

## Lancashire County Council

### Internal Scrutiny Committee

Friday, 10th September, 2021 at 10.00 am in Committee Room 'A' - The Tudor Room, County Hall, Preston

#### Agenda

##### Part I (Open to Press and Public)

No.	Item	
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|----|--|-----------------|
| 1. | <b>Apologies</b>   |                 |
| 2. | <b>Constitution: Chair and Deputy Chair; Membership; Terms and Reference</b>   | (Pages 1 - 8)   |
| 3. | <b>Disclosure of Pecuniary and Non-Pecuniary Interests</b><br><br>Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda. |                 |
| 4. | <b>Minutes of the Meeting held on 5 March 2021</b>   | (Pages 9 - 12)  |
| 5. | <b>Appointment of a Joint Health Scrutiny Committee for the Reconfiguration of Hyper Acute Stroke Services across North Mersey and West Lancashire</b>   | (Pages 13 - 26) |
| 6. | <b>Report of the Budget Scrutiny Review Panel</b>  | (Pages 27 - 32) |
| 7. | <b>Regulatory of Investigatory Powers Act 2000 - Annual Report</b>   | (Pages 33 - 88) |
| 8. | <b>Work Programme 2021/22</b>  | (Pages 89 - 94) |
| 9. | <b>Urgent Business</b>   |                 |

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

**10. Date of Next Meeting**

The next meeting of the Internal Scrutiny Committee will be held on Friday 12 November at 10:00am in Committee Room A, County Hall, Preston.

County Hall  
Preston

L Sales  
Director of Corporate Services

## Internal Scrutiny Committee

Meeting to be held on Friday, 10 September 2021

Electoral Division affected: All Divisions
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### **Constitution: Chair and Deputy Chair; Membership; Terms of Reference** (Appendix 'A' refers)

Contact for further information:

Misbah Mahmood, 01772 530818, Senior Democratic Services Officer (Overview and Scrutiny), misbah.mahmood@lancashire.gov.uk

### **Executive Summary**

This report sets out the constitution, membership, chair and deputy chair and terms of reference of the Internal Scrutiny Committee for the remainder of the municipal year 2021/22.

### **Recommendation**

The Internal Scrutiny Committee is asked to note:

1. The appointment of County Councillors David O'Toole and John Shedwick as Chair and Deputy Chair of the Committee for the remainder of the 2021/22 municipal year;
2. The Membership of the Committee following the County Council's Annual Meeting on 15 July 2021; and
3. The Terms of Reference of the Committee.

### **Background and Advice**

The County Council at its meeting on the 15 July 2021, approved the constitution of the Internal Scrutiny Committee as being 12 members on the basis of 7 from the Conservative group, 4 from the Labour group and 1 from the Green Party.

The following members were appointed by their respective groups:

#### **County Councillors (12):**

A Fewings	E Lewis
J Fillis	S Morris
S Hind	P Rigby
A Hindle	J Shedwick

S Holgate  
T Hurn

S Smith  
D O'Toole

Full Council also appointed County Councillors David O'Toole and John Shedwick as Chair and Deputy Chair of the Committee for the 2021/22 municipal year.

The Committee's Terms of Reference are set out at Appendix 'A'.

**Consultations**

N/A

**Implications:**

This item has the following implications, as indicated:

**Risk management**

There are no risk management implications arising from this item.

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Tel
None		
Reason for inclusion in Part II, if appropriate		
N/A		

## Part 2 – Article 5 (Overview and Scrutiny)

The council has established the following Overview and Scrutiny Committees:

<b>Committee</b>	<b>Responsibility</b>	<b>Membership</b>
Internal Scrutiny Committee	Review and Scrutinise decisions, actions and work of the Council	12 County Councillors
Education and Children's Services Scrutiny Committee	To review and scrutinise issues around: education services provided by the council including those education functions of a Children's Services authority; and Children and young people's services including the statutory powers of a scrutiny committee as they relate to the NHS.	16 County Councillors, 5 voting co-optees, (comprising three Church representatives and two parent governor representatives) who shall have voting rights in relation to any education functions which are the responsibility of the Executive, and one non-voting co-optee representing the Youth Council.
Health Scrutiny Committee	Statutory responsibility for scrutiny of adult and universal health services	12 County Councillors, plus 12 non-voting co-opted members, nominated by the 12 district councils
External Scrutiny Committee	Review and scrutinise issues, services and activities carried out by external organisations	12 County Councillors

### All Overview and Scrutiny Committees have the following Terms of Reference:

1. To review decisions made, or other action taken, in connection with the discharge of any functions which are undertaken by the Cabinet collectively, or in the case of urgent decisions which cannot await a Cabinet meeting by the Leader of the Council (or in his/her absence the Deputy Leader) and the relevant Cabinet Member, or Cabinet committees.
2. To make reports or recommendations to the Full Council, the Cabinet, the Leader, Deputy Leader or other Cabinet Members as necessary or

**(Last updated – 17 July 2020 – Full Council decision 16 July 2020  
Owner – Democratic Services)**

Cabinet committees with respect to the discharge of any functions which are undertaken by them or in respect of any functions which are not the responsibility of the Cabinet.

3. To hold general policy reviews and to assist in the development of future policies and strategies (whether requested by the Full Council or the Cabinet, individual Cabinet members, Cabinet committees, or decided by the Committee itself) and, after consulting with any appropriate interested parties, to make recommendations to the Cabinet, individual Cabinet members, Cabinet committees, Full Council or external organisations as appropriate.
4. To consider any matter brought to it following a request by a County Councillor or a Co-optee of the Committee who wishes the issue to be considered.
5. To consider requests for "Call In" in accordance with the Procedural Standing Orders – Overview and Scrutiny Rules at Appendix C – Appendix 3 of the Constitution
6. To request a report by the Cabinet to Full Council where a decision which was not treated as being a key decision has been made and the Overview and Scrutiny Committee is of the opinion that the decision should have been treated as a key decision
7. To request the Internal Scrutiny Committee to establish task groups and other working groups and panels as necessary.
8. To request that the Internal Scrutiny Committee establish as necessary joint working arrangements with district councils and other neighbouring authorities
9. To invite to any meeting of the Committee and permit to participate in discussion and debate, but not to vote, any person not a County Councillor whom the Committee considers would assist it in carrying out its functions.
10. To require any Councillor, an Executive Director or a senior officer nominated by him/her to attend any meeting of the Committee to answer questions and discuss issues.

### **Internal Scrutiny Committee**

1. To review and scrutinise all services provided by the authority, unless specifically covered by the Terms of Reference of another Overview and Scrutiny Committee.
2. To consider matters relating to the general effectiveness and development of Overview and Scrutiny in the authority including training for county councillors and co-optees.

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Owner – Democratic Services)**

3. To consider requests from the other Overview and Scrutiny Committees on the establishment of task groups, and to establish, task groups, and other working groups and panels as necessary, as well as joint working arrangements with District councils and other neighbouring authorities including joint committees to exercise the statutory function of joint health scrutiny committees under the NHS Act 2006.
4. To determine which Overview and Scrutiny Committee considers a particular matter where this is not clear.
5. To establish arrangements for the scrutiny of member development, and receive reports from the Member Development Working Group.
6. To recommend the Full Council to co-opt on to a Committee persons with appropriate expertise, without voting rights

### **Education and Children's Services Scrutiny Committee**

1. To scrutinise matters relating to education delivered by the authority and other relevant partners.
2. To fulfil all the statutory functions of an Overview and Scrutiny Committee as they relate to education functions of a Children's Services Authority.
3. To scrutinise matters relating to services for Children and Young People delivered by the authority and other relevant partners.

*The following provisions relating to scrutiny of health and social care relate to services for children and young people:*

4. To review and scrutinise any matter relating to the planning, provision and operation of the health service in the area and make reports and recommendations to NHS bodies as appropriate.
5. In reviewing any matter relating to the planning, provision and operation of the health service in the area, to invite interested parties to comment on the matter and take account of relevant information available, particularly that provided by the Local Healthwatch.
6. To review and scrutinise any local services planned or provided by other agencies which contribute towards the health improvement and the reduction of health inequalities in Lancashire and to make recommendations to those agencies, as appropriate.
7. In the case of contested NHS proposals for substantial service changes, to take steps to reach agreement with the NHS body.

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Owner – Democratic Services)**

8. In the case of contested NHS proposals for substantial service changes where agreement cannot be reached with the NHS, to refer the matter to the relevant Secretary of State.
9. To refer to the relevant Secretary of State any NHS proposal which the Committee feels has been the subject of inadequate consultation.
10. To scrutinise the social care services provided or commissioned by NHS bodies exercising local authority functions under Section 31 of the Health Act 1999.
11. To draw up a forward programme of health scrutiny in consultation with other local authorities, NHS partners, the Local Healthwatch and other key stakeholders.
12. To acknowledge within 20 working days to referrals on relevant matters from the Local Healthwatch or Local Healthwatch contractor, and to keep the referrer informed of any action taken in relation to the matter.
13. To require the Chief Executives of local NHS bodies to attend before the Committee to answer questions, and to invite the chairs and nonexecutive directors of local NHS bodies to appear before the Committee to give evidence.
14. To invite any officer of any NHS body to attend before the Committee to answer questions or give evidence.

## **Health Scrutiny Committee**

1. To scrutinise matters relating to health and adult social care delivered by the authority, the National Health Service and other relevant partners.
2. In reviewing any matter relating to the planning, provision and operation of the health service in the area, to invite interested parties to comment on the matter and take account of relevant information available, particularly that provided by the Local Healthwatch
3. In the case of contested NHS proposals for substantial service changes, to take steps to reach agreement with the NHS body
4. In the case of contested NHS proposals for substantial service changes where agreement cannot be reached with the NHS, to refer the matter to the relevant Secretary of State.
5. To refer to the relevant Secretary of State any NHS proposal which the Committee feels has been the subject of inadequate consultation.
6. To scrutinise the social care services provided or commissioned by NHS bodies exercising local authority functions under the Health and Social Care Act 2012.

**(Last updated – 17 July 2020 – Full Council decision 16 July 2020  
Owner – Democratic Services)**



7. To request that the Internal Scrutiny Committee establish as necessary joint working arrangements with district councils and other neighbouring authorities.
8. To draw up a forward programme of health scrutiny in consultation with other local authorities, NHS partners, the Local Healthwatch and other key stakeholders.
9. To acknowledge within 20 working days to referrals on relevant matters from the Local Healthwatch or Local Healthwatch contractor, and to keep the referrer informed of any action taken in relation to the matter.
10. To require the Chief Executives of local NHS bodies to attend before the Committee to answer questions, and to invite the chairs and non-executive directors of local NHS bodies to appear before the Committee to give evidence.
11. To invite any officer of any NHS body to attend before the Committee to answer questions or give evidence.
12. To recommend the Full Council to co-opt on to the Committee persons with appropriate expertise in relevant health matters, without voting rights.
13. To establish and make arrangements for a Health Steering Group the main purpose of which to be to manage the workload of the full Committee more effectively in the light of the increasing number of changes to health services.

## **External Scrutiny Committee**

1. To review and scrutinise issues, services or activities carried out by external organisations including public bodies, the voluntary and private sectors, partnerships and traded services which affect Lancashire or its inhabitants, and to make recommendations to the Full Council, Cabinet, Cabinet Members, Cabinet committees or external organisations as appropriate.
2. To review and scrutinise the operation of the Crime and Disorder Reduction Partnership in Lancashire in accordance with the Police and Justice Act 2006 and make reports and recommendations to the responsible bodies as appropriate
3. In connection with 2. above, to require an officer or employee of any of the responsible bodies to attend before the Committee to answer questions
4. To co-opt additional members in accordance with the Police and Justice Act 2006 if required, and to determine whether those co-opted members should be voting or non-voting

**(Last updated – 17 July 2020 – Full Council decision 16 July 2020  
Owner – Democratic Services)**

5. To review and scrutinise the exercise by risk management authorities of flood risk management functions or coastal erosion risk management functions which may affect the local authority's area

## Lancashire County Council

### Internal Scrutiny Committee

#### Minutes of the Meeting held on Friday, 5th March, 2021 at 10.00 am in Teams Virtual Meeting - Teams

#### Present:

County Councillor David O'Toole (Chair)

#### County Councillors

M Salter	E Lewis
T Ashton	P Rigby
C Crompton	P Steen
J Fillis	D Whipp
D Foxcroft	G Wilkins
S Holgate	

#### 1. Apologies

There were no apologies.

#### 2. Disclosure of Pecuniary and Non-Pecuniary Interests

None were disclosed.

#### 3. Minutes of the Meeting held on 22 January 2021

**Resolved:** The minutes from the meeting held on 22 January 2021 were confirmed as an accurate record.

#### 4. Staff Welfare and Wellbeing

The Chair welcomed to the meeting County Councillor Shaun Turner, Cabinet Member for Health and Wellbeing; Deborah Barrow, Head of Service Human Resources; Andrea Smith, Public Health Specialist; and Karen Smith, Team Leader Employee Support Team.

At the January meeting of the Internal Scrutiny Committee a request was made for an item to be considered on the welfare and wellbeing of staff, in light of the ongoing pandemic.

A presentation was provided to members of the committee to highlight the various aspects of work that had been ongoing during the pandemic to help and support staff of the county council with their welfare and wellbeing.

During the presentation, the following points were highlighted:

- Sickness absence during the pandemic from March 2020 to January 2021 was lower than the previous year. This was likely due to the new ways of living and working. Lancashire County Council's absence levels had followed the national pattern.
- Lancashire County Council staff had been supported and recognised during the pandemic. Access to information and guidance on Covid and employment had been made available. Help with remote working and home schooling was provided and there was support for staff so they could work from home. Staff were also encouraged to take leave.
- As recognition of the hard work and dedication of staff during the pandemic, CMT had given an additional two days leave to each member of staff.
- The Employee Support Team, which sat within Public Health, had dedicated its time during the pandemic looking at corporate wellbeing. Staff engagement was vital. There had been a staff survey in 2020 to gain insight into the wellbeing and feelings of staff and managers within the county council. There had also been engagement with councillors.
- The Employee Support Team assisted people with the implications and restrictions of lockdown.
- Isolation and loneliness were major issues, so keeping staff connected was vitally important.
- Social contact was very important. There was a 'Safer Working Group' which was looking at how to safely start bringing people back into the workplace.
- The key to providing support was knowing who needed support. The committee was informed that there were several referral mechanisms in place. There was a lot of accessible information available both externally and internally. There were wellbeing volunteers who were connected with teams on the ground. Managers were being educated on how to signpost people to the right support. There was also information available on C-First for councillors.
- A blog style way of communicating with staff had been set up. This enabled staff to engage and reflect on their circumstances.
- There was a self-care evaluation sheet available to all staff.
- The county council's vision for wellbeing volunteers was to create a supportive culture of wellbeing where staff could flourish. Wellbeing volunteers were emailed weekly to get feedback.
- The Wellbeing Volunteer Programme was a network of staff that could support each other's wellbeing and raise awareness of what support and information was available. There were 160 wellbeing volunteers across Lancashire County Council.
- There was focus on developing support on wellbeing for the whole of Lancashire County Council. The priority for this focus was frontline staff. The focus was on resilience, mental health and self-care and where support could be accessed.
- Lots of ways had been looked at to keep staff motivated, engaged and connected.

- It was important to place staff wellbeing at the heart of the induction process for new staff and managers and back this up with training.
- Supporting the recovery from the pandemic and the impact this would have on staff and service users was vital.
- Lancashire County Council continued to be supportive, innovative, collaborative and respectful.

In response to questions from members, the following information was clarified:

- The question of levels of sickness and what type of sickness had caused incidents was raised. The top two reasons for sickness, mental health and muscular / skeletal issues, had not changed during the pandemic. There had been a spike in mental health absences in April / May 2020. More support had been provided in this area.
- The committee enquired about the county council's approaches to long term Covid. There had been concerns from trade unions about the sickness absence policy. Conversations had been held with trade unions. Regarding long term Covid absences, services had been advised not to count this towards trigger levels of absence incidents. Talks had also been held with Public Health colleagues about how better to support staff with long term Covid get clinical help.
- Members enquired if county council staff working at a high-risk level were being monitored. The vaccine rollout was underway for staff in high risk services. There was robust risk assessment in high risk areas. A rigorous testing process was also taking place, where staff were tested every three to five days.
- There was concern staff and councillors were over working themselves during the pandemic. It was important for them to look after themselves and each other.
- It was noted that conversations were taking place with the Staff Experience Board around new ways of working. It was thought that trade unions could offer a useful voice in these conversations. The committee was informed that trade unions had a useful voice and had been involved in conversations and updated on new ways of working.

**Resolved:** The Internal Scrutiny Committee noted the update presented and recognised the challenging and ever-changing environment staff were operating in and the new best practice being developed, as a consequence. Officers were thanked for delivering an interesting and informative presentation.

