



# Haverling

L O N D O N B O R O U G H

## GOVERNANCE COMMITTEE AGENDA

**7.30 pm**

**Thursday  
12 March 2020**

**Committee Room 3A -  
Town Hall**

Members 12: Quorum 4

**COUNCILLORS:**

**Conservative Group  
( 6)**

Robert Benham (Vice-Chair)  
Michael White (Chairman)  
Joshua Chapman  
Roger Ramsey  
Damian White  
Viddy Persaud

**Residents' Group  
( 2)**

Ray Morgon  
Barry Mugglestone

**Upminster & Cranham  
Residents' Group (1)**

Linda Hawthorn

**Independent  
Residents' Group  
( 1)**

David Durant

**Labour Group  
( 1)**

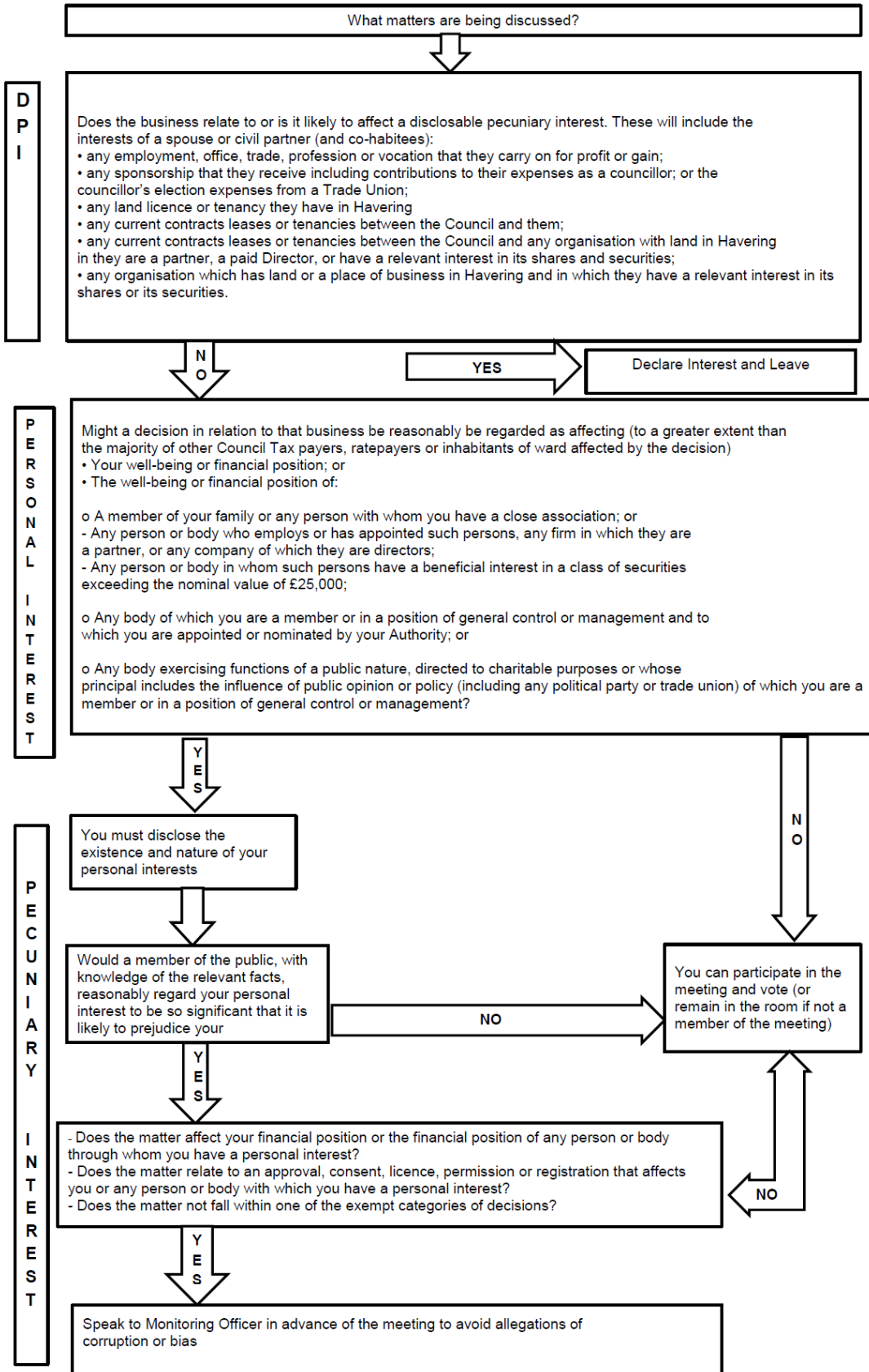
Keith Darvill

**North Haverling Residents  
Group (1)**

Darren Wise

**For information about the meeting please contact:  
Debra Marlow tel: 01708 433091  
e-mail: [debra.marlow@onesource.co.uk](mailto:debra.marlow@onesource.co.uk)**

**DECLARING INTERESTS FLOWCHART – QUESTIONS TO ASK YOURSELF**



## **AGENDA ITEMS**

### **1 CHAIRMAN'S ANNOUNCEMENTS**

The Chairman will announce details of the arrangements in case of fire or other events that might require the meeting room or building's evacuation.

### **2 APOLOGIES FOR ABSENCE & SUBSTITUTE MEMBERS**

(If any) - receive

### **3 DISCLOSURE OF INTERESTS**

Members are invited to disclose any interest in any of the items on the agenda at this point of the meeting.

*Members may still disclose any interest in any item at any time prior to the consideration of the matter.*

### **4 MINUTES** (Pages 1 - 6)

To approve as a correct record the minutes of the Committee held on 20<sup>th</sup> February, 2020, and to authorise the Chairman to sign them.

### **5 REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) UPDATE** (Pages 7 - 30)

### **6 STAFF EMPLOYMENT PROCEDURE RULES**

Report to follow

**Andrew Beesley**  
**Head of Democratic Services**

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**MINUTES OF A MEETING OF THE  
GOVERNANCE COMMITTEE  
Council Chamber - Town Hall  
20 February 2020 (7.30 am - 8.48 pm)**

**Present:**

**COUNCILLORS**

<b>Conservative Group</b>	Michael White (Chairman), Roger Ramsey, Damian White, Viddy Persaud, Jason Frost+ and Dilip Patel+
<b>Residents' Group</b>	Ray Morgon and Barry Mugglestone
<b>Upminster &amp; Cranham Residents' Group</b>	Linda Hawthorn
<b>Independent Residents Group</b>	David Durant
<b>Labour Group</b>	Keith Darvill
<b>North Havering Residents Group</b>	Darren Wise

The Chairman reminded Members of the action to be taken in an emergency.

