

EXECUTIVE MEMBER - ENVIRONMENT, FINANCE & GOVERNANCE

Date: Tuesday 10th August, 2021
Time: 11.00 am
Venue: Council Chamber

AGENDA

- | | | |
|----|----------------------------------|---------|
| 1. | Corporate Debt Management Policy | 3 - 34 |
| 2. | Surveillance Policy 2021/22 | 35 - 66 |

Charlotte Benjamin
Director of Legal and Governance Services

Town Hall
Middlesbrough
Monday 2 August 2021

MEMBERSHIP

Councillor B Cooper (Chair)

Assistance in accessing information

Should you have any queries on accessing the Agenda and associated information please contact Susie Blood, 01642 729645, susie_blood@middlesbrough.gov.uk

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MIDDLESBROUGH COUNCIL

Report of:	<i>Director of Finance – Ian Wright Executive Member Environment and Finance and Governance – Cllr Barrie Cooper</i>
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Submitted to:	<i>Executive Member for Environment and Finance and Governance - Single Executive – 10 August 2021</i>
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Subject:	<i>Corporate Debt Management Policy</i>
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Summary

Proposed decision(s)
That Single Executive approve the following : a) The Corporate Debt Management Policy

Report for:	Key decision:	Confidential:	Is the report urgent?¹
<i>Approval</i>	<i>Yes</i>	<i>No</i>	<i>No</i>

Contribution to delivery of the 2020-23 Strategic Plan		
People	Place	Business
<i>The purpose of this policy is to provide clear guidance for the recording, reporting, recovery and monitoring of the Council’s debt and income. It also supports the Council’s direction in dealing with vulnerable groups and those with multiple debts.</i>	<i>NA</i>	<i>To improve the financial performance of the Council with regards to collecting income and debt.</i>

Ward(s) affected
<i>All wards are affected by the decision to introduce a corporate debt policy.</i>

What is the purpose of this report?

1. The purpose of this new policy is to provide clear guidance on the recording, reporting, recovering and monitoring of the Council's debt and income.
2. All service areas must follow this policy to allow the Council to maximise the collection of debts and income by using a co-ordinated approach but having due regard to the customer's ability to pay.
3. Whilst some parts of income recovery are governed by particular legislative requirements such as Council Tax, Business Rates, Adult Social Care Debt, etc, wherever possible the overall principle of recovering debt / income should be efficient and effective, always giving consideration to the financial impact on the Council when debt and income is not recovered.
4. This policy will underpin any specific recovery strategies and will be applied across all directorates.
5. This new policy will also support cross directorate cash collection / payment problem solutions where a shared customer base exists. It is envisaged that the approach will support residents and businesses that have multiple debts, and should be considered at a corporate level to reduce multiple officer engagements across directorates with the same resident and or business base.

Why does this report require a Member decision?

6. The introduction of a Corporate Debt Management policy is part of the Council's strategic direction, and as such requires single executive approval.

Report Background

7. The Council has a statutory duty to collect outstanding debt and does so in accordance with the Local Government Finance Act 1992 and the Council's Financial Procedure rules. The introduction of this policy is to support this duty but also to provide that collection approach / methods are consistent, fair and efficient across all of its services.
8. This policy is the 2nd of 4 policies being developed which bring together a significant number of supporting arrangements which will not only compliment but enhance the Council's social regeneration plans.
 - Vulnerability Policy (Executive Approval on 16.6.2020)
 - Corporate Debt Management Policy – (Seeking Approval)
 - Corporate Welfare Policy – (In Design)
 - Corporate Write Off Policy – (In Design).
9. This policy also links to the Council's Stop the Knock approach, where the aim is to reduce the number of cases sent to the external enforcement agent by improving debt collection practices.
10. This policy also seeks to address other matters such as credits and how these will be offset with other debts across the Council, pre contractual checks to ensure any monies owed to the Council are addressed, and the insertion of a new contractual provision which allows sums owed to the Council to be offset.

Debt Management Policy

11. This policy applies to all debts and income owed / due to the Council.

12. The general principles of the policy are to:

- Ensure a professional, consistent and timely approach to debt recovery action across all of the Council's functions
- Where Data Protection legislation provides, promote a coordinated approach towards sharing debtor information internally and managing multiple debts owed to the Council.
- Where multiple debts are owed to the Council, where possible, interaction should be kept to a single point, to avoid multiple officer engagement with the same customer / business / resident.

13. This policy links into the Council's Vulnerability Policy and the Stop the Knock approach and looks to ensure that supporting arrangements are in place for debtors where their vulnerability affects their ability to pay a debt owed to the Council.

14. The policy applies to debts and income due to the Council for the following, however this list is not exhaustive:

- Council Tax
- Business Rates
- Overpaid Housing Benefit
- Rents, service charge and insurance
- Sundry Debts (incl. licensing, statutory notices, subscriptions, etc.)
- Car parking
- Recovery of enforcement costs
- Adult Social Care
- Charging for discretionary services or any money due to the Council under terms of an agreement to pay for goods, services or property.

15. This policy provides a comprehensive approach that allows for flexibility based on the customer needs rather than applying a standardised offering that prevents effective collection methods.

16. Should a coordinated debt recovery approach be applied, this policy provides an order of priority for the distribution of payment of debts based on the Council's financial position, the size of the debt and the impact of non-payment on the customer.

17. This policy also extends to support the recent Debt Respite Scheme (Breathing Space) legislation.

18. The following proposed changes are included in the policy and will be implemented once the policy is approved:

- Credits within different funding streams will be transferred where another debt exists. After offsetting, only the remainder will be refunded.
- That the following contractual provision is included in all new contracts with effective from 1 August 2021:
 - ***Monies owed to the Council / Authority***
 - *The Council / Authority may retain or set off any sums owed to it by any company/organisation which have fallen due and payable against any sums due to the company/organisation under any agreement pursuant to which the company*

/organisation or any associated company /organisation provides goods or services to the Council / Authority, or vice-versa.

- New contracts should not be entered into with companies/organisations (excluding public sector bodies) where it is known that they owe sums to the Council, (unless exceptional circumstances apply, or procurement rules require entering into such contract) until such debt is settled.
- Before providing requested goods or services to a company / organisation which amount to more than £50,000 for which payment will be invoiced, officers must carry out internal checks to ensure that no other monies are outstanding to the Council, and where they are they should be settled in advance of the provision.

19. In addition, a credit check and/or company search to establish the financial standing of the organisation (excluding public sector bodies), and if concerns are raised a payment in advance should be sought

What decision(s) are being asked for?

20. That Single Executive approve the Corporate Debt Management Policy.

Why is this being recommended?

21. This policy will allow Middlesbrough Council to provide a comprehensive approach that provides for flexibility based on the customer needs rather than applying a standardised offering that prevents effective collection methods.

22. It also highlights the Council's commitment to supporting the Town's most vulnerable when collecting debt / income.

Other potential decisions and why these have not been recommended

Impact(s) of recommended decision(s)

23. An impact assessment has been completed and is attached at Appendix B. It found that there were no concerns that the policy could have a disproportionate impact on individuals or groups because they hold one or more protected characteristics. The policy sets out how it will be adjusted for those identified as being vulnerable.

Legal

24. The following contractual provision is to be included in all new contracts with effective from 1 August 2021 if this is agreed:

- *The Council / Authority may retain or set off any sums owed to it by any company/organisation which have fallen due and payable against any sums due to the company/organisation under any agreement pursuant to which the company /organisation or any associated company /organisation provides goods or services to the Council / Authority, or vice-versa.*

Financial

25. The proposal is cost neutral; however it is hoped that this will lead to an increase in cash collection across the organisation.

Policy Framework

26. The proposed policy will not vary the current policy framework.

Equality and Diversity

27. The corporate debt management policy should be read in conjunction with any equality and diversity policies.

Risk

28. This policy will impact positively on the following risks.

- 08-059 Incorrect assumptions in the MTFP;
- 08-075 Reduction in Council Tax Collection;

Actions to be taken to implement the decision(s)

29. That Single Executive approve the policy and associated recommendations.

- The Council will publish the policy on its website by 01 August 2021,
- A contractual provision will be inserted on all new contracts from 1 August 2021 (see point 24 above)
- As part of the Council's combined approach to Debt Collection, briefing will be given to the managers of all teams affected by this policy (who will subsequently brief their staff) to ensure a consistent and coordinated approach to the collection of debt and income.

Appendices

- Corporate Debt Management Policy Appendix A
- Impact Assessment Appendix B

Background papers

30. There are no background papers associated with this report

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Corporate Debt Management Policy

Live from: 01 August 2021

Live until: 01 August 2024

Title	Corporate Debt Management Policy		
Creator	Author(s)	Mark Symmonds (Support Services Manager)	
	Approved by	Janette Savage	
	Department	Residents and Business Support	
	Service area	Finance Governance and Support	
	Head of Service	Janette Savage	
	Director	Ian Wright	
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Contributor(s)	Head of Service – Revenues & Benefits, Strategic Business Manager, Head of Finance & Investments, Head of Commissioning & Procurement, Head of Legal Services, Governance & Information Manager, Accounts Receivable Technician,		
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0.13	10.06.21	Final Draft	Janette Savage
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Summary

This policy is the 2nd of 4 policies (Vulnerability Policy, Debt Write Off policy and the Welfare Policy) which combine the Council's approach to Debt Management, and is aligned with the requirements of the Local Government Finance Act 1992 (as amended).

It sets out how the Council will manage all of its debt and income, and facilitates a fair and consistent approach to the recovery of debt across all Council services.

NB: This policy does not extend to any income relating to the pension fund.

Context

This policy is designed to complement and enhance the Council's social regeneration plans.

Purpose

The purpose of this new policy is to provide clear guidance for all Council Officers on the recording, reporting, recovery and monitoring of the Council's debt and income.

All service areas must follow this procedure to ensure that the Council maximises the collection of debts and income by using a co-ordinated approach but having due regard to the customer's ability to pay. The purpose should be to maximise income to the Council. Whilst some parts of income recovery must adhere to relevant regulations e.g. Council Tax, Business Rates, the overall principle of recovery should be the efficient and effective recovery of income and debt owed.

This policy will also link into service specific recovery strategies which would cover the detail around the day to day process and priority.

Objective

The Council's debt management policy has the following objective:

"In order to maximise all debt and income for the provision of services, Middlesbrough Council will collect all debt owing to it promptly, effectively and efficiently, while ensuring fair treatment to all debtors."

Outcome

The outcomes expected from this policy are to:

- Set out the general principles of debt and income management across all services provided by Middlesbrough Council,

- Ensure a consistent approach to the management of debts and income across the Council,
- Where appropriate, aim to look at a single view of debt across the Council,
- Set out provisions to assist customers to pay sums owed in a sustainable way,
- Ensure individual's financial circumstances are considered on a case by case basis before enforcement proceedings are commenced,
- Enable signposting of debtors to debt advice as appropriate.

Definitions

Debts are defined as a sum of money that is owed to the Council by a resident, business, customer or service user. For the purpose of this document, the use of the term debt extends to include charges and fees.

Demand notices are defined in Part V of The Council Tax (Administration and Enforcement) Regulations 1992, as the notice required to be served each financial year by the local authority 14 days prior, in order to collect Council Tax.

Income is defined as any monies payable to the Council excluding monies payable to the pension fund. For the purpose of this document, the use of the term income extends to include charges and fees.

Invoices are a request for payment for goods, services, property and associated fees / charges, or amounts due to the Council for payment within a specified period.

“Vulnerability” Types of vulnerability vary widely for example someone could be vulnerable by virtue of being a young person with autism living independently for the first time, to a single parent with dependent children who has recently become unemployed, to someone with a terminal illness.

“Vulnerability” Can be permanent, transient or progressive.

A vulnerable person is someone who, due to their personal circumstances is especially susceptible to detriment and who by characteristics and/or circumstances, is unable to act or respond appropriately to certain circumstances. This can also be any individual who is, or may be, in need of help or support due to mental health difficulties, disability, age, illness or frailty and who are, or may be, unable to look after their home and/or their wellbeing or unable to protect themselves from harm or exploitation by others.