## **5. Overview and Scrutiny Work Planning 2020/21**

The Internal Scrutiny Committee was informed that due to Purdah and the local elections on Thursday 6 May 2021, the meeting of the committee on Friday 16 April 2021 would be cancelled.

**Resolved:** The meeting of the Internal Scrutiny Committee on Friday 16 April be cancelled.

**6. Urgent Business**

There was no Urgent Business.

**7. Date of Next Meeting**

The next virtual meeting of the Internal Scrutiny Committee would take place on Friday 9 July 2021 at 10.00am.

L Sales  
Director of Corporate Services

County Hall  
Preston

## Internal Scrutiny Committee

Meeting to be held on Friday, 10 September 2021

Electoral Division affected:  
Burscough & Rufford;  
Ormskirk; Skelmersdale  
Central; Skelmersdale East;  
Skelmersdale West; West  
Lancashire East; West  
Lancashire North; West  
Lancashire West;

## Appointment of a Joint Health Scrutiny Committee for the Reconfiguration of Hyper Acute Stroke Services across North Mersey and West Lancashire (Appendix 'A' refers)

Contact for further information:

Gary Halsall, Tel: (01772) 536989, Senior Democratic Services Officer (Overview and Scrutiny), gary.halsall@lancashire.gov.uk

### Executive Summary

A request to appoint a proposed Joint Health Scrutiny Committee for the purpose of reviewing the final proposal for the reconfiguration of hyper acute stroke services across the North Mersey and West Lancashire area proposed by Liverpool Clinical Commissioning Group.

### Recommendation

The Internal Scrutiny Committee is asked to agree the proposed Joint Health Scrutiny Committee.

### Background and Advice

At its meeting on 7 July 2021, the Health Scrutiny Steering Group received a report from the NHS Liverpool Clinical Commissioning Group (CCG) detailing a proposal for the reconfiguration of hyper-acute stroke services across North Mersey and West Lancashire, adopting a new model of care to improve health outcomes for people who experience stroke. At that meeting the steering group determined that the proposal would represent a substantial variation for the people of West Lancashire and this was not contested by the CCG.

The proposal will affect residents living in the local authority areas of Knowsley, Liverpool, Sefton and West Lancashire. The CCG has since presented the proposal to the relevant health scrutiny committees of all four (upper tier) local authorities. Subsequently all four local authorities have reached the same determination and

subject to NHS England being assured about the proposal, a public consultation would take place on the preferred option for the future delivery of these services.

Regulation 30 (5) of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013, requires affected local authorities to appoint a joint overview and scrutiny committee for the purposes of the consultation.

It's important to note that this joint committee is not a committee of Lancashire County Council, but a joint committee between each of the participating authorities that will make up the joint committee. Consequently, the county council cannot dictate or have full control over the appointment and the development of the terms of reference. In addition, all nine local authorities within the Cheshire and Merseyside Health and Care Partnership area<sup>1</sup> have an agreed protocol for the establishment of joint health scrutiny arrangements for Cheshire and Merseyside which sets out the operation of a statutory joint health scrutiny committee (Appendix A).

The Health Scrutiny Steering Group was first informed about a review of hyper-acute stroke services across the North Mersey and West Lancashire area at its meeting on 11 March 2020. At that meeting the steering group agreed to a request from Knowsley Council to align itself with the Cheshire and Merseyside Joint Health Scrutiny Protocol.

The Internal Scrutiny Committee is asked to agree the proposed Joint Health Scrutiny Committee.

## **Consultations**

N/A

## **Implications:**

This item has the following implications, as indicated:

## **Risk management**

There is a legal requirement to establish a joint health scrutiny committee in certain circumstances as outlined in the report.

## **Local Government (Access to Information) Act 1985**

### **List of Background Papers**

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate - N/A

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<sup>1</sup> Cheshire and Merseyside Health and Care Partnership is in the process of becoming an Integrated Care System (ICS): <https://www.cheshireandmerseysidepartnership.co.uk/about-us/journey-to-becoming-an-ics/>



## PROTOCOL FOR ESTABLISHMENT OF JOINT HEALTH SCRUTINY ARRANGEMENTS FOR CHESHIRE AND MERSEYSIDE

### 1. INTRODUCTION

- 1.1 This protocol has been developed as a framework for the operation of joint health scrutiny arrangements across the local authorities of Cheshire and Merseyside. It allows for:
- scrutiny of substantial developments and variations of the health service; and,
  - discretionary scrutiny of local health services
- 1.2 The protocol provides a framework for health scrutiny arrangements which operate on a joint basis only. Each constituent local authority should have its own local arrangements in place for carrying out health scrutiny activity individually.

### 2. BACKGROUND

- 2.1 The Health and Social Care Act 2012 and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 came into effect on 1 April 2013 revising existing legislation regarding health scrutiny.
- 2.2 In summary, the revised statutory framework authorises local authorities to:
- review and scrutinise any matter relating to the planning, provision and operation of the health service; and,
  - consider consultations by a relevant NHS body or provider of NHS-funded services on any proposal for a substantial development or variation to the health service in the local authority's area.
- 2.3 Ultimately the regulations place a requirement on relevant scrutiny arrangements to reach a view on whether they are satisfied that any proposal that is deemed to be a substantial development or variation is in the interests of the health service in that area, or instead, that the proposal should be referred to the Secretary of State for Health. In instances where a proposal impacts on the residents of one local authority area exclusively, this responsibility lays with that authority's health scrutiny arrangements alone.
- 2.4 Where such proposals impact on more than one local authority area, each authority's health scrutiny arrangements must consider whether the proposals constitute a substantial development or variation or not. The regulations place a requirement on those local authorities that agree that a proposal is substantial to establish, in each instance, a joint

overview and scrutiny committee for the purposes of considering it. This protocol deals with the proposed operation of such arrangements for the local authorities of Cheshire and Merseyside.

### **3. PURPOSE OF THE PROTOCOL**

3.1 This protocol sets out the framework for the operation of joint scrutiny arrangements where:

- a) an NHS body or health service provider consults with more than one local authority on any proposal it has under consideration, for a substantial development/variation of the health service;
- b) joint scrutiny activity is being carried out on a discretionary basis into the planning, provision and operation of the health service.

3.2 The protocol covers the local authorities of Cheshire and Merseyside including:

- Cheshire East Council
- Cheshire West and Chester Council
- Halton Borough Council
- Knowsley Council
- Liverpool City Council
- St. Helens Metropolitan Borough Council
- Sefton Council
- Warrington Borough Council
- Wirral Borough Council

3.3 Whilst this protocol deals with arrangements within the boundaries of Cheshire and Merseyside, it is recognised that there may be occasions when consultations/discretionary activity may affect adjoining regions/areas. Arrangements to deal with such circumstances would have to be determined and agreed separately, as and when appropriate.

### **4. PRINCIPLES FOR JOINT HEALTH SCRUTINY**

4.1 The fundamental principle underpinning joint health scrutiny will be co-operation and partnership with a mutual understanding of the following aims:

- To improve the health of local people and to tackle health inequalities;
- To represent the views of local people and ensure that these views are identified and integrated into local health service plans, services and commissioning;

- To scrutinise whether all parts of the community are able to access health services and whether the outcomes of health services are equally good for all sections of the community; and,
- To work with NHS bodies and local health providers to ensure that their health services are planned and provided in the best interests of the communities they serve.

## **5. SUBSTANTIAL DEVELOPMENT/VARIATION TO SERVICES**

### **5.1 Requirements to consult**

- 5.1.1 All relevant NHS bodies and providers of NHS-funded services<sup>1</sup> are required to consult local authorities when they have a proposal for a substantial development or substantial variation to the health service.
- 5.1.2 A substantial development or variation is not defined in legislation. Guidance has suggested that the key feature is that it should involve a major impact on the services experienced by patients and/or future patients.
- 5.1.3 Where a substantial development or variation impacts on the residents within one local authority area boundary, only the relevant local authority health scrutiny function shall be consulted on the proposal.
- 5.1.4 Where a proposal impacts on residents across more than one local authority boundary, the NHS body/health service provider is obliged to consult all those authorities whose residents are affected by the proposals in order to determine whether the proposal represents a substantial development or variation.
- 5.1.5 Those authorities that agree that any such proposal does constitute a substantial development or variation are obliged to form a joint health overview and scrutiny committee for the purpose of formal consultation by the proposer of the development or variation.
- 5.1.6 Whilst each local authority must decide individually whether a proposal represents a substantial development/variation, it is only the statutory joint health scrutiny committee which can formally comment on the proposals if more than one authority agrees that the proposed change is “substantial”.
- 5.1.7 Determining that a proposal is not a substantial development/variation removes the ability of an individual local authority to comment formally

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<sup>1</sup> This includes the NHS England, any Clinical Commissioning Group providing services to the residents of Cheshire and Merseyside, an NHS Trust, an NHS Foundation Trust and any other relevant provider of NHS funded services which provides health services to those residents, including public health.

on the proposal and exercise other powers, such as the power to refer to the Secretary of State. Once such decisions are made, the ongoing obligation on the proposer to consult formally on a proposal relates only to those authorities that have deemed the proposed change to be “substantial” and this must be done through the vehicle of the joint committee. Furthermore the proposer will not be obliged to provide updates or report back on proposals to individual authorities that have not deemed them to be “substantial”.

### **5.2 Process for considering proposals for a substantial development/variation**

5.2.1 In consulting with the local authority in the first instance to determine whether the change is considered substantial, the NHS body/ provider of NHS-funded service is required to:

- Provide the proposed date by which it requires comments on the proposals
- Provide the proposed date by which it intends to make a final decision as to whether to implement the proposal
- Publish the dates specified above
- Inform the local authority if the dates change<sup>2</sup>

5.2.3 NHS bodies and local health service providers are not required to consult with local authorities where certain ‘emergency’ decisions have been taken. All exemptions to consult are set out within regulations.<sup>3</sup>

5.2.4 In considering whether a proposal is substantial, all local authorities are encouraged to consider the following criteria:

- *Changes in accessibility of services:* any proposal which involves the withdrawal or change of patient or diagnostic facilities for one or more speciality from the same location.
- *Impact on the wider community and other services:* This could include economic impact, transport, regeneration issues.
- *Patients affected:* changes may affect the whole population, or a small group. If changes affect a small group, the proposal may still be regarded as substantial, particularly if patients need to continue accessing that service for many years.
- *Methods of service delivery:* altering the way a service is delivered may be a substantial change, for example moving a particular service into community settings rather than being entirely hospital based.

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<sup>2</sup> Section 23 of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013

<sup>3</sup> Section 24 *ibid*

- *Potential level of public interest:* proposals that are likely to generate a significant level of public interest in view of their likely impact.

5.2.5. This criteria will assist in ensuring that there is a consistent approach applied by each authority in making their respective decisions on whether a proposal is “substantial” or not. In making the decision, each authority will focus on how the proposals impacts on its own area/ residents.

## **6. OPERATION OF A STATUTORY JOINT HEALTH OVERVIEW AND SCRUTINY COMMITTEE**

### **6.1 General**

6.1.1 A joint health overview and scrutiny committee will be made up of each of the constituent local authorities that deem a proposal to be a substantial development or variation. This joint committee will be formally consulted on the proposal and have the opportunity to comment. It will also be able to refer to the Secretary of State for Health if any such proposal is not considered to be in the interests of the health service.

6.1.2 A decision as to whether the proposal is deemed substantial shall be taken within a reasonable timeframe and in accordance with any deadline set by the lead local authority, following consultation with the other participating authorities.

### **6.2 Powers**

6.2.1 In dealing with substantial development/variations, any statutory joint health overview and scrutiny committee that is established can:

- require relevant NHS bodies and health service providers to provide information to and attend before meetings of the committee to answer questions
- make comments on the subject proposal by a date provided by the NHS body/local health service provider
- make reports and recommendations to relevant NHS bodies/local health providers
- require relevant NHS bodies/local health service providers to respond within a fixed timescale to reports or recommendations
- carry out further negotiations with the relevant NHS body where it is proposing not to agree to a substantial variation proposal; and
- where agreement cannot be reached, to notify the NHS body of the date by which it intends to make the formal referral to the Secretary of State.

6.2.2 A joint health overview and scrutiny committee has the power to refer a proposal to the Secretary of State if:

- the committee is not satisfied that consultation with the relevant health scrutiny arrangements on any proposal has been adequate
- it is not satisfied that reasons for an 'emergency' decision that removes the need for formal consultation with health scrutiny are adequate
- it does not consider that the proposal would be in the interests of the health service in its area.

6.2.3 Where a committee has made a recommendation to a NHS body/local health service provider regarding a proposal and the NHS body/provider disagrees with the recommendation, the local health service provider/NHS body is required to inform the joint committee and attempt to enter into negotiation to try and reach an agreement. In this circumstance, a joint committee has the power to report to the Secretary of State if:

- relevant steps have been taken to try to reach agreement in relation to the subject of the recommendation, but agreement has not been reached within a reasonable period of time; or,
- there has been no attempt to reach agreement within a reasonable timeframe.

6.2.4 Where a committee disagrees with a substantial variation and has either made comments (without recommendations) or chosen not to provide any comments, it can report to the Secretary of State only if it has:

- Informed the NHS body/local health service provider of its decision to disagree with the substantial variation and report to the Secretary of State; or,
- Provided indication to the NHS body/local health service provider of the date by which it intends to make a referral.

6.2.5 In any circumstance where a committee disagrees with a proposal for a substantial variation, there will be an expectation that negotiations will be entered into with the NHS body/local health service provider in order to attempt to reach agreement.

6.2.6 Where local authorities have agreed that the proposals represent substantial developments or variations to services and agreed to enter into joint arrangements, it is only the joint health overview and scrutiny committee which may exercise these powers.

6.2.7 A statutory joint health overview and scrutiny committee established under the terms of this protocol may only exercise the powers set out in 6.2.1 to 6.2.3 above in relation to the statutory consultation for which it was originally established. Its existence is time-limited to the course of

the specified consultation and it may not otherwise carry out any other activity.

### 6.3 Membership

6.3.1 Each participating local authority should ensure that those Councillors it nominates to a joint health overview and scrutiny committee reflect its own political balance.<sup>4</sup> However, overall political balance requirements may be waived with the agreement of all participating local authorities.

6.3.2 A joint committee will be composed of Councillors from each of the participating authorities within Cheshire and Merseyside in the following ways:

- where 4 or more local authorities deem the proposed change to be substantial, each authority will nominate 2 elected members
- where 3 or less local authorities deem the proposed change to be substantial, then each participating authority will nominate 3 elected members.

(Note: In making their nominations, each participating authority will be asked to ensure that their representatives have the experience and expertise to contribute effectively to a health scrutiny process)

Local authorities who consider change to be 'substantial'	No' of elected members to be nominated from each authority
4 or more	2 members
3 or less	3 members

6.3.3 Each local authority will be obliged to nominate elected members through their own relevant internal processes and provide notification of those members to the lead local administrative authority at the earliest opportunity.

6.3.4 To avoid inordinate delays in the establishment of a relevant joint committee, it is suggested that constituent authorities arrange for delegated decision making arrangements to be put in place to deal with such nominations at the earliest opportunity.

### 6.5 Quorum

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<sup>4</sup> Localism Act 2011, Schedule 2 9FA, 6 (b)

6.5.1 The quorum of the meetings of a joint committee shall be one quarter of the full membership of any Joint Committee, subject to the quorum being, in each instance, no less than 3.

6.5.2 There will be an expectation for there to be representation from each authority at a meeting of any joint committee established. The lead local authority will attempt to ensure that this representation is achieved.

### **6.6 Identifying a lead local authority**

6.6.1 A lead local authority should be identified from one of the participating authorities to take the lead in terms of administering and organising a joint committee in relation to a specific proposal.

6.6.2 Selection of a lead authority should, where possible, be chosen by mutual agreement by the participating authorities and take into account both capacity to service a joint health scrutiny committee and available resources. The application of the following criteria should also guide determination of the lead authority:

- The local authority within whose area the service being changed is based; or
- The local authority within whose area the lead commissioner or provider leading the consultation is based.

6.6.3 Lead local authority support should include a specific contact point for communication regarding the administration of the joint committee. There will be an obligation on the key lead authority officer to liaise appropriately with officers from each participating authority to ensure the smooth running of the joint committee.

6.6.4 Each participating local authority will have the discretion to provide whatever support it may deem appropriate to their own representative(s) to allow them to make a full contribution to the work of a joint committee.

### **6.7 Nomination of Chair/ Vice-Chair**

The chair/ vice-chair of the joint health overview and scrutiny committee will be nominated and agreed at the committee's first meeting. It might be expected that consideration would be given to the chair being nominated from the representative(s) from the lead authority.

### **6.8 Meetings of a Joint Committee**

6.8.1 At the first meeting of any joint committee established to consider a proposal for a substantial development or variation, the committee will also consider and agree:

- The joint committee's terms of reference;
- The procedural rules for the operation of the joint committee;



- The process/ timeline for dealing formally with the consultation, including:
  - the number of sessions required to consider the proposal; and,
  - the date by which the joint committee will make a decision as to whether to refer the proposal to the Secretary of State for Health – which should be in advance of the proposed date by which the NHS body/service provider intends to make the decision.