**1 APOLOGIES FOR ABSENCE & SUBSTITUTE MEMBERS**

Apologies were received from Councillors Joshua Chapman and Councillor Robert Benham who were substituted by Councillors Jason Frost+ and Dilip Patel+ respectively.

Also in attendance were Councillors John Tyler and Christopher Wilkins.

**2 DISCLOSURE OF INTERESTS**

There were no declarations of interest.

**3 BOUNDARY COMMISSION REVIEW, PART 2 (WARDING PATTERNS)**

Consideration was given to the report of Andrew Beesely, Head of Democratic Services detailing the impact of the Boundary Commission Review and the need for members of the Governance Committee to determine and recommend their preferred option to Full Council.

The Local Government Boundary Commission for England (LGBCE) is undertaking a review of the London Borough of Havering's local government electoral arrangements. The outcome of the review will be implemented in readiness for the 2022 Council elections.

The review forms two parts. The first part determines the Council size. In September 2019, Full Council recommended to the Commission that it retain its existing cohort size of 54. The Commission subsequently informed the Council that it was minded to agree to the proposal.

The second part (Part 2) is concerned with determining the warding arrangements in terms of the number of wards and the number of representatives of each ward which make up the Council, based on statutory criteria.

An officer working group has prepared a number of options for the Governance Committee to consider.

The Chief Executive, Andrew Blake-Herbert, together with the Head of Democratic Services gave a presentation to the Committee

The Electoral Review undertaken by the LGBCE will take into account the number of Councillors in the Borough and the warding arrangements. The warding arrangements will deal with the number of wards, the ward boundaries, the number of councillors elected to each ward and the names of each ward.

Submissions for Part 2 of the process dealing with the warding patterns must be made by 09/03/2020. Officers have attended training with the LGBCE and the early indication has been that there is a tolerance of + or – 2 Councillors to the number of 54 for the purposes of the Part 2 process.

Four options for Part 2 have been made available on the Council's website and members of the public can feed into this and make recommendations to the Boundary Commission supporting any of these options or indeed suggesting their own. When the LGBCE determine the warding patterns they take into account the following criteria:

- Electoral equity for voters
- Community identities and interests and
- Effective and convenient Local Government.

Other options may be put forward by members of the public and community groups etc. These will all be considered by the LGBCE and it was noted that the deadline for public submissions was 02/03/2020.

The Governance Committee was asked to recommend its preferred option to Full Council on 4<sup>th</sup> March, 2020.

Officers have used current and predicted data/GSI mapping technology to formulate the options. Data and maps are available on the London Borough of Havering website. Consideration has been given to past and present warding patterns; polling districts; approved developments; population forecasts; key local infrastructure; natural boundaries, such as railways, rivers and roads; public health data; Ordnance Survey maps; and on the ground sense checks.

An overview of all the options was presented to the Committee.

**Option 1** used the Polling Districts as a starting point and is the model of status quo to maintain the current status of:

- 54 Councillors across 18, 3 Member wards.
- All wards within +/- 10% variance
- Ward names remain as is
- Electorate predicted to be affected by 2025 is 36,391, (17.42%).

This option will have the least impact.

**Option 2** again used Polling District statistics and also allowed for the creation of two new wards as follows:

- 54 Councillors across 20 wards
- New wards in the Romford and Beam Park areas
- Mix of 2 and 3 Member wards
- All wards except one within the +/- 10% variance
- Electorate predicted to be affected by 2025 is 35,209 (16.86%)

**Option 3** utilised information from the last Boundary Commission Review in 1999:

- 52 Councillors over 20 wards
- A mix of 2 and 3 Member wards
- New wards in the Romford and Beam Park areas
- New names for a number of wards
- Electoral equality (+/- 10% variance) achieved in 12 of the 20 wards demonstrating less compliance with the criteria.
- Electorate predicted to be affected by 2025 is 102,509 (41.1%)

This represents a significant change, reducing the Member cohort to 52.

**Option 4** considered the natural boundaries such as railway lines, rivers and A roads. Consideration was given to how public health colleagues divide the Borough.

- Blank canvass approach with Borough loosely divided into 3 districts, north, central and south
- 56 Members over 21 wards
- Mix of 2 and 3 Member wards

- All 21 wards achieve the +/- 10% variance.

There then followed discussion regarding each of the options.

Councillor John Tyler put forward an amendment to Option 1, referred to as Option 1A. This was moved by Councillor Tyler and seconded by Councillor Linda Hawthorn.

Discussion followed in which it was considered that this option may result in some issues for a number of wards, notably Mawney Ward would take in Collier Row and Petits Ward would span two polling districts. In addition there would be concerns for Heaton Ward and Romford Town Ward, with a large proportion of Upminster Ward becoming Hacton Ward which would perhaps not be appropriate. Councillor Tyler stressed that Option 1A would satisfy the 3 criteria stipulated and would be non-political, retaining 18 3 Member wards and keeping existing, established communities intact.

Councillor Keith Darvill indicated that he preferred the amendments to Option 1 presented in Option 1A as it enables clarity regarding representation both on a central government basis for local MP's and the Local Government representation within Wards.

Councillor David Durant expressed concern whether the LGBCE would be satisfied with Option 1 given the arbitrary way in which wards would be divided. It would result in less effective representation with Members campaigning to a whole new electorate.

Councillor Roger Ramsey agreed with Councillor Darvill and stated concern over the fact that Petits Ward and Heaton are far apart geographically and this may result in community division.

The Leader of the Council, Councillor Damian White stated that Options 1 and 1A were not advisable as Polling Districts do not represent wards and therefore they do not represent the communities of the Borough.

The Governance Committee thanked Councillor Tyler for the considerable work he had put in to propose Option 1A.

