



Committee: AUDIT COMMITTEE
Date: WEDNESDAY, 22 JANUARY 2014
Venue: MORECAMBE TOWN HALL
Time: 6.00 P.M.

A G E N D A

1. **Apologies for Absence**

2. **Minutes**

Minutes of meeting held on 18th September 2014 (previously circulated).

3. **Items of Urgent Business authorised by the Chairman**

4. **Declarations of Interest**

To receive declarations by Members of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting.)

Whilst not a legal requirement, in accordance with Council Procedure Rule 10 and in the interests of clarity and transparency, Members should declare any disclosable pecuniary interests which they have already declared in the Register at this pointing the meeting.

In accordance with Part B, Section 2, of the Code of Conduct, Members are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

5. **Annual Audit Letter 2012-13** (Pages 1 - 7)

Report of KPMG

6. **Public Sector Internal Auditing Standards and Internal Audit Charter** (Pages 8 - 23)

Report of Internal Audit Manager

7. **Internal Audit Monitoring** (Pages 24 - 47)

Report of Internal Audit Manager

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors Malcolm Thomas (Chairman), Peter Williamson (Vice-Chairman), Jon Barry, Geoff Knight, Richard Newman-Thompson, Vikki Price and David Whitaker

(ii) Substitute Membership

Councillors Paul Aitchison, Roger Dennison, Tim Hamilton-Cox, Geoff Marsland, Sylvia Rogerson and Susan Sykes

(iii) Queries regarding this Agenda

Please contact Jane Glenton, Democratic Services - telephone (01524) 582068, or email jglenton@lancaster.gov.uk.

(iv) Changes to Membership, substitutions or apologies

Please contact Members' Secretary, telephone (01524) 582170, or email memberservices@lancaster.gov.uk.

MARK CULLINAN,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER, LA1 1PJ

Published on Monday, 13th January, 2014.



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Annual Audit Letter 2012/13

Lancaster City Council

18 October 2013



The contacts at KPMG in connection with this report are:

Steve Clark

Director

KPMG LLP

Tel: 0113 231 2910

stephen.clark@kpmg.co.uk

Richard Lee

Manager

KPMG LLP

Tel: 0161 246 4661

richard.lee@kpmg.co.uk

Sukhsimran Singh

Assistant Manager

KPMG LLP

Tel: 0161 246 4668

sukhsimran.singh@kpmg.co.uk

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Report sections

- Headlines

Appendices

1. Summary of reports issued
2. Audit fees

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This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. The Audit Commission has issued a document entitled *Statement of Responsibilities of Auditors and Audited Bodies*. This summarises where the responsibilities of auditors begin and end and what is expected from the audited body. We draw your attention to this document which is available on the Audit Commission's website at www.auditcommission.gov.uk.

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Steve Clark, the appointed engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact Trevor Rees on 0161 246 4000, or by email to trevor.rees@kpmg.co.uk, who is the national contact partner for all of KPMG's work with the Audit Commission. After this, if you are still dissatisfied with how your complaint has been handled you can access the Audit Commission's complaints procedure. Put your complaint in writing to the Complaints Unit Manager, Audit Commission, 3rd Floor, Fry Building, 2 Marsham Street, London, SW1P 4DF or by email to complaints@audit-commission.gsi.gov.uk. Their telephone number is 03034448330.

This report summarises the key findings from our 2012/13 audit of Lancaster City Council (the Authority).

Although this letter is addressed to the Members of the Authority, it is also intended to communicate these issues to key external stakeholders, including members of the public.

Our audit covers the audit of the Authority's 2012/13 financial statements and the 2012/13 VFM conclusion.

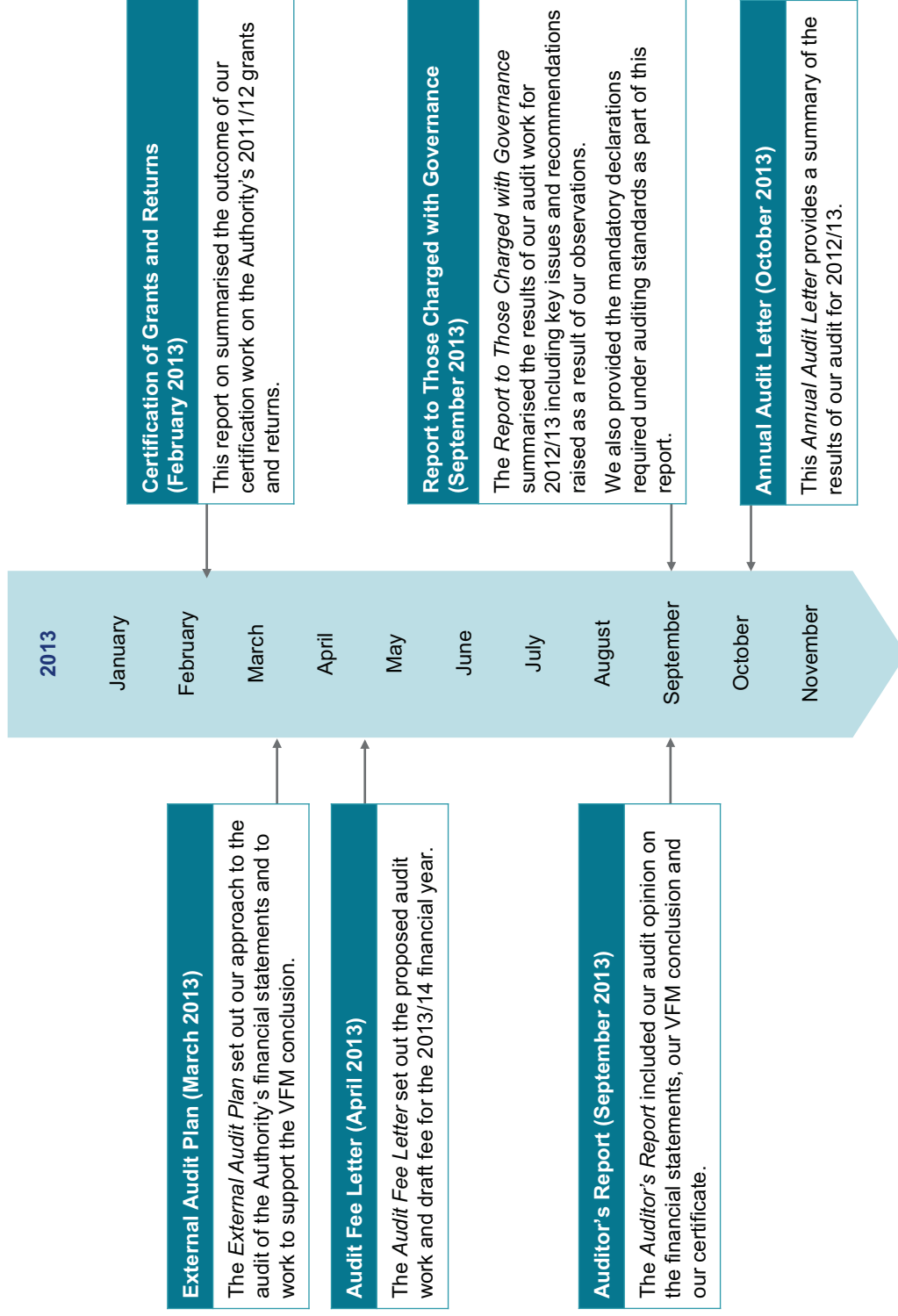
<p>VFM conclusion</p>	<p>We issued an unqualified value for money (VFM) conclusion for 2012/13 on 24 September 2013. This means we are satisfied that you have proper arrangements for securing financial resilience and challenging how you secure economy, efficiency and effectiveness.</p> <p>To arrive at our conclusion we looked at your financial governance, financial planning and financial control processes, as well as how you are prioritising resources and improving efficiency and productivity.</p>
<p>VFM risk areas</p>	<p>We identified a number of significant risks to our VFM conclusion and considered the arrangements you have put in place to mitigate these.</p> <p>Our work identified the following significant matters:</p> <ul style="list-style-type: none"> ■ The organisation has robust systems and processes to manage effectively financial risks and opportunities, and to secure a stable financial position that enables it to continue to operate for the foreseeable future. ■ The organisation is prioritising its resources within tighter budgets, for example by achieving cost reductions and by improving efficiency and productivity. <p>We have concluded that the Authority has made proper arrangements to secure economy, efficiency and effectiveness in its use of resources.</p>
<p>Audit opinion</p>	<p>We issued an unqualified opinion on your financial statements on 24 September 2013. This means that we believe the financial statements give a true and fair view of the financial position of the Authority and of its expenditure and income for the year.</p>
<p>Financial statements audit</p>	<p>We identified two significant audit risks and reported these to the Audit Committee in our Audit Plan.</p> <ul style="list-style-type: none"> ■ the Authority has appropriate savings plans in place to manage the impact of funding cuts. ■ the Lancaster Market Lease was surrendered in May 2013, after the Balance Sheet date. The Council has not accounted for the transaction in the 2012/13 Financial Statements as it was undertaken after the reporting period and does not meet the criteria of an adjusting event after the reporting period. ■ With regards to Luneside East, the Council continued to include a contingent asset and liability within the Financial Statements. <p>The quality of the accounts and the supporting working papers has been maintained at a high standard in 2012/13, which assists with the delivery of an effective and efficient audit.</p>

All the issues in this letter have been previously reported. The detailed findings are contained in the reports we have listed in Appendix 1.

Annual Governance Statement	We reviewed your <i>Annual Governance Statement</i> and concluded that it was consistent with our understanding.
Whole of Government Accounts	We reviewed the consolidation pack which the Authority prepared to support the production of Whole of Government Accounts by HM Treasury. We reported that the Authority's pack was consistent with the audited financial statements.
High priority recommendations	No high priority recommendations were identified as a result of our 2012/13 work. Lower priority recommendations have been reported, as appropriate, in our other reports, which are listed in Appendix 1. A number of recommendations remain outstanding from the 2010/11 audit. We will formally follow up these recommendations as part of our 2013/14 work.
Certificate	We issued our certificate on 24 September 2013. The certificate confirms that we have concluded the audit for 2012/13 in accordance with the requirements of the <i>Audit Commission Act 1998</i> and the Audit Commission's <i>Code of Audit Practice</i> .
Audit fee	Our fee for 2012/13 was £76,950, excluding VAT. This is in line with our planned core audit fee reported to you in our Audit Plan. Further detail is contained in Appendix 2.

Appendix 1: Summary of reports issued

This appendix summarises the reports we issued since our last *Annual Audit Letter*.



This appendix provides information on our final fees for 2012/13.

