Investigating Officers must keep appropriate records of their investigation in line with the established retention periods. They must forward a copy of all authorisations (including judicial approval form), reviews, renewals and cancellation forms, duly authorised (or where relevant, rejected), to the RIPA Coordinating Officer for inclusion in the central record as soon as possible. Forms will remain on the central record for three years from the date of cancellation.

vi	The RIPA Coordinating Officer must provide a quarterly report to the Corporate Governance Group summarising authorisations to date and highlighting any areas of concern. The Leader of the Council will also receive a copy of this report.
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8. AUTHORISATION OF SURVEILLANCE

8.1. Activity requiring authorisation

8.1.1. Authorisation is required for the following activities (Please see the definitions in Appendix B):

- directed surveillance,
- use of sources ('covert human intelligence sources') and
- the acquisition or disclosure of communications data

8.1.2. Any officer who undertakes investigations on behalf of the Council must seek authorisation in writing for any of the above-mentioned activities. The authorisations must be set out on the latest forms as published by the Home Office. These forms should not be adapted or modified unless authorised by the SRO.

8.2. Unique Reference Numbers (URNs)

8.2.1. Each application for authorisation must have a Unique Reference Number (URN). The officer applying for authorisation must first obtain the next available URN from the RIPA Coordinating Officer. Rejected forms will therefore also have URNs.

8.3. Authorising Officers – roles and responsibilities

8.3.1. Only specified senior managers may authorise covert surveillance. The Managing Director will inform those that may do so in writing. The Managing Director must approve all proposed changes to the delegation arrangements as far as they relate to any activities covered by this policy and procedure document. The Council's Authorising Officers are identified on the Intranet together with this policy and in the Council's Constitution.

8.3.2. Authorising Officers are responsible for overseeing each investigation and ensuring investigating officers follow the procedures set out in this document.

8.3.3. Authorising Officers cannot further sub delegate their powers to authorise covert surveillance.

8.3.4. Authorising Officers must not grant authorisation unless they believe it is necessary and proportionate *for the purpose of preventing or detecting crime or preventing disorder*. The Council may not use directed surveillance powers under RIPA except in relation to offences that attract a maximum sentence of at least six-months' imprisonment or are related to the underage sale of alcohol or tobacco. Please see section 9 for guidance on the necessity and proportionality test.

8.4. Authorising the acquisition of Confidential Material (see Appendix B for definition)

8.4.1. The investigating officer must seek authority from the Managing Director, or, in his or her absence, the Acting Managing Director. The fullest consideration must be given to any cases where the subject of the surveillance might reasonably expect a high degree of privacy.

8.4.2. Applications in which the surveillance is likely to result in the acquisition of confidential material will be considered only in exceptional and compelling circumstances. The investigating officer must have full regard to the proportionality issues this raises.

8.5. Authorisation for the use of sources

8.5.1. A source may include those referred to as agents, informants and officers working undercover. Appendix C contains advice on how to identify whether your investigation includes the use of a source.

8.5.2. An Authorising Officer must not grant an authorisation for the use or conduct of a source unless there is a person with the responsibility for maintaining a record of the use made of the source at all times.

8.5.3. The Authorising Officer shall ensure that arrangements are in place for the proper oversight and management of sources, including appointing individual officers for each source. The Authorising Officer shall carry out a risk assessment before authorising the source.

8.5.4. The person responsible for the day-to-day contact between the public authority and the source will usually be of a rank or position below that of the Authorising Officer.

8.5.5. Officers using a source shall consider the safety and welfare of that source (even after cancellation of the authorisation), and the foreseeable consequences to others of the tasks they are asked to carry out.

8.5.6. The Authorising Officer shall have regard to the special safeguards and provisions that apply to vulnerable individuals and juvenile sources, set out in more detail in the Covert Human Intelligence Source Code of Practice published by the Home Office <http://www.security.homeoffice.gov.uk>. Only the Managing Director or, in his or her absence, the Acting Managing Director is able to authorise the use of vulnerable individuals and juvenile sources (see Appendix E for special requirements for juveniles).

8.6. Authorising acquisition of communications data

- 8.6.1. Applications to obtain communications data will be submitted on the current Home Office forms to the National Anti-Fraud Network (NAFN) service. Investigating officers should contact the RIPA Coordinating Officer or, in the case of Benefit Fraud investigations, the Investigations Manager in the first instance for advice on the current procedure.
- 8.6.2. Once the authorisation has judicial approval, it will last for one month.
- 8.6.3. Communications data, and all copies, extracts and summaries of it must be handled and stored securely.
- 8.6.4. Officers must observe the requirements of the Data Protection Act 1998 and the principles of the Criminal Procedure and Investigations Act 1996. Officers must seek advice when they have questions about information security and integrity.

8.7. Communications Data – Special Procedure

- 8.7.1. There are two ways of authorising access to communications data;
 - Through a Section 22(3) authorisation: An authorisation would allow the Council to collect or retrieve the data itself, or
 - By a Section 22(4) notice: This is given to a postal or telecommunications operator and requires that operator to collect or retrieve the data and provide it to the council.
- 8.7.2. An Authorising Officer decides whether or not an authorisation should be granted or a notice given.
- 8.7.3. In order to illustrate, a Section 22(3) authorisation may be appropriate where:
 - the postal or telecommunications operator is not capable of collecting or retrieving the communications data;
 - it is believed the investigation may be prejudiced if the postal or telecommunications operator is asked to collect the data itself;
 - there is a prior agreement in place between the authority and the postal or telecommunications operator as to the appropriate mechanisms for the disclosure of data.
- 8.7.4. Only Council officers may make applications for the obtaining and disclosure of communications data.
- 8.7.5. Notices and authorisations for communications data must be submitted through the NAFN – please contact the IRO or the Investigations Manager for more information.

8.8. Applying for judicial approval

- 8.8.1. This is obtained as soon as possible after authorisation by one of the Council's designated officers as described above and is required for authorisation applications and renewals (not internal reviews or cancellations)

- 8.8.2. The authorising officer should take steps to contact Her Majesty's Courts and Tribunals Service (HMCT) administration at the magistrates' court to arrange a hearing. The authorising officer may delegate this to the investigating officer.
- 8.8.3. The hearing is a legal proceeding and so officers must be formally designated to attend, be sworn in and present evidence or information as required. It is envisaged the investigating officer will usually attend as they will have the detailed knowledge required to answer the questions that might be raised. However, it is important to note that the forms and supporting papers must, by themselves, make the case for authorisation.
- 8.8.4. The magistrate should have sight of the authorisation form and the supporting documents setting out the case – that is, all information the authorisation relied on. However, the Council must retain the original documentation.
- 8.8.5. The magistrate must be provided with a partially completed judicial application form and they will complete the order section of the form and this will be the official record of the magistrate's decision.
- 8.8.6. Where renewals are timetabled to fall outside of court hours, it is the Council's responsibility to ensure the renewal is completed ahead of the deadline.

8.9. Training

- 8.9.1. The SRO is responsible for ensuring relevant members of staff are suitably trained as Authorising Officers and 'applicants' so as to avoid common mistakes appearing on forms for RIPA authorisations.
- 8.9.2. Training will be given, or approved by the SRO, before Authorising Officers are certified to sign any RIPA forms. A certificate of training will be provided to the individual and a central register of all those individuals who have undergone training or a one-to-one meeting with the SRO on such matters, will be kept by the RIPA Coordinating Officer.

8.10. Activities by other Authorities

- 8.10.1. Care is needed to ensure that there is no conflict between the activities of this Council and other public authorities. The investigating officer should make enquiries of other public authorities (for example, the police) to find out whether they are carrying out similar activities if he or she considers that there is such a possibility.

8.11. Joint Investigations (collaborative working)

- 8.11.1. When some other agency has been instructed on behalf of the Council to undertake any action under RIPA, this document and the forms in it must be used (as for the normal procedure) and the agency advised or kept informed of the various requirements. They must be made aware explicitly of what they are authorised to do.
- 8.11.2. When some other agency (for example, police, Customs & Excise, Inland Revenue and so on) wishes to use:
- (a) the Council's resources (for example, CCTV surveillance systems), that agency must use its own RIPA procedures. Before any officer agrees to allow the Council's resources to be used for the other agency's purposes, he must obtain a copy of that agency's RIPA form for the record and/or

relevant extracts which are sufficient for the purposes of protecting the Council and the use of its resources.

- (b) the Council's premises for their own RIPA action, the officer should, normally, co-operate, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. In such cases, the Council's own RIPA forms should not be used as the Council is only assisting and not being involved in the RIPA activity of the external agency.

8.11.3. In terms of (a), if the police or another agency wish to use the Council's resources for general surveillance (as opposed to specific covert investigations), they must provide a letter requesting the proposed use. This must include the remit, duration, details of who will be undertaking the general surveillance and the purpose of it before any Council resources are made available. A copy of this letter must be provided to the RIPA Coordinating Officer for the central record.

9. THE 'NECESSARY & PROPORTIONATE' TEST

9.1. Responsibility for the test

9.1.1. An Authorising Officer shall not grant an authorisation unless he believes:

- a) that an authorisation is necessary and
- b) the authorised investigation is proportionate

9.1.2. When deciding whether the surveillance is necessary and proportionate, the Authorising Officer must consider the following:

9.2. "Necessary"

9.2.1. The exercise is deemed "necessary" if it is for the purpose of preventing and detecting a serious crime. A serious crime would attract a maximum sentence of at least six months' imprisonment.

9.3. "Proportionate"

9.3.1. The exercise is not "proportionate" if it is excessive in the overall circumstances of the case. The Authorising Officer would therefore need to explain the specific circumstances of each investigation, including whether the scale of the operation, the methods used and the impact on privacy would be excessive in relation to the allegation.

9.3.2. The proposed exercise and the methods used in the operation must meet the objective in question and must not be arbitrary or unfair nor must the impact on any individuals or group be too severe.

9.3.3. The Authorising Officer must explain why the methods used are the least invasive required to achieve the aims of the investigation and what other methods had been considered and why they were not implemented.

9.3.4. The authorising Officer must assess the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation (see Collateral Intrusion below).

9.3.5. The Authorising Officer must give careful consideration to all of these points. They must demonstrate this on the authorisation form in the relevant parts.

9.3.6. Authorising Officers must exercise their minds every time they are asked to sign a form. They must never sign or 'rubber stamp' the form without thinking about their personal and the Council's responsibilities.

9.3.7. If the Authorising Officer believes that any boxes on the form/s are not relevant in a particular case, these must be clearly marked as being 'not applicable' or a line put through them.

9.3.8. The Authorising Officer must take great care to ensure they use accurate information and record it in the correct boxes. They must record reasons for any refusal of an application on the form so that there is a clear audit-trail.

- 9.3.9. Authorising Officers should not be responsible for authorising investigations or operations in which they are directly involved.

9.4. Collateral Intrusion

- 9.4.1. Before authorising investigative procedures, the Authorising Officer shall take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion).
- 9.4.2. The investigating officer shall take measures, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.
- 9.4.3. An application for an authorisation shall include a risk-assessment of any collateral intrusion. The Authorising Officer shall take this into account, when deciding whether the surveillance is proportionate.
- 9.4.4. Where an operation unexpectedly interferes with the privacy of individuals who were not the subject of surveillance or covered by the authorisation in some other way, the investigating officer should inform the Authorising Officer.

10. DURATION, REVIEWS, RENEWALS AND CANCELLATION OF AUTHORISATIONS

10.1. Duration

10.1.1. Authorisations last for:

- a) three months from the date of grant or latest renewal for directed surveillance
- b) 12 months from the date of the written grant for the conduct or use of a source
- c) one month from the date of written notice or authorisation for communications data, or earlier if cancelled under Section 23(8) of the Act.

10.1.2. Officers should note that the authorised period starts from the date authorisation is granted – not from the date the surveillance begins.

10.1.3. Authorisations must not expire. They must be kept under review, and then renewed or cancelled if no longer required.

10.2. Reviews

10.2.1. The Authorising Officer must review the operation by the date he or she has entered on the authorisation form (or latest renewal, if applicable). The purpose of the review is to assess the need for the surveillance to continue, taking into account the specific circumstances and sensitivities of the investigation. They must cancel the authorisation if it is no longer needed.

10.2.2. The Authorising Officer should record the results of the review on the standard review form and ensure they add a copy to the central record of authorisations held by the RIPA Coordinating Officer.

10.2.3. Where the surveillance provides access to confidential or sensitive information or involves collateral intrusion the officer should conduct reviews more frequently.

10.3. Renewals

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

10.3.2. Authorisations can be renewed in writing shortly before the maximum period has expired. The renewal will begin on the day when the authorisation would have expired.

10.3.3. An authorisation cannot be renewed after the authorised period has expired. In this case the Authorising Officer must cancel the authorisation and consider the matter afresh, taking into account the benefits of the surveillance to date and any collateral intrusion that has occurred.

10.3.4. The Authorising Officer who granted or last renewed the authorisation must cancel it if he or she is satisfied that the investigative procedure no longer meets the criteria upon which it was authorised.

- 10.3.5. Standard renewal forms for the authorisation of directed surveillance and CHIS are available on the Intranet and from the Home Office website.

10.4. Cancellations

- 10.4.1. An Authorising Officer must cancel an authorisation as soon as it is no longer necessary, or the conduct is no longer proportionate to what is sought to be achieved. The duty to cancel a notice falls on the Authorising Officer who issued it.
- 10.4.2. In the case of a notice issued in respect of communications data, the relevant postal or telecommunications operator must be informed of the cancellation.
- 10.4.3. The standard Home Office cancellation forms should be used

11. THE CENTRAL RECORD

- 11.1. The RIPA Coordinating Officer will maintain a central register of covert surveillance and use of sources in order to comply with legal requirements and for quality assurance purposes.
- 11.2. Authorising Officers must ensure copies of the following documents are included in the Council's central record:
 1. Authorisation Forms (whether or not the authorisation is granted or refused)
 2. Review forms
 3. Renewal forms
 4. Cancellation forms
- 11.3. The central record shall contain the following information for each case:
 - a) the type of authorisation or notice
 - b) the date the authorisation or notice was given;
 - c) name and rank/grade of the Authorising Officer;
 - d) the unique reference number (URN) of the investigation or operation;
 - e) the title of the investigation or operation, including a brief description and names of subjects, if known;
 - f) if the authorisation or notice is renewed, when it was renewed and who authorised the renewal, including the name and rank/grade of the Authorising Officer;
 - g) whether the investigation or operation is likely to result in obtaining confidential information;
 - h) the date the authorisation or notice was cancelled.
- 11.4. These records will be retained for a period of at least three years from the ending of the cancellation. A record will be kept of the dates on which the authorisation notice is started and cancelled.
- 11.5. Authorising Officers must provide the relevant forms to the RIPA Coordinating Officer within 1 week of the authorisation, review, renewal, cancellation or rejection.
- 11.6. Authorising Officers must ensure that copies of any forms, sent through the internal postal system, are in sealed envelopes using the security measures required for documents classified as Official-Sensitive.
- 11.7. This record will be monitored and appropriate advice given from time to time. The record will also be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners.
- 11.8. Each Investigating Officer must retain the original form with the working file of the investigation.

12. RECORDS RETENTION AND DESTRUCTION

12.1. Retention of material obtained through surveillance

12.1.1. Arrangements must be in place for the handling, storage and destruction of material obtained using covert surveillance, a source or the obtaining or disclosure of communications data. The Authorising Officer must make the following arrangements to protect the material:

- A named officer responsible for retaining the information and disposing of the information in a secure manner.
- Physical, technical and organisational measures must have been put in place to prevent unauthorised access to and use of the information obtained by the surveillance exercise.
- Physical, technical and organisational measures must have been put in place to prevent accidental or unauthorised loss of the information obtained by the surveillance exercise.

12.1.2. Authorising Officers must ensure compliance with data protection and local documented working procedures relating to the handling and storage of material.

12.1.3. Material obtained from properly authorised surveillance or a source may be used in other investigations. Where the product of surveillance could be relevant to pending or future proceedings, it should be retained in accordance with established disclosure requirements for a suitable period and subject to review.

12.2. Records maintained by the Investigating Officer

12.2.1. RIPA forms and any information collected by means of covert surveillance should be retained securely for **six years** after which the Authorising Officer must review whether the information should be disposed of or kept for a further length of time.

12.2.2. The Authorising Officer should take into consideration the status of any legal proceedings connected to the operation and the likelihood of any future legal action (including action taken by the subject(s) of the surveillance).

12.2.3. The justification for any decision to keep the information for longer than six years must be documented and kept with the file.

12.2.4. The following documentation must be kept but need not form part of the central record:

- a) Supplementary documentation and notification of the approval given by the Authorising Officer;
- b) Supporting documentation submitted when a renewal is requested;
- c) the date and time when any instruction is given by the Authorising Officer.

12.3. Covert Human Intelligence Source Records (CHIS)

12.3.1. Investigating Officers must keep proper records of the authorisation and use of a source. The records shall contain the following information:

- (a) the identity of the source;

- (b) the identity, where known, used by the source;
- (c) any relevant investigating authority other than the Council;
- (d) the means by which the source is referred to within each relevant investigating authority;
- (e) any other significant information connected with the security and welfare of the source;
- (f) any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (d) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source;
- (g) the date when, and the circumstances in which, the source was recruited;
- (h) the identities of the persons who, in relation to the source;
 - i. hold day-to-day responsibility for dealing with the source and for the source's security and welfare
 - ii. have a general oversight of the use made of the source (not to be the person identified in (h)(i))
 - iii. have responsibility for maintaining a record of the use made of the source
- (i) the periods during which those persons have discharged those responsibilities;
- (j) the tasks given to the source and the demands made of him in relation to his activities as a source;
- (k) all contacts or communications between the source and a person acting on behalf of any relevant investigating authority;
- (l) the information obtained by the conduct or use of the source;
- (m) any dissemination of information obtained in that way; and
- (n) in the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

PART 3

APPENDIX A

AUTHORISED OFFICERS

Please check the Intranet for the most up to date list of Authorising Officers. At the time of this policy's approval the Authorising Officers were:

Authorisations involving the acquisition of confidential material or the use of minors as sources:

Managing Director

In the Managing Director's absence, the Executive Head of Service who is Acting Managing Director

All authorisations:

Head of Revenue and Payment Services

Head of Corporate Development

Managing Director

APPENDIX B

DEFINITIONS

Communications Data

This covers the obtaining of communications data and the disclosure to any person of such data. Communications data relates to a postal service or telecommunications system. For these purposes, communications data includes information relating to the use of a postal service or telecommunications system but does not include the contents of the communication itself, content of emails or interaction with websites.

Communications data includes subscribers details, names and addresses and telephone numbers of those contacted, billing addresses, account information, web addresses visited etc.

Two types of data (Customer Data or Service Data) are available to local authorities and, when making an application for obtaining or disclosing such data, the applicant must specify exactly which type of information is required from within each of the subscriber data and service use data.

a) Customer data – (Subscriber data, RIPA s21(4))

Customer data is the most basic. It is data about users of communication services.

This data includes:

- Name of subscriber
- Addresses for billing, delivery, installation
- Contact telephone number(s)
- Abstract personal records provided by the subscriber (e.g. demographic information)
- Subscribers' account information – bill payment arrangements, including bank, credit/debit card details
- Other services the customer subscribes to.

b) Service data – (Service Use data, RIPA s21(4)(b))

This relates to the use of the service provider's services by the customer, and includes:

- The periods during which the customer used the service(s)
- Information about the provision and use of forwarding and re-direction services by postal and telecommunications service providers

- 'Activity', including itemised records of telephone calls (numbers called), internet connections, dates and times/duration of calls, text messages sent
- Information about the connection, disconnection and reconnection of services
- Information about the provision of conference calling, call messaging, call waiting and call barring telecommunications services
- Records of postal items, such as records of registered, recorded or special delivery postal items, records of parcel consignment, delivery and collection
- 'Top-up' details for prepay mobile phones – credit/debit card, voucher/e-top up details

A third type of data (traffic data) is not accessible to local authorities.

Confidential Journalistic Material

This relates to material acquired or created for the purposes of journalism and subject to an undertaking to hold it in confidence, as well as communications resulting in information being acquired for the purposes of journalism and held subject to such an undertaking.

Confidential Material

This is information relating to an area where the subject of the investigation or operation might reasonably expect a high degree of privacy, or where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material.

Confidential Personal Information

This is information held in confidence relating to the physical or mental health or spiritual counselling concerning any identifiable individual (living or dead). This may include oral and written communications subject to an express or implied undertaking to hold the information in confidence.

Please note that the definition above applies only in the context of covert surveillance and differs from the definitions of sensitive personal information used in guidance on data protection matters.

Covert

In general, this is something carried out in a manner calculated to ensure that the subject of the surveillance is unaware of it.

Covert Human Intelligence Source: Key Features:

- Aims to establish a relationship (personal or otherwise) with another person for the covert purpose of obtaining information and/or disclosing it covertly.

Directed Surveillance:

Directed surveillance is surveillance which is covert (in other words, carried out in such a way that the subject would not know they are under surveillance), but not intrusive, and is undertaken:

- a) for the purposes of a specific investigation or specific operation;
- b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- c) not as an immediate response to events or circumstances of such a nature that it would be unreasonable and impracticable for an authorisation under RIPA to be sought for the surveillance.

Intrusive Surveillance:

Directed surveillance turns into intrusive surveillance if it is carried out involving anything that occurs on residential premises or any private vehicle and involves the presence of someone on the premises or in the vehicle or is carried out by means of a surveillance device.

If the device is not on the premises or in the vehicle, it is only intrusive surveillance if it consistently produces information of the same quality as if it were.

Where surveillance is carried out by a device designed or adapted principally for the purpose of providing information about the location of a vehicle, the activity is directed surveillance.

Surveillance involving commercial premises and commercial vehicles does not fall within the definition of intrusive surveillance.

*Local authorities are **not** allowed to carry out intrusive surveillance.*

Surveillance includes:

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

Surveillance includes the interception of postal and telephone communications where the sender or recipient consents to the reading of or listening to or recording of the communication. This is a form of directed surveillance.

APPENDIX C

FURTHER GUIDANCE

Q.1. IS MY OPERATION 'DIRECTED SURVEILLANCE'?

Ask yourself the following questions:

1. Is the surveillance covert?

- 1.1. Covert surveillance is any surveillance that 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.
- 1.2. If your activities are not hidden from the subjects of your investigation, you are not within the RIPA framework at all. In many cases, Officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about Council business openly (e.g. a market inspector walking through markets).
- 1.3. Similarly, surveillance will be overt if the subject has been told it will happen (e.g. where a noisemaker is warned (preferably in writing) that noise will be recorded if the noise continues, or where an entertainment licence is issued subject to conditions, and the licensee is told that officers may visit without notice or identifying themselves to the owner/proprietor to check that conditions are being met).
- 1.4. It should be noted that if the same outcome can be achieved by overt means then those means need to be fully explored in the first instance. Covert surveillance must only be undertaken when there is no less invasive way of achieving the outcome.

2. Is the surveillance for the purposes of a specific investigation or a specific operation?

- 2.1. The provisions of the Act do not normally cover the use of overt CCTV surveillance systems (such as those operated by Car Parks or the Safer Guildford Partnership), since members of the public are aware that such systems are in use. However, there may be occasions when the council wishes to use overt CCTV systems for the purposes of a specific investigation or operation. For example, if the CCTV cameras are targeting a particular known offender. In such cases, authorisation for directed surveillance may be necessary. The procedure for the use of overt CCTV for a covert operation is covered in a separate protocol document.

