

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE MEETING

Date: Monday 16 September 2019
Time: 6.30 p.m.
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Adkinson (Vice-Chairman), Brindle, Cox, Daley, Fissenden, Harvey (Chairman), McLoughlin, Perry, Round and Titchener (Parish Representative)

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

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3. Urgent Items	
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7. To consider whether any items should be taken in private because of the possible disclosure of exempt information	
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Issued on Friday 6 September 2019

Continued Over/:

Alison Broom

Alison Broom, Chief Executive

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PUBLIC SPEAKING AND ALTERNATIVE FORMATS

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In order to speak at this meeting, please contact Democratic Services using the contact details above, by 5 p.m. one clear working day before the meeting (i.e. Thursday 12 September 2019). If asking a question, you will need to provide the full text in writing. If making a statement, you will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated on a first come, first served basis.

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MAIDSTONE BOROUGH COUNCIL

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

MINUTES OF THE MEETING HELD ON 30 JULY 2019

Present: Councillor Harvey (Chairman) and
Councillors Mrs Blackmore, Brindle, Daley, English,
Khadka, Perry, M Rose and Round

Also Present: Ms Tina James – External Auditor, Grant Thornton

6. APOLOGIES FOR ABSENCE

It was noted that apologies for absence had been received from Councillors Adkinson, Cox, Fissenden, McLoughlin and Titchener (Parish Representative).

7. NOTIFICATION OF SUBSTITUTE MEMBERS

The following Substitute Members were noted:

Councillor Mrs Blackmore for Councillor McLoughlin
Councillor English for Councillor Cox
Councillor Khadka for Councillor Fissenden
Councillor M Rose for Councillor Adkinson

8. URGENT ITEMS

The Chairman said that she had agreed to take the following documents as urgent items as they had not been available when the agenda was published:

Appendix 1 to agenda item 19 – External Auditor’s Audit Findings Report

Appendix 3 to agenda item 19 – Letter of Representation

There were also amendments to Appendix 1 (Annual Governance Statement 2018/19) to agenda item 12 and to Appendix 2 (Narrative Report and Audited Statement of Accounts 2018/19) to agenda item 19.

A Member said that there had been, supposedly, a disclosure of confidential information and he would have expected the Audit, Governance and Standards Committee to have been updated as he understood that an investigation was being undertaken and some members of his Group had been interviewed.

The Head of Legal Partnership advised the Committee that the informal investigation was still ongoing and that she hoped to provide an update in

the annual report on Member Code of Conduct matters to be submitted to the Committee in September.

9. NOTIFICATION OF VISITING MEMBERS

There were no Visiting Members.

10. DISCLOSURES BY MEMBERS AND OFFICERS

Councillor Daley said that he was a member of the Kent County Council Superannuation Fund Committee and that if matters relating to the Pension Fund were raised during consideration of the Statement of Accounts 2018/19 (agenda item 19), he would not take part in the discussion.

11. DISCLOSURES OF LOBBYING

There were no disclosures of lobbying.

12. EXEMPT ITEMS

RESOLVED: That the items on the agenda be taken in public as proposed.

13. MINUTES OF THE MEETING HELD ON 18 MARCH 2019

RESOLVED: That the Minutes of the meeting held on 18 March 2019 be approved as a correct record and signed.

14. MINUTES OF THE MEETING HELD ON 21 MAY 2019

RESOLVED: That the Minutes of the meeting held on 21 May 2019 be approved as a correct record and signed.

15. QUESTION AND ANSWER SESSION FOR MEMBERS OF THE PUBLIC

There were no questions from members of the public.

16. COMMITTEE WORK PROGRAMME 2019/20

The Committee considered its work programme for 2019/20.

In response to a question, the Head of Audit Partnership confirmed that there was a duplicate item in the work programme. He anticipated that the Risk Management Annual report to be submitted to the September meeting of the Committee would cover the risk management process.

17. ANNUAL GOVERNANCE STATEMENT 2018/19

The Committee considered the report of the Head of Policy, Communications and Governance setting out the Annual Governance Statement 2018/19. It was noted that:

- The Council was required to produce an Annual Governance Statement each year looking at the effectiveness of the previous year's governance arrangements and whether any actions were required to improve arrangements in 2019/20. No significant governance issues had been identified arising from the review and the Officers were satisfied that the Council's governance arrangements were working well. This was reflected in the paragraph headed "Significant Governance Issues" on page 2 of the document which had been amended to read "Conclusion on Significant Governance Issues".
- The review had identified areas for improvement in 2019/20, several of which were linked to the Corporate Risk Register, to ensure good standards of governance are maintained. Updates on the actions would be provided for the Committee on a six monthly basis and kept under review by the internal Corporate Governance Group.
- A number of improvement actions had been identified as part of the 2017/18 review and progress had been made in all areas. For example:

The new Strategic Plan had been adopted;
 Audit reviews with weak assurance had now been rated as sound following the implementation of agreed remedial measures;
 Action had been taken in response to the findings of the Stress Survey and to mitigate risks associated with increasing housing pressures, the potential failure of significant capital projects of a housing and regeneration nature and financial restrictions;
 Progress had been made against the action plan to ensure compliance with Data Protection legislation; and
 The Council was now Payment Card Industry Compliant.

In response to questions:

- The Head of Audit Partnership advised the Committee that he had been consulted on the compilation of the Annual Governance Statement and the results and recommendations of Internal Audit reports were fed into it. There were established procedures for dealing with the results and recommendations of Internal Audit reports. There had only been a few issues giving rise to significant areas for improvement which should be recognised within the Statement, and he was satisfied that they were appropriately represented. Also, as set out in the Annual Internal Audit Report and Opinion 2018/19, he was satisfied that the Council's corporate governance arrangements for the year ended 31 March 2019 complied in all material respects with guidance on proper practices.
- The Head of Policy, Communications and Governance advised the Committee that:

The Annual Governance Statement looked back at the governance arrangements for 2018/19. The Monitoring Officer had cause during the year to remind Members about the obligations within the Code of

Conduct relating to the disclosure of exempt and confidential information and an investigation was being carried out into a potential alleged breach of the Code. The disclosure had not been identified as such a significant issue that it needed to be referenced in the Annual Governance Statement action plan for 2019/20, but if the trend continued it could be included as a governance issue next year.

Partner relationships had been identified as a key improvement area as it was necessary to build relationships with partners and stakeholders such as Kent County Council, Mid-Kent Services partner authorities and other local public sector organisations to deliver the ambitions within the Strategic Plan.

The Council was now broadly compliant with the Data Protection legislation and had action plans in place covering the areas where more work was required. Currently, the Policy team was working on email retention; updating the way information is retained; and making sure practices are followed through. The Information Management Group was monitoring progress against the action plans and regular updates could be provided for Members of the Audit, Governance and Standards Committee if required.

RESOLVED: That the Annual Governance Statement for 2018/19, attached as amended Appendix 1 to the report of the Head of Policy, Communications and Governance, be approved.

18. AUDIT, GOVERNANCE & STANDARDS COMMITTEE ANNUAL REPORT 2018/19

The Audit Manager presented the Audit, Governance and Standards Committee Annual Report 2018/19. It was noted that:

- The Annual Report outlined how the Committee had discharged its duties as set out in its terms of reference. The report covered the work undertaken by the Committee during 2018/19, the sources of assurance the Committee had received, the complaints received under the Members' Code of Conduct during 2018/19 and the development briefings which had been delivered during the year.
- The report also set out a proposed programme of updates and development briefings that could be provided during 2019/20.
- The overall conclusion was that the Committee could demonstrate that it had appropriately and effectively discharged its duties during 2018/19.

In response to a question, the Audit Manager confirmed that she would amend the section of the report entitled "Meetings and Attendance" to reflect the fact that during 2018/19, the Committee comprised nine Borough Councillors plus two non-voting Parish Councillors.

RESOLVED:

1. That subject to the amendment of the section entitled "Meetings and Attendance" to reflect the fact that during 2018/19, the Committee comprised nine Borough Councillors plus two non-voting Parish Councillors, the Audit, Governance and Standards Committee Annual Report for 2018/19, attached as Appendix A to the report of the Audit Manager, be agreed.
2. **To RECOMMEND to the COUNCIL:** That the Audit, Governance and Standards Committee Annual Report 2018/19, which demonstrates how the Committee discharged its duties during 2018/19, be noted.
3. That the proposed programme of Member development briefings be approved.

19. ANNUAL INTERNAL AUDIT REPORT & OPINION 2018/19

The Head of Audit Partnership introduced the Annual Internal Audit Report and Opinion 2018/19. In accordance with the Public Sector Internal Audit Standards, the report included:

- The annual opinion of the Head of Audit Partnership on the overall adequacy and effectiveness of the Council's internal control, governance and risk management;
- A summary of the work undertaken by Mid-Kent Audit that supported the opinion; and
- A statement on conformance with the Public Sector Internal Audit Standards.

It was noted that:

- The Head of Audit Partnership was satisfied from the audit work completed that the Council could place assurance on the system of control in operation during 2018/19; that the corporate governance framework complied in all significant respects with the best practice guidance issued by CIPFA/SOLACE; and that the Council's risk management processes were effective. The Head of Audit Partnership had reached his conclusions independently and without any undue pressure from Officers or Members.
- Some assurance projects had been removed from the 2018/19 audit plan or rescheduled/delayed, but this had not affected the overall opinion. Executive summaries of the findings of the planned 2018/19 assurance projects completed so far had been provided, but the full reports could be made available upon request. In terms of following up actions, the actions marked as overdue stemmed chiefly from three specific projects reported originally as part of the 2017/18 audit programme: Emergency Planning, Contract Management and Animal

Welfare Control. Updates would be provided as part of the interim reporting later in the year, but the Head of Audit Partnership was satisfied in the context of the overall opinion that there were no undue threats to the Council in relation to the progress on these matters.

- The report detailed other audit service work carried out throughout the year including three counter fraud and corruption investigations, one of which resulted in a former member of staff receiving a Police caution; and the completion of three independent reviews commissioned by Kent's Safeguarding Boards. The report also provided an update on progress towards completing the 2019/20 audit and assurance plan.
- All Internal Audit services were required to seek an external quality assessment at least every five years. The Audit Partnership's most recent such assessment was by the Institute of Internal Auditors in the spring of 2015. A suitably qualified assessor would be appointed this autumn with a view to a report being submitted to Members in the spring of 2020.

Members thanked the Head of Audit Partnership for a very comprehensive summary of the activities of the Internal Audit team during 2018/19 and thanked the team for its work and achievements in terms of professional development. They also thanked the Director of Finance and Business Improvement and the Procurement team for the progress made in improving contract management across the Council.

In response to questions:

The Head of Audit Partnership advised the Committee that:

- The way in which audit reports with weak assurance ratings were dealt with differed at each of the four partner authorities. The update on the Internal Audit Charter, scheduled to be reported to the Committee in January 2020, could be brought forward to September to enable consideration to be given at an early opportunity to a proposed mechanism for extra examination of audit reports with weak assurance ratings.
- One of the advantages of working in a four way partnership was that issues of resilience were easier to manage. There had been an extended period of sickness absence coupled with additional investigative and reporting work but there had been limited impact in the context of the Partnership in that some low risk more routine work was rescheduled from one year to another. He was satisfied that this was an appropriate response to risks as they changed and that he could still give a comprehensive opinion.

The Director of Finance and Business Improvement advised the Committee that the procedures for authorising and approving virements were set out in the Financial Procedure Rules contained within the Council's Constitution.

RESOLVED:

1. That the Head of Audit Partnership's opinion that the Council's system of internal control, corporate governance and risk management arrangements have operated effectively during 2018/19 be noted.
2. That the work underlying the opinion and the Head of Audit Partnership's assurance that it was completed with sufficient independence and conformance with Public Sector Internal Audit Standards be noted.
3. That progress so far towards completing the 2019/20 audit and assurance plan be noted.
4. That consideration be given to a proposed mechanism for extra examination of audit reports with weak assurance ratings as part of the forthcoming review of the Internal Audit Charter.

20. BUDGET STRATEGY - RISK ASSESSMENT UPDATE

The Director of Finance and Business Improvement introduced his report providing an update on the budget risks facing the Council.

The Director of Finance and Business Improvement explained that:

- The two principal budget risks continued to be uncertainty about future local government funding arrangements and the potential financial consequences of a disorderly Brexit.
- In terms of the local government funding regime, it was anticipated that the current arrangements would be rolled forward into 2020/21 as other priorities were likely to prevent the government from implementing a new funding regime as originally planned. However, there were a number of variables that were still uncertain even within the existing arrangements, including the Council Tax referendum limit, the Business Rates baseline (which determines the level of Business Rates that the Council retains locally), future specific grants and the potential for the Council to suffer negative Revenue Support Grant.
- The financial impact of a disorderly Brexit for the Council would be two-fold. In the short term disruption to transport would have major implications for service delivery with staff not being able to travel to work and congestion hampering services like refuse collection. Costs had already been incurred in contingency planning and further costs would be incurred in the run up to the likely revised Brexit date of 31 October 2019. Although the government had notified the Council of a grant of £35,000 to cover Brexit costs in January 2019, this was much less than estimated likely costs.
- In addition, there might be adverse longer term effects on the economy arising from a no-deal Brexit, with a knock-on impact for

local authorities. The prospect of a no-deal Brexit was depressing the exchange rate resulting in increases in key input costs such as fuel. Revenues from fees and charges would be adversely affected by a downturn, the collection of business rates and Council Tax could be affected and there could be increasing pressure on homelessness budgets.

In response to questions, the Director of Finance and Business Improvement explained that the Council was working with other Councils in Kent as part of the Kent Resilience Forum to press central government for additional resources to mitigate the impact of a disorderly Brexit. Contingency plans were being put in place based upon a range of scenarios (adverse, neutral and favourable) to ensure that the Council is prepared for the consequences of a disorderly Brexit.

Arising from the discussion, it was suggested and agreed that the Director of Finance and Business Improvement be requested to join with all District Councils in Kent, Kent County Council and other Kent based public sector bodies in lobbying for additional resources from central government to mitigate the effects of a disorderly Brexit.

RESOLVED:

1. That the updated risk assessment of the Budget Strategy, attached as Appendix A to the report of the Director of Finance and Business Improvement, be noted.
2. That the Director of Finance and Business Improvement be requested to join with all District Councils in Kent, Kent County Council and other Kent based public sector bodies in lobbying for additional resources from central government to mitigate the effects of a disorderly Brexit.