To ensure openness between KPMG and your Audit Committee about the extent of our fee relationship with you, we have summarised the outturn against the 2012/13 planned audit fee.

External audit

Our final fee for the 2012/13 audit of the Authority was £76,950. This is an overall reduction of 40 percent on the comparative total fee for 2011/12 of £128,250. This reflects the significant reductions made nationally by the Audit Commission to its scale fees.

The final fee is in line with the planned fee.

Certification of grants and returns

Our grants work is still ongoing and the fee will be confirmed through our report on the *Certification of Grants and Returns 2012/13* which we are due to issue in January 2014.



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AUDIT COMMITTEE

**Public Sector Internal Audit Standards and
Internal Audit Charter
22 January 2014**

Report of Internal Audit Manager

PURPOSE OF REPORT

To advise Members of the outcome from a self-assessment against the new Public Sector Internal Audit standards and seek approval for a revised Internal Audit Charter

This report is public

RECOMMENDATIONS

- (1) That the proposed action plan in relation to PSIAS compliance (Appendix A) is noted.
- (2) That the revised Internal Audit Charter (Appendix B) is approved.

1.0 Background

- 1.1 Members will recall that they approved a revised Internal Audit Charter at the meeting held on 26 June 2013. The new Charter was drafted to take account of requirements introduced by new Public Sector Internal Audit Standards (PSIAS) and an associated Local Government Application Note (LGAN) published by CIPFA.
- 1.2 The report to Audit Committee advised that the LGAN contained an extensive checklist for assessing compliance with the PSIAS and that further changes to the Charter may well be required following a preliminary self-assessment against the checklist.

2.0 Report

- 2.1 A preliminary self-assessment against the LGAN checklist has now been completed. Given the extent of the checklist, which consists of 334 lines of practice, full details of the assessment have not been appended to this report. Of the 334 lines, the exercise identified 288 points where compliance was achieved (or which were not applicable to our situation). Non-compliance was identified in 17 instances and partial compliance (where we do comply but it is felt that there is scope to raise standards) in 29 instances.
- 2.2 A resulting action plan to address the instances of non-compliance or partial compliance is attached as Appendix A. This sets out a programme of actions covering the next six months, with a view to establishing and demonstrating full compliance with the PSIAS. Progress with this objective will be included in the 2013/14 annual internal audit report which will be submitted to the June meeting of the Committee. Please note that in the assessment, the Internal Audit Manager's role is referred to as the Chief Audit Executive (CAE) and any reference to the "Board" is taken to mean the Audit Committee.

- 2.3 Members are asked to comment on and note the proposed action plan.
- 2.4 As anticipated, this exercise has identified the need for a small number of changes to the Charter. The opportunity has also been taken to update the Charter regarding organisational changes and new senior officer designations.
- 2.5 The amended draft of the Internal Audit Charter is attached at Appendix B with significant changes and additions highlighted.
- 2.6 Members are asked to consider and approve the proposed charter.

3.0 Details of Consultation

- 3.1 Management Team have been consulted in developing the draft Audit Charter.

4.0 Options and Options Analysis (including risk assessment)

- 4.1 Regarding the Internal Audit Charter, the options available to the Committee are to:
 - a. approve the draft charter, either as presented, or with suggested changes; or
 - b. propose an alternative course of action.
- 4.2 Option a) is the preferred option as it will provide the council and its internal audit function with the basis to establish compliance with the PSIAS. It will be possible to consider further minor changes should any be deemed necessary following any future assessments of the internal audit function against the PSIAS.

5.0 Conclusion

- 5.1 Following the self-assessment review against the PSIAS, it is timely and appropriate to update the council's Internal Audit Charter; this establishes the basis for compliance with the new professional standards for internal audit.

<p>CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</p> <p>Not applicable</p>	
<p>FINANCIAL IMPLICATIONS</p> <p>None directly arising from this report</p>	
<p>SECTION 151 OFFICER'S COMMENTS</p> <p>The Section 151 Officer has been consulted and has no further comments</p>	
<p>LEGAL IMPLICATIONS</p> <p>None directly arising from this report</p>	
<p>MONITORING OFFICER'S COMMENTS</p> <p>The Monitoring Officer has been consulted and has no further comments</p>	
<p>BACKGROUND PAPERS</p> <p>Public Sector Internal Audit Standards</p> <p>Local Government Application Note for the UK PSIAS - (CIPFA, in collaboration with the Chartered Institute of Internal Auditors)</p>	<p>Contact Officer: Derek Whiteway Telephone: 01524 582028 E-mail: dwhiteway@lancaster.gov.uk Ref: aud/comm/audit/140122Charter</p>

Ref	Conformance with the Standard	Assessment	Action Required	By Whom	By When
3	Attribute Standards				
3.2	1100 Independence and Objectivity				
	1110 Organisational Independence				
	Does the chief executive or equivalent undertake, countersign, contribute feedback to or review the performance appraisal of the CAE?	Non Compliant	The Internal Audit Manager's appraisals are currently undertaken by the CO(Resources). Consult Chair of Audit Committee, Chief Executive and other statutory officers on how this standard might be addressed.	Internal Audit Manager	31/03/2014
	Is feedback sought from the chair of the audit committee for the CAE's performance appraisal?	Non Compliant			
3.3	1200 Proficiency and Due Professional Care				
	1210 Proficiency				
	Do internal auditors have sufficient knowledge to evaluate the risk of fraud and anti-fraud arrangements in the organisation?	Partial	Consider our positioning on fraud, etc and build appropriate provision into forthcoming audit plans and individual development plans and objectives.	Internal Audit Manager	31/03/2014
	1220 Due Professional Care				
	Do internal auditors exercise due professional care by considering the:				
	d) Probability of significant errors, fraud, or non-compliance?	Partial	Consider whether we cover these robustly enough and incorporate any conclusions/proposed changes in future strategic and annual plans.	Internal Audit Manager	31/03/2014
	e) Cost of assurance in relation to potential benefits?	Partial			
	Do internal auditors exercise due professional care during a consulting engagement by considering the:				
	a) Needs and expectations of clients, including the nature, timing and communication of engagement results?	Partial			
	b) Relative complexity and extent of work needed to achieve the engagement's objectives?	Partial	There is scope to strengthen existing arrangements. Consider developing a protocol for agreeing to consulting engagements	Internal Audit Manager	31/03/2014
	c) Cost of the consulting engagement in relation to potential benefits?	Partial			

Ref	Conformance with the Standard	Assessment	Action Required	By Whom	By When
	1230 Continuing Professional Development				
LGAN	Has the CAE defined the skills and competencies for each level of auditor?	Partial	Review and update competency framework	Internal Audit Manager	31/01/2014
LGAN	Does the CAE periodically assess individual auditors against the predetermined skills and competencies?	Partial	Build in to future EDPA meetings		
	Do internal auditors undertake a programme of continuing professional development?	Partial	Consider whether/how to make CPD more active and formal using QAIP and EDPA framework.		
3.4	1300 Quality Assurance and Improvement Programme				
	Has the CAE developed a Quality Assurance and Improvement Programme (QAIP) that covers all aspects of the internal audit activity and enables conformance with all aspects of the PSIAS to be evaluated?	Non Compliant	QAIP to be developed in accordance with the PSIAS and reported to Audit Committee.	Internal Audit Manager	30/06/2014
	Does the QAIP assess the efficiency and effectiveness of the internal audit activity and identify opportunities for improvement?	Non Compliant			
	Does the CAE maintain the QAIP?	Non Compliant			
	1310 Requirements of the Quality Assurance and Improvement Programme				
	Does the QAIP include both internal and external assessments?	Non Compliant	To be built in to development of a compliant QAIP (see above)	Internal Audit Manager	30/06/2014
	1311 Internal Assessments				
	Do internal assessments include ongoing monitoring of the internal audit activity, such as:				
	b) Periodic assessments for evaluating conformance with the PSIAS?	Partial	To be built in to development of a compliant QAIP (see above)	Internal Audit Manager	30/06/2014
LGAN	Does ongoing performance monitoring include comprehensive performance targets?	Partial	Review again with reference to other LAS arrangements (using Lancashire Councils benchmarking information) and consult/report to Audit Committee.	Internal Audit Manager	30/06/2014
LGAN	Are the performance targets developed in consultation with appropriate parties and included in any service level agreement?	Partial			
LGAN	Does the CAE measure, monitor and report on progress against these targets?	Partial			
LGAN	Does ongoing performance monitoring include obtaining stakeholder feedback?	Partial	Arrangements are being made to invite managers' feedback on individual assignments.	Internal Audit Manager	31/01/2014

Ref	Conformance with the Standard	Assessment	Action Required	By Whom	By When
	1312 External Assessments				
LGAN	Has the CAE considered the pros and cons for the different types of external assessment (i.e. 'full' or self-assessment plus 'independent validation')?	Partial			
	Has the CAE discussed the proposed form of the external assessment and the qualifications and independence of the assessor or assessment team with the board?	Non Compliant			
LGAN	Has the CAE agreed the scope of the external assessment with an appropriate sponsor, such as the chair of the audit committee, the CFO or the chief executive?	Non Compliant	The potential for establishing peer review arrangements is being considered by Lancashire District Councils. This will consider the type of assessment and other potential sources of assessment.	Internal Audit Manager	30/06/2014
	Has the CAE agreed the scope of the external assessment with the external assessor or assessment team?	N/A	Expectations of external assessments will be reviewed and a case presented to Audit Committee for the preferred form/channel.		
	Has the assessor or assessment team demonstrated competence in both areas of professional practice of internal auditing and the external assessment process?	N/A			
	How has the CAE used his or her professional judgement to decide whether the assessor or assessment team demonstrates sufficient competence to carry out the external assessment?	N/A			
	Does the assessor or assessment team have any real or apparent conflicts of interest with the organisation?	N/A			
	<i>Note: This may include, but is not limited to, being a part of or under the control of the organisation to which the internal audit activity belongs.</i>				
	1320 Reporting on the Quality Assurance and Improvement Programme				
	Has the CAE reported the results of the QAIP to senior management and the board?	Non Compliant	This point has not yet been reached. Results will be reported to management and Audit Committee in future annual reports.	Internal Audit Manager	30/06/2014
	Has the CAE included the results of the QAIP and progress against any improvement plans in the annual report?	Non Compliant			
	1321 Use of 'Conforms with the International Standards for the Professional Practice of Internal Auditing'				
	Has the CAE stated that the internal audit activity conforms with the PSIAS only if the results of the QAIP support this?	Non Compliant	This point has not yet been reached. The issue will be addressed in future annual reports.	Internal Audit Manager	30/06/2014
	1322 Disclosure of Non-conformance				
	Has the CAE reported any instances of non-conformance with the PSIAS to the board?	Non Compliant	This point has not yet been reached. The issues will be addressed in the next (2013/14) IA Annual Report and corporate governance review	Internal Audit Manager	30/06/2014
	Has the CAE considered including any significant deviations from the PSIAS in the governance statement and has this been evidenced?	Non Compliant			