Age UK – “Vulnerability is not something that affects other people. Any of us, at any time may need care and support”.

They define a Vulnerable Person as:-

- A child – (who is under the age of 18),
- Someone who falls beneath the classification of a ‘vulnerable adult’,

- Someone in a situation causing vulnerability i.e. in a ‘vulnerable situation’.

As there is no clear definition, this places some ambiguity around what is considered as vulnerable. On that basis, Middlesbrough Council recognises that vulnerability can come in many forms and it can be multi layered. What is clear is that there is no absolute definition and as such each case should be considered given weight to the possibility that any residents//customers may at some point need some element of care and support in meeting payment obligations.

[Vulnerability Policy - June 2020](#)

Scope

This policy applies to all employees (both permanent and temporary), contractors and consultants of the Council who are given the authority to manage and collect debt and income which is owed to the Council, or will be due to be owed to the Council at a later date.

For the avoidance of doubt this policy document applies to all debts and income of the Council.

Legislative and regulatory framework

Key elements of the legislative and regulatory framework for debt management are set out below.

Local Government Acts 1992 (as amended)	Establishes requirements to manage the Council’s financial affairs and the appointment of a section 151 officer.
Council Tax (Administration and Enforcement) Regulations 1992	Make provision for the administration and enforcement of Council Tax.
Non-Domestic Rating (Collection and Enforcement)(Local Lists) Regulations 1989	Make provision for the collection and enforcement of non-domestic rates.
Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) Regulations 2020	Establishes a debt respite scheme and establishes a breathing space moratorium and a mental health crisis moratorium.
Traffic Management Act 2004	Provide for the enforcement of parking, loading and waiting restrictions and processing of penalty charge notices.
Transport Act 2000	Provide for the enforcement of bus lane contraventions.
Data Protection Act 2018	Controls the lawful passing of personal data from one part of the Council to another.
The Housing Benefit General Regulations 1987 and 1992	Sets out the legislation that governs the payment of Housing Benefit, including Housing Benefit overpayments and their associated recovery

Social Security Contributions and Benefits Act 1992	The primary legislation for most benefits in the UK
Social Security Administration Act 1992	The primary legislation for most benefits in the UK
Taking Control of Goods Regulations 2013	Provides the legislation for the taking control of goods in the UK, including the use of enforcement agents
County Courts Act 1984,	Establishes a single county court and its jurisdiction
Civil Procedure Rules 1998	Establishes the rules of Civil Procedure used by various courts in the UK
Charging Orders Act 1979	An Act to make provision for imposing charges to secure payment of money due, or to become due, under judgments or orders of court; to provide for restraining and prohibiting dealings with, and the making of payments in respect of, certain securities; and for connected purposes.
Insolvency Act 1986	Consolidates enactments relating to company insolvency and winding up, and bankruptcy of individuals
Equality Act 2010.	Is an amalgamation of previous anti-discrimination laws. It is a law which protects from discrimination of unfair treatment on the basis of certain personal characteristics such as age
General Data Protection Regulation 2016 (GDPR) and Data Protection Act 2018 (DPA2018)	The GDPR/DPA2018 place a duty on the Council to comply with the data protection principles relating to processing of personal data: (1)(a) Lawfulness, fairness and transparency; (1)(b) Purpose limitation; (1)(c) Data minimisation; (1)(d) Accuracy; (1)(e) Storage limitation; (1)(f) Integrity and confidentiality (security); (2) Accountability (including the rights of data subjects).
Freedom of Information Act (FOIA) 2000	Under the FOIA, the Council has a duty to make information available to the public upon request, unless specific exemption(s) apply. It is also obliged to proactively and routinely publish information that has been frequently requested in the past in its Publication Scheme. Information requests frequently include requests for information held in emails.
Local Government Acts 1972, 1985, 1988 and 1992, Lord Chancellor's Code of	Establishes requirements to manage records and information, and gives implied



Practice on Records Management (S46 Freedom of Information Act)	authority to share certain kinds of information with partners.
Care Act 2014 and Statutory Guidance Annex D	The Act by which the local authority is able to charge for social care support and the rules imposed on the local authority with regard to recovery of such debt.
Family Law Act 1996	An Act of Parliament governing divorce and marriage.
Safeguarding Vulnerable Groups Act 2006	An Act to make provision in connection with the protection of children and vulnerable adults.
Modern Slavery Act 2015	An Act designed to combat modern slavery in the UK.
Tribunal Courts and Enforcement Act 2007	An act which makes provision for tribunals and inquiries, particularly relating to the enforcement of judgments and debts.
Taking Control of Goods Regulations 2014	Make provision for recovery of fees and disbursements from debtors to enforcement agents in relation to the procedure for taking control of goods.
Landlord and Tenant Act 1954	Contractual obligations under lease agreements for the payment of rent and other property charges.
Land and Property Act 1925	
Miscellaneous Provisions Act 1986	
Regulation of Investigatory Powers Act 2000 (RIPA)	Governs the use of covert surveillance by public bodies.

Roles and Responsibilities

Director of Finance / Chief Financial Officer	<p>Under Part 7 of the Council's Constitution, the Chief Financial Officer (Section 151 Officer) is responsible for regulating and controlling the finances of the Council and hence that person will be responsible for the proper administration of the Council's financial affairs.</p> <p>Income relating to all types of debt should be handled in accordance with the Council's Financial Procedure Rules (contained within Section 21 – Debt Collection relating to the responsibilities for Directors, Director of Finance (Section 151 Officer), and Heads of Service.</p>
Head of Service – Residents and Business Services	Overall responsibility for the delivery of the Revenues and Benefits Service and the Policy Owner.

Other Heads of Service	Where appropriate, Heads of Service have responsibility for the raising and recording of debts and income in relation to Services they manage.
Records Manager	Responsible for the development and implementation of the corporate Records Management Policy and Retention Schedule, and for this email policy, which underpins them. Will liaise with the Data Protection Officer.
Service Delivery Manager / Strategic Business Managers / Support Services Manager.	Where appropriate, responsibility for overseeing day-to-day compliance with this policy and the standards set out within it by their staff and other personnel they manage or commission.
All staff, contractors, consultants, interns and any other interim or third parties	Responsible for compliance with this policy.
Data Protection Officer	Responsible for provision of advice and guidance to the Council on its obligations in relation to data protection.
Valuation and Estates Team	Responsible for the day to day management / compliance / requirements of all leasehold properties in relation to rent and service charges.

Supporting policies, procedures and standards

The following policies, procedures and standards will be implemented across the Council to ensure that the Council's debts are managed effectively and securely.

Debt Write Off Policy	This provides a framework for the consistent management of uncollectable debts.
Welfare Support Policy	This provides a framework for a joined up approach to a holistic welfare advice and support service for all relevant residents who owe a debt.
Data Protection Policy	This summarises the Data Protection Policy position of Middlesbrough Council and how it will comply with legislation, and associated codes of practice and official guidance in relation to the processing of personal data.
Records Retention Schedule	This defines how long different records should be retained to comply with legal, regulatory or other requirements and the proper arrangements for archiving and destruction.

Records Management Policy and supporting procedures	This provides a framework for ensuring that the Council's records are well kept and that the systems used to hold them are fit-for-purpose.
Information Security and Infrastructure Security Technical Policies	These set out policies and standards for the management and maintenance of the security of Council infrastructure and applications.
Vital Records Standards	This sets out how vital records will be identified and the steps to be taken to ensure their protection and preservation.
Vulnerability Policy	Intended for use by Middlesbrough Council employees when engaging with residents/customers where payment of a collectable debt is being considered.
Stop the Knock approach	A solution designed as a 'helping hand' to support customers who are experiencing difficulties in meeting payment obligations.

Debts to which this policy applies

For the avoidance of doubt this policy document applies to all debts and income due to the Council including but not limited to the list below, and include any other debts across the Council:

- Council Tax,
- Business Rates,
- Overpaid Housing Benefit,
- Rents, service charges and insurance,
- Sundry Debts (incl. licensing, fees, statutory notices, subscriptions, etc.),
- Car parking,
- Recovery of enforcement costs,
- Adult Social Care,
- Charging for discretionary services or any money due to the Council under terms of an agreement to pay for goods, services or property.

General Principles

The general principles adopted in this policy are as follows:

- To ensure a professional, consistent and timely approach to income / debt recovery action across all of the Council's functions,
- Where Data Protection legislation allows, promote a coordinated approach towards sharing debtor information internally and managing multiple debts owed to the Council,

- Where multiple debts are owed to the Council, where possible, interaction should be kept to a single point, to avoid multiple officer engagement with the same customer / business / resident,
- To raise a debt in a timely and accurate manner,
- Where appropriate to do so, seek payment in advance for a service,
- The preferred method of payment is by electronic means and where possible direct debit should be selected,
- To improve the speed of collection and the levels of income collected by the Council,
- To ensure that debts are managed in accordance with legislative provisions and best practice,
- To consider the impact on the debtor / charge payer of the consequences of any recovery options pursued, including their mental wellbeing and the proportionality of these, noting in particular the Council's Stop the Knock approach, and Breathing Space regulations,
- To try and protect customers from undue financial hardship by ensuring realistic payment arrangements are agreed upon,
- Where appropriate, to encourage the debtor to make contact with relevant organisations for debt management advice (i.e. CAB),
- To differentiate between the debtor who won't pay, and the debtor who can't pay, and take appropriate action in either case,
- Ensure that any steps taken to recover debt / income are in line with the Council's corporate policies on surveillance and data protection, and to ensure compliance with RIPA and GDPR legislation.

Delivering the policy

Delivering the policy involves a number of processes which are explained in more detail below:

- Raising of invoices / demand notices,
- Methods of Payment,
- Refunds and reversals,
- Collection, Recovery and Enforcement,
- Social Inclusion – the ability to pay,
- Welfare Support,
- Bad Debt Provision,
- Writing debts off.

Invoices / Demand Notices

Where appropriate to do so, invoices / demand notices should be sent to customers wherever possible. Information such as e-mail addresses / telephone numbers (contact information) should be captured in all instances.

When charging for goods and services, the Council will aim to raise the invoice within 5 working days and no more than 10 days of delivering the service or goods or of the commencement of the period where service covers a period of time. This excludes property related fees where rent is payable upon occupation (unless otherwise specified).

For demand notices (i.e. Council Tax / Business Rates), documentation will be issued in line with legislation and prescribed guidance.

All invoices / demand notices raised will as a minimum bear the Council logo, contact details, details and period of debt and methods of payment. Online and direct debit / card payment will be promoted. Where legislation requires additional information to be provided with the invoice / demand notice, this will also be included.

All invoices / demand notices will have a unique reference and / or barcode so that the customer is able to quote the appropriate document number/s to enable their account to be accessed and credited quickly and accurately.

The supporting documents relating to an invoice / demand notice must be made readily available to Residents and Business Support Services as and when requested. All documentation relating to an invoice / demand notice will be kept either in paper or scanned image format in accordance with the service's policy which is to hold supporting documents for a period of up to 6 years.

The Council's Corporate Retention policy in full can be found at the following link.

[Records Retention & Disposal Schedule 2020/21](#)

Monies owed to the Council

Before providing requested goods or services to a company / organisation which amount to more than £50,000 for which payment will be invoiced, officers must carry out internal checks to ensure that no other monies are outstanding to the Council, and where they are they should be settled in advance of the provision. In addition, a credit check and / or company search to establish the financial standing of the organisation (excluding public sector bodies), and if concerns are raised a payment in advance should be sought, nb - the figure of £50,000 may be reduced subject to service requirements.

New contracts should not be entered into with companies / organisations (excluding public sector bodies) where it is known that they or associated companies / organisations owe sums to the Council, (unless exceptional circumstances apply, or procurement rules require entering into such contract) until such debt is settled.

The Council will retain or offset sums owed to it by any company / organisation before providing goods and services (or vice versa). A contractual provision will be placed in all new contracts from 1 August 2021, and will be inserted as follows:

The Authority may retain or set off any sums owed to it by any company / organisation which have fallen due and payable against any sums due to the company / organisation under any agreement pursuant to which the company / organisation or any associated company / organisation provides goods or services to the Authority, or vice-versa. This to be a contractual provision in all contracts going forward.