Discussion then turned to Option 2 which was identified by Councillor Keith Darvill as his preferred option given that the smaller variance would be an ideal result. Creation of 2 Member wards in areas of population expansion in urban living areas would be distinct from other areas of the Borough. However, it was noted that 2 Member wards may present a problem with lower numbers representing ward areas. The LGBCE had made it clear in officer briefings that 1, 2 and 3 Member wards would be acceptable. Before 2002 there were 2 Member wards in Havering and currently these are worked successfully in Waltham Forest and Redbridge.

The Governance Committee agreed that they did not favour Option 3 and so this would not be taken forward.



Discussion then turned to Option 4. Councillor Damian White, the Leader of the Council indicated that he did not find any Option an immediate fit however, with certain amendments; Option 4 would be his favoured option, Option 4A was then proposed by the Leader and seconded by Councillor Jason Frost.

The Committee were then asked to vote on their preferred Option.

Votes placed for **Option 1A** were two in favour (Councillors Durant and Hawthorn) and 7 against (Councillors M White, D White, Frost, Persaud, Patel, Darvill and Ramsey)

**Option 2** was not seconded.

**Option 3** was ruled out and not voted on.

**Option 4** votes placed 3 in favour (Councillors Morgon, Darvill and Mugglestone) and 6 against (Councillors M White, D White, Frost, Patel, Persaud and Ramsey)

**Option 4A** Votes placed in favour 6 (Councillors M White, D White, Frost, Patel, Persaud and Ramsey) and against 2 (Councillors Durrant and Hawthorn)

**Accordingly the preferred Option of the Governance Committee was Option 4A.**

**Governance Committee therefore:**

- agreed to recommend to Full Council the preferred option for Part 2 of the LGBCE Review as Option 4A.

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**Chairman**

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**GOVERNANCE COMMITTEE**

<b>Subject Heading:</b>	<b>Regulation of Investigatory Powers Act 2000 (RIPA) Update</b>
<b>SLT Lead:</b>	<b>Andrew Blake-Herbert</b> , Chief Executive
<b>Report Author and contact details:</b>	<b>John William Jones</b> , Deputy Director of Legal and Governance & Monitoring Officer
<b>Policy context:</b>	<b>Governance</b>
<b>Financial summary:</b>	<b>None</b>

**The subject matter of this report deals with the following Council Objectives**

Communities making Havering	□
Places making Havering	□
Opportunities making Havering	□
Connections making Havering	□

**SUMMARY**

This is the Committee’s Annual Regulation of Investigatory Powers Act 2000 (RIPA) update. Members are asked to note that there has been no use of the Council’s RIPA powers since the last update.

**RECOMMENDATIONS**

That Members:

1. Note the update on the Council’s use of its RIPA powers.

**REPORT DETAIL**

**A Background**

1. Last year's update on the Council's use of its RIPA powers was reported to the Committee on 9 January 2019 and explained the proposed changes to the Council's Policy and Procedures on RIPA (which is set out at **Appendix 1**).
2. Members are reminded that RIPA regulates the use of covert surveillance activities when investigating serious criminal offences when relying on the powers made available to local authorities in Part II of RIPA. As the use of covert surveillance will affect an individual's privacy rights, compliance with RIPA ensures that the surveillance is necessary, proportionate and lawful. RIPA therefore protects the Council from legal claims and complaints and ensures that the evidence it relies upon in prosecutions is admissible.
3. Covert surveillance activities include static surveillance (e.g. taking up an observer post to monitor the activities and movements of those suspected of having committed criminal offences); mobile surveillance (e.g. following someone to see where they are going without their knowledge) and using hidden CCTV at a crime hotspot. It also extends to the use of undercover officers and informants.
4. In addition, local authorities have powers to access communications data, such as out-going phone calls and websites visited, held by telephone and internet service providers. However, only limited information about who sent the communication, when and how can be accessed but not the content i.e. what was said or written. This form of surveillance is principally regulated by the Investigatory Powers Act 2016 and different procedures apply. For example, local authorities must submit all their communications data applications via the National Anti-Fraud Network (NAFN) for quality assurance checks prior to consideration by the Office for Communications Data Authorisations (OCDA).
5. As well as legislation, the Council's policies and procedures are guided by statutory codes of practice most recently re-issued by the Home Office in August 2018.
6. The use of RIPA powers by local authorities is tightly controlled. Initially, directed surveillance or the use of a CHIS has to be assessed in detail and authorised in writing internally by a senior officer only if necessary and proportionate. Subsequently, it has to be approved by a Justice of the Peace before the authorisation takes effect.

7. The Council is required to have policies and procedures in place and these, together with the Council's use of the powers in practice, is the subject of periodic inspection by the Investigatory Powers Commissioner's Office (IPCO) which replaced the Office of Surveillance Commissioners (OSC).
8. The OSC most recently inspected the Council in December 2016 and IPCO have advised the Council that its next routine inspection will take in July 2020.
9. Following the Council's detailed review of its Policy and Procedures on RIPA and subsequent changes, no further changes are proposed ahead of its next inspection.

## **B Update on Council activity regarding RIPA**

10. In common with most other local authorities, the use by the Council of its RIPA powers is much reduced and is very limited. In fact, since the Committee's review last year, there have been no applications for the use of directed surveillance or a CHIS. Nor have any applications been made to access communications data.
11. Staff are kept aware of the requirements of RIPA, and advised of the need to secure legal compliance and to follow the Council's Policy and Procedures. The opportunity is also taken to report changes in the law, disseminate examples of good practice and to raise awareness about specific risks. For example, short guides on RIPA and the do's and don'ts of on-line surveillance were issued last year as well as technical guidance to managers.
12. Finally, in addition to staff training provided in January 2017 and March 2018, further training was provided in September 2019.

### **IMPLICATIONS AND RISKS**

#### **Financial implications and risks:**

None in relation to this report

#### **Legal implications and risks:**

Included within this Committee's terms of reference is the responsibility to review the Council's use of RIPA and the Council's Policy and Procedures at least once a year and to make recommendations for changes. This gives effect to the statutory Codes of Practice most recently re-issued by the Home Office in August 2018.

#### **Human Resources implications and risks:**

None

**Equalities implications and risks:**

This annual update does not have any adverse impacts on persons sharing a protected characteristic for the purposes of the public sector equality duty as set out in section 149 of the Equality Act 2010.