6.8.2 All other meetings of the joint committee will be determined in line with the proposed approach for dealing with the consultation. Different approaches may be taken for each consultation and could include gathering evidence from:

- NHS bodies and local service providers;
- patients and the public;
- voluntary sector and community organisations; and
- NHS regulatory bodies.

### **6.9 Reports of a Joint Committee**

6.9.1 A joint committee is entitled to produce a written report which may include recommendations. As a minimum, the report will include:

- An explanation of why the matter was reviewed or scrutinised.
- A summary of the evidence considered.
- A list of the participants involved in the review.
- An explanation of any recommendations on the matter reviewed or scrutinised.

The lead authority will be responsible for the drafting of a report for consideration by the joint committee.

6.9.2 Reports shall be agreed by the majority of members of a joint committee and submitted to the relevant NHS body/health service provider or the Secretary of State as applicable.

6.9.3 Where a member of a joint health scrutiny committee does not agree with the content of the committee's report, they may produce a report setting out their findings and recommendations which will be attached as an appendix to the joint health scrutiny committee's main report.

## **7. DISCRETIONARY HEALTH SCRUTINY**

7.1 More generally, the Health and Social Care Act 2012 and the 2013 Health Scrutiny Regulations provide for local authority health scrutiny

arrangements to scrutinise the planning, provision and operation of health services.

- 7.2 In this respect, two or more local authorities may appoint a joint committee for the purposes of scrutinising the planning, provision and operation of health services which impact on a wider footprint than that of an individual authority's area.
- 7.3 Any such committee will have the power to:
- require relevant NHS bodies and health service providers to provide information to and attend before meetings of the committee to answer questions
  - make reports and recommendations to relevant NHS bodies/local health providers
  - require relevant NHS bodies/local health service providers to respond within a fixed timescale to reports or recommendations.
- 7.4 A discretionary joint committee will not have the power to refer an issue to the Secretary of State for Health.
- 7.5 In establishing a joint committee for the purposes of discretionary joint scrutiny activity, the constituent local authorities should determine the committee's role and remit. This should include consideration as to whether the committee operates as a standing arrangement for the purposes of considering all of the planning, provision and operation of health services within a particular area or whether it is being established for the purposes of considering the operation of one particular health service with a view to making recommendations for its improvement. In the case of the latter, the committee must disband once its specific scrutiny activity is complete.
- 7.6 In administering any such committee, the proposed approach identified in sections 6.3 – 6.9 (disregarding any power to refer to the Secretary of State) of this protocol should be followed, as appropriate.

**8. CONCLUSION**

- 8.1 The local authorities of Cheshire and Merseyside have adopted this protocol as a means of governing the operation of joint health scrutiny arrangements both mandatory and discretionary. The protocol is intended to support effective consultation with NHS bodies or local health service providers on any proposal for a substantial development of or variation in health services. The protocol also supports the establishment of a joint health overview and scrutiny committee where discretionary health scrutiny activity is deemed appropriate.
- 8.2 The protocol will be reviewed regularly, and at least on an annual basis to ensure that it complies with all current legislation and any guidance published by the Department of Health.



## Internal Scrutiny Committee

Meeting to be held on Friday, 10 September 2021

Electoral Division affected: All
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## Report of the Budget Scrutiny Review Panel

(Appendix 'A' Refers)

Contact for further information:

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Misbah.Mahmood@lancashire.gov.uk

### Executive Summary

This report requests the Internal Scrutiny Committee to consider the membership of the Budget Scrutiny Review Panel in terms of membership numbers.

The report also presents a brief overview of matters presented and considered by the Budget Scrutiny Review Panel at their meeting held on 1 September 2021.

### Recommendation

Internal Scrutiny Committee is asked to:

1. Consider the membership of the Budget Scrutiny Review Panel and either:
  - a) Agree to amend the membership of the Budget Scrutiny Review Panel from 9 members to 7 members.
  - b) Or, request further nominations from groups to make up the membership of the Budget Scrutiny Review Panel to 9 members.
2. Note the update provided from Budget Scrutiny Review Panel at its meeting on 1 September 2021.
3. Consider whether a future scrutiny topic on Public Realm Agreements is necessary and if so to consider which scrutiny committee would be most appropriate.

### Background and Advice

The Terms of Reference for the Budget Scrutiny Review Panel (Appendix 'A' refers) allow for 9 County Councillors to sit on the panel:

- 5 Conservative
- 2 Labour

- 1 Lib Dem
- 1 Independent

The current membership of the Panel has 7 members as follows:

- 4 Conservative
- 2 Labour
- 1 Green

As the Terms of Reference of the panel allow for 9 members and currently only 7 have been identified, the Internal Scrutiny Committee, as the parent committee is asked to consider and agree one of the following two options:

- a) Agree to amend the membership of the Budget Scrutiny Review Panel from 9 members to 7 members.
- b) Or request further nominations from groups to make up the membership of the Budget Scrutiny Review Panel to 9 members.

### **Update from the Meeting held on 1 September 2021**

#### **Money Matters 2021/22 Position – Quarter 1**

A copy of the report to be presented to Cabinet at its meeting on 2 September 2021 was presented to the Budget Scrutiny Review Panel by Neil Kissock, Director of Finance.

The report provided an update to Cabinet on the county council's 2021/22 revenue and capital financial position, as at the end of June 2021 and an updated medium-term financial strategy (MTFS) covering the period 2022/23 to 2024/25.

In summary the report noted the following:

- (i) The 2021/22 revenue forecast outturn is £876.194m, representing a projected underspend of £5.219m (0.59%) of the agreed budget.
- (ii) The MTFS has been updated for our current expectations of levels of funding, savings delivery, demand and inflation.
- (iii) At Full Council in February 2021 the MTFS showed a deficit of £50.048m in 2023/24. The forecast now indicates a financial deficit of £63.958m by 2024/25.
- (iv) The council is forecast to hold a General Reserve against unforeseen issues of £23.437m representing circa 3% of net budget, which is unchanged from the previously reported position.

(v) The council is forecast to hold £180.340m of uncommitted transitional reserve at the end of the financial year. This is sufficient to meet the forecast gap for all of the years covered by the MTFS, 2022/23 to 2024/25.

Members raised several questions, the main points of which are summarised below:

- The impact of Covid on finances was well documented, a question was asked regarding the impact of Brexit on services and supplies. It was noted that the Officer Working Group on Brexit were considering the impact, and this was reviewed monthly. An increase in prices for some products and materials had been noted as well as delays to the supply chain on some of those products that the council purchased.
- The possible impact of care staff refusing to take the vaccine and the affect this could have on staffing levels was raised. It was noted that there was a small percentage of staff who fell into this category and the challenge was to encourage staff to take up the offer of the vaccine or face not being able to continue in the same role. The impact was being factored into the wider challenges of capacity in the care market.
- It was noted that the commitments made in the last financial year to the environment and climate program had been set aside from reserves, any recurrent costs would need to be reflected in the medium term financial strategy in the budget for next year.
- Concerns were raised about some of the basic maintenance services that were not being provided to residents under public realm agreements. Members requested that a possible future agenda item for the Budget Scrutiny Review Panel was to consider the financial elements of the agreements. It was also requested that Internal Scrutiny Committee consider whether a more general review of Public Realm Agreements was required and if so, which scrutiny committee would be most appropriate to look at this.

**Resolved** - The following was agreed:

- That the update and the recommendations to Cabinet be noted.
- Consideration be given to the financial elements of Public Realm Agreements as a possible future agenda item for Budget Scrutiny Review Panel.
- In terms of the general scrutiny of Public Realm Agreements, Internal Scrutiny to consider whether this topic may need to be looked at as a future agenda item and if so, which committee would be most appropriate.

### **Next Steps and Date of Next Meeting**

It was agreed that future meetings of the Budget Scrutiny Review Panel would be held in November 21 and January 22 ahead of Cabinet meetings to consider future financial updates.

An update on ongoing budget saving proposals, income generation and the commercialisation strategy were also agreed as items to be considered for future meetings.

### **Consultations**

N/A

### **Implications:**

This item has the following implications, as indicated:

### **Risk management**

This report has no significant risk implications.

### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Tel
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None

Reason for inclusion in Part II, if appropriate

N/A



## **Terms of Reference**

### **Budget Scrutiny Review Panel**

#### **1. Composition and Role**

The Budget Scrutiny Review Panel comprises 9 County Councillors (5 Conservative, 2 Labour, 1 Lib Dem and 1 Independent).

Current Membership:

County Councillors:

Azhar Ali	Ash Sutcliffe
Gina Dowding	David Westley (Chair)
John Fillis	Vacancy
Alan Schofield (Deputy)	Vacancy
John Singleton	

#### **2. Role of the Review Panel**

The role of the Review Panel would be to:

- Provide further support to the overall budget monitoring process
- Consider and formulate recommendations on Cabinet budget proposals
- Monitor progress of agreed budget savings

The Review Panel in exercising this function contributes to a robust budget scrutiny process, and supports effective monitoring of the county council's budget.

The Review Panel role is not to lead on the management of the budget or to set a budget, but to provide support as a 'critical friend'.

The Review Panel reports to the Internal Scrutiny Committee.

#### **3. Frequency of Meetings**

Meetings to be held six weekly between September and January with the provision for additional meetings to be held in April and July if required.

#### **4. Functions of the Review Panel**

- a) To review and scrutinise Cabinet's budget proposals
- b) To request any Councillor, an Executive Director or a senior officer nominated by him/her to attend any meeting of the Committee to answer questions and discuss issues
- c) To make recommendations in respect of those budget proposals
- d) To receive regular budget updates/monitoring reports as appropriate
- e) To engage with the relevant Portfolio Holder and officers on any financial issues arising from updates / monitoring reports

**Terms of Reference**  
**Budget Scrutiny Review Panel**

- f) To make any recommendations arising from discussions with the relevant Portfolio Holder and officers in respect of any financial issues
- g) To refer to the relevant scrutiny committee any issues arising for further consideration
- h) To receive and consider responses from Cabinet in relation to the Review Panel's recommendations
- i) To receive updates on the progress of agreed budget savings
- j) To engage with the relevant Portfolio Holder and officers on issues arising from reviews of agreed budget savings
- k) To provide update reports to Internal Scrutiny Committee as appropriate
- l) To support and review potential options for self-sufficiency/commercialisation

## Internal Scrutiny Committee

Meeting to be held on Friday, 10 September 2021

Electoral Division affected: All
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### Regulatory of Investigatory Powers Act 2000 - Annual Report

Appendix A - Corporate Policy and Guidance on the Regulation of Investigatory Powers Act

Appendix B - Shadow RIPA Surveillance Corporate Policy

Appendix C - Covert Social Networking Checks and Surveillance Policy

Contact for further information:

Chris Wilkinson, Trading Standards Manager, (01772 531407),

christopher.wilkinson@lancashire.gov.uk

#### Executive Summary

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework for local authorities, to use covert surveillance techniques for the purposes of undertaking statutory functions in connection with the prevention or detection of crime.

Local authorities are subject to regular inspections from the Investigatory Powers Commissioners Office - IPCO. The next inspection is expected to take place in 2023.

Members are required to review the use of RIPA and set the policy at least once a year.

#### Recommendation

The Committee is asked to:

1. Approve, with immediate effect, the updated corporate policies on:
  - RIPA Surveillance
  - Non-RIPA surveillance
  - The use of Social Media and the Internet in investigations

#### Background and Advice

RIPA includes the activities of directed surveillance, for example the use of recording devices, to record persons suspected of being engaged in criminal activity, where there is a possibility of gaining of private information, and the use of a Covert Human Intelligence Source (CHIS), for example an informant, where the surveillance involves developing a relationship in order to obtain information.

Adopting policies and procedures that comply with RIPA and the associated Codes of Practice and Guidance issued by the Investigatory Powers Commissioners Office (IPCO) and the Home Office provides the local authority with a defence if an individual brings a claim against the local authority alleging that the surveillance breaches their human rights, specifically Article 8, the right to respect for private and family life, home and correspondence.

Established processes ensure that applications to conduct covert surveillance activities are authorised by Senior Managers within the Trading Standards Service. The authorisation process considers the necessity of the surveillance and its proportionality. If authorised, the application must then be put before a magistrate for approval before the activity can take place

Within the County Council, covert surveillance is used very infrequently and only in connection with Trading Standards activities, typically against rogue traders, counterfeiters or individuals engaged in selling tobacco or alcohol products to children. It is used in cases where it is important to obtain information to support potential criminal proceedings, and only where that information cannot be obtained by any other means.

Members are expected to oversee the use of RIPA and set the policy at least annually. A copy of the Corporate Policy and Guidance on the Regulation of Investigatory Powers Act is attached as Appendix 'A'

Only minor amendments are made relating to the duration of which a juvenile CHIS authorisation can be granted. Increasing the time 1 month to 4 months bringing the policy inline with the associated code of practice.

### **RIPA Activity**

Since the last scrutiny committee report in June 2020 there have been no applications for the use of CHIS or for Directed Surveillance.

### **Non RIPA Surveillance**

The authority may also be involved in surveillance activity for other purposes, for which authorisation is not permitted to be sought under the RIPA.

Such surveillance could nevertheless leave the authority open to a claim of infringement of the right to privacy and family life, and therefore in such cases the approach of the authority has been to utilise what are called "shadow authorisations", to be put before the Trading Standards Service RIPA authorisers for approval.

Such activity may include surveillance in relation to child protection work, and use of social media to obtain information, or serious allegations of employee misconduct.

Shadow authorisations are rare. A corporate policy on their use has previously been adopted to promote consistency of application and ensure the principles of necessity and proportionality are considered.

A copy of the Shadow RIPA Surveillance Corporate Policy is attached as Appendix B. There are no significant changes to this policy since the last review.

### **Shadow RIPA Activity**

No shadow authorisations have been granted since the last scrutiny report in June 2020.

### **Social Media and Covert Surveillance Policy**

In response to guidance issued by the Home Office and by the IPCO LCC implemented a 'Social Media and Covert Surveillance Policy'.

Increasingly the use of social media means that a wide range of personal information posted by individuals is available online. Where the authority intends to search for information and

use it in connection with our investigations, we must ensure that the relevant provisions of RIPA are considered and that appropriate authorisations are obtained where necessary.

This applies to investigations concerning the prevention or detection of crime, or for the purpose of other investigations connected with employee misconduct or child protection matters for example.

This policy is also reviewed annually. There are no significant changes to this policy since the last review. A copy of this is attached as Appendix C.

### **IPCO Inspection**

IPCO inspect local authorities every 3 years and examine a sample of authorisations which have been granted in the period since the last inspection. The last inspection was completed virtually in March 2020. A recommendation was made that training should be refreshed for relevant Officers. It is expected that this training will be completed in the current financial year and initial enquiries have been made with training providers.

### **Consultations**

N/A

### **Implications:**

This item has the following implications, as indicated:

### **Risk management**

The use of RIPA, where permitted, provides a defence to a local authority where an individual alleges that their human rights have been contravened.

Non RIPA surveillance is subject to a similar process within LCC, which will enable the authority to show that it has appropriately considered necessity and proportionality in any case where there is an allegation that human rights have been breached in a situation not involving the prevention and detection of crime.

Guidance on the use of social media in investigations will ensure that an individual's human rights are considered in the context of the use of information published by the individual online.

### **Financial**

There are no financial implications arising from the recommendations in this report. However, without appropriate safeguards and if challenged, the Council could be liable to pay a financial penalty in respect of actions held to be an infringement of an individual's right to a private and family life, home and correspondence.

### **Legal**

The Council is obliged to have regard to the Covert Human Intelligence Sources Revised Code of Practice (August 2018) and the Covert Surveillance and Property Interference Code of Practice (August 2018) when seeking to undertake covert surveillance, this includes surveillance by the use of social media.

There is a possibility of legal action against the authority if covert surveillance is held to have breached an individual's human rights. Noncompliance with the legislation may result in challenges by IPCO or challenges to evidence in court.

In relation to the Investigatory Powers Act 2016, the Investigatory Powers Tribunal has jurisdiction to investigate and determine complaints against public authority use of investigatory powers.

### **Equality and Cohesion**

The use of RIPA principles requires consideration of the necessity and proportionality of surveillance and as part of this, equality and cohesion issues would be considered.

### **Human Rights**

The use of RIPA and associated principles is recommended in the context of consideration of the impact of surveillance activities on the right to privacy, a family life, home and correspondence.

### **Crime and Disorder**

LCC Trading Standards Service has a statutory duty to investigate criminal offences committed under a wide range of public protection legislation. In a small minority of cases the use of covert surveillance may be the only means of progressing the investigation.

### **Personnel**

Activities are risk assessed to ensure the health and safety of individuals is considered and any mitigating measures are implemented.

### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Tel
N/A		

### **Reason for inclusion in Part II, if appropriate**

N/A



**Corporate Policy and Guidance  
On  
The Regulation  
Of Investigatory Powers Act 2000**

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## **11. Complaints**

## **12. Management Records**

### General Statement of Policy

- This policy document relates to use by Lancashire County Council officers of directed surveillance, covert human intelligence sources and access to telecommunications information, for the prevention and detection of crime.
- The County Council is committed to upholding human rights.
- As a public body and responsible employer, the County Council wants to conform to the letter and spirit of the requirements of the Regulation of Investigatory Powers Act 2000, (RIPA) the Investigatory Powers Act 2016, (IPA) and associated regulations and codes of practice relating to the use of covert surveillance, the use of covert human intelligence sources, and access to communications data.
- County Council officers will only undertake surveillance work when it is both necessary and proportionate to the ends it seeks to achieve.
- From 1 November 2012 local authorities have been required to obtain judicial approval prior to using covert techniques. Local authority authorisations for CHIS and Directed Surveillance under RIPA are only be given effect once an order has been granted by a justice of the peace in England and Wales, a sheriff in Scotland and a district judge (magistrates' court) in Northern Ireland.
- Additionally, from this date local authority use of directed surveillance under RIPA will be limited to the investigation of crimes which attract a 6 month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco.

From 1 November 2018 a new serious crime threshold applies to the acquisition of some communications data.

## Corporate Guidance

### 1.1 Foreword

1.1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016 (IPA) provide a framework for certain bodies (including local authorities) to undertake their duties aimed at preventing or detecting crime, which may interfere with a citizens normal human rights in respect of privacy by the use of 'covert surveillance', Covert Human Intelligence Sources (CHIS) i.e. undercover officers/informants and to obtain certain limited communications data.

1.1.2 The use of these techniques must be "necessary" and "proportionate" to the investigation i.e. simple, overt methods of gathering information are not available and the matter under investigation should not be trivial.

1.1.3 The legislation establishes detailed requirements in respect of the seniority, training awareness of Authorising Officers (referred to as 'Designated Officers' in the Act) and also the formal assessment and recording processes before undertaking any surveillance activity.

1.1.4 The Authorising Officer is required to be an officer at least at the following level within the authority:

- Director
- Head of Service
- Service Manager or equivalent

The Authorising Officers for the Council are The Head of Trading Standards and Trading Standards Managers within Trading Standards as authorised by the Director of Corporate Services.

1.1.5 This guidance addresses the detailed requirements of RIPA/IPA and codes of practice in relation to:

- the covert surveillance of individuals,
- the use of covert human intelligence sources, including undercover officers/agents/informants,
- the recording of telephone conversations
- for obtaining communications data.

**This guidance provides a summary and overview of the legislation and codes of practice. DO NOT seek to rely on it alone. In the event of any doubt, any senior managers, or applicants, should refer to the relevant legislation or code and consult the Director of Corporate Services or the Head of Trading Standards before any action is taken.**

1.1.6 The Acts and relevant Codes of Practice (as amended in September 2018) had effect from 1 October 2000 and impose requirements as regards authorisation, procedures and records, which must be followed by Public Authorities undertaking investigations which fall within the scope of the Act

1.1.7 Appropriate staff should familiarise themselves with the guidance and procedures, the legislation and the Codes of Practice. If in any doubt advice and guidance should be sought from an appropriate officer before undertaking any enforcement activities which may fall within the scope of the Act.

1.1.8 Lancashire County Council is committed to carrying out its enforcement functions in an equitable, practical and consistent manner. We are committed to these aims and to maintaining a fair and safe environment. This guidance demonstrates our desire to carry out our criminal investigations in a fair and equitable manner that respects all human rights and contributing to this commitment.

1.1.9 Enforcement activities of the Council that fall within the remit of the RIPA/IPA are subject to monitoring and oversight by the Investigatory Powers Commissioner's Office.

1.1.10 Complaints made regarding activities of the Council, which are within the scope of RIPA/IPA, can be investigated by the Investigatory Powers Tribunal.

1.1.11 The Council may be liable to claims alleging breaches of an individual's rights under the Human Rights Act 1998 if officers fail to follow the requirements of the legislation and Codes of Practice.

1.1.12 Failure to follow the legislation and Codes may also adversely affect the admissibility of any evidence obtained using methods covered by RIPA/IPA. The safety of members of the public supplying information to the Council may also be compromised where an authorisation is not in place.

1.1.13 When undertaking any covert investigation, officers should have regard to the health and safety of persons affected by the activity. This may include themselves, colleagues and members of the public and the person you are being asked to observe. A risk assessment of the investigation technique being proposed should be undertaken, having regard to Corporate Health and Safety Policy and any supplementary guidance issued.

1.1.14 The monitoring of Internet and e-mail use is regulated by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, made under RIPA.

## **1.2 Employee or Non-RIPA Surveillance**

1.2.1 RIPA does not apply where surveillance is undertaken otherwise than for 'the detection or prevention of crime' for example as part of an internal investigation into possible employee misconduct where the investigation may be of a disciplinary nature rather than being primarily aimed at detecting criminal offences\*. However, as such surveillance may infringe an individual's Human Rights in respect of privacy, then similarly to RIPA, the procedures of authorisation and assessment should be followed with the Authorising Officer using RIPA criteria in considering the surveillance request. Assessment and Approval forms, similar to RIPA, must be used in considering surveillance activity.

1.2.2 Similarly, child custody/protection investigations requiring surveillance should follow the same principles and use the non-RIPA Application forms\*. Copies of appropriately completed forms should be kept with the investigation file and the original sent to the Central Register in Information Governance.

1.2.3 Where surveillance is undertaken otherwise than for the prevention or detection of crime, reference should be made to the corporate policy on shadow RIPA authorisations.

1.2.4 \*Note that where there is a clear likelihood at the outset of an investigation, or during an investigation it becomes apparent that criminal proceedings will result, the full RIPA regime, including application for magistrate's approval, should be followed. This may include cases of child abuse or neglect, abuse of vulnerable adults, or major employee fraud/theft. In all cases

the authorising officers will be the designated Trading Standards Managers (including the Head of Trading Standards and the Trading Standards Managers).

### 1.3 CCTV Use

1.3.1 CCTV surveillance systems are not normally caught by the Act where signs or cameras are visible or members of the public are aware that such systems are in use. However there may be occasions when public authorities use CCTV systems for the purposes of a specific directed investigation or operation. In such cases, authorisation for directed surveillance may be necessary. A protocol has been produced to protect those officers responsible for such systems from being pressured into carrying out directed surveillance without an appropriate authorisation.

### 1.4 Lancashire County Council Auditing

1.4.1 For appropriate corporate reporting and auditing of activities to ensure awareness and ongoing compliance with RIPA/IPA policies. Contact: Director of Corporate Services

## 2 Definitions

### 2.1 Surveillance and Covert Human Intelligence Sources

#### The Regulation of Investigatory Powers Act 2000

Authorising Officer Means the person(s) designated under Sections 28 and 29 of the Act to grant authorisations for directed surveillance and the use and conduct of a Covert Human Intelligence Source, respectively. The Head of Trading Standards and Trading Standards Managers in Trading Standards are designated as authorising officers by the Director of Corporate Services.

Conduct of a Source - Any action of that source falling within the terms of the Act or action incidental to it. (i.e. what they do)

Confidential Material Matters of legal privilege, confidential personal - Includes: information (e.g. medical records), confidential journalistic material

Controller - Means the person or designated managerial officer responsible for overseeing the use of the source.

Covert Human Intelligence Sources - Commonly known as Agents, Informants, Undercover Officers. (NB. See RIPA and the Codes of (CHIS) Practice for the definition)

Covert Surveillance - surveillance carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is taking place.

Directed Surveillance - Surveillance is directed if it is covert but not intrusive and is undertaken:

- a) for the purpose of a specific investigation/operation.
- b) is likely to result in the obtaining **private information** about a person (whether one specifically identified for the purposes of the investigation or operation or not).
- c) Otherwise than by way of an immediate response to events or circumstances and it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

Handler - An investigating officer having day to day responsibility for:

- dealing with the source on behalf of the authority.
- directing the day to day activities of the source.
- recording the information supplied by the source.
- monitoring the security and welfare of the source.

Intrusive Surveillance - Covert Surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle **and** involves the presence of any individual **on** the premises or **in** the vehicle or is carried out by means of a surveillance device.

Private Information - in relation to a person or business, this includes any information relating to an individual's private, business or family life. Information which is non-private may include publicly available information such as web sites, business reports, and commercially available information.

Senior Responsible Officer (Surveillance) - An officer responsible for the integrity of RIPA processes for the authority and compliance with Part II of the Act. The Senior Responsible Officer for Surveillance and CHIS is the Director of Corporate Services.

(Note: See Senior Responsible Officer for Communications Data)

Surveillance includes:

- monitoring, observing or listening to persons, their movements, their conversations, or their activities or communications.
- recording anything monitored, observed or listened to in the course of surveillance.
- Surveillance by or with the assistance of a surveillance device (any apparatus designed or adapted for use in surveillance e.g. cameras and microphones.)

## 2.2 Communications Data

Investigatory Powers Act 2016 (IPA)

Brings together all of the powers already available to law enforcement and the security and intelligence agencies to obtain communications and data about communications.

Communications Service Provider (CSP)

These include telecommunications, Internet (including e-mail) and postal service providers.

Designated Person

These are the officers who must be made aware of any application for communications data prior to it being submitted to the OCDA currently three Trading Standards Managers.

Senior responsible Officer (Communications Data)

An officer responsible for the integrity of RIPA/IPA processes in relation to the Acquisition of Communications data under the Act, currently the Head of Trading Standards.

Single Point of Contact (SPOC)

All local authorities who wish to acquire communications data under the Act must be party to a collaboration agreement. We are required to be members of NAFN and use NAFN's shared SPoC services. The accredited SPoCs at NAFN will scrutinise the applications independently. They will provide advice to the local authority ensuring it acts in an informed and lawful manner. (CSPs will not deal with enquires to obtain communications data from an officer who is not listed with them as being a nominated SPOC).

### 3. Covert Surveillance Policy and Procedures

#### 3.1 Introduction

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

3.1.2 An authorisation provides lawful authority for a Public Authority to carry out covert surveillance.

3.1.3 Any /Service seeking to use covert surveillance techniques must seek authorisation.

3.1.4 Whenever surveillance takes place and is for the purpose of obtaining, or is likely to obtain private information about a person (whether or not they are the target of the operation) an authorisation should be obtained.

3.1.5 By obtaining an authorisation, the surveillance operation is carried out in accordance with the law and the safeguards that exist.

3.1.6 Prior to granting an authorisation the Authorising Officer must be satisfied that the proposed surveillance is **necessary** on specific grounds and is **proportionate** to what it seeks to achieve.

3.1.7 Careful consideration must also be given to any Community sensitivities that may be exacerbated by any individual surveillance operation.

3.1.8 Before applying for an authorisation, the Investigating Officer should consider whether the evidence sought could be obtained by alternative possibly non covert methods.

3.1.9 The Authorising Officer must also believe that the surveillance is proportionate to what it seeks to achieve and is not excessive.

#### Note for All Applications for Authorisations

##### Necessity

For interference with an individual's private, family or business life to be necessary, the action must be for the purpose of preventing or detecting crime, be necessary to secure best evidence and the authoriser should be satisfied that less covert or intrusive action would not serve the appropriate purpose.

##### Proportionality

The test for proportionality goes far beyond selecting the least intrusive method of investigation. The activity to be observed must not be trivial and must warrant the surveillance to be instigated.

The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair. Proportionality should contain a consideration of four elements:

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

### 3.2 Collateral Intrusion

3.2.1 The officer seeking the authorisation should also consider the possibility of collateral intrusion (this is where interference with the privacy of others not subject to the original surveillance may occur). Steps should be taken to assess the risk and where possible reduce the risk of collateral intrusion. Where unforeseen collateral intrusion occurs during an operation, the Authorising Officer must be notified and consideration given to amending the authorisation following a review. A separate Lancashire County Council CCTV protocol exists which also refers to avoiding collateral intrusion.

3.2.2 Consideration must also be given as to whether or not the surveillance activities of the Service take place where similar activities are also being undertaken by another agency e.g. the Police, Benefits Agency, Environment Agency and liaison with other enforcement agencies should be considered where appropriate.

### 3.3 Records of Authorisations

3.3.1 A record of all authorisations must be maintained for five years following the end of the authorisation for Covert Surveillance and CHIS. The record should include not only those authorisations granted, but also those which are refused. Records relating to Communications Data are retained by NAFN and liable to be inspected by the Investigatory Powers Commissioner's Office (IPCO).

3.3.2 All CHIS and Directed Surveillance records including JP authorisations must be supplied electronically by email to Information Governance for the Central Record of authorisations. For the Acquisition of Communications data, the record is maintained by the National Anti Fraud Network (NAFN). Nominated Authorising Officers may retain copy records for their own reference. Copies of all relevant documents should be returned electronically to the applying officer. An officer from Information Governance will advise Authorising Officers of the status of authorisations when renewals, cancellation etc. are required.

3.3.3 Due to the sensitive nature of **all documentation** covered by the Act, consideration **must** be given to the means by which copies are forwarded to the central record to ensure confidentiality. Records of authorisations, renewals and cancellations should be forwarded by email to Information Governance.



### 3.4 Authorisations for Directed Surveillance

3.4.1 An authorisation is required for covert surveillance undertaken:

- (a) for a specific investigation or operation; and
- (b) where the surveillance is likely to result in obtaining private information about any person (whether they are the subject of the surveillance or not).

3.4.2 Directed surveillance is conducted where the observation is for the purpose of gathering private information to produce a detailed picture of a person's life, activities and associations.

3.4.3 An authorisation is not required for covert surveillance carried out as an immediate response to events or circumstances which could not be foreseen. However, if this surveillance continues for a substantial period of time, or is recommenced after some time has elapsed, an authorisation may be required.

3.4.4 **Local Authorities cannot undertake intrusive surveillance.** Therefore, authorisations will not be granted for covert surveillance on residential premises or in any private vehicles where an individual or surveillance device is present on such premises or vehicle.

3.4.5 Where the surveillance activity is likely to result in **confidential material** being obtained, the Authorising Officer within Lancashire County Council will be **the Chief Executive, or in his absence the person acting as Head of Paid Service** (see paragraph 4.3 of the Code of Practice on Covert Surveillance). In practice, advice should be sought from the Director of Corporate Services.

### 3.5 Covert Video Camera and Audio Recording Equipment

3.5.1 This type of equipment may be considered for the purpose of recording the transaction/activity and obtaining photographic evidence of individuals or activities e.g. Trading Standards test purchases etc. Concealed cameras and voice recorders may be used to record activities and conversations without the knowledge of the other party.

3.5.2 The deployment of such equipment clearly has the potential for not only obtaining personal information in relation to the suspect, but also collateral intrusion into the activities of other persons in the vicinity of the operation.

3.5.3 Whilst the use of such equipment does not automatically require an authorisation, consideration should be given to safeguard against any challenge as to Human Rights infringements. The manner in which such equipment is used may also invoke the requirements relating to **Covert Human Intelligence Sources**. Prior to such covert use of equipment, advice should always be sought from an Authorising Officer or the Head of Trading Standards.

### 3.6 Grounds For Granting Authorisations

3.6.1 Surveillance **must** be shown to be necessary on specific grounds. Investigations undertaken by Local Authorities can only be authorised:

#### **For the purposes of preventing and detecting crime**

3.6.2 The Council operates parallel procedures for Non-RIPA investigations/surveillance (Ref paragraph 1.2)

3.6.3 Local Authorities are not able to issue urgent authorisations.

3.6.4 Officers should normally be able to prepare applications in advance to enable a written authorisation to be obtained.

### 3.7 Duration of Authorisation

3.7.1 An authorisation is valid for three months, unless cancelled.

This begins on the day on which the Authorising Officer grants the application, the expiry date will be considered to be three months minus one day (authorisation ceases at 23:59) from the date of signature by the Authorising Officer.

3.7.2 The Authorising Officer should ensure that a system is in place to review authorisations before it ceases to have effect. It is a matter for the Authorising Officer to determine how frequently a review is necessary and practicable. This is stated within the authorisation as a control measure. The authorisation should also be reviewed prior to expiry to determine whether a renewal is required and can be justified. It is a requirement that review forms are maintained as part of the Central Record of authorisations.

### 3.8 Renewal

3.8.1 An authorisation may be renewed for a further period of three months. It may be renewed more than once provided that the renewal continues to meet the criteria for authorisation. The number of occasions it has been renewed should be recorded.

3.8.2 A record should also be made of the following:

- Any significant changes to the previous authorisation
- Why it is necessary to continue the surveillance
- The value to the investigation of the information obtained so far by surveillance
- An indication of the length of time further surveillance may be necessary

### 3.9 Cancellations

3.9.1 The Authorising Officer who granted or who last renewed the authorisation must cancel it if satisfied that the directed surveillance no longer satisfies the criteria outlined in this procedure.