Methods of Payment

The Council will promote the use of Direct Debit as a preferred payment method, maximising the use of this wherever possible. It will discourage the use of cash and cheque, by persuading customers to use more electronic methods of payment.

All Invoices / demand notices will include Information on how and where payments can be made i.e. listing the various options we offer, for example:-

- BACS / Standing Order,
- Paypoint,
- Card Payments – debit / credit,
- At Post Offices using barcodes,
- Internet Payments / automated payment line.

Customers may request an instalment arrangement for debts which will be considered by the relevant service. The instalment amount offered and frequency of the payments will be based on an assessment of the financial circumstances of the customer. The default payment option will be Direct Debit for payment arrangements.

Collection, Recovery and Enforcement

The collection of income in respect of invoices / demand notices raised must follow a standard course, which fully documents the efforts made to settle the debt, although it is recognised that certain debts such as Council Tax and Business Rates will have a more regulated period for recovery. See Appendix 1.

- Invoices raised in respect of services delivered are normally due for payment within 14 days. The Council may exercise discretion and extend, where appropriate to do so, to 28 days (depending on the service),
- If no payment is received, recovery activity will commence within a period between 14 and 28 days from the issue of the invoice (depending on the service),

- Where debts in respect of services provided remain unpaid after the first reminder, where appropriate a second debt notice is raised and the provision of further services may cease until the debt is paid,
- If no payment is received within 10 days of the reminder letter, a final demand will be sent,
- If no payment is received within 7 days, further recovery action will be initiated which may include legal proceedings and / or referral to debt collection agencies.

Where legislation permits, the Council will seek to levy and recover all costs/fees that are legitimately due to the Council or its agents.

The Council will appoint / review the enforcement agencies to be used in respect of the collection of debt that remains unpaid. Cases will be selected following the undertaking of the necessary checks to determine suitability, with only approved agencies being used.

Where it is appropriate to do so, all debts will be taken into consideration when referring the debt for legal recovery. Where multiple debts are owed the Council will endeavour to consolidate those debts before taking recovery action.

Enforcement options are dependent on the debt and any governing legislation, but can include the following:

- Court proceedings to initiate any further enforcement,
- Attachment of Benefits,
- Attachment of Earnings,
- Use of Enforcement Agents,
- Charging Orders placed on property owned by the debtor,
- Initiating bankruptcy proceedings,
- Legal proceedings,
- Committal proceedings to prison for unpaid Council Tax,
- Third Party Debt Orders.

The above list is not exhaustive.

The Council will always consider vulnerability of the debtor, and breathing space legislation (or anything similar) when considering enforcement of debt.

Where suitable, the Council will use third party products or alternative remedies to engage with customers and secure payments.

Use of Third Party Products

To support the collection of debt and to trace debtors, the Council will use third party products such as:

- Search hubs for tracing debtors and tackling fraud,
- Engagement technology to contact debtors by telephone,
- Use of text or e-mail technology as well as social media channels,
- Land registry / other data platforms,
- National Fraud Initiative (NFI).
- Credit reference agencies.

This list is not exhaustive and alternative options may be considered.

When using third party products, the Council will comply with the Data Protection legislation, and the Council's surveillance policy.

Multiple Debts owed to the Council

Where the Council is made aware that a debtor owes multiple debts to the Council and unless the debtor advises to the contrary, debts will be considered in a priority order, to avoid the customer going to prison for non-payment, or any other serious consequences. The priority is covered below. The Council may choose to split any payments received across multiple debts based on a percentage allocation.

It is recognised that in the absence of a system which provides a 'Single View of Debt' that this will be difficult to establish if the information is not voluntarily given by the debtor. The Council will take all reasonable steps to identify where customers have multiple debts, and respond to the debt position by combining the debt and dealing with it as one single interaction with the customer.

Credits on accounts

Where accounts are in credit of £200 or more, internal checks against all outstanding debts will be undertaken to ensure no other debt is owed to the Council for any other goods or services provided, and where appropriate to do so, offset any credit against the outstanding debt before making any refund.

Credits within different funding streams will be transferred where another debt exists. After offsetting, only the remainder will be refunded.

Priority of Debt

When recovering debt, the Council will consider the importance of paying priority debts over non – priority debts. Priority debts are considered those where non-payment could lead to serious consequences such as loss of a home or imprisonment.

In addition, consideration will also be given to the size of the debt, and the financial impact of the collection of such debts on the Council's overall financial position. As a general guide, our priority will be:

Collection Fund

- Council Tax,
- Business Rates,

Non Collection Fund

- Overpaid Housing Benefit,
- Adult Social Care,
- Rents, service charges and insurance,
- Other Sundry Debts,
 - Car parking,
 - Recovery of enforcement costs,
 - Licensing, statutory notices, subscriptions, etc.

Likewise, when a debtor is also a supplier to the Council, the Council will seek to offset any overdue debts owed to the Council from the monies owed to the supplier. All new supplier contracts from 1 August 2021 should include a clause clarifying this right (see above).

Social Inclusion – the ability to pay & vulnerable residents.

Ability to pay is a paramount concern when considering debt recovery. A person's vulnerability should also be taken into account, and this policy should be read in conjunction with the Council's Vulnerability policy and 'Stop The Knock' approach.

Middlesbrough Council has a statutory obligation to recover debts / income due. Whilst we will take all reasonable endeavours to identify those residents / customers who may be vulnerable, this can only be achieved when residents / customers interact with the relevant service. Middlesbrough Council are only able to base decisions on what is known and what can lawfully be shared between our services. There may be instances where residents / customers who are vulnerable are not identified. On that basis, actions will continue in line with the process appropriate to the debt. Should it become apparent that a vulnerability exists; additional reasonable and proportionate steps will be introduced at any given stage to support the residents / customers.

For identified vulnerable customers, where reasonable to do so we will:-

- Support them to agree the best method of recovering outstanding monies and the easiest way for them to pay,
- We will update their account with any information they provide to us to aid us with dealing with any vulnerabilities they may have that are influencing their ability to meet their payment obligations,
- We will carefully consider their circumstances before taking any action,
- Where further action is necessary, if contact has not been maintained, we will aim to make an appointment with them before progressing with any next steps,

- We will adapt our processes if we are aware that someone is vulnerable to minimise any hardship or distress,
- We will carefully explain our processes and decisions and aim to keep them fully informed,
- We will signpost them to any help and advice, which is available.

Please refer to the Council's full vulnerability policy and Stop The Knock report – links below

Stop the Knock Report – 16 June 2020 – [Stop The Knock Report](#)

Vulnerability Policy – May 2020 - [Vulnerability Policy](#)

For all other customers, a standardised “income and expenditure” form will be used to ensure that collection officers can ascertain a customer’s total income and expenditure, and agree a consolidated affordable payment, which will clear all overdue sums in an appropriate period of time.

Staff will promote the services of qualified debt advisers i.e. Citizens Advice Bureau, National Debt-Line, Neighbourhood Advice Centres, Money Advice Service (MAS) etc.

In addition, as part of the Council's Stop the Knock approach, we will (where applicable):

- Conduct a Benefit entitlement review, to maximise take up, supporting those customers to claim where they are not able to do so,
- Provide support to help with shortfalls in rent through the Discretionary Housing Payment scheme,
- Consider Emergency assistance through the Community Support scheme
- For multiple debts – signpost to debt advice services and consider consolidated debt solution, supported by Welfare Rights,
- Link in with other Council services/other organisations through data sharing agreements to access difficult to reach client groups,
- Signpost to a consolidated advice and support web page, which has been designed by Revenue and Benefits Services. This page holds valuable information of where to go for help with:-
 - Debt Advice,
 - Help with Gas and Electric,
 - Rent and Council Tax Support,
 - Free School Meals and Foodbanks,
 - Housing Support and Money Advice,
 - Health and Wellbeing.
- Reduce the level of costs charged for those customers that take steps to self-help.
- In exceptional cases, if financial circumstances mean there is an inability to pay and if residents are accessing self-help options (i.e. routes to work, access to

learning etc.), options to reduce the debt using the Council's hardship provision may be considered.

- Work closely with the Tees Valley Routes to Work team to help residents identify any barriers to finding employment. Nb. following the Services recent recruitment campaign, the service have successfully recruited a member of staff who has extensive knowledge in successfully delivering a routes to work solution. This added level of knowledge strengthens the Revenues and Benefits Service and demonstrates the Services commitment to supporting people back into work.

Income relating to all types of debt should be handled in accordance with the Council's Financial Procedure Rules (contained within Section 21 – Debt Collection).

Welfare Support

The Council will provide a joined up approach to a holistic welfare advice and support solution for all relevant residents who owe a debt.

Support will include (but is not limited to):

- A full review of the case including payment resolution,
- Support through the Discretionary Housing Payment process (where applicable),
- A financial Health Check including advice on Benefit take up,
- A full review of existing debt (including responding to payment problems / reducing the amount to pay if possible),
- Engagement with the Stop the Knock approach,
- Referrals to Food Bank and other food related initiatives,
- Crisis Support & white goods provision.

For a full overview of Welfare Support, please refer to the Council's full welfare policy – [insert link here \(currently being drafted\)](#)

Bad Debt Provision

The Director of Finance (Section 151 Officer) in conjunction with Heads of Service must ensure there is adequate provision for Bad Debts, in accordance with 'CIPFA Code of Practice on Local Authority Accounting in United Kingdom – A Statement of Recommended Practice'.

Debts where a bad debt provision has been assigned should be appropriately reviewed on a timely basis with effective recovery methods applied. Where debts are not recoverable, suitable evidence should be provided to progress the case / debt to write off.

A separate bad debt provision is held for each service area so that any increase required in the provision will be charged to the service area concerned. Conversely,

if the debt for which a bad debt provision is paid then the provision for that debt will be credited back to the relevant service area.

Please refer to debt Write off policy for further information on bad debt and write offs. (currently being drafted)

Writing Debts Off

Writing off of debt should be handled in accordance with the Council's Financial Procedure Rules (contained within Section 21.5 – Debt Collection).

Adult Social Care debt write offs must be carried out in accordance with Annex D of the Statutory Guidance to the Care Act 2014.

Please refer to the Council's Corporate Debt Write Off policy which also includes the Debt Write off form. [Insert link here \(currently being drafted\)](#)

Breathing Space

The new Breathing Space scheme, originally outlined by Government in February 2020 following campaigning from the debt advice and wider sector, went live on 4 May 2021.

The 60-day breathing space period will see enforcement action from creditors halted and interest frozen for people with problem debt. Council debt management processes have been amended to share breathing space details, and accommodate the breathing space process into internal procedures.

[Debt Respite Scheme \(Breathing Space\) Regulations 2020](#)

Monitoring and review arrangements

The implementation and effectiveness of this policy and its supporting procedures will be checked and monitored by the Head of Service and associated management team.

The policy for the first 12 months will be subject to quarterly review, followed by a full review every 3 years.

Appendix 1 – Debt Recovery

Debt Recovery By Debt Type

	Regulated Recovery process	1 st Reminder	2 nd Reminder	Final Demand
Miscellaneous Debts	No	21 days after invoice due date	N/A	28 days after invoice due date
Council Tax	Yes	7 days after due date	7 days after due date	If no response to the 1 st or 2 nd Reminder, a Final Reminder is issued.
Business Rates	Yes	7 days after due date (called a further notice)	N/A	7 days after due date (called a reminder letter)
Housing Benefit Overpayments	Yes	20 days after invoice	N/A	10 days after 1 st reminder
Fines / Excess Charges – Public Spaces Protection Order	No	14 days after issue of the fine (fine can be increased to £50 if unpaid)	N/A	14 Days after fine has been increased

Fines / Excess Charges – environmental offences	No	7 days after issue of the fine	N/A	14 days after issue of the fine.
Rents, service charge and insurance	No	21 days after invoice due date	N/A	28 days after invoice due date
Car Parking	Yes	Penalty Charge Notice issued for either £50, £60 or £70 depending on contravention type – Discounted by 50% if paid within 14 days	Notice to Owner (NtO) document sent by post if penalty charge notice remains unpaid for 28 days i.e. NtO sent to inform that the full charge should be paid within a further 28 days	If payment is not received 28 days after NtO a Charge Certificate will be issued and the penalty increases by 50%.
Adult Social Care	Yes	7 days after invoice due date – reminder issued to service area. Telephone call to service user 7 days after reminder issued. Liaise with Social Worker / Legal Services regarding mental capacity / possible Safeguarding issues.	Ongoing discussions with Social Work staff / families. Home visit with other professionals offered. Explore alternative methods of managing finances / referral to Estates.	14 days after invoice due date – final notice sent to service area. Telephone call to service user 7 days after final notice issued. Final notice only sent once 2 nd Reminder stage complete.

