

## ENVIRONMENT SCRUTINY PANEL

<b>Date:</b> Monday 5th February, 2024
<b>Time:</b> 10.00 am
<b>Venue:</b> Mandela Room, Town Hall

### AGENDA

1. Apologies for Absence
2. Declarations of Interest
3. Minutes of the Previous Meeting of the Environment Scrutiny Panel held on 15 January 2024 3 - 12
4. Update on the use of the Surveillance Policy 2023/24 13 - 54

The Governance and Information Manager will be in attendance to provide the Panel with a statutory annual update in relation to the use of the Council's Surveillance Policy for 2023/24 and compliance in accordance with the Statutory Codes of Practice under the Regulation of Investigatory Powers Act 2000 (RIPA).

5. Overview and Scrutiny Board Update

The Chair will provide a verbal update relating to business conducted at the Overview and Scrutiny Board meeting held on 18 January 2024.

6. Any other urgent items which in the opinion of the Chair, may be considered.
7. Date and Time of Next Meeting - 4 March 2024

Charlotte Benjamin  
Director of Legal and Governance Services

Town Hall  
Middlesbrough  
Friday 26 January 2024

## MEMBERSHIP

Councillors J Ryles (Chair), D Branson (Vice-Chair), J Banks, J Ewan, TA Grainge, L Mason, I Morrish, M Nugent and S Platt

### **Assistance in accessing information**

**Should you have any queries on accessing the Agenda and associated information please contact Joanne Dixon, 01642 729713, [joanne\\_dixon@middlesbrough.gov.uk](mailto:joanne_dixon@middlesbrough.gov.uk)**

**ENVIRONMENT SCRUTINY PANEL**

**A meeting of the Environment Scrutiny Panel was held on 15 January 2024.**

**PRESENT:** Councillors: Ryles (Chair), Branson (Vice Chair), Ewan, Morrish and S Platt.

**OFFICERS:** C Coverdale, J Dixon, G Field, D Metcalfe, P Salt and M Walker.

**An APOLOGY FOR ABSENCE** was submitted on behalf of Councillor Banks.

**\*\* DECLARATIONS OF MEMBERS' INTERESTS**

There were no Declarations of Interest made by Members at this point in the meeting.

**MINUTES OF THE PREVIOUS MEETING OF THE ENVIRONMENT SCRUTINY PANEL HELD ON 11 DECEMBER 2023**

The minutes of the previous meeting of the Environment Scrutiny Panel held on 11 December 2023 were submitted and approved as a correct record.

**\*\* SUSPENSION OF COUNCIL PROCEDURE RULE 4.13.2 – ORDER OF BUSINESS**

**ORDERED:** In accordance with Council Procedure Rule No. 4.57, the Scrutiny Panel agreed to vary the order of business to consider agenda item 5 as the next item of business.

**COUNCIL BUDGET 2024/25 AND MEDIUM-TERM FINANCIAL PLAN REFRESH – ENVIRONMENT SCRUTINY PANEL**

G Field, Director of Environment and Community Services, accompanied by Councillor P Gavigan, Executive Member for Environment, was in attendance at the meeting to provide the Panel with budget proposals relating to the Environment and Community Services Directorate.

Each of the Council's Scrutiny Panels had been asked to consider the budget proposals in relation to its relevant service area/remit as part of consultation with Members. Comments and feedback provided by the Panel would be fed into a briefing note to be submitted to the Overview and Scrutiny Board on 18 January 2024.

Members were reminded of the legal requirement for the Council to set a balanced budget for 2024/25 by 11 March 2024 and the best value requirement to secure financial recovery and stability through setting a balanced three-year Medium-Term Financial Plan (MTFP) over the period to 2026/27.

Due to the Council's critical financial position it was necessary to identify, approve, and implement a range of budgetary control measures at significant scale to return to a financially sustainable position where the annual expenditure of the Council remained within its annual income over the medium term.

On 17 January 2024, the Executive would be asked to consider approving an application to Government for Exceptional Financial Support in order to balance the budget. The money borrowed would be repaid at a slightly higher rate but it would allow the Council to navigate through the period required and to implement transformation of services to regain a financially sustainable position.

If approved by the Executive, once an application had been made for exceptional financial support, Full Council would ultimately decide on setting a balanced budget. There still remained a risk of the Section 151 Officer being required to issue a S114 Notice under s114(3) of the Local Government Finance Act 1988, in the event that the Council was unable to set a legally balanced budget for 2024/25. The adverse consequences of issuing a section 114 notice were significant.

The Director made a presentation to the Panel providing details on:-

- The remaining budget gap.
- Post settlement update/exceptional financial support
- Budget savings proposals for Environment and Communities.

#### Remaining Budget Gap

The remaining budget gap for 2024/25 after all current budget proposals and Council Tax assumptions was £6.279.

Further gaps of £1.596m for 2025/26 and £0.305m for 2026/27, equivalent to a cumulative budget gap of £8.180m had also been identified. The draft savings and income growth proposals that were subject to consultation totalled £14.038m in 2024/25. For 2025/26 the figure was £5.083m and £1.967m in 2026/27, presenting a cumulative savings plan of £21.088m by the end of 2026/27.

#### Post Settlement Update

The Provisional Local Government Finance Settlement (LGFS) was announced on 18 December 2023 and was broadly inline with the Council's MTFP and initial assessment and, therefore, did not close the £6.3 million funding gap.

CIPFA guidance to S151 Officers who were considering issuing a s114 Notice was to engage with DLUHC and make an application for Exceptional Financial Support (EFS) in order to agree a financial recovery plan that would avoid the requirement for a s114 Notice.

Exceptional Financial Support would provide a temporary funding solution that would buy time for the Council to achieve financial sustainability and avoid a s114 Notice.

Prior to issuing a s114 Notice, the s151 Officer and Chief Executive, with the support of the Mayor and Executive, would make an application for EFS around mid-January.

It was expected that a response would be received from DLUHC at the latest prior to Council meeting on 28 February.

#### Environment and Communities Context

In the context of Environment and Communities, the key messages in terms of the budget were:-

- Significant increase in the cost of waste disposal.
- Need to increase the rate of recycling towards national targets.
- Reducing levels of crime and antisocial behaviour but still a significant problem within Middlesbrough.
- Move towards neighbourhood working to increase both responsiveness to the needs of residents alongside increasing community resilience and social capital.
- Increased dissatisfaction derived from community survey in respect of condition of place.
- Green agenda requiring focus on environment sustainability.
- Requirement to ensure that bridges and structures and other assets or maintained to acceptable standards.

#### Waste Disposal

The costs associated with waste disposal had risen and continued to rise, placing significant budget pressures on the Council.

The Council currently operated a weekly waste collection service. The current 2023/24 net budget for waste collection was £2.854m. Waste disposal was a significant cost to the Council with a

2023/24 budget of £3.969m.

As well as contributing to the Council's environmental objectives, the cost of disposing of recycled waste was much lower (average disposal rate - £53.01 per tonne) than the cost of residual waste (disposal rate - £72.56 per tonne). In addition, it was important to note that there was a significant cost to disposing of waste incorrectly. Residual waste placed in the recycling bin caused contamination to the recycled waste stream and was rejected by waste operators and diverted to the residual waste stream for which the Council had to pay to process twice (average residual waste disposal rate of £173.78 per tonne).