**Background Papers**

None

**POLICY & PROCEDURES  
on  
COVERT SURVEILLANCE  
and use of  
COVERT HUMAN INTELLIGENCE SOURCES  
under the  
REGULATION OF INVESTIGATORY POWERS ACT 2000**

**January 2019**

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### NOTE:

This Document must be read in conjunction with the:

- Revised Code of Practice for Covert Surveillance and Property Interference, August 2018 ('CS CoP'),- (Intranet- *Regulation of Investigatory Powers Act 2000*)
- Revised Code of Practice for Covert Human Intelligence Sources, August 2018 ('CHIS CoP') -(Intranet- *Regulation of Investigatory Powers Act 2000*)
- Protection of Freedoms Act 2012 – changes to provisions of the Regulation of Investigatory Powers Act 2000 (RIPA) - (Intranet- *Regulation of Investigatory Powers Act 2000*)

And, in respect of CCTV,

- The Home Office Surveillance Camera Code of Practice, June 2013

Copies of this Document, the Application Forms and the Codes of Practice are located on the Intranet/ (Intranet- *Regulation of Investigatory Powers Act 2000*)



## LONDON BOROUGH OF HAVERING POLICY & PROCEDURES - REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

### A. Background

The Human Rights Act requires the Council, and organisations working on its behalf, to have respect for the private and family life of citizens. However, in rare cases, it may be necessary for the Council to act covertly in ways that may interfere with an individual's rights.

The Regulation of Investigatory Powers Act 2000 ('RIPA') provides a mechanism for authorising covert surveillance and the use of "covert human intelligence sources" (CHIS). It aims to ensure that any interference with an individual's privacy is **necessary** and **proportionate**, and for the purpose of the protection of both the public interest and the human rights of individuals.

It is important to note that the legislation does not only affect directly employed Council staff. Where external agencies are working for the London Borough of Havering, carrying out the Authority's statutory functions, the Authority remains liable for compliance with its duties. It is essential that all external agencies comply with the regulations, as they are contractually obliged to do so. Therefore, work carried out by agencies on the council's behalf should be properly authorised by one of the Council's designated [Authorising Officers](#).

**If the correct procedures are not followed:**

- **evidence could be thrown out**
- **a complaint of maladministration could be made to the Ombudsman**
- **the Council could be the subject of an adverse report by the Investigatory Powers Commissioner's Office (IPCO)**
- **a claim could be made leading to the payment of **compensation** by the Council**
- **there could be adverse publicity which could have a serious impact on the Council's reputation**

### B. What RIPA does and doesn't do

RIPA does

- require [authorisation](#) of [directed surveillance](#)
- prohibit [intrusive surveillance](#)
- require [authorisation](#) of the conduct and use of a [CHIS](#),
- require safeguards for the use of CHIS.

RIPA does not make unlawful conduct which is otherwise lawful, and it does not prejudice any existing power to obtain information by any means not involving conduct that may be authorised under this Act. For example, it does not affect the Council's current powers to obtaining information via the DVLA, or to get information from the Land Registry as to the owner of property.

RIPA does provide valuable legal protection against claims and complaints and therefore **compliance with its requirements and these procedures are mandatory for all services and staff.**

## C Procedure

**Officers should consider each of these points when starting and conducting an investigation.**

1. Ensure complaint is recorded and kept up-to-date on recording system.
2. A full note of evidence must be maintained.
3. Ascertain whether the investigation being conducted is one that will or will not likely involve covert surveillance of any person or which may reveal confidential personal information about anyone. If covert surveillance is likely or intended to result in the acquisition of confidential or legally privileged information, the special rule applies (see below).
4. Ascertain whether a **Covert Human Intelligence Source (CHIS)** is necessary. Apply the [special rule](#) if the CHIS is under the age of 18 or is a vulnerable individual or when knowledge of legally privileged or confidential information is likely to be acquired. If the special rule is applied this must be the subject of prior consultation, with the Monitoring Officer or the Deputy Monitoring Officer.
5. Before starting covert surveillance or using CHIS, obtain a number and written [authorisation](#) from the relevant officer(s) (see [Flow Chart](#) and [Forms](#)).
6. Surveillance during an investigation conducted by one of the above people must be authorised by another authorised person.
7. Authorising Officers must not grant or renew authorisations unless satisfied that the requirements are met (see [Grounds for Authorisation](#)).
8. An application for authorisation must be made on the relevant [form](#). The forms are available from [the intranet – search for ‘RIPA’](#). The relevant forms are:

<b>Surveillance</b>	<b>CHIS</b>
Authorisation to <b>conduct</b> Directed Surveillance	Authorisation to <b>conduct</b> CHIS
Authorisation to <b>renew</b> Directed Surveillance	Authorisation to <b>renew</b> CHIS
Authorisation to <b>cancel</b> Directed Surveillance	Authorisation to <b>cancel</b> CHIS
Review of Directed Surveillance Authority	Review of Conduct and Use of a CHIS

9. [Urgent cases](#) There is now no power to grant urgent oral authorisations. Written authorisation from a Justice of the Peace is required using the standard procedure.
10. Officers should ensure that the officer granting the authorisation regularly reviews it. Officers should cancel authorisation where surveillance is no longer necessary or proportionate to the investigation in progress.
11. Authorising Officers should ensure that authorisations are renewed and/or cancelled before they expire.

12. The officer responsible for authorisation of the investigation must immediately inform the Public Protection Manager as the Co-ordinating Officer by e-mail of the grant, renewal or cancellation of all authorisations
13. Authorising Officer must ensure that all materials are secured and originals sent to the Public Protection Manager (as the Co-ordinating Officer), and disposal of expired material is timely. Officers are responsible for continuously maintaining RIPA standards.

The following time limits apply to an authorisation:

<b><u>Type of authorisation</u></b>	<b><u>Expiry Period</u></b>
Covert directed surveillance	A maximum of 3 months, reviewed regularly, and timely cancellation when appropriate
CHIS	A maximum of 12 months (4 months if CHIS is under 18), reviewed regularly, and timely cancellation when appropriate

## **D Types of Surveillance**

“**Surveillance**” includes

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

Surveillance can be [overt](#) or [covert](#).

### **Overt Surveillance**

Most of the surveillance carried out by the Council will be done overtly – there will be nothing secretive, clandestine or hidden about it. In many cases, officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases), and/or will be going about council business openly (e.g. a market inspector walking through Romford Market). An immediate response may be appropriate in certain instances e.g. if an occurrence is witnessed action could follow to see what if anything takes place. Similarly, surveillance will be overt if the subject is aware it will happen (e.g. where a noisemaker is warned that noise will be recorded if the noise continues, or where a licence is issued subject to conditions and the licensee is told that officers may visit without identifying themselves to check that the conditions are being met).