21. TREASURY MANAGEMENT ANNUAL REVIEW 2018/19

The Director of Finance and Business Improvement introduced the report of the Finance Manager setting out details of the activities of the Treasury Management function for the 2018/19 financial year in accordance with CIPFA's Code of Practice on Treasury Management in Local Authorities, and in the context of the economic environment over the past 12 months.

The Director of Finance and Business Improvement advised the Committee that:

- As at 31 March 2019, the Council had investments of approximately £15m. The end of March was generally the lowest point in the year for the Council's cash investments because it was only after the end of the month that Council Tax and Business Rates income started coming in again.
- As at 30 July 2019, the value of the Council's investments had increased to £26m. The context for this was that the Council had a

Capital Programme and would have quite significant cash requirements over the next few years so whilst the Council was holding cash at the moment it would be moving into a borrowing position over the next year or so. The cash held was generally held on a short term basis to keep a degree of liquidity so that it was available when needed for capital investment. Other than for short term purposes, the Council would not borrow before it had to because the cost of borrowing although relatively cheap at just over 2% was still more than it earned on cash balances (approximately 1%).

In response to questions, the Director of Finance and Business Improvement explained that:

- The sum of £377 currently invested with Svenska Handelsbanken was to keep the account open.
- Service loans supported the service objectives of the Council. The Council had provided two service loans; one to Kent Savers, a credit union, to provide financing facilities for people who might not otherwise be able to access finance and the other to support the establishment of the BID. The loan to the Cobtree Manor Estate Charity was a purely commercial transaction, hence the commercial rate of interest on the loan.

RESOLVED:

1. That the review of the financial year 2018/19 undertaken in accordance with CIPFA's Code of Practice on Treasury Management in Local Authorities and the prudential and treasury indicators be noted.
2. That no amendments to the current treasury management procedures are necessary as a result of the review of activities in 2018/19.

22. UPDATED CAPITAL STRATEGY

The Director of Finance and Business presented the report of the Interim Head of Finance proposing the adoption of an updated Capital Strategy. It was noted that:

- CIPFA's Prudential Code which governs the Council's capital investment and borrowing introduced a new requirement in 2019/20 for a Capital Strategy. The intention was to ensure that Councils provide a high-level overview of how capital expenditure, capital financing and treasury management activity contribute to the provision of local public services together with a description of how associated risk is managed and the implications for future financial sustainability.
- Accordingly, the Capital Strategy was an overarching document linking the Strategic Plan, the Medium Term Financial Strategy, the Treasury Management Strategy and the Asset Management Plan. The Capital

Strategy was adopted by the Council in February 2019 but since then best practice had evolved and the Council had started working with new treasury advisers, Link Asset Services. It was therefore appropriate to take the opportunity to review and update the Strategy.

- Specific details of the five year Capital Programme were set out in table 1 to the Capital Strategy. The two main strands to the Strategy were housing development and regeneration where it was proposed to invest £35m and the acquisition of commercial assets where it was proposed to invest another £35m. The acquisition of commercial assets not only generated a financial return, but also supported the local economy.
- The Strategy also included details of the financing of the Capital Programme and the mechanisms to ensure that capital investment and the borrowing to support it is not excessive. It could be seen that at the end of the five year period the financing costs only accounted for 7% of the net revenue stream, which represented a modest level of borrowing.
- As part of the budget process for next year, Members would be asked to consider whether they wished to pursue a more ambitious Capital Programme to deliver the Council's objectives.

In response to a question about whether there was a training need for Members on the Capital Strategy, the Director of Finance and Business Improvement confirmed that a briefing session could be arranged to take place before the meeting of the Committee in January 2020 when the updated Capital Strategy would be discussed.

RESOLVED to RECOMMEND to the COUNCIL: That the updated Capital Strategy, attached as Appendix A to the report of the Director of Finance and Business Improvement, be agreed.

23. EXTERNAL AUDIT FEE LETTER 2019/20

The Committee considered the report of the Interim Head of Finance concerning the External Audit Fee Letter for 2019/20. It was noted that the planned fee for external audit work in relation to the 2019/20 financial statements audit and value for money conclusion was £38,866 which was the same as in 2018/19. The fee for grant claim certification work had not yet been set. Provision for the audit fee had been incorporated into the Council's financial planning.

In response to a question, Ms James of Grant Thornton, the External Auditor, explained the outline audit timetable including the phases of work, the team members and the approximate number of weeks involved.

RESOLVED: That the planned fee of £38,866 for the 2019/20 financial statements audit and value for money conclusion be noted.

24. FINAL STATEMENT OF ACCOUNTS 2018/19

The Interim Head of Finance introduced his report setting out the findings of the External Auditor's work on the 2018/19 financial statements audit and value for money conclusion. It was noted that the audit process was nearing its conclusion and the amended Statement of Accounts attached at Appendix 2 incorporated audit adjustments and suggestions made by Members during the briefing session in June.

Ms James of Grant Thornton presented the External Auditor's Audit Findings Report. She explained that:

- The External Auditor had received the draft financial statements by the end of May 2019 and a revised version in June as adjustments had been made to reflect a change in the treatment of income from Retained Business Rates and a late Rent Allowance Payment. Work was ongoing and it was hoped that a conclusion would be reached the next day, but it was anticipated that an unmodified or unqualified audit opinion would be issued.
- The rest of the report covered, inter alia, the risks considered during the audit work; the potential impact of the McCloud judgement on the pension fund net liability; and audit adjustments, including a technical adjustment relating to depreciation and the treatment of a revalued asset.

In response to questions:

Ms James said that discussions were ongoing regarding the potential impact of the McCloud ruling on the financial statements of local government bodies. At Maidstone, management's view was that the impact of the ruling was not material for the Council and would be considered for future years' actuarial valuations. The External Auditor was of the view that there was sufficient evidence to indicate that a liability was probable but was satisfied that there was not a risk of material error as a result of this issue.

The Director of Finance and Business Improvement said that:

He was aware of the potential for hospitals to claim back rates, but at the moment, it was considered to be a low enough risk not to have to make provision for it in the accounts.

In terms of the change in the Council's current ratio (Current Assets: Current Liabilities) between 2017/18 and 2018/19, there was an unusual item in this year's accounts which had pushed up the ratio. This was the figure for short term creditors which had increased from £14m to £23m. This was because the Council was the administering authority for the Kent and Medway Business Rates Pilot 2018/19 and as at 31 March, the Council was holding cash that had to be distributed to other authorities. This was one of the factors giving rise to a higher liability figure.

During the discussion, it was pointed out that the External Auditor's Audit Findings Report had not been updated in all relevant sections to reflect the revised date for Brexit.

RESOLVED:

1. That the External Auditor's Audit Findings Report, attached at Appendix 1 to the report of the Director of Finance and Business Improvement, be noted.
2. That subject to the issue of an unmodified audit opinion by the External Auditor, the amended audited Statement of Accounts, attached at Appendix 2 to the report of the Director of Finance and Business Improvement, be approved.
3. That the Letter of Representation from the Council to the External Auditor, attached at Appendix 3 to the report of the Director of Finance and Business Improvement, be approved.

25. DURATION OF MEETING

6.30 p.m. to 8.05 p.m.

2019/20 WORK PROGRAMME

	Committee	Month	Lead	Report Author
Annual Complaints Report 2018/19	AGS	Sep-19	Angela Woodhouse	Anna Collier/Alex Munden
Complaints Received Under the Members' Code of Conduct	AGS	Sep-19	Patricia Narebor	Christine Nuttall
Revision of the Covert Surveillance and Access to Communications Data Policy and Guidance Notes	AGS	Sep-19	Patricia Narebor	Gary Rowland
Contract Management Update	AGS	Sep-19	Mark Green	Georgia Hawkes
Annual Accounts 2018/19 Update Report	AGS	Sep-19	Mark Green	Chris Hartgrove
Budget Strategy - Risk Assessment Update	AGS	Sep-19	Mark Green	Mark Green
Internal Audit Charter	AGS	Sep-19	Rich Clarke	Rich Clarke
Data Protection Act 2018 Update	AGS	Nov-19	Angela Woodhouse	Angela Woodhouse
Review of Standards Procedures in the Constitution	AGS	Nov-19	Patricia Narebor	Christine Nuttall
Budget Strategy - Risk Assessment	AGS	Nov-19	Mark Green	Chris Hartgrove
External Auditor's Annual Audit Letter 2018/19	AGS	Nov-19	Mark Green	Chris Hartgrove
External Audit Update Report November 2019	AGS	Nov-19	Mark Green	Chris Hartgrove
Risk Management Annual Report	AGS	Nov-19	RichClarke	Rich Clarke
Internal Audit Interim Update	AGS	Nov-19	Rich Clarke	Rich Clarke

2019/20 WORK PROGRAMME

	Committee	Month	Lead	Report Author
Maidstone Property Holdings Governance Arrangements	AGS	Nov-19	Mark Green	Chris Hartgrove
Treasury Management Mid-Year Review 2019/20	AGS	Nov-19	Chris Hartgrove	John Owen
Annual Governance Statement Update	AGS	Jan-20	Angela Woodhouse	Angela Woodhouse
Budget Strategy - Risk Assessment	AGS	Jan-20	Mark Green	Chris Hartgrove
Counter-Fraud Strategy	AGS	Jan-20	Rich Clarke	Rich Clarke
Housing Benefit Grant Claim	AGS	Jan-20	Sheila Coburn	Liz Norris
Treasury Management Strategy 2020/21	AGS	Jan-20	Chris Hartgrove	John Owen
Audit & Assurance Plan	AGS	Mar-20	Rich Clarke	Rich Clarke
Budget Strategy - Risk Assessment	AGS	Mar-20	Mark Green	Chris Hartgrove
Complaints Received Under the Members' Code of Conduct	AGS	Mar-20	Patricia Narebor	Christine Nuttall
External Audit Update Report March 2020	AGS	Mar-20	Mark Green	Chris Hartgrove
External Auditor's Audit Plan 2019/20	AGS	Mar-20	Mark Green	Chris Hartgrove

Annual Complaints Report 2018/19

Final Decision-Maker	Audit, Governance and Standards Committee
Lead Head of Service/Lead Director	Angela Woodhouse, Head of Policy, Communication and Governance
Lead Officer and Report Author	Anna Collier, Policy and Information Manager and Alex Munden, Information and Corporate Policy Officer
Classification	Public
Wards affected	All

Executive Summary

To provide the Audit, Governance and Standards Committee with an overview of how the Council has performed in responding to complaints in 2018/19 and the Local Government and Social Care Ombudsman’s annual complaints review letter.

This report makes the following recommendations to this Committee:

1. That the Council’s performance on complaint management in 2018/19 and the Local Government and Social Care Ombudsman’s review letter be noted

Timetable

Meeting	Date
CLT	3 September 2019
Audit, Governance and Standards Committee	16 September 2019

Annual Complaints Report 2018/19

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Good complaints management ensures that the Council learns from customer experience and develops services to deliver both priorities	Head of Policy, Communications and Governance
Risk Management	This report is presented for information only and has no risk management implications.	Head of Policy, Communications and Governance
Financial	The process of responding to and dealing with complaints as described in this report has been managed within existing budgets.	Section 151 Officer & Finance Team
Staffing	None Identified	Head of Policy, Communications and Governance
Legal	<p>This report provides a review of complaints received and an update on the Council's complaint handling. If any complaint raises issues that may have legal implications or consequences, the Head of Legal Partnership should be consulted.</p> <p>There is no statutory duty to report regularly to Committee on the Council's performance. However, under Section 3 of the Local Government Act 1999 (as amended) a best value authority has a statutory duty to secure continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness. Regular reports on the Council's performance in responding to complaints assist in demonstrating best value and compliance with the statutory duty.</p>	Team Leader (Corporate Governance), MKLS
Privacy and Data Protection	The recommendations will not have an impact on the processing of personal data, and there is no need for a Data Protection Impact Assessment.	Information & Corporate Policy Officer
Equalities	The complaints process is extremely valued. It can help identify where changes to policy or improvements to service delivery may be required. When a change is proposed an Equalities Impact Assessment is undertaken to	Equalities and Corporate Governance Officer

	ensure that there is no detrimental impact on individuals with a protected characteristic. All complaints with an identified equality issue are investigated with the Policy and Information Officer to ensure that equalities concerns are investigated appropriately.	
Public Health	None Identified	Senior Public Health Officer
Crime and Disorder	None Identified	Head of Policy, Communications and Governance
Procurement	None Identified	Head of Policy, Communications and Governance & Section 151 Officer

2. INTRODUCTION AND BACKGROUND

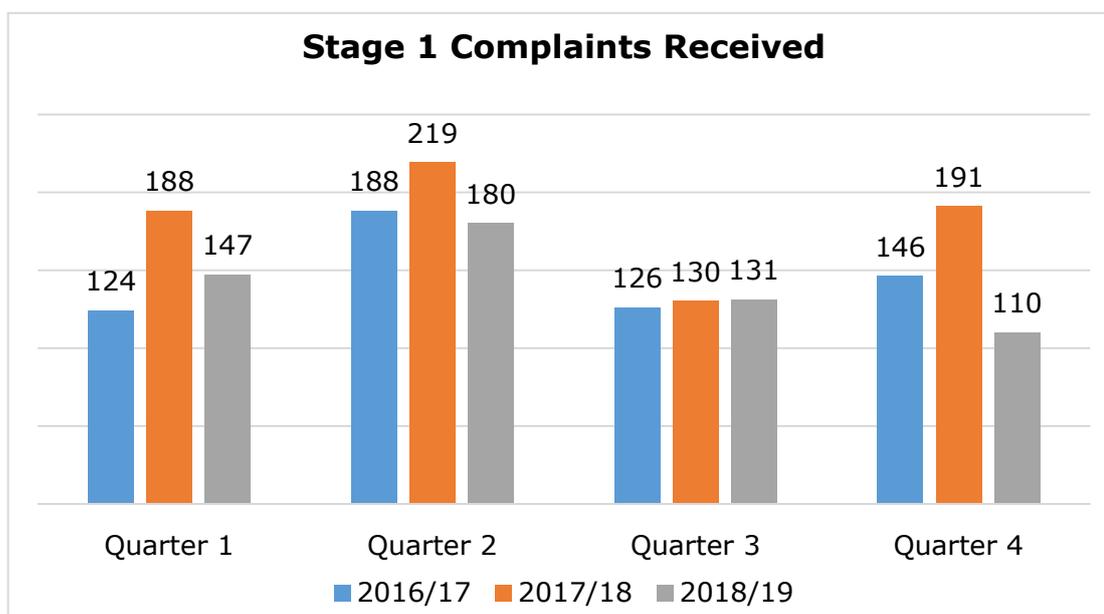
- 2.1 Complaints are managed and monitored by the Policy and Information team.
- 2.2 A complaint is a formal expression of dissatisfaction or disquiet with the quality of a service, a failure to provide a previously agreed service, a policy or a decision made, a technical issue, a lack of communication or customer service, or the attitude or behaviour of a member of staff.
- 2.3 Complaints recorded under the formal procedure do not include those first time representations that were requests for a service and were treated as such. In the event the service request was not handled correctly and created a form of dissatisfaction, as outlined in paragraph 2.2, a complaint would then be raised.
- 2.4 The Council's formal complaints procedure has two stages with the following response timescales:
- Stage 1 within 10 working days; and
 - Stage 2 within 20 working days.
- 2.5 Stage one complaints are dealt with by the manager of the service or their line manager if the complaint is about them. Stage two complaints are investigated by the Head of Policy, Communications and Governance.
- 2.6 Following the completion of stage two, unsatisfied complainants then have the opportunity to refer their complaint to the Local Government and Social Care Ombudsman (LGSCO).
- 2.7 The Council's complaints policy can be found at <https://www.maidstone.gov.uk/home/other-services/find-and-contact-us/additional-areas/our-complaints-policy>

2018/19 Performance Summary

3 Stage 1 and 2 Complaints

Stage 1 Complaints

3.1 The Council received 568 stage 1 complaints in 2018/19 compared to 728 in the previous year, a decrease of 22%. Complaints were higher than usual during 2017/18 partially due to the impact of severe weather. The number of complaints is now comparable to 2016/17.