Ref	Conformance with the Standard	Assessment	Action Required	By Whom	By When
4	Performance Standards				
4.1	2000 Managing the Internal Audit Activity				
	2010 Planning				
	Does the risk-based plan take into account the organisation's assurance framework?	Partial	Consider whether/how the assurance framework can be further developed/defined. Include any conclusions/proposals in the next IA strategic and annual plans.	Internal Audit Manager	31/03/2014
	Does the risk-based plan incorporate or is it linked to a strategic or high-level statement of:				
	c) How the internal audit service links to organisational objectives and priorities?	Partial	Consider how this can be strengthened in the next IA strategic plan.	Internal Audit Manager	31/03/2014
	If such a risk management framework does not exist, has the CAE used his or her judgement of risks after input from senior management and the board and evidenced this?	Partial	Consider ways in which the risk management framework can be developed with input from senior management and the Audit Committee.	Internal Audit Manager	31/03/2014
	2030 Resource Management				
	Does the risk-based plan explain how internal audit's resource requirements have been assessed?	Partial	The absence of a comprehensive corporate risk information source means that audit needs assessments start from a relatively low position. Consideration is to be given to extending and strengthening current needs assessment processes. This will be addressed in the next round of strategic and annual plans.	Internal Audit Manager	31/03/2014
	2050 Coordination				
	Does the risk-based plan include the approach to using other sources of assurance and any work that may be required to place reliance upon those sources?	Partial	Consideration will be given to ways in which wider assurance can be obtained.	Internal Audit Manager	31/03/2014
LGAN	Has the CAE carried out an assurance mapping exercise as part of identifying and determining the approach to using other sources of assurance?	Partial	Conclusions and proposals will be incorporated in future strategic plans.	Internal Audit Manager	31/03/2014

Ref	Conformance with the Standard	Assessment	Action Required	By Whom	By When
	2110 Governance				
	Does the internal audit activity:				
	b) Ensure effective organisational performance management and accountability?	Partial	These issues will be considered in developing the next IA strategic and annual plans.	Internal Audit Manager	31/03/2014
	c) Communicate risk and control information to appropriate areas of the organisation?	Partial			
	Has the internal audit activity assessed whether the organisation's information technology governance supports the organisation's strategies and objectives?	Partial	This will be considered in consultation with the CO(Resources) and ICT Mgr in developing the next IA strategic and annual plans	Internal Audit Manager	31/03/2014
	2120 Risk Management				
	Has the internal audit activity evaluated the effectiveness of the organisation's risk management processes by determining that:				
	c) Appropriate risk responses are selected that align risks with the organisation's risk appetite?	Partial	Developments in this area are impacted by the extent of organisational change in recent years. These issues will be considered in developing the next IA strategic and annual plans.	Internal Audit Manager	31/03/2014
	d) Relevant risk information is captured and communicated in a timely manner across the organisation, thus enabling the staff, management and the board to carry out their responsibilities?	Partial			
4.3	2200 Engagement Planning				
	For consulting engagements, have internal auditors established an understanding with the engagement clients about the following:				
	c) The respective responsibilities of the internal auditors and the client and other client expectations?	Partial	A protocol is to be developed for agreeing consulting engagements.	Internal Audit Manager	31/03/2014
	For significant consulting engagements, has this understanding been documented?	Partial			
4.4	2300 Performing the Engagement				
	2330 Documenting Information				
	Has the CAE developed and implemented retention requirements for all types of engagement records?	Non Compliant	The document retention policy will be reviewed and updated.	Internal Audit Manager	31/03/2014
4.5	2400 Communicating Results				
	2410 Criteria for Communicating				
	If recommendations and an action plan have been included, are recommendations prioritised according to risk?	Non Compliant	We will review and reconsider our stance on this.	Internal Audit Manager	31/03/2014
LGAN					

Ref	Conformance with the Standard	Assessment	Action Required	By Whom	By When
	2430 Use of 'Conducted in Conformance with the International Standards for the Professional Practice of Internal Auditing'				
	Do internal auditors report that engagements are 'conducted in conformance with the PSIAS' only if the results of the QAIP support such a statement?	Non Compliant	This will be considered following completion of the QAIP review for the 2013/14	Internal Audit Manager	30/06/2014
	2450 Overall Opinion				
	Does the annual report incorporate the following:				
LGAN	h) The results of the QAIP?	Non Compliant			
LGAN	i) Progress against any improvement plans resulting from the QAIP?	N/A	To be implemented in the 2013/14 annual report process	Internal Audit Manager	30/06/2014
LGAN	j) A summary of the performance of the internal audit activity against its performance measures and targets?	N/A			



LANCASTER CITY COUNCIL INTERNAL AUDIT CHARTER

DRAFT FOR CONSIDERATION BY AUDIT COMMITTEE 22/01/14

PREPARED BY THE INTERNAL AUDIT MANAGER

Revision History

Date of this revision:

Revision Date	Summary of Changes	Version
14/11/07	Initial Draft	0.01
23/01/08	Approved by Audit Committee	1.00
06/06/13	Complete Re-draft – to take account of PSIAS requirements	1.02
26/06/13	Approved by Audit Committee	2.00
17/12/13	Amendments arising from review of PSIAS etc	2.01
19/12/13	Further amendments	2.02

Distribution

Name	Title
Audit Committee	Internal Audit Charter

Approvals

Name	Date Approved	Link to Approval Minutes	Version
Audit Committee	23/01/08	Minute 31 (2007/08)	1.00
Audit Committee	26/06/13	Minute 9(2) (2013/14)	2.00

INTERNAL AUDIT CHARTER

1. Introduction

- 1.1 Internal Audit in local authorities is a statutory function, required under the Accounts and Audit (England) Regulations 2011. The regulations state that; ***“A relevant body must undertake an adequate and effective internal audit of its accounting records and of its system of internal control in accordance with the proper practices in relation to internal control”***
- 1.2 From 1st April 2013, “proper practices” in internal audit are defined as complying with the UK Public Sector Internal Audit Standards (PSIAS). The standards combine best practice from the global and private sector experience of the Institute of Internal Auditors (IIA), with the UK public sector expertise of CIPFA and other audit bodies in the public services and form the benchmark against which local authority internal audit services are assessed.
- 1.3 The Standards comprise a revised definition of Internal Auditing, a Code of Ethics for Internal Auditors working in the Public Sector and the Standards themselves. The Standards are mandatory for all internal auditors working in the UK public sector.

2. Definition of Internal Audit

- 2.1 The PSIAS define internal auditing as *“an independent, objective assurance and consulting activity designed to add value and improve an organisation’s operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.”*

3. Framework for Internal Audit

- 3.1 The following diagram sets out the key legislative, professional and organisational elements which create the framework within which internal audit operates.
- 3.2 Whilst the Council’s highest level of commitment to internal audit is set out in the Financial Regulations, it is the Internal Audit Charter which plays the central and most significant role in establishing the internal framework and environment for internal audit. The Charter sets the scene for the production and management of the more detailed elements, including strategic and operational plans, people management and development, and working practices (the audit manual).
- 3.3 Within the overall framework established under the Charter, internal audit is managed and delivered in accordance with more detailed elements including those relating to HR matters (competency framework, Job Descriptions and the Employee Development & Performance Appraisal regime); strategy and planning; and operational management (covered by the Internal Audit Manual).



4. Key Organisational Roles and Relationships

- 4.1 The PSIAS require that the internal audit charter defines the terms *'Board'* and *'Senior Management'* in relation to the work of internal audit. For the purposes of internal audit work, the *'Board'* is taken to refer to the full Council, although in practice, the Audit Committee has delegated responsibility for overseeing the work of internal audit, on behalf of full Council. *'Senior Management'* is taken to refer to the Chief Executive and Chief Officers.
- 4.2 The authority has adopted CIPFA's *"Statement on the Role of the Chief Financial Officer in Local Government", 2010*, and the associated *"Statement on the Role of the Head of Internal Audit in Public Service Organisations", 2011*. These statements set out principles and standards for the Chief Officer (Resources) (as CFO and Section 151 Officer) and the Internal Audit Manager to act in a mutually supportive way in fulfilling their statutory and professional responsibilities.
- 4.3 Internal Audit supports the Chief Executive, as Head of Paid Service, in providing high level assurances relating to the council's strategy and governance arrangements.
- 4.4 Internal Audit also supports the Chief Officer (Governance), as Monitoring Officer, in discharging his/her responsibilities in maintaining high standards of governance, conduct and ethical behaviour.
- 4.5 The Internal Audit Manager is responsible for the effective review of all aspects of governance, risk and internal control across the full range of the Authority's activities.

- 4.6 The existence of Internal Audit does not detract from or diminish the responsibility of management to establish systems of internal control to ensure that activities are conducted in a secure, efficient, accountable and well-ordered manner.
- 4.7 Internal Audit works with, and is accountable to the council's Audit Committee, to ensure it can:
- o rely on the assurances provided by Internal Audit
 - o Rely on the assurances provided in respect of all other aspects of the Council's Governance arrangements, to enable them to perform an informed critique of the Annual Governance Statement, on behalf of the Council.

5. Internal Audit Independence and Objectivity

- 5.1 Internal Audit operates independently within the Council to ensure it is able to appraise the Authority's governance, risks and internal control systems in the impartial and unbiased manner essential to the proper conduct of audits.
- 5.2 To ensure this independence, Internal Audit operates within a framework that allows unrestricted access to all council officers, senior management and elected Members. As such, all Internal Audit staff have the right to access all premises, records and documentation held by the council, its officers and Elected Members, and to seek explanations as they see necessary to effectively discharge their duties. This position is supported by the Accounts and Audit (England) Regulations 2011 (§ 6(2)).
- 5.3 The Internal Audit Manager will report in his / her own name to officers and Elected Members, as they are charged with maintaining effective governance within the organisation. The work of Internal Audit will be performed and reported in accordance with the direction and agreement of the Internal Audit Manager.
- 5.4 Objectivity is preserved by ensuring that internal audit personnel are free from conflicts of interest and do not undertake any non-audit duties. The sole exception to this is the Internal Audit Manager's role as a Deputy Section 151 Officer, which could lead to involvement in operational matters, creating a conflict of interest. Where there is a call for internal audit review and opinion on any area in which the Internal Audit Manager has fulfilled an operational role, this will be managed and reported on directly by the Principal Auditor.
- 5.5 Where internal auditors have a perceived or real conflict of interest in undertaking a particular piece of work, this will be managed through the internal audit management and supervisory process. Internal auditors are required to declare any potential conflict of interest both on an annual basis, and when they are assigned a particular audit review. The work will then be reassigned to another auditor.