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Template for Impact Assessment Level 1: Initial screening assessment

Subject of assessment:	Corporate Debt Management Policy			
Coverage:	Cross cutting			
This is a decision relating to:	<input checked="" type="checkbox"/> Strategy	<input checked="" type="checkbox"/> Policy	<input checked="" type="checkbox"/> Service	<input checked="" type="checkbox"/> Function
	<input checked="" type="checkbox"/> Process/procedure	<input checked="" type="checkbox"/> Programme	<input type="checkbox"/> Project	<input checked="" type="checkbox"/> Review
	<input checked="" type="checkbox"/> Organisational change	<input type="checkbox"/> Other (please state)		
It is a:	New approach:	<input type="checkbox"/>	Revision of an existing approach:	<input checked="" type="checkbox"/>
It is driven by:	Legislation:	<input checked="" type="checkbox"/>	Local or corporate requirements:	<input checked="" type="checkbox"/>
Description:	<ul style="list-style-type: none"> ○ Key aims, objectives and activities ○ The policy sets out how the Council will manage all of its debt and income, and facilitates a fair and consistent approach to the recovery of debt across all Council services. In order to maximise all debt and income for the provision of services, Middlesbrough Council will collect all debt owing to it promptly, effectively and efficiently, while ensuring fair treatment to all debtors. ○ Statutory drivers (set out exact reference) ○ Implementation of the Policy will reinforce the Council’s plans to meet its legal duty under the Local Government Finance Act 1992 to manage the Council’s financial affairs. It will also enable the Council to meet other statutory duties detailed in the legislation covering the recovery of unpaid Council Tax, Non Domestic Rates, Adult Social Care debt, Car Parking fines, etc, whilst taking into account new legislation such as the Debt Respite Scheme Regulations 2020. ○ Differences from any previous approach ○ The policy has been put in place to try and provide a coordinated and consistent approach to debt and income recovery across the council, improve speed and efficiency of collection, whilst being mindful of and providing support to vulnerable groups and their ability to pay. ○ Key stakeholders and intended beneficiaries (internal and external as appropriate) ○ The key stakeholders include customers of council services, businesses, staff, local partners and national government. ○ Intended outcomes. ○ To set out general principles of debt and income management across all services provided by Middlesbrough Council. 			
Live date:	August 2021			
Lifespan:	3 years. This is the first iteration of the policy. It will be reviewed quarterly during the first year, and then annually thereafter.			
Date of next review:	November 2021			

Screening questions	Response			Evidence
	No	Yes	Uncertain	
<p>Human Rights</p> <p>Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?*</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>This proposed policy is designed to ensure that the Council operates a more consistent and joined approach to debt recovery, and considers the whole view of a customer’s debt rather than each service chasing individually. A policy will result in increased signposting and support for those who are having difficulties repaying their debt, and also links in with the Council’s vulnerability policy and the Stop the Knock approach. There are no concerns that the policy could infringe qualified or absolute human rights.</p> <p>Evidence used to inform this assessment includes analysis of the various debt recovery processes across the council, and engagement to date with senior officers who have been involved in the development of the policy and supporting detailed delivery plans.</p>

* Consult the Impact Assessment further guidance appendix for details on the issues covered by each of these broad questions prior to completion.

Screening questions	Response			Evidence
<p>Equality</p> <p>Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?*</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The Public Sector Equality Duty (PSED) requires that when exercising its functions the Council must have due regard to the need to:-</p> <ul style="list-style-type: none"> eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. <p>In having due regard to the need to advance equality of opportunity, the Council must consider, as part of a single equality duty:</p> <ul style="list-style-type: none"> removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it; and encouraging people who share a protected characteristic to participate in public life or in any other activity in which participation is low. <p>The proposed policy looks to provide consistency in the council’s approach, whilst being mindful of a debtor / service user’s ability to pay and their vulnerability (if applicable). Supporting systems are in place to help where this is identified.</p> <p>The policy joins up with recent Government legislation (Breathing Space / Debt Respite) where a person is in debt and requires a breathing space moratorium or a mental health crisis moratorium</p> <p>It is potentially relevant to all the protected characteristics. The aim of the policy is to address inequalities in outcomes experienced by people / service users / debtors of the council when they owe a debt to the council for a charge or a service.</p> <p>This method of working is designed to understand the individual needs of debtors / service users and address those needs in a joined up and holistic way. This will result in a more tailored service response, improving outcomes and the better identification of equality and fairness issues that may need to be addressed. There are no concerns that the policy could have a disproportionate adverse impact on individuals or groups because they hold one or more protected characteristics. The application of a case by case approach to vulnerability will support work to provide nuanced approaches.</p> <p>Evidence used to inform this assessment includes analysis of the various debt recovery processes currently in place across the council and engagement to date with senior officers who have been involved in the development of the policy and supporting detailed delivery plans. It also links to the plan to combine all debt recovery and charging services across the council under one Service Head - Business and Residents Services.</p>

Screening questions	Response	Evidence			
<p>Community cohesion</p> <p>Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?*</p>	<table border="1"> <tr> <td style="background-color: #90EE90;"><input checked="" type="checkbox"/></td> <td style="background-color: #FFD700;"><input type="checkbox"/></td> <td style="background-color: #FFD700;"><input type="checkbox"/></td> </tr> </table>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>The proposed policy should provide a coordinated , joined up approach to a single view of debt for each and every person to whom it interacts with, whilst taking into consideration any vulnerabilities and ability to pay. More affordable and realistic repayment plans and methods of payment will be initiated.</p> <p>Where there may be any different needs because of a protected characteristic or geography, this joined up approach will help to develop follow up actions focussed on addressing those unequal impacts. There are no concerns that the policy could have an adverse impact on community cohesion.</p> <p>Evidence used to inform this assessment includes analysis of the various debt recovery processes currently in place across the council and engagement to date with senior officers who have been involved in the development of the policy and supporting detailed delivery plans.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			
<p>Next steps:</p> <ul style="list-style-type: none"> ➡ If the answer to all of the above screening questions is No then the process is completed. ➡ If the answer of any of the questions is Yes or Uncertain, then a Level 2 Full Impact Assessment must be completed. 					

Assessment completed by:	Mark Symmonds	Head of Service:	Janette Savage
Date:	11/06/2021	Date:	11/06/2021

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Legal and Governance Services
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Submitted to:	Executive Member for Environment, Finance and Governance, 10 August 2021
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Subject:	Surveillance Policy 2021/22
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Summary

Proposed decision(s)

That the Executive Member approves the proposed corporate Surveillance Policy for 2021/22.

Report for:	Key decision:	Confidential:	Is the report urgent?
Decision	No	No	No

Contribution to delivery of the 2021-24 Strategic Plan

People	Place	Business
The proposed policy will ensure that surveillance activity undertaken by the Council is pursuit of its strategic priorities is lawful and that due regard is given to human rights and to data protection rights.		

Ward(s) affected

There is no direct impact on any ward from the recommendations of this report.

What is the purpose of this report?

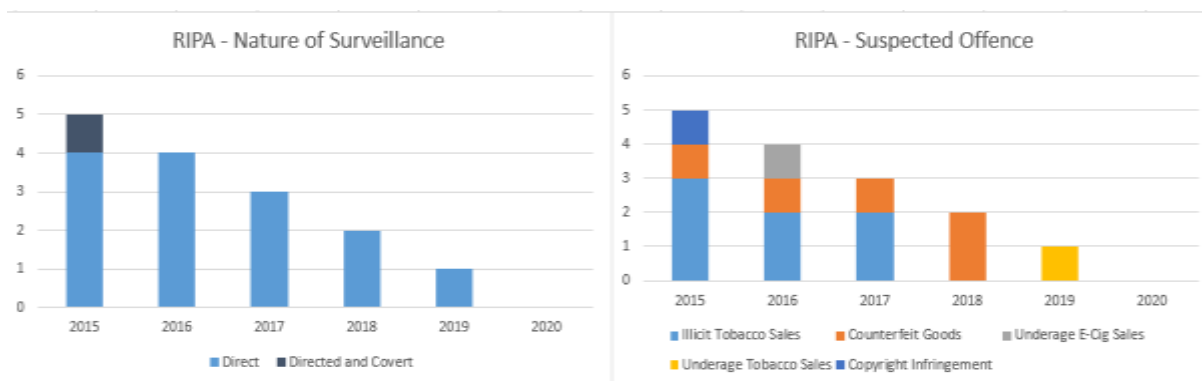
1. This report presents seeks approval of the proposed corporate Surveillance Policy for 2021/22.

Why does this report require a member decision?

2. Guidance underpinning the Regulation of Investigatory Powers Act (RIPA) 2000 states that elected members should review the Council's use of RIPA powers and set the RIPA policy at least once per annum.
3. Use of RIPA powers are considered annually by Culture and Communities Scrutiny Panel and Corporate Affairs and Audit Committee, last on 15 and 29 April 2021 respectively.
4. While broader in scope, this proposed policy subsumes the Council's RIPA policy and reflects discussions with those groups and Investigatory Powers Commissioner's Office following a periodic inspection of the Council's use of RIPA powers in December 2020.

Report Background

5. RIPA is the law governing the use of surveillance techniques by public authorities, including local authorities. RIPA requires that when public authorities need to use covert techniques to obtain private information about someone, they only do so if surveillance is necessary, proportionate, and compatible with human rights. Typically this relates to suspected criminal activity that is likely to result in a custodial sentence of six months or more.
6. In such instances, covert surveillance can be undertaken, subject to magistrate approval, if it is not possible to gather sufficient evidence to secure a prosecution without this.
7. The majority of RIPA applications made by the Council relate for enforcement in relation to tobacco, alcohol and counterfeit goods. The Council's use of RIPA has reduced annually since 2015, with no applications made in 2020 primarily due to the impact of the pandemic on regulatory activity. The charts below set out the number of applications made the Council in the past six years, the nature of the surveillance and the reasons why it was undertaken.



8. The policy relating to RIPA is updated annually and was last approved by the then Executive Member for Finance and Governance in February 2020.

9. In late 2020 the Council was subject to a (periodic) inspection by the IPCO regarding its use of RIPA powers. In summary, the conclusions of this inspection (reported in full to Corporate Audit and Affairs Committee on 29 April 2020) were that the Council has a strong compliance regime for the use of RIPA powers, with the use of the Electronic Document and Records Management System highlighted as a particular strength.
10. No formal recommendations for improvement were made by the IPCO following this inspection, however the Council agreed with the IPCO that from now on it will maintain an overarching Surveillance Policy (Appendix 1), which will cover CCTV, RIPA, non-RIPA covert surveillance and the surveillance of employees.
11. This is necessary to ensure that any covert surveillance undertaken by the Council that does not meet the RIPA threshold is lawful and that due regard is given to human rights and to data protection rights, and to clarify for the benefit of employees when and under what circumstances they will be subject to surveillance.

What decision(s) are being asked for?

12. That the Executive Member approves the proposed corporate Surveillance Policy for 2021/22.

Why is this being recommended?

13. To demonstrate the Council's compliance with all legal duties relating to surveillance and to provide clarity to all stakeholders in a single policy document the circumstances under which the Council will use surveillance and how this will be done.

Other potential decisions and why these have not been recommended

14. The Council could choose to update the existing RIPA policy and develop and implement separate policies relating to non-RIPA surveillance, employee surveillance and other issues not currently covered by policy. However, this is not recommended, as a single policy provides for a coherent and systematic approach and is in line with the Council's commitment to openness and transparency.