3.2 The number of complaints by service can be found at appendix 1.

3.3 The number of stage 1 complaints received by the Council accounts for 0.18% of the total volume of calls and online forms received in 2018/19 (317,684).

3.4 Stage 1 complaints for 2018/19 have been analysed in two ways: categorisation of complaints received, and the number of upheld complaints.

The categorisation of complaints received

3.5 Complaints are categorised for one or more of the following reasons. This is the first year we have categorised stage 1 complaints in this way, so we cannot draw comparisons to previous years:

- **Policy & Decision:** usually relates to an outcome of an assessment or a service request that has not been agreed (e.g. our decision to change the bin collection schedule).
- **Failure:** we have a responsibility for delivering a service. What started as a service request and was not completed properly may turn into a failure.

- **Quality:** Data breach, wrong information provided, quality of letters/responses, poor handling i.e. broken bins due to our poor handling.
- **Technical:** Complaints about the website, cyber incidents, the telephone system, or other automated systems we use such as apps/parking machines.
- **Staff Conduct:** complaints about the conduct of members of staff.
- **Customer Service:** not about customer services, but rather the level of service the customer has received when they were dealing with a member of staff that ultimately resulting in them complaining.
- **Communication:** usually about calls, messages, emails etc. not being responded to, or just a general lack of communication.

3.6 The following table displays the number received in each category for the year. It is important to note that the overall number of stage 1 complaints received (568), will not match the reason for each complaint as there may be multiple reasons for dissatisfaction.

Reason for Complaint	Total Number	Percentage of Complaints Received
Policy & Decision	228	40.14%
Failure	119	20.95%
Communication	84	14.79%
Customer Service	81	14.26%
Staff Conduct	57	10.04%
Quality	54	9.51%
Technical	21	3.70%

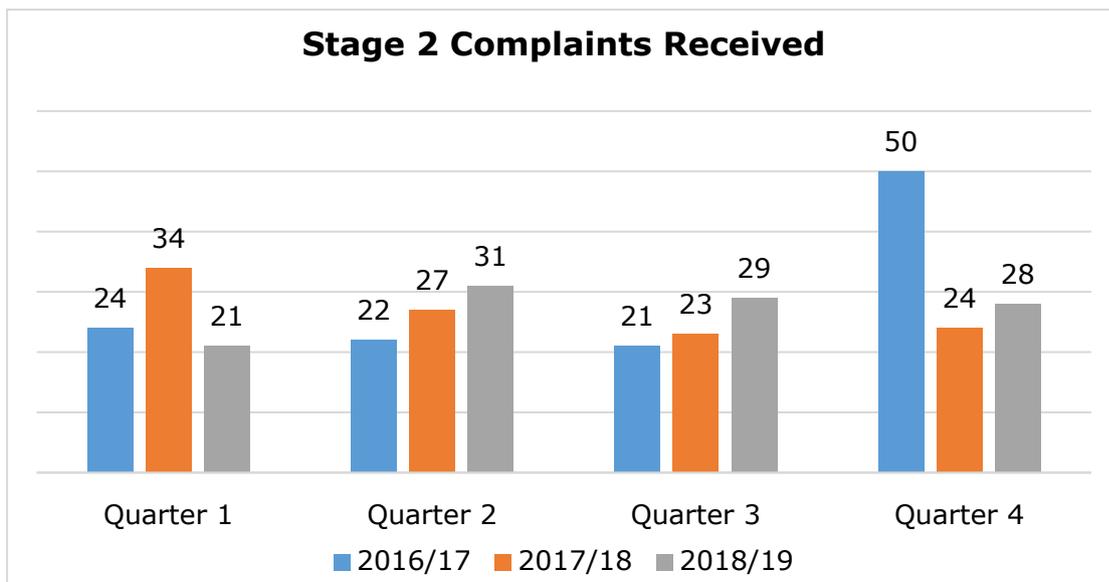
The number of upheld complaints

3.7 An upheld complaint is one that is considered confirmed or supported, by the Council.

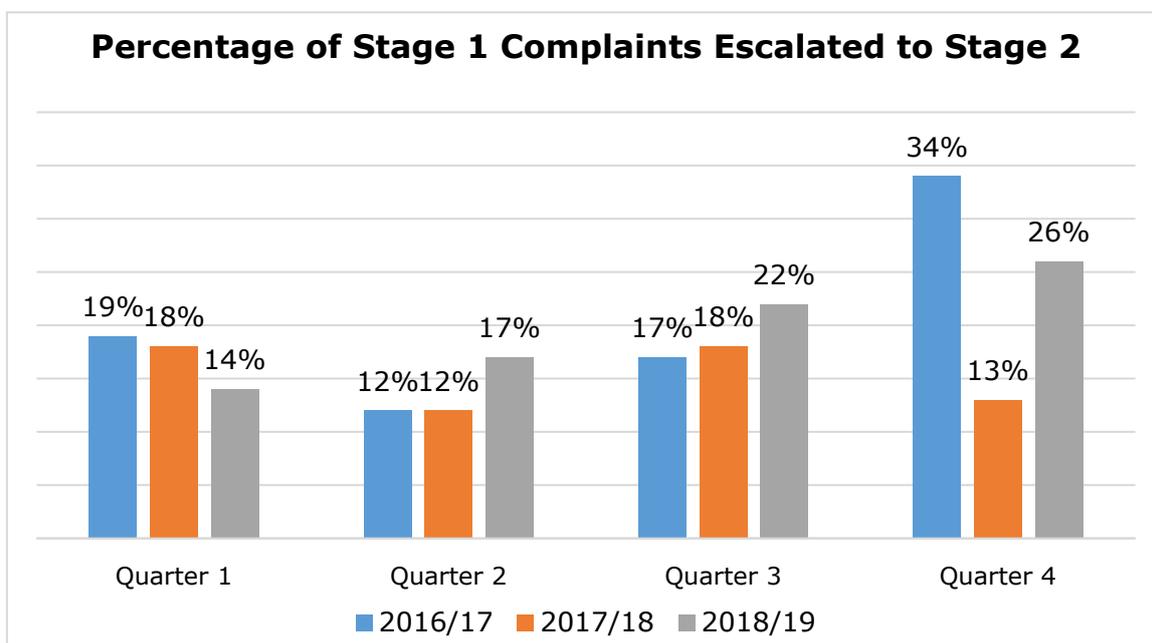
3.8 Of the 568 stage 1 complaints, 31.9% (181) were upheld. Uphold rates were not recorded for stage 1 complaints in 2017/18.

Stage 2 Complaints

3.9 Of the 568 stage 1 complaints received in 2018/19, 109 were escalated to the second stage of the Council's complaints process.



3.10 This is an escalation rate of 19.2%, compared to 14.8% in 2017/18 and is higher than our target of 15% of complaints being escalated. A full comparison by quarter to previous years can be seen in the graph below. The Policy and Information team have started to look at ways of better managing the complaints process reduce the escalation of complaints, these next steps are outlined in paragraph 6.2 of this report.



3.11 A full list of complaints by service can be found at appendix 2.

3.12 Stage 2 complaints for 2018/19 were analysed in three ways: categorisation of complaints received, the number of upheld complaints, and the number of justified complaints.

3.13 The following table displays the number received in each category for the year. It is important to note that the overall number of stage 2 complaints

received (109) will not match the reason for each complaint as there may be multiple reasons for dissatisfaction.

Reason for Complaint	Total Number	Percentage
Policy & Decision	77	70.64%
Failure	15	13.76%
Customer Service	14	12.84%
Staff Conduct	10	9.17%
Quality	9	8.26%
Technical	2	1.83%
Communication	1	0.92%

The number of upheld complaints

3.14 An upheld complaint is one that is considered confirmed or supported, by the Council.

3.15 Of the 109 stage 2 complaints, 16.5% (18) were upheld. This represents a small number of wrongly determined stage 1 decisions.

The number of justified complaints

3.16 A justified complaint occurs when a customer has a valid concern regarding how their stage 1 complaint was handled and/or the decision that was made.

3.17 Stage 2 complaints can have a few combinations in terms of whether it was upheld/not upheld or justified/unjustified. For example, a complaint could be justified in the reason for escalation because the response may not have been sufficiently detailed; but still not upheld as the stage 1 decision was correct.

3.18 31.2% (34) of stage 2 complaints were justified in their reason for complaining. This is an increase from 25% in 2017/18. A complaint can be justified but not upheld as the stage 1 response may not address all the points raised or create further concerns for the customer. The stage 2 investigation may not uphold these points, even though the escalation was justified.

4 Time taken to respond

4.1 The Council's policy on responding to a stage 1 complaint is within 10 working days of receipt. Against that target, 95.2% (541) stage 1 complaints were responded to in time. This is a slight improvement on last year, where 92.6% of complaints were responded to in time.

4.2 The average length of time taken to provide a formal response to all complaints received in 2018/19 was 4.5 days, this has reduced compared to 6.8 days for 2017/18, and the percentage responded to in time has increased. If a complaint is going to be late, the complaints team will contact the customer to advise them and provide a reason for the delay and a confirmed timescale.

- 4.3 When a complaint is escalated to stage 2, an investigation is conducted by the Head of Policy, Communications and Governance and a response is provided within 20 working days. Against that target, 90.8% (99) stage 2 complaints were responded to in time.
- 4.4 The average length of time taken to provide a formal response to the 108 stage 2 complaints received was 19.3 days, this is a slight increase compared to average of 18.6 days for 2017/18, and the percentage responded to in time has also reduced by 2.8%. As with a stage 1, if a complaint is going to be late, the complaints team will contact the customer to advise them and provide a reason for the delay and a confirmed time scale.

5 Summary of Overall Performance

- 5.1 The services with the highest volume of stage 1 complaints (>9%) were Waste (19.37%), Parking (13.56%), Council Tax (11.8%) and Development Management (9.15%). However, as a percentage of overall contact, this is still very low (see 3.3).
- 5.2 Despite the high volume, Parking Services responded to all 77 complaints received in 2018/19 within 10 working days and Waste Services responded to all 110 complaints within 10 working days.
- 5.3 Development Management also had high volumes of complaints (52) but only 2 (3.8%) complaints were not responded to within 10 working days; this is an improvement on 2017/18, when 25% of Development Management's complaints were not responded to within 10 working days.
- 5.4 The services with the highest stage 2 escalation rates were Development Management, Parking, Waste and Planning Enforcement. For all except Planning Enforcement, this isn't surprising given the number of stage 1 complaints received. Planning enforcement complaints tend to arise when we are not taking action against a particular development, or not taking the action that the complainant wants. As this is unlikely to be resolved in the Stage 1 response, we tend to see these issues escalated. As discussed in 3.15, only 16.5% (18) of stage 1 complaints were upheld when escalated to stage 2.

6 Next Steps

- 6.1 It is important that lessons are learned from each complaint to improve the Council's overall service. In the stage 2 complaints investigated in 2018/19, we identified the following themes. Some of these are recurring from the previous year, however it is important to note we have seen improvements and we are seeing positive trends in comparison to last year. We will however continue to improve these areas of responses.
1. Make certain to answer every point contained within the complaint.
 2. Acknowledge the perceived failure or the way a resident felt about the service. This does not admit fault and can go a significant way to

ameliorate the resident's concerns in an effort to reduce the likelihood of stage 2 complaints.

3. The tone adopted in the response can be as important as the information contained, especially as quoting legislation and technical matters can seem defensive even if that is not the intention.
4. Keep in contact with the resident while their complaint is being investigated, if possible. Especially if more time will be required to fully investigate, or if more information is required.
5. Empower managers to offer a resolution or remedy if appropriate
6. Provide clear timescales to manage expectations following a complaint to stop the complaint being raised again

6.2 The Policy and Information Team will be reviewing the complaints process so that we can assess whether a stage 2 escalation will add value to a complaint. This will ensure our time is spent investigating complaints in more detail where we can add to the original stage 1 investigation. This will also stop complaints being investigated where we cannot remedy the complaint, for example cancelling a parking ticket.

6.3 We will also be looking at what further training and guidance can be provided to service managers dealing with complaints so we can reduce the escalation rate. This will also focus on more general areas where refreshing knowledge will be useful, such as identifying unreasonably persistent behaviours.

7 Local Government and Social Care Ombudsman Annual Review Letter (Maidstone Borough Council) 2018/19 and Local Government and Social Care Ombudsman Review of Local Government Complaint 2018/19

7.1 Each year, this report and review letter is released to local authorities countrywide, to feedback statistics from the complaints made to the LGSCO and comment on their performance in responding to investigations. The LGSCO's Annual Review Letter can be seen at Appendix 4 and the report can be viewed here: <https://www.lgo.org.uk/information-centre/reports/annual-review-reports/local-government-complaint-reviews>

7.2 The LGSCO Annual Review Letter criticises the Council for a housing complaint the LGSCO received and upheld, which resulted in the issuing of a public report in 2019/20. This was presented to Full Council on Wednesday 17 July 2019.

7.3 The public report was about the way we dealt with an application to join our housing register. We did not take account of failings in the independent medical advisor's assessment or weigh the applicant's evidence against that of the medical assessment. The LGSCO also considered that there were failings with our decision letter. The LGSCO also investigated charging for further medical assessments. They recommended an apology, and a review of the application at no cost, and that we check for any housing bids that would have been successful. They also recommended a distress payment, and that we review our allocation policy and medical assessment process.