3. Is the surveillance to be carried out in such a manner that it is likely to result in the obtaining of private information about a person?

- 3.1. Private information includes any information relating to a person's private or family life. The concept of private information should be broadly interpreted

to include an individual's private or personal relationship with others. It includes an individual's business and family relationships. Family life itself should be treated as extending beyond the formal relationships created by marriage.

4. Is the surveillance otherwise than by way of an immediate response to events or circumstances where it is not reasonably practicable to get authorisation?

- 4.1. *Directed surveillance* does not include covert surveillance carried out by way of an immediate response to events or circumstances which, by their very nature, could not have been foreseen. For example, a police officer would not require an authorisation to conceal himself and observe a suspicious person that he came across in the course of a patrol.
- 4.2. However, if as a result of that immediate response, you decide to undertake a specific investigation you will then need authorisation.

Q.2. AM I USING A COVERT HUMAN INTELLIGENCE SOURCE?

1. A person is a source if:
 - a) He establishes or maintains a personal or other relationship with a person for the covert purpose of assisting anything falling within paragraph (b) or (c);
 - b) He is covertly using such a relationship to obtain information or to provide access to any information to another person; or
 - c) He is covertly disclosing information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
2. A source may include those referred to as agents, informants and officers working undercover.
3. Such a purpose is 'covert', if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.
4. A relationship is used covertly, and information obtained is disclosed covertly, if and only if it is used or disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.
5. The use of a source involves inducing, asking or assisting a person to behave as a source, or to obtain information by means of the behaviour of such a source.
6. This covers the use of professional witnesses to obtain information and evidence. For example, it will include professional witnesses engaged by

Housing to pose as tenants to obtain information and evidence against alleged nuisance perpetrators.

7. Carrying out test purchases will not require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (eg walking into a shop and purchasing a product over the counter). By contrast, developing a relationship with a person in the shop, to obtain information about the seller's suppliers of an illegal product will require authorisation as a CHIS. Similarly, using mobile hidden recording devices or CCTV cameras to record what is going on in the shop will require authorisation as directed surveillance.
8. The Code of Practice states that the provisions of RIPA are not intended to apply in circumstances where members of the public volunteer information to the police or other authorities, as part of their normal civic duties, or to contact numbers set up to receive information (such as Crimestoppers, Customs Confidential, the Anti Terrorist Hotline, or the Security Service Public Telephone Number). Members of the public acting in this way would not generally be regarded as sources.
9. An authorisation under RIPA will provide lawful authority for the use of a source.

APPENDIX D

FURTHER EXAMPLES TO HELP YOU DECIDE WHETHER YOUR ACTIVITIES ARE COVERED BY THIS POLICY

Firstly, consider:

- Is it necessary for the operation to be covert? Could you obtain the evidence you require without resorting to Covert Surveillance? Authorising Officers should consider this very seriously because, if it is found that there was no need to carry out the surveillance covertly, the invasion of privacy may be deemed disproportionate to the investigation in question.
- *Overt* investigations (that is, not carried out in a manner calculated to ensure that the subject is unaware of the operation) is not subject to the authorisation procedures set out in this policy. Overt activity includes (but is not limited to) routine patrols, observation at trouble spots, immediate response to events and overt use of CCTV.

Examples:

Does the investigation involve the collection of private information?

1. Two people holding a conversation on the street or in a bus may have a reasonable expectation of privacy over the contents of that conversation even though they are associating in public. The contents of the conversation should be considered as private information.

The offence under investigation would need to meet the minimum penalty criteria and a directed surveillance authorisation would be necessary to listen in to or record the conversation as part of a specific investigation or authorisation.

(Source: Covert Surveillance and Property Interference Revised Code of Practice 2010)

2. A surveillance officer intends to record a specific person providing their name and telephone number to a shop assistant, in order to confirm their identity, as part of a criminal investigation.

Although the person has disclosed these details in a public place, there is a reasonable expectation that the details are not being recorded separately for another purpose. Before proceeding, the investigating officer should make sure the alleged offence meets the minimum penalty criteria and seek a directed surveillance authorisation. (Source: *Covert Surveillance and Property Interference Revised Code of Practice 2010*).

Planning Enforcement

1. Routine activities such as Enforcement Officers looking at new building work, which has not been granted planning permission.

This is not directed surveillance, but falls under normal enforcement duties. Section 80 of the Regulation of Investigatory Powers Act 2000 provides a general saving for collecting information by lawful means such as this. However, such routine activities should not develop into directed surveillance.

2. Officers wish to drive past a café to obtain a photograph of the exterior.

Reconnaissance of this nature is not likely to require a directed surveillance authorisation. However, if the exercise was to establish a pattern of occupancy of the premises by someone, the accumulation of the information is likely to result in private information. In the latter case, a directed surveillance authorisation would be required and the offence would need to meet the minimum penalty requirements. (Source: *Covert Surveillance and Property Interference Revised Code of Practice 2010*).

3. You are conducting a site visit in response to a report made by a member of the public who suspects a change of use of land, which is likely to involve criminal activity. The circumstances suggest that you will need to monitor the site in a covert manner and you are likely to obtain private information about the owner and/or collateral information about other users of the site such as workers.

This activity appears to fall within the definition of Directed Surveillance. However, it is not legal to use covert surveillance to investigate crimes that would attract a custodial sentence with a minimum term of less than six months. You must therefore find some overt method of dealing with the offence.

4. You are unable to gather conclusive evidence that illegal activity is taking place on site but you still suspect that it is. Therefore, you decide to observe the site by driving past it periodically over the next fortnight. If you see unauthorised work taking place you will take a photo – but not covertly.

This does not appear to fall within the definition of either Directed Surveillance or Covert Human Intelligence Sources. This low-level activity is not subject to the authorisation procedures set out in this policy.

Benefit Fraud

5. You are required to investigate an allegation that Mr X is claiming housing and council tax benefit even though he has been working full time for a number of years. Mr X did not declare on his benefit application that he had been working. You therefore intend to covertly observe Mr X's activities at his alleged employer's address in order to establish whether he is working there. The observation will be from a vehicle and will cover a number of days.

This appears to involve the systematic surveillance of an individual and falls within the definition of Directed Surveillance, as set out in Appendix B, for the following reasons:

- The surveillance is being carried out for the purposes of a specific investigation into Mr X's alleged benefit fraud.
- The surveillance is of Mr X's personal activities and is therefore likely to produce private information about him.

- The exercise is not an immediate response to events or circumstances but has been planned in respect of timing and the manner in which the surveillance is to be carried out.
- It is likely that collateral material will be gathered

Employer Responsibilities

6. Recurrent thefts from staff are taking place and after considering all of the options, it has been suggested that the only recourse is to set up a secret CCTV camera covering the work area to catch the culprit “in the act”.

Normal business practice (in other words the kinds of responsibilities that all employers would have in relation to staff) are outside of the RIPA controls. Therefore, the operation would need to be conducted in accordance with the Data Protection Act 1998 and the privacy impact assessment (PIA) provisions within that legislation. Use the PIA template available on the Intranet.

You would need to consider all of the circumstances of the case. But where the aim is to stop the offending behaviour, overt measures (such as overt CCTV) may be more proportionate.

Note: If a crime on Council premises were being investigated by the police and they are conducting the surveillance, they would be required to authorise the surveillance, not the Council.

7. A manager has received a report from employee A that employee B is spending hours surfing the internet. The manager wishes to obtain a print out of employee B’s websites visited and times spent on the internet to check whether the allegations are true.

As with the scenario above, this investigation would fall outside of the RIPA provisions. The Council has arrangements to ensure any staff investigations involving ICT equipment are necessary and proportionate. Please use the Privacy Impact Assessment form available as part of the Acceptable Use Policy and available on the Data Protection and Information Security intranet page

Note: Automatic and untargeted central monitoring of internet and email use carried out by ICT software, which would highlight obvious infringements of the Council’s Acceptable Use Policy is allowed under the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000.

Housing Management

8. A member of the public reports that their neighbour’s garden is a health hazard. You visit the site, which contains excessive rubbish and materials that are clearly likely to be an environmental hazard to the local community. As the tenant is not at home, you take a photograph of the view of the garden from the road. You have not deliberately planned that the photograph should be taken without the knowledge of the tenant concerned and any future surveillance of the site will not be carried out in a manner calculated to ensure that the tenant is unaware of it.

This does not appear to fall within the definition of either Directed Surveillance or Covert Human Intelligence Sources as set out in Appendix A and is therefore not

subject to the authorisation procedures set out in this policy. However, care will need to be taken if photographs are taken whilst on the premises as this may in some circumstances become “Intrusive Surveillance”, which the Council does not have the authority to carry out.

If you gather personal data (information that can be used to identify someone), this will be subject to the Data Protection Act and the activity would be subject to a Privacy Impact Assessment.

9. You have received an application for housing by someone claiming to be homeless. However, you have grounds to believe that the claim is fraudulent and so you wish to carry out surveillance of the claimant’s suspected residence to establish the integrity of their application.

This appears to fall within the definition of Directed Surveillance, as set out in Appendix B, for the following reasons:

- The surveillance is being carried out for the purposes of a specific investigation into a fraudulent application.
- The surveillance is likely to produce private information about him as well as collateral information about third parties.
- The exercise is not an immediate response to events or circumstances but has been planned in respect of timing and the manner in which the surveillance is to be carried out.
- However, you would need to consider whether the offence is listed on the statute book as attracting a minimum custodial sentence of six months or more before proceeding with the covert elements of the investigation and applying for authorisation.

Use of CCTV

An officer receives information that an individual suspected of committing Benefit Fraud will be going to their workplace, which is in the High Street and within an area monitored by CCTV. The officer wishes to use the CCTV system to obtain evidence that the suspect is working.

This is targeted use of the town centre’s overt CCTV system, to conduct surveillance against that individual without his being aware that there is a specific interest in him. The investigating officer would need to apply for an authorisation for directed surveillance.

If you are investigating a serious criminal matter and you are not sure whether your surveillance activity falls under the Regulation of Investigatory Powers Act 2000, you should apply for authorisation in order to avoid any claim that Guildford Borough Council has infringed anyone’s Human Rights, which could disqualify the evidence from being permitted in court.

APPENDIX E

COVERT HUMAN INTELLIGENCE SOURCES – USING MINORS OR VULNERABLE PEOPLE

The Regulation of Investigatory Powers (Juveniles) Order 2000 S.I. 2000/2793 states that:

- A Source under sixteen years of age cannot be used to obtain information about his/her parent or anyone with parental responsibility.
- Where a source is under sixteen, someone must have responsibility for ensuring that an appropriate adult is present at meetings (i.e. parent, guardian, a person who has assumed responsibility for his/her welfare, anyone over eighteen years of age who is not employed by Guildford Borough Council).
- Where a source is under eighteen years of age, no authorisation can be granted unless someone has carried out a risk assessment covering the likelihood of physical and psychological injury arising from the covert activities AND is satisfied the risks are justified AND have been properly explained AND understood by the source.
- Where the operation or investigation relates to a parent or guardian and so on the person authorising must be aware of that fact and give “particular consideration” to whether the authorisation is justified.
- Where the source is under eighteen, at the time of authorisation it can only last one month before being renewed.
- Authorisation for the use of a juvenile or vulnerable person CHIS must be authorised by the Managing Director or, in their absence, the Executive Head of Governance.

APPENDIX F

FORMS

The latest versions of the forms listed below should be downloaded from the Home Office (<https://www.gov.uk/government/collections/ripa-forms--2>)

Application for authorisation of directed surveillance
Review of directed surveillance
Renewal of directed surveillance
Cancellation of directed surveillance

Application for CHIS
Review of CHIS
Renewal of CHIS
Cancellation of CHIS

Application for communications data

Application for judicial approval

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Corporate Governance and Standards Committee Report
Report of Executive Head of Organisational Development

Author: Vincenzo Ardilio

Tel: 01483 444053

Email: vincenzo.ardilio@guildford.gov.uk

Lead Councillor responsible: Paul Spooner

Tel: 01252 341666

Email: paul.spooner@guildford.gov.uk

Date: 26 March 2015

Data protection action plan progress

Executive Summary

This report provides an update on the Council's progress in meeting the recommendations set out in the Information Commissioner's Office (ICO) 2013 audit.

Recommendation to Committee:

That the Committee

1. notes the progress of the action plan in Appendix 1;
2. agrees that the Information Rights Officer includes a further progress report in the annual information rights compliance report for 2014.

Reason for recommendation:

To ensure that the Council meets the legal and good-practice requirements for handling personal information as set out in the Data Protection Act 1998.

1. Purpose of Report

- 1.1 This report updates the Corporate Governance and Standards Committee on the Council's compliance with the ICO Audit Recommendations, following their data protection audit report dated 5 September 2013.

2. Strategic Framework

- 2.1 Compliance with data protection and privacy legislation contributes to a safe and vibrant community. In particular, it ensures that residents within our community can live in dignity.

3. Background

- 3.1 At their meeting on 5 June 2014, the Corporate Governance and Standards Committee requested an update on the actions put in place following the Information Commissioner's voluntary audit of the Council's records management and subject access procedures in September 2013.
- 3.2 The update on actions taken to date is attached to this report as Appendix 1.
- 3.3 To assist the Committee in monitoring the Council's compliance with data protection and privacy legislation, officers recommend that the Information Rights Officer includes a further progress report in his annual information rights compliance report for 2014.

4. Financial Implications

- 4.1. There are no financial implications to this report.

5. Legal Implications

- 5.1. Meeting the Information Commissioner's recommendations will assist the Council to comply with the Data Protection Act 1998.

6. Human Resource Implications

- 6.1 There are no human resource implications arising from this report except in relation to office time invested in the Records Management Project Group.

7. Conclusion

- 7.1. Good progress has been made in meeting the objectives of the plan, though some actions were ongoing at the time of writing.

8. Background Papers

- Information Commissioner's Data protection audit report 5 September 2014

9. Appendices

- Action plan and progress document

Detailed findings and action plan

Action plan and progress

Recommendation	Progress at 30 November 2014
<p>A2. Appoint a formal records manager role to take on the operational responsibility for the development and implementation of the records management function</p>	<p>COMPLETED</p> <p>The Information Systems Manager was given responsibility of corporate records management</p>
<p>A3. Formalise the records management sub group, draft TOR and assign responsibilities to representatives to support the records manager in developing and implementing the records management function, strategy and policy. The group should meet regularly and attendance should be mandatory for members or their deputies.</p>	<p>COMPLETED/IN PROGRESS</p> <p>A records management project group has been formed and is chaired by the Information Systems Manager. This group consists of staff from a variety of Services across the Council.</p>
<p>A4, A5, A6. Develop an overarching policy that documents GBC's approach to records management, supports the RM function and provides a framework for supporting documents such as procedures and disposal schedules.</p>	<p>IN PROGRESS – COMPLETION TARGET: 31 March 2015</p> <p>The Records Management Standards have been drafted and will be reviewed by the records management project group at the next meeting in January. This document will set out the Standards for the Council overall, and will be used by each Service to create their own set of local standards, based on their own needs. That target date for CMT approval of the standards</p>

	is 31 March 2015. Therefore the records management actions shown in this table as "in progress" are expected to be completed by 31 March 2015
A7. Ensure that appropriate data protection training is completed by all staff processing personal data prior to allowing them access to systems.	<p>COMPLETED/ONGOING</p> <p>HR and Information Rights Officer agreed induction checklist to ensure local data protection compliance is covered by the managers of new starters.</p> <p>New staff are required to attend Information Rights Officer's corporate data protection training course within 3 months of starting.</p>
A8. Monitor training provision and completion in order to identify gaps and chase up non-attendance.	<p>COMPLETED/ONGOING</p> <p>Information Rights Officer initially keeps a spreadsheet record of training attendance matched against structure spreadsheets. This will soon be incorporated into Selima to ensure non-attendance is monitored.</p>
A10. Ensure the provision of data protection refresher training on an annual basis. Review training content on an annual basis so it remains relevant and up to date.	<p>COMPLETED/ONGOING</p> <p>At the time of writing, on line refresher training was being rolled out to staff who have attended training more than a year ago via NetConsent</p>
A11. Ensure there is appropriate records management training commensurate with	IN PROGRESS – COMPLETION TARGET: 31 MARCH 2015

<p>specialised staff duties. General records management requirements for all staff should be included in the corporate training.</p>	<p>The Records Management project group intend to roll out training on records management, following approval of the standards by 31 March 2015</p>
<p>A12. Review and formalise the local elements for training and monitor their deployment, ensuring they are consistent with corporate standards.</p>	<p>IN PROGRESS – COMPLETION TARGET 30 SEPTEMBER 2015</p> <p>Following approval of the standards by 31 March 2015, the Records Management project group will plan training on records management as part of the overall project during the period 1 April to September 2015. Training sessions for each Service will be included in this plan, based on their own local needs.</p>
<p>A13. Ensure that where staff require the use of Egress and Protective Marking that the training is completed.</p>	<p>COMPLETED/ONGOING</p> <p>Staff are now given the opportunity to cover Egress and protective marking in the corporate data protection training course.</p> <p>A “trail-finder” template has been circulated for officers to use if they intend to send an encrypted email via Egress.</p> <p>Further guidance and training will be required in respect of the latest Government Protective Marking scheme and preparation for this in underway</p>
<p>A14. Implement corporate minimum standards for the provision of fair processing information and review local standards to ensure they comply with</p>	<p>COMPLETED</p> <p>Fair Processing standards provided and available for officers on the Intranet and available through each officer’s NETconsent</p>

<p>these requirements.</p>	<p>portal.</p>
<p>A15. GBC should publish easily accessible corporate fair processing information on their website.</p>	<p>COMPLETED</p> <p>Fair processing notice is on our website at http://www.guildford.gov.uk/privacystatement</p>
<p>A18. Implement formal requirements to monitor and return records that are taken out of the office for extended periods.</p>	<p>IN PROGRESS – TARGET FOR COMPLETION 30 SEPTEMBER 2015</p> <p>In order to meet the individual needs of each Service this will be completed at a local level, following the approval of the overall records management standards by 31 March 2015.</p>
<p>A20. Implement procedures to monitor the return of archive boxes.</p>	<p>IN PROGRESS – TARGET FOR COMPLETION 30 SEPTEMBER 2015</p> <p>In order to meet the individual needs of each Service this will be completed at a local level by 30 September 2015, following the approval of the overall records management standards.</p>
<p>A21. Produce guidance for the archiving requirements to ensure records can be tracked and retrieved. Where records are of limited use for the purposes for which they were collected, consider whether they can be destroyed.</p>	<p>IN PROGRESS – TARGET FOR COMPLETION 30 SEPTEMBER 2015</p> <p>As above – for completion during 1 April to 30 September 2015</p>

<p>A25. Consider separating data controllers, to reduce the risk of unauthorised access or disclosure of personal information.</p>	<p>This recommendation was under consideration at the time of writing.</p> <p>The data controllers are Guildford Borough Council, Surrey County Council and Surrey Police who share the Millmead complex. Information should not be shared between these separate legal entities in an ad-hoc manner.</p> <p>At the time of writing the Head of Business Systems was arranging a meeting with representatives from each of the data controllers to agree some ground rules in terms of maintaining confidentiality where necessary and to consider any other arrangements to ensure an appropriate separation of duties in respect of personal information.</p>
<p>A26. Reduce the access to the public by implementing the plan for a single central reception.</p>	<p>COMPLETED</p> <p>The Planning reception is now on the ground floor and this addresses the concerns raised by the inspectors, as the public are not required to go beyond the reception areas on the ground floor.</p>
<p>A28. Ensure that staff have a secure area to store documents, to prevent them from being left on desks or in in-trays.</p>	<p>COMPLETED</p>
<p>A31. Ensure that PDF files can be protectively marked in line with the requirements, or introduce an alternative measure for dealing with PDF files and</p>	<p>COMPLETED/IN PROGRESS</p> <p>The Boldon James File Classifier product has now been purchased and will be made available for all users by 28</p>

<p>train staff appropriately. For example, the use of safe haven procedures for fax usage.</p>	<p>February 2015. This product uses the same classification policy as the Office Classifier product, which is currently in use by staff at the Council.</p>
<p>A33. Ensure that all services develop and implement retention schedules for their manual records.</p>	<p>IN PROGRESS – TARGET FOR COMPLETION 31 MARCH 2015</p> <p>The new Records Retention and Disposal Schedule has been drafted. This will be submitted for CMT approval with the Records Management Standards by 31 March 2015.</p>
<p>A34. Implement retention schedules for electronic records that are held by GBC. Ensure that schedules are reviewed regularly so they continue to meet business needs and statutory requirements.</p>	<p>See above (this is part of the Records Retention Schedule)</p>
<p>A36. Ensure that confidential waste is locked away at the end of the day to prevent any inappropriate access.</p>	<p>COMPLETED –</p> <p>Secure confidential waste storage provided in each office area</p>
<p>A37. Ensure appropriate RM performance measures are developed and that records management compliance reporting is fed into the relevant group / individuals.</p>	<p>IN PROGRESS – TARGET DATE FOR COMPLETION 31 MARCH 2015</p> <p>Overarching performance measures have been discussed by the Information Risk Group and will be incorporated into the Records Management Standards</p>

<p>A38. Where elements of existing policy contain records management requirements, these should be monitored and reported on to assure compliance.</p>	<p>IN PROGRESS – TARGET DATE FOR COMPLETION 31 MARCH 2015</p> <p>This forms part of the Records Management Standards due for completion by 31 March 2015</p>
<p>A40. Consider adapting the SIA to incorporate elements of records management.</p>	<p>IN PROGRESS – TARGET FOR COMPLETION 15 APRIL 2015</p> <p>The ICT developers are building a Configuration Management Development Database (CMDB) that will hold information asset information linked to risk assessments, working procedures and controls. This is scheduled for completion by early April 2015.</p>
<p>A43. Include risks from local information asset registers within the corporate risk register where appropriate.</p>	<p>See above (A40)</p>
<p>A44. Where risk to information assets are identified as requiring a control, ensure these are recorded on the information asset register</p>	<p>See above (A40)</p>
<p>A45. Ensure that all information assets are assessed for risk. Where the workload is excessive consider allocating responsibility to additional staff.</p>	<p>COMPLETED/ONGOING</p> <p>This is now a standing agenda item on the quarterly P&ISL meeting. New systems are risk assessed during the approval process by ICT and the Information Right Officer together with the relevant project manager.</p>
<p>A46. Ensure there is oversight of</p>	<p>COMPLETE/ONGOING</p>

<p>information asset risks and that any controls are tested for adequacy.</p>	<p>This is a training and awareness issue. This is raised at the Corporate Data Protection training and included as a standing agenda item on Information Risk Group agenda and P&ISL Group</p>
<p>A49. Ensure the requirements for conducting Privacy Impact Assessments (PIAs) are published and available to staff. These should highlight when a PIA is required, include compliance requirements, detail the authorisation process and outline monitoring / recording measures.</p>	<p>COMPLETED</p> <p>The PIA template is available on the Intranet for officers and has been incorporated as part of the VERTO project management process.</p> <p>Also bespoke PIAs provided in relation to:</p> <ul style="list-style-type: none"> • Press releases • CCTV • Staff monitoring and report information (via Acceptable Use Policy)
<p>B4. Additional resource should be provided to support and cover leave or other absence of the Information Rights Officer.</p>	<p>IN PROGRESS – TARGET FOR COMPLETION: 31 MARCH 2015</p> <p>A Management Briefing note is due before CMT during early January to propose the arrangements for meeting this recommendation. The recommendations from this report are due to be implemented by 31 March 2014.</p>
<p>B5. SAR monitoring information should be provided to the PISL Group. Any information request failing to meet legal time limits should be reviewed by PISL,</p>	<p>COMPLETED</p> <p>This is now a regular agenda item on the P&ISL Group meetings.</p>

<p>causes identified and results reported to the Information Risk Group.</p>	
<p>B14. Links should be added to the current pages to provide appropriate guidance on the use of redaction and exemptions in relation to requests for personal data.</p>	<p>COMPLETED/IN PROGRESS</p> <p>FAQs guidance added to our SAR system.</p> <p>ADOBE Pro licences (for redaction) have been purchased and available to service representatives together with on the job support as required</p>
<p>B15. GBC should implement the use of KPI's regarding the processing of Subject Access Requests (SARs) in line with the Subject Access Request Procedure.</p>	<p>COMPLETED</p> <p>Timescales for completion are now monitored</p>
<p>B16. GBC should ensure services have delegated responsibility for ensuring the appropriate progress of SAR processing and for monitoring and reporting this to the Information Rights Officer.</p>	<p>IN PROGRESS – TARGET FOR COMPLETION 31 MARCH 2015</p> <p>As for B4, the briefing note will address arrangements for SARs and FOI requests. CMT agreement will be required.</p> <p>A FIRMSTEP FOI Add-on to has been installed and will be configured following CMT agreement of the briefing note. This will replace the current FOI and SAR system and is expected to be fully operational by 31 March 2014</p>
<p>B18. The proposed SAR training should be rolled out as a priority to those teams responsible for dealing with the majority</p>	<p>COMPLETED/ONGOING</p> <p>Class-based training sessions provided and will become part of</p>

<p>of requests, for example the Licencing Team.</p>	<p>the regular corporate training plan. Now available twice-yearly.</p>
<p>B19. Redaction and exemption training should be provided to relevant staff as required.</p>	<p>COMPLETED/ONGOING</p> <p>Included in training for B18 - Class-based training sessions provided and will become part of the regular corporate training plan.</p> <p>IRO also provides specific advice to staff as and when required (ongoing)</p>
<p>B21. Introduction of a work flow based system with facilities such as automatic email reminders should be prioritised to reflect the problem of late SAR completion.</p>	<p>SEE B16</p>
<p>B33. GBC should ensure that the proposed replacement for the Subject Access Request System can retain central records of all 3rd Party disclosure requests.</p>	<p>SEE B16</p>

Corporate Governance and Standards Report

Report of Executive Head of Governance

Author: John Armstrong, Democratic Services Manager

Tel: 01483 444102

Email: john.armstrong@guildford.gov.uk

Lead Councillor responsible: Paul Spooner

Tel: 01252 341666

Email: paul.spooner@guildford.gov.uk

Date: 26 March 2015

Criminal Records Checks on Councillors

Executive Summary

This report sets out the results of a review by officers into whether Guildford Borough Councillors are eligible under current rules for criminal record checks by the Disclosure and Barring Service (DBS).