The annual forecast waste disposal costs, as at October 2023, totalled £4.9 million. This included the cost of disposing of residual, recycled and contaminated waste for 2023/24 based on an estimated tonnage total of 71,251. These figures also included green waste disposal, road sweepings and miscellaneous costs such as staffing.

Based on 2021/22 available comparative data, Middlesbrough had one of the lowest recycling rates of all single tier authorities at 29.8% compared to an average of 42.3%. The amount of residual waste was higher than most single tier authorities at 701kg per household compared to 554kg, and the level of contaminated waste was also higher than most single tier authorities.

It was noted that residual waste disposal costs were set to almost double from current rates for 2025/26, making increasing recycling rates critical.

#### Environment and Communities – Financial Context 2023/24

The Panel was advised that the key drivers of the adverse variance in the Environment and Communities budget was due to:-

- an increase in waste disposal costs - £1.017m largely due to increases in tonnage price, increased Management Fees and higher than anticipated Shutdown costs.
- Bereavement Services – with an adverse variance of £0.699m due to a shortfall in income and increased operational costs. This was partially offset by additional grant income, £(0.857)m across Environment Services and Supported Communities.

Members were informed that at October 2023 (Period 7), the forecast outturn was £133.792m (before Financial Recovery Plans), an adverse variance of £7.438m (+5.9%). This was a decrease of (£1.118m) from the £8.556m reported at Quarter 2.

Financial Recovery Plans totalling £1.584m had been proposed which, if assured and fully implemented, would reduce the adverse variance to £5.854m.

Environment and Communities, with a current net budget of £17.369m, forecast outturn was £18.228m, an adverse variance of £0.859m, however, with financial recovery plans the outturn may reduce by £0.078m to an adverse £0.781m.

#### Proposed Savings

A summary of proposed budget savings within Environment and Communities that were considered to potentially affect front line service delivery levels were outlined to the Panel, together with savings for each year and proposed reduction in staffing from 2024-2026, where applicable. In summary, they comprised:-

- Fortnightly Residual Waste Collections. (£0.374m – 12.0 FTE)
- Green Waste Collection Charge. (£0.406)
- 'Junk' Job Collection Charge. (£0.092)
- Replacement Wheeled Bins Charge. (£0.033)
- Cease Council financial support for Environment City. (0.105 – 2.0 FTE)
- Resident Parking Permits Charge. (£0.250)

- Car Parking Charge at Stewart Park. (£0.060)
- Review of Community Facilities. (£0.300)

A summary of further proposed budget savings that were considered to have minimal or no effect on front line service delivery levels were also outlined:-

- Integrate Environment Services and Supporting Communities functions to create a Neighbourhood Management approach. (£0.400 – 12.0 FTE)
- Increase in Education and Enforcement around Recycling. (£0.219)
- Review contribution to Community Hubs running costs. (£0.040)
- Charge for Waste Bins on New Developments. (£0.030)

Each of the proposals was explained in detail and Panel Members raised the following issues:-

- Green Waste collection charge – Reference had been made to provision of new green waste bins for residents subscribing to the collection service and it was queried what the cost would be of providing the new bins. The Director explained that all existing green waste bins would be collected in March and taken away. For those wishing to keep a green waste collection service, a charge of £40 would be made for a new green waste bin. This would also cover the cost of the first year of green waste collection. Subsequent bins would be charged for at £20 each. It was expected that the introduction of green waste charging would save approximately £400,000 in revenue and there would be a capital expenditure of around £1 million on the provision of new bins.
- In response to a query, the Director stated it was anticipated that around 25% of those currently using the green waste collection service would continue to do so once charges were introduced. When asked how this figure had been arrived at and whether any comparison had been made with other local authorities, the Panel was advised that comparisons had been made with Hartlepool, whose take up of the green waste collection service had risen to approximately 30%. It was considered that it was a sensible approach to allow for 25% take up in the first year and any additional take up would put the Council in a better financial position. It was also confirmed that should take up be greater than the estimated 25% there would be sufficient bins available for those that wanted them.
- It was queried why new green bins needed to be provided. It was explained that the current green waste bins and vehicles operated on a different lifting system to the recycling and residual waste bins. A move to bring all bins on to the same lifting system would provide greater flexibility with the use of all the collection vehicles.
- In response to a question, the Panel heard that those who currently used the green recycling service but did not wish to pay to continue with collections, would need to make their own arrangements. For example, a resident with a small garden might not require a fortnightly green waste collection so it may not be worthwhile to pay for the service, however, it may be that two or more neighbours might wish to share a green bin and share the costs.
- Car Parking Charge at Stewart Park - Members commented that the forecasted income generated from introducing a change would be relatively small in the scheme of things and whether charging would be legal as the park was bequeathed to the people of Middlesbrough. The Director advised that this would be examined in greater detail as part of the consultation and was a proposal for the following year (2025/26).
- Review of Community Facilities/ Review contribution to Community Hubs running costs – It was acknowledged that hubs would be encouraged to generate income by increasing chargeable activities, room hire, etc and also noted proposals for locality working and queried whether staff would be located in the hubs and whether this would conflict in terms of whether there would be

enough space for staff as this might possibly hinder plans to increase chargeable activities from the hub. The Director stated that some of the hubs would have sufficient space for both but it would need to be distinguished between the community facility part and the locality working space. In some cases locality teams may not necessarily be based in the actual community hub but in a nearby building.

- Waste Management – disposal costs. Clarification was provided in relation to disposal costs. The slide stated that the cost of recycling waste disposal was £53.01 per tonne and residual waste disposal was £72.56 per tonne and a Panel Member queried why contaminated recycling waste cost £173.78 to dispose of. It was explained that when recycling waste was contaminated it was rejected by the disposal contractor and redirected back into the residual waste stream which the Council then had to pay for again to be disposed of through the incinerator, effectively paying twice for the process plus additional transport costs.
- Neighbourhood Management approach – in response to a query it was clarified that the proposed £400,000 savings was in relation to 12 FTE posts.
- Resident parking permit charges – A Member raised a query as to how the scheme would operate for residents who did not have cars but may need a permit for visitors or for tradespeople attending their property. It was highlighted that temporary permits could be applied for and that trades would need to take the cost on board as part of the cost of the work being undertaken. The Director advised he would look into this proposal further in relation to the visitor permit issue and advise the councillor.

Each individual Scrutiny Panel's views/comments would be compiled in a "consolidation briefing note" to be discussed at the Overview and Scrutiny Board meeting on 18 January. Once agreed by OSB, the briefing note would be submitted to the Mayor and Executive by the Chair of OSB.

The Chair thanked the Director and Executive Member for their attendance and the information provided.

**AGREED** that the information be noted and that the Panel's views and comments in relation to the budget proposals for Environment and Communities be comprised within a consolidation briefing note to be presented to the Overview and Scrutiny Board on 18 January 2024.

## **WASTE MANAGEMENT – FURTHER EVIDENCE**

C Coverdale, Environment Services Manager, P Salt, Waste Collections Manager and D Metcalfe, Operational Community Safety Manager, were in attendance to provide Members with further information in relation to bulky waste collections and fly tipping collections.