Impact(s) of recommended decision(s)

Legal

15. The report and its associated action plan, demonstrates how the Council does and will continue to meet its various legal duties when undertaking surveillance.

Financial

16. It is anticipated that all activities require by the policy are achievable within existing and planned budgets.

Policy Framework

17. The proposed policy is consistent with the aims and priorities of the Strategic Plan, so this report does not seek to vary the Council's Policy Framework.

Equality and Diversity

18. The proposed policy has been subject to Level 1 (screening) equality impact assessment (at Appendix 2). This assessment identified that no negative differential impacts on diverse groups and communities within Middlesbrough is anticipated from the implementation of the policy.

Risk

19. Implementation of the proposed surveillance policy mitigates a number of risks within the Council's strategic and information risk registers, including:

- O8-054 Legal compliance, organisational effectiveness and/or achievement of objectives is impacted by failure to operate an effective corporate governance framework and associated processes.
- Non-compliance with PoFA 2012 (CCTV provisions).
- Non-compliance with information law, including the UK General Data Protection Regulation (UK GDPR).
- Non-compliance with RIPA 2000.

Actions to be taken to implement the decision

20. Following approval, the surveillance policy will be published on the Council's website and staff intranet page. Supporting procedures will be developed and revised as appropriate, with training provided for all managers and case workers, and the Council's privacy notices updated where required.

21. The provides for live monitoring of surveillance activity with issues raised to Risk Management Group and / or Corporate Governance Board on a quarterly basis if required.

22. The Senior Responsible Owner for surveillance will report annually to Corporate Affairs and Audit Committee on the Council's overt and covert surveillance activity from February 2022.

Appendices


- 1 Surveillance Policy 2021/22
- 2 Surveillance Policy 2021/22 – Impact Assessment Level 1: Initial screening assessment

Background papers

- 28/02/20 Executive Member for Finance and Governance; RIPA Policy
29/04/21 Corporate Affairs and Audit Committee; Annual Report of the Senior Information Risk Owner (SIRO)

Contact: Paul Stephens, Head of Strategy, Information and Governance
Email: paul_stephens@middlesbrough.gov.uk

Appendix 1: Surveillance Policy 2021/22

	<h1>Surveillance Policy</h1>
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Creator	Author(s)	Paul Stephens		
	Approved by	Executive Member for Environment, Finance and Governance		
	Department	Legal and Governance Services		
	Service area	Strategy, Information and Governance		
	Head of Service	Paul Stephens		
	Director	Charlotte Benjamin		
Date	Created	2012/06/14		
	Submitted	2021/07/13		
	Approved	2021/07/21		
	Updating Frequency	Annually, unless review triggers met in interim		
Status	Version: 6.0			
Contributor(s)	Governance and Information Manager; Data Protection Officer.			
Subject	Overt and covert surveillance			
Type	Policy			
	Vital Record		EIR	
Coverage	Middlesbrough Council			
Language	English			

Document Control

Version	Date	Revision History	Reviser
2.0	2015/03	Review	S Bonner
2.1	2016/01/03	Update	S Bonner
2.2	2017/11/28	Update	S Bonner
3.0	2018/08	Review	AM Johnstone
4.0	2019/02	Review	AM Johnstone
5.0	2020/02	Review	AM Johnstone
6.0	2021/07/13	Review – move to Surveillance Policy	P Stephens

Distribution List

Version	Date	Name/Service area	Action
5.0	2020/02	All stakeholders	Note
6.0	2021/07/13	All stakeholders	Note

Contact:	data@middlesbrough.gov.uk
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Summary

1. This policy provides a framework for the undertaking of surveillance by the Council of the public and of its employees, where appropriate, ensuring that any surveillance undertaken is lawful and that due regard is given to human rights and to data protection rights.
2. The following sections outline:
 - the purpose of this policy;
 - definitions;
 - scope;
 - the legislative and regulatory framework;
 - roles and responsibilities;
 - policy detail;
 - supporting policies, procedures and standards; and
 - monitoring and review arrangements.

Purpose

3. This policy provides a framework for the undertaking surveillance activities in compliance with all applicable laws by:
 - creating and maintaining organisational awareness of the Right to Privacy (Article 8, Human Rights Act 1998) as an integral part of operations;
 - ensuring that all employees are aware of and fully comply with the relevant legislation as described in this policy and fully understand their own responsibilities when planning and undertaking surveillance activities;
 - where necessary, ensuring that all employees obtain the appropriate authorisations when undertaking surveillance activities; and
 - ensuring that sensitive and confidential surveillance information is stored, archived and disposed of in an appropriate manner.

Definitions

4. Appendix 1 defines the key terms used in this policy. Where appropriate, the definitions used by the Council are aligned with those in legislation or supporting codes of practice.

Scope

5. The policy applies to all overt and covert surveillance undertaken by or on behalf of the Council. This includes, but is not limited to the following:
 - the taking of photographs of someone in a public place;
 - the recording by audio devices or video cameras of someone in a public place;
 - the use of listening devices or photographic equipment to obtain information in respect of activities in a residential premises or private vehicle;
 - the acquisition of communications data from third party service providers;
 - the viewing of someone's online or social media activity;
 - the taking of photographs of employees in the workplace;

- the recording by audio devices or video cameras of employees in the workplace;
 - the viewing of an employee's online or social media activity;
 - the tracking of employee's location through GPS; and
 - the acquisition of employees' communication data during the course of work.
6. The policy applies to all Council employees and any other party undertaking surveillance on behalf of the Council by contract. Non-compliance with this policy may result in disciplinary action or other sanction, with the individual(s) responsible for non-compliance held personally accountable for any breaches of Article 8 of the Human Rights Act 1998.
 7. The policy applies to all surveillance equipment use by the Council and any other party undertaking surveillance on behalf of the Council by contract. At this time the Council does not use drones for surveillance or enforcement purposes. The potential use of drones will be assessed during 2021/22 and a policy brought forward, if required.
 8. This policy is approved and its application scrutinised by elected members but members will have no direct involvement in surveillance operations or in making decisions on specific authorisations.
 9. The policy does not apply to householders or businesses who have obtained grants from the Council for the purpose of installing domestic or commercial CCTV. Equipment paid for and installed under these grants is not the property of the Council and the Council has no legal responsibilities for such equipment or the information obtained by its use.

Legislative and regulatory framework

10. The Council must comply with all relevant applicable legislation pertaining to surveillance, as outlined below.

Human Rights Act 1998

11. The Human Rights Act 1998 (HRA) gave effect in UK law to the rights set out in the European Convention on Human Rights (ECHR).
12. The HRA requires that all action which may potentially impact on an individual's human rights is proportionate, necessary, non-discriminatory and lawful. The HRA lists sixteen basic human rights, which are either absolute, limited or qualified. All activity undertaken by the Council must comply with the HRA, including surveillance.
13. Article 8 of the ECHR – the qualified right to respect for private and family life, home and correspondence – is most likely to be engaged when local authorities seek to obtain private information about a person by means of surveillance. Covert surveillance, in particular via RIPA, are likely to engage the limited right to a fair and public hearing (Article 6).

Regulation of Investigatory Powers Act 2000

14. Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) does not grant powers to undertake surveillance but does provide a statutory framework under

which appropriate covert surveillance activity undertaken by local authorities (specifically directed surveillance and the use of CHIS) can be authorised, conducted and supervised compatibly with Article 8 of the ECHR and the Data Protection Act 2018.

15. RIPA aims to balance the rights and freedoms of individuals with the need for law enforcement and security agencies to have powers to perform their roles effectively.
16. The grounds on which local authorities can rely on to authorise directed surveillance are narrower than those available to security services or the police. A local authority can only authorise directed surveillance of a member of the public if the designated person believes that such surveillance is necessary and proportionate for the purpose of preventing or detecting a crime which the local authority has legal powers to prosecute. In most cases the threshold is an offence for which there is a minimum prison sentence of six months, and the surveillance must also be authorised by a magistrate.
17. The acquisition of a RIPA authorisation will equip the Council with the legal protection (the RIPA 'Shield') against accusations of a breach of Article 8. Failure to comply with RIPA does not necessarily mean that surveillance would be unlawful, however it does mean that evidence obtained from surveillance could be inadmissible in court proceedings and so jeopardise a successful outcome. Unauthorised action could also be open to challenge as a breach of the HRA and a successful claim for damages could be made against the Council.
18. A number of Codes of Practice have been issued under Part II of RIPA, as listed below. This policy and its supporting procedures fully comply with these codes.

[Interception of communications: code of practice 2016](#)

[Equipment interference: code of practice](#)

[Codes of practice for the acquisition, disclosure and retention of communications data](#)

[Covert surveillance and covert human intelligence sources codes of practice](#)

[Code of practice for investigation of protected electronic information](#)

Data Protection Act 2018

19. Middlesbrough Council is a 'competent authority' for the purposes of Part 3 of the Data Protection Act 2018 (DPA) where it has legal duties or powers to investigate and prosecute criminal offences.
20. In this role the Council will comply with the law enforcement principles, which are reflected within this policy as appropriate. Processing of personal data for any of the law enforcement purposes must be:
 - lawful and fair;
 - collected and only processed for a specified, explicit and legitimate purpose;
 - adequate, relevant and not excessive;
 - accurate and, where necessary, kept up to date, and that personal data that is inaccurate is erased or rectified without delay;
 - kept for no longer than is necessary and storage periodically reviewed; and

- processed in a manner that ensures appropriate security.
21. All other personal data that is not processed for law enforcement purposes falls under the UK General Data Protection Regulation (UK GDPR) and other applicable Parts of the DPA including appropriate exemptions (referred to as ‘the data protection legislation’). In this general processing role, as a data controller, the Council will comply with the UK GDPR principles, which are reflected in this policy as appropriate.
22. Personal data will be:
- processed lawfully, fairly and in a transparent manner;
 - collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes;
 - adequate, relevant and limited to what is necessary;
 - accurate and, where necessary, kept up to date;
 - kept in a form which permits identification of data subjects for no longer than is necessary; and
 - processed in a manner that ensures appropriate security of the personal data.
23. As a data controller, the Council will be responsible for, and be able to demonstrate compliance with these principles (‘accountability principle’).

Protection of Freedoms Act 2012

24. The Protection of Freedoms Act 2012 (POFA) provides for a wide range of measures to protect and promote the freedoms of individuals. Part 2 of the POFA required a new Code of Practice on surveillance technologies and the appointment of a Surveillance Camera Commissioner to oversee and review the operation of the Code.
25. A Surveillance Camera Code of Practice was published in 2013 and provides guidance on the appropriate and effective use of surveillance camera systems by relevant authorities and sets out 12 guiding principles that should be adopted by systems operators:
- Use of a surveillance camera system must always be for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need.
 - The use of a surveillance camera system must take into account its effect on individuals and their privacy, with regular reviews to ensure its use remains justified.
 - There must be as much transparency in the use of a surveillance camera system as possible, including a published contact point for access to information and complaints.
 - There must be clear responsibility and accountability for all surveillance camera system activities including images and information collected, held and used.
 - Clear rules, policies and procedures must be in place before a surveillance camera system is used, and these must be communicated to all who need to comply with them.
 - No more images and information should be stored than that which is strictly required for the stated purpose of a surveillance camera system, and such

images and information should be deleted once their purposes have been discharged.

- Access to retained images and information should be restricted and there must be clearly defined rules on who can gain access and for what purpose such access is granted; the disclosure of images and information should only take place when it is necessary for such a purpose or for law enforcement purposes.
- Surveillance camera system operators should consider any approved operational, technical and competency standards relevant to a system and its purpose and work to meet and maintain those standards.
- Surveillance camera system images and information should be subject to appropriate security measures to safeguard against unauthorised access and use.
- There should be effective review and audit mechanisms to ensure legal requirements, policies and standards are complied with in practice, and regular reports should be published.
- When the use of a surveillance camera system is in pursuit of a legitimate aim, and there is a pressing need for its use, it should then be used in the most effective way to support public safety and law enforcement with the aim of processing images and information of evidential value.
- Any information used to support a surveillance camera system which compares against a reference database for matching purposes should be accurate and kept up to date.