6. Reporting Lines and Audit Reports

- 6.1 The Internal Audit Manager reports administratively to the Chief Officer (Resources).
- 6.2 Functionally, the work of internal audit is reported in full to senior managers, Members of the Audit Committee and the external auditor by means of specific reports, and in summary form to Audit Committee via periodic monitoring and activity reports.
- 6.3 The Internal Audit Manager and Chairman of the Audit Committee have mutual direct access to each other as they consider appropriate.
- 6.4 Most internal audit assignments will result in the production of a formal report. Draft reports will be sent to the manager(s) responsible for the area under review for agreement of the factual accuracy of findings and to develop an action plan to address weaknesses in internal controls.

- 6.5 Once agreed, final reports will be copied to the relevant Chief Officer(s), the Chief Executive and the Chief Officer (Resources) as well as Members of the Audit Committee and the external audit manager.
- 6.6 Internal Audit will report regularly on the results of its work to senior management and the Audit Committee, highlighting significant control issues and potential for improving risk management and internal control processes.
- 6.7 Whilst management are responsible for the implementation of agreed actions, follow up work will be performed of agreed action plans to ensure they are being progressed. The Audit Committee will be advised of progress with the implementation of action plans, and the Committee may seek explanations directly from the managers responsible for any delays or failure to implement.

7. Scope of Internal Audit Work

- 7.1 The scope of Internal Audit covers all the council's governance arrangements, procedures for ensuring the effective management of all significant risks and ensuring regularity in all its financial affairs, including achieving value for money.
- 7.2 Where the Council works in partnership with other organisations, the role of Internal Audit will be defined on an individual basis or agreed with the organisation through liaison with the relevant Chief Officer.
- 7.3 Where Internal Audit undertakes work on behalf of any other organisations, this will be determined in conjunction with the Audit Committee and in consultation with the Chief Officer (Resources), to ensure that adequate audit resources remain available to provide assurance over the council's activities. External assurance work will result in a report and assurance statement to the relevant organisation's Board and recommendations to its senior management.
- 7.4 Internal Audit may undertake consultancy work in addition to its primary assurance role and the extent of each will be set out in internal audit plans. The scope of any consultancy work will be agreed with management and will only be undertaken where resources permit without impacting on the annual assurance process. In line with the PSIAS, the Audit Committee will be advised of any consultancy work requested and performed.

8. Internal Audit Obligations and Responsibilities

- 8.1 The Internal Audit Manager is responsible for:
- o Developing and proposing the future strategic direction for Internal Audit within the Authority;
 - o Developing an annual audit plan in the context of the strategic direction and based on an understanding of the significant risks to which the organisation is exposed;
 - o Managing the provision of a complete professional internal audit service to the authority that is compliant with the PSIAS;
 - o Monitoring and reporting the performance of the Internal Audit service in accordance with the documented Internal Audit Performance Management Framework;
 - o Producing and reporting to Audit Committee an annual audit opinion, based on the outcomes of internal audit work conducted throughout the year;
 - o Providing advice and guidance on risks and the application and development of internal controls;
 - o Maintaining good working relationships with External Audit based on mutual recognition and respect, leading to a joint improvement in performance and the avoidance of unnecessary overlapping of work;

- o Assessing all matters of potential fraud or irregularity in line with the requirement of the Council's Anti-Fraud, Corruption and Bribery Policy. Internal audit will undertake investigations as necessary into such matters and advise the Statutory Officers and Audit Committee of the outcomes.

9. Limitations of Internal Audit Responsibilities

- 9.1 In seeking to discharge the obligations and responsibilities set out in §8 above, it should be noted that Internal Audit is not responsible for the following, which are the proper responsibility of management:
- o Controlling the risks of the Authority;
 - o Establishing and maintaining systems of internal control;
 - o Determining operational policies or procedures; and
 - o Preventing or detecting fraud and irregularity.

10. Client Obligations and Responsibilities

- 10.1 The effective fulfilment of the objectives of internal audit reviews and the robustness of internal audit assurance opinions requires commitment from the managers of services under review to:
- o understand their responsibilities to establish systems of internal control which ensure that activities are conducted in a secure, efficient, accountable and well-ordered manner;
 - o identify, evaluate and manage business (including financial) risks on a day-to-day basis;
 - o inform Internal Audit of proposed new systems to enable involvement from the outset, the scope of involvement to be mutually agreed;
 - o discuss risks identified with the lead auditor at the start of an audit assignment with a view to agreeing the scope, objectives and methodology for the review, to be formalised in the audit brief;
 - o agree with the lead auditor the plan for the review including timescales, communication lines and expectations;
 - o provide constructive input and adequate resources to complete the review within the agreed timescale;
 - o respond to audit requests and documentation on a timely basis ensuring that accurate, up-to-date information is made available to auditors as required;
 - o evaluate and take ownership of agreed actions, taking account of risk and cost-effectiveness: and
 - o implement agreed actions in line with agreed timescales.

11. Resourcing and Staffing Matters

- 11.1 Internal audit will be staffed according to the staffing structure as approved by the Chief Officer (Resources) and advised to the Audit Committee and will aim to maintain a suitable mix of experienced and qualified staff. Adequate resources will be maintained to enable meaningful, evidenced assurances to be provided.
- 11.2 Individual training needs are established and agreed through the Employee Development and Performance Appraisal (EDPA) process along with the most cost effective means of meeting those needs. As a professional service, staff are expected to actively participate in relevant formal Continuing Professional Development (CPD) schemes.

12. Ethics

- 12.1 The PSIAS contain a Code of Ethics which is mandatory for all internal auditors in the public sector. In addition, individuals are also required to adhere to the council's Code of Conduct for Employees and the Codes of Ethics of their professional bodies, where appropriate.
- 12.2 Internal Audit has adopted the PSIAS Code of Ethics. Staff will be required to declare annually any personal interests and certify that they understand and will comply with requirements of the Code.

DRAFT

AUDIT COMMITTEE

Internal Audit Monitoring Report 22 January 2014

Report of Internal Audit Manager

PURPOSE OF REPORT

To advise Members of the latest monitoring position regarding the 2013/14 Internal Audit Plan, seek approval for proposed variations to the plan, and update Members on the results of recent audits.

Also to provide the Committee with an annual update on the council's position on, and use of, surveillance and seek Members' approval for the continued use of the current RIPA Working Policy.

This report is public

RECOMMENDATIONS

- (1) That the current monitoring position is noted.
- (2) That the proposed revisions to the audit plan, as set out in the table in §1.2, are approved.
- (3) That the allocation of further time to undertake work in support of the corporate programme of service reviews, as set out in §1.6, is approved.
- (4) That the results of recent audits (sections 2-3 of the report) are noted.
- (5) That the monitoring statement regarding the use of surveillance is noted and the continued use of the current RIPA Working Policy (attached at Appendix B) is approved.

1.0 Audit Plan Monitoring to 23 December 2013

- 1.1 The 2013/14 Internal Audit Plan was approved by the Audit Committee at its meeting on 24 April 2013 with minor adjustments approved at subsequent meetings on 26 June 2013 and 18 September 2013. This report is based on the monitoring position up to 23 December 2013 and a detailed monitoring report as at that date is attached as Appendix A. In summary, the position at that date was as shown in the following table.

1.2 Summary of monitoring position at 23 December 2013




Area of work	Resources (audit days)					
	Actuals to 23/12/13	Remain-ing	Comm-itted	Current Plan	Variance	Proposed Plan
Assurance Work						
Core Financial Systems	32	0	32	60	28	38
Revenues & Benefits Shared Services	56	20	76	50	(26)	76
Core Management Arrangements	17	23	40	70	30	55
Risk Based Assurance Audits	205	12	217	190	(27)	217
Follow-Up Reviews	56	10	66	60	(6)	66
Sub-Total, Assurance	366	65	431	430	(1)	452
Consultancy Work						
Support Work	9	5	14	25	11	20
Corporate service review work	24	16	40	25	(15)	40
Ad-Hoc Advice	57	13	70	70	0	70
Sub-Total, Consultancy	90	34	124	120	(4)	130
Other Work						
Other Duties (Non-Audit)	5	3	8	10	2	8
Work for Other Bodies	14	11	25	25	0	25
Audit Management	34	16	50	50	0	50
Sub-Total, Other Work	53	30	83	85	2	83
Contingencies						
Investigations	16	0	16	30	14	25
General Contingency	0	0	0	40	40	15
Sub-Total, Contingencies	16	0	16	70	54	40
Total	525	129	654	705	51	705

- 1.3 The monitoring position takes account of ongoing and planned work commitments. This shows that overall, current commitments total 654 days compared with the current plan of 705 days, giving an uncommitted resource of 51 days. This includes both the general contingency of 40 days and the unallocated balance of the contingency for investigation work (14 days).
- 1.4 A review of attendance and work allocations indicates that the previously anticipated 705 chargeable days should be achievable for the year.
- 1.5 Within the Assurance Work section, proposals are made to reallocate resources to reflect an increased commitment to the Revenues & Benefits Shared Service and the Risk Based element of the programme. The total number of days planned on assurance work is increased by 22 to 452.
- 1.6 Members will recall that, at the last meeting of the committee, an allocation of 25 days was approved to support the corporate programme of service reviews. As indicated in the monitoring reports, 24 days have so far been devoted to a review of council-wide arrangements for processing payroll. Following on from this, plans are in place to undertake similar work in relation to other corporate financial systems, and it is proposed to allocate a further 15 days to this programme.

- 1.7 It is proposed to meet these increased allocations from reductions in the investigations contingency (5 days) and the general contingency (25 days). This still leaves 24 days unallocated in these contingencies and provides some flexibility for the last quarter of the year.
- 1.8 Other than the proposals set out above, no other significant pressures have been identified within the plan.