### Bulky Waste Collections

The Panel was informed that the Council operated a bulky waste collection service (sometimes referred to as 'junk jobs') for Middlesbrough residents for waste that did not fit inside a residential wheeled bin.

Examples of bulky waste items included: furniture, such as beds and sofas; electrical items and white goods, such as TVs, washing machines, microwaves, fridges, freezers, etc.

There was currently a two-tier service in operation – one providing collections free of charge, and a paid for service ensuring a quicker collection time, known as the premium bulky waste collection service.

The wait time for the free of charge collection service was up to 12 weeks at peak times, however, the service had been suspended for the last two months due to resource issues with vehicles.

The wait times for the premium service varied but, on average was up to three weeks, however, there was currently only a one week wait time due to low take up.

The charges for the premium services were as follows:-

- £22.50 for up to 5 items
- £45.00 for up to 10 items
- £67.50 for up to 15 items
- All prices were dependent on weight

For both bulky waste and premium bulky waste collections, residents were provided with a collection date and advice on how to present the items for collection from the front of their property and asked to leave out by 7.00am on the day of collection. For example, glass must be taped, bubble-wrapped, or smashed up and placed in a securely taped box.

Residents were advised that collection teams were not allowed to enter homes to remove, or help to remove, items and had to make separate collections for electrical and non-electrical items due to environmental legislation and the use of different vehicles to collect such items.

Currently, electrical items were collected on Wednesdays and Fridays and non-electrical items were collected on Wednesdays from South and West Middlesbrough and on Fridays from North and East Middlesbrough.

Mattresses had to be collected separately by another vehicle and if a resident wished to have a mattress collected, no other bulky waste items could be collected at the same time. Mattress collections were made fortnightly on Mondays (except Bank Holidays) and a maximum of three per property could be collected. It was highlighted that a total of 50 mattress collections were made on the last mattress collection round and it was a very popular service.

During the course of discussion, the following issues were raised:-

- In response to a query it was clarified that items were differentiated between at the point of booking when full details of the items to be collected would be taken from the resident. This would determine the collection date(s) for the items depending on what they were. The majority of bookings were for furniture items, electrical goods and mattresses.
- It was acknowledged that the budget proposals included introducing a charge for all bulky waste collections and it was queried whether it was anticipated that there would be any impact on the service. Members were advised that it was not expected to have an adverse impact on the service as generally residents were willing to pay for the service. Advice was also provided to residents regarding considering donating items to charities, such as FRADE, where possible. It was also highlighted that the service had previously incurred a charge for collections prior to the free service being introduced and that had always operated successfully.
- A Panel Member queried whether, with such long waiting times for the free service, whether it was difficult to distinguish between items that had been placed for collection and items that had been fly-tipped. The Environment Manager stated that residents were provided with an appointment date and time (either morning or afternoon) and were advised not to place items for collection until collection day. In cases where suspected fly-tipping was being investigated, the enforcement team would always check to find out whether a bulky waste collection request had been made from that address.
- In response to a query as to how the charges were set, the Panel was advised that the more items there were to dispose of, the greater the waste disposal costs were and Middlesbrough's charges were comparable with other local authorities. Fees and charges were set by full Council following consultation and the current charges for bulky waste collections were set a number of years ago but were usually based on comparisons with neighbouring authorities. In

addition, the weight of the items to be disposed of and sorting to be sent to various disposal streams was taken into account.

- When asked whether providing the service was cost effective, the Panel was advised that approximately £22,000 was generated from the service last year, however, it cost around £128,000 to provide the service.
- Reference was made to licensed waste contractors and it was confirmed that they were generally much cheaper than the Council, however, residents needed to ensure that they used a licensed carrier.
- It was acknowledged that a better balance needed to be struck in terms of operating an affordable service for residents that the Council could afford to operate. It was more cost effective to collect the items as bulky waste collections than to have to collect as fly-tipping.
- It was queried how Middlesbrough's bulky waste service compared with other Tees Valley local authorities. The Panel was informed that the number of requests/booking made for the bulky collection service in Middlesbrough was very comparable with the other authorities. It was further highlighted that currently Middlesbrough was the only authority in the Tees Valley that operated a free of charge service.
- It was recognised that stopping the free of charge service was one of the budget proposals and that this could potentially have a short term impact of a slight increase in fly-tipping, however, education work around the consequences of fly-tipping and using unlicensed waste carriers would need to increase.
- A Panel Member queried whether educational information in relation to recycling and fly-tipping was available in languages other than English. It was highlighted that there were a number of leaflets and other promotional information that had been translated into other languages, however, there were currently around 35 different languages spoken in Newport Ward alone so it could be a challenge. The Cohesion and Migration Team were able to go out into communities and could work with charities in areas with a high private rented sector and temporary accommodation population. In addition, some of the Council's street wardens spoke different languages and were able to communicate within communities.

#### Fly-Tipping Collections

The Panel was advised that the Environmental Enforcement Team, comprising of a Senior Warden; seven Environmental Wardens and six Area Care Operatives, was co-located within the Neighbourhood Safety and Street Warden Service. The Team was responsible for clearing and investigating fly-tipping using a 'sort it not report it' approach.

As well as focussing on fly-tipping, the Team's other duties included:-

- waste presentation (how bins/waste was presented for collection).
- checks on commercial businesses to ensure they had the correct waste disposal arrangements in place (the Council was able to prosecute if this was not the case).
- Abandoned vehicles (untaxed vehicles could be seized).
- Stray dogs (not dangerous dogs)
- Littering
- Enforcement of Public Spaces Protection Orders (PSPOs) (currently in place for the TS1 area).
- Fly-posting (illegal advertising).

The Team had a range of tools and powers available to them depending on the issue being investigated. This included provision of advice and/or guidance; issuing informal or formal warnings; issue of fixed penalty notices; prosecution.

The Team worked closely with the Council's Legal Service to ensure that the most appropriate tool for each situation was used. It was highlighted that the Team dealt with criminal matters and needed to ensure that the standard of evidence for criminal matters was met. Members were notified that the Council's Enforcement Policy was in the process of being updated.

During the course of discussion, the following issues were raised:-

- In response to a query, Members were informed that the Team was located within the neighbourhood teams already, each having designated areas, allowing them to get to know people within the community, the area itself, and local Ward Councillors.
- Reference was made to The Crown building on the corner of Borough Road and Linthorpe Road and it was stated that many complaints had been received about the current condition of the building and immediate area. The Panel was advised that the building had been cordoned off for safety reasons and that cleansing operatives were not allowed within the cordon in order to clean. The Head of Community Safety advised that she would make enquiries and report back to Members.
- A Panel Member queried the collection of mattresses from alleyways, stating that they often appeared to be there for months without being collected. The Operational Manager advised that this was often due to the weight of the mattress. If the mattress had been put outside and it rained, it could weight up to 300kg and was impossible to move, therefore, they had to be left to completely dry out before they could be removed.

The Chair thanked the Officers for their attendance and the information provided.

**AGREED** that the information be noted and considered in the context of the Panel's current scrutiny topic of Waste Management.