### **Covert Surveillance**

Surveillance is Covert Surveillance if, and only if, it is carried out in a manner calculated to ensure that persons subject to the surveillance are unaware it is taking place. (Section 26(9)(a) of RIPA.)

RIPA regulates two types of covert surveillance ([Directed Surveillance](#) and [Intrusive Surveillance](#)) and the use of [Covert Human Intelligence Sources](#) (CHISs):

### **Directed Surveillance**

Directed Surveillance is surveillance which

- is [covert surveillance](#); and
- is not [intrusive surveillance](#) (see definition below) – **the Council must not carry out intrusive surveillance.**
- is not carried out as an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable e.g. spotting something suspicious and continuing to observe it; [CS CoP 3.32] and
- it is undertaken for the purpose of a **specific investigation** or operation in a manner **likely to obtain private information** about an individual (whether or not that person is specifically targeted for purposes of an investigation). [CS CoP 2.4 and 3.1];

**Private information** in relation to a person includes any information relating to his/her private or family life. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. RIPA does not apply in situations involving the general monitoring and use of town centre CCTV. These cameras are overt and so cannot generally be used for covert monitoring.

Prolonged surveillance targeted on a single person may very well result in the obtaining of private information. Similarly, although overt town centres CCTV cameras do not normally require authorisation, if the camera is tasked for a specific operation, which involves prolonged surveillance on a particular individual, authorisation may well be required. The way a person runs their business may also reveal information about his or her private life.

**Council Officers can carry out “Directed Surveillance” IF, AND ONLY IF, the RIPA authorisation procedures are followed.**

### **Intrusive Surveillance**

- is covert
- relates to residential premises and private vehicles; and
- involves the presence of an individual on the premises or in the vehicle; or is carried out by a surveillance device. If a surveillance device is not on the premises or in the vehicle it is not intrusive, unless it consistently provides information of the same quality as if it was on the premises or in the vehicle
- or relates to premises used for the purpose of legal consultations
- can be carried out only by police and other law enforcement agencies

**Council Officers must not carry out intrusive surveillance.**

### **Examples of different types of Surveillance**

Surveillance will fall into one of four categories:

Type of Surveillance	Examples
----------------------	----------

Overt	<ul style="list-style-type: none"> <li>• Uniform Police Officer on patrol.</li> <li>• Signposted Town Centre CCTV Cameras (in normal use)</li> <li>• Recording noise coming from premises after the occupier has been warned that this will occur if the noise persists.</li> <li>• Most test purchases (where the officer behaves no differently from a normal member of the public).</li> </ul>
<u>Covert</u> , but may not require authorisation	Hidden CCTV camera focused on a railway bridge which has just been cleared of graffiti, where it is expected that taggers will target the bridge. However if collateral information is likely to be obtained then RIPA authorisation is necessary.
<u>Directed</u> – requires a RIPA authorisation.	<ul style="list-style-type: none"> <li>• Officers follow an individual over the course of the day, to establish whether he is working when claiming benefit</li> <li>• Test purchases where the officer has a hidden camera recording information which might include information about the private life of a small shop-owner, e.g. the way they run their business.</li> </ul>
<u>Intrusive</u> - Council cannot do.	Planting a listening device (bug) in a person's home or in their private motorcar.

**Directed and Intrusive Surveillance is subject to the Revised Code of Practice for Covert Surveillance and Property Interference, August 2018 issued under s 71 of RIPA.**

The Protection of Freedoms Act 2012 introduced new requirements concerning the use of directed surveillance. **Local authorities can now only grant an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or nicotine products like tobacco. A local authority may not authorise the use of directed surveillance under RIPA to investigate disorder that does not involve criminal offences or to investigate low-level offences which may include, for example, littering, dog control and fly-posting.**

However, RIPA does *not* prevent the Council from conducting other investigations, even if covert surveillance techniques are used.

If RIPA does not apply, the Council must follow procedures similar to RIPA and ensure that any surveillance pursues a legitimate aim and is necessary, proportionate and justifiable in all the circumstances of the case. This will ensure compliance with data protection legislation and the Human Rights Act 1998, in particular, Article 8.

### **Covert surveillance of Social Networking Sites (SNS) and On-line Accounts**

Reference should be made to paragraph 288 of the OSC Procedures and Guidance 2016.

The fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation.

Care must be taken to understand how the SNS being used works. Authorising Officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.

Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as “open source” or publicly available; the author has a reasonable expectation of privacy if access controls are applied. In some cases data may be deemed private communication still in transmission (instant messages **for** example). Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. **Repeat viewing of “open source” sites may constitute directed surveillance on a case by case basis and this should be borne in mind.**

The RIPA regime was introduced before the rise of electronic media such as Twitter and Facebook where individuals voluntarily put lots of personal information ‘on-line’ with varying degrees of public accessibility. Such sites can be a very useful source of research for an investigator. The applicability of RIPA to such information sources is a developing area, but currently the Council will follow the following rules:

- a) Casual or occasional checking of an individual’s on-line account which is open to all is regarded as akin to walking past a person’s house or shop and does not need authorisation under RIPA.
- b) Targeted, on-going checking of an ‘open’ account is effectively the electronic equivalent of carrying out physical surveillance of an individual. While currently there isn’t a definitive legal ruling on the issue, in order to prevent possible challenge to any evidence gained in this manner, a RIPA authorisation should be obtained.
- c) Accessing an individual’s account by becoming that person’s ‘friend’, even if there is no intention to have additional contact, requires a RIPA authorisation.
- d) Any access of an account which will involve an on-going dialogue with the targeted individual is forming a relationship with the individual and requires a CHIS authorisation.

### **Children and Young People’s Services**

For cases of suspected abuse, directed covert surveillance, may be an appropriate adjunct to ordinary social care practice including family visits. Where it is suspected that abuse amounting to a crime is being carried out, and where no other means can be found to confirm the position, a Multi-Agency Strategy Meeting should be convened, and the decision to recommend covert surveillance should be considered against the tests above, formally recorded, and then passed to an authorising officer in the local authority or the police.