2.0 Results of Internal Audit Work to 23 December 2013

- 2.1 This report covers audit work and reports issued since the last report to Committee on 18 September 2013. Summary reports have been issued to Members for consideration and are also posted on the Council's Intranet. The reports issued have been:

Audit Title		Report Date	Assurance Level	
New Audit Reports				
12/0874	Fees & charges - Salt Ayre Sports Centre, Williamson Park & other recreational facilities	26/09/13	Limited	
13/0883	Working time arrangements	13/11/13	Limited	
13/0886	Fees & charges – Planning & Building Control income	16/09/13	Substantial	
13/0889	Debtors 2013/14	05/12/13	Substantial	
13/0890	Fees & charges – private housing and cemeteries income	17/10/13	Limited	
13/0897	CCTV	16/12/13	Limited	
13/0901	NDR retention	11/11/13	Substantial	
13/0902	Housing benefit (welfare reforms)	12/12/13	Maximum	
Follow up Reviews				
11/0837	Complaints	14/10/13	Substantial	
12/0855	Septic tanks	23/09/13	Substantial	
12/0875	Visitor Information Centres	21/10/13	Substantial	
12/0878	Affordable warmth	16/12/13	Limited	
13/0888	Fees & charges – Licensing income	07/10/13	Substantial	
13/0891	Creditors 2013/14	09/12/13	Substantial	

3.0 Matters Arising from Audit Reviews

- 3.1 The key conclusions and action points in relation to those reports where a “Limited” or “Minimal” assurance opinion has been given are:

3.2 12/0874 – Fees & charges - Salt Ayre Sports Centre, Williamson Park and other recreational facilities (Limited)

There are good arrangements in place to ensure that fees and charges are appropriately set, authorised and reviewed. A limited assurance opinion has been given on the basis that the efficiency and effectiveness of current purchasing and stock management arrangements in respect of catering at SASC need to be improved. Pricing arrangements at recreational grounds seek to encourage maximum usage, however consideration needs to be given to whether the service provided is effectively balanced against the income generated.

3.3 12/0883 – Working time arrangements (Limited)

Whilst working time arrangements across the council are generally appropriate to business needs there are areas where there may be scope for greater efficiency, for example in standby and callout arrangements. Not all areas of the council are compliant with Working Time Regulations and/or corporate policies relating to working time arrangements. Policies need reviewing and clarifying for managers to ensure that they are applied fairly and consistently.

In a number of areas, arrangements for the management of non-standard pay are inefficient and prone to error; it is intended to address this through better utilisation of the new HR/Payroll system and a review of related procedures and practices.

There may be scope for efficiencies through better time recording systems and the introduction of a corporate approach where possible. Arrangements for booking and recording annual leave should be improved once the related module of the HR/Payroll system is introduced, which is due by April 2014.

Lone working risk assessments and procedures need to be reviewed.

A corporate approach to home-working and hot-desking is required to maximise the benefits of this flexible approach to working.

3.4 13/0890 - Private housing and cemeteries income streams (Limited)

A limited assurance opinion has been given on the basis that the fees for the re-licensing of Houses in Multiple Occupation (HMO) have not been reduced in accordance with the amendment to the Housing Act which came into force in September 2012. Actions have been agreed to review these and all other private housing fees and charges to ensure that they remain appropriate and cover the costs of service provision where required. Implementation of the action plan should result in a substantial level of assurance being achieved.

3.5 13/0897 – Closed circuit television (CCTV) systems (Limited)

Policy and procedural documents are to be developed and improved in order to meet the requirements of the Home Office Surveillance Camera Code of Practice issued in June 2013, and demonstrate compliance with legislation. The guiding principles of the Code closely reflect the requirements of the Data Protection Act 1998. Systems and procedures require strengthening to enable the council to evidence that it is fully compliant with data protection obligations in the management of its various CCTV systems.

An action plan has been agreed with a view to ensuring compliance with legislation through documented adoption of the principles of the Code. Officers from those service areas with CCTV management responsibilities have formed a working group to take forward the actions agreed in the plan.

3.6 In all the above areas, action plans have been developed, setting out measures to address the issues arising from these audits. Progress will be reviewed and reported to the Audit Committee in line with normal follow-up arrangements.

3.7 12/0878 - Affordable warmth (follow-up review) (Limited)

An affordable warmth strategy has been drafted with a view to clearly defining aims and objectives and achieving a co-ordinated approach to helping vulnerable households achieve affordable warmth. However, resources available to deliver the actions within the strategy have not been identified. Therefore the level of assurance that can be provided in relation to the council's arrangements for delivering affordable warmth objectives remains limited at this stage.

Given the current position on this review, it is proposed that Internal Audit continues to track progress over the coming year and report developments to future meetings of the Audit Committee.

4.0 Investigations

4.1 Internal Audit has been involved in two internal investigations so far this year, these being in relation to firstly, the procurement of minor works, and secondly the collection and banking of income. In both instances, appropriate action has been taken by senior management and arrangements are being made corporately to raise awareness in these areas.

5.0 Other Matters

5.1 Surveillance and the use of the Regulation of Investigatory Powers Act 2000 (RIPA)

5.2 The Home Office's recommended practice¹ for local authorities is that elected members "...should review the authority's use of the 2000 Act and set the policy at least once a year and also consider internal reports on use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose".

5.3 The council's RIPA Working Policy was last endorsed by the Audit Committee at its meeting on 18 April 2012. Since that date, the policy has been updated to address procedural changes brought about by the Protection of Freedoms Act 2012. The principal changes are:

- A requirement for judicial approval to be obtained for any RIPA authorisation prior to undertaking covert surveillance; and
- Further restrictions on the purpose for which for RIPA authorisations may be made, so as to limit their use to "serious crimes". This rules out the use of RIPA in the detection and prevention of what are regarded as minor offences, for example dog fouling.

Together these changes mean that the council's need to employ RIPA in future is very low and is likely to be restricted to the investigation of cases of serious taxation or benefit fraud.

5.4 The council did not raise or rely on any RIPA authorisations during the calendar year 2013. As established in April 2012, any use of RIPA will be reported to Audit Committee in the Internal Audit monitoring reports.

5.5 The current RIPA Working Policy, with the altered sections highlighted, is attached at Appendix B. Members are asked to consider the revised policy and approve its continued use.

6.0 Details of Consultation

6.1 Management Team continues to be consulted in developing the plan.

7.0 Options and Options Analysis (including risk assessment)

¹ Covert Surveillance and Property Interference - Code of Practice (Home Office)

- 7.1 Regarding the Internal Audit Plan, the options available to the Committee are either to approve the proposed changes or to propose an alternative course of action.
- 7.2 Regarding the RIPA Working Policy, the options available to the Committee are either to approve the policy as it stands or to propose changes to its wording.







8.0 Conclusion

- 8.1 There are no unmanageable pressures within the audit plan at present. Some realignment of plan allocations is proposed to reflect demands on audit resources, whilst retaining a reasonable proportion of the contingency provisions to cater for any unforeseen demands during the final quarter of the year. The programme of audits for the rest of the year continues to be developed in consultation with senior management.

<p>CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</p> <p>Not applicable</p>	
<p>FINANCIAL IMPLICATIONS</p> <p>None directly arising from this report</p>	
<p>SECTION 151 OFFICER'S COMMENTS</p> <p>The Section 151 Officer has been consulted and has no further comments</p>	
<p>LEGAL IMPLICATIONS</p> <p>None directly arising from this report</p>	
<p>MONITORING OFFICER'S COMMENTS</p> <p>The Monitoring Officer has been consulted and has no further comments.</p>	
<p>BACKGROUND PAPERS</p> <p>Internal Audit Plan 2013/14</p>	<p>Contact Officer: Derek Whiteway Telephone: 01524 582028 E-mail: dwhiteway@lancaster.gov.uk Ref: aud/comm/audit/140122IAMon</p>

Work Allocations		Actuals to 23/12/13	Remaining	Committed	Approved Plan (18/09/13)	Variance	Status at 23/12/13
Job No	Title						
1. ASSURANCE WORK							
LCC Core Financial Systems							
12/0861	Debt Management - Council Housing	10	0	10			✓
12/0889	Debtors 2013/14	10	0	10			✓
12/0891	Creditors 2013/14	12	0	12			✓
Sub-total - Core Financial Systems		32	0	32	60	28	
Revenues Shared Service - Financial Systems							
12/0862	Housing & Council Tax Benefits 2012/13 (Lancaster)	4	0	4			✓
12/0863	Housing & Council Tax Benefits 2012/13 (Preston)	1	0	1			✓
12/0867	Council Tax 2013/13 (Preston)	1	0	1			✓
13/0900	NDR Retention (Preston)	6	0	6			✓
13/0901	NDR Retention (Lancaster)	3	0	3			✓
13/0902	Housing Benefit Welfare Reforms (Lancaster)	15	0	15			✓
13/0905	Housing Benefit Welfare Reforms (Preston)	16	0	16			✓
13/0906	Revenues & Benefits Operational Support (Lancaster)	7	8	15			⚠
13/0907	Revenues & Benefits Operational Support (Preston)	3	12	15			⚠
Sub-total - Revenues Shared Services		56	20	76	50	-26	
Core Management Arrangements							
12/0846	National Fraud Initiative 2012/13	3	3	6			⚠
12/0868	Risk Management	5	1	6			⚠
12/0871	HR Systems Replacement - ResourceLink Aurora	0	6	6			⚠
12/0879	Annual Governance Review 2012/13	6	0	6			✓
13/0903	NFI 2012/13 (HB to Student Loans, CTax to Electoral Roll)	2	8	10			⚠
13/0892	Procure to Pay Implementation	1	5	6			⚠
Sub-total - Core Management Arrangements		17	23	40	70	30	
Risk Based Assurance Work Programme							
12/0874	Fees & Charges - Salt Ayre Sports Centre	21	0	21			✓
12/0875	Fees & Charges - Visitor Information Centres	8	0	8			✓
12/0877	Corporate Property Service Contracts	15	0	15			✓
12/0878	Affordable Warmth	3	0	3			✓
13/0883	Working Time Arrangements	34	0	34			✓
13/0885	Fees & Charges - Environmental Health	16	1	17			⚠
13/0886	Fees & Charges - Planning & Building Control	15	0	15			✓
13/0887	Heritage Assets	15	0	15			⚠
13/0888	Fees & Charges - Licensing	13	0	13			✓
13/0890	Fees & Charges - Private Housing & Cemeteries	13	2	15			✓
13/0895	Fees & Charges - Trade Waste & Recycling	13	2	15			⚠
13/0896	Fees & Charges - Grounds Maintenance & Nursery	12	0	12			⚠
13/0897	CCTV Operations	22	0	22			✓
13/0908	Commercial Property Leases & Licences	3	5	8			⚠
13/0909	Corporate Fees & Charges Arrangements	2	2	4			⚠
Sub-total - Risk Based Assurance Work		205	12	217	190	-27	
Follow-Up Reviews		56	10	66	60	-6	∞
SUB-TOTAL - ASSURANCE WORK		366	65	431	430	-1	