3.9.2 An authorisation should also be cancelled once the activity which was the subject of the authorisation has been completed. **The authorisation should not be left to lapse as a result of the time limit expiring.**

3.9.3 The reason for cancellation of the authorisation must be detailed on the cancellation form. The cancellation form should be sent to the Central Record by the Authorising Officer.

### 3.10 Records

3.10.1 Material obtained as a result of surveillance activities should be recorded on the "Record of Product obtained by Directed Surveillance Form".

3.10.2 A copy of this form should be forwarded to the Authorising Officer to be filed with the Authorisation form. The original should be retained by the Investigating Officer as part of the case file. Internal procedures within some services may require that all authorisations and case materials are held within a specific secure location. A copy should be retained on the case file.

3.10.3 A record must also be maintained of the period over which surveillance has taken place.

### 3.11 Handling Product from Surveillance Activities

3.11.1 "Product" from Covert Surveillance activities may consist of:

- Photographs
- Video film
- Voice recordings
- Surveillance log
- Officer's notes

3.11.2 The above may be required as evidence in current or future criminal proceedings. Officers must have regard to the provisions of the Criminal Procedure and Investigations Act 1996 in relation to unused material. Product obtained via an authorisation may be used by the authority in other investigations.

3.11.3 Although specific legislation and the Data Protection Act 2018 provide for the disclosure of information in certain circumstances, additional controls are introduced by RIPA.

3.11.4 The use of any product obtained by authorised surveillance activities outside of the local authority or the Courts should only be authorised in the most exceptional circumstances. This requirement seeks to prevent product from being used for grounds other than that for which it was obtained. **Joint operations should make reference to the potential use of evidence by each agency.**

3.11.5 Officers may receive requests from other agencies for product, which may include photographs of suspects, descriptions and vehicle details. Where this information has been obtained under an authorisation, further guidance should be sought from the Authorising Officer since disclosure may not be permitted under the provisions of the Code of Practice.

### 3.12 Storage of Product

3.12.1 Officers should ensure that evidential protocols are observed to ensure the integrity, security and confidentiality of material. This will ensure that the requirements of the Data Protection Act are addressed.

### 3.13 Disposal of Product

3.13.1 Officers should ensure that personal data is not kept for longer than necessary for the purpose for which it was obtained. Product which is not required as evidence should not be retained any longer than necessary. It will be necessary to retain product for a sufficient time to safeguard the Council against any civil claims against infringement of an individual's Human Rights. **A period of five years** ensures that all of the retention period requirements are addressed.

3.13.2 Product which has been destroyed should have this fact recorded on the record of product obtained by Directed Surveillance and be signed by the officer

3.13.3 An amended copy of this Record form should be forwarded to the Authorising Officer indicating destruction of the product obtained from the surveillance activity.

## **4 Guidance Notes for the Authorisation of Directed Surveillance**

### **4.1 Activity Involved**

Does the activity involve:

The necessary and proportionate systematic covert surveillance of an individual which is likely to gather private information?

#### **If so, an authorisation is required**

4.1.1 Low-level activity for example, to determine whether a premise is still trading, will not require authorisation. Surveillance carried out in response to immediate events will also not require authorisation. However, if the surveillance activity continues for any period of time, an authorisation will be required.

4.1.2 The Authorising Officer must be satisfied that the authorisation is:

**Necessary for the purposes of preventing and detecting crime or is pursuant to Council Policy for Non-RIPA surveillance (Ref Paragraph 1.2)**

**4.1.3 The Authorising Officer must also believe that the surveillance is proportionate to what it seeks to achieve, and is not excessive.**

Where the identity of the subject is known to the officer, measures should also be taken to verify (where appropriate) the address under surveillance (e.g. electoral register, business rates, utility suppliers). The Authorising Officer must include some control measures within the authorisation e.g. reviews, circumstances in which the surveillance must be stopped.

4.1.4 The application should provide the background to the investigation and details of other methods which have failed to provide the information being sought or why other methods are not appropriate.

4.1.5 The description of the activity to be undertaken should be as comprehensive as possible describing how the surveillance will be undertaken, where it will occur and any equipment (e.g. cameras, video camera) which will be used. The investigating officers must not employ techniques which are not permitted by the authorisation.

4.1.6 The information being sought should be described and how this may provide evidence of the offence or other matter being investigated. The potential for collateral intrusion should be identified and plans to avoid/minimise such intrusion.

4.1.7 A statement must also be included as to the likelihood of obtaining confidential material/religious material e.g. the premises are a residential property, not located near any medical, religious or legal establishments, therefore there is no likelihood of obtaining any confidential/religious material.

4.1.8 If confidential material is being sought, or is likely to be obtained, a higher level of authorisation is required. This authorisation can only be given by the Chief Executive (or in their absence by the Head of Paid Service). Further guidance should be sought from the Director of Corporate Services if confidential material becomes relevant to the investigation.

4.1.9 Where applications for authorisations are refused, records of the refused application must also be maintained stating the reasons for the refusal and a service number. Copies of these refusals must be sent for inclusion in the central record.

## **4.2 Directed Surveillance via Recording of Telephone Conversations**

4.2.1 The interception of communications sent by post or public telecommunications systems or private telecommunications systems attached to the public network may only be authorised by the Secretary of State.

4.2.2. The attachment of a general surveillance device e.g. "wiretapping" to a telecommunications system can only be undertaken under a warrant **(this is not available to the Council)**.

4.2.3 However an exception to the rule requiring a warrant exists, where one party to a telephone conversation consents and where an authorisation for directed surveillance is obtained. See Section 48(4) of RIPA.

4.2.4 For example, a member of the public may consent to the recording of a telephone conversation made by or to him/her. An officer may seek to record such a conversation to assist with an investigation into another person's activities.

4.2.5 An officer may also request a colleague to telephone another person as part of an investigation or may make the call himself or herself. These situations may require an authorisation to be granted depending on the nature of the information to be obtained. Where the call is a simple call to enquire about the availability or description of goods or services on offer for supply as any consumer would enquire, and is not recorded, an authorisation will not be required.

4.2.6 Where the person giving consent is not present and a recording made, this activity is deemed to be intrusive surveillance and is beyond the scope of activities authorised for the Council.

4.2.7 Where the Officer acts in an overt capacity, i.e. clearly identifying the fact that they represent the Council, the activity will not require a directed surveillance authorisation.

4.2.8 Where the Officer makes/receives the call acting covertly, with the possibility of private information being obtained and a relationship being entered into, a CHIS authorisation will be required. This will cover any directed surveillance activity which is undertaken by the CHIS.

4.2.9 Similarly if a member of the public or another person acting as a covert source is asked to record a telephone conversation made/received by them, a CHIS should be in place.

## **4.3 Test purchasing of age restricted products**

4.3.1 Juveniles may only be authorised as a CHIS by the Head of Paid Service.

4.3.2 Officers should have regard to the Regulatory Delivery code of Practice in determining whether directed surveillance authorisation will be necessary in the context of the planned operations.

4.3.3 Where the information obtained relates only to whether a sale is made or not, and no other information is likely to be obtained which is not already known to the officer directed surveillance authorisation is not necessary.

## **5 Covert Human Intelligence Sources (C.H.I.S.)**

### **5.1 Introduction**

5.1.1 This section of the guidance document deals with Covert Human Intelligence Sources (CHIS), more commonly known as undercover officers and informants/agents.

Authorisation is a two-stage process:

- (a) to use a source
- (b) an authority for the conduct of a source

NB: Juvenile surveillance CHIS – normally no-one under 18 years or any vulnerable individual should be considered as a CHIS (see 5.6 – 8)

5.1.2 A CHIS is a person who establishes or maintains a personal or other relationship with another person for the covert purpose of:

- (a) Using such a relationship to obtain information or to provide access to information to another person, or
- (b) Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship.

In addition, a person who covertly provides information to a public authority is potentially a CHIS if he has obtained that information in the course of or as a consequence of the existence of a personal or other relationship, whether or not the relationship has been established or maintained for that purpose. A repeat informant, if it becomes apparent that he obtains his information in that way, is a CHIS to whom a duty of care is owed, if the information is acted upon. Legal advice should be taken before acting on the information provided by such a source.

5.1.3 The relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose.

5.1.4 The Council receives complaints/information routinely from the public and traders regarding the alleged activities of individuals. The actions of these complainants do not generally fall within the definition of a covert source since they are a one off provision of information. However, a person may become a covert source if an ongoing relationship with the Council develops and activities described in paragraph 5.1.2 above are carried out.

5.1.5 Where the nature of the complaint relates to a matter where an officer requests the complainant to obtain further information covertly via a relationship with another individual, this activity is likely to fall within the scope of RIPA. An authorisation will therefore be required before seeking such information. By following the authorisation procedures, the Council will also be in a position to seek to safeguard the identity of the source in any subsequent legal proceedings. Further guidance should be sought from the Director of Corporate Services on this issue to ensure that the identities of any such individuals are safeguarded in the event of any legal proceedings, tribunals or disciplinary hearings.

5.1.6 The Code of Practice on Covert Human Intelligence Sources relates not only to sources (which may commonly be referred to as informants) but also the activities of sources, which consist of undercover officers who establish or maintain a covert relationship to obtain information and evidence.

5.1.7 Before a source may be engaged or an undercover officer deployed the use must be authorised. A separate authorisation for the conduct is also required. The use authorisation effectively registers the source with the Council. The conduct will address each separate operation/investigation in which that source may be involved.

5.1.8 In most cases, the use and conduct of a source will be restricted to a single investigation. However, situations may arise where different conducts are required which can be done once the use authorisation is in place. An example would be officers of a Service who undertake investigations which require different undercover stories to be adopted. The use authorisation enables them to undertake such covert activities. The conduct authorisation addresses each different cover story and activity within a different investigation/operation.

5.1.9 The same authorisation form is used for both use and conduct, with the deletion of Use\*/Conduct\* as appropriate. A conduct authorisation should be traceable back to the original use authority. A handler and controller must also be designated as part of the authorisation process and detailed records of the use, conduct and tasking of the source maintained.

5.1.10 An Authorising Officer is a person entitled to give an authorisation for the use or conduct of a source in accordance with Section 29 of the RIPA. The Head of Trading Standards and Trading Standards Managers have been designated as authorising officers.

5.1.11 The use of a CHIS should be **necessary** and **proportionate** to the matter being investigated (see para 3.1.9).

5.1.12 Failure to obtain an authorisation may render the Council liable to a claim of infringing the human rights of an individual and may adversely affect the admissibility of any evidence obtained by the use of covert methods employed by a source. It is also established that a public authority owes a duty of care to a CHIS. Failure to undertake a robust risk assessment and authorisation may also adversely affect the position of the Council in the source suffering any harm as a result of the activity in which they have been engaged.

5.1.13 Careful consideration must be given to any potential sensitivities which may exist before deciding whether to use a CHIS in a particular community or against a particular individual.

5.1.14 A separate directed surveillance authorisation is not required where any surveillance device (technical equipment) is used in the presence of the covert source.

5.1.15 A CHIS carrying surveillance equipment can be invited to enter residential premises or a private vehicle. However, the CHIS cannot install surveillance equipment in residential premises or a private vehicle since this activity constitutes intrusive surveillance and is not available for use by local authorities.

## 5.2 Further Guidance on the C.H.I.S Process.

5.2.1 When seeking an authorisation for an individual to act as a CHIS, consideration needs to be made of their potential role in the investigation. Are they prepared to be a witness? Do they need to be given protection as a result of providing information? The source may also be able to provide information relating to several different matters worthy of investigation.

5.2.2 The motives of potential sources need to be considered as part of the evaluation process. Could they be motivated by possible rewards or revenge? The aim could be to deflect attention away from themselves towards other individuals.

5.2.3 Has consideration been given to building up a detailed profile of the potential source and their associates? In all cases, a face-to-face meeting with the complainant or any other person considered as a potential source should take place. Please be aware that the individual may have needs in respect of language, hearing or sight.

5.2.4 Directed surveillance may be needed to evaluate the source. Consideration should be given in certain circumstances to carrying out checks on the source with the Police. A thorough risk assessment must be carried out on the potential source and the proposed conduct.

### **5.3 Management of Sources**

5.3.1 Tasking is the assignment given to the source by the handler/controller asking him/her to obtain information or to take action to obtain information.

5.3.2 All authorisations should be in writing and in place before tasking a source. Every source must have a designated handler and controller.

### **5.4 Designated Handlers and Controllers for the Use of Covert Human Intelligence Sources**

5.4.1 Where the CHIS is a complainant or an informant, the Handler will be the Investigating Officer and the Controller will be their line manager. Where the CHIS is employed by the Council acting in an undercover capacity, the Handler will be the officer's line manager and the Controller will be another manager within the Service. This arrangement will ensure that an officer does not act as a Controller and Authorising Officer thereby ensuring a level of independent scrutiny.

### **5.5 Security and Welfare of Sources**

5.5.1 A source has no licence to commit crime. In certain circumstances it may be advisable to provide written guidance to the source explaining what is being requested of them and the limits of the tasking. The source should be asked to sign such a document to confirm that they understand the terms of reference.

5.5.2 A public authority deploying a source should take into account the safety and welfare of the source when carrying out any actions in relation to the authorisation or tasking. The foreseeable consequences of the tasking should also be considered.

5.5.3 A Risk Assessment should be undertaken to evaluate the source and to determine the risk to the source of any tasking and the likely consequences should the identity and role of the source become known to the subject or others involved with the subject.

5.5.4 The handler should draw to the attention of the controller:

- The Risk Assessment.
- The Conduct of the Source.
- The Safety and Welfare of the Source.



A Handler is responsible for:

- Dealing with the source on behalf of the Council.
- Directing the day to day activities of the source.
- Recording the information supplied by the source.
- Monitoring the security and welfare of the source.

5.5.5 Where a source is known or suspected of being involved in crime, consideration should be given to their motives in supplying information. It may also be a prudent step in the management of such a source to have two officers present during any meetings with the source. Background checks on the potential source via the Police Local Intelligence Officer should also be considered.

5.5.6 Special provisions exist for the conduct in use of juvenile sources (Under 18).

A source under 16 cannot be engaged to use a relationship with any person having parental responsibility for them. A source under 16 must have an appropriate adult present during any meetings and a risk assessment must also take place before granting or renewing an authorisation for the conduct and use of a source under 18. This will take account of physical and psychological risks.

See the Regulation of Investigatory Powers (Juveniles) Order 2000 (as amended) for detailed guidance.

5.5.7 Special consideration should also be given to the use of vulnerable individuals as a source. This will require the highest level of Authorising Officer (see the code of practice for further guidance).

5.5.8 Authorisations for juvenile sources i.e. a source under the age of 18, when the authorisation is granted, have a duration of 4 months and must be reviewed monthly. **Juvenile and vulnerable source authorisations can only be issued with the authorisation of the Head of Paid Service.**

## 5.6 The Application for Authorisation

Must include:

5.6.1 The ground on which the authorisation is sought:

- Preventing or detecting crime (or other Lancashire County Council Non-Ripa policy circumstances)
- An explanation of the necessity and proportionality of the Use/Conduct.
- Where the matter relates to a specific investigation, details of that investigation or operation.
- Details of the purpose for which the source will be tasked.
- Details of what the source will be tasked to do.
- Details of the level of authority required having regard to any confidential material that might be obtained as a consequence of the authorisation. (This will invoke the requirement to be authorised by the Chief Executive if confidential material is being sought or is likely to be obtained).

- Details of who will be affected and plans to avoid/minimise collateral intrusion. Where this changes, the Authorising Officer must be informed and the authorisation reviewed.
- A detailed Risk Assessment must have been undertaken. A review may also be required if the assessment is not current.
- The Authorising Officer may wish to impose control measures on the authorisation that is granted.

5.6.2 Unless renewed or cancelled, an authorisation remains in force for:

12 months from the date of issue (Juveniles – four months). The authorisation should be given a unique operation reference number and be recorded in management record file. Conduct authorisations should be referenced to the original use authorisation.

A duplicate/copy of the authorisation should be issued to the officer. This will ensure that the officer has a record of the scope of the activity authorised.

5.6.3 Applications which are refused should also be recorded together with the reasons for the refusal and a service number. Copies of these refusals must be sent for inclusion in the central record.

## **5.7 Duration of Authorisations**

5.7.1 Authorisations have effect for a period of twelve months. It is suggested that the authorisation to use the source has effect for up to 12 months (other than juveniles, see above), however the conduct may be restricted to a shorter period or be made subject to reviews set as a control measure by the Authorising Officer.

5.7.2 Records of authorisations to be retained for a minimum period of five years.

5.7.3 Destruction of the authorisation form should be documented in the Authorising Officers Management Record file.

## **5.8 Renewals and Reviews**

5.8.1 An authorisation may be renewed after the Authorising Officer reviews the use made of the source having regard to:

- a) The tasks given to the source
- b) The information obtained from the source.

If satisfied that the original authorisation criteria are met, a renewal may be granted.