For school admissions, covert surveillance is almost certainly not an option because of the need to identify a criminal offence with a possible 6 month custodial sentence and questions about the proportionately of such actions. Information can be acquired from parents and carers to demonstrate residence through overt means, such as the production of utility bills, health registrations, mortgage or rent documentation, Council

tax records, and membership of libraries, churches, or other local organisations. In cases where a family has broken up, the main residence of the child should be confirmed by court documents.

**E. Conduct and Use of a Covert Human Intelligence Sources (CHIS)  
(e.g. informers, undercover agents)**

**Who is a CHIS?**

Under the 2000 Act, 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 to 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.

A relationship is established or maintained for a covert purpose if and only if it is conducted in manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.

The provisions of RIPA are not intended to apply in circumstances where members of the public volunteer information to the council as part of their normal civic duties, or to contact numbers set up to receive information.

## **Use of a CHIS**

The Council is extremely unlikely to deploy a CHIS and any officer contemplating such a step should consult the Monitoring Officer or Deputy Monitoring Officer within Legal Services.

### **What must be authorised**

The Conduct or Use of CHIS requires [authorisation](#).

- **Conduct** of a CHIS = Establishing or maintaining a personal or other relationship with a person for the covert purpose of (or is incidental to) obtaining and passing on information.
- **Use** of a CHIS = Actions inducing, asking or assisting a person to act as a CHIS.

**The Council can use a CHIS IF, AND ONLY IF, RIPA procedures are followed.**

### **Juvenile Source**

Special safeguards apply to the use or conduct of juvenile sources (those under 18 years old). On no occasion can a child under 16 years of age be authorised to give information against his or her parents [see CHIS CoP 4.2]. Only the Chief Executive or, (in his/her absence) the person acting as the Head of Paid Service can authorise the use of Juvenile Sources. The duration of the authorisation is **four** months only.

### **Vulnerable individuals**

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 herself, or unable to protect himself or herself against significant harm or exploitation. A vulnerable individual should only be authorised to act as a source in the most exceptional circumstances. The Chief Executive or, (in his/her absence) the person acting as the Head of Paid Service are the only persons who can authorise the use of a vulnerable person as a CHIS.

### **Test Purchases**

Carrying out test purchases will not normally require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information, and therefore the purchaser will not normally be a CHIS. For example, authorisation would not normally be required for test purchases carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter). By contrast, developing a relationship with a person in the shop to obtain information about the sellers suppliers of an illegal product (e.g. illegally imported wild meat) is likely to require authorisation as a [CHIS](#). Similarly, using hidden recording devices to record what is going on in the shop (e.g. a hidden CCTV Camera) may require [authorisation](#) as [directed surveillance](#). A combined authorisation can be provided if a CHIS is carrying out directed surveillance.

### **Noise**

Persons who complain about excessive noise, and are asked to keep a noise diary, will not normally be a CHIS, as they are not required to establish or maintain a relationship



for a covert purpose. Recording the level of noise (e.g. the decibel level) will not normally capture private information, and therefore does not require authorisation.

However, if the Council serves notice on the owner/occupier of the premises and the source of the noise is a third party, authorisation under RIPA may be required. The investigation may (i) be covert in relation to that third party and (ii) may reveal private information about them.

## F. Authorisation

[Directed surveillance](#) and the use of a [CHIS](#) can be carried out only if authorised, and only within the terms of the authorisation. [Appendix A](#) provides a flow chart of process from application to record management.

### Authorising Officers:

Authorisations can only be given by Authorising Officers, listed in [Appendix B](#).

**Only the Chief Executive** or, (in his/her absence) the person acting as the Head of Paid Service can authorise covert surveillance if **legally privileged or confidential information** is likely to be acquired or when a **juvenile or vulnerable person** is to be used as a source.

Authorisation under RIPA is quite separate from delegated authority to act under the Council's Scheme of Delegation and internal directorate Schemes of Management. **RIPA authorisations are for specific investigations only and must be cancelled once the specific surveillance is complete or applied to be reviewed when about to expire if the investigation is continuing.**

The Authorising Officer should not just "sign off" an authorisation, but must give **personal consideration** to the **necessity** and **proportionality** of the proposed action and any **collateral intrusion** which may result, and must personally ensure that the surveillance is reviewed and cancelled.

### Application Forms:

Applications for authorisation should be made using standard RIPA forms. Forms seek to ensure that criteria for RIPA are fully considered.

**London Borough of Havering currently uses the following Home Office forms (available from the Intranet / RIPA)**

- Application for Authority for Directed Surveillance
- Application for Renewal of Directed Surveillance Authority
- Cancellation of Directed Surveillance
- Review of Directed Surveillance Authority
- Application for Authority for Conduct and Use of a CHIS
- Application for Renewal of Conduct and Use of a CHIS Authority
- Cancellation of Conduct and Use of a CHIS

- Review of Conduct and Use of a CHIS
- JP approval form

### **Grounds for Authorisation**

See also section 28(3) of the RIPA Act 2000

[Directed Surveillance](#), or the [Conduct](#) and [Use](#) of a [CHIS](#) can be authorised by the Council **only** on the following grounds:

- For the **prevention or detection of crime**

Before seeking authorisation, the applicant is to contact the Public Protection Manager as Co ordinating Officer (x2771) for a Unique Reference Number (URN). Certain information will be required at this stage to be input onto a corporate log of RIPA activities

### **Assessing the Application Form.**

When considering whether to authorise surveillance an Authorising Officer must

- Consider the relevant Code of Practice
- Ensure that the exact nature of the surveillance is fully described so that the Authorising Officer is fully aware of what he/she is being asked to authorise.
- Satisfy him/herself that the authorisation is **necessary** in the circumstances of the particular case on the grounds of the prevention or detection of crime, and also
- Satisfy him/herself that the surveillance is **proportionate** to what it seeks to achieve [CS CoP 4.6 – 4.7]. In assessing whether or not the proposed surveillance is proportionate, the Authorising Officer will consider other appropriate means of gathering information. In the case of the CHIS, authorisations, (see also CHIS CoP 3.2 – 3.5).
  - Proportionate 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.
  - The activity will not be proportionate if the information which is sought could reasonably be **obtained by other less intrusive means**. e.g. if the evidence could have been gathered through other methods of investigation, such as unannounced inspections, then these less intrusive and non-covert methods should have been exhausted first.
  - **Proportionate also involves balancing the Human Rights of the subject of the surveillance against the seriousness of the offence under investigation.**

**If there is an alternative practicable means of carrying out the surveillance, which is less intrusive, then the surveillance is neither necessary nor proportionate and should not be authorised.**

- Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (**Collateral Intrusion**). Measures must be taken wherever practicable to avoid collateral intrusion [see CS CoP 4.11 – 4.16].
- Set a date for review of the authorisation
- Ensure that the Public Protection Manager is sent the top copy of the authorisation for filing centrally.