## **OVERVIEW AND SCRUTINY BOARD UPDATE**

The Chair provided a verbal update in relation to the business conducted at the Overview and Scrutiny Board meeting held on 20 December 2023, namely:

- Executive Forward Work Programme
- Council Plan 2024 onwards
- 2024/25 Budget and MTFP Refresh
- Final Report of the Health Scrutiny Panel – Dental Health and the Impact of Covid 19.
- Scrutiny Panels' Chairs' Updates.
- Next meeting of OSB – Thursday, 18<sup>th</sup> January 2024, 4.30pm.

## **ANY OTHER BUSINESS**

### Feedback from Site Visit to Recycling Facility

The Vice Chair reported back on the site visit undertaken to the Cumbria Waste Recycling Facility on 19 December 2023. The visit had provided Members with the opportunity to see first-hand what happened to recycling once it had been collected from the kerbside and transported to the recycling plant. This included hand sorting by site operatives of all the waste into relevant streams such as glass, paper, cardboard, plastic etc. Members had also witnessed the problems caused by contamination of the recycling waste stream, reinforcing the need for this to be reduced as much as possible. Members had found the visit very interesting and wished to thank the officers and site operatives for the hospitality shown to them.

During the ensuing discussion, it was highlighted that a short promotional video showing a snapshot of what happens to recycling once it reaches the plant might help to promote the message of the importance of recycling.

**NOTED**

Crustacean Deaths Collaborative Working Group - Update

The Vice Chair advised that a draft report following the one-year investigation by the above group had been shared with the members of the group for comment prior to its next meeting in February. This would be shared with the Scrutiny Panel in due course.

The Vice Chair provided details of the large scale demise of crustaceans that had first occurred in October 2021. It was a major problem in the North East resulting in an 80% decline in catches for local fishermen.

**NOTED**

**DATE AND TIME OF NEXT MEETING**

The next meeting of the Environment Scrutiny Panel was scheduled to take place on Monday, 5 February 2024 at 10.00am.

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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Director of Legal and Governance Services
<b>Submitted to:</b>	Environment Scrutiny Panel
<b>Date:</b>	5 February 2024
<b>Title:</b>	Update on the use of the Surveillance Policy 2023/4
<b>Report for:</b>	Information
<b>Status:</b>	Public
<b>Strategic priority:</b>	All
<b>Key decision:</b>	Not applicable
<b>Why:</b>	Not applicable
<b>Subject to call in?:</b>	No
<b>Why:</b>	Not applicable

<b>Executive summary</b>	
That the Panel note the report which provides an update on the processes the Council has in place to ensure compliance in accordance with the Statutory Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA).	

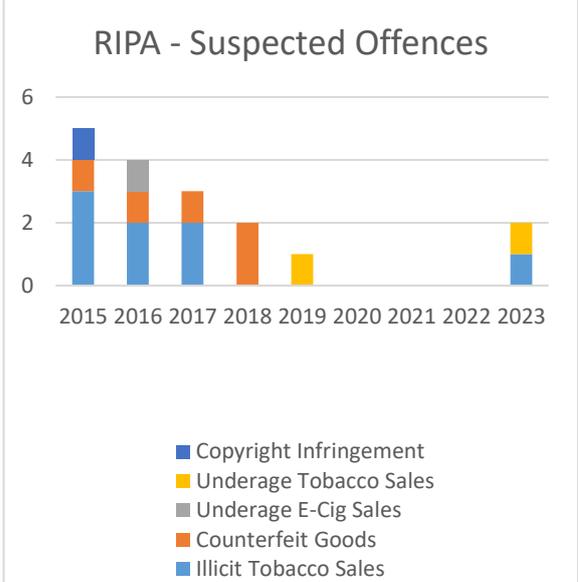
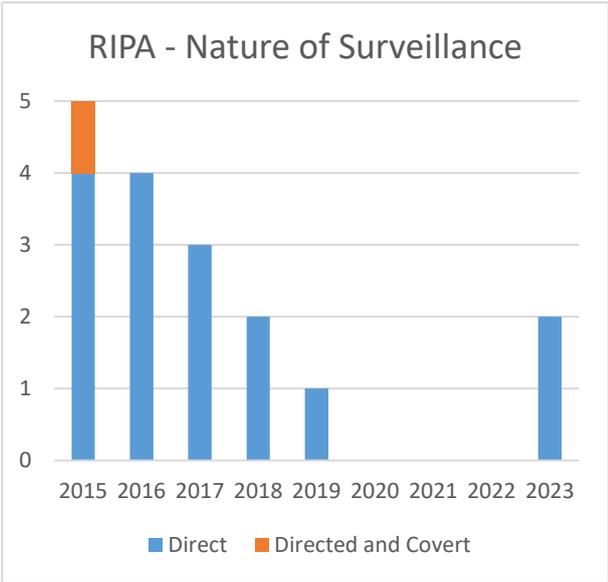
## Purpose

1. The report provides an update to the Panel on the processes the Council has in place underpinning the Regulation of Investigatory Powers Act (RIPA) 2000.

## Background and relevant information

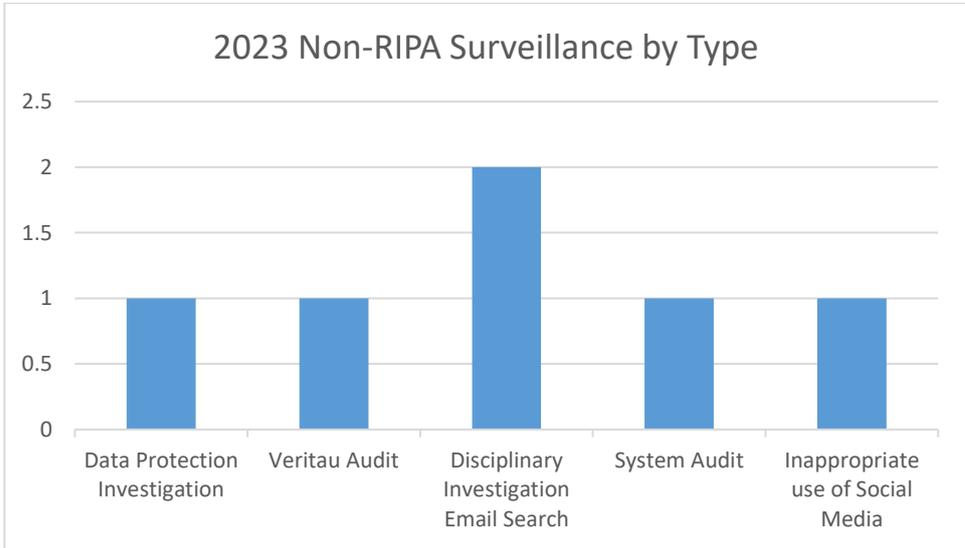
### Use of RIPA

2. 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.
3. 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.  
The Council has exercised these powers twice since 2019, both in 2023 and in relation to the following suspected offences:
  - Underage tobacco sales
  - Illicit tobacco sales
4. The Act and supporting guidance set out a prescribed process the Council must comply with if it deems that it is necessary to exercise its powers under RIPA.
5. The charts below set out the past nine years of RIPA activity undertaken by the Council, the nature of the surveillance and the reasons why it was undertaken. To note, the Council always looks to methods to gather information that do not require covert surveillance to be undertaken, in order to minimise use of this power, therefore activity remains low.