Work Allocations		Actuals to 23/12/13	Remaining	Committed	Approved Plan (18/09/13)	Variance	Status at 23/12/13
Job No	Title						
2. CONSULTANCY WORK							
Support Work (projects and other)							
12/0509	RIPA Monitoring and Central Register	2	1	3			∞
12/0807	Information Management Group	0	1	1			∞
12/0870	Information Security and PSN Code of Connection	1	0	1			⚠
12/0876	Financial Regulations Review	6	3	9			⚠
Sub-total - Support Work		9	5	14	25	11	
Corporate Service Review Work		24	16	40	25	-15	⚠
Ad-Hoc Advice		57	13	70	70	0	∞
SUB-TOTAL - CONSULTANCY WORK		90	34	124	120	-4	
3. OTHER							
12/0392	Deputy s151 Officer Duties	5	3	8	10	2	∞
	Audit Work for Other Bodies - LDNPA	14	11	25	25	0	⚠
SUB-TOTAL - OTHER		19	14	33	35	2	
4. AUDIT MANAGEMENT							
12/0172	Committee Work	11	5	16			∞
12/0189	Audit Planning & Monitoring	23	11	34			∞
SUB-TOTAL - AUDIT MANAGEMENT		34	16	50	50	0	
5. CONTINGENCIES							
Investigations		16	0	16	30	14	
General Contingency		0	0	0	40	40	
SUB-TOTAL - CONTINGENCIES		16	0	16	70	54	
TOTALS		525	129	654	705	51	

Key:  Completed  In Progress  Not Yet Started  Continuous or Multi-Year Activity
 Carried Forward to 2014/15 Plan  Abandoned



THE REGULATION OF INVESTIGATORY POWERS ACT 2000 – **A WORKING POLICY**

The Purpose of this Policy

1. The purpose of this policy is to:
 - ❑ explain the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA);
 - ❑ provide guidance and give advice to those Services undertaking covert surveillance; and
 - ❑ ensure full compliance with RIPA and a Council-wide consistent approach to its interpretation and application.

Introduction to RIPA

2. RIPA came into force on 25th September 2000 to regulate covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.

Lancaster City Council is therefore included within the 2000 Act framework with regard to the authorisation of both Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS)

3. In summary RIPA requires that when a Council undertakes "directed surveillance" or uses a "covert human intelligence source" these activities must only be authorised by an officer with delegated powers when the relevant criteria are satisfied. In addition, amendments contained in the Protection of Freedoms Act 2012, which took effect on the 1st November 2012, mean that local authority authorisations, and renewals of authorisations under RIPA, can only take effect once an order approving the authorisation (or renewal) has been granted by a Justice of the Peace (district judge or lay magistrate)(JP).
4. Authorisation for both types of surveillance may be granted only where it is believed that the authorisation is necessary and the authorised surveillance is proportionate to that which is sought to be achieved:

An authorisation may be granted only where the Authorising Officer believes that the authorisation is necessary in the circumstances of the particular case:

"For the purpose of preventing and detecting crime and disorder"

However, amendments which took effect on the 1st November 2012 mean that a local authority may only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months' imprisonment or are related to the underage sale of alcohol and tobacco. Local authorities cannot authorise directed surveillance for the purpose of preventing disorder unless this involves a criminal offence punishable by a maximum term of at least 6 months' imprisonment. These amendments are referred to as "the crime threshold".

5. The background to RIPA is the Human Rights Act 1998, which imposes a legal duty on public authorities to act compatibly with the European Convention on Human Rights (ECHR). Article 8(1) of the ECHR gives a right to respect for private and family life, the home and correspondence. However, this is qualified by Article 8(2) which provides that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. RIPA was enacted so as to incorporate the provisions of Article 8(2) in English law, and to establish a means by which a public authority may interfere with privacy rights in accordance with the law. The objective is to give protection to the Council and any officer involved in an investigation. The scheme of RIPA is to state that an authorisation for covert surveillance shall be lawful for all purposes, but that such an authorisation may only be granted if the authorising officer believes that what is proposed is necessary and proportionate (see paragraphs 35 and 36 below).
6. If the authorisation procedures introduced by RIPA are followed, they afford protection to the Council and to investigating officers in respect of challenges to the admissibility of evidence, claims under the Human Rights Act 1998, and complaints to the Local Government Ombudsman or the Investigatory Powers Tribunal.
7. The Act is supported by statutory Codes of Practice, the most recent versions of which were published in 2010 and are available on the Council's intranet. These are the 'Covert Surveillance and Property Interference' Code of Practice and the 'Covert Human Intelligence Sources' (CHIS) Code of Practice. RIPA requires the Council to have regard to the provisions of the Codes which are admissible as evidence in criminal and civil proceedings and must be taken into account by any court or tribunal.

Office of Surveillance Commissioners

8. In May 2001 an Inspectorate was formed within the Office of Surveillance Commissioners (OSC) to assist the 'Chief Surveillance Commissioner' keep under review the exercise and performance of the powers and duties conferred or imposed by RIPA. The most recent Procedures and Guidance document was issued by the Chief Surveillance Commissioner in December 2011, and is available on the Council's intranet.
9. RIPA requires public authorities to disclose or provide to the Chief Surveillance Commissioner all such documents and information as he may require for the purpose of enabling him to carry out his functions.

Statement of intent

10. The Council's policy and practice in respect of RIPA is to comply fully with the law and strike a fair and proportionate balance between the need to carry out covert surveillance in the public interest and the protection of an individual's fundamental right to privacy. The Council acknowledges that this policy is very much a living document and will be reviewed and updated in line with the best guidance and advice current at the time.

PART 1: AN EXPLANATION OF THE KEY PROVISIONS OF RIPA

What is meant by 'surveillance'?

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

When is surveillance 'covert'?

12. According to RIPA, surveillance is covert if, and only if, it is carried out in a manner that is calculated to ensure that persons who are subject to the surveillance are unaware that it is or may be taking place. If activities are open and not hidden from the subjects of an investigation, the 2000 Act framework does not apply.

What is 'directed surveillance' or when is surveillance 'directed'?

13. Surveillance is directed if it is 'covert' but *not* 'intrusive' (see below) and is undertaken:
 - a) for the purposes of a specific investigation or a specific operation;
 - b) in such a manner as is likely to result in the obtaining of private information about a person (whether or not that person is specifically identified for the purposes of the investigation or operation); and
 - c) otherwise than 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 the carrying out of the surveillance.

14. Essentially, therefore, directed surveillance is any:
- (1) pre-planned surveillance activity;
 - (2) undertaken covertly;
 - (3) for the purposes of a specific investigation;
 - (4) in such a way that is *likely* to result in obtaining private information about a person.

15. **Is it for the purposes of a specific investigation or operation?**

For example, are CCTV cameras which are readily visible to anyone walking around a Council car park covered?

The answer is not if their usage is to monitor the general activities of what is happening in the car park. If that usage changes at any time the 2000 Act may apply.

For example, if the CCTV cameras are targeting a particular known individual, and are being used in monitoring his activities, that has turned into a specific operation which will require authorisation.

16. **Is it in such a manner that is likely to result in the obtaining of private information about a person?**

‘Private information’ in relation to a person, includes any information relating to his private or family life. Private information should be taken generally to include any aspect of a person’s private or personal relationship with others, including family and professional or business relationships. 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 and where a record is being made by a public authority of that person’s activities for future consideration.

If it is likely that observations will not result in the obtaining of private information about a person, then it is outside the 2000 Act framework. However the use of “test purchasers” may involve the use of covert human intelligence sources (see para 92)

17. **‘Immediate response....’**. According to the Covert Surveillance Code of Practice, “covert surveillance that is likely to reveal private information about a person but is carried out by way of an immediate response to events such that it is not reasonably practicable to obtain an authorisation under the 2000 Act would not require a directed surveillance authorisation.” For example, a police officer would not require an authorisation to conceal himself and observe a suspicious person that he came across in the course of a patrol.

However, if as a result of an immediate response, a specific investigation subsequently takes place, that brings it within the 2000 Act framework.

18. **What is meant by ‘intrusive surveillance’ or when is surveillance ‘intrusive’?**

Surveillance becomes intrusive if the covert surveillance :

- a) is carried out in relation to anything taking place on any **'residential premises'** or in any **'private vehicle'**; or a **"place for legal consultation"**; 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; or
- c) is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle but is carried out without that device being present on the premises or in the vehicle, and the device is such that it **consistently provides information of the same quality and detail** as might be expected to be obtained from a device actually present on the premises or in the vehicle.

The definition of surveillance as intrusive relates to the location of the surveillance, and not to other consideration of the nature of the information that is expected to be obtained. Officers of the Council are unlikely to have access to any "place of legal consultation", but should seek advice from legal Services on the detailed definition.

- 19. **'Residential premises'** is defined to include any premises that is for the time being occupied or used by any person, however temporarily, for residential purposes or otherwise as living accommodation. For example, the definition includes hotel rooms. It, however, does not include so much of any premises as constitutes any common area to which a person is allowed access in connection with his use or occupation of any accommodation. For example, a hotel lounge.
- 20. **'Private vehicle'** means any vehicle which is used primarily for private purposes, for example, for family, leisure or domestic purposes. It therefore does not include taxis i.e. private hire or hackney carriage vehicles.

Why is it important to distinguish between directed and intrusive surveillance?

- 21. It is imperative that officers understand the limits of directed surveillance or, put another way, recognise when directed surveillance becomes intrusive surveillance because **RIPA does not permit local authorities to undertake intrusive surveillance in any circumstances.**

What is a 'covert human intelligence source' (CHIS)?

- 22. According to RIPA a person is a CHIS if:
 - a) he **establishes or maintains a personal or other relationship** with a person for the **covert purpose** of facilitating the doing of anything falling within paragraph b) or c).
 - b) he covertly uses such a relationship to **obtain information** or provide access to any information to another person; or
 - c) he covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

23. A CHIS is effectively an inside informant or undercover officer, someone who develops or maintains their relationship with the surveillance target, having the covert purpose of obtaining or accessing information for the investigator.
24. A **purpose is covert**, in relation to the establishment or maintenance of a personal or other relationship, if and only if the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.
25. It is not clear whether '**information**' is restricted to private information in line with directed surveillance. The inference is there, but it is not clear. If in doubt, the Council's policy is to obtain an authorisation.
26. RIPA also makes reference to the use of a CHIS which refers to inducing, asking or assisting a person to engage in the conduct of a CHIS, or to obtain information by means of the conduct of such a CHIS.