We agreed to all LGSCO recommendations, providing training to officers and accepted the customers application.

7.4 The LGO reviewed 38 complaints and made decisions on 37 complaints in 2018/19. This represents a decrease of 5 decisions made from 2017/18. Compared to 2017/18, the upheld rate has decreased by 9%. The table below shows the LGO decision on each of these:

Decision Category	2017/18 Number	2018/19 Number	Explanation
Closed After Initial Enquiries	14	19	On the basis of the complainants referral the LGO have decided not to investigate
Referred back to Council	13	9	The complaint hasn't gone through the Council's official complaint process and it is referred back to the Council
Invalid/not enough information	3	0	The LGO was unable to progress the complaint
Not Upheld	7	6	Following explanation the LGO agrees with the Council's decision
Upheld	5	3	The LGO doesn't agree with the Council's decision and finds in favour or partial favour with the complainant
Upheld Rate	42%	33%	

7.5 The number of complaints referred to the LGO (38) accounts for 5.6% of the total number of stage 1 and 2 complaints received in 2018/19 (677).

7.6 While the Council would strive to have no complaints upheld by the LGO, the performance overall has been good both in relation to the number of complaints escalated to the LGO, the number investigated and the number upheld. For the three complaints upheld, the table below shows the LGO recommendations. In each case, the recommendation was implemented.

Complaint	Service	Redress
1	Development Management	Null
2	Parking	Apology, Training and guidance
3	Housing Register	Apology, Procedure or policy change/review, Reassessment

7.7 A full list of LGO complaints by service can be found at appendix 3.

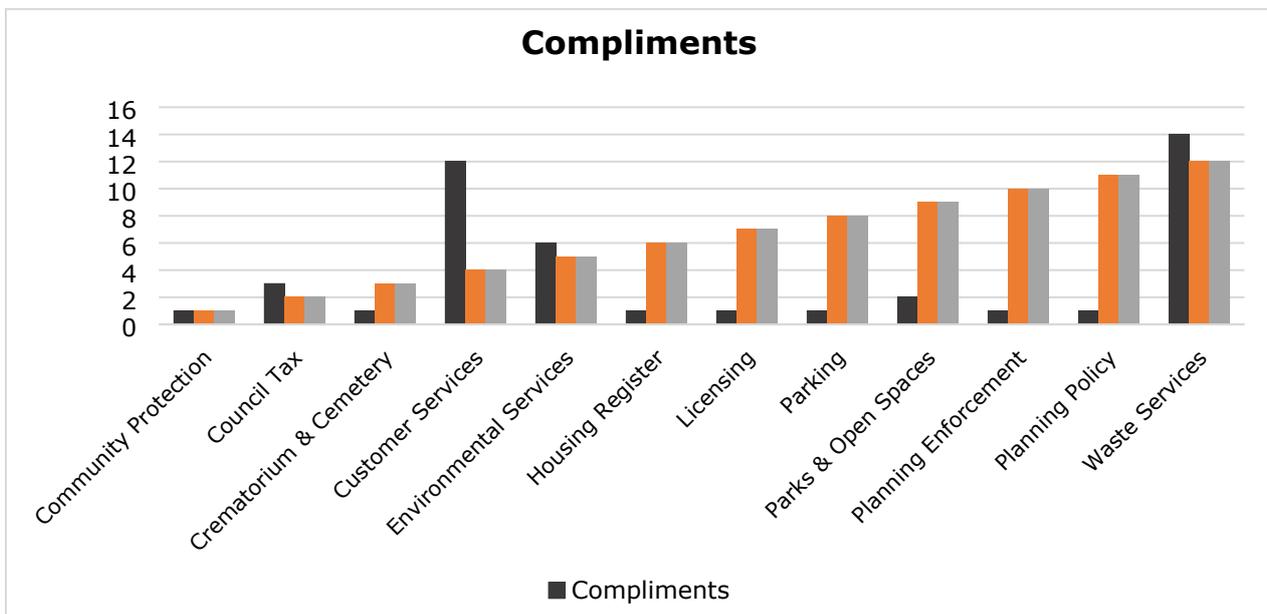
7.8 Maidstone Borough Council was not listed in the Public Interest section of the LGSCO's annual report.

8 Compliments

8.1 A compliment is an expression of praise for an interaction, a service or a product. We log compliments from members of the public as they help us identify good practice, recognise those members of staff who provide a high quality of service, and learn from our customers' feedback.

8.2 The Council received 38 written compliments in 2018/19. Of these, the services with noticeable volumes of compliments were:

- Waste Services
- Customer Services
- Environmental Services (Depot)



9 RISK

9.1 This report is presented for information only and has no risk management implications.

10 REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix 1: 2018/19 Stage 1 Complaint Volume Summary
- Appendix 2: 2018/19 Stage 2 Complaint Volume Summary
- Appendix 3: 2018/19 LGO Complaints by Service
- Appendix 4: Local Government Ombudsman Annual Review Letter 2019

11 BACKGROUND PAPERS - None

2018/19 Stage 1 Complaint Volume Summary:

The number of complaints received can be broken down across the services as follows:

Service Area	Stage 1	% of overall stage 1 received	No. Responded Late	% Late
Benefits	31	5.46%	3	9.7%
Building Control	0	-	0	-
Cobtree Estates	1	0.18%	0	0%
Communications	1	0.18%	0	0%
Community Protection	13	2.29%	1	7.7%
Council Tax	67	11.8%	1	1.5%
Crematorium & Cemetery	2	0.35%	0	0%
Customer Services	19	3.35%	1	5.3%
Democratic Services	1	0.18%	0	0%
Development Management (Planning)	52	9.15%	2	3.8%
Digital Services	12	2.11%	1	8.3%
Economic Development	5	0.88%	1	20%
Environmental Health	0	-	0	-
Environmental Services (Depot)	42	7.4%	1	2.4%
Facilities Management	0	-	0	-
Finance	4	0.7%	0	0%
Heritage Landscape & Design	0	-	0	-
Housing & Health	3	0.53%	0	0%
Housing Homelessness	25	4.4%	1	4%
Housing Register	29	5.11%	1	3.4%
ICT	0	-	0	-
Legal	1	0.18%	0	0%
Licensing	4	0.7%	1	25%
Market	0	-	0	-
Maidstone Culture and Leisure (Events, Leisure Centre, Hazlitt)	7	1.23%	0	0%
Mid Kent Enforcement	6	1.1%	1	16.7%
Museums	2	0.35%	0	0%
Parking	77	13.56%	0	0%
Parks & Open Spaces	19	3.35%	0	0%
Planning Enforcement	23	4.05%	8	34.8%
Planning Policy	1	0.18%	0	0%

Appendix 1: 2018/19 Complaint Volume Summary

Service Area	Stage 1	% of overall stage 1 received	No. Responded Late	% Late
Planning Support	2	0.35%	0	0%
Policy and Information	5	0.88%	2	40%
Property and Procurement	3	0.53%	1	33.3%
Registration Services	1	0.18%	1	100%
Waste	110	19.37%	0	-
Total	568			

2018/19 Stage 2 Complaint Volume Summary:

The number of complaints received can be broken down across the services as follows:

By service:

Service Area	Stage 2	% of overall stage 2 received
Benefits	4	3.67%
Building Control	0	-
Communications	0	-
Community Protection	1	0.92%
Council Tax	8	7.34%
Crematorium & Cemetery	0	-
Customer Services	1	0.92%
Democratic Services	0	-
Development Management (Planning)	20	18.35%
Digital Services	1	0.92%
Economic Development	1	0.92%
Environmental Health	0	-
Environmental Services (Depot)	8	7.34%
Facilities Management	0	-
Finance	0	-
HLD	0	-
Housing & Health	1	0.92%
Housing Homelessness	9	8.26%
Housing Register	7	6.42%
ICT	0	-
Legal	0	-
Licensing	1	0.92%
Market	0	-
MCL (Events, Leisure Centre, Hazlitt)	0	-
Mid Kent Enforcement	3	2.75%
Museums	1	0.92%
Parking	18	16.51%
Parks & Open Spaces	1	0.92%
Planning Enforcement	11	10.09%
Planning Policy	0	-
Planning Support	1	0.92%

Appendix 2: 2018/19 Stage 2 Complaint Volume Summary

Service Area	Stage 2	% of overall stage 2 received
Policy and Information	1	0.92%
Property and Procurement	0	-
Registration Services	0	-
Waste	11	10.09%
Total	109	

2018/19 LGO Complaint Volume Summary:

The number of complaints received can be broken down across the services as follows:

LGO Complaint Description	Service Areas	No. of stage 1 complaints	No. of Stage 2 Complaints	No. received by the LGO	Number Upheld
Adult Care Services	N/A	-	-	-	-
Benefits and Tax	Benefits Council Tax	98	12	10	0
30 Corporate and Other Services	Communications Customer Services Democratic Services Digital Services Economic Development Facilities Management Finance ICT Legal Licensing Market MCL MidKent Enforcement Policy and Information Property and Procurement Registration Services	69	8	1	0
Education and Children's Services	N/A	-	-	-	-

Appendix 3: 2018/19 LGO Complaint Volume Summary

Environment Services	Community Protection Crematorium & Cemetery Environmental Health Environmental Services (depot) Parks and Open Spaces Waste	186	21	3	0
Highways and Transport	Parking	77	18	5	1
Housing	Housing & Health Housing Homelessness Housing Register	57	17	9	1
31 Planning and Development	Building Control Development Management HLD Planning Enforcement Planning Policy Planning Support	78	32	10	1

24 July 2019

By email

Alison Broom
Chief Executive
Maidstone Borough Council

Dear Ms Broom

Annual Review letter 2019

I write to you with our annual summary of statistics on the complaints made to the Local Government and Social Care Ombudsman about your authority for the year ending 31 March 2019. The enclosed tables present the number of complaints and enquiries received about your authority, the decisions we made, and your authority's compliance with recommendations during the period. I hope this information will prove helpful in assessing your authority's performance in handling complaints.

Complaint statistics

As ever, I would stress that the number of complaints, taken alone, is not necessarily a reliable indicator of an authority's performance. The volume of complaints should be considered alongside the uphold rate (how often we found fault when we investigated a complaint), and alongside statistics that indicate your authority's willingness to accept fault and put things right when they go wrong. We also provide a figure for the number of cases where your authority provided a satisfactory remedy before the complaint reached us, and new statistics about your authority's compliance with recommendations we have made; both of which offer a more comprehensive and insightful view of your authority's approach to complaint handling.

The new statistics on compliance are the result of a series of changes we have made to how we make and monitor our recommendations to remedy the fault we find. Our recommendations are specific and often include a time-frame for completion, allowing us to follow up with authorities and seek evidence that recommendations have been implemented. These changes mean we can provide these new statistics about your authority's compliance with our recommendations.

I want to emphasise the statistics in this letter reflect the data we hold and may not necessarily align with the data your authority holds. For example, our numbers include

enquiries from people we signpost back to your authority, some of whom may never contact you.

In line with usual practice, we are publishing our annual data for all authorities on our website, alongside our annual review of local government complaints. For the first time, this includes data on authorities' compliance with our recommendations. This collated data further aids the scrutiny of local services and we encourage you to share learning from the report, which highlights key cases we have investigated during the year.

This year, we issued a public report about the way your Council dealt with a disabled man's application to join its housing register. When deciding the man's home met his needs, the Council did not take account of failings in the independent medical advisor's assessment or weigh the applicant's evidence against that of the medical assessment. In addition, there were failings with its decision letter.

An issue which may have had wider importance was that the man was told to pay £75 if he wanted the decision reviewed, as the Council assumed he was challenging the medical assessment: Council policy is to make this charge where it had already carried out a medical assessment. If the Council routinely asks applicants to pay a fee where a medical assessment has been made, applicants are potentially losing their right to ask for a review at no cost. They are also potentially discouraged by the fee from pursuing their appeal further.

We recommended the Council provide the applicant with an apology, review his application at no cost and check its records to see if any bid for a property he might have made would have succeeded. We also recommended the Council pay the man £250 for the distress caused. I welcome that it agreed to this payment and has since accepted his application. Following a review, the Council says the man has not lost out on any suitable property. We also asked the Council to review its allocation policy and the lawfulness of its provision about charging, to check whether any other applicant may have been affected, and to carry out training for officers. I am pleased it has agreed to do so.

New interactive data map

In recent years we have been taking steps to move away from a simplistic focus on complaint volumes and instead focus on the lessons learned and the wider improvements we can achieve through our recommendations to improve services for the many. Our ambition is outlined in our [corporate strategy 2018-21](#) and commits us to publishing the outcomes of our investigations and the occasions our recommendations result in improvements for local services.

The result of this work is the launch of an interactive map of council performance on our website later this month. [Your Council's Performance](#) shows annual performance data for all councils in England, with links to our published decision statements, public interest reports, annual letters and information about service improvements that have been agreed by each council. It also highlights those instances where your authority offered a suitable remedy to resolve a complaint before the matter came to us, and your authority's compliance with the recommendations we have made to remedy complaints.

The intention of this new tool is to place a focus on your authority's compliance with investigations. It is a useful snapshot of the service improvement recommendations your

authority has agreed to. It also highlights the wider outcomes of our investigations to the public, advocacy and advice organisations, and others who have a role in holding local councils to account.

I hope you, and colleagues, find the map a useful addition to the data we publish. We are the first UK public sector ombudsman scheme to provide compliance data in such a way and believe the launch of this innovative work will lead to improved scrutiny of councils as well as providing increased recognition to the improvements councils have agreed to make following our interventions.

Complaint handling training

We have a well-established and successful training programme supporting local authorities and independent care providers to help improve local complaint handling. In 2018-19 we delivered 71 courses, training more than 900 people, including our first 'open courses' in Effective Complaint Handling for local authorities. Due to their popularity we are running six more open courses for local authorities in 2019-20, in York, Manchester, Coventry and London. To find out more visit www.lgo.org.uk/training.

Finally, I am conscious of the resource pressures that many authorities are working within, and which are often the context for the problems that we investigate. In response to that situation we have published a significant piece of research this year looking at some of the common issues we are finding as a result of change and budget constraints. Called, [Under Pressure](#), this report provides a contribution to the debate about how local government can navigate the unprecedented changes affecting the sector. I commend this to you, along with our revised guidance on [Good Administrative Practice](#). I hope that together these are a timely reminder of the value of getting the basics right at a time of great change.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M King', with a stylized flourish at the end.