26. POFA also amends S.28 of RIPA and brought in the requirement for a magistrate to approve a RIPA authorisation when the crime threshold is met. The threshold is a criminal offence which attract a maximum custodial sentence of six months or more. There are some limited exceptions to the six month rule, specifically:

- the sale of alcohol to children (S.146 of the Licensing Act 2003);
- allowing the sale of alcohol to children (S.147 of the Licensing Act 2003);
- persistently selling alcohol to children (S.147A of the Licensing Act 2003); and
- the sale of tobacco to persons under 18 years of age (S.7 Children and Young Persons Act 1933).

Investigatory Powers Act 2016

27. The Investigatory Powers Act 2016 (IPA) commenced on 11 June 2019 and is now the main legislation governing local authorities' access to communications data in order to carry out their statutory functions as a 'competent authority' under the DPA, replacing the framework set out in RIPA.

28. The Communications Data Code of Practice sets out the process for acquiring communications data in line with the IPA.

The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000

29. These regulations implemented Article 5 of the EU Telecoms Privacy Directive and gave businesses the right to intercept communications on their own networks, which occur as part of lawful business practice, and for the certain purposes.

30. Interception is lawful for the purposes of monitoring or recording, if doing so:
- allows the business to comply with other regulations;
 - establishes the existence of facts;
 - acts as a means of verification that the person being monitored is performing his or her work to standards;
 - is in the interests of UK security;
 - may prevent or detect criminal activity;
 - ensures the communication system operates effectively; and
 - allows the business to detect unauthorised use of the system.

Employment Practices Code

31. The Information Commissioner's Office's Employment Practices Code provides a historical framework under which surveillance of the activity of employees can be authorised and conducted compatibly with Article 8 of the ECHR and the DPA. It covers amongst other matters, how employees can be monitored in the workplace and their right to work in a comfortable environment. Monitoring of employees should only take place where there is a real risk to the business and in line with the DPA, employees should be told about monitoring practices and under what circumstances their communications might be intercepted. The Council is aware that this Code is no longer statutory and will review this policy as and when the ICO issues replacement guidance.

Key roles and Responsibilities

32. Effective and lawful surveillance is the collective responsibility of all those individuals named within the scope of this policy. Appropriate training will be provided to all those officers within the scope of this policy.
33. As with all Council policies, Directors and Heads of Service have a general responsibility to ensure compliance with this policy within their operations. This includes taking reasonable steps to protect the health and safety and where appropriate third parties involved in surveillance, including the carrying out of risk assessments.
34. The specific roles within surveillance activities are described below. Where appropriate, the current role holders and their deputies are listed at Appendix 1.

Senior Responsible Officer (SRO)

35. The SRO has overall responsibility for overt and covert surveillance, including:
- creation, communication and review of this policy;
 - appointing the CCTV Single Point of Contact;
 - appointing the Coordinating Officer (Auditor) for covert surveillance;
 - ensuring the availability of appropriate authorisers for covert surveillance;
 - raising corporate awareness of the policy and proper surveillance practices;
 - assessing corporate compliance with this policy;
 - providing professional guidance on all matters relating to surveillance;
 - engagement with the Surveillance Camera Commissioner and the IPCO; and

- overseeing the implementation of any post-inspection action plans recommended or approved by the IPCO.

Overt surveillance

36. The following key roles are in place in relation to **overt** surveillance via cameras and any other associated equipment:

CCTV Single Point of Contact (SPOC)

37. Appointed by the SRO, and supporting the Data Protection Officer, the SPOC will ensure the Council operates all surveillance camera equipment in compliance with the Surveillance Camera Code and key legislation, thereby building transparency, trust and confidence.
38. Specifically, the SPOC will:
- establish and maintain a CCTV code of practice setting out the regulatory framework that each Council scheme must comply with, the internal assessment programme that each scheme must undertake and the processes required to establish a new surveillance camera scheme or upgrade an existing scheme;
 - maintain a central register of all public space surveillance camera equipment operated by the Council, including the location of each piece of equipment, its asset reference and the manager responsible;
 - act as the main point of contact for surveillance camera systems, and introduce consistent procedures that can be applied across all systems in operation, including standardised signage, alongside appropriate training for those operating surveillance cameras; and
 - provide regular guidance and updates to scheme managers to ensure that all surveillance cameras schemes continue to operate in full compliance with the regulatory framework governing its use and undertake an annual audit of all schemes, documented in an annual report to the SRO.

Scheme Managers

39. A scheme manager will be in place for each individual scheme operated by or on behalf of the Council. Scheme managers will maintain the following documentation in a Code Assessment Pack, which will demonstrate compliance with the local code and allow the SPOC to undertake her / his role.
- list of all documents maintained by the scheme manager;
 - scheme asset list – a complete record of all cameras, signage, monitors and recording equipment, with location, functionality and purpose and associated contractual arrangements for management and / or maintenance;
 - record of data protection impact assessments (DPIAs) for each camera (or if agreed, groups of cameras) on the asset list and cyber security checks undertaken;
 - scheme access list – including who is authorised to access the scheme and the level of access granted;
 - training records of all those accessing the scheme and associated confidentiality arrangements;

- records of the self-assessment and annual review, including who undertook this and the changes made as a result; and
- declaration of compliance – completed annually or when the scheme manager changes.

Responsible Officers

40. All CCTV sites also should have an appointed Responsible Officer (RO) – this may or may not be the scheme manager. ROs are responsible for the day-to-day management of the CCTV system and providing relevant information to the scheme manager.

Surveillance Camera Operators

41. All surveillance camera operators or those otherwise viewing images will undertake training relevant to operating public space surveillance, information security and data protection, and may be required to sign appropriate confidentiality agreements.

Covert surveillance

42. The following key roles are in place in relation to **covert** surveillance:

Coordinating Officer (Auditor)

43. The Coordinating Officer (Auditor) will:
- provide up-to-date guidance and training on covert surveillance within the Council;
 - maintain a central record of authorisations including a URN;
 - audit each covert surveillance application, authorisation, review, renewal and cancellation for compliance with this policy and the law, ensuring there is a uniformity of practice; and
 - advise the SRO as appropriate in the light of the above.

Authorising Officers

44. Authorising Officers will assess, authorise, renew and cancel all public-facing covert surveillance (RIPA or non-RIPA) on behalf of all Directorates. Authorising Officers will be at Head of Service level or above, trained to an appropriate standard, and cannot authorise surveillance requested by any service or team under their management.
45. The SRO will ensure there is always a minimum of three trained authorising officers within the Council. The SRO will authorise surveillance in exceptional circumstances.
46. If confidential information or matters subject to legal privilege are likely to be acquired through directed surveillance or by a CHIS, or the CHIS is a juvenile aged between 16-18 years or a vulnerable adult, the surveillance may only be authorised by the Head of Paid Service.
47. Covert surveillance of employees will only be permitted during an investigation of an allegation of a serious disciplinary offence and will be authorised by the HR manager.

IPA Single Point of Contact (SPoC) (Communications data)

48. The National Anti-Fraud Network (NAFN) acts as the SPoC for the Council for the acquisition of external communications data, liaising with the Office for Communications Data Authorisations on the Council's behalf.

IPA Designated Person (Communications data)

49. The Designated Person (Communications data) will approve telecommunications applications that have been checked by the IPA SPoC.

Applicants (Case Officers)

50. Only officers that can reasonably be expected to undertake covert surveillance as part of their job description and who are fully-trained and competent will plan and apply for the authorisation of such surveillance.

Policy detail

51. The Council will use overt and covert surveillance within its operations where it is appropriate to do so.

Overt surveillance

52. Most of the surveillance carried out by the Council will be done overtly e.g. general observations made by officers in line with their job roles and legal powers.
53. Overt surveillance using relevant equipment will be undertaken in line with the national Surveillance Camera Code of Practice. The Council will maintain a local code of practice that fully complies with the national code and keep this up to date.
54. The SRO will appoint a SPoC for CCTV and notify the Surveillance Camera Commissioner accordingly.
55. The SPoC will oversee all CCTV schemes operated by or on behalf of the Council and ensure their compliance with the national and local codes. Any new scheme or asset can only be introduced with the approval of the SPoC.
56. Scheme managers and responsible officers will be identified for all schemes and maintain Code Assessment Packs, demonstrating compliance with the Council's local code of practice.
57. Scheme managers will ensure that DPIAs are undertaken before any surveillance system is installed, whenever new technology or functionality is being added onto or removed from an existing system, or whenever there are plans to process more sensitive data or capture images from a different location.
58. Scheme managers will ensure that responsible officers and surveillance camera operators working within their schemes are trained to the standard required by the Council's Code of Practice.

59. The SPoC will produce an annual report based on a review of annual self-assessments from scheme managers. The annual report will cover all schemes and equipment operated by the Council, covering:
- operating arrangements, including contracts;
 - performance of schemes;
 - compliments and complaints received;
 - outcome of any inspections or audits in the year;
 - assurance the scheme continues to operate in compliance with legislation and relevant codes of practice; and
 - whether the scheme and / or individual cameras are still required.
60. From time to time, the Council may offer grants to residents for the installation of domestic CCTV systems. Equipment paid for and installed under these grants is not the property of the Council and the Council has no legal responsibilities for such equipment.
61. Outside of contractual arrangements, the Council will not direct any third party to undertake surveillance on its behalf. Any footage provided to the Council as potential evidence of criminality will only be processed where the Council has a lawful basis to do so and where the footage has been captured in line with data protection legislation.

Covert surveillance

62. The Council will use covert surveillance to acquire information to support investigations where it is lawful and appropriate to do so.
63. Covert surveillance will only be used where it is not considered possible to obtain the necessary information to progress investigations by overt means. In addition the method of surveillance must be proportionate and the least harmful means of gathering the information.
64. Covert surveillance does not require authorisation when it is in immediate response to events and it is not reasonably practicable for authorisation to be sought. When covert surveillance has been used in such circumstances it will be noted in the incident report(s) of the employee(s) that have undertaken the surveillance, and reported to the SRO as soon as possible. The SRO will keep this use of surveillance of this type under review to ensure that it is not misused.
65. In the majority of circumstances, however, covert surveillance will be directed, planned, and authorised, through either (i) the framework provided by the Regulation of Investigatory Powers Act 2000, or (ii) internal authorisation processes that follows the spirit and principles of RIPA to ensure that such covert surveillance is necessary, proportionate, non-discriminatory, uses suitable equipment, and is lawful.
66. In general terms, it is more likely that the Council will carry out covert surveillance to progress investigations outside of the RIPA framework, because (i) while significant, the matters under investigation may not typically result in criminal proceedings, or (ii) the potential criminal offence(s) under investigation are likely to attract a penalty below the RIPA threshold. Examples of such instances include but are not limited to:

- suspected benefit fraud;
- children at risk as court orders are not being respected;
- serious cases of anti-social behaviour; or
- contractors failing to carry out contracted works.

67. Both RIPA and non-RIPA surveillance will use a systematic process of:

- application;
- authorisation;
- conduct of authorisation;
- review;
- renewal (where necessary); and
- cancellation.

68. The following standard forms for RIPA applications will be used and provided via the Coordinating Officer (Auditor). The forms will be adapted for internal authorisation of non-RIPA covert surveillance.

- Application for use of directed surveillance
- Review of use of directed surveillance
- Renewal form for directed surveillance
- Cancellation of use of directed surveillance form
- Application for the use of covert human intelligence sources (CHIS)
- Reviewing the use of covert human intelligence sources (CHIS)
- Renewal of authorisation to use covert human intelligence sources
- Cancellation of covert human intelligence sources (CHIS)

69. All covert surveillance must be undertaken in line with the detailed practical guidance provided within the Council's covert surveillance procedure.

Application

70. Only officers that can reasonably be expected to undertake covert surveillance as part of their job description and who are fully trained and competent will plan and apply for the authorisation of such surveillance.

71. At the start of an investigation, the applicant will consider whether the alleged activity proposed for surveillance is a potential criminal offence that meets the RIPA threshold, as defined within this policy.

72. If this threshold is met, the applicant will complete the mandatory RIPA application form (directed surveillance and / or CHIS). If the threshold is not met, then the applicant will complete and submit the Council's non-RIPA application forms.