Non-RIPA surveillance

- 6. The Council also has in place a process, set out within the Surveillance policy, which governs the application of requests for surveillance on non-RIPA grounds. The data for 2023 relates to staffing matters, these are centrally logged and approved by HR to again ensure the use of this power is minimised and there is a legitimate basis for use is identified prior to approval. The table below sets out the reasons this power used to investigate the following potential issues:



## Surveillance Policy

7. The Council has in place a Surveillance Policy which sets out how the Council would process an application under RIPA. This policy is reviewed by the Executive Member for Finance and Governance on an annual basis and was last reviewed in December 2023.
8. The policy applies to all overt and covert surveillance undertaken by or on behalf of the Council. The policy includes not only RIPA based surveillance but also defines the grounds on which the Council would consider that it has legitimate reasons to conduct surveillance for grounds other than RIPA and the processes that must be complied with before any surveillance can be undertaken. The Surveillance policy identifies that the Council may determine it has a need to carry out covert surveillance to progress investigations outside of the RIPA framework, where (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.
9. The Policy applies to all Council employees and any other party undertaking surveillance on behalf of the Council by contract.
10. Information on the use of RIPA is also reported to Corporate Affairs and Audit Committee on an annual basis as part of the Senior Information Responsible Officer (SIRO) report.

### **What decision(s) are being recommended?**

11. That this Panel notes the report which provides an update on the processes the Council has in place to ensure continued compliance with the Regulation of Investigatory Powers Act 2000.

### **Rational for the recommended decision(s)**

12. The Panel have requested information on the usage of RIPA powers within the Council.

### **Impact(s) of the recommended decision(s)**

#### ***Financial (including procurement and Social Value)***

13. There are no financial implications arising from this report which is for information only.

**Legal**

14. The policy ensures compliance with legal requirements in relation to RIPA activities.

**Risk**

15. The Surveillance Policy mitigates a number of risks within the Council’s strategic and information risk registers, having a positive overall impact on the strategic risk that the Council could fail to comply with the law.

**Human Rights, Public Sector Equality Duty and Community Cohesion**

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

**Climate Change / Environmental**

17. There are no climate or environmental impacts associated with the proposed policy.

**Children and Young People Cared for by the Authority and Care Leavers**

18. There are no direct implications arising from the Policy.

**Data Protection / GDPR**

19. The policy aims to balance the business interests of the Council as an employer and workers’ rights and freedoms under data protection law. It is imperative that the Council has an up-to-date policy which advises staff on proper use of these powers to ensure any action is lawful, necessary and proportionate.

**Actions to be taken to implement the recommended decision(s)**

Action	Responsible Officer	Deadline
Not applicable		

**Appendices**

1	Surveillance Policy 2023/2024
2	Surveillance Policy 2023/24 – Impact Assessment Level 1: Initial screening Assessment
3	Surveillance Policy covering report to Executive Member for Finance and Governance December 2023.

**Background papers**

<b>Body</b>	<b>Report title</b>	<b>Date</b>
Executive Member for Finance and Governance	RIPA Policy	28/02/2020
Corporate Affairs and Audit Committee	Annual Report of the Senior Information Risk Owner (SIRO)	29/04/2021
Executive Member for Environment, Finance and Governance	Surveillance Policy	10/08/2022
Corporate Affairs and Audit Committee	Annual Report of the Senior Information Risk Owner (SIRO)	31/03/2022
Corporate Affairs and Audit Committee	Annual Report of the Senior Information Risk Owner (SIRO)	April 2023

**Contact:** Leanne Hamer, Governance and Information Manager  
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<b>MIDDLESBROUGH COUNCIL</b>	
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<b>Report of:</b>	Director of Legal and Governance Services
<b>Relevant Executive Member:</b>	Executive Member for Finance and Governance
<b>Submitted to:</b>	Executive Member for Finance and Governance
<b>Date:</b>	20 December 2023
<b>Title:</b>	Surveillance Policy 2023/4
<b>Report for:</b>	Decision
<b>Status:</b>	Public
<b>Strategic priority:</b>	All
<b>Key decision:</b>	No
<b>Why:</b>	Decision does not reach the threshold to be a key decision
<b>Subject to call in?:</b>	Yes
<b>Why:</b>	Not urgent

<b>Proposed decision(s)</b>
That Executive Member approves the annual review of the Surveillance Policy.

<b>Executive summary</b>
This report seeks Executive approval of an updated Surveillance Policy. In accordance with the Statutory Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA) The Authority is required to review its use and set out the Policy at least annually.

## **Purpose**

1. This report presents seeks approval of the proposed corporate Surveillance Policy 2023/24.
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 Audit Committee as part of the annual report of the Senior Information Risk Owner. Statistical information on use of the powers will be reported to a future meeting of the relevant Scrutiny Panel.

## **Recommendations**

4. That the Executive Member approves the annual review of the Surveillance Policy.

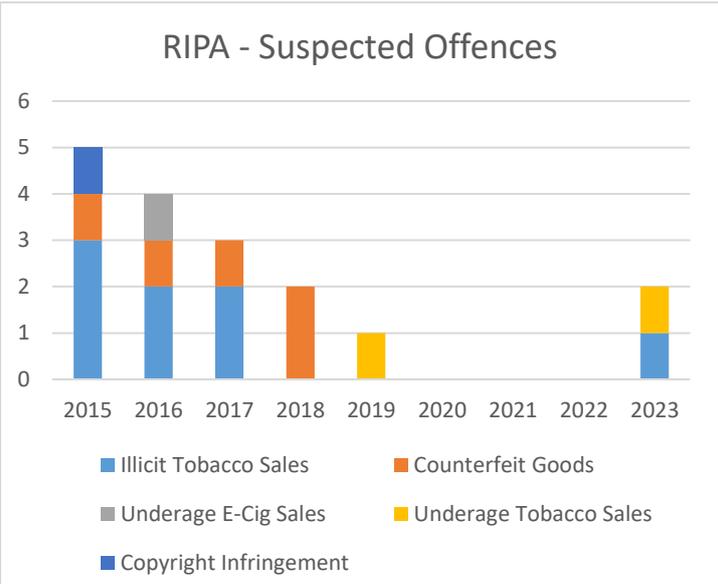
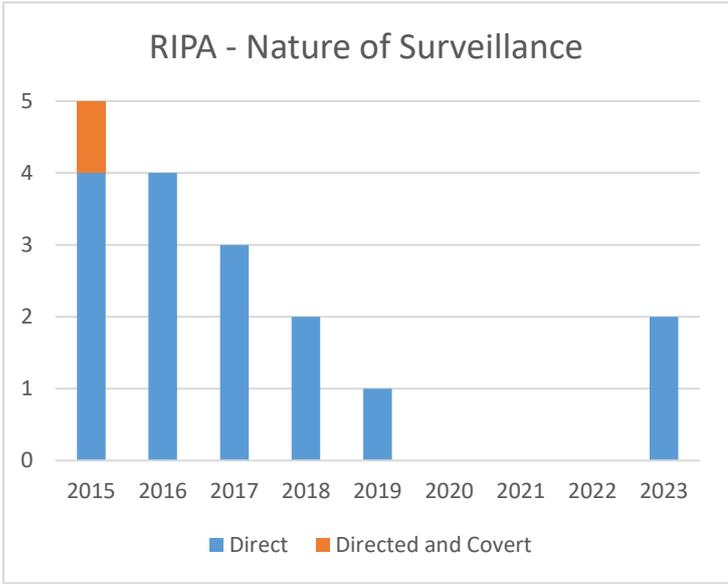
## **Rationale for the recommended decision(s)**

5. The proposed policy will ensure that surveillance activity undertaken by the Council complies with its strategic priorities and statutory obligations, is lawful and that due regard is given to human rights and to data protection rights.