Michael King
Local Government and Social Care Ombudsman
Chair, Commission for Local Administration in England

Local Authority Report: Maidstone Borough Council

For the Period Ending: 31/03/2019

For further information on how to interpret our statistics, please visit our [website](#)

Complaints and enquiries received

Adult Care Services	Benefits and Tax	Corporate and Other Services	Education and Children's Services	Environment Services	Highways and Transport	Housing	Planning and Development	Other	Total
0	10	1	0	3	5	9	10	0	38

35

Decisions made

				Detailed Investigations			
Incomplete or Invalid	Advice Given	Referred back for Local Resolution	Closed After Initial Enquiries	Not Upheld	Upheld	Uphold Rate (%)	Total
0	0	9	19	6	3	33	37

Note: The uphold rate shows how often we found evidence of fault. It is expressed as a percentage of the total number of detailed investigations we completed.

Satisfactory remedy provided by authority

Upheld cases where the authority had provided a satisfactory remedy before the complaint reached the Ombudsman	% of upheld cases
0	0

Note: These are the cases in which we decided that, while the authority did get things wrong, it offered a satisfactory way to resolve it before the complaint came to us.

Compliance with Ombudsman recommendations

Complaints where compliance with the recommended remedy was recorded during the year*	Complaints where the authority complied with our recommendations on-time	Complaints where the authority complied with our recommendations late	Complaints where the authority has not complied with our recommendations	
2	1	1	0	Number
	100%		-	Compliance rate**
<p>Notes:</p> <p>* This is the number of complaints where we have recorded a response (or failure to respond) to our recommendation for a remedy during the reporting year. This includes complaints that may have been decided in the preceding year but where the data for compliance falls within the current reporting year.</p> <p>** The compliance rate is based on the number of complaints where the authority has provided evidence of their compliance with our recommendations to remedy a fault. This includes instances where an authority has accepted and implemented our recommendation but provided late evidence of that.</p>				

**Audit, Governance & Standards 16th September 2019
Committee**

Complaints Received Under the Members’ Code of Conduct and Investigation into the Release of Exempt Information Contrary to Part 1 of Schedule 12A to the Local Government Act 1972

Final Decision-Maker	Audit, Governance & Standards Committee
Lead Head of Service/Lead Director	Patricia Narebor – Head of Legal Partnership and Monitoring Officer
Lead Officer and Report Author	Christine Nuttall – Senior Governance Lawyer
Classification	Public
Wards affected	All

Executive Summary

The report provides an update to the Committee on complaints received under the Members’ Code of Conduct for the period 15th January 2019 to date. In addition, paragraph 3 of the report sets out the results of an investigation as set out as an Appendix entitled “Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (the Report).

This report makes the following recommendations to this Committee:

1. That the contents of the report be noted; and
2. That it be noted that as a result of the investigation into the release of exempt information the following actions to help manage the risks will be taken:
 - i. A training course will be made available to Members on Media training and insight;
 - ii. Officers will be provided with training from Democratic Services on how to structure reports to minimise the information required to be taken in Part II of a meeting
 - iii. Regular meetings with Communications will be offered to all Group Leaders to review, plan and schedule public relations, as appropriate, for Council activities; and
 - iv. Tighter control of exempt information, via named checking in of information after a meeting, will be implemented by Democratic Services.

Timetable

Meeting	Date
Audit, Governance & Standards Committee	16 th September 2019

Complaints Received Under the Members' Code of Conduct and Investigation into the Release of Exempt Information Contrary to Part 1 of Schedule 12A to the Local Government Act 1972

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	High standards of conduct are essential amongst Members in delivering the Council's priorities. The Code of Conduct and complaints procedure supports this.	Senior Governance Lawyer
Cross Cutting Objectives	No impact.	Senior Governance Lawyer
Risk Management	Paragraph 2 of this report is presented for information only and has no risk management implications. An effective Code of Conduct and robust complaints procedure minimises the risk of Member misconduct and is part of an effective system of governance. Paragraph 3 of this report is presented for information only. It is recommended that the outcome of the investigation entitled "Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Report) and actions arising to manage risks be noted.	Senior Governance Lawyer
Financial	There are no direct financial implications; however, should it be necessary to appoint external Independent Investigators the cost of this will be met by the Borough Council.	Senior Governance Lawyer
Staffing	The complaints procedure is dealt within the remit of the Monitoring Officer with input from the Legal Team as	Senior Governance Lawyer

	required. The Investigation into the Release of Exempt Information contrary to Part 1 of Schedule 12A to the Local Government Act 1972 was also dealt within the remit of the Monitoring Officer with the Investigation taking place from within the Legal Team.	
Legal	The requirements of the Localism Act 2011 with regards to the Code of Conduct and complaints procedure are set out within the report. The reporting process ensures that the Committee continues its oversight of the Code of Conduct as required by the Constitution. Exempt information was released contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972. The Monitoring Officer looked into this matter based on her statutory and constitutional authority.	Senior Governance Lawyer
Privacy and Data Protection	No personal information is provided as part of the report.	Senior Governance Lawyer
Equalities	Any potential to disadvantage or discriminate against different groups within the community should be overcome within the adopted complaints procedures.	Senior Governance Lawyer
Crime and Disorder	None identified in the report.	Senior Governance Lawyer
Procurement	None identified in the report.	Senior Governance Lawyer

2. COMPLAINTS RECEIVED UNDER THE MEMBERS' CODE OF CONDUCT

Introduction and Background

- 2.1 It is a requirement under the Localism Act 2011 that all Councils adopt a Code of Conduct and that the Code adopted must be based upon the Nolan

Principles of Conduct in Public Life. The current Members' Code of Conduct ("the Code") for Maidstone Borough Council is set out in the Constitution.

- 2.2 The Localism Act 2011 requirement to adopt a Code of Conduct also applied to all the Parish Councils. Most Parish Councils in the Maidstone area have adopted a similar Code of Conduct to the Borough Council, based on a Kent wide model. A few Parish Councils have adopted their own particular Code.
- 2.3 Under the Localism Act 2011 Maidstone Borough Council is responsible for dealing with any complaints made under the various Codes of Conduct throughout the Maidstone area.
- 2.4 The Constitution stipulates that oversight of Code of Conduct complaints is part of the remit of the Audit, Governance and Standards Committee.
- 2.5 As part of the Committee's oversight function it is agreed that the Monitoring Officer will provide reports on complaints to the Audit, Governance and Standards Committee. It should be noted that the Localism Act 2011 repealed the requirement to publish decision notices; therefore in providing the update to the Committee the names of the complainant and the Councillor complained about are both kept confidential in accordance with the Data Protection Act 2018.
- 2.6 Since the last report to this Committee on 14th January 2019 there have been 5 new Parish Council complaints as follows:
 - Allegation of inappropriate dealing with the parish planning committee. The complaint failed one or more of the Legal Jurisdiction Criteria Test and the complaint was rejected.
 - Allegation of an aggressive and rude manner in a parish meeting. There was an informal resolution to the complaint and the Subject Member undertook training.
 - Allegation of inappropriate dealings in a planning matter against two Subject Members. The matter was informally resolved which resulted in training taking place.
 - Allegation of verbal assault and aggression. Awaiting outcome of Police inquiries before completing assessment.
 - Allegation of a Data Protection Breach. The complaint failed the Local Assessment Criteria Test and the complaint was rejected, although there was a recommendation that Councillors are given further training on the use of IT systems and reminded of their duty to ensure data is accessed and handled in line with data protection regulations.
- 2.7 There has also been one Borough Councillor complaint, in relation to an allegation of disclosure of confidential information. The matter was resolved through a mediation meeting.

3. EXEMPT INFORMATION LEAKED IN CONTRAVENTION OF PARAGRAPH 3 OF PART 1 OF SCHEDULE 12A TO THE LOCAL GOVERNMENT ACT 1972

Introduction and Background

- 3.1 On the 22nd May 2019 the Policy and Resources Committee elected to go into exempt session in relation to a report that contained exempt information. The exemption was applied by virtue of paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, as the report had the potential to compromise the financial and business affairs of the Council and third parties. It was deemed to be in the public interest to apply the exemption to avoid the Council breaching its contractual obligations and to avoid the Council compromising its financial position.
- 3.2 Unfortunately, the following day exempt information contained within the exempt report was published by the press in contravention of Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.
- 3.3 The Monitoring Officer in consultation with the Chief Executive decided that it was necessary to undertake an investigation regarding the release of the exempt information that was provided to members and discussed at the Committee.
- 3.4 As a result the Monitoring Officer appointed an experienced governance lawyer, currently employed internally by the Mid Kent Legal Partnership, to carry out the investigation. The investigator's report entitled "Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 Schedule 12A to the Local Government Act 1972" is annexed as an appendix to this report.

4 AVAILABLE OPTIONS

- 4.1 That the Committee note the update on complaints received under the Members' Code of Conduct and note the actions arising from the investigation in order to reduce the risks of exempt information being made public.
- 4.2 To not consider the investigation – this would undermine the importance of looking into the matters identified and would send out an inappropriate message regarding the control of exempt information.

5. RISK

- 5.1 Paragraph 2 of this report is presented for information only and has no risk management implications.
- 5.2 The identified actions arising from the investigation, set out in the recommendation, will help manage the risks of exempt information being

made public.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Members of the Audit, Governance and Standards Committee and the Independent Person in accordance with the relevant complaints procedure will be consulted, on individual complaints as and when necessary.
-

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 Paragraph 2 of the report is for information only and as a result no further action will be taken.
-

8. REPORT APPENDIX

“Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Report)”

Investigation into the Release of Exempt Information Contrary to Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Report)

1. Introduction and Summary

This Report has been prepared following an investigation into the release of exempt information contained within an exempt item that went to the Policy and Resources Committee at Maidstone Borough Council on 22nd May 2019. The release of exempt information was in contravention of Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972.

Circulation of exempt information contained within the report that was entitled “Call for Sites” had the potential to compromise the financial and business affairs of the Council and third parties. It was deemed to be in the public interest to apply the exemption to avoid the Council breaching its contractual obligations and avoid compromising the Council’s financial position.

2. Statutory and Constitutional Responsibilities of the Chief Executive and Monitoring Officer

Part 2.3 of the Constitution of Maidstone Borough Council sets out the responsibility for functions relating to officers and paragraph 2.3.1 provides that the Chief Executive may undertake any decision in respect of the matters listed under paragraph 1 to 21. Paragraph 4 of that list provides for a decision to ensure the propriety of the Council’s actions together with the Monitoring Officer. Therefore, this delegation enables the Monitoring Officer, on the authority of the Chief Executive, to undertake an investigation. In addition, the Monitoring Officer has specific delegated power to provide advice to Councillors and Officers of the Council on all legal issues.

The Local Government and Housing Act 1989, section 5 enables the Monitoring Officer to review actions taken by an officer or member where the action has given rise to or is likely to give rise to a contravention of any enactment or rule of law.

The purpose of this investigation is to enable the Monitoring Officer to review actions taken by an officer or member where the action has given rise to or is likely to give rise to a contravention of any enactment or rule of law, namely the release of exempt information in contravention of Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972. As a result the investigation could result in a formal code of conduct complaint or an officer disciplinary complaint.

It is important for there to be a public audit trail of any investigation and so the outcome of the investigation, as set out in this Report, is to be reported to the Audit, Governance and Standards Committee of Maidstone Borough Council. The Constitution of Maidstone Borough Council states that the purpose of the Audit, Governance and Standards Committee of Maidstone Borough Council is the promotion and maintenance of high standards of Councillor and Officer conduct within the Council.

In order for this to be achieved the ability of the Monitoring Officer to investigate and or take action is essential, and facilitates the close and good working relationship between the Monitoring Officer and the Audit, Governance and Standards Committee. This enables the Monitoring Officer to fulfil her role and responsibilities in keeping up ethical standards within the Council.

3. Guidance Previously Given to Members

The Monitoring Officer felt the need to produce a briefing note dated the 10th January to the Leaders' Forum, giving guidance entitled "Councillor Press Briefings and dealing with the Press". This was detailed guidance reminding Councillors about their obligations as set out in the Protocol on Councillor/Officer Relations and the Code of Conduct.

On the 21st January 2019 the Monitoring Officer provided Members of Maidstone Borough Council with guidance about dealing with confidential and exempt items on agendas and at meetings. The guidance in relation to exempt information explained that a local authority can exclude the public or press from a meeting by resolution during an item of business if the item includes exempt information. Members were given a list of the types of information that could be regarded as exempt, and information on the importance of the public interest test. They were also given practical examples of confidential and exempt information for guidance.

In addition, there is a Protocol on Councillor/Officer Relations and the Code of Conduct for Members, details of which are given to Members on induction along with information on dealings with the media and the Policy on Social Media.

Maidstone Borough Council also has its own communications team, through which press inquiries should be channelled.

4. The Need for the Exemption to Apply

The Chief Executive and the Monitoring Officer reminded the Policy and Resources Committee on the 22nd May 2019 the reason why the agenda item was being considered as exempt under Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972, this being information relating to the financial or business affairs of any particular person (including the authority holding that information). Circulation of the information had the potential to compromise the financial and business affairs of the Council and third parties. It was in the public interest to apply the exemption to avoid the Council breaching its contractual obligations and compromising the Council's financial position. The Chief Executive advised the Policy and Resources Committee that the Council had signed non-disclosure agreements with respect to an item in the exempt report.

The investigation obtained a transcript of the debate that took place at the Policy and Resources Committee on the 22nd May 2019 when deciding whether to go into exempt session. The webcast of the debate was also viewed. The debate was lengthy and did take into account the public interest test. The publicly available minutes are as follows:

“TO CONSIDER WHETHER ANY ITEMS SHOULD BE TAKEN IN PRIVATE BECAUSE OF THE POSSIBLE DISCLOSURE OF EXEMPT INFORMATION

The Committee considered whether to take Item 10, Call for Sites in public. Advice was provided by Officers, and the Committee decided that it was not possible to consider the report in public as non-disclosure agreements had been signed with some landowners impacted by sites in the report.

RESOLVED: That Item 10. Call for Sites be taken in private as proposed.

Voting: For – 11 Against – 3 Abstentions – 1

Note: Two Councillors requested that their dissent be noted”.

5. Exempt Information that was Leaked to the Press in Contravention of Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972

The author of the Exempt Report entitled “Call for Sites” was the Director of Regeneration & Place, who willingly took part in the investigation process. He identified those parts of the exempt report that had been leaked to the press in contravention of Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972. These were as follows:

- Downs Mail publication entitled “Lenham could be hit with 5,000 new homes in council’s call for sites” dated 23rd May 2019

“Lenham could be hit with up to 5,000 extra houses in one hit as the Maidstone Borough Council’s “call for sites” reaches its conclusion. Downs Mail understands a proposal favoured by officers at Liberal Democrat-led Maidstone Borough Council would see a “garden village” scheme, possibly at or near Lenham Heath for 2,500 – 5,000 new houses. It would, fear critics, turn an historic village into a small town.