73. Both forms provide for consideration of necessity and proportionality and the likelihood of collateral intrusion and gathering confidential information, and how this can be mitigated. In completing the form(s), the applicant will have regard to the relevant code(s) of practice, the Council's covert surveillance procedure and associated guidance, and be advised by the SRO, Coordinating Officer (Auditor) and / or Legal Services where required.

74. The applicant considers the surveillance to be justified following completion of the forms, then a URN should be obtained from the Coordinating Officer (Auditor) and the form submitted to an appropriate authorising officer as defined by this policy for authorisation.

Authorisation

75. Authorisation is an appropriate safeguard against the abuse of power by public authorities. The appropriate authorising officer will assess the request for authorisation applying the same tests and the applicant, ensuring that a defensible case can be made for the conduct to be authorised.
76. In completing the form(s), the authorising officer will have regard to the relevant code(s) of practice, the Council's covert surveillance procedure and associated guidance, and be advised by the SRO, Coordinating Officer (Auditor) and / or Legal Services where required.
77. Having taking these issues into account, the authorising officer will either approve, part-approve or reject the application, updating the form(s) in writing. The authorising officer cannot add activity that may wish to see to the application.
78. The authorising officer will notify the applicant and the Coordinating Officer (Auditor) of the decision reached.
79. Before an authorisation can take effect it must be approved by a Justice of the Peace (a District Judge or Magistrate) in the case of RIPA applications, or the SRO, in the case of non-RIPA applications. The Coordinating Officer will liaise with the applicant, Legal Services and the SRO as required to secure the appropriate approvals.
80. No urgency provisions are available to local authorities and all RIPA authorisations must be in writing. Written authorisations for directed surveillance last for a fixed duration of three months and CHIS for 12 months (or four months in the case of a juvenile CHIS) from the date of the magistrate's approval. The Council will apply the same duration to non-RIPA authorisations.

Conduct of authorisation

81. It will be the responsibility of the applicant and those conducting the authorised surveillance to ensure that it is done appropriately, ensuring:
- surveillance is carried out in accordance with the authorisation;
 - collateral intrusion is monitored and minimised as far as possible;
 - intrusive surveillance is not carried out under any circumstances; and
 - information obtained is recorded and managed appropriately.
82. Any CHIS used must be aware that:
- only the tasks authorised must be carried out;
 - collateral intrusion is minimised as far as possible;
 - intrusive surveillance is not carried out under any circumstances
 - entrapment if not committed; and
 - they must report only to the applicant.

83. If the authorised activity unexpectedly interferes with the privacy of individuals not covered by the authorisation, if the conduct or health safety of a CHIS becomes a concern, or any other unforeseen event occurs, the applicant must report this to the authorising officer, who will consider whether the authorisation should be amended or cancelled.

Review

84. All authorisations for covert surveillance or use of a CHIS (RIPA or non-RIPA) will be reviewed by the applicant using the appropriate form every 28 days, or sooner if the risk of collateral intrusion or of obtaining private information is high or the circumstances of the investigation require it.
85. The applicant will send the completed form to the relevant authorising officer and the coordinating officer.

Renewal

86. If towards the end of the authorisation period there is a case for continuing the covert surveillance, the applicant will complete the appropriate form and send to the relevant authorising officer for consideration.
87. If the authorising officer agrees that the grounds for authorisation remain in place then the form will be sent to the coordinating officer to arrange consideration by a JP.
88. If the authorisation lapses during this period then no further surveillance can be undertaken until the JP has approved the renewal.
89. Subject to approval, directed surveillance can be extended for a further three months and an adult CHIS for a further 12 months, starting on the date of the day the previous authorisation ended.

Cancellation

90. There is a presumption that covert surveillance or CHIS authorisations (RIPA or non-RIPA) will be cancelled at the earliest opportunity using the appropriate form.
91. Authorisations should not be simply left to expire, and **must** be cancelled if the authorisation period has not ended and:
- conditions for authorising the surveillance are no longer satisfied;
 - sufficient information has been gathered to progress litigation; or
 - it is clear that no evidence of the suspected activity will be detected.
92. Authorisations must also be cancelled when the authorisation period has expired and a renewal is not been requested and authorised.
93. The applicant will send the completed form to the relevant authorising officer and the coordinating officer.

Errors

94. All errors in documentation must be reported immediately by the authorising officer to the SRO who will report these to the IPCO for consideration of any further action.

Covert Human Intelligence Sources (CHIS)

95. The Council will use CHIS to acquire information covertly where it is lawful and appropriate to do so. The crime threshold does not apply to the authorisation of a CHIS.
96. Individuals contacting the Council to provide unsolicited information on a one-off basis will not be considered CHIS.
97. Similarly, those individuals undertaking test purchases on behalf of the Council will be trained to ensure that they do not form a relationship other than that of customer / retailer, and these individuals will also not be considered CHIS.
98. If however that individual proceeds to pass on more information and this includes forming a relationship with other parties to facilitate this, then a CHIS application will be made. Officers must be conscious of the prospect of individuals drifting into the status of CHIS in their desire to assist the Council and take appropriate actions to advise and safeguard such individuals where necessary.
99. The Council will not authorise the use of a juvenile as a CHIS against her / his parents or carers. The Council will not authorise the use of a juvenile or a vulnerable adult as a CHIS without undertaking a specific risk assessment. Authorisation of such an individual as a CHIS can only be approved by the Head of Paid Service.

Other third parties

100. Where the Council has instructed another agency to act on its behalf under RIPA, this policy and its associated procedures and forms will apply. Applicants will ensure that third parties are aware of exactly what they are authorised to do.
101. Two or more public authorities can undertake a joint directed surveillance investigation or use of a CHIS. In such circumstances it must be clear which authority will lead the investigation and so authorise the surveillance.
102. Requests from third parties to use the Council's equipment, facilities and / or buildings under RIPA authorisations must be made in writing (including a copy of the authorisation, redacted where appropriate) to the SRO, or in the case of CCTV, the SPoC.

Telecommunications data

103. The Council can apply for individual's telecommunications data in support of investigations where appropriate. Applications can be made for entity and event data. The crime threshold applies only to event data.

104. Applicants for telecommunications data must complete the appropriate forms, which will be provided by the Designated Person. Applications will be routed through the IPA SPOC, NAFN, which will check for legal compliance and submit applications to the OCDA once approved by the Council's Designated Person.
105. Any application returned by the OCDA for re-work must be completed within 14 days or a new request must be submitted. Any application rejected by the OCDA can be appealed within seven days, via the Designated Person.

Online surveillance

106. Websites and social media are another source of intelligence for investigations.
107. In general terms, overt monitoring of online material, where the subject has been informed that this is taking place, or the preliminary reconnaissance by Council officers of websites or the social media sites of individuals to ascertain whether they may be of interest, and that do not involve any personal interaction, will be unlikely to require authorisation as they are unlikely to interfere with an individual's reasonably held expectation of privacy.
108. In all other circumstances (e.g. repeated visits to sites to gather information, or establishing a relationship with a viewing to purchasing items either directly or through a CHIS) will likely require authorisation as set out in this policy.
109. Officers will not use covert profiles online. If an investigation requires covert profiles then this should be undertaken by the police or specialists in regional or national trading standards teams.
110. The Council will set out in its privacy notices where it may gather information from online sources as part of its investigations, including the lawful condition relied upon.
111. In undertaking online surveillance, officers will have regard to the relevant code(s) of practice, the Council's covert surveillance procedure and associated guidance, and be advised by the SRO, Coordinating Officer (Auditor) and / or Legal Services where required.

Surveillance of employees

112. All employees are entitled to a comfortable working environment that provides an appropriate degree of privacy. However the monitoring of employees is necessary under certain circumstances in order to safeguard employees, customers and the Council as an employer.
113. The Council will be clear with its employees and Trade Unions when, under what circumstances and to what extent, monitoring and surveillance – both overt and covert – will be used in the workplace.
114. All monitoring and surveillance of employees must be proportionate and in line with the guidance issued by the Information Commissioner to ensure employees' personal data is respected and properly protected under the data protection legislation.
115. Covert surveillance of employees will only be undertaken in extreme circumstances in which the Council suspects criminal activity that would require the involvement of

the police. If necessary such surveillance would be undertaken using the relevant steps outlined in this policy.

116. Employees will be routinely captured on CCTV during the course of their work. CCTV footage of employees may be used to investigate a crime or incident of anti-social behaviour, or to investigate a security or health and safety incident.
117. The Council will also collate and retain records of employee communications data, including but not limited to, door entry, vehicle, ICT device, network, system and internet access and usage, instant messaging, telephone calls / voicemail and printing logs, in line with its retention schedule.
118. Employees will be clearly advised as to what represents appropriate and fair private usage of the systems set out above. In some cases the Council will not permit the private use of such systems at all.
119. The content of phone calls and online meetings involving employees will only be recorded where there is prior notification to the caller e.g. into the Council's contact centre.
120. The Council will use GPS trackers on all of its fleet vehicles and also provide them to certain individuals in line with their job roles or working arrangements e.g. neighbourhood wardens, lone workers, Alertcom users.
121. The Council will not track any individual through their work-provided mobile phone or other devices unless there is considered to be a threat to the individual's or other relevant person's health and safety.
122. The Council will undertake drug and alcohol testing for employees where there is reasonable cause and post-incident (e.g. after a road traffic accident). It will consider expanding this to safety critical roles in due course if evidence suggests this would be a reasonable mitigation in health and safety risk assessments.
123. Employee communications will be legitimately accessed and utilised in the investigation of management investigations, complaints and in response to statutory information requests from members of the public.
124. Routine monitoring of systems access will be undertaken to ensure that employee access to customer personal data is lawful and appropriate.
125. Outside of the above, access to internal CCTV footage and employee communications data and the covert surveillance of employees through these means will only be permitted where it complies with Human Rights and associated legislation, specifically during an investigation of an allegation of a serious disciplinary offence, and will be authorised by the HR Manager as part of the Council's disciplinary procedure.
126. Employee information will only be accessed by those with a business need to know. Any personal information collected in the course of monitoring or surveillance that is not in line with the purposes described above will not be accessed, unless it is required or permitted by law.

Equipment

127. All equipment used by the Council will be fit-for-purpose, inspected and maintained to schedule and produce video and audio footage and images to the appropriate evidential standard.
128. Where CCTV cameras are used covertly as part of an operation to observe a targeted individual or group, the appropriate authorisation must be applied for.
129. Equipment for the purposes of covert surveillance will only be installed when the required authorisations and approvals have been obtained by the case worker, as set out in this policy.
130. Covert surveillance equipment will only be installed in residential premises if prior written permission has been obtained from the householder or property owner.
131. Equipment and surveillance logs will be allocated from a central record of equipment (unless national standard logs are required, in which case they will be used), and an appropriate audit trail maintained. Upon cancellation all equipment in use must be removed immediately or else as soon as practicable, since further recordings will amount to unauthorised surveillance.

Evidence handling and records management

132. Evidence gathered during the course of overt and covert surveillance will include electronic and paper files and records, video and audio recordings, photographs and negatives.
133. Material gathered as part of surveillance activities will not be used for any purpose other than that authorised. Where surveillance gathers information that may be relevant to other criminality, the Council may disclose this to appropriate law enforcement agencies, in line with data protection legislation.
134. The Council's privacy notices will set out what personal information services may gather from surveillance activities.
135. Evidence gathered during surveillance will be handled, stored and disseminated safely and securely in line supporting procedures and the Council's retention schedule:
 - CCTV images will be retained for 28 days (or seven years if used as part of a criminal investigation);
 - covert surveillance records will be retained for seven years;
 - additional records will be retained for CHIS as per the Council's retention schedule; and
 - any material that may be relevant to pending or future litigation will be retained until such litigation is concluded, and thereafter subject to periodic review.
136. Where material is obtained unrelated to the investigation and there is no reason to suspect that it will be relevant to any future litigation, it will be destroyed at the earliest opportunity.

137. The Coordinating Officer (Auditor) will maintain a detailed central record of applications, authorisations, orders, reviews, renewals and cancellations, together with supporting documentation. This will be held in the Council's EDRMS in order to facilitate effective records management across the lifecycle.