PART 2: GENERAL AUTHORISATION REQUIREMENTS

The authorisation requirements

27. RIPA requires that prior authorisation is obtained by all local authorities using directed surveillance and CHIS techniques.
28. The authorising officer must give authorisations in writing and a separate authorisation is required for each investigation. Any authorisation must also be approved by an order from a JP. The application form for such approval is available on the Council's intranet, but advice should be sought from Legal Services on making an application for judicial approval.
29. Whilst according to RIPA, a single authorisation may combine two or more different authorisations (for example, directed surveillance and CHIS), the provisions applicable in the case of each of the authorisations must be considered separately. Because combining authorisations may cause confusion, officers must use separate forms for different authorisations.
30. The purpose of the authorisation is to comply with the Human Rights Act 1998 by providing lawful authority to carry out surveillance. This is why an authorisation must be obtained where the surveillance is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. If the surveillance is then actually carried out in accordance with the authorisation, it will be less open to challenge.

Who can authorise the use of covert surveillance?

31. To give effect to RIPA, (1) **Service Heads** have been designated to authorise the use of directed surveillance and CHIS techniques in respect of external investigations and (2) **the Monitoring Officer** is authorised to sanction the use of such covert surveillance in respect of internal officer/Member investigations. **Any RIPA authorisation must be approved by an order from a JP. The JP will be provided with a copy of the authorisation, and with a partially completed judicial application/order form, which is available on the**

Council's intranet. Advice should be sought from Legal Services, who will contact the court to arrange the hearing date for the application.

32. It should also be noted that in accordance with the relevant Regulations, the designation of Service Heads to sanction the use of RIPA regulated covert surveillance extends upwards to the Chief Executive. This is in accordance also with the Council's own Constitution.
33. Ideally, authorising officers should not be responsible for authorising their own activities i.e. those operations/investigations in which they are directly involved. However, the Codes of Practice recognise that this may sometimes be unavoidable, especially in the case of small organisations, or where it is necessary to act urgently.

Justification for covert surveillance

34. In order to use covert surveillance (both directed surveillance and a CHIS) lawfully the person granting the authorisation (i.e. the authorising officer) will have to demonstrate that the surveillance is both '**necessary**' and '**proportionate**' to meet the objective of the prevention or detection of crime or of prevention of disorder. The JP must also be satisfied that the use of the technique is necessary and proportionate.

The necessity test

35. RIPA first requires that the authorising officer must be satisfied that the authorisation is necessary, in the circumstances of the particular case, for the prevention and detection of crime, or prevention of disorder. This is the only statutory ground on which local authorities are now able to carry out directed surveillance and use a CHIS. For the purposes of the authorisation of directed surveillance, the crime threshold referred to in paragraph 4 above must be met. Covert surveillance cannot be "necessary" unless, in that particular case, there is no reasonably available overt method of discovering the desired information.

The proportionality test

36. Then, if the activities are necessary, the authorising officer must be satisfied that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is **excessive** in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

CHIS – additional requirements

37. In addition, there are further criteria in relation to CHIS authorisations. Namely, that specific arrangements exist to ensure that, amongst other things, the source is independently managed and supervised, that records are kept of the use made of the source, that the source's identity is protected from those who do not need to know it, and that arrangements also exist to satisfy such other requirements as may be imposed by an Order made by the Secretary of State.

38. RIPA provides that an authorising officer must not grant an authorisation for the use or conduct of a source unless he believes that arrangements exist that satisfy these requirements. In this regard, the particular attention of authorising officers is drawn to paragraph 6.14 of the CHIS Code of Practice concerning the security and welfare of a CHIS and the need to carry out a **risk assessment**.
39. ***The Regulation of Investigatory Powers (Source Records) Regulations 2000 (SI No. 2725)*** details the particulars that must be included in the records relating to each CHIS. The authorising officer should comment on all these aspects in his “comments” box, as he may have to justify the fact that he has taken account of these requirements and made an appropriate provision to comply.

Collateral Intrusion

40. Before authorising surveillance the authorising officer should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (particularly when considering the proportionality of the surveillance). This is referred to as collateral inclusion, and the following should be considered:
 - I. measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the privacy of those not directly connected with the investigation or operation;
 - II. an application for an authorisation should include an assessment of the risk of any collateral intrusion and the authorising officer should take this into account, when considering the proportionality of the surveillance;
 - III. those carrying out the surveillance should inform the authorising officer if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation; and
 - IV. when the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and reauthorised or a new authorisation is required.

Local community ‘sensitivities’

41. Any person applying for or granting an authorisation will also need to be aware of what the Codes of Practice refer to as “*any particular sensitivities in the local community*” where the surveillance is taking place or of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance.

PART 3: DIRECTED SURVEILLANCE AUTHORISATION REQUIREMENTS

Applications for directed surveillance authorisation

42. Applications for authorisation to carry out directed surveillance must be made in **writing** using the **standard Application Form** and **judicial approval form** available on the Council’s intranet.

Duration of directed surveillance authorisations

43. A written authorisation granted by an authorising officer, **and approved by a JP,** will cease to have effect (unless renewed) at the end of a period of **three months** beginning with the day on which it took effect.

Reviews of directed surveillance authorisations

44. Regular reviews of authorisations should be undertaken to assess the need for the surveillance to continue. Particular attention is drawn to the need to review authorisations frequently where the surveillance provides access to '**confidential information**' (see below) or involves collateral intrusion.
45. Authorisations must be reviewed by the authorising officer therefore **at least monthly** using the **standard Review Form** available on the Council's intranet to ensure that they remain in force only for so long as it is necessary.

Renewals of directed surveillance authorisations

46. If at any time before an authorisation would cease to have effect, the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, he may renew it in writing **for a further period of three months** using the **standard Renewal Form** available on the Council's intranet. The same conditions attach to a renewal of surveillance as to the original authorisation. **An order from a JP is required for a renewal in the same way as for an authorisation.**
47. A renewal takes effect at the time at which, or day on which the authorisation would have ceased to have effect but for the renewal. An application for renewal should not be made until **10 working days** before the authorisation period is drawing to an end. However, where renewals are timetabled to fall outside of court hours, for example during a holiday period, care must be taken to ensure that the renewal is completed ahead of the deadline.
48. Any person who would be entitled to grant a new authorisation can renew an authorisation, **but an order from a JP is also required.** Authorisations may be renewed more than once, provided they continue to meet the criteria for authorisation.

Cancellation of directed surveillance authorisations

49. The authorising officer who granted or last renewed the authorisation **must** cancel it using the **standard Cancellation Form** available on the Council's intranet if he is satisfied that the directed surveillance no longer meets the criteria upon which it was authorised. Authorisations should not be allowed to simply expire.
50. Where the authorising officer is no longer available, this duty will fall on the person who has taken over the role of authorising officer or the person who is acting as authorising officer (*see the Regulation of Investigatory Powers (Cancellation of Authorisations) Order 2000; SI No: 2794*).
51. If the authorising officer is on sick or annual leave or is otherwise unable to cancel the authorisation for good reason, any other officer designated to grant authorisations may cancel the authorisation.

Ceasing of surveillance activity

52. As soon as the decision is taken that directed surveillance should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject(s). The date and time when such an instruction was given should be recorded in the notification of cancellation where relevant (see standard cancellation form).

Urgent cases

53. A JP may consider an authorisation out of working hours in exceptional cases. This must be arranged through the court, and two completed judicial application/order forms must be provided so that one can be retained by the JP.

Confidential information

54. RIPA does not provide any special protection for '**confidential information**'. The Codes of Practice, however, do provide additional safeguards for such information. Confidential information consists of matters subject to **legal privilege**; **confidential personal information** (information relating to the physical or mental health or spiritual counselling of a person who can be identified from it) or **confidential constituent information** (relating to communications between a Member of Parliament and a constituent in respect of constituency matters) or **confidential journalistic material** (material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence). Further details about these categories of confidential information are set out in the Codes themselves, and advice can be obtained from Legal Services.
55. Special care should be taken if there is a likelihood of acquiring any confidential information. Such authorisations should only be granted in exceptional and compelling circumstances with full regard to the proportionality issues such surveillance raises.
- 56.. In accordance with the provisions of the Code, in cases where through the use of the surveillance it is likely that confidential information will be acquired, the use of surveillance must be authorised by the **Chief Executive**.
57. If, exceptionally, any Council investigation is likely to result in the acquisition of confidential material, officers are required to **obtain the prior approval of Legal Services** before applying for an authorisation.
58. If confidential material is acquired during the course of an investigation, the following general principles apply:
- confidential material should not be retained or copied unless it is necessary for a lawful purpose;
 - confidential material should be disseminated only where an officer (having sought advice from the Legal Services Manager) is satisfied that it is necessary for a lawful purpose;
 - the retention or dissemination of such information should be accompanied by a clear warning of its confidential nature. It should be safeguarded by taking reasonable steps to ensure that there is no possibility of it becoming

- available, or its content being known, to any person whose possession of it might prejudice any criminal or civil proceedings related to the information; and
- confidential material should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.

PART 4: CHIS AUTHORISATION REQUIREMENTS

59. Generally speaking, the authorisation requirements for directed surveillance also apply to a CHIS authorisation. There are, however, some variations, and the crime threshold as set out in paragraph 4 does not apply to a CHIS authorisation.

Duration of CHIS authorisations

60. A written CHIS authorisation granted by an authorising officer **and approved by a JP**, will cease to have effect (unless renewed) at the end of a period of **twelve months** beginning with the day on which it took effect.

Renewal of CHIS authorisations

61. An authorising officer may renew a CHIS authorisation in writing **for a further period of twelve months**. **This is subject to approval from a JP.**
62. The same conditions attach to a renewal of surveillance as to the original authorisation. However, before renewing an authorisation for the use or conduct of a CHIS, officers are required to carry out a review of the use made of that source, the tasks given to that source and the information so obtained.

CHIS forms

63. Standard **CHIS Application; Review; Renewal, and Cancellation Forms, and the Judicial Approval form** are available on the Council's intranet. Officers are required to use these forms in the appropriate circumstances.

Vulnerable individuals

64. In accordance with the CHIS Code of Practice, a '**vulnerable person**' should only be authorised to act as a CHIS in the most exceptional circumstances and must be authorised by the **Chief Executive**. Legal advice should always be sought. A 'vulnerable individual' is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation.

Juvenile sources

65. Special safeguards also apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. Legal advice should always be sought. On no occasion should the use or conduct of a CHIS under 16 years of age be authorised to give information against his parents or any person who has parental responsibility for him. In other cases, authorisations should not be granted unless the special provisions contained within ***The Regulation of Investigatory Powers (Juveniles) Order 2000 (SI No. 2793)*** are satisfied. Authorisations for juvenile sources must be authorised by the **Chief**

Executive The duration of such an authorisation is **one month only** instead of the usual twelve months.