....One MBC insider said “Lenham is seen as a good spot as it has links via rail and road. The officers have it near the top of the list”. The scheme would cause fewer political headaches as both local councillors, ... are independents..... Cllr. ... who spoke passionately about the scheme to a closed session of Maidstone Borough Council’s policy and resources committee last evening, was unavailable for comment today”.

- Downs Mail publication entitled “Landowner reveals 1,000 homes plans as council ‘call for sites’ deadline passes” dated 24th May 2019

“one is for a massive “garden village” development on or near Lenham Heath. This would comprise 2,500 to 5,000 houses. Local independent councillor ... was moved to tears as he spoke about the possibility at a closed session meeting this week at the town hall”.

- Kent Messenger, Maidstone publication entitled “Council head urged to end housing talks secrecy” dated June 13th 2019

“It was later leaked to the press the meeting of the authority’s policy and resources committee included a proposal for a ‘garden community’ of up to 5,000 homes at Lenham Heath”

The Director of Regeneration & Place only identified those press articles that he considered contained truly exempt information, by virtue of the fact that the information had not previously been reported publicly by Maidstone Borough Council. Such identification took place via a process whereby the Director of Regeneration & Place examined each press article and circled those parts of the various articles that contained exempt information, not previously within the public domain, being paragraphs 1.31 to 1.49 of the exempt report.

Any reference to named Councillors has been redacted from the press articles for Data Protection purposes.

6. Councillors and Officers that were interviewed as part of the process of investigation

All Members present at the Policy and Resources Committee held on Wednesday 22nd May 2019 and listed in the Minutes of the Meeting were invited for interview.

In addition, all those Members who would have received the exempt papers, being Members of the Committee, although not present at the actual meeting, were also invited for interview, as well as all Group Leaders, and any Member having the exempt papers on a “need to know” basis.

All officers present at the meeting were also invited for interview as well as an officer from the Communications team at Maidstone Borough Council.

The majority of Councillors invited for interview willingly took part in the process, with only a hand full not taking part, three of whom were present at the meeting on the 22nd May 2019.

All those officers invited for interview willingly agreed to be interviewed.

None of the Members and Officers interviewed, or who communicated in writing, admitted to leaking exempt information to the Press in contravention of Paragraph 3, of Part 1 of Schedule 12A of the Local Government Act 1972. In fact they all strongly denied any involvement in leaking the exempt information.

No evidence emerged to identify who may have leaked the exempt information.

It was established that there had been one press release by a Member of the Committee to the Downs Mail on the 23rd May 2019, which was the day after the Policy and Resources Committee had met. The contents of the press release was to do with the Exempt item on the Agenda. However, the contents of the Press release was examined by the Director of Regeneration & Place who confirmed that the Press Article did not contain any exempt information.

7. Conclusions reached as a result of the Investigation

Unfortunately, the investigation has not been able to establish, based on the balance of probabilities, who was, or may have been responsible for the exempt information being leaked to the press.

However, the majority of Members and Officers interviewed were extremely concerned that exempt information had been leaked to the press, in breach of the legislative requirements.

The investigation did establish that adequate guidance had been given by the Monitoring Officer, prior to the leak, in relation to Members' responsibilities regarding the need to keep certain Council information confidential and the need not to leak exempt information. Consequences of leaking confidential or exempt information to the press had also been high-lighted to Members.

8. Potential damage that can be caused by Exempt Information Being Leaked

The initial position should always be in favour of disclosure of as much information as possible about the decisions the council takes, and only in limited circumstances should information be withheld, where there is a justification, in law. However, once that decision has been taken both Members and Officers should respect that decision and abide by the ruling.

The potential damage that can be caused as a result of leaking exempt information to the press is far reaching, and can have damaging results, for example:

- The authority can be brought into disrepute.
- Member(s) of the authority can themselves be brought into disrepute.
- Members can be shown to have breached the Code of Conduct.
- There could be disciplinary action taken against Officers.
- Data Protection breaches or Freedom of Information breaches.
- The relationship between Councillors and Officers could be severely damaged
- Public respect for Members and Officers could be diminished.
- Trust within Political Groups could be tarnished as well as overall Member and Officer relations.
- Third party rights could be affected, and the Councils ability to negotiate successfully in the interests of the Council, and the wider community.
- Legal proceedings, such as the ability to settle a claim successfully could be put in jeopardy.

- The Council's good relationship with the press could also be tarnished as the press could be seen as a 'demon' rather than an important ally to both Councillors and Officers, and to the democratic process as a whole.

9 Recommendations for the future

Safeguards can be put in place to try and minimise the risk of exempt information being leaked to the press.

Practical measures could be adopted, for example:

- Members and Officers being asked to sign up to a Confidentiality Undertaking before being provided with confidential information. The Undertaking could also include the non-disclosure of exempt information.
- Training in relation to dealings with the Media could be increased within the organisation for both Officers and Members via the Council's Communication Team.
- The Democratic Services Team could put in place tighter controls on the return of exempt papers.
- Where there is considered to be exempt information in a report, officers could see whether the exempt information could be placed in a schedule separate to the main body of the report, rather than making all the report exempt.
- Group Leaders and the Communications Team could work together to establish press procedures which would promote the Council and keep residents informed.

These are only a few suggestions in order to facilitate the culture of one team, Members and Officers working together to enhance two of the principles within the Local Code of Corporate Governance for Maidstone, this being:

- A. Behaving with integrity, demonstrating strong commitment to ethical values, and respecting the rule of law
- B. Ensuring openness and comprehensive stakeholder engagement.

Investigation Report compiled by
Christine Nuttall, Senior Lawyer at Mid Kent Legal Services (Locum)

Dated

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

16 September 2019

REVISION OF THE COVERT SURVEILLANCE AND ACCESS TO COMMUNICATIONS DATA POLICY AND GUIDANCE NOTES

Final Decision-Maker	Audit, Governance and Standards Committee
Lead Head of Service	Patricia Narebor, Head of Legal Partnership
Lead Officer and Report Author	Gary Rowland, Trainee Lawyer Corporate Governance
Classification	Public
Wards affected	All

Executive Summary

Following the approval of the Corporate Leadership Team on 20 August 2019, this report seeks the approval of the Audit, Governance and Standards Committee for the revised policy and guidance notes on Covert Surveillance and Access to Communications Data. This follows the inspection of the Investigatory Powers Commissioner’s Office (“IPCO”) in June 2018. The revised policy incorporates the up to date guidance produced by the Surveillance Commission and also the amendment to the Regulation of Investigatory Powers Act (RIPA) in relation to communications data.

This report makes the following recommendations to this Committee:

1. That the Audit, Governance and Standards Committee, approve the revised Covert Surveillance and Access to Communications Data Policy and Guidance Notes (“the policy”) in order to meet the recommendations set out in the IPCO’s report, specifically;
 - a) the addition at section 4.2 of the Policy that urgent oral authorisations can no longer be relied upon;
 - b) the update at 2.7.3 of the Policy to remove reference to urgency provisions and add the requirement to record the date that any authorisations are given;
 - c) the addition at section 1.8 of the Policy highlighting the requirement for the Co-ordinating officer to ensure training is carried out at regular intervals; and
 - d) the addition at section 1.39 of the Policy that a register shall be kept in the Central Record containing a list of all online Council profiles utilised and a record of their use when carrying out surveillance of social media sites.

Timetable	
<i>Meeting</i>	<i>Date</i>
Audit, Governance and Standards Committee	16 September 2019

REVISION OF THE COVERT SURVEILLANCE AND ACCESS TO COMMUNICATIONS DATA POLICY AND GUIDANCE NOTES

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	We do not expect the recommendations will by themselves materially affect achievement of corporate priorities. However, they support the Council’s overall achievement of its aims by updating the Council’s approach to RIPA as required by legislation and IPCO.	Principal Solicitor, Governance
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendation(s) supports the overall achievement(s) of all the cross cutting objectives by ensuring that the Council is complying with statutory requirements when undertaking investigations and surveillance.</p>	Principal Solicitor, Governance
Risk Management	The risk implications are set out in section 5 of the report.	Principal Solicitor, Governance
Financial	The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.	Interim Head of Finance
Staffing	No additional staffing.	Principal Solicitor, Governance
Legal	Accepting the recommendations will fulfil the Council’s duties under Regulation of Investigatory Powers Act 2000 and meets the requirements of IPCO.	Principal Solicitor, Governance

Privacy and Data Protection	No implications.	Principal Solicitor, Governance
Equalities	No implications.	Principal Solicitor, Governance
Public Health	No implications.	Principal Solicitor, Governance
Crime and Disorder	Accepting the recommendations ensures that the Council complies with its obligations under RIPA, which are important in the Council's role in controlling crime and disorder.	Principal Solicitor, Governance
Procurement	No implications.	Principal Solicitor, Governance

2. INTRODUCTION AND BACKGROUND

- 2.1 The Home Office Covert Surveillance and Property Interference Revised Code of Practice 2010 requires that the Council reviews its use of RIPA and reviews the policy at least once a year.
- 2.2 Following the IPCO's inspection, which was carried out in June 2018 and subsequently followed up with a report, it became apparent that the guidance was in need of updating.
- 2.3 The IPCO's report made 4 recommendations following their inspection:
- 1) The Central Record should be updated to ensure that all references to 'urgent oral authorisations' are removed. There has been no provision for Local Authorities to use urgent oral applications since 2012;
 - 2) The Central Record should be updated to ensure the correct headings are being used, as referenced in the policy at 2.7.3. Any references to 'urgency provisions' must be removed and the date should be recorded for all court authorisations;
 - 3) The Senior Responsible Officer should ensure that RIPA training is refreshed for all relevant officers undertaking the role of applicant or Authorising Officer, at regular intervals. Such training should include discussion of Covert Human Intelligence Sources ("CHIS") recognition and management issues and the use of the internet and social media during investigations. It is only usually the Police who use CHIS, however Local Authorities do have the option; and

- 4) Changes should be made to the Covert Surveillance and Access to Communication Data Policy and Guidance Note with regards to the monitoring of social networking sites at section 1.39, as no control measures are currently outlined or any direction given as to whether the Council wishes to permit such activity.

The full Inspector's report is attached at Appendix A. The refreshed policy is at Appendix B.

- 2.4 To give effect to recommendation 1, all references to 'urgent oral authorisations' shall be removed from the Central Record.
- 2.5 To give effect to recommendation 2, all references to 'urgency provisions' shall be removed from the Central Record and the need to ensure court authorisation dates are recorded shall be highlighted with the appropriate forms.
- 2.6 To give effect to recommendation 3, it is proposed that the RIPA Co-ordinating Officer shall ensure external training (carried out in-house) continues to be provided to key officers on a biennial basis. It shall be mandatory for all RIPA Authorising Officers to attend the training. A record of all training undertaken shall be held in the Central Record along with a list of attendees. Training was last carried out by Act Now Training on 1 April 2019.
- 2.7 To give effect to recommendation 4 regarding the monitoring of social media sites, a register of the number of times the Council's profile is used to monitor social media sites should be stored in the Central Record.
- 2.8 The Committee is also asked to consider the inclusion of non-RIPA surveillance within the policy. Where the criminal threshold for surveillance is not met because the offence is low level, e.g. littering, surveillance can still be considered as a last resort if it is deemed to be both necessary and proportionate. In such cases, a similar procedure used for the authorisation (as set out on pages 15 -19 of the policy) is to be followed; however the relevant non-RIPA form is to be used. For non-RIPA applications there is no requirement to obtain approval from the Magistrates Court.

The table below sets out examples of how the process applies in relation to the various criminal thresholds:

Threshold	Example of criminal activity	Court Approval Required?	Data Available
Minimum 12 month imprisonment "serious crime"	Illegal waste business. Repeat incidents of fly tipping	Yes	<u>Category B Data</u> <ul style="list-style-type: none"> • Itemised Billing • Call Diversion • Data Download • Outgoing Call Data <u>Category C Data</u> <ul style="list-style-type: none"> • Name & Address • Method of Payments • Customer Info
Minimum 6 month imprisonment or underage sales of alcohol or tobacco	Single incident of fly tipping	Yes	Category C Data
Less than 6 month imprisonment / monetary fine	Littering	No	Category C Data

3. AVAILABLE OPTIONS

- 3.1 To approve the actions proposed as set out in the recommendations of this report. This will address the recommendations within the IPCO's report and meets the Inspector's requirements. This option also proposes accepting the non-RIPA process.
- 3.2 The Committee could approve such additional or alternative actions that it deems appropriate, provided such actions meet the Inspector's requirements.
- 3.3 Do nothing. This option would result in the recommendations not being implemented. This is likely to result in an adverse critical report following the next IPCO inspection.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 1 is the preferred option as it would implement the Inspector's recommendations.

5. RISK

5.1 Currently the risk implications are low as the Council has not authorised any activity under RIPA since 2012. However, there is risk of litigation and challenge if authorisations are incorrectly given in the future without proper understanding of the current requirements. The actions set out in the Inspector's report and recommended in this report will mitigate any such risks.

6. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

- Appendix A: Inspector's Report
 - Appendix B: Draft Covert Surveillance and Access to Communications Data Policy and Guidance Notes
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APPENDIX A

INSPECTOR'S REPORT

IPCO/INSP/075

The Rt. Hon. Sir Adrian Fulford
Investigatory Powers Commissioner
Investigatory Powers Commissioner's Office
PO Box 29105
London SW1V 1ZU

25 June 2018

OSC INSPECTION – MAIDSTONE BOROUGH COUNCIL

1 Date of Inspection

A desktop review of Maidstone Borough Council was undertaken on Monday 25th June 2018.

2 Inspector

Mrs Gráinne Athorn.