The outcome of the review is that there is currently no legal basis upon which the Council can require such checks of its councillors by the DBS.

However, the DBS has confirmed that it is possible for a councillor to apply for a basic disclosure criminal record check using Disclosure Scotland, which is a Scottish government agency. Disclosure Scotland runs checks against the UK-wide Police National Computer, the basic level of which will disclose unspent criminal convictions.

Recommendation:

The Committee is asked to note the position in respect of the DBS and to agree to defer consideration as to whether it would be appropriate and proportionate to ask councillors to apply for a basic disclosure criminal record check using the service provided by Disclosure Scotland to the new Council following the local elections in May.

1. Purpose of Report

- 1.1 To note the outcome of a review into whether the Council can legitimately carry out criminal record checks of its councillors by the DBS.

2. Background

- 2.1 Under paragraph 1 (d) of Section 80 of the Local Government Act 1972, a person shall be disqualified from being elected or being a member of a local authority if he:

“has within five years before the day of election or since his election been convicted in the United Kingdom, the Channel Islands or the Isle of Man of

any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine.”

- 2.2 All candidates for election to any local authority are required to confirm in their consent to nomination form that, to the best of their knowledge and belief, they are not disqualified from being elected by reason of any disqualification - including a disqualification under Section 80 (1) (d) referred to above.
- 2.3 We are not required to do anything other than take a candidate's confirmation that they are not disqualified at face value. There is no requirement for a candidate to provide evidence (e.g. a criminal records check) that they are not disqualified under this part of Section 80.
- 2.4 The review was prompted by the receipt of a freedom of information (Fol) request in August 2014 which asked for a 'list of all past criminal convictions of, and any criminal charges currently pending against, members of the GBC Executive team.'
- 2.5 Although the Council's response to the Fol request was that it did not hold the information requested, the Monitoring Officer accepted that the request raised important issues of concern around the governance of the Council. The Monitoring Officer therefore undertook to take steps to review our current arrangements by making enquiries of other councils to understand the extent to which they require and maintain information regarding councillors' criminal convictions.
- 2.6 In October 2014, we enquired of other district councils in Surrey as to whether they:
 - (a) held information on councillors' criminal charges and convictions;
 - (b) sought information from councillors or from the DBS on those convictions;
 - and
 - (c) had a policy on this
- 2.7 None of the Surrey districts held such information, nor sought it from councillors or from the DBS. The background on the legal position in respect of criminal record checks on councillors set out in the paragraphs below would explain why other district councils do not have their councillors DBS checked.
- 2.8 In 2012, the Criminal Records Bureau (CRB) and the Independent Safeguarding Authority (ISA) merged into what is now the Disclosure and Barring Service (DBS). The DBS carries out criminal record checks for specific professions, employment, offices, works and licences under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975.
- 2.9 Whilst it is routine and appropriate for employers to check the criminal record history of people working, or seeking to work, in certain positions, especially those that involve working with children or vulnerable adults in specific situations, the position in respect of similar checks on councillors is not so clear or straightforward.

- 2.10 The practice of carrying out DBS checks on councillors has almost exclusively been undertaken by councils with education and adult social care responsibilities (for example, county councils, unitaries, metropolitan borough councils and London boroughs). The reason for this is to ensure that members who have regular contact, or are in a position of authority over those with regular contact, with children or vulnerable adults in their official capacity do not present a risk to those persons.
- 2.11 Some of these councils have chosen to require criminal record checks of all of their councillors, whilst others have been more selective by requiring checks of councillors only if they undertook certain roles (e.g. in Education or Social Care), or had direct unsupervised contact with vulnerable clients.
- 2.12 The Protection of Freedoms Act 2012 made changes to the regime of vetting and barring individuals from working with children and vulnerable adults. This had the effect of reducing significantly the number of positions and circumstances in which persons would need to be the subject of a criminal records check. The provisions now only relate to those persons who have close and unsupervised contact with vulnerable groups including children. There are specific definitions as to what this means in practice.
- 2.13 The 2012 Act amended the definition of “regulated activity” under the Safeguarding Vulnerable Groups Act 2006. Previously, the definition specifically included councillors who “discharged functions” relating to the social care of vulnerable adults and children for two or more days in any 30 day period. This was understood by many of the councils referred to in paragraph 2.10 above to include all executive members, relevant scrutiny members and those serving on fostering and adoption panels. This definition has been formally repealed so none of the councillors in the above roles, with the exception of those involved in fostering and adoption panels, are now legally required to undergo a criminal records check as part of assessing their suitability for such roles.
- 2.14 The changes in legislation effectively mean that there is now no legal requirement for any councillor to undergo criminal record checking by virtue only of their position as an elected member. Advice on this point was sought from the DBS. They have confirmed that:
- “There is no eligibility for the role of councillor to undergo a DBS check, unless they are specifically undertaking specified activities with children or vulnerable adults. Just because there is a piece of legislation that states a councillor should not have convictions less than five years old, this does not mean there is entitlement for a DBS check.”*
- 2.15 The “specified activities” referred to above are referred to as “regulated activities” in the legislation.
- 2.16 With regard to children, regulated activities are unsupervised activities involving teaching, training, instructing, caring for or supervising children, or providing advice/guidance on their well-being, or driving a vehicle only for children – if done

regularly; and relevant personal care (even if only done once); registered child-minding and foster caring.

- 2.17 With regard to adults, regulated activities involve the provision of healthcare or personal care by healthcare professionals; the provision of social work by social care workers; assistance with cash, bills or shopping or the conduct of their personal affairs; conveying persons because of their age, illness or disability even if only done once.
- 2.18 Clearly, Guildford Borough councillors are not involved in any of these regulated activities by virtue of their role as borough councillors.

3 Disclosure Scotland

- 3.1 In their response to our enquiry, the DBS indicated that the only check that they were aware we could ask to be carried out is a basic level of check, which would reveal unspent convictions only. Upon further enquiry, DBS informed us that Disclosure Scotland undertakes Basic Disclosure checks even though it is a Scottish Government agency.
- 3.2 A Basic Disclosure (termed as a 'criminal conviction certificate' in Part V of the Police Act 1997) is the lowest level of Disclosure and, as there is no eligibility check (unlike a DBS check), is available to anyone in the UK for any purpose. It contains details of convictions considered unspent under the Rehabilitation of Offenders Act 1974 or states that there are no such convictions. This type of Disclosure is only issued to the applicant.
- 3.3 Whilst, on the face of it, a basic disclosure check may provide some assurance that a councillor is not disqualified from holding office, it cannot provide 100% assurance. For example, it would be possible theoretically for a councillor to have a relevant conviction that becomes spent during the five year period prior to their election which would technically disqualify them but would not show on a basic disclosure check.

4. Financial Implications

- 4.1 If the new Council agreed to ask all 48 councillors to apply for a basic disclosure check and to reimburse them, the cost would be £1,200, for which there is currently no specific budget. There are no other financial implications arising from this report.

5 Legal Implications

- 5.1 These are explained in section 2 of this report.

6 Human Resource Implications

- 6.1 If the new Council agrees to conduct basic disclosure checks, they would need to be co-ordinated by the democratic services team to ensure that councillors understand what they need to do. There are no other human resource implications arising from this report.

7 Conclusion

- 7.1 Given the legal position outlined in this report on the extent to which councillors can now be checked for criminal records and the advice received from the DBS, it is clear that the Council is unable to take this matter further with the DBS.
- 7.2 The Committee is asked to note the position as described in this report and agree to ask the new Council, following the local elections in May, to consider whether it is reasonable and proportionate to ask all councillors, or councillors performing specified roles, to apply to Disclosure Scotland for a basic disclosure check.

8 Background Papers

None

9 Appendices

None

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Corporate Governance and Standards Committee Report

Report of the Managing Director (Chief Financial Officer)

Author: Claire Morris, Head of Financial Services

Tel: 01483 444827

Email: Claire.morris@guildford.gov.uk

Lead Councillor responsible: Nigel Manning

Tel: 01252 665999

Email: nigel.manning@guildford.gov.uk

Date: 26 March 2015

External Audit Plan 2014-15 and External Audit Update

Executive Summary

The Council's external auditors, Grant Thornton, have prepared their annual audit plan for 2014-15. The plan is attached as **Appendix 1**, it details the programme of work that Grant Thornton intend to carry audit during 2014-15, the approach they will adopt and significant risks that they will review as part of the audit. Pages 9 and 10 set out the interim audit work undertaken so far and the auditor's conclusions in respect of that work. Page 11 of the audit plan details the parts of the audit and the dates the work will be carried out. Page 12 details the fee that Grant Thornton will charge in respect of the external audit of the Council. The overall fee for the core audit and grant claim work is a small reduction on the fee charged in 2013-14 and is within budget.

The report also presents, at **Appendix 2**, the latest edition of a periodic update that our external auditors will prepare for this Committee. The update covers the progress up to March 2015 and provides a work programme for the rest of the audit to September. The paper identifies a number of accounting issues, which we will consider as we close the accounts for 2014/15. The paper also summarises various documents published by Grant Thornton, the Independent Commission into Local Government Finance, the Local Government Association (LGA) and the Department for Communities and Local Government (DCLG).

Recommendation

That the Committee:

1. approves the external audit plan submitted by Grant Thornton, the fee set out on page 12, Appendix 1 and makes any comments it feels relevant.
2. notes the content of the External Auditor's update report and makes any comments that it feels appropriate

Reason for recommendation:

To enable the Committee to consider and comment on the planned audit fee, work programme and update report

1. **Purpose of Report**

- 1.1 This report provides a summary of the proposed external audit fee and the work programme for the audit of the 2014-15 accounts, value for money opinion and the grant certification work as set out in the audit plan attached at **Appendix 1**. Officers recommend that the Committee notes the fee and makes any comment that it feels relevant
- 1.2 The report also presents the latest edition of a periodic update that our external auditors will prepare for this Committee.

2. **Strategic Framework**

- 2.1 The Developing your Council theme within the Corporate Plan 2013-16 sets out the Council's key priorities of improving value for money and efficiency in service delivery and improving the Council's governance structures. The annual audit by Grant Thornton contributes to the achievement of those priorities.

3. **Background**

- 3.1 When the external audit function transferred to private firms in 2012, the Audit Commission proposed that the scale fee (which covers the core audit) would be reduced by 40 per cent and remains the same until the audit for 2016-17. The fee for the 2014-15 core audit will be £76,710; this represents a small increase in the fee since 2013-14. The small increase is a result of the work in relation to the Council's business rates (NNDR1) return to central government now being included as part of the core audit fee rather than being audited separately as part of the audit work on grant certification. The audit plan contains details of the scope of work covered by the core audit fee.
- 3.2 The external auditor charges a separate fee for Grant Certification work. The indicative fee for 2014-15 is £17,330; this is a reduction of £4,670 since 2013/14. The reduction is due to two reasons:
- a. the NNDR1 claim being audited as part of the core audit work as described above and
 - b. reduced work required to audit the housing benefit claim because council tax benefit no longer exists (it has been replaced by the local council tax support scheme).
- 3.3 The actual fee charged may vary from the indicative fee, depending on the level of work necessary to complete the grant certification work.
- 3.4 Overall, there is a decrease in audit fees from £97,810 in 2013-14 to £94,040 in 2014-15.
- 3.5 This year, Corporate Management Team and the Head of Financial Services have asked Grant Thornton to provide other services to the Council focussed on helping the Council identify strategies to alleviate the budget pressures projected

- for 2016-17 and possible alternative service delivery models. The fee for this work is £4,050 and can be contained within the Council's budget for financial services.
- 3.6 Grant Thornton periodically presents an ongoing update of the progress of the annual audit. Attached at **Appendix 2** is the latest of these updates.
- 3.7 The update covers the progress up to March 2015 and provides a work programme for the rest of the audit to September. The paper identifies a number of accounting and audit issues, which we will consider as we close the accounts for 2014/15.
- 3.8 Officers will review the business rates appeals provision for 2014-15. The Council's business rates system, like other business rates systems, will not provide information required to estimate the amount of appeals settled in the year. Officers propose to calculate the overall provision required and adjust the previous year's provision accordingly. The actual refunds incurred during the year because of appeals will be included in the business rates income on the collection fund rather than charging the refunds to the provision. Officers believe our approach in relation to this matter is a pragmatic solution to the problem and will not have any impact on the accounts. If the software suppliers find a solution, then officers will review the accounting treatment for business rates appeals.
- 3.9 Officers have reviewed the impact of the employment tribunal case regarding the inclusion of overtime in the calculation of holiday pay mentioned on page 8 of **Appendix 2**. We have identified a potential cost impact on the Council however; due to the amount being immaterial, we are not proposing to include a provision in the 2014-15 financial statements.
- 3.10 The finance team have received training on the accounting updates contained in the 2014/15 CIPFA code and are evaluating the impact of these changes on the Council. Officers will report on how these issues have affected the Council's financial statements to the Corporate Governance and Standards Committee at the July meeting as part of the report on the draft financial statements.
- 3.11 The update report also summarises various documents published by Grant Thornton, the Independent Commission into Local Government Finance, the Local Government Association (LGA) and the Department for Communities and Local Government (DCLG). Officers are reviewing these documents and will brief Councillors on their impact if necessary.
4. **Financial Implications**
- 4.1 There is budget provision in the 2014-15 estimates for the audit fees and the fees for other services provided by Grant Thornton.

5. Legal Implications

- 5.1 The Local Audit and Accountability Act 2014 states that the accounts of a relevant authority for a financial year must be audited:
- a) in accordance with the Act and provision made under it, and
 - b) by an auditor (a “local auditor”) appointed in accordance with the Act or provision made under it.
- 5.2 A local auditor must, in carrying out the auditor’s functions in relation to the accounts of a relevant authority, comply with the code of audit practice applicable to the authority that is for the time being in force. The current code of practice for UK Local Government is the Code of Audit Practice issued by the Audit Commission in 2010. The code adopts the International Standards of Auditing (ISAs) as issued by the FRC.
- 5.3 ISA 260, Communication of audit matters with those charged with governance, requires the auditor to outline the audit strategy and plan to deliver the audit. The External Audit Plan at Appendix 1 meets that requirement. The External Audit Update at Appendix 2 sets out the work and progress to date carried out by the auditors in relation to their audit plan for 2014-15.

6. Human Resource Implications

- 6.1 There are no human resource implications to the report

7. Conclusion

- 7.1 The report outlines Grant Thornton’s external audit plan for 2014-15. The audit fee has reduced by £3,770 since 2013-14.
- 7.2 The report presents the latest edition of a periodic update that our external auditors will prepare for this Committee. The update covers the progress up to March 2015 and provides a work programme for the rest of the audit to September. The paper identifies a number of accounting and audit issues, which we have summarised in the report and will consider as we close the accounts for 2014-15. The paper also summarises various recent documents published by Grant Thornton, the Independent Commission into Local Government Finance, the Local Government Association (LGA) and the Department for Communities and Local Government (DCLG).

8. Background Papers

None

9. **Appendices**

- Appendix 1 – Grant Thornton: The Audit Plan for Guildford Borough Council year ended 31 March 2015
- Appendix 2 – Grant Thornton: External Audit Update for the Corporate Governance and Standards Committee of Guildford borough Council year ended 31 March 2015

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The Audit Plan for Guildford Borough Council

Year ended 31 March 2015

26 March 2015

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Christian Heeger

Director

T 01293 554 145

E christian.heeger@uk.gt.com

Keith Hosea

Manager

T 020 7728 3231

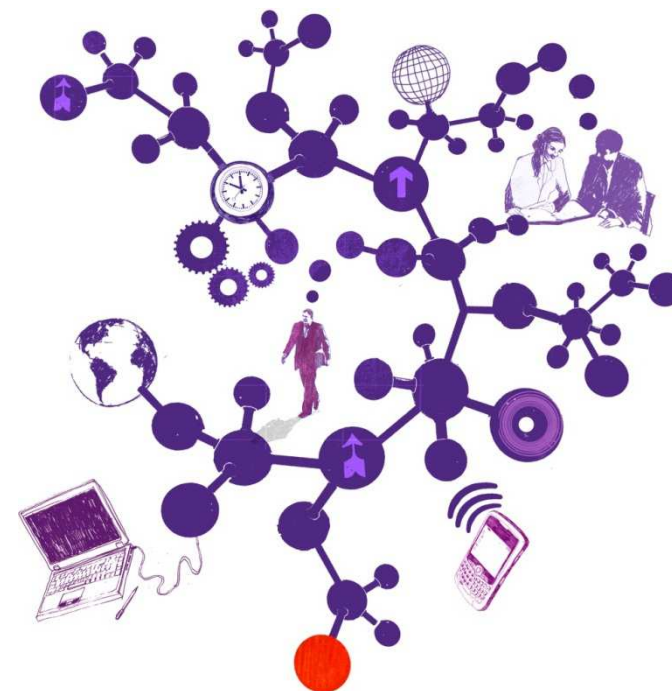
E keith.j.hosea@uk.gt.com

Sebastian Evans

Executive

T 020 7728 3451

E sebastian.evans@uk.gt.com



Agenda item number: 7
Appendix 1

The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect the Council or any weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

Contents

Section

1. Understanding your business
2. Developments relevant to your business and the audit
3. Our audit approach
4. An audit focused on risks
5. Significant risks identified
6. Other risks
7. Group scope and risk assessment
8. Value for money
9. Results of interim work
10. Key dates
11. Fees and independence
12. Communication of audit matters with those charged with governance

Understanding your business

In planning our audit we need to understand the challenges and opportunities the Council is facing. We set out a summary of our understanding below.

Challenges/opportunities

<p>1. Alternative Delivery Models</p> <ul style="list-style-type: none"> • Development of local authority trading companies • Partnership working with other bodies and the voluntary sector 	<p>2. Procurement and Commissioning</p> <ul style="list-style-type: none"> • Delivering efficiency savings through improved procurement • Moving from the provision to the commissioning of services where appropriate 	<p>3. Governance</p> <ul style="list-style-type: none"> • Our recent report on governance in local government 'All Aboard' identified issues with: • the scrutiny process, particularly over joint arrangements and partnerships • Governance of stakeholder relations, including how far service users are involved in designing the future scope and delivery of its services 	<p>4. LG Finance Settlement</p> <ul style="list-style-type: none"> • The local government spending settlement showed local authorities are facing a cash reduction in their spending power of 6% in 2015-16. • At the same time local authorities are facing increasing demands for services. 	<p>5. Housing development</p> <ul style="list-style-type: none"> • Your plans to redevelop the Slyfield area have been shortlisted for housing zone monies. You are considering how to proceed. • You are building new homes in a number of locations to increase supply in the HRA. 	<p>6. Regeneration</p> <ul style="list-style-type: none"> • You are finalising a deal to regenerate the North Street area of the town centre.
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Our response

<ul style="list-style-type: none"> • Colleagues from our local government advisory team will facilitate a workshop for your senior management team to explore alternative models of delivering services. 	<ul style="list-style-type: none"> • We will review the progress you have made in delivering your efficiency savings in this area as part of our work on your arrangements for financial resilience. 	<ul style="list-style-type: none"> • We will review your arrangements for managing partnerships and relationships with stakeholders as part of our value for money work. 	<ul style="list-style-type: none"> • We will review your Medium Term Financial Plan and financial strategy as part of our work on your arrangements for financial resilience. 	<ul style="list-style-type: none"> • We have introduced you to colleagues with experience in housing development to discuss options for taking forward the project. • We will review your treatment of expenditure on this development as part of our work in 2014/15 and future years. 	<ul style="list-style-type: none"> • We have introduced you to colleagues in our Real Estate department to discuss the development. • We will review your treatment of expenditure on this development as part of our work in 2014/15 and future years.
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Developments relevant to your business and the audit

In planning our audit we also consider the impact of key developments in the sector and take account of national audit requirements as set out in the Code of Audit Practice (the code) and associated guidance.

Developments and other requirements

1. Financial reporting

- Changes to the CIPFA Code of Practice
- Adoption of new group accounting standards (IFRS 10, 11 and 12)
- provision for including overtime in calculation of backdated holiday pay following employment appeal tribunal ruling.