### **Additional Factors when Authorising a CHIS**

In addition, when authorising the conduct or use of a CHIS the Authorising Officer must be

- be satisfied that the **conduct** and/or **use** of the CHIS is proportionate to what is sought to be achieved and
- be satisfied that **appropriate arrangements** are in place for the management and oversight of the CHIS;
- consider the likely degree of intrusion of all those potentially affected.
- consider any adverse impact on community confidence that may result from the use or conduct or the information obtained.
- ensure **records** contain statutory particulars and are not available except on a need to know basis.

### **Urgent Authorisations**

Until April 2013 it was possible in exceptional circumstances to give urgent authorisations orally. This practice is now prohibited by changes introduced by the Protection of Freedoms Act 2012. All authorisations (grants and renewals) have to be made in writing by a Justice of the Peace after completion of the Council's internal process. The Magistrates Court has provisions for contacting an out-of-hours duty magistrate – details are held at Romford Police Station.

### **Immediate Responses**

There are certain events situations which require an immediate response where it would be impracticable to obtain an authorisation. Such surveillance is not deemed to be directed surveillance for the purposes of RIPA. An example would be Council officers needing to covertly observe an activity that they come across during their routine duties.

### **Duration**

The authorisation period for Directed Surveillance is 3 Months and 12 Months for a CHIS (except for a CHIS for a juvenile which is 4 months).

### **Review and Cancellation**

The Authorising Officer must review authorisations frequently, and must cancel an authorisation promptly if he/she become satisfied that the surveillance is no longer required or appropriate. An authorisation must be cancelled in all cases, it cannot be left to expire at the end of the authorisation period. When cancelling the authorisation the Authorising Officer is required to consider whether the surveillance was effective,

necessary, and met its objectives. Cancellations must be made using the cancellation form [CS CoP 5.22 – 5.24].

### **Renewals**

Authorisations can be renewed in writing when the authorisation period expires. The Authorising Officer must consider the matter afresh, including taking into account the benefits of the surveillance to date, and any collateral intrusion that has occurred.

The renewal will begin on the day when the authorisation would have expired and will last for a further 3 months [CS CoP 5.18]. Renewals can no longer be renewed orally in urgent cases and have to be approved by a Justice of the Peace.

## **G Record maintenance**

**The Council must keep a detailed record of all authorisations, renewals, and cancellations [CS CoP Chapter 8]**

### **Records maintained by Requesting Officer and Centrally**

**The following documents must be securely retained by the Requesting Officer and originals sent to the Public Protection Manager as the Co Ordinating Officer for recording centrally:**

- A copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the Authorising Officer;
- A record of the period over which the surveillance has taken place;
- The frequency of reviews prescribed by the Authorising Officer; Reviews can be undertaken earlier in order to gain an understanding of what is working in practice.
- A record of the result of each review of the authorisation;
- A copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- The date and time when any instruction was given by the Authorising Officer.
- The date and time when any instruction was given by the Authorising Officer.
- A copy of the order approving or otherwise the grant or renewal of an authorisation from a Justice of the Peace.
- The Council shall retain records for a period of at least three years (and usually for up to five years) from the ending of the authorisation [CS CoP 8.2 & 8.5]. The Investigatory Powers Commissioner's Office (IPCO) can review the council's policies and procedures, and individual authorisations. IPCO usually provide notice before an inspection, but can arrive unannounced.

**Copies of authorisations, renewals and cancellations are discoverable in legal proceedings. If proper records are not maintained, evidence gathered may be inadmissible.**

## H. Single Point of Contact (SPOC)

As of 5 January 2004, access to communication data to further investigatory work (in areas like trading standards, environmental health, benefits fraud and planning functions) fell under the RIPA 2000. Each Authority is required to establish a SPOC to interface with the many communication service providers (Telecoms, Internet and Postal companies) who hold this data.

The Council's SPOC is the Public Protection Manager, in collaboration with the National Anti-Fraud Network (NAFN).

## I. Oversight

In accordance with recommended best practice, the Council has appointed its Monitoring Officer and Deputy Director of Legal & Governance as the Senior Responsible Officer for the purposes of RIPA. This officer is responsible for,

- the integrity of the process in place within the Council to authorise directed and intrusive surveillance and interference with property;
- compliance with Part II of the 2000 Act,
- and with the relevant codes;
- reporting any errors in complying with the requirements of RIPA to the IPCO (in accordance with section 235(6) of the Investigatory Powers Act 2016) as soon as reasonably practicable, and no later than ten working days;
- engagement with the Commissioners and inspectors when they conduct their inspections;
- where necessary, overseeing the implementation of any post inspection action plans recommended or approved by a Commissioner and
- ensuring that all *authorising officers* are of an appropriate standard in light of any recommendations in the inspection reports prepared by the Office of Surveillance Commissioners

The Senior Responsible Officer will:

- Report to the Council's Governance Committee at least once a year on the use of RIPA and reviewing the Council's policy
- Report to the Leader and the Lead Member and oneSource Management (on use under functions delegated to oneSource) at least once a year to ensure that it is being used consistently with this policy and these procedures and that the policy and procedures remain fit for purpose.