3 Introduction

- 3.1 Maidstone Borough Council (MBC) employs more than 500 staff and serves the residents of the county town, which is situated halfway between the City of London and the Channel Ports, and an area covering 40,000 hectares. The Council shares core services with other local councils under the Mid Kent partnership including Legal Services who oversee the application and use of the Regulation of Investigatory Powers Act 2000 (RIPA).
- 3.2 The senior leadership team is comprised of the Chief Executive Alison Broom, Director of Regeneration and Place, William Cornell and Director of Finance and Business Improvement, Mark Green. Stephen McGinness is the Director of Shared Services within the Mid Kent Partnership including the Legal Partnership which is overseen by the Monitoring Officer Patricia Narbor who also acts as Senior Responsible Officer (SRO) for RIPA matters.
- 3.3 Maidstone BC was last inspected during June 2012 by Surveillance Inspector Clare Ringshaw-Dowle. A shortfall in available Inspectorate resources has meant the Council could not be inspected until now.
- 3.4 The address for correspondence is Maidstone House, King Street, Maidstone, Kent, ME15 6JQ. The Chief Executive of the Council may be contacted by e mail: alisonbroom@maidstone.gov.uk

4 Inspection Approach

- 4.1 The purpose of the inspection was to examine policies, procedures, operations and administration in respect of directed surveillance and covert human intelligence sources (CHIS) under the Regulation of Investigatory Powers Act 2000 (RIPA). In the period since the 2012 Inspection Maidstone Borough Council has not utilised directed surveillance or CHIS powers.
- 4.2 This report has been prepared without visiting Maidstone Borough Council, however to assess the ongoing compliance of the Council, information provided by the SRO has been reviewed which included a copy of the Covert Surveillance and Access to Communications Data Policy and Guidance Notes and a copy of the Central Record.

5 Actions Taken on Past Recommendations

- 5.1 In her report of 2012 Surveillance Inspector Clare Ringshaw-Dowle made four recommendations:
- 5.2 Recommendation 1 - *The RIPA policy document should be reviewed to ensure that it remains fully up to date with legislative and procedural developments.*

A draft amended policy has been produced to address the matters identified within the Inspection Report. This has been reviewed as part of the Inspection and further discussed in section 6 below. Recommendation **discharged**.

- 5.3 Recommendation 2 - *The Central Record should be updated to ensure it contains all the matters highlighted at paragraph 8.1 of the Covert Surveillance and Property Interference Revised Code of Practice.*

The Central Record of authorisations continues to make reference to urgent oral authorisations, a legal provision that has not been available to local authorities since 2012. Furthermore there is no reference to the need to record when authorisation was granted at court, also a requirement since 2012 and a critical factor on calculating the expiry date of an authorisation. Recommendation **extant**.

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- 5.4 Recommendation 3 - *The Senior Responsible Officer should ensure that RIPA training is refreshed for all relevant officers undertaking the role of applicant or Authorising Officer, at regular intervals. Such training should include discussion of CHIS recognition and management issues.*

Refresher training was provided to a number of key Council staff, including legal services personnel in 2015, however it is acknowledged that there is a requirement to provide further training for the three nominated Authorising Officers (AOs) and Chief Executive. As a consequence this recommendation remains extant but is altered in light of the information above. Recommendation **extant**.

- 5.5 Recommendation 4 - *In relation to directed surveillance authorisations:*

- i, At review or renewal stages, applicants and Authorising Officers should ensure that they address afresh each time the key matters of necessity, collateral intrusion and proportionality, as these will tend to require further justification and comment the longer an operation has been in progress.*
- ii, Reviews must be completed on the correct forms.*
- iii, At cancellation, the Authorising Officer must provide his direction regarding any product obtained as a result of the surveillance (Note 145 of the OSC's 2011 Procedures & Guidance document).*

No use has been made of surveillance or CHIS powers since the last Inspection in 2012 and as a consequence it has not been possible to verify the above requirement. Given that a period of six years has elapsed, this recommendation will be discharged however any future applications will be reviewed against this criteria. Recommendation **discharged**.

6 Review of Policies and Procedures

- 6.1 Maidstone Borough Council maintains a Covert Surveillance and Access to Communications Data Policy and Guidance Note for personnel seeking to find out how RIPA powers may be applied for and utilised. This is a clear and comprehensive document which provides the reader with explanations of key principles such as proportionality and collateral intrusion. The policy has been updated to account for legislative changes introduced in 2012 which includes the requirement to seek authorisation at a Magistrates' Court.

6.2 There are two areas where the policy would benefit from being further updated:

- Paragraph 2.7.3 makes reference to the required headings for the Central Record which are no longer accurate (as is the record itself). They should not include reference to urgency provisions which are no longer available to Councils, and must reference the date a request was authorised by the court or otherwise.
- Within the policy there is reference to the monitoring of persons via social media and/or the internet potentially requiring an authorisation for directed surveillance, however there are no control measures outlined (for example by maintaining a register of covert online profiles utilised and a record of their use) or direction given as to whether the Council wishes to permit such activity. It is therefore recommended that prior to publication this section is further amended to address the points raised.

7 Training

7.1 With the continued ability to use RIPA powers comes an obligation to ensure preparedness by ensuring that key staff complete regular refresher training, thus ensuring their knowledge is up to date with recent developments in legislation, guidance and best practice. The most recent training made available to key personnel such as legal services officers and heads of units most likely to use surveillance techniques was in 2015. The value of such refresher training cannot be overstated in maintaining control over how RIPA powers are used, and as such the Council has already acknowledged the need to further roll this out to Authorising Officers (see Recommendation 1).

8. Reports to Members

8.1 To ensure that Members have an awareness of the Council's use of RIPA they should be informed on a regular basis how often these powers are requested and broadly why. An annual report, including RIPA matters, has been made to members of the Audit, Governance and Standards Committee. It appears that this is only the case if the Council utilises RIPA powers, however it should equally be a matter of scrutiny if RIPA is not used.

9 Liaison with the Magistrates' Court

9.1 Maidstone BC has not made any use of RIPA powers since prior to the last Inspection in 2012, however the corporate policy document sets out in detail the

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process that must be employed when seeking the authorisation of a court, including in urgent circumstances.

10 Authorising Officers

- 10.1 There are presently three nominated Authorising Officers which are Mark Green - Director of Finance and Business Improvement, William Cornell – Director of Regeneration and Place and John Littlemore - Head of Housing and Community Safety. The Chief Executive Alison Broom will act as AO where the use of a juvenile source is required or where confidential information may be obtained. All AOs are sufficiently senior to fulfil the requirements of SI 2010/521 which states that AOs must be of at least Director, Head of Service or Manager level.

11 CCTV and Technical Equipment

- 11.1 Maidstone Borough Council works in partnership with Medway Council and other local authorities in relation to the management and use of the local CCTV system. The local service covers Maidstone town centre only and is operated in accordance with the relevant Code of Practice.
- 11.2 The Council also maintains a small amount of surveillance equipment including five static cameras and noise monitoring equipment.

12 Conclusions

- 12.1 Despite the fact that Maidstone Borough Council has not used its RIPA powers for some time it has maintained a good level of preparedness which includes maintaining a Central Record and comprehensive policy document, albeit the former still requires amendment.
- 12.2 The Council acknowledges that there is a requirement to train additional officers including the nominated Authorising Officers which is therefore also the subject of a continued recommendation. It would be helpful if this training could address the use of social media and internet information during investigations as an area of growing use among local authorities. This may assist in further developing the social media guidance contained within the RIPA policy which is the subject of a further recommendation, in order that the Council makes clear what its staff are and are not permitted to do online.

13 Recommendations

- 13.1 Recommendation 1 - The Senior Responsible Officer should ensure that RIPA training is refreshed for all relevant officers undertaking the role of applicant or Authorising Officer, at regular intervals. Such training should include discussion of CHIS recognition and management issues and the use of the internet and social media during investigations.
- 13.2 Recommendation 2 - The Central Record should be updated to ensure it contains all the matters highlighted at paragraph 8.1 of the Covert Surveillance and Property Interference Revised Code of Practice.
- 13.3 Recommendation 3 - Changes should be made to the Covert Surveillance and Access to Communication Data Policy and Guidance Note in accordance with paragraph 6.2 of this report.

Gráinne Athorn
Surveillance Inspector

APPENDIX B

DRAFT COVERT SURVEILLANCE AND ACCESS TO COMMUNICATIONS DATA POLICY AND GUIDANCE NOTES



COVERT SURVEILLANCE AND ACCESS TO COMMUNICATIONS DATA POLICY AND GUIDANCE NOTES

Scope

This policy and guidance notes apply to authorisations for the Access to Communications Data and to Surveillance by the Council carried out under Parts I and II of the Regulations of Investigatory Powers Act 2000 (RIPA).

RIPA Senior Responsible Officer: Alison Broom (Chief Executive)

RIPA Co-ordinating Officer: Gary Rowland (Trainee Lawyer, Corporate Governance)

Revised: August 2019
Review: August 2021

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POLICY STATEMENT

The Regulation of Investigatory Powers Act 2000 (RIPA) provides the legislative framework within which covert surveillance and access to communications data operations must be conducted in order to ensure that investigatory powers are used in accordance with human rights. This Policy Statement is intended as a practical reference guide for Council Officers/Investigators who may be involved in such operations.

Officers/Investigators involved in covert operations must familiarise themselves with the Home Office Codes of Practice on:

- Covert Surveillance
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384975/Covert_Surveillance_Property_Interference_web_2_.pdf
- Covert Human Intelligence Sources
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384976/Covert_Human_Intelligence_web.pdf
- and the Office of Surveillance Commissioners Procedures and Guidance 2016
<https://www.ipco.org.uk/docs/OSC%20Procedures%20&%20Guidance%20-%20%20July%202016.pdf>

to ensure that they fully understand their responsibilities.

The Council is committed to implementing the provisions of RIPA to ensure that any covert surveillance and/or access of communications data that is carried out during the course of investigations is undertaken properly and that the activity is necessary and proportionate to the alleged offence/s. Following the implementation of the Protection of Freedoms Act 2012 investigatory powers can only be used in relation to activities that would receive a minimum sentence of six months imprisonment or are in relation to the underage selling of alcohol or tobacco. If such action is contemplated, initial consultation with the Council's Co-ordinating Officer should be undertaken at the earliest opportunity.

The Council seeks to ensure that this Policy Statement remains consistent with the Council's objectives.

This Policy ensures:

- that proper procedures are in place in order to carry out covert surveillance or to obtain communications data;
- that an individual's right to privacy is not breached without justification;
- that proper authorisation is obtained for covert surveillance or access to communications data;
- that proper procedures are followed; and
- that covert surveillance is considered as a last resort having exhausted all other avenues.

1. **BACKGROUND**

Scope and Control

- 1.1 RIPA is the law which governs the use of a number of covert techniques for investigating crime and terrorism. Using covert techniques allows public authorities, which range from the police and security agencies to local authorities and organisations, such as the Office of Fair Trading, to investigate suspected offences without alerting an individual that they are part of that investigation.
- 1.2 Local authorities can use three techniques. They can **obtain Communications Data, use Directed Surveillance and use Covert Human Intelligence Sources (CHIS)**.
- 1.3 RIPA requires that an authorisation is needed for the use of these investigatory techniques and that they can only be used where it is considered proportionate to what is sought to be achieved.
- 1.4 Local authorities can only use these investigatory techniques if they are necessary to prevent or detect crime or prevent disorder.
- 1.5 These guidance notes provide a summary of the main points from the Home Office Covert Surveillance Code of Practice that are relevant to Maidstone Borough Council. They apply to authorisations for covert surveillance and access to communications data made by the Council under Part I and II of the Regulation of Investigatory Powers Act 2000.
- 1.6 To improve awareness this guidance also briefly refers to activities that the Council has determined **should not** be undertaken.
- 1.7 Before undertaking any covert surveillance these guidelines should be read and, if it is considered necessary, further reference to the code and training should be sought. Members of the public who enquire about covert surveillance procedures should be referred to the Home Office Covert Surveillance code of practice, copies of which are available for viewing at Council offices from the RIPA Co-ordinating Officer. Contract staff employed by the Council and who are involved in covert surveillance should be made aware of these guidelines and of the Code of Practice.
- 1.8 The use of the Regulation of Investigatory Powers Act 2000 by the Council will be overseen by the Senior Responsible Officer supported by the Co-ordinating Officer. These positions will be held by:
 - Senior Responsible Officer – Alison Broom
 - Co-ordinating Officer – Gary Rowland

Senior Responsible Officer

The Senior Responsible Officer will have overall responsibility for the integrity of the RIPA process within the Council. In addition they will:

1. be responsible for compliance with RIPA and its regulatory framework;
2. engage with the Commissioners and Inspectors when they conduct inspections;

3. oversee the implementation of any recommendations made by the OSC;
4. carry out periodic oversight of the authorisations; and
5. report to Members on the usage of RIPA within the Council.

Co-ordinating Officer

The Co-ordinating Officer will be responsible for the day to day RIPA process, in particular they will:

1. keep the Central Record and collate the documentation received;
2. exercise the day to day oversight over the RIPA process by ensuring the quality of the documents submitted;
3. to monitor the Council's use of its appointed S.P.O.C agent (NAFN) in line with contract agreement
4. monitor the timeliness of the officers in making returns, carrying out reviews and effecting renewals and cancellations;
5. keep a record of the RIPA training programme; and
6. raise general RIPA awareness within the Council whilst ensuring that detailed awareness and training is provided to applicants and authorising officers.

NB: applicants and authorising officers are required to undertake regular training at two yearly intervals.

Definitions

- 1.9 **Covert surveillance** is any surveillance carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.
- 1.10 General observation forms part of the duties of the Councils enforcement officers i.e. **overt surveillance**, and is not usually regulated by the 2000 Act (for example observations during routine planning enforcement matters where the property owner has been 'put on notice' that inspections may be carried out). 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.
- 1.11 The use of noise monitoring equipment to measure noise audible in a complainant's premises does not amount to covert surveillance because the noise has been inflicted by the perpetrator who it is likely has forfeited any claim of privacy. The use will only become covert when sensitive equipment is used to discern speech of other noisy activity that is not discernible to the unaided ear. Further advice can be obtained from the SRO.
- 1.12 Although, the provisions of the 2000 Act do not normally cover the use of overt CCTV surveillance systems, since members of the public are aware that such systems are in use, there may be occasions when the Council's overt CCTV system is used for the purpose of a specific investigation or operation. Such cases should be discussed with the authorising officer who will decide whether it is directed surveillance and requires to be authorised.
- 1.13 The primary purpose of surveillance is to secure evidence to bring offenders before the courts. The proper authorisation of surveillance should ensure the admissibility of such evidence in criminal proceedings.