5.8.2 Since an authorisation for a CHIS may remain in force for a period of twelve months, regular reviews should be undertaken to ensure the ongoing validity of the activity and the ongoing welfare and security of the source. Any changes to circumstances may require that further risk assessments are undertaken.

5.8.3 The reviews should be undertaken at intervals of no longer than three months and documented. Additional control measures may also be introduced as a result of a review. The Authorising Officer should implement a system to identify appropriate review dates.

## 5.9 Cancellations

5.9.1 An Authorising Officer must cancel an authorisation where:

The use or conduct of the source no longer meets the original authorisation criteria.

The procedures for managing the source are no longer in place.

Where possible the source should be informed of the cancellation, and this fact noted on the cancellation. The authorising officer should give directions on the handling, storage or destruction of the product of surveillance.

5.9.2 Where an investigation no longer requires the authorisation to be in place e.g. the evidence has been obtained, it should be cancelled promptly rather than allowed to expire through time, and the reason for cancellation documented.

## 5.10 Source Records

5.10.1 Records of Use of the source and the product provided by the source should be maintained by the service for a period of five years. Records should not be destroyed without the authority of the Authorising Officer. Destruction of records should be documented in the Central Records file.

5.10.2 The following information must be recorded:

- Authorisation Reference Number
- Authorising Officer
- Identity used by Source (If any)
- Identity of Source
- Reference used in the authority to refer to Source (If any)
- Information relating to security and welfare of Source
- A record that any risks to the security and welfare of the Source have been explained to and understood by the Source
- Records of reviews conducted on the continuing use and welfare of the Source
- The date when the Source was recruited
- The circumstances of the recruitment
- Identity of the Handler and Controller (and details of any changes)
- A record of the tasks and activities given to the Source
- A record of all contacts or communications between the Source and a person representing the Council
- The information obtained through the Source

- How the information is used
- A statement as to whether any payment, benefit or reward is provided by or on behalf of any investigating authority and details of it\*.
- Reasons for cancelling/not renewing the authorisation and the date and the time of such a decision.

\*(Please seek guidance regarding any payment, benefit or reward you may wish consider from an Authorising Officer).

**Notes:**

**Necessity**

For interference with an individual's private, family or business life to be necessary, the action must be for the purposes of preventing and detecting crime or of preventing disorder, be necessary to secure best evidence and that less covert or intrusive action would not serve the appropriate purpose.

**Proportionality**

The test for proportionality goes far beyond selecting the least intrusive method of investigation. The activity to be observed must not be trivial and must warrant the surveillance to be instigated.

The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair. Proportionality should contain a consideration of these elements:

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

**6 Risk Assessments for All RIPA/Surveillance Activities**

6.1 Whenever undertaking covert directed surveillance or engaging in the conduct and use of a CHIS, the proposed activity must be the subject of a risk assessment and evaluation of the proposed Source.

6.2 Directed Surveillance activities clearly have the potential to expose staff to hazards should their activities become known to the subject or even to others during the operation. The use of a CHIS has the potential to expose handlers, undercover officers, agents/informants and the public to health and safety risks. A duty of care may also lie with officers and the Council in managing sources.

6.3 Authorising Officers, Controllers, Handlers Undercover Officers and Investigating Officers must all have regard to the Council's Corporate Policy on Health and Safety. This addresses issues such as lone working and violence to staff.

6.4 It is a matter for each Service to determine the training required to ensure that staff are competent to undertake risk assessments of proposed operations/use of covert sources. All incidents/dangerous occurrences during the course of operations should be reported in accordance with the relevant Health and Safety Procedures.

6.5 Consideration should also be given to staff training requirements to engage in covert activities, surveillance and acting in an undercover capacity.

6.6 This section of this guidance document is intended to provide an overview which must be borne in mind when undertaking activities within the scope of RIPA.

6.7 Further Guidance on Health and Safety issues is available from Corporate HR/ Health and Safety sources.

6.8 Risk assessments for directed surveillance operations should be undertaken by the officer in charge of the proposed activity and submitted with the authorisation application.

6.9 Risk assessments for the use of a CHIS should be undertaken by the Handler and considered by the Controller as part of a risk management process. The assessment should then be forwarded to the Authorising Officer with the application. The assessment should consider the Ethical, Personal and Operational Risks of the proposed activity. The evaluation of a potential source is an important part of the application process.

6.10 Risk assessment is not a one-off activity but an ongoing process throughout the operation and use of the source, since circumstances may change and a review may be required.

6.11 The nature of the risks surrounding the deployment and management of individual sources, handlers and operational activities will vary according to a wide range of factors on a case by case basis. Risk assessment allows the handler and controller to advise the Authorising Officer of the plan for managing the risks.

6.12 Authorising Officers will **not** authorise a Directed Surveillance operation or the use of a source without the evidence that the risks have been considered and a plan for their management exists.

## **7 Communications Data (Investigatory Powers Act 2016)**

### **7.1 Accessing Communications Data**

7.1.1 The Investigatory Powers Act 2016 (IPA) and Associated Code of Practice set out a formal legal framework, by which public authorities can obtain communications data by a lawful method, consistent with article 8 of the Human Rights Act 1998.

7.1.2 This section of the guidance document details the systems in place to ensure compliance with IPA when an investigating officer seeks to obtain communications data within the scope of their enquiries.

7.1.3 In a similar manner to the existing provisions of RIPA relating to directed surveillance and the use of a CHIS, a process of submitting an application and securing an authorisation is established by the legislation and code of practice.

For this process the lead Service for the Authority is the Trading Standards Service. The Senior Responsible Officer for this Part of the Act is the Head of Service for Trading Standards. The authoriser for Communications Data is the Office for Communications Data Authorisations (OCDA) which sits within IPCO.

7.1.4 Under Section 60A(1)(a) of the IPA, communications data which local authorities are entitled to access can only be sought for the purpose of:

- **Preventing or detecting serious crime where the data requested is wholly or partially events data.**
- **the purpose of preventing or detecting crime or of preventing disorder where the data requested is entity data.**

The application is therefore put to the tests of necessity, proportionality and seriousness.

7.1.5 Requests for communications data must be made within the prescribed framework and cannot be undertaken directly by an officer as communications service providers will only accept requests for information from accredited officers registered with the Home Office and termed **Single Points of Contact (SPOC)**.

7.1.6 The National Anti Fraud Network NAFN acts as the SPOC on behalf of Lancashire County Council. Applications are made by officers via a secure network, and forwarded to the designated persons in the Trading Standards Service. The Designated Person confirms that the application is appropriate for forwarding to the OCDA, who are the approval body for applications, by means of this network.

7.1.7 Records of all applications, authorisations, notices, cancellations and refusals are maintained by NAFN. These are subject to periodic inspection by the body appointed to have an overview of this Part of the Act, the Investigatory Powers Commissioners Office. As with RIPA there is a Central Record. For this part of the Act it is maintained by NAFN on behalf of Lancashire County Council.

## **7.2 What is Communications Data**

7.2.1 The term 'communications data' includes the 'who', 'when', 'where', and 'how' of a communication but not the content i.e. what was said or written.

It includes the way in which, and by what method, a person or thing communicates with another person or thing. It excludes anything within a communication including text, audio and video that reveals the meaning, other than inferred meaning, of the communication.

It can include the address to which a letter is sent, the time and duration of a communication, the telephone number or email address of the originator and recipient, and the location of the device from which the communication was made. It covers electronic communications including internet access, internet telephony, instant messaging and the use of applications. It also includes postal services.

7.2.2 Communications data is generated, held or obtained in the provision, delivery and maintenance of communications services – i.e. postal services or telecommunications services.

7.2.3 Communications data in relation to telecommunications operators' services and systems includes data held or obtainable by a telecommunications operator or postal operator or which is available directly from a telecommunication system.

## 7.3 Who are Communication Service Providers

7.3.1 Communications data is obtained from Communications Service Providers (CSPs)

These include:

- Telecommunications Providers
- Internet Service Providers (ISPs)
- Postal Providers

## 7.4 What Information can be obtained from Communications Service Providers

### 7.4.1 Information about communications service users

#### Entity Data

This category mainly includes personal records supplied to the CSP by the customer/subscriber. For example, their name and address, payment method, contact number etc.

- Name of account holder/subscriber
- Installation and billing address
- Method of payment/billing arrangements
- Collection/delivery arrangements for PO Box (but not where from or to)
- Other customer information such as any account notes, demographic information or sign up data (not passwords or personalised access information)

### 7.4.2 Information about the use of the Communications Service

#### Events Data

This category mainly includes everyday data collected relating to the customer's use of their communications system. For example, details of the dates and times they have made calls and which telephone numbers they have called.

- Outgoing calls on landline or contract or prepay mobile
- Timing and duration of service usage
- Itemised connection records
- Internet log on history
- Emails log (sent)
- Information on connection, disconnection and reconnection of services
- Information on the provision of conference calling, call messaging, call waiting and call barring
- Information about the provision and use of forwarding/redirection services (postal and telecom)
- Records of postal items, such as records of registered, recorded or special delivery postal items, records of parcel consignments, delivery and collection

### 7.4.3 Information about Communications Content

**Local authorities are not permitted to obtain the actual content of the communication or more detailed information or tracking.**

This category mainly includes data generated by the CSP (network data) relating to a customer's use of their communication system (that the customer may not be aware of) for example, cell site data and routing information.

- Information identifying the sender and recipient (including copy recipients) of a communication
- Information identifying any location of a communication (such as mobile phone cell site locations data)
- Routing information identifying or selecting any apparatus through which a communication is transmitted – for example dynamic IP address allocation, web postings and e-mail headers
- Call detail records for specific calls (such as calling line identity – incoming calls)
- Web browsing information (only the web site name is disclosed and not the pages visited on the web site)
- Information written on the outside of a postal item (such as a letter or parcel)
- Online tracking of communications (including postal)
- Signalling information and dialling sequences that affects the routing of a communication (but not the delivery of information) in the investigation of “dial thru” fraud

**Please note that these lists are not exhaustive and the CSPs cannot all provide the same information.**

## **7.5 How can this Information be obtained**

7.5.1 Under the IPA, communications data which local authorities are entitled to access can only be sought in the case of entity data if it is for the purpose of:

### **The prevention and detection of crime or preventing disorder**

7.5.2 In addition for events data information must satisfy the seriousness of the crime test – section 86(2A) defines this as a crime committed where an adult can be sentenced to imprisonment for 12 months or more, or a crime committed by a person who is not an individual, or a crime which involves the sending of a communication or a breach of a person's privacy.

7.5.3 A CSP only has to provide the data in a reasonable time and if practical to do so. Different CSPs will have different types of data and differing retention periods.

7.5.4 When it becomes clear that a witness statement is required to formally produce the data which has been provided by the CSP, it should be requested without undue delay.

7.5.5 CSPs are entitled to recover reasonable costs incurred in providing the data and supplying witness statements. These vary from one CSP to another.

7.5.6 Where the notice or authorisation is approved by the OCDA, it remains in force for a period of one month.

7.5.70 Notices and authorisations which are no longer required are no longer necessary or proportionate and must be cancelled.

## **7.6 Contact with the Communications Industry**

7.6.1 Notices and, where appropriate, authorisations for communications data can only be channelled through single points of contact officers (SPOCs) within each public authority.



7.6.2 Similarly, requests for a witness statement following receipt of data from a CSP should also be via a SPOC.

7.6.3 SPOCs have been trained via a course accredited by the Home Office and the details of nominated SPOCs within each public authority are held by each CSP.

A CSP will therefore not deal with any request received from another un-accredited source of enquiry.

## **7.7 The Role of the SPOC**

7.7.1 SPOCs will enable a more efficient regime to be developed as they will deal with CSPs and become aware of the data which they hold.

7.7.2 The SPOC plays an important role in the self-regulation and internal quality control of a public authority in ensuring that the requirements of IPA are adhered to in requesting and obtaining communications data.

7.7.3 SPOCs reduce the demands upon CSPs from a great number of sources within a public authority.

7.7.4 A SPOC will be able to advise the applicant officer of the nature and practicalities of obtaining the data which is being requested.

7.7.5 The SPOC will advise the applicant on the content of the application request prior to submission to the OCDA and where necessary refuse the application at that point for stated reasons.

7.7.6 The SPOC provides a safeguard for CSPs in ensuring that applications and notices are genuine.

7.7.7 SPOCs will retain a list of contact points with relevant CSPs.

7.7.8 NAFN provide a SPOC service on behalf of Lancashire County Council, and access details are maintained within the Trading Standards Service.

## **7.8 The Role of the Designated Person**

7.8.1 This officer confirms that the service is aware of the application, and that it is appropriate to be forwarded to the OCDA for consideration.

7.8.2 The Designated Person is required to be an officer at least at the following level within the authority:

- Director
- Head of Service
- Service Manager or equivalent

A designated person should have the necessary training and experience to be competent to authorise activity. A record of designated persons will be kept within the Trading Standards Service.

## **7.9 The Application Process**

7.9.1 The investigating officer should log in to NAFN and complete the relevant online form.

7.9.2 The application should then be submitted to the SPOC via NAFN who will consider the following:

- Whether the data being requested is capable of being provided by the CSP
- The reasons for the data being required in terms of the investigation being conducted and the offence being investigated
- The grounds for necessity and proportionality being addressed
- Should the application be deemed satisfactory, a Notice or authorisation form will be completed, this together with the application form will be submitted to the OCDA for authorisation or refusal. A designated officer at the authority concerned will be notified of the application.

Should the SPOC, however, consider there are grounds refusing the application, the form will be returned to the officer via the network.

When an authorisation is approved by the Authorising Officer, the SPOC will only send it to the relevant CSP following OCDA approval – see 8 below.

A Notice is only valid for a period of one month.

When, during the life of a Notice or authorisation, it is no longer necessary or proportionate or is no longer required by the investigation it must be cancelled.

## **7.10 Records and Errors**

7.10.1 NAFN will retain records of all applications, refusals and authorisations passed to the designated person. Copies of all Notices/authorisations and refusals from the Authorising Officer will be retained.

7.10.2 This will allow a full audit trail for an application for obtaining communications data.

7.10.3 Documentation will be maintained by NAFN for inspection by the Investigatory Powers Commissioner's Office and complaints falling within the remit of the Complaints Tribunal.

7.10.4 Where any errors have occurred in granting authorisations or notices (e.g. subscriber details of an incorrect telephone number being obtained), a record must be kept and the matter explained by means of a report to the Commissioner as soon as practicable. NAFN or the authorising officers will notify the Trading Standards Head of Service of any errors as soon as possible so a report can be sent to the Investigatory Powers Commissioner's Office.

## **8 Seeking District Judge or lay magistrate (JP) approval for authorisations**

8.1 In all cases involving authorisation of Directed Surveillance, and use of CHIS, officers must seek prior approval from a JP before undertaking the activity. For access to Communications Data, approval is now sought from the OCDA.

8.2 If the JP is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate he/she will issue an order approving the grant or renewal for the use of the technique as described in the application.

8.3 The officer will make an appointment at the relevant magistrates' court and will provide the JP with a copy of the original RIPA authorisation or notice and the supporting documents setting out the case. This forms the basis of the application to the JP and **should contain all information that is relied upon**.

8.4 The original RIPA authorisation or notice should be shown to the JP but will be retained by the local authority so that it is available for inspection by the Commissioner's office and in the event of any legal challenge or investigations by the Investigatory Powers Tribunal (IPT). The court may wish to take a copy.

8.5 In addition, the local authority will provide the JP with a partially completed judicial application/order form.

8.6 The order section of this form will be completed by the JP and will be the official record of the JP's decision. The local authority will need to obtain judicial approval for all initial RIPA authorisations/applications **and renewals** and the local authority will need to retain a copy of the judicial application/order form after it has been signed by the JP. There is no requirement for the JP to consider either cancellations or internal reviews.

8.7 Further more detailed guidance and documentation should be accessed via the Home Office Guidance available on the [www.gov.uk](http://www.gov.uk) website.

8.8 Where JP approval is granted, this should be retained on the Central record, and directed surveillance and CHIS activity can commence.

## 9 Lancashire County Council Auditing of Authorisations and Records

9.1 The Trading Standards Service must annually undertake a review of their activity within the scope of RIPA and complete the annual IPCO return form which must be returned to the Director of Corporate Services.

9.2. The Senior Responsible Officer reviews RIPA activity on a quarterly basis, and reports activity under RIPA to the Cabinet on an annual basis.

9.3 Part of the Audit will focus on a review of Projected Service activity and that all relevant staff have had sufficient training.

9.4 The following will also fall within the scope of the audit:

- Applications
- Authorisations
- Risk assessments
- Reviews and Renewals
- Cancellations
- Records of Product of Directed Surveillance
- Source Records
- Staff Awareness

9.5 The audit will seek to establish compliance of the authorisations/renewals/cancellations and records with the following:

- RIPA /IPA
- Statutory Instruments made under RIPA/IPA
- The Code of Practice on Covert Surveillance

- The Code of Practice on Covert Human Intelligence Sources
- The Code of Practice on Accessing Communications Data
- <https://www.gov.uk/government/collections/ripa-codes>
- Lancashire County Council RIPA corporate policy and work instructions
- Guidance material issued by IPCO.