## **Background and relevant information**

### Use of RIPA

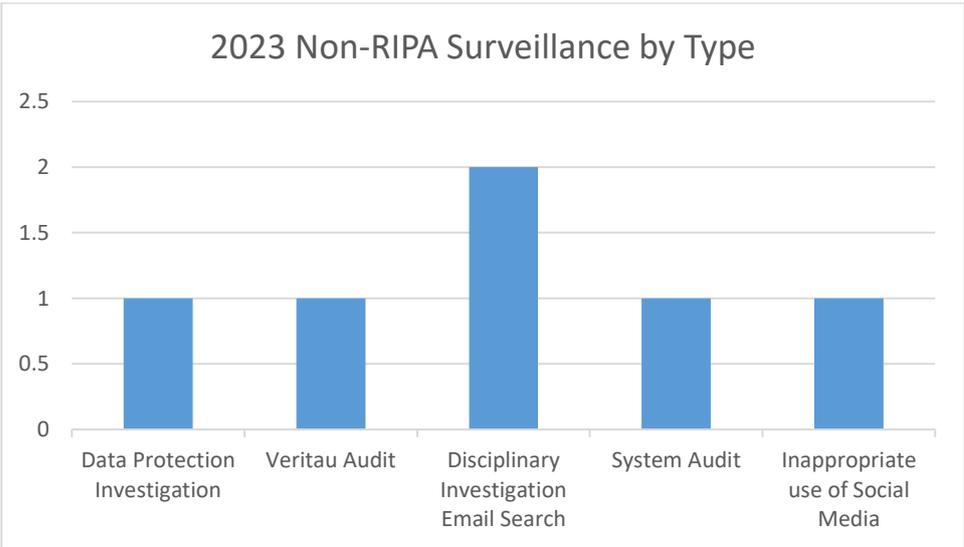
6. RIPA is the law governing the use of surveillance techniques by public authorities, including local authorities. RIPA requires that when public authorities need to use covert techniques to obtain private information about someone, they only do so if surveillance is necessary, proportionate, and compatible with human rights. Typically, this relates to suspected criminal activity that is likely to result in a custodial sentence of six months or more.
7. 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.
8. The charts below set out the past nine years of RIPA activity undertaken by the Council, the nature of the surveillance and the reasons why it was undertaken. To note, the Council always looks to methods to gather information that do not require covert surveillance to be undertaken, in order to minimise use of this power, therefore activity remains low.



9. Since this policy was last reviewed, two RIPA applications were submitted in 2023.

Non-RIPA surveillance

10. The Council also has in place a process, set out within the Surveillance policy, which governs the application of requests for surveillance on non-RIPA grounds. The data for 2023 relates to staffing matters, these are centrally logged and approved by HR to again ensure the use of this power is minimised and there is a legitimate basis for use is identified prior to approval. The table below sets out the reasons this power used to investigate the following potential issues:



Monitoring and review

11. This Policy is updated annually and was last approved by the then Executive Member for Finance and Governance in December 2022.

12. As was agreed with the IPCO following their inspection in late 2020 we continue to maintain an overarching Surveillance Policy (Appendix 1), which covers CCTV, RIPA, non-RIPA covert surveillance and the surveillance of employees.
13. The then draft guidance published by the Information Commissioners Office in October 2022 was approved as guidance on monitoring workers<sup>1</sup> on 3 October 2023. It substantially follows the draft guidance with some additional examples and pointers on where employers “must”, “should”, or “could” follow the approach. This Policy has used the guidance for reference to ensure compliance. The policy this year has had minor changes to reflect staffing and the addition of now approved requirements from the ICO which were in draft at the last publication, no other change has been necessary as the policy was already compliant.

### **Other potential alternative(s) and why these have not been recommended**

14. The Council could choose to restrict this policy to RIPA activity only 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 the recommended decision(s)**

#### ***Financial (including procurement and Social Value)***

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

#### ***Legal***

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

#### ***Risk***

17. Implementation of the proposed Surveillance Policy mitigates a number of risks within the Council’s strategic and information risk registers, having a positive overall impact on the strategic risk that the Council could fail to comply with the law.

#### ***Human Rights, Public Sector Equality Duty and Community Cohesion***

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.

#### ***Climate Change / Environmental***

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<sup>1</sup> [Employment practices and data protection: monitoring workers | ICO](#)

19. There are no climate or environmental impacts associated with the proposed policy.

**Children and Young People Cared for by the Authority and Care Leavers**

20. There are no direct implications arising from this Policy on this group as identified in the equality impact assessment (Appendix 2).

**Data Protection / GDPR**

21. This policy aims to balance the business interests of the Council as an employer and workers’ rights and freedoms under data protection law. It is imperative that the Council has an up-to-date policy which advises staff on proper use of these powers to ensure any action is lawful, necessary and proportionate.

**Actions to be taken to implement the recommended decision(s)**

Action	Responsible Officer	Deadline
Publication of surveillance policy on the MBC Website and Intranet pages	L Hamer	5 January 2024
Refresh of the RIPA and Non RIPA e-Learning for all staff	L Hamer	30 January 2024
Senior Information Risk Owner (SIRO) annual report to Corporate Affairs and Audit Committee	Ann-Marie Johnstone	April 2024

**Appendices**

1	Surveillance Policy 2023/2024
2	Surveillance Policy 2023/24 – Impact Assessment Level 1: Initial screening Assessment

**Background papers**

Body	Report title	Date
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## Surveillance Policy

<b>Creator</b>	Author(s)	Ann-Marie Johnstone		
	Approved by	Executive Member		
	Department	Legal and Governance Services		
	Service area	Policy, Governance and Information		
	Head of Service	Ann-Marie Johnstone		
	Director	Charlotte Benjamin		
<b>Date</b>	Created	2022/09/15		
	Submitted	2022/10/05		
	Approved	2022/12/14		
	Updating Frequency	Annually, unless review triggers met in interim		
<b>Status</b>	Version: 6.0			
<b>Contributor(s)</b>	Governance and Information Manager; Data Protection Officer, HR Manager, Operational Community Safety Manager			
<b>Subject</b>	Overt and covert surveillance			
<b>Type</b>	Policy			
	Vital Record		EIR	
<b>Coverage</b>	Middlesbrough Council			
<b>Language</b>	English			

### Document Control

Version	Date	Revision History	Reviser
4.0	2019/02	Review	AM Johnstone
5.0	2020/02	Review	AM Johnstone
6.0	2021/07	Review – move to Surveillance Policy	P Stephens
7.0	2022/12	Review	AM Johnstone
8.0	2023/11	Review	L Hamer