2. Legislation

- Local Government Finance settlement

3. Corporate governance

- Annual Governance Statement (AGS)
- Explanatory foreword

4. Financial Pressures

- Managing service provision with less resource
- Progress against savings plans

5. Other requirements

- The Council is required to submit a Whole of Government accounts pack on which we provide an audit opinion
- The Council completes grant claims and returns on which audit certification is required

Our response

We will ensure that

- the Council complies with the requirements of the CIPFA Code of Practice through discussions with management and our substantive testing.
- the group boundary is recognised in accordance with the Code and joint arrangements are accounted for correctly.
- you have assessed the need for any provision or contingent liability appropriately.

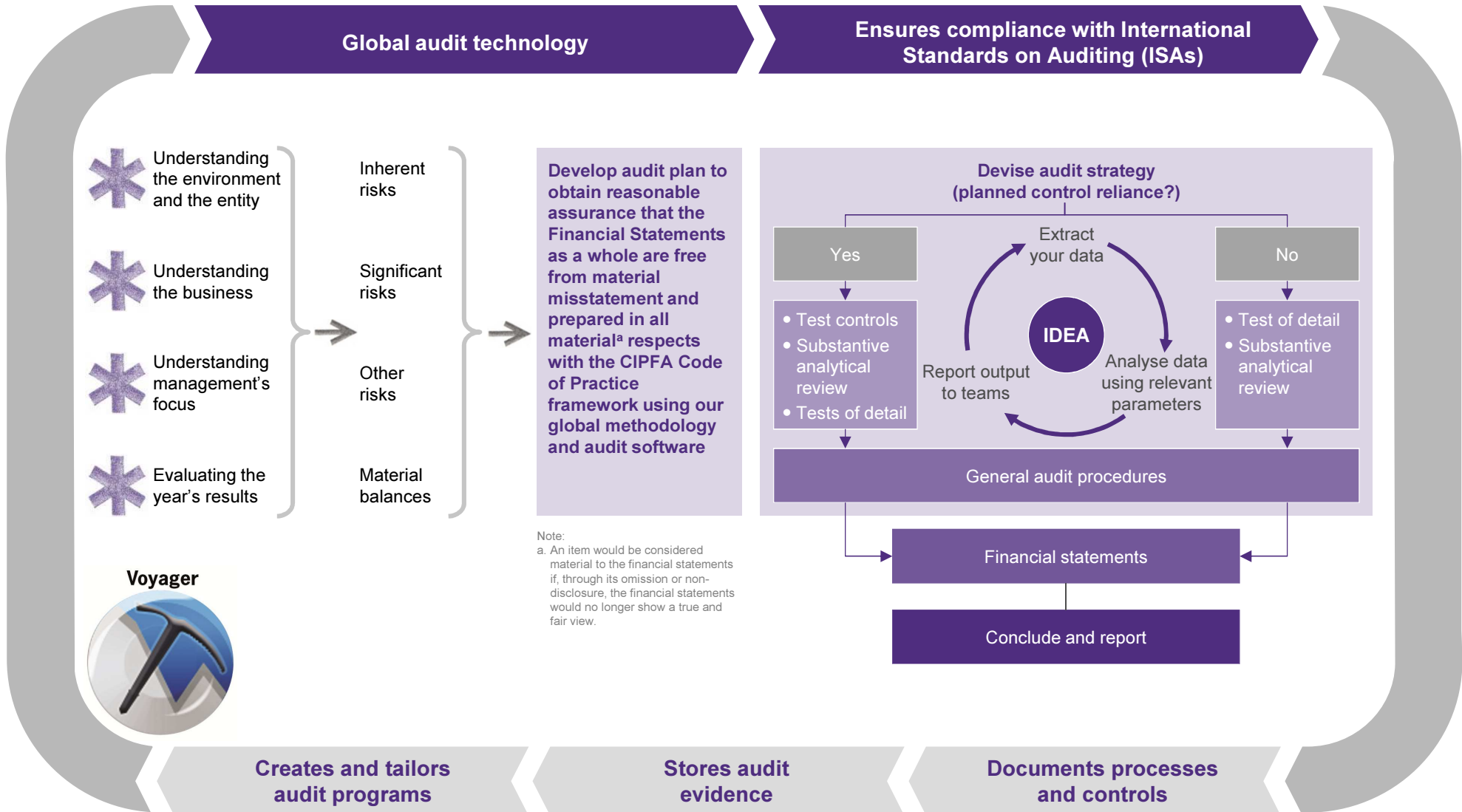
- We will discuss the impact of the legislative changes with the Council through our regular meetings with senior management and those charged with governance, providing a view where appropriate

- We will review the arrangements the Council has in place for the production of the AGS
- We will review the AGS and the explanatory foreword to consider whether they are consistent with our knowledge

- We will review the Council's performance against the 2014/15 budget, including consideration of performance against the savings plan
- We will undertake a review of Financial Resilience as part of our VfM conclusion

- We will carry out work on the WGA pack in accordance with requirements
- We will certify the housing benefit subsidy claim in accordance with the requirements specified by Public Sector Audit Appointments Ltd. This company will take over the Audit Commission's responsibilities for housing benefit grant certification from 1 April 2015.

Our audit approach



Significant risks identified

Significant risks often relate to significant non-routine transactions and judgmental matters. Non-routine transactions are transactions that are unusual, either due to size or nature, and that therefore occur infrequently. Judgmental matters may include the development of accounting estimates for which there is significant measurement uncertainty' (ISA 315).

In this section we outline the significant risks of material misstatement which we have identified. There are two presumed significant risks which are applicable to all audits under auditing standards (International Standards on Auditing – ISAs) which are listed below :

Significant risk	Description	Substantive audit procedures
The income cycle includes fraudulent transactions	<p>Under ISA 240 there is a presumed risk that income may be misstated due to the improper recognition of income.</p> <p>This presumption can be rebutted if the auditor concludes that there is no risk of material misstatement due to fraud relating to income recognition.</p>	<p>Having considered the risk factors set out in ISA240 and the nature of the income streams at Guildford Borough Council, we have determined that the risk of fraud arising from income recognition can be rebutted, because:</p> <ul style="list-style-type: none"> • there is little incentive to manipulate income recognition; • opportunities to manipulate income recognition are very limited; • the culture and ethical frameworks of local authorities, including Guildford Borough Council, mean that all forms of fraud are seen as unacceptable; • there are robust controls to prevent and detect material misstatement of income, including monitoring by senior management.
Management over-ride of controls	<p>Under ISA 240 the presumption that the risk of management over-ride of controls is present in all entities.</p>	<p>Work completed to date:</p> <ul style="list-style-type: none"> • Review of entity level controls to ensure they address risk of management override. • Review of basis of accounting estimates, judgments and decisions made by management in previous years to assess if there are risks for the current year. • Review of controls around processing of journal entries and testing of journals in the first 10 months of the year. <p>Further work planned:</p> <ul style="list-style-type: none"> • Review of accounting estimates, judgments and decisions made by management at year-end. • Testing of journal entries for the final 2 months and as part of closedown. • Review and testing of unusual significant transactions.

Other risks identified

The auditor should evaluate the design and determine the implementation of the entity's controls, including relevant control activities, over those risks for which, in the auditor's judgment, it is not possible or practicable to reduce the risks of material misstatement at the assertion level to an acceptably low level with audit evidence obtained only from substantive procedures (ISA 315).

In this section we outline the other risks of material misstatement which we have identified as a result of our planning.

Other risks	Description	Audit Approach
Operating expenses	<p>Completeness Creditors understated or not recorded in the correct period</p>	<p>Work completed to date:</p> <ul style="list-style-type: none"> • Identification and walkthrough of controls on the operating expenses system. <p>Further work planned:</p> <ul style="list-style-type: none"> • Search for unrecorded liabilities either side of the balance sheet date. • Test purchase orders system to identify unrecorded liabilities not accrued for. • Document the Council's accruals process, review and test a sample of accrued amounts.
Employee remuneration	<p>Completeness Employee remuneration and benefit obligations and expenses understated</p>	<p>Work completed to date:</p> <ul style="list-style-type: none"> • Identification and walkthrough of controls on the payroll system. • Performed substantive testing of employee expenses during the first ten months of the year. <p>Further work planned:</p> <ul style="list-style-type: none"> • Reconcile employee remuneration per the payroll system to the general ledger. • Perform trend analysis of movements in total employee costs and follow up testing on unexpected movements. • Agree the main components of senior officers' remuneration to supporting evidence. • For the pension fund liability recognised in the accounts, review the basis of the scheme, evaluate the work performed by the scheme actuary and test the basis on which the liability is recognised in the financial statements. • Review and test any liability recognised for termination benefits.

Other risks identified

The auditor should evaluate the design and determine the implementation of the entity's controls, including relevant control activities, over those risks for which, in the auditor's judgment, it is not possible or practicable to reduce the risks of material misstatement at the assertion level to an acceptably low level with audit evidence obtained only from substantive procedures (ISA 315).

In this section we outline the other risks of material misstatement which we have identified as a result of our planning.

Other risks	Description	Audit Approach
Housing Benefits Expenditure	<p>Valuation gross Welfare benefit expenditure improperly computed</p>	<p>Work completed to date:</p> <ul style="list-style-type: none"> • Identification and walkthrough of controls on the housing benefits system. <p>Further work planned:</p> <ul style="list-style-type: none"> • Agree housing benefits paid per the ledger to the housing benefits system and reconcile to the housing benefits subsidy claim. • Substantive testing using the HB COUNT methodology to cover: <ul style="list-style-type: none"> • Checking system parameters (Module 2); • Testing calculation of a sample of benefit cases (Module 3); • Analytical review of expenditure against expectations (Module 4); • Confirming claim is correctly generated from system using the software provider's guidance notes (Module 5).

Value for money

Value for money

The Code requires us to issue a conclusion on whether the Council has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources. This is known as the Value for Money (VfM) conclusion.

Our VfM conclusion is based on the following criteria specified by the Audit Commission:

VfM criteria	Focus of the criteria
The organisation has proper arrangements in place for securing financial resilience	The organisation has robust systems and processes to manage financial risks and opportunities effectively, and to secure a stable financial position that enables it to continue to operate for the foreseeable future
The organisation has proper arrangements for challenging how it secures economy, efficiency and effectiveness	The organisation is prioritising its resources within tighter budgets, for example by achieving cost reductions and by improving efficiency and productivity

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We have undertaken a risk assessment to identify areas of risk to our VfM conclusion. We will undertake work in the following areas to address the risks identified:

- We will review your medium term financial strategy and in particular your progress in identifying options to address the gap between available resources and expected expenditure in 2016/17 and 2017/18
- We will review how you have taken into account the various regeneration and housing developments into account in your capital programme for the coming years.
- We will consider how you have reflected challenges to the local plan and the impact of these on your strategy and provision of services.
- We will consider how you manage partnership and interact with stakeholders in designing changes to services.

The results of our VfM audit work and the key messages arising will be reported in our Audit Findings report and in the Annual Audit Letter. We will agree any additional reporting to the Council as required.

Results of interim audit work

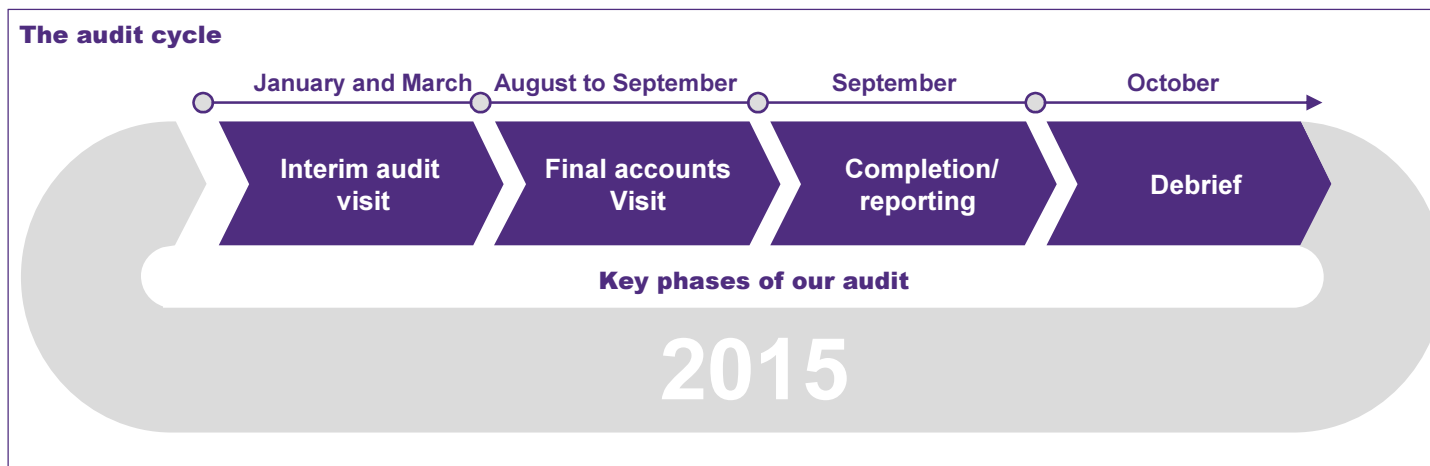
The findings of our interim audit work, and the impact of our findings on the accounts audit approach, are summarised in the table below:

	Work performed and findings	Conclusion
Internal audit	<p>We have completed a high level review of internal audit's overall arrangements. Our work has not identified any issues which we wish to bring to your attention.</p> <p>We also reviewed internal audit's work on the Council's key financial systems to date. We have not identified any significant weaknesses impacting on our responsibilities.</p>	<p>Overall, we have concluded that the internal audit service continues to provide an independent and satisfactory service to the Council and that internal audit work contributes to an effective internal control environment at the Council.</p> <p>Our review of internal audit work has not identified any weaknesses which impact on our audit approach.</p>
Walkthrough testing	<p>We have completed walkthrough tests of controls operating in areas where we consider that there is a risk of material misstatement to the financial statements.</p> <p>Our work has not identified any issues which we wish to bring to your attention. Internal controls have been implemented in accordance with our documented understanding.</p>	<p>Our work has not identified any weaknesses which impact on our audit approach.</p>
Entity level controls	<p>We have obtained an understanding of the overall control environment relevant to the preparation of the financial statements including:</p> <ul style="list-style-type: none"> • Communication and enforcement of integrity and ethical values • Commitment to competence • Participation by those charged with governance • Management's philosophy and operating style • Organisational structure • Assignment of authority and responsibility • Human resource policies and practices 	<p>Our work has identified no material weaknesses which are likely to adversely impact on the Council's financial statements</p>

Results of interim audit work continued

	Work performed	Conclusion
Review of information technology controls	<p>We performed a high level review of the general IT control environment, as part of the overall review of the internal controls system. We have also performed a follow up of the issues that were raised last year.</p> <p>IT (information technology) controls were observed to have been implemented in accordance with our documented understanding.</p>	<p>Our work has identified no material weaknesses which are likely to adversely impact on the Council's financial statements.</p>
Journal entry controls	<p>We have reviewed the Council's journal entry policies and procedures as part of determining our journal entry testing strategy and have not identified any material weaknesses which are likely to adversely impact on the Council's control environment or financial statements.</p> <p>To date we have undertaken detailed testing on journal transactions recorded for the first ten months of the financial year, by extracting 'unusual' entries for further review. No issues have been identified that we wish to highlight for your attention.</p>	<p>Our work to date has not identified any material weaknesses or indications of fraudulent transactions.</p> <p>We will complete our testing by reviewing and testing journal transactions for the last two months of the year and those 'closedown' journals raised as part of preparing the financial statements. This testing will be carried out as part of our audit of the financial statements.</p>
Early substantive testing	<p>We are in the process of undertaking early testing</p>	<p>We will report our conclusions in our next update</p>
Value for money	<p>We have completed our initial risk assessment and identified areas for further work which are set out in the previous section of this plan.</p>	<p>Work will be completed as part of the interim and final accounts visits and we will report findings in our audit findings report.</p>

Key dates



Date	Activity
January 2015	Planning
January and March 2015	Interim site visit
26 March 2015	Presentation of audit plan to Corporate Governance and Standards Committee
August to September 2015	Year end fieldwork
Early September 2015	Audit findings clearance meeting with Managing Director and Head of Financial Services
24 September 2015	Report audit findings to Corporate Governance and Standards Committee
By 30 September 2015	Sign financial statements opinion

Fees and independence

Fees

Council audit	76,710
Grant certification	17,330
Total fees (excluding VAT)	94,040

Our fee assumptions include:

- Supporting schedules to all figures in the accounts are supplied by the agreed dates and in accordance with the agreed upon information request list
- The scope of the audit, and the Council and its activities, have not changed significantly
- The Council will make available management and accounting staff to help us locate information and to provide explanations

Grant certification

- Our fees for grant certification cover only housing benefit subsidy certification, which falls under the remit of Public Sector Audit Appointments Limited, as the successor to the Audit Commission in this area.
- Fees in respect of other grant work, such as reasonable assurance reports, will be shown under Fees for other services.

Fees for other services

Service	Fees £
Workshop on 2016/17 Budget pressures and Alternative Delivery Models	4,050

Fees for other services

Fees for other services reflect those agreed at the time of issuing our Audit Plan. Any changes will be reported in our Audit Findings Report and Annual Audit Letter.

Independence and ethics

We confirm that there are no significant facts or matters that in fact on our independence as auditors that we are required or wish to draw to your attention. We have complied with the Auditing Practices Board's Ethical Standards and therefore we confirm that we are independent and are able to express an objective opinion on the financial statements.

Full details of all fees charged for audit and non-audit services will be included in our Audit Findings report at the conclusion of the audit.

We confirm that we have implemented policies and procedures to meet the requirement of the Auditing Practices Board's Ethical Standards.

Communication of audit matters with those charged with governance

International Standards on Auditing (ISA) 260, as well as other ISAs, prescribe matters which we are required to communicate with those charged with governance, and which we set out in the table opposite.

This document, The Audit Plan, outlines our audit strategy and plan to deliver the audit, while The Audit Findings will be issued prior to approval of the financial statements and will present key issues and other matters arising from the audit, together with an explanation as to how these have been resolved.

We will communicate any adverse or unexpected findings affecting the audit on a timely basis, either informally or via a report to the Council.

Respective responsibilities

This plan has been prepared in the context of the Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission (www.audit-commission.gov.uk).

We have been appointed as the Council's independent external auditors by the Audit Commission, the body responsible for appointing external auditors to local public bodies in England. As external auditors, we have a broad remit covering finance and governance matters.

Our annual work programme is set in accordance with the Code of Audit Practice ('the Code') issued by the Audit Commission and includes nationally prescribed and locally determined work. Our work considers the Council's key risks when reaching our conclusions under the Code.

It is the responsibility of the Council to ensure that proper arrangements are in place for the conduct of its business, and that public money is safeguarded and properly accounted for. We have considered how the Council is fulfilling these responsibilities.

Our communication plan	Audit plan	Audit findings
Respective responsibilities of auditor and management/those charged with governance		
Overview of the planned scope and timing of the audit. Form, timing and expected general content of communications		
Views about the qualitative aspects of the entity's accounting and financial reporting practices, significant matters and issue arising during the audit and written representations that have been sought		
Confirmation of independence and objectivity		
A statement that we have complied with relevant ethical requirements regarding independence, relationships and other matters which might be thought to bear on independence.		
Details of non-audit work performed by Grant Thornton UK LLP and network firms, together with fees charged.		
Details of safeguards applied to threats to independence		
Material weaknesses in internal control identified during the audit		
Identification or suspicion of fraud involving management and/or others which results in material misstatement of the financial statements		
Non compliance with laws and regulations		
Expected modifications to the auditor's report, or emphasis of matter		
Uncorrected misstatements		
Significant matters arising in connection with related parties		
Significant matters in relation to going concern		

External Audit Update for the Corporate Governance and Standards Committee of Guildford Borough Council

Year ended 31 March 2015

26 March 2015

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Christian Heeger

Director

T +44(0)1293 554 145

E christian.heeger@uk.gt.com

Keith Hosea

Manager

T +44(0)20 7728 3231

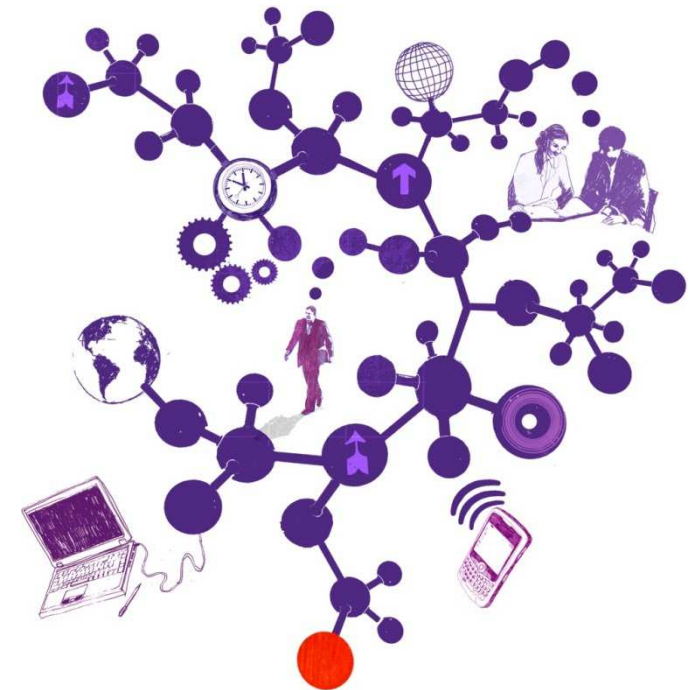
E keith.j.hosea@uk.gt.com

Sebastian Evans

Executive

T +44(0)20 7728 3451

E sebastian.evans@uk.gt.com



Agenda item number: 7
Appendix 2

The contents of this report relate only to the matters which have come to our attention, which we believe need to be reported to you as part of our audit process. It is not a comprehensive record of all the relevant matters, which may be subject to change, and in particular we cannot be held responsible to you for reporting all of the risks which may affect your business or any weaknesses in your internal controls. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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Introduction

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

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

Members of the Committee can find further useful material on our website www.grant-thornton.co.uk, where we have a section dedicated to our work in the public sector (<http://www.grant-thornton.co.uk/en/Services/Public-Sector/>). Here you can download copies of our publications including:

- All aboard? our local government governance review 2015
- Stronger futures: development of the local government pension scheme
- Rising to the challenge: the evolution of local government, summary findings from our fourth year of financial health checks of English local authorities
- 2020 Vision, exploring finance and policy future for English local government
- Where growth happens, on the nature of growth and dynamism across England

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

Progress at March 2015

Work	Planned date	Complete?	Comments
<p>2014-15 Accounts Audit Plan We are required to issue a detailed accounts audit plan to the Council setting out our proposed approach in order to give an opinion on your 2014-15 financial statements.</p>	March 2015	Yes	We present the Audit Plan to this meeting, which sets out the risks we have identified in our audit and the work we propose to carry out to address these.
<p>Interim accounts audit Our interim fieldwork visit includes:</p> <ul style="list-style-type: none"> • updating our review of the Council's control environment • updating our understanding of financial systems • review of Internal Audit reports on core financial systems • early work on emerging accounting issues • early substantive testing 	January 2015 March 2015	N/A	<p>We updated our understanding of your control environment and systems in January.</p> <p>We have carried out further work in March including some early testing of transaction streams. We have reflected initial findings from this work in the Audit Plan referred to above.</p>
<p>2014 -15 final accounts audit Including:</p> <ul style="list-style-type: none"> • audit of the 2014-15 financial statements • proposed opinion on the Council's accounts 	August to September 2015	N/A	We will report the findings from our audit of your financial statements to the September meeting of this Committee.