9.6 Non-conformities identified as a result of the audit will be reported to the relevant Service Management Team. Action taken by local management should be reported back to the Audit team.

9.7 The cross Council audit report will be held within the Central Record.

9.8 The processing of prosecution reports by a service should have regard to compliance with RIPA where investigations include covert surveillance and/or the use of a CHIS and/or obtaining communications data.

## 10 Inspections by the Investigatory Powers Commissioner's Office

10.1 The Codes of Practice include a section dealing with inspection by the Commissioner. They impose a requirement to comply with requests and to disclose or provide information requested by the Commissioner to allow him to carry out his functions.

10.2 During inspection visits, the codes require certain authorisations to be drawn to the Inspector's attention. These being where the Authorising Officer has authorised an activity he is directly involved in and those where confidential material is sought or obtained.

10.3 A further inspection regime has been established in relation to accessing communications data. These inspections take place through NAFN, with queries raised individually with local authorities where necessary. Similar recourse to the Tribunal exists for complaints against the activities of the authority.

## 11 Complaints

11.1 An independent complaints procedure is provided by the legislation. Complaints can be made to:

**The Investigatory Powers Tribunal**  
**PO Box 33220**  
**London**  
**SW1H 9ZQ**  
**Tel: 0207 035 3711**  
**<http://www.ipt-uk.com/>**

## 12 Management Records

12.1 The management files, authorisations/renewals/cancellations and Source Records **must be kept in a secure place with restricted access**. These files will provide the basis of the audits and be liable for inspection by the Investigatory Powers Commissioner's Office. **Originals of the authorisations (including refusals), reviews, renewals and cancellations, must also be provided to the Central Record. This is managed by the Director of Corporate Services.** Officers forwarding confidential material to the Central Record must ensure that it is forwarded by a secure method.

The Central Record is to be held in a suitable locked cabinet, or secure electronic folder.

**Version Control**

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## Shadow RIPA Surveillance Policy

**General Statement of Policy**

- **This policy document relates to use by Lancashire County Council officers of directed surveillance, and covert human intelligence sources not undertaken in relation to the prevention and detection of crime or which fall outside the RIPA regime due to offence penalties not meeting the thresholds laid down for the RIPA regime to apply.**
- **The County Council is committed to upholding human rights**
- **As a public body and responsible employer, the County Council wants to conform to the spirit of the requirements of the Regulation of Investigatory Powers Act 2000 and associated regulations and codes of practice relating to the use of covert surveillance, the use of covert human intelligence sources,**
- **County Council officers will only undertake surveillance work outwith the RIPA regime when it is both necessary and proportionate to the ends it seeks to achieve.**



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## Introduction

The Regulation of Investigatory Powers Act 2000 (RIPA) does not grant powers to carry out surveillance. It simply provides a framework that allows the Council to authorise and supervise surveillance in a manner that ensures compliance with the Human Rights Act 1998. Equally, RIPA does not prevent surveillance from being carried out or require that surveillance may only be carried out under RIPA. Where a public authority carries out surveillance in accordance with RIPA this provides protection against a claim of infringement of an individual's human right to a private and family life, his home and his correspondence.

RIPA can however only be used by a local authority for the purposes of preventing and detecting crime.

There will be times when it will be necessary and proportionate to carry out covert Directed Surveillance or use a CHIS other than by using RIPA either because the investigation is not carried out for the purposes of preventing or detecting crime, or because, in the case of directed surveillance, the penalty for the offences under investigation is below the threshold which would enable use of a RIPA authorisation. This could include surveillance for the purposes of monitoring employees who may be under investigation. It could also include matters where the authority is involved in litigation and may wish to carry out surveillance to verify whether or not information provided is true or false – for example in child protection matters where there are questions raised as to residency of individuals who may pose a threat to a child .

Indeed, there may be circumstances in which the use of Directed Surveillance or employment of a CHIS is the only effective means of efficiently obtaining significant information to take an investigation forward.

Provided the established principles of necessity, proportionality and collateral intrusion are considered, the Authority will be in a strong position to meet any challenge in respect of infringement of human rights.

Each application for covert surveillance authorisation will be assessed on a case by case basis to determine whether the application meets the criteria for the formal RIPA authorisation procedure to be followed. In all other cases the shadow RIPA regime will apply.

The Report of the Investigatory Powers Commissioner in 2017 supports the implementation of a non RIPA authorisation process that runs in parallel to any RIPA approvals in circumstances where an authorisation is unavailable under the Act.

## 1. Purpose of This Policy

To establish guidance within Lancashire County Council services for seeking approval for the conduct by officers of directed surveillance, and the use of covert human intelligence sources (CHIS) **which is not undertaken for the prevention or detection of crime or where the penalty for the offence under investigation falls below the threshold for Directed Surveillance to be approved under the RIPA regime.**

**If the surveillance is undertaken for purposes related to the prevention and detection of crime, reference must be made to the Corporate Policy and Guidance on the Regulation of Investigatory Powers Act 2000.**

This policy is Intended to cover surveillance carried out in such situations as investigations into serious allegations regarding the conduct of employees, observations on private residences to determine the veracity of information provided to the County Council in connection with the exercise of its functions, use of sources to provide information in person or on the internet or to provide officers with information in circumstances which would be covered by relevant codes of practice if the activity was undertaken for the prevention and detection of crime.

## 2. Scope

2.1 Surveillance which is covert but not intrusive and undertaken for the purposes of a specific investigation or operation, 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 otherwise than by way of an immediate response to events or circumstances, the nature of which is such that it would not be reasonable practicable for an authorisation under the Act to be sought for the carrying out of the surveillance.

Private information in relation to a person includes any information relating to his private or family life. **Note that this can include information about family, professional and business relationships.**

2.2 The use of Covert Human Intelligence Sources (CHIS). A CHIS is a person who establishes or maintains a personal or other relationship with another person for the covert purpose of:

- (a) Using such a relationship to obtain information or to provide access to information to another person, or
- (b) Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship.

In addition, a person who covertly provides information to a public authority is potentially a CHIS if he has obtained that information in the course of or as a consequence of the existence of a personal or other relationship, whether or not the relationship has been established or maintained for that purpose. A repeat informant, if and when it becomes apparent that he obtains his information in that way, is a CHIS to whom a duty of care is owed, if the information is acted upon. Legal advice should be taken before acting on the information provided by informants.

### **3. Responsibilities**

- Director of Corporate Services – Senior Responsible Officer
- Head of Trading Standards Service and Trading Standards Managers – designated authorisers
- Heads of Service – awareness and day to day management
- Service Managers – awareness and day to day management

### **4. References**

- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Protection of Freedoms Act 2012
- Codes of Practice on Covert Surveillance and CHIS
- Corporate Guidance

### **5. Procedure – Directed Surveillance in relation to Lancashire County Council employees**

If during the course of any investigation or enquiry into an Lancashire County Council employee, the investigating officer believes it necessary to carry out directed surveillance on any person involved in the investigation he shall consider the possibility of obtaining any private information about that person and if there is such a possibility, authorisation on the relevant form should be sought by completing and forwarding the form E1 -2020 to one of the designated authorising officers.

Those carrying out the covert surveillance should inform the authorising officer if the operation/investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation in some other way. This is known as collateral intrusion and steps should be taken to minimise the risks of the surveillance affecting other individuals who are not targets of the investigation, including considering the appropriateness of recording and retention of evidence regarding those individuals.

Before giving the authorisation, the authorising officer will at first satisfy him/herself that the authorisation is necessary on particular grounds and that the surveillance is proportionate to what it seeks to achieve. This could include, for example, serious disciplinary investigations.

Assessing proportionality includes the following:

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

If other overt methods of obtaining the information can be tried, then these methods should be attempted – covert surveillance should be the last resort.

Where there is a possibility that confidential material may come into the possession of the Service special safeguards should be observed.

**In such circumstances the matter should be referred to the Chief Executive immediately and legal advice sought. (If the Chief Executive is not available, the matter should be referred to a Chief Officer, it is not appropriate for the matter to be delegated).**

Confidential material is defined in the Home Office code of practice but relates to matters subject to legal privilege; confidential personal information; or confidential journalistic material. Such material should not be retained or copied unless necessary for a specific purpose, should not be disseminated except for a specific purpose and if retained or disseminated this should be done with a clear warning of its confidential nature. Reasonable steps should be taken to ensure that there is no possibility of its content being known to any person whose possession of it might prejudice any criminal or civil proceedings related to the information.

**Confidential material should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.**

## **6. Procedure – Directed Surveillance on Lancashire County Council Residents**

The Council receives complaints and information on occasions in relation to LCC residents who are alleged to be involved in activities which may infringe child protection guidelines or other County Council guidelines.

Covert surveillance can only be authorised in relation to Lancashire County Council residents by the designated Head of Trading Standards and Trading Standards Managers. The applicant should outline in the application why the activity is considered to be necessary and proportionate, as in paragraph 5 above.

## **7. Procedure – Covert Human Intelligence Sources**

The Council receives complaints/information routinely from the public regarding the alleged activities of individuals. The actions of these complainants do not generally fall within the definition of a covert source since they are a one off provision of information. However, a person may become a covert source if an ongoing relationship with the Council develops and activities described in above are carried out. The use of CHIS could also cover circumstances where an employee of LCC establishes a relationship in order to gain information about a particular situation.

Where the nature of the complaint relates to a matter where an officer requests the complainant to obtain further information covertly via a relationship with another individual, this activity is likely to fall within CHIS. A shadow authorisation will therefore be required before seeking such information. By following the authorisation procedures, the Council will also be in a position to seek to safeguard the identity of the source in any subsequent legal proceedings.

**Further guidance should be sought from the Director of Corporate Services on this issue to ensure that the identities of any such individuals are safeguarded in the event of any legal proceedings, tribunals or disciplinary hearings.**

NB: Juvenile surveillance CHIS – normally no one under 18 years or any vulnerable individual should be considered as a CHIS.

## 8. Monitoring and Retaining Applications

The Local Authority must maintain a central record of all Authorisations. This is the responsibility of Information Governance. These records will be confidential and should be retained for a period of at least five years from the ending of the authorisation. Where it is believed that the records could be relevant to pending or future criminal proceedings, they should be retained for a suitable further period, commensurate to any subsequent review.

Authorisations last for a period of three months and may be renewed more than once, if necessary, by completion of the relevant document. The renewal should be kept/recorded as part of the "authorisation record".

Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. The results of a review should be recorded on the relevant form (**E2 - 2020**). Generally, unless circumstances dictate otherwise, reviews will be carried out at monthly to six weekly intervals.

Once surveillance activities have ceased, the officer who made the application must submit an application for cancellation to the Authorising officer. The cancellation application should be submitted immediately the activities are no longer required. The authorising officer who granted an authorisation must cancel it if satisfied that the action authorised by it is no longer necessary.

In summary, the **practical procedure** for obtaining an Authorisation is as follows:

1. A completed application should be submitted to the authorising officer using form **E1-2020**. The authorising officer will consider the necessity and proportionality of the application and the likelihood of any collateral intrusion.
2. A review should take place at monthly to six weekly intervals. (**Form E2 – 2020**)
3. At the end of the surveillance operation, the investigating officer will submit a cancellation form (**E3-2020**) to the authorising officer. A copy of the cancellation form will be given to the investigating officer. All forms will be provided to Information Governance for retention in the central record.
4. The investigating officer may seek a renewal of the authorisation if necessary (**Form E4 – 2020**).
5. Copy documents will be retained on the investigation file.

## 9. Handling Product from Surveillance Activities

Product from Covert Surveillance activities may consist of:

- Photographs
- Video film
- Voice recordings
- Surveillance log
- Officer's notes

The above may be required as evidence in current or future proceedings. Officers must have regard to Data Protection provisions in relation to this material. Product obtained via an authorisation may be used by the authority in other investigations.

Officers should record the results of any surveillance. When product is disposed of, a note should be made on the file.

The use of any product obtained by authorised surveillance activities outside of the Public Authority or the Courts should only be authorised in the most exceptional circumstances. This requirement seeks to prevent product from being used for grounds other than that for which it was obtained. **Joint operations should make reference to the potential use of evidence by each agency.**

Officers may receive requests from other agencies for product, which may include photographs of suspects, descriptions, and vehicle details. Where this information has been obtained under an authorisation, further guidance should be sought from the Authorising Officer, since disclosure may not be permitted under the provisions of the Code of Practice.

### Version Control

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## Covert Social Networking Checks and Surveillance Policy

## **Contents**

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- 2. Private Information**
- 3. Covert Activity**
- 4. Directed Surveillance and Covert Human Intelligence Sources**
- 5. Permitted Activities**
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- 7. Unauthorised Activity**
- 8. Decision Log**
- 9. Example Scenarios**

## 1. Introduction

**1.1** The increasing availability of 'open source' information, and in particular private information that individuals posts about themselves or others on social media, means that it has never been easier for an officer of a public authority to unwittingly infringe someone's right to a private and family life as set out in the European Convention on Human Rights (ECHR) and the Human Rights Act 1998. Such an infringement by an employee of Lancashire County Council leaves the Council at risk of a claim for breach of those human rights.

**1.2** As a public authority, Lancashire County Council has specific obligations in relation to private information and officers cannot assume that just because information is publicly available it may be gathered and used by the Authority.

**1.3** Under the terms of the ECHR, the human rights it sets out can only lawfully be infringed in specified circumstances. Within England and Wales, the legal framework under which those rights can be infringed is the Regulation of Investigatory Powers Act 2000 (RIPA).

Further, more specific guidance is available from the Home Office in the form of the Covert Surveillance and Property Interference, and Covert Human Intelligence Sources Codes of Practice of 2018.

RIPA may only be used by local authorities for the prevention or detection of crime. In practical terms this means that RIPA is normally only used by a team or department within the County Council which has a duty to investigate or enforce criminal legislation BUT it is recommended that a similar "shadow" approach be adopted in other investigations where such information may be gathered and utilised. This enables the authority to demonstrate that proper consideration is given to the necessity and proportionality of activity carried out by officers which may infringe the human rights of individuals.

**1.4** It is vital that all officers understand the implications of using material recovered from sources such as the internet and social media, and ensure they abide by legislative requirements and take legal advice at an early stage where necessary. Where officers are undertaking covert activity not for the prevention or detection of crime authorisation may still be appropriate in accordance with the LCC Shadow RIPA Surveillance Policy.

## 2. Private Information

**2.1** Section 26(10) of RIPA defines 'private information' in relation to a person as including "any information relating to his private or family life". Case law has defined this to include anything from obviously private information such as that concerning personal relationships to financial information, information about a person's children or even information about a person's business relationships.

Para 3.13 of the Covert Surveillance and Property Interference Code of Practice provides that information which is non-private may include publicly available information such as books, newspapers, journals, TV and radio broadcasts, newswires, web sites, mapping imagery, academic articles, conference proceedings, business reports, and more. Such information may also include commercially available data where a fee may be charged, and any data which is available on request or made available at a meeting to a member of the public.

**2.2** It should be recognised that even if individuals post information about themselves on social media without any privacy settings, they do not forfeit the right to have that material treated as private information by a public authority. The Covert Surveillance and Property Interference Code of Practice is clear that covert surveillance of information in the public domain may still lead to a public authority obtaining private information. This is particularly so

where a public authority records the information either on one occasion or over a period of time. The key question is whether the individual has a reasonable expectation of privacy in the way the material is gathered, retained or used.

### 3. Covert Activity

**3.1** Covert activity is anything that is done in a manner calculated to ensure that the individual subject to the activity is unaware that it is or might be taking place. It follows that most on-line activity will be covert by its very nature. However, where it is shown that the target of any investigation was made aware of the activity then it is possible that subsequent investigative activity may not be considered to be covert. For example, when warnings are issued about the fact that an investigation is likely to take place. Discussions should be held in those cases as to the necessity for authorisation.

### 4. Directed Surveillance and Covert Human Intelligence Sources (CHIS)

**4.1** Directed surveillance is surveillance activity which is not intrusive, and is carried out for a specific investigation or operation, and which is likely to result in the obtaining of private information about any individual. It follows, as set out in the Covert Surveillance and Property Interference Code that it is important that public authorities are able to make full and lawful use of this information for statutory purposes. Much of it can be accessed without the need for RIPA authorisation; use of the internet prior to an investigation should not normally engage privacy considerations.

However the code also states that gathering information about an individual from an on-line source for a specific purpose, even if done on a one-off basis, may amount to directed surveillance, dependent on the nature of the activity, and the level of detail recorded.