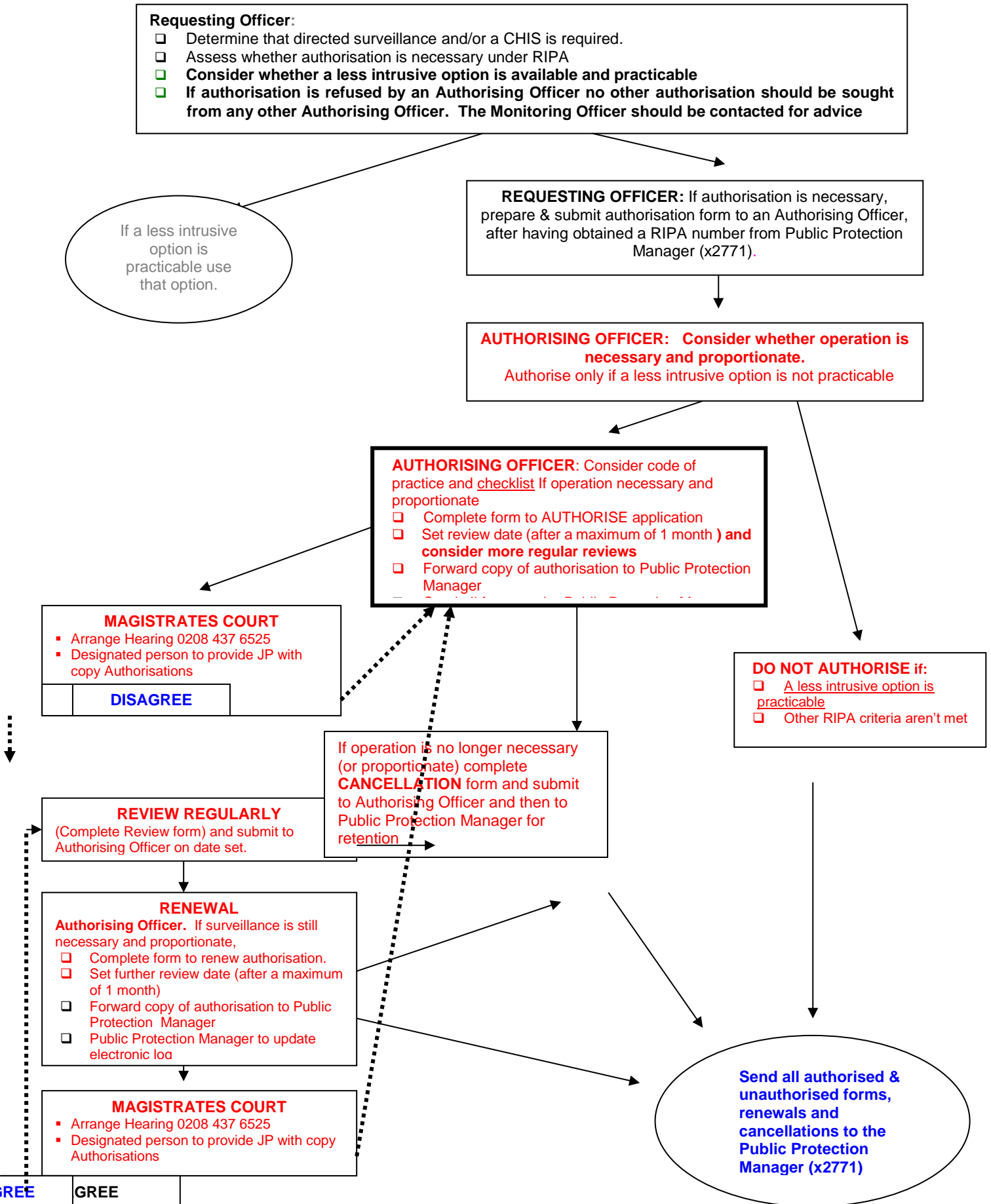
## J. Training

- Training is required and mandatory for all Council Authorising Officers and staff involved with any aspect of investigation and surveillance.
- Home office accredited training is mandatory for the Council's SPOCs

- It is also the responsibility of managers to ensure that appropriate staff receive the appropriate training and guidance on RIPA.

**Further information and Application Forms are available on the Intranet - search for 'RIPA'.**

# Appendix A Flow chart of RIPA process



## Appendix B Authorising Officers

Authorising officers are listed below. The Monitoring Officer will keep this list under review and will amend it in response to any staffing or service changes. Authorising officers should not be directly involved in the investigation.

1. Authorising officers for Directed Surveillance and CHIS are:
  - a. Chief Executive (for **all** applications)
  - b. Assistant Director of Environment (**subject to the special rule (see below)**, for **all** applications)
  - c. Managing Director, Director of Finance and Head of Assurance for oneSource (**subject to the special rule (see below)**, for **applications relating to oneSource Services only**)
2. Special rule

If directed surveillance is *likely* or *intended* to result in the acquisition of confidential or legally privileged information, **only the Chief Executive** or, (in his/her absence) the person acting as the Head of Paid Service can authorise it..

If the acquisition of confidential or legally privileged information is *intended*, it should only be authorised if there are **exceptional and compelling circumstances** justifying it.

If a **juvenile or vulnerable person** is to be used as a CHIS, **only the Chief Executive** or, (in his/her absence) the person acting as the Head of Paid Service can authorise it.

If knowledge of **legally privileged or confidential information** is *likely* to be acquired if a CHIS is used, **only the Chief Executive** or, (in his/her absence) the person acting as the Head of Paid Service can authorise it.

**A CHIS should never be deployed for deliberately acquiring legally privileged information.**

Great care must be taken, and enhanced safeguards must be applied, to the handling, minimising access, storage, retention and destruction of confidential or legally privileged information in accordance with human rights and data protection legislation.

**Prior consultation, with the Monitoring Officer or the Deputy Monitoring Officer is required** if the special rule applies.

Confidential information includes medical records, confidential journalistic material and confidential discussions between Members of Parliament and their constituents.

Legally privileged information includes confidential communications between a lawyer and his/her client for the purpose of obtaining and the giving of legal advice or communications for the purpose of actual or contemplated legal proceedings.



3. Designated officers authorised to represent the Council in a Magistrates' Court are:
  - a. Chief Executive
  - b. Director of Legal & Governance
  - c. Assistant Director of Environment
  - d. Trading Standards Manager, Public Protection
  - e. Public Protection Manager
  - f. Food Safety Divisional Manager, Public Protection
  - g. Licensing and Health & Safety Divisional Manager, Public Protection
  - h. Trading Standards Specialists
  - i. Metrology Partnership Manager, Public Protection
  - j. Enforcement Team Leader
  - k. Projects & Compliance Manager

Additionally any solicitor holding a Practising Certificate working for the Council can appear on its behalf on an application to the Magistrates Court.

4. The Public Protection Manager is the RIPA Coordinating Officer.
5. Interim Officers on temporary or permanent employment and in positions with RIPA responsibilities **must** undertake RIPA training before executing RIPA approvals.

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