Progress at March 2015

Work	Planned date	Complete?	Comments
<p>Value for Money (VfM) conclusion</p> <p>The scope of our work to inform the 2014-15 VfM conclusion comprises:</p> <ul style="list-style-type: none"> • Review of your arrangements to secure financial resilience in the foreseeable future; • Review of your arrangements to challenge how to secure value for money. 	<p>March 2015</p> <p>August 2015</p>	N/A	<p>We have carried out the initial risk assessment for this work, which is reflected in the Audit Plan which we present to this meeting.</p> <p>Further work to assess your arrangements is in progress and we will report a summary of our findings in our Audit Findings Report in September.</p>
<p>2014/15 Certification of claims</p> <p>We expect that the housing benefit subsidy claim will be the only return we are required to certify this year.</p>	<p>August to September 2015</p>	N/A	
<p>Other activity undertaken</p> <p>Colleagues from our local government advisory team are preparing and facilitating a workshop with the Council's corporate management team to explore pressures in the 2016/17 budget and alternative service delivery models.</p>	<p>24 March 2015</p>		
<p>We received an objection to the 2013/14 accounts from a member of the Guildford Hackney Carriage Association. We have closed this objection but have received another potential objection and are considering the impact of this before we can issue our certificate of completion of the 2013/14 audit.</p>	<p>March 2015</p>		

Emerging issues and developments: accounting and audit issues

Provision for business rates appeals

Unlodged appeals

The Chancellor's Autumn Statement included a change to the rules relating to business rates appeals. As a result we do not expect to see any provisions for unlodged appeals in local authorities' 2014/15 accounts, although we will expect this to be re-considered for 2015/16 accounts.

The change restricts the backdating of Valuation Office Agency (VOA) alterations to rateable values. Only VOA alterations made before 1 April 2016 and ratepayers' appeals made before 1 April 2015 can now be backdated to the period between 1 April 2010 and 1 April 2015. The aim is to put authorities in the position as if the revaluation had been done in 2015 as initially intended, before the deadline was extended to 2017.

There may be some fluctuations in provisions at 31 March 2015 as unlodged appeals provisions are released. However, there may also be increased numbers of appeals lodged prior to 31 March 2015. These appeals may be more speculative in nature and therefore authorities may need to consider whether prior year assumptions remain valid in estimating their provisions.

Utilisation of provision

As part of the provisions disclosures in the accounts, local authorities need to disclose additional provisions made in the year, the amounts used (i.e. incurred and charged against the provision) during the year and unused amounts reversed during the year.

We understand that the software used for business rates may not provide values for the amounts charged against the provision during the year and that there is no simple software solution for this for 2014/15. Local authorities will need to consider available information and make an estimate of the amount for appeals settled in the year.

Challenge questions

- Has your Head of Financial Services reassessed the methodology for making the business rates provision?
- Has your Head of Financial Services put in place arrangements to estimate appeals to be charged against the provision?

A accounting and audit issues

Inclusion of overtime in the calculation of holiday pay

The Employment Appeal Tribunal (EAT) has delivered its judgement on the extent to which overtime pay should be included in the calculation of holiday pay. This case stems from an apparent conflict between UK law and European Law.

The EAT found that non-guaranteed overtime (i.e. overtime, which is not guaranteed by the employer, but which the worker is obliged to work, if it is offered), should be included in the calculation of holiday pay. Back-dated claims can only be made if it is less than three months since the last incorrect payment of holiday pay.

It is likely that there will be an Appeal to this decision. However that does not mean that authorities should hold off assessing the impact. Local authorities should be considering their own circumstances and if necessary taking their own legal advice as to the extent they might be affected by the ruling. If an authority is going to be affected they need to assess whether the liability can be reliably measured.

For an authority likely to be affected in a material way, where it is possible to reliably measure that liability, then appropriate provision should be made in the 2014/15 accounts. The fact that the issue might go to Appeal at some uncertain time in the future is not of itself grounds for not including a provision. The chances of any success would need to be taken account of in the legal analysis but, in any case, there are some indications that the key issue on Appeal would be whether to remove the three month cap (if this were done then the provision would increase), rather than dismissing the entire decision to include overtime in the calculation of holiday pay.

Challenge question

- Has your authority taken legal advice and assessed if a provision is required in the 2014/15 accounts?

Emerging issues and developments: Grant Thornton

All Aboard? – Local Government Governance Review 2015

Our fourth annual review of local government governance is available at <http://www.grant-thornton.co.uk/en/Publications/2015/Local-Government-Governance-review-2015-All-aboard1/>.

We note that the challenges faced by local authorities are intensifying as austerity and funding reductions combine with demographic pressures and technological changes to create a potential threat to the long-term sustainability to some organisations. Maintaining effective governance is becoming ever more complex and increasingly important.

Against this background we have focused this year's review on three key areas:

Governance of the organisation – the main area of concern highlighted in this year's governance survey is the level of dissatisfaction with the scrutiny process.

Governance in working with others – there is an urgent need for scrutiny to exercise good governance over the complex array of partnerships in which local authorities are now involved. Boundary issues notwithstanding, by 'shining a light' on contracted-out activities and joint operations or ventures, scrutiny committees can bring a new level of transparency and accountability to these areas

Governance of stakeholder relations – despite the work that a number of local authorities are doing with the public on 'co-production', almost a third of respondents to our survey did not think their organisation actively involves service users in designing the future scope and delivery of its services.

We conclude that local authorities need to ensure that their core objectives and values are fulfilled through many other agencies. This implies a greater role for scrutiny and a need to make sure local public sector bodies' arrangements are as transparent as possible for stakeholders.

Hard copies of our report are available from your Engagement Lead or Audit Manager.



Stronger futures: development of the LGPS

Our second review on governance in LGPS funds in England and Wales is based on comprehensive research with pension fund senior officers, supported by insights from pension fund auditors and is available at <http://www.grant-thornton.co.uk/Publications/2015/Stronger-futures-development-of-the-LGPS/>

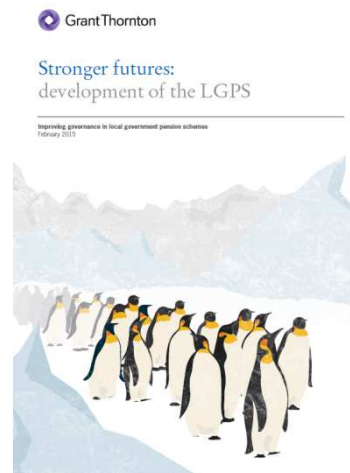
With the local government pensions scheme (LGPS) continuing to face significant change and challenge, there is a clear commitment to ensuring its survival and the provision of affordable pension benefits for the future. Following the implementation of a career average pension scheme in 2014, administering authorities are preparing for significant changes in governance arrangements effective from April 2015.

Some of the key messages from the report are:

- there are increasing strong examples of innovation and increased collaborative working across the LGPS to achieve reduced costs and improved use of specialist skills and knowledge;
- implementation of the career average scheme from April 2014 went well and demonstrated good project management and effective communication with members and employers; and
- there have been several other positive trends across the LGPS since our 2013 review particularly around the widening scope of reporting to Pension Committees including performance reporting, risk management and internal audit reviews.

However, we saw a wide variation in practice, including a concentration of risk reporting on investment risk. Over half of funds have not implemented the CIPFA knowledge and skills framework as part of their member training, 45 per cent of Pension Committees do not receive internal audit reports and 15 per cent do not have specific internal audit coverage, and nearly half of funds have no information around the value of their liabilities in between the triennial valuations.

Hard copies of our report are available from your Engagement Lead or Audit Manager.



Emerging issues and developments: local government issues

Independent Commission into Local Government Finance

The Independent Commission into Local Government Finance was established in 2014 to examine the system of funding local government in England and bring forward recommendations on how it can be reformed to improve funding for local services and promote sustainable economic growth. It published its final report, [Financing English Devolution](#), on 18 February 2015.

The report notes that the core of the Commission's proposition is the devolution of powers, funding and taxes to sub-national entities over a 10 year period. They estimate that this could lead to over £200 billion in public expenditure being controlled at a sub-national level. The expectation is that councils and their partners would work collaboratively to manage differences in capacity and resources. They see local areas becoming self sufficient.

The Commission advocates a 'variable speed' approach to reform with 'Pioneers' able to and wishing to reform at a faster pace. Reforms advocated for all authorities include:

- An independent review of the functions and sustainability of local government in advance of the next spending review
- Freedom to set council tax and council tax discounts and full retention of business rates and business rates growth
- Multi-year financial settlements
- The ability to raise additional revenue through the relaxation of the rules on fees and charges

'Pioneer' authorities would also implement:

- Single placed-based budgets for all public services
- Management of funding equalisation across a sub-national area
- Further council tax reforms including the ability to vary council tax bands and undertake revaluations
- Newly assigned and new taxes such as stamp duty, airport taxes and tourism taxes
- The establishment of Local Public Accounts Committees to oversee value for money across the placed-base budget.

Local government issues

Help into work programmes

In its press release of 12 January 2015 the LGA reported that more than one million unemployed people are falling through cracks in national work schemes that are failing to reach some of the most vulnerable jobseekers. It warned that whilst councils are being left to pick up the pieces to prevent more vulnerable people slipping further into long-term unemployment and disengagement they cannot afford to continue resolving the failings of these national schemes in their communities without the appropriate funding.

As a remedy the LGA calls on the next government to commit to devolving all nationally-run education, skills and employment schemes to local areas so councils can join-up services to support their most vulnerable residents. A report published by the National Institute of Economic and Social Research (NIESR), commissioned by the LGA, explores in detail how a sample of councils across the country have provided a safety net for their most vulnerable and hardest to reach residents. The NIESR report's lead author, Dr Heather Rolfe, said:

"Local authorities have a unique position in their communities, are able to bring services together, forging partnerships and strengthening referral networks. It is through such work that they are able to help unemployed people who are beyond the reach of national programmes."

Local government issues

DCLG – build to rent scheme

Housing Minister Lewis Brandon announced on 10 January 2015 a £55 million deal to provide nearly 800 homes for private sector rent in Manchester and Salford as part of the government's wider £1 billion [Build to Rent scheme](#), which has the objective of building 10,000 new homes for private rent. The Chief Executive of the Homes and Communities Agency (HCA) Andy Rose said:

"this is a major investment in the private rented sector in Manchester. It demonstrates how the HCA, working closely with partners, is combining financial and local expertise to increase the private rented choice in areas where there is a high demand for homes".

As part of its strategy of creating a bigger and better private rented sector the government has also

- published a [How to rent](#) guide, so tenants and landlords know their rights and what to expect when renting privately
- published a [model tenancy agreement](#), so tenants who want to ask for longer tenancy agreements have the opportunity to do so;
- introduced a new requirement for letting agents to belong to one of three redress schemes, so the minority of tenants and landlords who get a raw deal have somewhere to go with their complaint.

Corporate Governance and Standards Committee Report
Report of the Managing Director (Chief Financial Officer)

Author: Claire Morris, Head of Financial Services

Tel: 01483 444827

Email: Claire.morris@guildford.gov.uk

Lead Councillor responsible: Councillor Paul Spooner

Tel: 01252 341666

Email: paul.spooner@guildford.gov.uk

Date: 26 March 2015

Discussions with those charged with governance

Executive Summary

In carrying out their annual audit of the Council, Grant Thornton comply with the International Standards on Auditing (ISAs) as adopted by the UK Financial Reporting Council (FRC).

ISAs require the auditor to make inquiries of those charged with governance (TCWG) to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity. These inquiries are made in part to corroborate the responses to the inquiries of management.

Grant Thornton has sent the Council a questionnaire setting out their inquiries of TCWG. Officers have prepared a response to the questionnaire, on behalf of the Chairman of the Corporate Governance and Standards Committee. The questionnaire and the Council's proposed responses are set out in **Appendix 1**. The Corporate Governance and Standards Committee is asked to approve the Council's response.

Recommendation to Corporate Governance and Standards Committee

That the Committee approve the responses to Grant Thornton provided in the Discussions with Those Charged with Governance document at **Appendix 1**.

Reason for Recommendation:

To enable the Council's external auditors, Grant Thornton, to carry out their duties under the Local Audit and Accountability Act 2014, we are required to provide the auditors with the necessary assurances required under International Standards on Auditing (ISA), particularly, ISA 260, Communication with Those Charged with Governance.

1. Purpose of Report

- 1.1 The purpose of the report is to provide the necessary assurances to the Council's external auditor, Grant Thornton, as required under International Standards on Auditing (ISA) 260. The standards require that the auditors ask those people

charged with governance certain questions around internal control and the risk of fraud and error.

2. Strategic Framework

- 2.1 The Council's Corporate Plan 2013-2016 includes the key priority to improve the Council's governance structures under the Developing you Council fundamental theme.

3. Background

- 3.1 In carrying out their annual audit of the Council, Grant Thornton comply with the International Standards on Auditing (ISAs) as adopted by the UK Financial Reporting Council (FRC). Auditing standards for audits of financial statements include objectives for the auditor, together with requirements and related application and other explanatory material.
- 3.2 ISA 260, Communication with Those Charged with Governance, defines the objectives of the auditor which are to:
- (a) communicate clearly with those charged with governance the responsibilities of the auditor in relation to the financial statement audit, and an overview of the planned scope and timing of the audit
 - (b) obtain from those charged with governance information relevant to the audit
 - (c) provide those charged with governance with timely observations arising from the audit that are significant and relevant to their responsibility to oversee the financial reporting process
 - (d) promote effective two-way communication between the auditor and those charged with governance.
- 3.3 Those Charged with Governance (TCWG) is a term used to describe the body or people of an organisation with responsibility for overseeing the strategic direction of the organisation and obligations related to the accountability of the organisation. At Guildford Borough Council, the Council has delegated responsibility to the Corporate Governance and Standards Committee for overseeing the Council's governance arrangements.
- 3.4 Many of the ISAs require the auditor to discuss items with, and seek assurances from, management and TCWG. ISA 260 requires certain discussions with TCWG, to be documented as part of the audit.
- 3.5 The standards set out that the auditor shall communicate with TCWG an overview of the planned scope and timing of the audit and significant findings from the audit. The auditor shall communicate with TCWG:
- (a) the auditor's views about significant qualitative aspects of the entity's accounting practices, including accounting policies, accounting estimates and financial statement disclosures.
 - (b) significant difficulties, if any, encountered during the audit;
 - (c) unless all of TCWG are involved in managing the entity:

- i. significant matters, if any, arising from the audit that were discussed, or subject to correspondence with management; and
 - ii. written representations the auditor is requesting; and
 - (d) other matters, if any, arising from the audit that, in the auditor's professional judgment, are significant to the oversight of the financial reporting process.
- 3.6 Unless all of TCWG are involved in managing the entity the auditor shall obtain an understanding of how TCWG exercise oversight of management's processes for identifying and responding to the risks of fraud in the entity and the internal control that management has established to mitigate these risks. The auditor shall make inquiries of TCWG to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity. These inquiries are made in part to corroborate the responses to the inquiries of management.
- 3.7 Grant Thornton has sent the Council a questionnaire setting out their inquiries of TCWG. Officers have prepared a response to the questionnaire, on behalf of the Chairman of the Corporate Governance and Standards Committee. The questionnaire and the Council's proposed responses are set out in **Appendix 1**. The Corporate Governance and Standards Committee is asked to approve the Council's response.

4. Financial Implications

- 4.1 There are no financial implications to this report

5. Legal Implications

- 5.1 The Local Audit and Accountability Act 2014 states that the accounts of a relevant authority for a financial year must be audited:
 - (a) in accordance with the Act and provision made under it, and
 - (b) by an auditor (a "local auditor") appointed in accordance with the Act or provision made under it.
- 5.2 A local auditor must, in carrying out the auditor's functions in relation to the accounts of a relevant authority, comply with the code of audit practice applicable to the authority that is for the time being in force. The current code of practice for UK Local Government is the Code of Audit Practice issued by the Audit Commission in 2010. The code adopts the International Standards on Auditing (ISAs) as issued by the FRC.

6. Human Resource Implications

- 6.1 There are no human resource implications to the report

7. Conclusion

- 7.1 International Standards on Auditing, ISAs, require the auditor to make inquiries of those charged with governance to determine whether they have knowledge of any actual, suspected or alleged fraud affecting the entity. These inquiries are made in part to corroborate the responses to the inquiries of management.
- 7.2 Grant Thornton has sent the Council a questionnaire setting out their inquiries of TCWG. Officers have prepared a response to the questionnaire, on behalf of the Chairman of the Corporate Governance and Standards Committee. The questionnaire and the Council's proposed responses are set out in **Appendix 1**. The Corporate Governance and Standards Committee is asked to approve the Council's response.

8. Background Papers

None

9. Appendices

Appendix 1 – Discussions with Those Charged with Governance

Discussions with Those Charged with Governance

Date	26 th March 2015
Venue	Guildford Borough Council
Present	Corporate Governance and Standards Committee

Item	Description	Comment
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a	Have you assessed the risk of material misstatement in the financial statements due to fraud?	<p>Yes. We identify fraud risks as part of each internal audit and in the internal audit planning process. Appropriate controls and checks are in place to assess that they are working as expected. Where there are potential issues with controls, such as a lack of separation of duties due to limited resources, we would expect to see mitigating management controls in place and the problem would be highlighted in the audit report. The results of each audit are fed into the audit planning database and the risk profile of the service is amended according to audit findings. The results of internal audits are reported to Corporate Governance and Standards Committee bi-annually.</p> <p>In addition, Surrey Chief Accountants group, and Surrey Treasurers share fraud experiences, which would highlight any potential fraud.</p> <p>Appropriate officers receive NFAN bulletins on a regular basis which alerts them to potential threats</p>
b	What are the results of this process?	No significant fraud has been identified for 14-15
c	What processes do you have in place to identify and respond to the risks of fraud?	Each department with financial responsibility has systems of internal control in place. The council is required to provide an annual

Item Description

d Have any specific fraud risks, or areas with a high risk of fraud, been identified, and what has been done to mitigate these risks?

Comment

governance statement to the Corporate Governance and Standards Committee that requires senior management to attest to the internal controls in place. In addition, the Corporate Governance and Standards Committee review the annual internal audit programme and reports are presented on a regular basis to the committee.

There is always the risk of fraud within an organisation of the size and diversity of Guildford Borough Council. Fraud is included in the audit planning risk process. The risk register is based on value, volume, past history, staff turnover, political sensitivity and the level of change within the service. Fraud risks are identified as part of each audit and we audit high-risk areas annually. Audit testing gives assurance that the appropriate controls and checks are in place and working as intended. Experience shows that fraud is more likely to occur in the smaller outstations where local working practices become the norm and controls are relaxed or circumvented. The audit plan includes a rolling programme of reviews of financial controls at the outstations. The other major area of risk is in areas where there is significant change and high staff turnover and we work closely with these services to ensure that any new systems or processes have the necessary control framework. There are no specific areas that have been drawn to the attention of the Corporate Management Team, Corporate Governance Group or the Corporate Governance and Standards Committee.

Areas perceived to be highest risk are Housing Benefit, Council Tax Income, Business Rates and supplier fraud.

Management and budgetary controls are designed to limit risk. At Guildford there would have to be significant collusion covering many

Item	Description	Comment
e	Are internal controls, including segregation of duties, in place and operating effectively?	staff at many levels for a fraud to go undetected. Creditors are audited annually
f	If not, where are the risk areas and what mitigating actions have been taken?	<p>We believe so. We revised the constitution during 14-15 to update the controls in place. A summary of internal audit reports for the first six months of the year show there were three services that were given limited assurance, which were Neighbourhood and Housing Management minor works and gas servicing service, Licensing and Fleet Management (lease cars).</p> <p>Corporate Governance Group meets to review governance arrangements quarterly; the group includes the Monitoring Officer & Deputy, Head of Paid Service, Head of IA, and the two Deputy CFO's.</p>
g	Are there any areas where there is a potential for override of controls or inappropriate influence over the financial reporting process (for example, because of undue pressure to achieve financial targets)?	<p>There is an effective control framework in place but the current economic climate means that staffing levels are kept to a minimum and there are sites where separation of duties cannot be enforced because of limited resources. In such cases, mitigating management controls are put in place and this is fed into the audit risk profile of the service. In addition, there have been a number of structural changes and service reviews within the Council and these always increase the risk that internal controls will be overlooked or degrade. We are aware of this risk and Internal Audit will work with managers in the relevant areas to ensure that appropriate operational and management controls are incorporated into any new processes or structures.</p>
h	Are there any areas where there is a potential for misreporting?	<p>Not that we are aware of</p> <p>Not that we are aware of</p>

Item Description

i How do you exercise oversight over management's processes for identifying and responding to risks of fraud?

Comment

Through regular reports to the Corporate Governance and Standards Committee, which has recently reviewed the whistleblowing policy.

New employees are given a copy of the Code of Conduct. Whistleblowing policy and procedures are also on the Guildford intranet – (LOOP).

j What arrangements are in place to report fraud issues and risks to the Audit Committee?

Any significant incidents of fraud or internal control failures would be drawn to the attention of the Corporate Governance Group and Corporate Governance and Standards Committee. The Committee receives a summary of all audit work twice a year including investigations. The Chair of the Committee and the Lead Member for Governance are notified of all material incidents at the point of discovery. The reporting mechanism for reporting any frauds and subsequent investigations includes notifying:

- the Managing Director
- the Monitoring Officer
- the relevant Executive Head of Service
- the Chair of the Corporate Governance and Standards Committee
- the Lead Member for Governance

In addition, the Council has a system of internal control established within the Financial Procedure Rules and Code of Conduct, which sets out the roles and responsibilities of officers in relation to fraud and financial management.