**4.2** A CHIS is deployed if a person, being an employee of the County Council or a third party establishes or maintains a personal or other relationship with another person for the covert purpose of:

**(a) Using such a relationship to obtain information or to provide access to information to another person, or**

**(b) Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship.**

**4.3** A public authority is at risk of breaching an individual's human rights in situations where officers conduct planned covert surveillance (which is not intrusive) on an individual where it is likely that private information will be gathered about them in the process, or use a relationship between an individual and a covert human intelligence source (CHIS) to obtain information about that individual. There is also a risk that private information about a third party may be gathered because of the surveillance or the use of CHIS. This is called collateral intrusion, and can be a particular risk with social media since posts from other individuals may be accessible to officers.

**4.4** Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle, and that involves the presence of an individual on the premises or in the vehicle or is carried out by a means of a surveillance device. **Local Authorities are not permitted to conduct intrusive surveillance.**

## 5. Permitted Activities

**5.1** Open source information available on public databases which individuals know may be searched, may be accessed, stored and use for appropriate purposes in the course of an officer's duties. For example, the electoral register may be searched to confirm a resident's address or the Companies' House database may be searched to confirm the registered address and directors' details of a business.

**5.2** The Code specifies that the 'general observation duties' of case officers do not amount to directed surveillance. This is because it is not directed at an individual or particular investigation.

In an on-line scenario such 'general observation duties' would involve, for example, general searches on Facebook in order to determine whether a particular product, such as counterfeit goods or fireworks, was being sold via that medium. At some point in an investigation, the officer will reach a point where authorisation for directed surveillance is required. This will need to be judged on a case-by-case basis, dependent on the facts. An initial check of accounts on Facebook where privacy settings are open is unlikely to require authorisation. paragraph 4.14 of the CHIS Code provides that:

*"Where a website or social media account requires a minimal level of interaction, such as sending or receiving a friend request before access is permitted, this may not in itself amount to establishing a relationship. Equally, the use of electronic gestures such as "like" or "follow" to react to information posted by others online would not in itself constitute forming a relationship. However, it should be borne in mind that entering a website or responding on these terms may lead to further interaction with other users and a CHIS authorisation should be obtained if it is intended for an officer of a public authority or a CHIS to engage in such interaction to obtain, provide access to or disclose information."*

It can be seen therefore that minimal interactions would be likely not to require authorisation. At some point though the activity may reach over into territory where authorisation is advisable.

## 5.3 Test Purchasing

In some cases, officers may need to adopt a covert identity in the course of their duties. For example, a trading standards officer may use a pseudonym in order to complete an on-line test purchase. Use of disguised purchaser details for such a transaction would not require authorisation. However, if the test purchase undertaken requires greater detailed communication with the seller to obtain more information, authorisation may become necessary.

## 6. Activities Requiring Authorisation

**6.1** The Code requires that a public authority which uses the internet as part of an investigation must consider whether the proposed activity is likely to interfere with an individual's article 8 rights. Once an officer covertly gathers, records and retains private information about an individual to a significant extent and going beyond initial reconnaissance, this is likely to amount to directed surveillance and a RIPA authorisation must be obtained.

**6.2** If the purpose of the activity is not the prevention or detection of crime, it may still be appropriate for the Authority to undertake directed surveillance of this nature. This should only be done with an appropriate authorisation from a designated authorising officer from the Trading Standards Service, (Head of Service or Trading Standards Manager) that considers the necessity and proportionality of, and risks involved in, the activity.

**6.3** Social media allows the sending of personal messages between individuals and it may be a prerequisite of sending such messages that a friend request is made first. In such circumstances an officer may be establishing a relationship with the individual concerned and if this is to be used to obtain information a CHIS authorisation may be required. It should be noted that the use of a relationship to obtain any information, not just private information, amounts to the deployment of a CHIS.

**6.4** Again, if the purpose of the activity is not the prevention or detection of crime it may still be appropriate to enter into a relationship with an individual. This should only be done with appropriate authorisation from a designated authorising officer from the Trading Standards Service (Head of Service or Trading Standards Manager) that considers the necessity and proportionality of and risks involved in the activity.

**6.5** Where direct communication is entered into with an online operator, for example negotiations about the purchase of goods, obtaining detailed information about the supplier, arranging to meet for example, in those circumstances it would be advisable to seek authorisation for a CHIS. Any directed surveillance carried out in the presence of the CHIS would not then require additional authorisation.

**6.6** Officers should not undertake any on-line investigation or other covert activity in their own name as this could compromise their own personal and data security.

## **7. Unauthorised Activity**

**7.1** Any activity which has been undertaken which was not properly authorised must be reported to the Investigatory Powers Commissioner. Any officer who believes they may have conducted unauthorised activity that may have infringed an individual's article 8 rights must report it immediately to their line manager who must then seek advice from Trading Standards.

## **8. Decision Log**

**8.1** In all cases where the case officer decides to conduct social networking or internet checks this decision should be recorded and should form part of notes on the case file of any investigation. The information should be subject to the normal considerations of data protection and retention in accordance with corporate policy.

## **9. Service Specific Examples**

### **9.1 Trading Standards Investigations**

#### **Typical scenarios**

Enquiries into the sale of counterfeit, misdescribed or unsafe goods over the internet or on social networking sites.

#### **Comment and Advice**

*In such cases, it is necessary for Trading Standards Officers to act covertly to a certain extent – otherwise the activity can be driven underground and offending goods remain on the market.*

*Trading Standards need to be able to operate with covert purchaser details, and the Codes of practice themselves recognise that this does not, of itself, require authorisation.*

*In addition, preparatory checks on social media/Facebook that equate to initial observations would not normally require authorisation.*

*Authorisation is required where the officer plans to use a covert account to befriend and communicate with the target individual, or carries out checks on sites and accounts on a continuing and systematic basis.*

## 9.2 Employee Misconduct Investigations

### Typical scenarios

- An employee is suspected of operating a private business in LCC's time. Allegations made by a third party include evidence by way of invoices demonstrating work has been undertaken privately. It is proving difficult to show that the employee is operating a private business during working hours. The employee has not submitted a declaration of business interest and the large gaps between the invoice numbers suggest that this is the tip of the iceberg and a lot of private work has been undertaken.
- An employee is suspected of being employed by a private company whilst being in full time employment with LCC. Furthermore, the employee is in liaison with the private company as part of LCC duties so the two are intrinsically linked and at the very least, there is a conflict of interest.

**Actual Case:** An employee was conspiring with a sub-contractor and between them had produced fictitious invoices in relation to non-existent work. The fraud ran into hundreds of thousands of pounds. The case eventually went to trial at Crown Court and the employee was convicted and sentenced to a period of imprisonment. Whilst there was sufficient factual evidence to gain a conviction, it would have been useful to access social media during the investigation to ascertain whether there were any links between the employee and individuals from the sub-contracting company and whether there was evidence of a lavish lifestyle that the employee and his wife were leading. Furthermore, there was always doubt as to whether his wife knew of the fraud and again it would have been useful to look at Facebook accounts etc. to ascertain whether there was any evidence of a lavish lifestyle.

### **Comment and Advice:**

*Open source searching on names and addresses could reveal whether an employee has any links to commercial activity, or whether there are any open discussions accessible online. These initial searches and checks could be carried out without authorisation, but bear in mind that initial facebook checks require the officer to be logged in and it would be advisable therefore to have covert accounts for officers to do this on an official basis rather than use their own login.*

*If the initial checks indicate that there is a significant level of information which is of interest, consideration should be given to systematic collation of material and this should be done under a shadow directed surveillance authorisation UNLESS after discussion with the appropriate line manager it is thought that there is a realistic prospect of criminal proceedings being taken, in which case a RIPA authorisation approved by magistrates should be obtained.*

## 9.3 Children's Social Care

### Typical scenarios

Scenarios in Children's Social Care (CSC) that might merit surveillance using social media are likely to fall under the following areas:

- Reasonable grounds to believe that information given by a family as part of the assessment is misleading or untrue e.g. the claimed separation of a couple where domestic abuse is known to be a significant risk factor.
- Possible relationship between child and a known or suspected abusive adult.
- Presence of known risky behaviour, drug taking, drinking etc.
- Persons Posing a Risk to a child said to be present in family relationships.

For example, when CSC have concerns about the welfare of the children in a family, the list of friends on a parent's Facebook profile might reveal individuals who are known to be involved in domestic abuse, sexual offences, substance misuse, etc.

Also, timeline postings or photographs on the parent's Facebook profile could indicate activities that might place the children at risk.

Regarding neglect, an example would be where there are concerns that children are being left unsupervised. Facebook timeline postings and photographs could provide evidence of what parents were doing at particular times and dates.

**Comment and Advice:**

*Open source searching on names and addresses may reveal useful information about target individuals. A Facebook search where privacy settings are open may also reveal useful information. These initial searches and checks could be carried out without authorisation, but bearing in mind that initial Facebook checks require the officer to be logged in it would be advisable to have covert accounts for officers to do this on an official basis rather than use their own login.*

*If the initial checks indicate that there is a significant level of information that is of interest, it may be that the intention is to raise this at an early stage with the relevant parties. If the intention is to continue to monitor the situation and collate material, this should be done under a shadow directed surveillance authorisation UNLESS after discussion with the appropriate line manager it is thought that there is a realistic prospect of criminal proceedings being taken, in which case a RIPA authorisation approved by magistrates should be obtained.*

*Where privacy settings on Facebook mean that information is not visible except to "friends", in serious cases it may be appropriate (with authorisation) to use shadow CHIS provisions to seek approval to make a friend request using a covert Facebook account.*



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## Internal Scrutiny Committee

Meeting to be held on Friday 10 September 2021

Electoral Division affected:  
(All Divisions);

## Internal Scrutiny Work Programme

(Appendix 'A' refers)

Contact for further information:

Misbah Mahmood, 01772 530818, Senior Democratic Services Officer,

misbah.mahmood@lancashire.gov.uk

### Executive Summary

The draft work programme for the Internal Scrutiny Committee is attached at Appendix 'A'.

The topics included in the work programme were identified at the joint work planning workshop for Internal and External Scrutiny held on 9 July 2021.

### Recommendation

The Internal Scrutiny Committee is asked to:

- i. Discuss and agree the draft work programme for 2021/22.
- ii. Consider key lines of enquiry for future meeting topics.
- iii. Discuss any additional representation required from key officers/cabinet members/partners.

### Background and Advice

A draft statement of the work to be undertaken by the Internal Scrutiny Committee for the 2021/22 municipal year is set out at Appendix 'A'. The committee is asked to note that the timetable is still being agreed with officers to ensure items are presented at the most appropriate time.

The work programme will be presented to each meeting for consideration by the Committee.

Members are requested to discuss and agree the draft work programme, consider key line of enquiry for future meeting topics and representation.

### Consultations

NA

**Implications:**

This item has the following implications, as indicated:

**Risk management**

This report has no significant risk implications.

**Local Government (Access to Information) Act 1985  
List of Background Papers**

Paper	Date	Contact/Tel
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NA

Reason for inclusion in Part II, if appropriate

NA

## Internal Scrutiny Committee Work Programme 2021/22

The Internal Scrutiny Committee Work Programme details the planned activity to be undertaken over the forthcoming municipal year through scheduled Committee meetings, task group, events, training and through use of the 'rapporteur' model.

The items on the work programme are determined by the Committee following the work programming session at the start of the municipal year in line with the Overview and Scrutiny Committees terms of reference detailed in the County Councils Constitution. This includes provision for the rights of County Councillors to ask for any matter to be considered by the Committee or to call-in decisions.

Coordination of the work programme activity is undertaken by the Chair and Deputy Chair of all of the Scrutiny Committees to avoid potential duplication.

In addition to the terms of reference outlined in the [Constitution](#) (Part 2 Article 5) for all Overview and Scrutiny Committees, the Internal Scrutiny Committee will:

- Determine which Overview and Scrutiny Committee considers a matter where this is not clear.
- Receive for approval requests from the other Overview and Scrutiny Committees to establish task groups and/or other working groups
- Receive for approval requests from the other Overview and Scrutiny Committees to establish as necessary joint working arrangements with district councils and other neighbouring authorities
- Review and scrutinise all services provided by the authority, unless specifically covered by the terms of reference of another Overview and Scrutiny Committee
- Consider matters relating to the general effectiveness and development of Overview and Scrutiny in the authority including training for County Councillors and Co-optees
- Recommend the Full Council to co-opt on to a Committee persons with appropriate expertise, without voting rights
- Establish arrangements for the scrutiny of member development, and receive reports from the Member Development Working Group

The Work Programme will be submitted to and agreed by the Scrutiny Committees at each meeting and will be published with each agenda. The dates are indicative of when the Internal Scrutiny Committee will review the item, however they may need to be rescheduled and new items added as required.

<b>Topic</b>	<b>Scrutiny Purpose</b> (objectives, evidence, initial outcomes)	<b>Lead Officers/organisations</b>	<b>Proposed Date(s)</b>
Appointment of a Joint Health Scrutiny Committee between 4 local authorities	To agree the appointment of a Joint Health Scrutiny Committee between the local authorities of Lancashire, Sefton, Knowsley and Liverpool to reconfigure stroke services across the North Mersey area. The proposal will affect residents of the West Lancashire area.	LCC Gary Halsall, Senior Democratic Services Officer	10 September 2021
Update from Budget Scrutiny Review Panel	To receive a general update from the Budget Scrutiny Review Panel	LCC Misbah Mahmood, Senior Democratic Services Officer	10 September 2021
Regulatory of Investigatory Powers Act (RIPA) Annual Report	To provide an annual update to the committee.	LCC Chris Wilkinson, Trading Standards Laura Sales, Director of Corporate Services	10 September 2021
Local Government Funding and Income Generation Task Group	Further update to committee on progress of recommendations from the Task Group report.	Ajay Sethi, Head of Commercialisation	12 November 2021
Drainage issues in general and Winter Maintenance	Requests have been received to look at general drainage issues in Lancashire and the policies around drains.  Annual update on Winter Maintenance.	LCC Highways Department	12 November 2021 TBC
Quality of highway repairs	To review the standard of highway repairs carried out by external organisations and contractors.	LCC Highways Department External organisations	12 November 2021 TBC
The Levelling Up Fund	To consider the following points of discussion in order to try and get funding to Lancashire from	LCC John Davies, Head of Service, Highways	21 January 22 TBC

Topic	Scrutiny Purpose (objectives, evidence, initial outcomes)	Lead Officers/organisations	Proposed Date(s)
	<p>the Government for regeneration of high streets and transport in the next funding round:</p> <ul style="list-style-type: none"> <li>- Overview of the Fund and its aims</li> <li>- Submitting a bid</li> <li>- Priorities for Lancashire</li> </ul>	<p>Phil Durnell, Director of Highways Service</p> <p>Bite Size Briefing also being arranged in due course.</p>	
Ultra-Low Emission Vehicles	<p>Following improvements to range etc, LCC has now procured its first electric vehicles (small vans).</p> <p>No new petrol or diesels cars will be available from 2030. Issues remain regarding suitability of current designs for county council activities, but these are diminishing as designs improve. Charging issues too.</p> <p>Capital purchase cost of vehicles is substantially greater but whole-life costs more equivalent</p> <p>Currently technology for large vehicles isn't in place.</p>	<p>LCC</p> <p>Oliver Starkey, Head of Service, Public and Integrated Transport</p> <p>Phil Durnell, Director of Highways</p>	4 March 22
Economic and Social recovery post Covid and the way forward.	<p>Being the second largest economy in NW, Lancashire hit hard on three fronts:</p> <ul style="list-style-type: none"> <li>- under some form of restriction for majority of pandemic; AND</li> <li>- business sectors hardest hit are Lancashire's key sectors, manufacturing, hospitality, retail; AND</li> </ul>	<p>LCC</p> <p>Stephen Young, Executive Director Growth, Environment, Transport &amp; Community Services.</p>	April 2022

Topic	Scrutiny Purpose (objectives, evidence, initial outcomes)	Lead Officers/organisations	Proposed Date(s)
	<ul style="list-style-type: none"> <li>- Impacts of a global health crisis exacerbated in significant areas of existing inequality and deprivation.</li> </ul> <p>A recovery framework was devised in June 2020 and a new strategic vision has been developed in the Greater Lancashire Plan.</p>		
Update on Reducing Single Use Plastics in Lancashire	An update report on the ongoing work to reduce single use plastics within the county council and the development of a strategy to make LCC a SUP free authority where possible and feasible.	LCC Mike Kirby, Clare Johnson, Steve Scott, William Maxwell, Rachel Tanner, Ginette Unsworth, Ajay Sethi.	22 April 2022
The Bus Service Improvement Plan/ Enhanced Bus Partnerships	In March 2021, government published its National Bus Strategy – 'Bus Back Better' with £3bn supporting funding during this parliament to be allocated to transport authorities.	LCC Oliver Starkey, Head of Service, Public and Integrated Transport  Phil Durnell, Director of Highways	TBC A joint session is being considered with other scrutiny committees due to overlap between work areas.
Youth Employment and Skills – impact on youth as one of the hardest hit groups during the pandemic	Consideration to be given to which scrutiny committee will be best to consider this item.	LCC	To be agreed