### Distribution List

Version	Date	Name/Service area	Action
5.0	2020/02	All stakeholders	Note
6.0	2021/07	All stakeholders	Note
7.0	2022/12	All stakeholders	Note
8.0	2023/11	All stakeholders	Note

**Contact:** [data@middlesbrough.gov.uk](mailto:data@middlesbrough.gov.uk)

## 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 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 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 social media activity;
  - the taking of photographs of employees in the workplace;

- the recording by video cameras of employees in the workplace;
  - the viewing of an employee's social media activity; and
  - the acquisition of employees' communication data or other tracking data during the course of work.
6. At this time the Council does not use drones for surveillance or enforcement purposes.
  7. 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.
  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 (EHCR).
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 EHCR – 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 EHCR 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. Appendices 3 to 6 set out the forms that must be completed when applying for authority to conduct directed surveillance using RIPA, renewing authorisation and cancelling directed surveillance. Appendices 7 to 10 set out the same process for use of Covert Human Intelligence Sources using the RIPA legal framework.
19. 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](#)

[Employment practices and data protection: monitoring workers | ICO](#)

### **Data Protection Act 2018**

20. Middlesbrough Council is a 'competent authority' for the purposes of Part 3 of the Data Protection Act 2018 (DPA) where it has authority or powers to investigate and prosecute criminal offences.
21. 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.

22. All other personal data that is not processed for law enforcement purposes falls under the UK General Data Protection Regulation 2016 (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 GDPR principles, which are reflected in this policy as appropriate.

23. 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.

24. As a data controller, the Council will be responsible for, and be able to demonstrate compliance with these principles.

### **Protection of Freedoms Act 2012**

25. 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.

26. 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.

27. POFA also amends s28 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 minimum 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**

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

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

30. 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.
31. 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**

32. The Information Commissioner's Office's Employment Practices Code provides a 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. A form that must be completed for the authorisations is in place and available on the Council's intranet page. Authorisations must be approved by the HR Manager.

### **Key roles and Responsibilities**

33. 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.
34. 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.
35. The specific roles within surveillance activities are described below. Where appropriate, the current role holders and their deputies are listed at Appendix 2.

### ***Senior Responsible Officer (SRO)***

36. 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**

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

#### ***CCTV Single Point of Contact (SPOC)***

38. 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.
39. 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***

40. 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 their 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***

41. 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***

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

### **Covert surveillance**

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

#### ***Coordinating Officer (Auditor)***

44. 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 Unique Reference Number (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***

45. 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.
46. 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.
47. If confidential information or matters subject to legal privilege are likely to be acquired through directed surveillance or by a Covert Human Intelligence Source (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.

48. 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 and an authorising officer. A form is in place to ensure compliance with this policy for non-RIPA directed surveillance.

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

49. 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)***

50. The Designated Person (Communications data) approves telecommunications applications that have been checked by the IPA SPoC.

***Applicants (Case Officers)***

51. Only officers that can reasonably be expected to undertake covert surveillance as part of their job description will plan and apply for the authorisation of such surveillance for RIPA based surveillance. Line Managers may apply to conduct non-RIPA based surveillance of an employee by accessing communications, tracking or other data but must have the approval of the HR Manager, unless there is a reason why they should not be made aware of the surveillance. In that case the reason must be set out in the application and the approval of the SRO sought. In some restricted circumstances, there may be a need to consider covert surveillance of the public in circumstances where the RIPA threshold would not be met but the Council may have a legitimate need to gather information in order to assess fraud, defend a legal case or investigate in line with its statutory duties. Where this is the case, an authorisation process must be followed where the need to gather evidence would exceed the threshold for surveillance.

**Policy detail**

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

**Overt surveillance**

53. 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.
54. 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.
55. The SRO will appoint a SPoC for CCTV and notify the Surveillance Camera Commissioner accordingly.
56. 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.

57. Scheme managers and responsible officers will be identified for all schemes and they will maintain Code Assessment Packs, demonstrating compliance with the Council's local code of practice.
58. 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.
59. 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 and have signed appropriate confidentiality agreements.
60. 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.
61. 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.
62. 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.

### **Overt use of recording – virtual meetings**

63. From time to time, officers within the Council may identify a legitimate need to record an online interaction using the Council's meeting software tools, or those of any Council supplier, excluding the streaming and recording of formal member committee meetings which are open to the public. Any officer wishing to do this must first assure themselves that recording the interaction is necessary and proportionate to the purpose identified having sought advice from the Data Protection Officer and prior approval from the Senior Information Risk Owner. There is a process in place to govern when formal committee meetings of the Council will be recorded.

### **Covert surveillance**

64. The Council will use covert surveillance to acquire information to support investigations where it is lawful and appropriate to do so.

65. Covert surveillance will only be used where it is not considered possible to obtain the necessary information to progress investigations by overt means e.g. interview. In addition, the method of surveillance must be proportionate and the least harmful means of gathering the information.
66. 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 e.g. CCTV tracking of a crime in progress to assist police detection of offenders. 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.
67. 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. This is set out in the supporting forms at appendices 3 to 6.
68. The Council will carry out covert surveillance to progress investigations outside of the RIPA framework, where (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.
69. Both RIPA and non-RIPA surveillance will use a systematic process of:
- application;
  - authorisation;
  - conduct of authorisation;
  - review;
  - renewal (where necessary); and
  - cancellation.
70. The following standard forms for RIPA applications will be used and provided via the Coordinating Officer (Auditor). Forms for internal authorisation of non-RIPA covert surveillance are also in place.
- 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 (CHIS)
  - Cancellation of covert human intelligence sources (CHIS)

## **Application**

71. Only officers that can reasonably be expected to undertake covert surveillance as part of their job description will plan and apply for the authorisation of such surveillance.
72. 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.
73. 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 form.
74. 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.
75. 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**

76. 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.
77. 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.
78. Having taken 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 they may wish to see on to the application.
79. The authorising officer will notify the applicant and the Coordinating Officer (Auditor) of the decision reached.
80. 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.

81. In urgent cases (i.e. a likelihood of endangering life or jeopardising an investigation if authorisation is not immediate), verbal authorisation may be sought and authorisation recorded in writing. An urgent verbal authorisation may last for 72 hours. However, if the surveillance continues and there is opportunity before the expiration of 72 hours, authorisation in writing should be applied for and authorised if appropriate.
82. Written authorisations for directed surveillance last for a fixed duration of three months and CHIS for 12 months (or one month 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.
83. Written authorisations for non-RIPA applications will be considered by the SIRO as authorising officer.

### **Conduct of authorisation**

84. 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.
85. Any CHIS (RIPA only) 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 is not permitted; and
  - they must report only to the applicant.
86. 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**

87. All authorisations for covert surveillance or use of a CHIS (RIPA only) 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.
88. The applicant will send the completed form to the relevant authorising officer and the coordinating officer.

### **Renewal**

89. 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.
90. 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 for RIPA applications.
91. If the authorisation lapses during this period then no further surveillance can be undertaken until the JP has approved the renewal for RIPA applications.
92. 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.
93. For non-RIPA applications, renewal applications for surveillance will be considered by the SIRO as authorising officer.