PART 5: OTHER AUTHORISATION REQUIREMENTS

Central Record of all authorisations

66. The Codes of Practice provide that a centrally retrievable record of all authorisations should be held by each public authority and regularly updated whenever an authorisation is granted, reviewed, renewed or cancelled. The record should be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners (OSC), upon request. These records will be retained for a period of at least three years from the ending of the authorisation and will comprise of the information prescribed in the Codes.
67. The Council will also maintain a record of specified documentation relating to authorisations as further required by the Codes.
68. To give effect to these requirements Internal Audit have set up, and will maintain, a central recording and monitoring system. **Authorising officers are required to e-mail all completed RIPA forms to Internal Audit within two working days** of the grant; review; renewal; or cancellation of the authorisation so that the Council's central recording and monitoring systems can be kept up to date. **Authorising officers are also required to send a copy of all RIPA forms to the Head of Governance, as Monitoring Officer** so that a central register of RIPA forms can be maintained.
69. Authorising officers should however ensure that original RIPA forms are kept on the investigation case file and stored securely.
70. To assist Services, Internal Audit has set up an e-mail alert facility for authorisations. That is, Internal Audit will e-mail authorising officers 14 days before an authorisation is due to expire reminding them to either renew the authorisation if it is necessary for the surveillance to continue or to cancel the authorisation by completing the appropriate form.
71. In addition, the **Monitoring Officer** will receive **periodic status reports** from Internal Audit to enable her to be satisfied that RIPA authorisation requirements are being complied with.

Retention and destruction of the product of surveillance

72. Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable period, commensurate to any subsequent review.
73. The Codes of Practice draw particular attention to the requirements of the code of practice issued under the **Criminal Procedure and Investigations Act 1996**. This requires that material which is obtained in the course of a criminal investigation and which may be relevant to the investigation must be recorded and retained.

74. Where material is obtained by surveillance, which is **wholly unrelated** to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to believe it will be relevant to future civil or criminal proceedings, it should be **destroyed immediately**. Consideration of whether or not unrelated material should be destroyed is the responsibility of the authorising officer.
75. There is nothing in RIPA which prevents material obtained from properly authorised surveillance from being used in other investigations. Each Service must ensure that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising officers must ensure compliance with the appropriate data protection requirements relating to the handling and storage of material.

Acting on behalf of another

76. In cases where one agency is acting on behalf of another, it is usually for the tasking agency to obtain or provide the authorisation. For example, where surveillance is carried out by the Police with the use of the Council's CCTV systems, an authorisation must be obtained by the Police.

PART 6: PRACTICAL APPLICATION OF RIPA

Who is affected by RIPA?

77. As the Council has already recognised in respect of the application of the **Human Rights Act 1998**, RIPA will impact on the enforcement activities of all the Council's regulatory Services, but, **in the case of authorisations for directed surveillance, the crime threshold referred to in paragraph 4 must be met.** This means that directed surveillance will no longer be able to be used in some investigations where it was previously authorised, eg dog fouling. However, this does not mean that it will not be possible to investigate these matters with a view to stopping offending behaviour. **Routine patrols, observation at trouble "hotspots", immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.**

A public authority may only engage RIPA when in performance of its "core functions" in contrast to the "ordinary functions" which are undertaken by all authorities (eg employment and contractual matters). Accordingly, the disciplining of an employee is not a core function, although related criminal investigations may be.

'general observation vs. 'systematic surveillance'

78. According to the Covert Surveillance Code of Practice "General observation duties of many law enforcement officers and other public authorities do not require authorisation under the 2000 Act". For example, police officers will be on patrol to prevent and detect crime, maintain public safety and prevent disorder or trading standards or HM Customs and Excise officers might covertly observe and then visit a shop as part of their enforcement function to verify the supply or level of supply of goods or services that may be liable to a restriction or tax. Such observation may involve the use of equipment to merely reinforce normal sensory perception, such as binoculars, or the use of cameras, where this does not involve systematic surveillance of an individual.

79. The clear view expressed therefore is that usually low-level activity such as general observation will **not** be regulated under the provisions of RIPA provided it does not involve the systematic surveillance of an individual. That said, the determination of what constitutes 'general observation' on the one hand and 'systematic surveillance' on the other is a question of fact, the determination of which is not always straightforward and depends on the particular circumstances of an individual case.
80. In practice, the issue will turn on whether the covert surveillance is *likely* to result in obtaining any information in relation to a person's private or family life, whether or not that person is the target of the investigation or operation. If in doubt you are strongly recommended to obtain an authorisation.

'covert' vs. 'overt' surveillance

81. In accordance with the Council's usual practice, wherever possible and appropriate Services should give advance warning of their intention to carry out surveillance. This is because the provisions of RIPA regulate the use of covert surveillance only. In some cases a written warning may itself serve to prevent the wrongdoing complained of.
82. However, in order to properly put a person on notice that he is or may be the subject of surveillance, the notification letter must be couched in sufficiently precise terms so that he knows what **form** the surveillance will take (i.e. record of noise; photographs etc.). In fact, in line with directed surveillance requirements, notification letters should state **how long** the surveillance is likely to last (which should not be longer than three months); the necessity for the surveillance should be **reviewed at least monthly**; if it is necessary to continue the surveillance beyond the initial specified period a **renewal letter** should be sent to the 'noisy' neighbour, for example, and he should be informed when the surveillance has ceased.
83. It is also important to instruct the investigating officer not to exceed the limits of the 'surveillance' he has been asked to carry out.
84. Whilst it is accepted that the definition of 'covert' set out in RIPA could be interpreted very broadly, it is suggested that whether the surveillance activity is covert or not depends on the investigator's intention and conduct. If there is some element of **secrecy** or **concealment** the activity is likely to be covert.
85. Wherever possible or appropriate, officers should be **open; obvious and overt**.

CCTV

- 86 Overt CCTV systems used for general purposes are **not** usually regulated by RIPA (but CCTV in general is regulated by the **Data Protection Act 1998** and the **CCTV Code of Practice** issued by the Office of the Information Commissioner). If, however, CCTV systems are used to **track individuals** or **specific locations** and the surveillance is pre-planned (i.e. not an immediate response to events or circumstances which by their very nature, could not have been foreseen) a **directed surveillance** authorisation must be obtained.

Recognising a CHIS

- 87.. The provisions of RIPA are not intended to apply in circumstances where members of the public volunteer information to the police or other authorities, as part of their normal civic duties, or to contact numbers set up to receive information (such as Crimestoppers, Customs Confidential, the Anti Terrorist Hotline, or the Security Service Public Telephone Number). Members of the public acting in this way would not generally be regarded as sources.
88. However, when an informant gives repeat information about a suspect or about a family, and it becomes apparent that the informant may be obtaining the information in the course of a family or neighbourhood relationship, this probably means that the informant is a CHIS, to whom a duty of care is owed if the information is then used, even though he or she has not been tasked by the authority to obtain information on its behalf.
- 89 The use of professional witnesses to obtain information and evidence is clearly covered.

“.....establishing or maintaining a personal or other relationship.....”

- 90 Whilst the meaning of “...establishing or maintaining a personal or other relationship...” is not clear and is open to interpretation, it is suggested that there has to be some measure of **intimacy** beyond the ordinary conversation. Only if an officer, for example, establishes some measure of **trust and confidence** with the person who is the subject of the surveillance will he be establishing or maintaining a personal or other relationship.
- 91 Usually a simple enquiry or a request for general information (i.e. a request for information which would be supplied to any member of the public who enquired) *not* obtained under false pretences is not likely to be regulated by RIPA.

Simple test purchase transactions

92. Whether or not test purchase transactions are regulated by RIPA depends on the circumstances and in particular the conduct of the person carrying out the surveillance. Usually simple covert test purchase transactions carried out under existing statutory powers where the officer involved does not establish a personal or other relationship will not require a CHIS authorisation.
93. Officers should, however, be wary of the law on **‘entrapment’**. Whereas officers can in appropriate circumstances, present a seller or supplier, for example, an opportunity which he could act upon, officers cannot ‘incite’ the commission of an offence i.e. encourage, persuade or pressurise someone to commit an offence.

Use of DAT recorders

94. If it is appropriate to do so, Environmental Health officers, and to a much lesser extent Council Housing officers, use a recorder to monitor noise levels (usually at residential premises) following noise nuisance complaints. Whilst the recorder is installed by officers, the complainant decides when to switch the recorder on and off.
95. The covert recording of suspected noise nuisance where the intention is only to record excessive noise levels from adjoining premises, and the recording device is calibrated to record only excessive noise levels, may not require an

authorisation, as the perpetrator would normally be regarded as having forfeited any claim to privacy

96. That said, a Digital Audio Tape (DAT) recorder is a sophisticated piece of monitoring equipment and if used covertly may constitute directed surveillance. In general, a letter is sent to the person who is to be the subject of the surveillance, and this should mean that subsequent surveillance is overt, and an authorisation will not as a matter of course be required. However, if there is any doubt as to whether surveillance is covert, eg if any longer than a few weeks has passed since the alleged perpetrator was informed that monitoring might be carried out, and if it is likely that private information will be obtained, then an authorisation should be sought.

RIPA forms

97. It is imperative that RIPA forms are completed in full whenever RIPA regulated surveillance activity is planned. The information given must be specific and detailed; must relate to the particular facts of an individual case (i.e. avoid standard wording if at all possible) and must demonstrate that a proper risk assessment has been carried out. Both those who apply for an authorisation and the Authorising Officer should refer to this policy and to the relevant Code of Practice in completing the relevant form,

Role of Service Heads/Authoring Officers

98. Service Heads in particular must recognise that RIPA imposes new and important obligations on those Services affected by RIPA.
99. Authorising officers are required to ask themselves: "Have I got sufficient information to make an informed decision as to whether or not to authorise surveillance activity on the particular facts of this case?"
100. Authorising officers must be satisfied that there are adequate checks in place to ensure that the surveillance carried out is in line with what has been authorised. Such monitoring should be properly documented as well as the decision making process in general.
101. Officers are strongly recommended to read this policy in conjunction with the Covert Surveillance and CHIS Codes of Practice which provide supplementary guidance.
102. If the surveillance is not properly authorised, the protection offered by RIPA will be lost.

How to access RIPA documents?

103. RIPA itself; explanatory notes to RIPA, the Covert Surveillance and CHIS Codes of Practice; RIPA statutory instruments and other RIPA documents are available on the Home Office web-site:
www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/.
104. Relevant RIPA documents as well as this policy and the Council's standard forms have also been posted on the Council's intranet.