Supporting policies, procedures and standards

138. The following supporting procedures and guidance will be made available in support of this policy:

- CCTV Code of Practice
- CCTV Code Assessment Pack
- Covert surveillance procedure
- Fleet vehicle tracking procedure
- Drug and alcohol testing procedure.

139. Each procedure will be subject to impact assessment, including data protection impact assessment, and privacy notices will be updated accordingly.

Monitoring and review arrangements

140. This policy will be reviewed on an annual basis, considered by the appropriate Scrutiny Panel(s) and approved by the Executive. The policy and, where appropriate supporting procedures, will be made available on the Council's Open Data site.

141. Ongoing monitoring will be undertaken by the SPoC (overt surveillance) and the Coordinating Officer (Auditor) (covert surveillance) to ensure organisational compliance with this policy on a live basis. Any issue arising will be reported to the SRO and the Council's Risk Management Group and Corporate Governance Board will be updated as appropriate.

142. The Corporate Affairs and Audit Committee is responsible for oversight of the Council's corporate governance processes. To ensure appropriate oversight of surveillance is maintained, an overview of applications, compliance and trends will be provided to the Committee within an annual report from the SRO.

143. Data relating to the Council's overt and covert surveillance activity (redacted as appropriate) will be published on annually on the Council's Open Data site on a periodic basis.

144. Statistical returns for CCTV will be submitted to the Surveillance Camera Commissioner by the SRO upon request. The SRO will comply with requests from the Surveillance Camera Commissioner in relation to the organisation of inspections of the Council.

145. Statistical returns for directed surveillance and communications acquired using RIPA will be submitted to the IPCO by the SRO upon request. The SRO will comply with requests from the IPCO in relation to the organisation of inspections of the Council.

Complaints

146. Complaints relating to any surveillance matters must be made in writing and addressed to:

Senior Responsible Officer (Surveillance)
Middlesbrough Council
PO Box 500
Middlesbrough
TS1 9FT

147. Complaints will be investigated in line with the Council's complaints policy and where appropriate the Council's data protection policies. All alleged breaches of privacy will be investigated and appropriate action taken.

148. If the complainant remains dissatisfied following the SRO's response they will if appropriate be advised to write to the Local Government and Adult Social Care Ombudsman and / or the Information Commissioner's Office as appropriate.

149. If the complaint relates to covert surveillance, complainants will also have recourse to:

The Investigatory Powers Tribunal
PO Box 33220
London SW1H 9ZQ
Tel. 0207 035 3711

150. Costs incurred by the Council as a result of cases progressed to The Investigatory Powers Tribunal or the courts, will be met by the relevant Directorate.

Appendix 1: Definitions

Surveillance

Monitoring, observing or listening to persons, their movements, conversations or other activities and communications. Surveillance may be conducted with or without the assistance of a surveillance device and includes the recording of any information monitored, observed or listened to during the course of surveillance.

Overt surveillance

Surveillance that is intentionally and visibly undertaken. General observations made by officers in the course of their duties constitutes overt surveillance. Surveillance by visible cameras e.g. CCTV, body worn cameras and automatic number plate recognition cameras is also overt surveillance and must be appropriately signed.

Covert surveillance

Surveillance is covert if, and only if, it is carried out in a manner calculated to ensure that any persons who are subject to the surveillance are unaware that it is or may be taking place. There are three types of covert surveillance: directed surveillance, covert human intelligence sources, and intrusive surveillance.

Directed surveillance

Surveillance is directed if it is covert, but not intrusive, and is undertaken for the purposes of a specific investigation or operation and 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).

Surveillance will not be directed, and therefore will not require authorisation, if it is done by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought for carrying out the surveillance.

Covert Human Intelligence Source (CHIS)

A person who establishes or maintains a personal or other relationship with a person and:

- covertly uses such a relationship to obtain information or provide access to any information to another person, or
- covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

Intrusive surveillance

Surveillance is intrusive if it is covert surveillance that (a) is carried out in relation to anything taking place on any residential premises or in any private vehicle; and (b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

Local authorities are not permitted to carry out intrusive surveillance in any circumstances.

Private information

Information capable of including any aspect of a person's private or personal relationship with others, such as family and professional or business relationship. Whilst a person may have a reduced expectation of privacy when in a public place (including online), covert surveillance of that person's activities in public may still result in the obtaining of private information. This is likely to be the case where that person has a reasonable expectation of privacy even though acting in public.

Collateral intrusion

The risk of intrusion into the privacy of persons other than the target of covert surveillance.

Confidential information

Consists of matters subject to legal privilege, confidential journalistic material, constituent information and confidential personal information which is held in confidence about the physical or mental health or spiritual counselling of a person (whether living or dead) who can be identified from it.

Residential premises

Any premises as is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation. This includes hotel rooms or rented flats but not communal areas, front gardens, hotel reception areas or dining rooms or driveways readily visible to the public.

Private vehicles

Any vehicle which is used primarily for the private purposes of the person who owns it or a person otherwise having the right to use it. This includes leased and company cars.

Communications data

Information about communications: the 'who', 'where' 'when', 'how', and 'with whom' of a communication but not what was written or said (i.e. not content). Generally, it is data that may be acquired from a Telecommunication Operator (TO) as per below.

Entity data (as per the Communications Data Code of Practice 2018)

Data regarding the use of service(s) by customers, including:

- subscriber checks' such as "who is the subscriber of phone number 01234 567 890?", "who is the account holder of e-mail account example@example.co.uk?" or "who is entitled to post to web space www.example.co.uk?";
- subscribers' or account holders' account information, including names and addresses for installation, and billing including payment method(s), details of payments;
- information about the connection, disconnection and reconnection of services to which the subscriber or account holder is allocated or has subscribed (or may have subscribed) including conference calling, call messaging, call waiting and call barring telecommunications services;

- information about apparatus or devices used by, or made available to, the subscriber or account holder, including the manufacturer, model, serial numbers and apparatus codes; and
- information about selection of preferential numbers or discount calls.

Event data

Identifies or describes events in relation to a telecommunication system which consist of one or more entities engaging in an activity at a specific point, or points, in time, including:

- information tracing the origin or destination of a communication that is, or has been, in transmission (including incoming call records);
- information identifying the location of apparatus when a communication is, has been or may be made or received (such as the location of a mobile phone);
- information identifying the sender or recipient (including copy recipients) of a communication from data comprised in or attached to the communication;
- routing information identifying apparatus through which a communication is or has been transmitted (for example, file transfer logs and e-mail headers – to the extent that content of a communication, such as the subject line of an e-mail, is not disclosed);
- itemised telephone call records (numbers called);
- itemised internet connection records;
- itemised timing and duration of service usage (calls and/or connections);
- information about amounts of data downloaded and/or uploaded;
- information about the use made of services which the user is allocated or has subscribed to (or may have subscribed to) including conference calling, call messaging, call waiting and call barring telecommunications services.

Local authorities are prohibited from acquiring internet connection records for any purpose.

National Anti-Fraud Network (NAFN)

A not-for-profit public sector organisation providing a range of data and intelligence services that are subscribed to by over 90% of local authorities. NAFN acts as the Council's Single Point of Contact for the acquisition of external communications data, liaising with the Office for Communications Data Authorisations on the Council's behalf.

Office for Communications Data Authorisations (OCDA)

Created under the IPA, the Office for Communications Data Authorisations considers requests for communications data from law enforcement and public authorities.

Surveillance Camera Commissioner

The role of Surveillance Camera Commissioner (Professor Fraser Sampson) was created under POFA to encourage compliance with the surveillance camera code of practice, review how the code is working, and provide advice to ministers on whether or not the code needs amending.

Investigatory Powers Commissioner's Office (IPCO)

Overseen by the Investigatory Powers Commissioner (Sir Brian Leveson), the IPCO was created under the IPA to provide independent oversight and authorisation of the use of investigatory powers by intelligence agencies, police forces and other public authorities.

Appendix 2: Key officers

Senior Responsible Officer (SRO)

Paul Stephens, Head of Strategy, Information and Governance
Deputy: Ann-Marie Johnstone, Governance and Information Manager

CCTV Single Point of Contact (SPoC)

Dale Metcalfe, Operational Community Safety Manager

Coordinating Officer (Auditor)

Ann-Marie Johnstone, Governance and Information Manager
Deputy: Michael Brearley, Data Protection Officer (for compliance audit purposes only)

Authorising Officers

Richard Horniman, Director of Regeneration and Culture
Judith Hedgley, Head of Public Protection
Paul Clarke, Head of Planning and Development

Authorising officers deputise for one another.

Authorising Officer for Juvenile / Vulnerable Adult CHIS, or where confidential information or matters subject to legal privilege are likely to be acquired through either directed surveillance or by a CHIS

Tony Parkinson, Chief Executive

Designated person

Judith Hedgley, Head of Public Protection
Deputy: Paul Stephens, Head of Strategy, Information and Governance

Appendix 2: Impact Assessment Level 1: Initial screening assessment

Subject of assessment:	Surveillance Policy 2021/22			
Coverage:	Overarching / crosscutting			
This is a decision relating to:	<input type="checkbox"/> Strategy	<input checked="" type="checkbox"/> Policy	<input type="checkbox"/> Service	<input type="checkbox"/> Function
	<input type="checkbox"/> Process/procedure	<input type="checkbox"/> Programme	<input type="checkbox"/> Project	<input type="checkbox"/> Review
	<input type="checkbox"/> Organisational change	<input type="checkbox"/> Other (please state)		
It is a:	New approach:	<input type="checkbox"/>	Revision of an existing approach:	<input checked="" type="checkbox"/>
It is driven by:	Legislation:	<input checked="" type="checkbox"/>	Local or corporate requirements:	<input checked="" type="checkbox"/>
Description:	<p>Key aims, objectives and activities</p> <p>The proposed policy provides a framework for the undertaking surveillance activities across the Council in compliance with all applicable laws by.</p> <p>Statutory drivers</p> <p>Human Rights Act 1998, Regulation of Investigatory Powers Act 2000, UK General Data Protection Regulation, Data Protection Act 2018, Protection of Freedoms Act 2012, Investigatory Powers Act 2016</p> <p>Differences from any previous approach</p> <p>This policy supersedes and subsumes the Council’s existing RIPA Policy, setting out the Council’s policy in relation to CCTV, non-RIPA surveillance and employee surveillance, amongst other matters.</p> <p>Key stakeholders and intended beneficiaries (internal and external as appropriate)</p> <p>Elected members, employees of the Council, local communities and businesses, partners, regulators.</p> <p>Intended outcomes</p> <p>To ensure that the Council’s approach to surveillance clearly articulated and communicated to all stakeholders, and that the Council continues to comply with its legal duties.</p>			

Live date:	As soon as the report is approved.			
Lifespan:	2021/22 financial year.			
Date of next review:	Reviewed on an annual basis, with information on progress to be published on the Council's website.			
Screening questions	Response			Evidence
	No	Yes	Uncertain	
Human Rights Could the decision impact negatively on individual Human Rights as enshrined in UK legislation?	☒	☐	☐	No. The policy is specifically designed to ensure that human rights as identified in national legislation is not contravened when undertaking surveillance activities.
Equality Could the decision result in adverse differential impacts on groups or individuals with characteristics protected in UK equality law? Could the decision impact differently on other commonly disadvantaged groups?	☒	☐	☐	No. The policy will ensure a systematic and evidence-based approach to surveillance undertaken in communities and in the workplace. As a result there are no concerns that the actions could have a disproportionate adverse impact on groups or individuals with characteristics protected in national legislation.
Community cohesion Could the decision impact negatively on relationships between different groups, communities of interest or neighbourhoods within the town?	☒	☐	☐	No. The policy will ensure a systematic and evidence-based approach to surveillance undertaken in communities and in the workplace. Specific account will be taken in appropriate assessments of community sensitivities. As a result there are no concerns that the proposed plan could have an adverse impact on community cohesion.
Assessment completed by:	Paul Stephens, Head of Strategy, Information and Governance			
Date:	17/06/2021			
LMT approver:	Charlotte Benjamin, Director of Legal and Governance Services			
Date:	17/06/2021			

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