### **Cancellation**

94. There is a presumption that covert surveillance or CHIS authorisations (RIPA only) will be cancelled at the earliest opportunity using the appropriate form.
95. Authorisations **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.
96. Authorisations must also be cancelled when the authorisation period has expired and a renewal has not been requested and authorised.
97. The applicant will send the completed form to the relevant authorising officer and the coordinating officer.

### **Errors**

98. All errors in documentation must be reported immediately by the authorising officer to the SRO for consideration and appropriate action.

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

99. 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.
100. Individuals contacting the Council to provide unsolicited information on a one-off basis will not be considered CHIS.
101. 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.

102. 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.
103. The Council will not authorise the use of a juvenile as a CHIS against their 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. Forms set out at appendices 7 to 10 of this policy set out the detail required for the approval, review and cancellation of CHIS surveillance requests.

### **Other third parties**

104. 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.
105. 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.
106. 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**

107. 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.
108. 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.
109. 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**

110. Websites and social media are another source of intelligence for investigations.
111. 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.

112. 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.
113. 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.
114. 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.
115. 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**

116. All employees are entitled to a comfortable working environment that provides an appropriate degree of privacy, consistent with data protection legislation. However, the monitoring of employees is necessary under certain circumstances in order to safeguard employees, customers and the Council as an employer.
117. The Council will be clear with 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.
118. All monitoring and surveillance of employees will 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. In order to lawfully monitor employees, the Council must identify its lawful basis for doing so and identify a special category processing condition if sensitive data is likely to be captured. The Information Commissioner's Office provides an interactive tool to support applicants to understand the lawful basis for planned monitoring.<sup>1</sup>
119. Employees will be routinely captured on CCTV during the course of their work. Some employees have been given access to devices which offer the option of using biometric data to secure the device. Where an employee has opted into that device, any data gathered will be held on the device and only used for that purpose.
120. The Council will also collate and retain records of employee communications data, including but not limited to, door entry, vehicle, safety tracking devices, ICT device, network, system and internet access and usage, instant messaging, telephone calls and printing logs, in line with its retention schedule.

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<sup>1</sup> <https://ico.org.uk/for-organisations/gdpr-resources/lawful-basis-interactive-guidance-tool/>

121. 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.
122. 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.
123. 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.
124. 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.
125. 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).
126. 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.
127. 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.
128. Routine monitoring of systems access will be undertaken to ensure that employee access to customer personal data is lawful and appropriate.
129. 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.
130. 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. A form is in place that sets out the detail required for the authorisation, review and cancellation of employee covert surveillance which should only be used in exceptional circumstances and in line with guidance from the ICO.

### **Non-RIPA surveillance of the public and third parties**

131. Paragraph 68 of this policy sets out that in exceptional circumstances the Council will carry out covert surveillance to progress investigations outside of the RIPA framework, where (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. The form for this

process must be completed and submitted to the SRO for approval before non-RIPA covert surveillance of third parties or the public is conducted.

132. Surveillance under this policy section must be conducted with a view to minimising data collected and minimising the length of time surveillance is conducted for. A maximum of 30 days can be approved at any one time.

### **Equipment**

133. 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.
134. 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.
135. 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.
136. Covert surveillance equipment will only be installed in residential premises if prior written permission has been obtained from the householder.
137. Equipment and surveillance logs will be allocated from a central record of equipment, 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**

138. 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.
139. 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.
140. The Council's privacy notices will set out what personal information services may gather from surveillance activities.
141. 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;
  - covert surveillance records will be retained for seven years;
  - additional records will be retained for CHIS; 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.

142. 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.
143. 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**

144. 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.
145. Each procedure will be subject to impact assessment, including data protection impact assessment, and privacy notices will be updated accordingly.

### **Monitoring and review arrangements**

146. 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.
147. 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.
148. 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.
149. Data relating to the Council's overt and covert surveillance activity (redacted as appropriate) will be published annually on the Council's Open Data site.
150. 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.
151. 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

152. 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

153. 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.

154. 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.

155. 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

156. 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, 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](http://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)**

Ann-Marie Johnstone, Head of Policy Governance and Information  
Deputy: Leanne Hamer, Governance and Information Manager

### **CCTV Single Point of Contact (SPoC)**

Dale Metcalfe, Operational Community Safety Manager

### **Coordinating Officer (Auditor)**

Leanne Hamer, 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

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**

Clive Heaphy, Chief Executive

### **Designated person**

Judith Hedgley, Head of Public Protection  
Deputy: Ann-Marie Johnstone, Head of Policy, Governance and Information

**Appendix 2: Impact Assessment Level 1: Initial screening assessment**

<b>Subject of assessment:</b>	Surveillance Policy 2023/24			
<b>Coverage:</b>	Overarching / crosscutting			
<b>This is a decision relating to:</b>	<input type="checkbox"/> <b>Strategy</b>	<input checked="" type="checkbox"/> <b>Policy</b>	<input type="checkbox"/> <b>Service</b>	<input type="checkbox"/> <b>Function</b>
	<input type="checkbox"/> <b>Process/procedure</b>	<input type="checkbox"/> <b>Programme</b>	<input type="checkbox"/> <b>Project</b>	<input type="checkbox"/> <b>Review</b>
	<input type="checkbox"/> <b>Organisational change</b>	<input type="checkbox"/> <b>Other (please state)</b>		
<b>It is a:</b>	<b>New approach:</b>	<input type="checkbox"/>	<b>Revision of an existing approach:</b>	<input checked="" type="checkbox"/>
<b>It is driven by:</b>	<b>Legislation:</b>	<input checked="" type="checkbox"/>	<b>Local or corporate requirements:</b>	<input checked="" type="checkbox"/>
<b>Page 51</b> <b>Description:</b>	<p><b>Key aims, objectives and activities</b> The proposed policy provides a framework for the undertaking surveillance activities across the Council in compliance with all applicable laws by.</p> <p><b>Statutory drivers</b> 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><b>Differences from any previous approach</b> 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><b>Key stakeholders and intended beneficiaries (internal and external as appropriate)</b> Elected members, employees of the Council, local communities and businesses, partners, regulators.</p> <p><b>Intended outcomes</b> 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>			
<b>Live date:</b>	December 2023			
<b>Lifespan:</b>	December 2023- December 2024			
<b>Date of next review:</b>	Reviewed on an annual basis.			

Screening questions	Response			Evidence
	No	Yes	Uncertain	
<b>Human Rights</b> 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.  Evidence used to inform this assessment includes analysis of legislation, statutory and draft statutory guidance and feedback from the IPCO inspection regime.
<b>Equality</b> 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.  Evidence used to inform this assessment includes analysis of legislation, statutory and draft statutory guidance and feedback from the IPCO inspection regime.
<b>Community cohesion</b> 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.  Evidence used to inform this assessment includes analysis of legislation, statutory and draft statutory guidance and feedback from the IPCO inspection regime.
<b>Assessment completed by:</b>	Leanne Hamer, Governance and Information Manager			
<b>Date:</b>	29/11/2023			
<b>Head of Service:</b>	Ann-Marie Johnstone, Head of Policy, Governance and Information			
<b>Date:</b>	30/11/2023			



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