Item	Description	Comment
k	How do you communicate and encourage ethical behaviour of staff and contractors?	<p>There are policies and procedures in place that set out the expectations of staff with regard to their conduct. Codes of Conduct for both officers and Councillors are included in the Council's Constitution and given to new staff as part of a starter pack. If managers suspect fraud they will involve Internal Audit (as required by Financial Procedure Rules)</p> <p>Councillors and the Corporate Management Team complete declarations of interest, which a Principal Accountant reviews when preparing the related party transactions note in the accounts. Staff and Councillors have codes of conduct and ethical codes relating to their professional institutes. Conflicts of interest should be declared and Human Resources hold details.</p> <p>Management and budgetary controls are in place for financial systems and the management of contractors</p>
l	How do you encourage staff to report their concerns about fraud?	The Council has a whistleblowing policy, Fraud and Corruption Policy and an Anti-Bribery Policy. There is a Code of Conduct for both staff and Councillors and managers are encouraged to come forward with concerns and report any inappropriate behaviour.
m	Have any significant issues been reported?	No.
n	Are you aware of any related party relationships or transactions that could give rise to risks of fraud?	No
o	Are you aware of any instances of actual, suspected or alleged fraud, either within the Council as a whole or within specific departments since 1 April 2014?	Not that we are aware of
o	What arrangements do you have in place to prevent and detect non-compliance with laws and regulations?	The council has an internal control and governance framework in place to ensure that it operates in accordance with its legal and

Item	Description	Comment
p	How does management gain assurance that all relevant laws and regulations have been complied with?	<p>regulatory obligations. It also has an internal legal department to provide professional assistance.</p> <p>Appropriate training is provided for all changes in accounting regulations. Membership of CIPFA's publication scheme ensures that the most recent Codes of Practice are available each year together with practitioner notes.</p> <p>The Legal Services team subscribes to daily on-line and periodic hard copy updates on all aspects of the law which they deal with from time to time and attend formal training sessions on significant or topical developments in law. They arrange appropriate briefings for the relevant client service as necessary</p>
q	How are you provided with assurance that all relevant laws and regulations have been complied with?	<p>The Corporate Governance and Standards Committee receives an annual governance statement that evidences compliance. There are periodic inspections from external agencies such as the Information Commissioner's Office(ICO). The outcomes from these inspections are reported to the Corporate Governance and Standards Committee.</p>
r	Have there been any instances of non-compliance or suspected non-compliance with laws and regulation since 1 April 2014?	None that we are aware of.
s	What arrangements do you have in place to identify, evaluate and account for litigation or claims?	The council has a professional legal services team who deal with all claims and litigation.
t	Are there any actual or potential litigation or claims that would affect the financial statements?	<p>Together with all authorities providing a Land Charges service we are affected by the ongoing national litigation regarding personal search fees. We are aware of a potential threat of judicial review proceedings from the Guildford Hackney carriage association regarding historic taxi fees but a claim has not been formerly lodged against us.</p>
u	Have there been any reports from other regulatory bodies, such as HMRC, which indicate non-compliance?	None that we aware of.

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Corporate Governance and Standards Report

Report of Executive Head of Governance

Author: Peter Mulholland

Tel: 01483 44955

Email: peter.mulholland@guildford.gov.uk

Lead Councillor responsible: Nigel Manning

Tel: (01252) 665999

Email: nigel.manning@guildford.gov.uk

Date: 26 March 2015

Revisions to Procurement Procedure Rules

Executive Summary

The Public Contracts Regulations 2015 came into force on 26 February 2015. Procurements undertaken on or after this date must comply with the new regulations. The purpose of this report is to recommend appropriate amendments to the Council's Procurement Procedure Rules to take account of these new regulations. However, further minor amendments may be required as the new procurement regime beds in.

Recommendation

The Committee is asked to recommend to Council that:

- a) the amended Procurement Procedure Rules attached to the report at Appendix 1 be approved and adopted
- b) the Managing Director be given delegated authority to make other related changes to the Procurement Procedure Rules as she (in consultation with the Executive Head of Governance and the appropriate lead councillor) considers desirable and necessary as the new procurement regime beds in.

Reason for recommendation:

To ensure that the Council's Procurement Procedure Rules take account of the new Public Contracts Regulations 2015.

1. Purpose of Report

- 1.1 The Public Contracts Regulations 2015, came into force on 26 February 2015. Procurements undertaken on or after this date must comply with the new regulations. The purpose of this report is to recommend appropriate amendments to the Council's Procurement Procedure Rules (PPR) to take account of these new regulations.

2. Strategic Framework

- 2.1 To deliver its vision the Council has necessarily to procure works, goods and services. Keeping the Procedure Procurement Rules up to date is an important part of the Council's governance in carrying out such procurements legally and obtaining best value for the Council.

3. Background

- 3.1 In 2014 the European Union (EU) adopted 3 new Directives on public procurement:
- a new *classic* Procurement Directive
 - a Concessions Directive and
 - an updated Utilities Directive.
- 3.2 The first of these – the *classic* Directive – has now been transposed into UK law with the Public Contracts Regulations coming into force on the 26th February 2015. These regulations replace The Public Contracts Regulations 2006.
- 3.3 We have already reflected some of the new requirements in the Council's Procurement Procedure Rules (PPR), which we amended as recently as December 2014. Whilst the majority of the proposed amendments in this report are required to reflect the 2015 regulations, officers have taken the opportunity to make a number of other small amendments to our PPR.
- 3.4 Specific changes brought in by the 2015 regulations, which we have reflected in these amendments, include:
- The special regime for social and other specific services set out in Schedule 3 to the 2015 Regulations. These have a higher EU threshold (£650K) and a light-touch tender regime for contracts over that threshold (regulations 74 to 77).
 - The introduction of new procurement procedures including the *Competitive Procedure with Negotiation* (regulation 29) and the *Innovative Partnership* procedure (regulation 31).
 - New requirements for procurements below the relevant EU threshold figures but above £25,000 (including the requirement for them additionally to be advertised on Contracts Finder) (regulations 109 to 112).
 - New requirements for clauses permitting termination where the contract has been wrongly awarded (regulation 73) and for the Council and its contractors to pay invoices within 30 days (regulation 113).
- 3.5 The new regulations have only been in force for a matter of weeks. Local authorities were given only a short amount of time to incorporate the changes into their own PPR, hence the need to bring this report to councillors as swiftly as

possible. It is likely that other related changes to our rules will be required as the new procurement regime beds down. Therefore, it is requested that the Managing Director, in consultation with the Executive Head of Governance or his nominated deputy and the appropriate lead councillor, be given delegated authority to make such additional changes as required. This is to ensure compliance with the new rules, an appropriate level of governance and adherence to the principles of best value in all procurement activity.

- 3.6 Councillors are asked to note that the regulations, which in due course bring the new Concessions Directive into force in England and Wales, will necessitate further amendments to the PPR, as may the regulations regarding the updated Utilities Directive. These amendments can only be made once we know the final form of the relevant new UK regulations.

4. Financial Implications

- 4.1 Having up to date PPR is an important part of obtaining best value for the Council. Apart from that, there are no specific financial implications.

5. Legal Implications

- 5.1 There are no legal implications other than as mentioned in this report.

6. Human Resource Implications

- 6.1 There are no human resource implications directly relating to the introduction of the new regulations. Additional support for developing the procurement functions of the Council to complement the legal service will be delivered by a temporary post approved as part of the growth bid process for the 2015-16 budget.

7. Conclusion

- 7.1 All local authorities have to incorporate the new Public Contracts Regulations 2015, into their PPR. Our rules were amended in December 2014, to accommodate the EU Directives as specified in the 2006 regulations in the knowledge that further changes would have to be made once the 2015 regulations had been laid.
- 7.2 The new regulations came into force on 26 February 2015, giving local authorities very little time to introduce them to their PPR. However, we have now managed to achieve this, although further amendments may be necessary as the new regulations bed down. The draft Procurement Procedure Rules are attached at **Appendix 1**, for members of the Governance and Standards Committee to consider recommending to Council.

Agenda item number: 9

8. Background Papers

The Public Contracts Regulations 2015

www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

9. Appendices

Appendix 1 Draft of amended Procurement Procedure Rules

GUILDFORD BOROUGH COUNCIL

PROCUREMENT PROCEDURE RULES

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Appendix 1 Quick Guide to Procurement: Minimum requirements

Part 1**1 INTRODUCTION**

- 1.1 These Procurement Procedure Rules apply to all purchases of works, goods and services by the Council. They provide a framework within which all the procurement activity of the Council is undertaken. The object of these Rules is to ensure that all the Council's procurement activity regardless of value is fair, open, transparent, non-discriminatory and lawful. Their observance is mandatory. The Rules are to protect the interests of the Council and also councillors and officers from the risk of challenge, undue criticism or allegations of wrongdoing.
- 1.2 These Procedure Rules should be seen as setting minimum requirements. Where better value for the Council might be achieved by seeking more tenders or quotations this should be done.
- 1.3 A Corporate Procurement Advisory Board (CPAB), is to take an active role in the management of the procurement process. The CPAB will ensure that the processes and reporting requirements are followed and will enable the identification of areas of strength and weakness within the procurement function. It will seek out solutions and better methods of working, encouraging consistency and efficiency to achieve best value through the procurement process across the Council. Until the CPAB is set up and functioning any reference in these rules to actions to be done by or with respect to CPAB shall be taken to be references to the EHoG and the EHoF acting together
- 1.4 If there is any relevant change to English or European Law, which affects these rules then that change must be observed until these rules can be revised. Where there is a difference between these Rules and the current legislation, the legislation will prevail.

Part 2**2 APPLICATION**

- 2.1 These rules apply to:
- 2.1.1 All contracts for the supply of works, goods or services (including consultancy) to the Council, regardless of value.
- 2.1.2 Partnership and collaborative arrangements with other bodies.
- 2.1.3 Concession Contracts
- 2.2 These rules do not apply to:
- 2.2.1 Contracts for the purchase or sale of any interest in land including leasehold interests and licences for which reference should be made to the Financial Procedure Rules.
- 2.2.2 Contracts of employment for the appointment of individual members of staff.
- 2.2.3 Grant agreements, where the Council is giving an unconditional grant.
- 2.2.4 Sponsorship agreements regulated by the Sponsorship Rules.

PART 4 – PROCUREMENT PROCEDURE RULES

- 2.2.5 Supply of works, goods and services **by** the Council. [The Executive Head of Governance must be consulted where the Council is contemplating this route.]
- 2.2.6 Contracts procured in collaboration with other local authorities where the Council is not the lead authority (subject to the necessary approvals having been obtained from the appropriate decision maker at the Council). The Procurement/Contract Procedure Rules of the lead authority shall apply. Assurance is to be sought that the lead authority is acting in compliance with its own contract procedure rules.
- 2.3. Exceptions to these rules.
- 2.3.1 In all cases, where an exception to the tendering or quotation process is sought the EHoS or HoS shall consult with the CPAB. If the CPAB agree the EHOS or HOS shall obtain the consent of the Managing Director or Monitoring Officer and Lead Councillor for the service concerned. The CPAB will document the request, all reasons for the request and record the decision. Additionally the EHoS or HoS will ensure that a record of the decision of the Managing Directors and Lead Councillor are recorded on the procurement file.
- 2.3.2 The following circumstances represent the permitted exceptions from all or part of these Rules. Tenders or quotations need not be sought in the following circumstances:
- 2.3.2.1 The work to be executed or the goods or materials or services to be supplied are procured via an approved and valid framework agreement. The CPAB is to be notified of the intention to access such an agreement the use of which must be approved by the EHoG;
- 2.3.2.2 Goods or materials are proprietary items or are sold only at a fixed price and no satisfactory alternative is available;
- 2.3.2.3 The price of the goods or materials is wholly controlled by trade organisations, government order or statutory undertakers where they have monopoly status and no satisfactory alternative is available;
- 2.3.2.4 The work to be executed or the goods or materials to be supplied consist of repairs to or the supply of parts for existing proprietary machinery or plant or the execution of work or supply of goods or services or materials necessary for maintenance or repairs to existing machinery or plant;
- 2.3.2.5 Where the work to be executed or goods to be supplied are required urgently ~~because of an unforeseen emergency~~ and would not, therefore, permit the invitation of quotations or tenders;
- 2.3.2.6 The execution of works or the supply of services is of such a specialised nature that in the opinion of the EHoS or HoS the number of prospective contractors is less than required by these rules. In this case, tenders or quotations shall be obtained from the sole or all available suppliers who possess the relevant knowledge or expertise;

2.3.2.7 The work to be executed or the goods or materials supplied constitute an extension or variation permitted under the terms of an existing contract provided the extension or variation is compliant with English or European law.

2.3.3 No exemptions are permitted if the value requires compliance with EU Procurement Directives.

3 COMPLIANCE

3.1 Every Contract entered into on behalf of the Council shall comply with

- these Procurement Procedure Rules;
- the Council's Financial Procedure Rules, and
- all relevant English and European legislation.

3.2 All members of staff and consultants engaged in any capacity to manage or supervise the procurement of any works, goods or services for the Council must comply with these Procurement Procedure Rules and with the Council's Manual of Procurement Practice. The attention of Officers is drawn to the Council's Code of Conduct for staff at Part 5 of the Constitution. Non-compliance with these Rules may constitute grounds for disciplinary action.

3.3 Generally, work must not begin under a contract until both parties have signed the contract document (or, if the only contract document is a purchase order, until the purchase order has been issued), except in the cases of urgency when the approval of the EHoG is to be obtained. Letters of intent may only be provided with the approval of the EHoG who must agree the terms of any such letter.

3.4 If there is any doubt about the application of the rules the issues should be referred to CPAB and to the EHOg.

4 CONFLICTS OF INTEREST

4.1 Members of staff must avoid any conflict between their own interests and the interests of the Council. This is a requirement of the Council's Code of Conduct for Staff and includes:

4.1.1 not accepting gifts or hospitality from organisations or suppliers that the Council has dealings with;

4.1.2 not working for organisations or suppliers that the Council has dealings with;

4.1.3 notifying the Executive Head of Service or Head of Service in writing if an officer has links with an organisation or supplier who is tendering or quoting for a contract with the Council or already has a contract with the Council. (For example, a family member or close friend works for the organisation).

4.2 All consultants engaged to act on behalf of the Council must declare that they will avoid any conflict between their own interests or those of any of their other clients and the interests of the Council.

4.3 If a councillor or a member of staff has an interest, financial, otherwise, in a contract, or proposed contract, he/she must declare it in writing to the EHoG as soon as

PART 4 – PROCUREMENT PROCEDURE RULES

he/she becomes aware of the interest. A councillor or member of staff who has an interest in a contract must not take part in the procurement or management of that contract.

5 PREVENTION OF BRIBERY AND CORRUPTION

- 5.1 A contract may be terminated immediately, and any losses to the Council arising from the termination recovered from the supplier, if the supplier, or anyone acting on his behalf (with or without the supplier's knowledge), offers or promises or gives a financial or other advantage to a councillor any member of staff or any consultant in connection with the contract.
- 5.2 Any elected councillor, member of staff or consultant who becomes aware or has reason to believe that a supplier or potential supplier has committed one of the corrupt acts referred to in Rule 4.1, must report it to the Monitoring Officer
- 5.3 The Monitoring Officer must maintain a record of all declarations of interest notified by Councillors and Officers.

6 RESPONSIBILITIES OF EXECUTIVE HEADS OF SERVICE AND HEADS OF SERVICE

- 6.1 Procurement activity in the council is devolved to individual service units, which are supported in their purchasing activities by Governance & Law, Financial Services and by the CPAB, from whom advice must be sought as necessary. Procuring officers must observe the Council's Financial Procedure Rules at all times.
- 6.2 It is the responsibility of each EHoS and HoS:
- 6.2.1 To compile and provide a list of all forecast contract opportunities to the CPAB at the beginning of each business planning year containing projections for the upcoming three years. (This is also part of the business planning process.) This list is to be updated as necessary throughout the year.
- 6.2.1 To ensure that all procurements and contracts within his/her department comply with Procurement Procedure Rules, Financial Procedure Rules and all applicable public procurement legislation.
- 6.2.2 To ensure those officers to whom they delegate their functions have received relevant training and have the necessary skills. The CPAB will from time to time in conjunction with the Training Officer organise training for staff engaged in procurement.
- 6.2.3 To plan the procurement of and manage Contracts within his/her department to ensure that contracts deliver best value, are operated effectively, efficiently and economically and are operated in accordance with the contract provisions.
- 6.2.4 To keep adequate records to show compliance with the Procurement Procedure Rules, Financial Procedure Rules and all relevant legislation. In particular it is incumbent on the EHoS and HoS to ensure each contract valued at £500 or more is listed on completion in the Contract Register.
- 6.3 At the outset of each procurement, the EHoS or HoS must:

- 6.3.1 assess the business needs,
- 6.3.2 ensure the procurement complies with corporate policies and priorities
- 6.3.3 review ethical, social and sustainability issues
- 6.3.4 consider potential contractual relationships
- 6.3.5 undertake a risk management exercise at the start of any procurement exercise, which is commensurate with the value and complexity of the procurement
- 6.3.6 undertake when appropriate a premarket testing exercise
- 6.3.7 ensure that they have the necessary authority to undertake the procurement.
- 6.3.8 (a) Prepare or obtain an estimate in writing of the probable cost of the procurement and any ongoing revenue costs arising from the procurement; and
 - (b) Ensure that adequate provision has been made within the Council's capital or revenue estimates and that proper technical and financial appraisals of the procurement have been carried out in accordance with the Council's Financial Procedure Rules.

7 ESTIMATE OF CONTRACT VALUE

- 7.1 The value of a contract is the total amount that the Council expects to pay for the contract, including any contract extension period and any options within the contract. This may be a lump sum (e.g. £50,000) or a periodic payment (e.g. £10,000 per year for a 5 year contract = £50,000). If the contract is for an uncertain term (e.g. a “rolling” Contract), the value is the amount the Council expects to pay over four years.
- 7.2 Contracts must **not** be packaged or divided into smaller units for the purpose of creating lower value contracts to avoid any provision of these Rules or EU procurement legislation. When tendering consideration must be given to the extent to which it is appropriate to divide the contract into lots to facilitate opportunities for small and medium sized enterprises and voluntary organisations.

8 USE OF FRAMEWORK AGREEMENTS

- 8.1 The use of framework agreements is permitted for any value of contract. The EHoG must be consulted and confirmation given that the Council may lawfully access the framework before a purchase. The CPAB must be informed of the use of a framework agreement.
- 8.2 In order to select a supplier for a call-off contract under a multi-supplier framework agreement or to conduct a mini competition, the procuring officer must follow the procedure set out in that Framework Agreement.

9 SPECIFICATION

- 9.1 Each procurement must be appropriately specified and selection and award criteria must be formulated in advance of inviting expressions of interest to ensure the Council obtains value for money and the procurement process is transparent.

PART 4 – PROCUREMENT PROCEDURE RULES

- 9.2 All works, goods and services must be specified by reference to European standards, or national standards if no European standards are set. The specification must be a clear and comprehensive description of the Council's requirements and should incorporate measurable and, so far as is possible, objective quality and performance criteria to enable a proper assessment to be made of the supplier's ability to meet the Council's requirements.

10 INSURANCE

- 10.1 It is the responsibility of the procuring officer, in consultation with the Executive Head of Financial Services and Executive Head of Governance to set, where appropriate, adequate levels of insurance for every procurement in respect of employers' liability, product liability, professional indemnity, third party and fire and material damage. As a guide the level of insurance required shall not unless exceptional circumstances prevail be less £10 million for employer's liability insurance, £5 million for public liability insurance and £2 million for professional indemnity insurance.
- 10.2 The procuring officer must ensure that any insurance required by the Council is held by the provider with a reputable insurance company(ies) and that the policy(ies) are renewed as necessary during the contract period.

11 TUPE

- 11.1 Where relevant, the procuring officer must consider the implications of the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and consult with the EHoG as to their application to their application.

12 DISPUTE RESOLUTION

- 12.1 The procuring officer must consider the procedure for resolving disputes arising in relation to the procurement and, where appropriate, contracts shall contain provisions for alternative dispute resolution.

13 PURCHASING SERVICE (ePAYMENTS)

- 13.1 Procuring officers must make enquiries of the Financial/Revenue and Payments Services where the procurement is of consumables. These services will advise of any existing corporate contracts or mechanisms through which the purchase is to be made.

14 ELECTRONIC PROCUREMENT

- 14.1 Systems to enable the Council to procure works, goods and services are to begin introduction in the course of the financial year 2015–2016 and details of the system will be incorporated in an appendix to these Rules.

15 ELECTRONIC TENDERING

- 15.1 Electronic tendering systems will be introduced in the course of the financial year [20142015–2015–2016](#) and details of the system will be incorporated in an appendix to these Rules.
- 15.2 Use of the electronic tendering system will become mandatory after an introductory period during which training will provided.

16 FORM OF CONTRACT

- 16.1 Each procurement must be in writing or confirmed in writing whether by way of formal contract or by exchange of correspondence. Contracts valued at £10,000 or more must be in a form approved by the EHoG.

17 CONTRACTS REGISTER

- 17.1 All contracts having a value or estimated value of £500 (five hundred pounds) or more must be entered in the central Contracts Register, which will be monitored by the CPAB. The register will specify the information that is to be held, but will include:

- contract value or estimated value
- description of contract
- name of contractor/supplier
- name of contract administrator
- start and completion dates
- payment details

18 PERFORMANCE BOND/PARENT COMPANY GUARANTEE

- 18.1 A performance bond or, in an appropriate case, a deposited sum must be obtained for any construction contract with a contract sum in excess of £100,000.00 unless the procuring officer, in consultation with the Head of Financial Services, deems it to be unnecessary having undertaken an appropriate risk assessment.
- 18.2 For any other contract for works, goods or services having a value of £100,000 or more, the procuring officer must consider in consultation with the Head of Financial Services whether it is appropriate to take security in the form of a Performance Bond or Parent Company Guarantee. In each case, the procuring officer must record his decision with reasons.

19 DEEDS, SEALING AND SIGNING OF CONTRACTS

- 19.1 Any contract valued at £100,000 or more must, unless the EHoG determines otherwise, be sealed with the common seal of the Council. In exceptional cases where the EHoG decides that a contract which amounts to or exceeds £100,000 in value does not require the common seal, it must be signed, subject to compliance with the Council's Financial Procedure Rules, by the Managing Director and one other EHoS or by two EHoS.
- 19.2 Contracts not exceeding £100,000 in value must be signed by the relevant EHoS or HoS (or, subject to compliance with the Council's Financial Procedure Rules, his or her nominee) or may be sealed with the common seal of the Council in cases where the EHoG considers it to be appropriate.
- 19.4 Before a Contract can be sealed by the Council, the Officer must provide the relevant authority to award in writing from the appropriate decision maker.

20 CONTRACT DOCUMENTS

- 20.1 Wherever practicable, work under a contract must not start until the contract documents and all other procedures have been completed to the satisfaction of the Head of Service or, in the case of a procurement valued at £100,000 or more, the Head of Service and the EHoG. A letter of intent must not be issued unless approved by the EHoG.

PART 4 – PROCUREMENT PROCEDURE RULES**21 DELAY IN COMPLETING THE CONTRACT**

- 21.1 If a written contract is not signed or sealed, as the case may be, within a period of six months from the date of the decision to enter into it, it shall be the duty of the procuring officer to report the details to the lead councillor for the procurement activity.

22 NOMINATING SUB-CONTRACTORS AND SUPPLIERS

- 22.1 Where it is decided to be in the Council's interest, that a sub-contractor or supplier should be nominated to a main contractor, at least three tenders for the nomination must be invited in accordance with one of the methods described in Table 1 below.
- 22.2 The invitation to tender as sub-contractors or suppliers must require an undertaking from any tenderer to enter into a contract with the main contractor, including an obligation to indemnify the main contractor in respect of matters included in the sub contract.

23 CONFIDENTIALITY OF TENDERS AND QUOTATIONS

- 23.1 All matters concerned with quotations and tenders must be treated as confidential, including the correction of errors, and any information, discussion or correspondence entered into should be confined to those officers of the Council who are directly concerned and any consultant retained by the Council irrespective of the procurement process in question.
- 23.2 The amount or value of any tender or quotation which is to be considered by the Council or Executive shall not be made public before the meeting and shall be omitted from any written report on the subject which may be circulated before the meeting unless the report is marked as confidential.

24 AMENDMENTS TO PROCUREMENT PROCEDURE RULES

- 24.1 The EHoG shall be empowered to review the Procurement Procedure Rules from time to time and as often as may be necessary in consultation with the lead councillor and, following formal approval by full Council, shall publish details of amendments.

Part 3**25 THE PROCUREMENT PROCESS**

- 25.1 The process to be adopted is determined by the value of the contract (see paragraph 6 above). The procedure must be both appropriate and proportionate to the value of the contract. It must ensure that the council achieves best value which is to be assessed by an evaluation of both the price and quality of competitive bids so as to determine the most economically advantageous over the life of the contract.

- 25.2 Procuring officers must as a minimum obtain quotations and tenders as follows:

PART 4 – PROCUREMENT PROCEDURE RULES

	Goods, services and works	Goods, services and works	All goods and services other than Schedule 3 services		Services covered by Schedule 3 ² and those not covered by the regulations	Services covered by Schedule 3 ² and those not covered by the regulations	Works	
Value of contract aggregated over 4 years (excluding VAT)	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,933) ³	The EU threshold for standard goods and services (£173,934) ³ and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015) ³	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015) ³	£100,001 up to - relevant EU threshold for works (£4,348,350) ³	The relevant EU threshold for works (£4,348,350) ³ and over
Minimum requirements	1 written quotation demonstrating value for money	3 written quotations ¹	3 formal tenders ¹	Full EU tender process in accordance with the Public Contracts Regulations,	3 formal tenders ¹	Light-touch tender regime under regulations 74 to 77	3 formal tenders ¹	Full EU tender process in accordance with the Public Contracts Regulations

Table 1

*¹ For sub-threshold procurements of over £25K which are covered by the Public Contracts Regulations 2015, the procedures set out in regulations 109 to 112 inclusive will need to be followed in obtaining those quotations or tenders. This will equally apply to Schedule 3 contracts under their higher threshold.

**² The social and other specific services mentioned in Schedule 3 to the 2015 Regulations have a higher threshold of Euro 750K, and for those services there is a light-touch procurement regime (referred to in Regulation 74) even over that threshold.

***³ The EU threshold for goods and other services (i.e. non-Schedule 3) is Euro 207K, and for works it is Euro 5,186,000. The GBP sums shown in brackets are meant to represent the official GBP equivalents of these Euro sums. For each of the EU thresholds a new official GBP equivalent is expected to take effect as at 1st January 2016 and every two years thereafter, and will replace the stated GBP figures. These official equivalents must be used – the respective market values of the Euro and the GBP from time to time cannot be used.

Appendix 1
PART 4 – PROCUREMENT PROCEDURE RULES

- 25.3 A summary of these processes and requirements is at **Appendix 1**.
- 25.4 Procuring officers will be issued with the Council's Manual of Procurement Practice providing detailed information and highlighting issues which may arise in respect of which further advice must be sought. The Manual must be followed. Advice must be sought as appropriate from Governance and Law or the CPAB. The following is a summary of the key steps to be taken when engaging in a procurement exercise.
- 25.5 Preparation of Business case:
- 25.5.1 A business case proportionate to the complexity, risk and value of any proposed procurement must be prepared setting out the issues in sufficient detail to enable an informed decision to be taken.
- 25.6 Pre-Tender market research and consultation, with a view to preparing the procurement and informing economic operators in the market place of plans and requirements:
- 25.6.1 Advice may be sought from independent experts, authorities or from market participants and may be used in the planning and conduct of the procurement process provided that the consultation does not have the effect of distorting competition and does not breach requirements for non-discrimination and transparency. It is recommended advice be sought from the EHoG as appropriate.
- 25.7 Advertising.
- 25.7.1 If a Contract (**regardless of value**) may be of interest to both local suppliers and more widely including suppliers in EU member states (cross border interest), a sufficiently accessible advertisement must be published. Generally, the greater the likely interest, the wider the advertising coverage should be. At a minimum advertisements should appear on the Council's web site (mandatory for all contracts above £10,000) and may be placed on regional and national portals in addition to local papers and national specialist journals as appropriate.
- In respect of sub-threshold contracts, regulation 109 of the 2015 regulations may require tenders to be advertised on the Cabinet Office's Contracts Finder.
- OJEU notices are mandatory for procurements exceeding the threshold values specified by the current European Directive. Procuring officers are required to keep a record of their consideration of and decision in respect of the potential for cross border interest
- 25.8 Route to market
- 25.8.1 The appropriate route to market must be selected. This may be an Open procedure through an Invitation to Quote (ITQ) or an Invitation to Tender (ITT) or a Restricted Procedure when candidates are invited to submit initial information respond to a Pre-Qualification Questionnaire (PQQ) and a number are selected to receive an ITT on the basis of the information provided. to receive an ITT. Additional procedures including Competitive Dialogue, the proposed the Competitive Dialogue with Negotiation, the and a Negotiated Procedure Procedure and Innovation Partnership may be available but must be selected only after consultation with the EHoG and the CPAB.

25.9 Evaluation criteria and scoring mechanism:

- 25.9.1 Each procurement must be properly specified and the evaluation criteria and the scoring mechanism clearly explained in the Invitation to Tender or Invitation to Quote.
- 25.9.2 Award Criteria must be designed to assess the suitability of the offer being made and must be appropriate to the purchase so as to assess which proposal is the most economically advantageous over the life of the contract.

25.10 Return of Quotations and Tenders:

- 25.10.1 Quotations must be returned to the respective EHoS or HoS by whom they will be held securely and unopened until after the closing time and date for receipt of responses. All responses must be opened at one time in the presence of two persons.
- 25.10.2 Tenders must be returned to the EHoG. They will be retained securely unopened until after the date and time for receipt of responses. All tenders must be opened at one time and in the presence of a councillor, the EHoG or his or her nominee and the HoS for the procurement activity or his/her nominee.
- 25.10.3 Any tender received after the date and time indicated for receipt will be retained unopened by EHoG until all other valid tenders have been opened and recorded. It will then be opened and returned to the sender. Exceptionally the EHoG may, on being satisfied that there is evidence of posting in time for delivery by the due date authorise acceptance of the tender provided other tenders have not already been opened.
- 25.10.4 A record shall be kept for both quotations and tenders of:
- (i) the nature of the works, goods or service to be supplied;
 - (ii) the authority for entering into the contract;
 - (iii) the name of each person by or on whose behalf a quotation or tender was submitted;
 - (iv) the amount of each quotation or tender ;
 - (v) the date and time of opening of the quotation or tenders
 - (vi) the names of those present at the opening of the quotation or tender.
- 25.10.5 A tender or quotation that does not comply with the instructions to tenders or is conditional must be treated as non-compliant and rejected. Non-compliant tenders or quotations will not be evaluated. The Council's decision in this respect is final.

25.11 Evaluation Panels:

- 25.11.1 The evaluation panel must consist as a minimum of the procurement officer [\(when appointed\)](#), Head of Service or their delegate, and the Head of Finance or their delegate. The evaluation panel may include service users and external consultants. The panel may further include those with specific expertise in the subject matter

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- 25.11.2 Negotiations with applicants who have tendered for a contract through an Open or Restricted procedure are not permitted. Clarification of a submission may be sought by the evaluation panel but must not result in any substantive changes to the Tender. Clarification questions and responses must be carefully documented.
- 25.11.3 A tenderer may be permitted to amend his tender sum where there is an obvious arithmetic or similar error in the priced bill of quantities or schedule of rates in which case the tender sum shall be corrected accordingly and the contractor/supplier notified in order to facilitate withdrawal of the submitted tender if the contractor/supplier so determines.
- 25.12 Standstill period:
- 25.12.1 For procurements subject to the OJEU procedure standstill letters prior to the award of contract are mandatory and for other procurements are strongly recommended. If it is not proposed to provide feedback the CPAB must be informed and the reasons provided.

Part 4**26 CONTRACT TERMS**

- 26.1 Every contract entered into by the Council for the provision of works, goods or services which exceeds £500.00 in value (and in any other case where the EHOS or HOS shall require) shall:
- 26.1.1 Specify the works to be executed and goods or services to be supplied;
- 26.1.2 State the price to be paid detailing the frequency and method of calculation together with a statement as to the amount of any discounts or other deductions and requiring payment within 30 days of receipt of a valid invoice;
- 26.1.3 State the period or times within which the contract is to be performed;
- 26.1.4 Prohibit any assignment or sub-letting of the contract without the express agreement in writing of the Council;
- 26.1.5 State that the Council may cancel the contract and recover any resulting losses if the contractor, his employees or anyone acting on his behalf, with or without his knowledge, does anything improper to influence the Council or commits an offence under Bribery Act 2010;
- 26.1.6 Require the supplier to comply with the requirements of the Health and Safety at Work etc. Act 1974, and any other relevant Acts, Regulations or Orders pertaining to health and safety;
- 26.1.7 Require the contractor to comply with the Equality Act 2010 including where relevant the Public Sector Equality Duty;
- 26.1.8 State that if the Contractor enters into liquidation or administration, the Council is entitled to cancel the contract and recover any resulting losses

- 26.2 For contracts with a value in excess of £100,000, if appropriate, make provision for the payment of liquidated damages by the contractor where he fails to complete the contract within the time specified. The level of liquidated damages must be determined by the EHoS or HOS;
- 26.3 For every contract with a value of £100,000 or more, require and take sufficient security for the due performance of the contract, unless the Head of Financial Services, in consultation with the EHoG, deems this inappropriate;
- 26.4 For contracts which permit sub-contracting the contractor is to be required to impose on his sub-contractors equivalent contractual requirements in terms of equality, health and safety, bribery and corruption and payment provisions ;
- 26.5 The terms of appointment of a consultant must include the following provisions requiring the consultant to:
- 26.5.1 Comply in all respects with the Council's Procurement Procedure Rules and Financial Procedure Rules;
- 26.5.2 Consult the Council's Executive Head of Governance in respect of all tender documents and obtain written approval for such documents prior to tendering;
- 26.5.3 Maintain adequate records relating to the contract and produce them to the procuring officer whenever requested during the contract; and
- 26.5.4 Pass all relevant records to the procuring officer on completion of the contract.

26.7 Every contract entered into by the Council shall (where considered appropriate by the EHoG) contain suitable provisions to ensure that a) the Council can terminate the contract in the situations specified in Regulation 73 of the 2015 Regulations, and in any other case where the contract has been entered into in breach of the Council's Procurement Procedure Rules and b) the Council complies with Regulations 113 (payment of invoices within 30 days by the Council and its contractors and subcontractors) in each case the wording of such provision to be such as the EXoG specifies from time to time

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Appendix 1

QUICK GUIDE TO PROCUREMENT: Minimum requirements

	Goods, services and works	Goods, services and works	All goods and services other than Schedule 3 services		Services covered by Schedule 3 and services not covered by the regulations	Services covered by Schedule 3 and services not covered by the regulations	Works		Accessing Framework agreements
Value of contract aggregated over 4 years (excluding VAT)	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,934) (£173,933)	The EU threshold for standard goods and services (£173,934) and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	£100,001 – up to relevant EU threshold for works (£4,348,350)	The relevant EU threshold for works (£4,348,350) and over	Not relevant
Minimum tendering requirement	1 written quote evidencing value for money.	3 written quotes.	3 formal tenders	Full EU tender process (Public Contracts Regulations) ¹	3 formal tenders	Light-touch tender regime under regulations 74 to 77	3 formal tenders	Full EU tender process (Public Contracts Regulations) ²	Confirmation Framework accessible to authority. Comply with framework conditions recall off. Confirm with legal services
Who authorises process?	EHoS/HoS ³ Budget holder	EHoS/HoS/ Budget holder	EHoS/HoS + CPAB ⁴	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB & briefing note to CMT	EHoS/HoS + CPAB. Briefing note to CMT on values in excess of £100,000

¹ Different procedures can apply: ~~open; restricted; negotiated; competitive dialogue; competitive negotiated~~. Legal Services will approve most appropriate route.

² Different procedures can apply: ~~open; restricted; negotiated; competitive dialogue; competitive negotiated~~. Legal Services will approve most appropriate route.

³ EHoS – Executive Head of Service; HoS – Head of Service

⁴ CPAB – Corporate Procurement Advisory Board

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	Goods, services and works	Goods, services and works	<u>All goods and services other than Schedule 3 services</u>		<u>Services covered by Schedule 3 and services not covered by the regulations</u>	<u>Services covered by Schedule 3 and services not covered by the regulations</u>	Works		Accessing Framework agreements
<u>Value of contract aggregated over 4 years (excluding VAT)</u>	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,933)	The EU threshold for standard goods and services (£173,934) and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	£100,001 – up to relevant EU threshold for works (£4,348,350)	The relevant EU threshold for works (£4,348,350) and over	Not relevant
<u>Where should advert be placed?</u>	No advert required ⁵	Consider use of website, portals suitable media ⁶ <u>Use of Contract Finder required over £25K</u>	Appropriate medium - web site, portals, professional journals etc. <u>Use of Contract Finder required</u>	Advert in OJEU website., and other media	<u>Appropriate medium - web site, portals, professional journals etc. Use of Contract</u>	<u>Advert in OJEU website., and other media</u>	Advert on website and other media <u>Use of Contract Finder</u>	Advert in OJEU Also website and other media	No advert required
<u>Who receives quotes/tenders?</u>	EHoS/HoS	EHoS/HoS	EHog Recorded opening with Councillor present	EHog Recorded opening with Councillor present	<u>EHog Recorded opening with Councillor present</u>	<u>EHog Recorded opening with Councillor present</u>	EHoG Recorded opening with Councillor present	EHoG Recorded opening with Councillor present	EHoS

⁵ Use eTendering portal from 1 April 2015.

⁶ Use eTendering portal from 1 April 2015

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	Goods, services and works	Goods, services and works	<u>All goods and services other than Schedule 3 services</u>		<u>Services covered by Schedule 3 and services not covered by the regulations</u>	<u>Services covered by Schedule 3 and services not covered by the regulations</u>	Works		Accessing Framework agreements
<u>Value of contract aggregated over 4 years (excluding VAT)</u>	UNDER £10,000	£10,001 - £100,000	£100,001 to the EU threshold for standard goods and services (£173,933)	The EU threshold for standard goods and services (£173,934) and over	£100,000 to the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	Over the relevant EU threshold for Schedule 3 services (£625K as at April 2015)	£100,001 – up to relevant EU threshold for works (£4,348,350)	The relevant EU threshold for works (£4,348,350) and over	Not relevant
Is a contract required?	Yes, we have to publish all contracts over £500. May be evidenced by order form with GBC appropriate terms and conditions attached.	Yes. Advice from Legal Service.	Yes. Agreed by Legal Service and under seal.	Yes. Agreed by Legal Service and under seal.	<u>Yes. Agreed by Legal Service and under seal.</u>	<u>Yes. Agreed by Legal Service and under seal.</u>	Yes. Agreed by Legal Service and under seal.	Yes. Agreed by Legal Service and under seal.	Yes. Agreed by Legal Service. May be under seal .
Evaluation	Budget Holder	Evaluation panel	Evaluation panel	Evaluation panel	<u>Evaluation panel</u>	<u>Evaluation panel</u>	Evaluation panel	Evaluation panel	Evaluation panel for mini-competition
Who approves exemption from rules?	EHoS/HoS	CPAB, Managing Director/ Monitoring Officer and Lead Councillor	CPAB, Managing Director/ Monitoring Officer and Lead Councillor	No exemption	<u>CPAB, Managing Director/ Monitoring Officer and Lead Councillor</u>	<u>No exemption</u>	CPAB, Managing Director/ Monitoring Officer/ Lead Councillor	No exemption	N/A

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PROCUREMENT PROCEDURE RULES – STEPS TO BE TAKEN TO PROCURE

These notes complement the *Quick Guide to Procurement*. These steps are part of the formal rules for undertaking procurement and bound by the formalities of the Council's Constitution. [Procuring officers will be expected to keep a full trail of documents relating to each procurement undertaken.](#)

STEP 1
IDENTIFY NEED

- You must prepare for a procurement process in good time, having identified in your service/business plan that procurement for goods and/or services and/or works will be required during the lifespan of the plan. This will allow for a legitimate fairer procurement cycle and enable the proper legal guidance necessary to carry out the procurement. The process for urgent procurement is set out in separate guidance.
- Document what you want to do with your procurement and keep it on a file.
- You must record on the file that you have your manager's authority to perform the procurement before you take any steps.

STEP 2
DEVELOP BUSINESS CASE

- Before you start the process, prepare and document an estimated value of the contract you wish to procure.
- You must ensure that you have adequate budget provision for the procurement you wish to undertake or have commenced the process for obtaining funds (e.g. CMT approval; Executive approval) in accordance with the financial procedure rules.
- You must determine the appropriate form of tender or quotation process to follow. You can use the Quick Guide to Procurement that forms part of these procedure rules (and the Council's Constitution) in conjunction with the Council's Manual of Procurement Practice. In either case, you must consult with Legal Services before progressing further. The form of tender might be to use a framework agreement. Use the Manual to determine whether a framework agreement will meet your objectives.
- The guidance suggests the minimum in terms of procedures. You must remember that we are aiming for the best value for Guildford residents, which we may achieve by obtaining a greater number of quotes or tenders than specified.

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<p>STEP 3</p> <p>IDENTIFY STAKEHOLDERS</p>	<ul style="list-style-type: none"> You may enter into pre-market consultation with potential suppliers to establish that the market can meet your requirement for good, works or services. Dialogue with the market pre-procurement is encouraged not only to bring the opportunity to the attention of the market but also to assist in a greater understanding of the market place for specific products or services. We purchase such a wide range of goods and services that it is impossible, particularly in a smallish authority like Guildford, to understand the vagaries and needs of all markets. Pre-engagement will assist in the understanding of the feasibility of the requirement, market capacity and the acceptable level of risk in an individual market. You must take care however, to ensure pre-market engagement does not distort competition or violate the transparency and non-discrimination principles. This exercise may also shape your thinking about what alternatives might exist or how suppliers might deliver your requirements and the extent to which there is cross border interest.
<p>STEP 4</p> <p>DEVELOP TENDER DOCUMENTATION</p>	<ul style="list-style-type: none"> A specification and selection criteria must be prepared in advance of your request for tenders or quotations. You must keep these on the procurement file ready to use for evaluating the tenders or quotations you receive. You are seeking the best value for the Council and selection criteria must reflect our ability to secure best value by balancing cost and quality to produce the most economically advantageous solution over the lifetime of the contract.
<p>STEP 5</p> <p>UNDERTAKE PROCUREMENT PROCESS</p>	<ul style="list-style-type: none"> Determine the most appropriate procurement process Advertise Issue documentation Evaluate tenders/quotations returned Feedback
<p>STEP 6</p> <p>AWARD AND IMPLEMENTATION</p>	<ul style="list-style-type: none"> Work under contract must not start until you have completed the contract documents and all other procedures to the satisfaction of the EHoS/HoS. A letter of intent must not be issued unless approved by EHoG

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OF CONTRACT

STEP 7
CONTRACT MANGEMENT

- All contracts will have a contract manager nominated by the EHoS or HoS.
- The contract manager will be responsible to the EHoS /HoS for entering contracts over £500 onto the contracts register, including appropriate markers for when the contract is due for renewal or termination. The contract manager must enter the contract on the register immediately following the contract being agreed with the supplier.
- The role of the contract manager is to manage the contract throughout its duration, as well as enforce duties owed to the Council and to take responsibility for those duties owed to the contractor.
- The contract manager will –
 - monitor performance of the contractor against the agreed level of service,
 - monitor the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate,
 - ensure the contractors’ due diligence with all appropriate health and safety obligations,
 - facilitate the resolutions of issues between the contractor and users of the service,
 - ensure prompt payment of invoices and compliance with all financial regulations and contract standing orders during the lifetime of the contract,
 - ensure that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time.

STEP 8
LESSONS LEARNED

- All contract managers will use their knowledge and experience gained from each procurement exercise to inform and advise other contract managers. This knowledge sharing will be facilitated by the CPAB in order that mistakes are not repeated and good practice appropriately disseminated.

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APPENDIX 2

Regulations 73, 74 to 77, 109 to 112, and 113 of the 2015 regulations .

73. Termination of contracts

73.—(1) Contracting authorities shall ensure that every public contract which they award contains provisions enabling the contracting authority to terminate the contract where—

(a) the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9);

(b) the contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1), including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or

(c) the contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

(2) Those provisions may address the basis on which the power is to be exercisable in those circumstances, for example by providing for notice of termination to be given and by addressing

consequential matters that will or might arise from the termination.

(3) To the extent that a public contract does not contain provisions enabling the contracting authority to terminate the contract on any of the grounds mentioned in paragraph (1), a power for

the contracting authority to do so on giving reasonable notice to the contractor shall be an implied

term of that contract.

Social and Other Specific Services

74. Award of contracts for social and other specific services

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74. Public contracts for social and other specific services listed in Schedule 3 shall be awarded

in accordance with this Section.

75 Publication of notices

75.—(1) Contracting authorities intending to award a public contract for the services referred to

in regulation 74 shall make known their intention by any of the following means:—

(a) by means of a contract notice, which shall contain the information referred to in part H of Annex V to the Public Contracts Directive; or

(b) by means of a prior information notice, which shall—

(i) be published continuously,

(ii) contain the information set out in part I of Annex V to the Public Contracts Directive,

(iii) refer specifically to the types of services that will be the subject-matter of the contracts to be awarded, and

(iv) indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing.

(2) Paragraph (1) shall not apply where a negotiated procedure without prior publication could

have been used, in accordance with regulation 32, for the award of a public service contract.

(3) Contracting authorities that have awarded a public contract for the services referred to in regulation 74 shall make known the results of the procurement procedure by means of a contract

award notice, which shall contain the information referred to in part J of Annex V to the Public

Contracts Directive.

(4) Contracting authorities may group contract award notices on a quarterly basis, in which case

they shall comply with paragraph (5) by sending the grouped notices within 30 days of the end of

each quarter.

(5) Contracting authorities shall send the notices referred to in this regulation for publication in

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accordance with regulation 51.

76 Principles of awarding contracts

76.—(1) Contracting authorities shall determine the procedures that are to be applied in connection with the award of contracts subject to this Section, and may take into account the specificities of the services in question.

(2) Those procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) In particular, where, in accordance with regulation 75, a contract notice or prior information

notice has been published in relation to a given procurement, the contracting authority shall, except in the circumstances mentioned in paragraph (4), conduct the procurement, and award any

resulting contract, in conformity with the information contained in the notice about—

(a) conditions for participation,

(b) time limits for contacting the contracting authority, and

(c) the award procedure to be applied.

(4) The contracting authority may, however, conduct the procurement, and award any resulting

contract, in a way which is not in conformity with that information, but only if all the following conditions are met:—

(a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;

(b) the contracting authority has, before proceeding in reliance on sub-paragraph (a)—

(i) given due consideration to the matter,

(ii) concluded that sub-paragraph (a) is applicable,

(iii) documented that conclusion and the reasons for it in accordance with regulation 84(7) and (8), and

(iv) informed the participants of the respects in which the contracting authority intends to proceed in a way which is not in conformity with the information contained in the notice.

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(5) In paragraph (4)(b)(iv), “participants” means any economic operators which have responded

to the notice and have not been informed by the contracting authority that they are no longer under

consideration for the award of a contract within the scope of the procurement concerned.

(6) All time limits imposed on economic operators for the purposes of this regulation, whether

for responding to a contract notice or taking any other steps in the relevant procedure, shall be

reasonable and proportionate.

(7) Without prejudice to the generality of paragraph (1), and subject to the other requirements of

this Chapter, contracting authorities may apply procedures for the purposes of this regulation which correspond (with or without variations) to procedures, techniques or other features provided

for in Chapter 2, as well as procedures which do not.

(8) In relation to the award of contracts subject to this Section, contracting authorities may take

into account any relevant considerations, including —

(a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;

(b) the specific needs of different categories of users, including disadvantaged and vulnerable

groups;

(c) the involvement and empowerment of users; and

(d) innovation.

77 Reserved contracts for certain services

77.—(1) Contracting authorities may reserve to qualifying organisations the right to participate

in procedures for the award of reservable public contracts.

(2) For that purpose, a contract is a reservable public contract only if it is exclusively for one or

more of the services which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4,

79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7,

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80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-

7, 98133000-4, and 98133110-8.

(3) In this regulation, “qualifying organisation” means an organisation which fulfils all of the following conditions:—

(a) its objective is the pursuit of a public service mission linked to the delivery of services referred to in paragraph (2);

(b) profits are reinvested with a view to achieving the organisation’s objective, and any distribution of profits is based on participatory considerations;

(c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract) —

(i) based on employee ownership or participatory principles, or

(ii) require the active participation of employees, users or stakeholders; and

(d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.

(4) The maximum duration of a contract awarded under this regulation shall not be longer than 3

years.

(5) Where a contracting authority exercises the power of reservation conferred by paragraph (1),

the call for competition shall make reference to Article 77 of the Public Contracts Directive.

(6) This regulation does not apply in relation to the procurement of health care services for the

purposes of the NHS within the meaning and scope of the National Health Service (Procurement,

Patient Choice and Competition) (No. 2) Regulations 2013(a).

CHAPTER 8

BELOW-THRESHOLD PROCUREMENTS

109. Scope of Chapter 8

109.—(1) Subject to paragraphs (2) and (5), this Chapter applies to procurements by contracting

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authorities with respect to public contracts where Part 2 does not apply because the estimated

value of the procurement is less than the relevant threshold mentioned in regulation 5.

(2) This Chapter does not apply in any of the following cases:—

(a) where Part 2 would not have applied even if the estimated value of the procurement had been equal to or greater than the relevant threshold mentioned in regulation 5;

(b) where the contracting authority is a central government authority and the procurement has

a value net of VAT estimated to be less than £10,000;

(c) where the contracting authority is—

(i) a sub-central contracting authority or an NHS Trust, and

(ii) the procurement has a value net of VAT estimated to be less than £25,000;

(d) the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition)

(No. 2) Regulations 2013

(3) For the purposes of paragraph (2)(b) and (c) and regulation 111(2), the estimated value of the

procurement shall be calculated on the basis set out in regulation 6(1) to (5), (7) to (10) and (16) to

(19), but as if the reference to a call for competition in regulation 6(7) were a reference to the publication of information on Contracts Finder in accordance with regulation 110.

(4) A procurement shall not be subdivided with the effect of preventing it from falling within the

scope of this Chapter, unless justified by objective reasons.

(5) Regulations 110 and 112 do not apply where the contracting authority is a maintained school

or an Academy.

110. Publication of contract opportunities on Contracts Finder

110.—(1) Paragraph (2) applies where a contracting authority advertises a contract award opportunity.

(2) In those circumstances, the contracting authority shall publish information about the

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opportunity on Contracts Finder, regardless of what other means it uses to advertise the opportunity.

(3) Where a contracting authority is required by paragraph (2) to publish information on Contracts Finder, it shall do so within 24 hours of the time when it first advertises the contract award opportunity in any other way.

(4) A contracting authority may publish on Contracts Finder information about a contract award opportunity even if the contracting authority does not advertise the opportunity in any other way.

(5) For the purposes of this regulation—

(a) a contracting authority advertises an opportunity if it does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially openended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract; and

(b) accordingly, a contracting authority does not advertise an opportunity where it makes the opportunity available only to a number of particular economic operators who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a framework agreement), regardless of how it draws the opportunity to the attention of those economic operators.

(6) In this regulation, “contract award opportunity” means the opportunity to be awarded a public contract by a contracting authority, regardless of how specific the opportunity is.

(7) For example, advertising by means of techniques similar to prior information notices used to

call for competition under Part 2 amounts to the advertising of contract award opportunities even

though the specific contracts that may in due course be awarded within the scope of such procurements are not identified individually in the advertising.

(8) The information to be published on Contracts Finder shall include at least the following:—

(a) the time by which any interested economic operator must respond if it wishes to be considered;

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(b) how and to whom such an economic operator is to respond; and

(c) any other requirements for participating in the procurement.

(9) For the purposes of paragraph (8)(a), the time shall be such as to allow the economic operators a sufficient but not disproportionate period of time within which to respond.

(10) The contracting authority shall ensure that the information remains published on Contracts

Finder until the time mentioned in paragraph (8)(a).

(11) Paragraph (10) does not apply where the procedure is, for any reason, abandoned before

that time.

(12) Where a contracting authority publishes information on Contracts Finder under this regulation, the contracting authority shall—

(a) by means of the internet, offer unrestricted and full direct access free of charge to any relevant contract documents; and

(b) specify in the information published on Contracts Finder the internet address at which those documents are accessible.

(13) But paragraph (12)(a) does not require a contracting authority to provide such access where

the access cannot be offered for a relevant reason.

(14) In paragraph (13), “relevant reason” means any reason which, in accordance with regulation 53(3) and (4), would have applied if the procurement had been covered by Part 2 and

the relevant contract documents had been procurement documents.

(15) For the purposes of this regulation, a document is a relevant contract document if—

(a) it contains information about the opportunity which goes beyond the information published on Contracts Finder, and

(b) that information is intended by the contracting authority to be taken into account by those responding to the advertisement.

(16) In complying with this regulation, contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office in relation to—

(a) the form and manner in which information is to be published on Contracts Finder;

(b) what is a sufficient but not disproportionate period of time for the purposes of paragraph

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(9).

111. Assessing suitability etc

111.—(1) A contracting authority shall not include a pre-qualification stage in a procurement.

(2) Where the relevant threshold for the purposes of regulation 109(1) is that mentioned in regulation (5)(1)(a) or (d), paragraph (1) of this regulation applies only if the estimated value of

the procurement is less than the lower threshold mentioned in paragraph (3).

(3) The lower threshold is the threshold mentioned in—

(a) regulation 5(1)(b) where the contracting authority is a central government authority;

(b) regulation 5(1)(c) where the contracting authority is a sub-central contracting authority.

(4) In paragraph (1), “pre-qualification stage” means a stage in the procurement process during

which the contracting authority assesses the suitability of candidates to perform a public contract

for the purpose of reducing the number of candidates to a smaller number who are to proceed to a

later stage of the process.

(5) In any event, contracting authorities may ask candidates to answer suitability assessment questions only if each such question is—

(a) relevant to the subject-matter of the procurement; and

(b) proportionate.

(6) In paragraph (5), “suitability assessment question” means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status

or financial standing.

(7) In complying with this regulation, contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office, which may include guidance on how to establish and

assess, without infringing paragraph (5), whether candidates meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.

(8) Where a contracting authority conducts a procurement in a way which represents a

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reportable deviation from the guidance issued under paragraph (7), the contracting authority shall

send to the Cabinet Office a report explaining the deviation.

(9) For that purpose, something is a reportable deviation only if it falls within criteria laid down

for that purpose in guidance issued under paragraph (7).

(10) In this regulation, “candidate” means an economic operator that wishes to be considered for

the award of a public contract.

112. Publication of information on Contracts Finder about contracts awarded

112.—(1) Where a public contract is awarded, the contracting authority shall, within a reasonable time, publish on Contracts Finder at least the following information:—

- (a) the name of the contractor;
- (b) the date on which the contract was entered into;
- (c) the value of the contract;
- (d) whether the contractor is a SME or VCSE.

(2) But the contracting authority may withhold information from publication where its release—

- (a) would impede law enforcement or would otherwise be contrary to the public interest,
- (b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or
- (c) might prejudice fair competition between economic operators.

(3) In complying with this regulation, contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office in relation to—

- (a) the form and manner in which the information is to be published on Contracts Finder; and
- (b) what is a reasonable time for the purposes of paragraph (1).

(4) In paragraph (1)(d)—

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises(a); and

PART 4 – PROCUREMENT PROCEDURE RULES

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

113. Payment of undisputed invoices within 30 days by contracting authorities, contractors and subcontractors

113.—(1) This regulation applies to all public contracts except the following:—

(a) contracts for the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013(b);

(b) contracts awarded by a contracting authority which is a maintained school or an Academy.

(2) Contracting authorities shall ensure that every public contract which they award contains suitable provisions to require the following:—

(a) that any payment due from the contracting authority to the contractor under the contract is

to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;

(b) that any invoices for payment submitted by the contractor are considered and verified by the contracting authority in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and

(c) that any subcontract awarded by the contractor contains suitable provisions to impose, as between the parties to the subcontract—

(i) requirements to the same effect as those which sub-paragraphs (a) and (b) require to be imposed as between the parties to the public contract; and

(ii) a requirement for the subcontractor to include in any subcontract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those required by this sub-paragraph (c).

(3) Paragraph (2) is without prejudice to any contractual or statutory provision under which any

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payment is to be made earlier than the time required by that paragraph.

(4) In complying with paragraph (2), contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office.

(5) Such guidance may, in particular, recommend model provisions, including provisions defining the circumstances in which an invoice is to be regarded as being, or as having become,

valid and undisputed including, for example—

(a) provisions deeming an invoice to have become valid and undisputed if not considered and

verified in a timely manner; and

(b) addressing what is to be considered, for that purpose, to be a timely manner in various circumstances.

(6) To the extent that a public contract does not contain express provisions dealing with any of

the matters which, in accordance with paragraph (2), should have been contained in that contract

or subcontract, it shall be an implied term of the contract that—

(a) any payment due under it from the contracting authority to the contractor is to be made no

later than the end of a period of 30 days from the date on which the contracting authority completes any process of verification that the invoice is valid and undisputed;

(b) the contracting authority is to consider and verify any invoice submitted by the contractor in a timely manner with a view to ascertaining whether the invoice is valid and undisputed; and

(c) the contractor will include in any subcontract which it awards provisions—

(i) imposing, as between the parties to that subcontract, requirements to the same effect as those which sub-paragraphs (a) and (b) refer to as between the parties to the public contract, and

(ii) requiring the subcontractor party to that subcontract to include in any subcontract which it in turn awards provisions imposing, as between the parties to that subcontract, requirements to the same effect as those referred to in paragraphs (i) and

(ii) of this sub-paragraph.

PART 4 – PROCUREMENT PROCEDURE RULES

(7) Every financial year, each contracting authority shall publish on the internet statistics showing, for the preceding financial year, how far the contracting authority has actually complied

with its obligations under this regulation to make payments within 30 days, including—

(a) the proportion of invoices that were paid in accordance with those obligations, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with those obligations;

(b) the total amount of any liability (whether statutory or otherwise) to pay interest which accrued by virtue of circumstances amounting to a breach of those obligations; and

(c) the total amount of interest actually paid in discharge of any such liability (including any which had accrued before the beginning of the period to which the statistics relate).

(8) In paragraph (7), “publish on the internet” means—

(a) make freely available on the internet; and

(b) maintain such availability, subject to temporary interruptions for technical reasons, until the publication under paragraph (7) of the statistics for the following financial year.

(9) In complying with paragraph (7), contracting authorities shall have regard to any guidance

issued by the Minister for the Cabinet Office.

(10) Such guidance may, in particular, recommend model templates for presenting the statistics.

(11) In this regulation—

“financial year” means the period in respect of which the accounts of the contracting authority

are prepared;

“subcontract” means a contract between two or more suppliers (at any stage of remoteness from the contracting authority in a subcontracting chain) made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of a public contract; and

“supplier” means a party to a contract or subcontract under which that party is to execute any

works, supply any products or provide any services.

Corporate Governance and Standards Committee Report

Report of Head of Executive Head of Governance

Author: Ola Dejo-Ojomo

Tel: 01483 444106

Email: Ola.Dejo-Ojomo@guildford.gov.uk

Date: 26 March 2015

Corporate Governance and Standards Committee – work programme

Recommendation

That the Committee:

1. comment on proposals for it to consider Treasury Management reports
2. consider and approve its work programme, as detailed in Appendix 1 to this report.

Reason for recommendations:

1. To ensure the Council effectively scrutinises its Treasury Management strategy and policies
2. To allow the Committee to approve its work programme for the next year.

1. Purpose of report

- 1.1 The draft work programme sets out the items to be considered by this Committee over the next year. The report also considers the merits of the Committee being the Council's nominated body responsible for ensuring effective scrutiny of its Treasury Management strategy and policies.

2. Draft work programme

- 2.1 The draft work programme for the Corporate Governance and Standards Committee is set out in Appendix 1 to this report. The items to be considered include decisions to be made by the Executive and full Council, with consideration of any comments or recommendation made by this Committee.

3. Treasury Management

- 3.1 The Chartered Institute of Public Finance and Accountancy (CIPFA) code states that local authorities should nominate a responsible body (such as a committee, board or council) or a nominated group of individuals or relevant committee to be responsible for ensuring effective scrutiny of the Treasury Management strategy and policies.

- 3.2 Under our current financial procedure rules, the Council has nominated the Corporate Improvement Scrutiny Committee to be responsible for ensuring effective scrutiny of our Treasury Management strategy and policies.
- 3.3 Recent concerns regarding the Corporate Improvement Scrutiny Committee's work programme led officers to review whether this was the most appropriate committee to consider our Treasury Management strategy and policies. Further to discussions with the Chairmen of the Corporate Governance and Standards Committee, the Corporate Improvement Scrutiny Committee and the Lead Councillor for Finance and Asset Management, they agreed the Corporate Governance and Standards Committee may be better placed to consider Treasury Management reports. This was due to both the Corporate Improvement Scrutiny Committee's work programme, and the level of relevant knowledge and expertise of the Committee.
- 3.4 The Treasury Management Panel is a working group, rather than a formally constituted committee, and therefore would not satisfy the CIPFA code in terms of being one of the Council's responsible bodies to ensure effective scrutiny of the Treasury Management strategy and policies.
- 3.5 Both the Treasury Management Panel and the Corporate Improvement Scrutiny Committee were also consulted on the recommendation for Treasury Management items to be considered by the Corporate Governance and Standards Committee, and both agreed this would be a sensible move.

Timetable implications

- 3.6 There are currently three Treasury Management reports, all reviewed by the Treasury Management Panel, considered throughout the municipal year:
 1. The Treasury Management Annual Strategy and Plan, currently presented to the Corporate Improvement Scrutiny Committee and Executive in January and approved Budget Council at its budget meeting in February
 2. The Treasury Management Annual Report, currently considered by Executive in June and approved by full Council in July
 3. The Treasury Management mid-year report, currently considered by the Joint Scrutiny Committee and Executive in November and approved by full Council in December.
- 3.7 The Council's timetable of meetings for the 2015-16 municipal year was agreed by full Council at its meeting on 7 October 2014 (see Appendix 2 to this report). At present, the full Council meeting in July (7 July) is before the July meeting of the Corporate Governance and Standards Committee (23 July). Officers have advised that the 4 June meeting of the Committee would be too early for the Treasury Management Annual Report to be ready, and so are investigating the possibility of effectively swapping the July Committee and full Council dates.

- 3.8 For the Treasury Management mid-year report, the November meeting of the Committee (26 November) is currently scheduled to meet two days after the Executive (24 November). However, as with the Treasury Annual Report, this will be approved by full Council, and so may negate the need to move the Committee and Executive meetings around.

4. Financial Implications

- 4.1 There are no financial implications

5. Legal Implications

- 5.1 There are no legal implications

6. Human Resource Implications

- 7.1 There are no human resources implications.

7. Conclusion

- 7.1 There is scope within the Constitution for the Corporate Governance and Standards Committee to consider Treasury Management reports, although the financial procedure rules and Article 10 of the Constitution may have to be amended to specifically state this.
- 7.2 Considering the Treasury Management reports would complement the Corporate Governance and Standards Committee's role with regard to the Statement of Accounts and its audit and governance role, particularly as they are a key part of the financial governance framework.

8. Background Papers

- Guildford Borough Council Forward Plan
- Management Team Forward Plan
- Corporate Improvement Scrutiny Committee, minutes of 5 March 2015.

9. Appendices

- Appendix 1 – Corporate Governance and Standards Committee work programme
- Appendix 2 – Current timetable of meetings for Council, Executive, Overview and Scrutiny and Corporate Governance and Standards meetings for 2015-16 municipal year

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CORPORATE GOVERNANCE AND STANDARDS COMMITTEE DRAFT WORK PROGRAMME

Treasury Management items – proposed move to Corporate Governance and Standards Committee

4 June 2015

Subject	Details of decision to be taken	Decision to be taken by	Contact Officer
Compliance with information Rights Legislation – 2013	Annual report on compliance with Freedom of Information and Data Protection requirements	Corporate Governance and Standards Committee	Vincenzo Ardilio 01483 444053
Responsibility for functions and proposed amendments to the scheme of delegation	<ol style="list-style-type: none"> 1. To approve any proposed amendments to the scheme of delegation to officers in respect of executive functions 2. To recommend to Council (07/07/15) the noting of the delegation of executive functions made during the 2013-14 municipal year and to approve any proposed amendments to the scheme of delegation to officers in respect of non-executive functions. 	Executive 23.06.2015	John Armstrong 01483 444102
Audit Committee Update	To note the update report from the external auditor	Corporate Governance and Standards Committee	Claire Morris 01483 444827
Annual Governance Statement 2014-15	To adopt the Council's Annual Governance Statement 2014-2015	Executive 23.06.2015	Claire Morris 01483 444827
Internal Audit Plan 2015-16	To consider the internal audit plan for 2015-16	Corporate Governance and Standards Committee	Joan Poole 01483 444854
Summary of internal audit reports October 2014 to March 2015	To consider the summary of internal audit reports	Corporate Governance and Standards Committee	Joan Poole 01483 444854

CORPORATE GOVERNANCE AND STANDARDS COMMITTEE DRAFT WORK PROGRAMME

23 July 2015 (07 July 2015)

Subject	Details of decision to be taken	Decision to be taken by	Contact Officer
<i>Draft statement of accounts</i>	<i>To note the draft statement of accounts signed by the Chief Finance Officer for 2014-15</i>	<i>Executive 21.07.15 Council July15</i>	<i>Claire Morris 01483 444827</i>
<i>Treasury Management Annual Report</i>	To recommend to Council (July 2015) the noting of the treasury management annual for 2014-15 and approval of the actual Prudential Indicators.	<i>Council</i>	<i>Victoria Worsfold 01483 444834</i>

24 September 2015

Subject	Details of decision to be taken	Decision to be taken by	Contact Officer
Annual Governance Report 2014-2015	To approve the Annual Governance Report for 2014-2015	Executive 29.09 or 27.10 2015	Satish Mistry 01483 444042
Statement of accounts 2014-2015	To approve the Statement of accounts 2014-2015	Corporate Governance and Standards Committee	Claire Morris 01483 444827
Audit Committee Update	To note the update report from the external auditor	Corporate Governance and Standards Committee	Grant Thornton/ Claire Morris 01483 444827
Audit findings report	To note the external auditor's findings and management's response in the Action Plan	Corporate Governance and Standards Committee	Grant Thornton/ Claire Morris 01483 444827
Annual report of the Local Government Ombudsman 2014-2015	To note the Local Government Ombudsman's annual report for 2014-2015	Corporate Governance and Standards Committee	Martyn Brake 01483 444850

CORPORATE GOVERNANCE AND STANDARDS COMMITTEE DRAFT WORK PROGRAMME

26 November 2015

Subject	Details of decision to be taken	Decision to be taken by	Contact Officer
Annual Audit Letter 2014-2015	To consider the Annual Audit Letter and Annual Governance Report for 2014-15	Executive: 24.11.15	Claire Morris 01483 444827
Summary of internal audit reports April 2015 to September 2015	To consider the summary of internal audit reports and progress on the internal audit plan for April – September 2015	Corporate Governance and Standards Committee	Joan Poole 01483 444854
Internal Audit Plan: progress report			
<i>Treasury Management monitoring report April – September 2015</i>	<i>To consider the report monitoring treasury management from April to September 2015</i>	<i>Executive 24.11.15 Council 08.12.15</i>	<i>Victoria Worsfold 01483 444834</i>

14 January 2016

Subject	Details of decision to be taken	Decision to be taken by	Contact Officer
<i>Treasury Management Strategy 2015-2016</i>	<i>To recommend to Council the adoption of the revised Treasury Management Strategy and prudential indicators</i>	<i>Executive 19.01.16 Council 10.02.16</i>	<i>Victoria Worsfold 01483 444834</i>

CORPORATE GOVERNANCE AND STANDARDS COMMITTEE DRAFT WORK PROGRAMME

31 March 2016

Subject	Details of decision to be taken	Decision to be taken by	Contact Officer
Enquiries of those charged with governance	To agree the Committee's response to the external auditor's audit plan for 2014-15	Corporate Governance and Standards Committee	Satish Mistry 01483 444042
Audit Plan	To note the external auditor's audit plan for 2014-15	Corporate Governance and Standards Committee	Claire Morris 01483 444827
Audit Committee Update	To note the update report from the external auditor	Corporate Governance and Standards Committee	Claire Morris 01483 444827

Unscheduled items

Subject	Details of decision to be taken	Decision to be taken by	Contact Officer
Single Equality Scheme and Action Plan	To review the Single Equality Scheme and Action Plan for 2012-15 (Year 1 and 2)	Corporate Governance and Standards Committee	Martyn Brake 01483 444850
Corporate Risk Strategy	Report on the Council's corporate risk strategy and risk management arrangements	Corporate Governance and Standards Committee	Martyn Brake 01483 444850

TIMETABLE OF COUNCIL AND COMMITTEE MEETINGS FOR THE 2015-16 MUNICIPAL YEAR

MEETING	PROPOSED DAY AND TIME	2015									2016				
		MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	
Council	Tuesday 7:00 p.m.	13+ 19\$		7			6		8		10£	1 (res)	12	4+	
Executive	Tuesday 7:00 p.m.	26	23	21		1 29	27	24		5 19	23	22	19		
Customer & Community Scrutiny Committee	Tuesday 7:00 p.m.		9	14		8	20		1	12		15			
Corporate Improvement Scrutiny Committee	Thursday 7:00 p.m.		25	30		17		12		7		3	28		
Joint Scrutiny Committee*	Tuesday 7:00 p.m.		16					17							
Corporate Governance and Standards Committee	Thursday 7:00 p.m.		4	23		24		26		14		31			

Notes:

+ Annual Council meeting at the Guildhall at 7pm on Wednesday 13 May 2015 and Wednesday 4 May 2016

\$ Selection Council meeting to elect a Leader and make appointments to committees

£ Budget Council meeting on Wednesday 10 February 2016

(res) Reserve date for Budget Council meeting if Surrey Police & Crime Panel vetoes the Police and Crime Commissioner's precept for 2016-17

* Joint meeting of both scrutiny committees on Tuesday 16 June 2015 to consider the Leader's annual report for 2014-15 and on Tuesday 17 November 2015 to consider the outline budget

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