- 1.14 **Directed surveillance** is the type of covert surveillance that Maidstone Borough Council employees will be permitted to undertake on an exceptional basis and only within the Council's responsibilities for the prevention and detection of crime, or for the prevention of disorder. Authorisation for directed surveillance **must** first be obtained.
- 1.15 Directed surveillance is defined as surveillance which is covert, but not intrusive, and undertaken:
- a) for the purpose of the prevention or detection of crime or to prevent disorder
 - b) for the purpose of a specific investigation or specific operation.
 - c) in a manner as is likely to result in the obtaining of **private information** about a person (whether or not one specifically identified for the purpose of the investigation or operation). Private information is defined at paragraph 1.19 below.
 - d) 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 under Part II of the 2000 Act to be sought for the carrying out of the surveillance. For example, you may be in a Post Office obtaining information in relation to a particular customer when you observe a different person committing a benefit fraud. You are allowed to follow that person, if necessary, to establish their identification and any other information that may help with the subsequent investigation.
- 1.16 A similar situation may occur whilst visiting an employer under section 110 powers, Social Security Administration Act 1992 (which requires separate authorisation). For example, if during a visit to an employer you recognise an individual benefit claimant, authorisation for watching the person working would not be required. This is because you have come across the information incidentally and in the course of your normal duties. However, if you visited an employer with the precise intention of observing an identified individual at work (whilst claiming benefit) written authorisation would be required before the visit.
- 1.17 Directed surveillance includes covert surveillance within office and business premises.
- 1.18 It should be noted that Local Authorities may only make an authorisation permitting the use of directed surveillance under RIPA where:
- it is for the purpose of the prevention or detection of crime or the prevention of disorder, and
 - the offence being investigated meets the crime threshold; i.e. criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.
- 1.19 **Private information** includes:
- a) any information relating to a person's private or family life, or
 - b) information relating to aspects of a person's professional and business life.

The concept of private information should be broadly interpreted to include an individual's private or personal relationship with others. Family life should be treated to extend beyond the formal relationships created by marriage.

- 1.20 **Intrusive surveillance** is defined as covert surveillance that:
- a) is carried out in relation to anything taking place within any residential premises or any private vehicle; and
 - b) involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device; or
 - b) involves premises where legal consultations take place.
- Under no circumstances** should this type of surveillance be undertaken. An alternative means of obtaining the information should be sought.
- 1.21 **Interception of post, e-mail and recording of telephone conversations.** The interception of communications sent by post or by means of public telecommunications systems or private telecommunications systems attached to the public network are outside of the remit of Maidstone Borough Council officers.
- 1.22 **Covert Human Intelligence Source (CHIS)** is the term used for a person who is tasked by the Council to establish or maintain a relationship with a person for the purpose of covertly obtaining or disclosing information i.e. it is someone working “under cover” who has been asked to obtain information, to provide access to information or to otherwise act, incidentally for the benefit of the Council.
- 1.23 A relationship is established or maintained for a covert purpose if and only if it is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the purpose.
- 1.24 A person is considered to be a CHIS if:
- (a) s/he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraphs (b) or (c) below.
 - (b) s/he covertly uses such a relationship to obtain information or provide access to any information to another person; or
 - (c) s/he covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.
- 1.25 The Council has taken a policy decision that it will be the general practice **not to** undertake this type of surveillance activity. An alternative means of obtaining the information should be followed. However, it is necessary that the Council be equipped to deal with CHIS if the situation arose.
- 1.26 If it is necessary to request an authorisation under CHIS advice should first be sought from the RIPA Senior Responsible Officer. Conduct that may be authorised is any conduct that:
- (a) remains within the scope of the activity authorised within the CHIS authorisation;
 - (b) relates to the person identified and authorised as a CHIS; and
 - (c) is carried out for the purposes of the investigation as detailed within the CHIS authorisation.
- 1.27 As with directed surveillance a local authority may only make an authorisation permitting the use of CHIS on the ground that it is necessary for the purpose of the prevention or detection of crime or the prevention of disorder.

- 1.28 It should be noted that where members of the public volunteer information to council officers, either as a complaint or as part of their civic duties i.e. use contact numbers set up for the reporting of suspected benefit fraud or for whistle-blowing etc. they would not generally be regarded as covert human intelligence sources. In addition, if someone is keeping a diary record of nuisance, this will not amount by itself to use of a CHIS.
- 1.29 In order for the Council to carry out surveillance using CHIS (should the need arise) it is necessary to have officers designated as Controllers and Handlers. These posts will carryout the following functions:
- Controller – will at all times have general oversight of the use made of the source.
 - Handler – will have day to day responsibility for dealing with the source on behalf of the authority, and for the source's security and welfare.

In all cases the Controller will be the RIPA Senior Responsible Officer.

Handlers will include investigators and enforcement officers that have received the relevant training and have been authorised by the RIPA Senior Officer to undertake this role. A register of those authorised as handlers will be kept by the RIPA Co-ordinating Officer.

In addition to the above the RIPA Co-ordinating Officer will have responsibility for maintaing a record of the use made of the source.

1.30 **Accessing Communications Data**

Local Authorities can obtain communications data for investigating crime under Part I Chapter II of the Regulation of Investigatory Powers Act 1990. Communications data includes land line and mobile telephone subscriber and billing data for telephone, web and postal customers.

- 1.31 Communications data can be obtained where it is necessary and proportionate to do so. Applications are primarily used to identify or locate suspects. Examples include applications to ascertain subscriber identity and address details of illegal fly tipping suspects from mobile phone number evidence.
- 1.32 The Council has appointed the National Anti Fraud Network (NAFN) to provide a RIPA Single Point of Contact (SPoC) service to obtain communications data. NAFN is authorised to carry out requests to telecommunications service providers for category B and C data for criminal investigations. This includes subscriber and billing information on telephone, web and postal services.
- 1.33 It should be noted that in order for Local Authorities to seek authority to acquire category B data, it must meet the new serious crime threshold. A serious crime is one which carries a prison sentence for a minimum of 12 months and meets the definition set out in section 81(3)(b) of the Act, i.e. conduct that involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose. Category C data can still be acquired for any crime where necessary and proportionate to do so.

Category Table

A Data – Not accessible to Local Authorities	B Data – Available if serious crime threshold met	C Data – Available
Cell site IEMI Incoming caller data	Itemised Billing Call Diversion Data Downloading Outgoing call data	Subscriber detail including: Name and Address Method of Payments Customer info.

NB: Local Authorities are not able to obtain Category A data.

Social Networking Sites

- 1.34 **Social Networking Sites (SNS)** which include but are not limited to Facebook, Myspace, Twitter and Bebo can provide information that will aid an investigation. When using these sites to carry out surveillance it is essential to know how they work and officers should not assume that one service provider works in the same way as another.
- 1.35 In all cases it would be unwise to assume that the content came from an open source or was publically available, even where security settings are low, as the author would have some reasonable expectation of privacy where access controls are applied.
- 1.36 Where a site is being covertly accessed for monitoring purposes it may be necessary for an authorisation for directed surveillance to be obtained. As part of an investigation it is possible to take an initial look at an individual's social media activity, however, should there be a need to return the site this may constitute surveillance. In such circumstances advice should be obtained from the RIPA Co-Ordinating Officer before further surveillance is carried out.
- 1.37 If, when using social media, a relationship is established or maintained by an officer of the Council or by a person acting on the Council's behalf for a purpose which exceeds merely reading the site's content an authorisation for a CHIS may need to be obtained. See 1.24 above for full details of what constitutes a CHIS..
- 1.38 When conducting any surveillance of social media sites use of an officer's personal account is prohibited and advice should be sought from the Communications Team with regards to setting up a Council account.
- 1.39 The Central Record contains a register of any Council profiles utilised and a record of their use.
- 1.40 A brief summary of the relevant legislation governing covert surveillance has been included at Appendix A.

2. GENERAL RULES ON AUTHORISATIONS

- 2.1 Where an authorisation or renewal is sought for the use of Directed Surveillance, acquisition of Communications Data or the use of CHIS it will be necessary to obtain Judicial Approval, i.e approval from the Magistrates Court. It will still be necessary to go through the internal authorisation stage, detailed below, prior to an application for

Judicial Approval. The procedure for obtaining Judicial Approval is detailed at paragraphs 4.12 to 4.14 below.

NB: A flowchart produced by the Home Office showing the authorisation procedure is shown at Appendix B.

2.2 Directed Surveillance and CHIS

2.2.1 You must seek an authorisation where the surveillance is likely to interfere with a person's rights to privacy (*Article 8 of the European Convention on Human Rights*) by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation will ensure that the action is carried out in accordance with law and subject to stringent safeguards against abuse.

2.2.2 In the event that the Council are required to conduct joint directed surveillance working with another agency, the tasking agency should obtain the authorisation. For example, in the event that the police require covert surveillance by the Councils CCTV system the police would normally seek the authorisation. A copy of the Authorisation, Renewal and Cancellation forms should be sought from the tasking agency to provide a record and justification for the Councils involvement.

2.3 Accessing Communications Data

2.3.1 Only authorised officers are able to use the National Anti Fraud Network ("NAFN") Single Point of Contact ("SPoC") service to access communications data. NAFN provides Maidstone officers with access to a secure online system for processing RIPA telecommunications requests. Authorised applicants and Designated Persons ("DP") can submit, approve and track applications through one central secure website. NAFN review all applications for legal compliance prior to approval from Maidstones DP. NAFN is subject to inspection by the officers of the Interception Commission to ensure compliance with RIPA.

2.4 RIPA Authorising Officers

The authorising officers for the Council are:

- Alison Broom - Chief Executive / RIPA Senior Responsible Officer
- Mark Green – Director of Finance and Business Improvement
- William Cornell – Director of Regeneration and Place
- John Littlemore – Head of Housing and Community Services

No person designated as an Authorising Officer may act as an Authorising Officer unless they have undertaken appropriate training.

In addition to the above the following officers will be responsible for the authorisation of NAFN RIPA telecommunications requests:

- Alison Broom – Chief Executive
- William Cornell – Director of Regeneration and Place

2.5 Necessity and Proportionality

2.5.1 Obtaining an authorisation for surveillance will only ensure that there is a justifiable interference with an individual's Article 8 rights if it is **necessary and proportionate** for these activities to take place. The 2000 Act first requires that the person granting

an authorisation to believe that the authorisation is necessary for the purpose of preventing and detecting crime or of preventing disorder; therefore there is a requirement that applicants and authorising officers consider why the use of covert surveillance is necessary in the specific investigation and what it will achieve.

2.5.2 Then, if the activities are necessary, the person granting the authorisation must believe 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 the operational terms. Both the officer making the application and the authorising officer should consider the following test when deciding that the proposed covert surveillance is proportionate:

- a) Is the proposed covert surveillance proportionate to the mischief under investigation, and
- b) Is the proposed covert surveillance proportionate to the degree of anticipated intrusion on the target and others, and
- c) That the proposed covert surveillance is the only option, other overt means having been considered and discounted.

2.5.3 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. For example it may be acceptable in a benefit “living together” case for surveillance over seven days but not extended over three months. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

2.6 Collateral Intrusion

2.6.1 Before authorising surveillance the authorising officer should 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 (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

2.6.2 An application for an authorisation should include an assessment of the risk of any collateral intrusion. The authorising officer should take this into account, when considering the proportionality of the surveillance.

2.6.3 Those carrying out the covert surveillance should inform the authorising officer if the operation or investigation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation. When the original authorisation may not be sufficient, consideration should be given to whether the authorisation needs to be amended and re-authorised or a new authorisation is required.

2.6.4 Any person granting or applying for an authorisation will also need to be aware of particular sensitivities in the local community where the surveillance is taking place and of similar activities being undertaken by other public authorities which could impact on the deployment of surveillance.

2.7 Central Record of all authorisations

2.7.1 A central retrievable record of all authorisations is required to be kept by the Council and regularly updated. Whenever an authorisation is granted, renewed or cancelled

the original signed document must be passed to the Co-ordinating Officer who maintain's the Central Record of Authorisations. On receipt of the documentation the required information will be recorded in the central register.

2.7.2 The record is required to be made available to the relevant Commissioner or an Inspector from the Office of Surveillance Commissioners, upon request.

2.7.3 These records should be retained for a period of five years from the ending of the authorisation and should contain the following information:

- the unique reference number (URN) – this will be provided by the Co-ordinating Officer when requested by the officer applying for the authorisation;
- the type of authorisation; (SBC officers can only conduct directed surveillance)
- the date the authorisation was given;
- the name of the authorising officer;
- the title of the investigation or operation, including a brief description and names of subjects, if known;
- the date for review
- the date review was undertaken
- if the authorisation is renewed, when it was renewed and who authorised the renewal, including the name of the authorising officer;
- whether the investigation is likely to result in obtaining confidential information;
- the date the authorisation was cancelled.

2.7.4 In all cases, the officer responsible for the investigation (Investigation Manager) must maintain the following documentation which need not form part of the central retrievable record:

- 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;
- copy of any renewal of any authorisation together with supporting documents
- record of the period over which the surveillance has taken place;
- any risk assessment raised in relation to a CHIS
- the circumstances in which tasks were given to the CHIS
- the value of the CHIS to the investigation
- the frequency of reviews prescribed by the authorising officer, recommended monthly;
- record of the result of each review of the authorisation;
- copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
- date and time when any instruction were given by the authorising officer since using CHIS.

2.8 Retention and destruction of product

2.8.1 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 further period, commensurate to any subsequent review.

2.8.2 There is nothing which prevents material obtained from properly authorised surveillance from being used in other investigations. Authorising officers must ensure compliance with the appropriate data protection requirements and that arrangements for the handling, storage and destruction of material obtained through the use of covert surveillance are followed.

- 2.8.3 Investigating officers are expected to keep accurate and full records of investigations. All notebooks (QB50 for Benefit Officers), surveillance logs and other ancillary documentation that relate to surveillance must be maintained for five years and available for management or regulatory inspection on demand.

3. SPECIAL RULES ON AUTHORISATIONS

(Directed Surveillance and CHIS)

- 3.1 Care should be taken in cases where the subject of the investigation or operation might reasonably expect a high degree of privacy eg, where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material. For example, extra care should be given where, through the use of surveillance, it would be possible to acquire knowledge of discussions between a minister of religion and an individual relating to the latter's spiritual welfare, or where matters of medical or journalistic confidentiality or legal privilege may be involved.
- 3.2 In cases where through the use of surveillance it is likely that knowledge of confidential information will be acquired, the use of surveillance is subject to a higher level of authorisation, and must be authorised by the Chief Executive, or in his absence his deputy; this being the RIPA Senior Responsible Officer or the Head of Service Delivery.
- 3.3 Where a juvenile or vulnerable person is to be used as a CHIS the Investigating Officer must, when seeking an authorisation:
- (a) make a risk assessment to demonstrate that the physical and psychological risks have been identified, evaluated and explained to the CHIS, and
 - (b) that an appropriate adult will be present at meetings of any CHIS under the age of 18.
- 3.4 Where the authorisation is for the employment of a juvenile or vulnerable CHIS the authorisation **must** be obtained by the Chief Executive or in her absence his deputy (as detailed in 3.2 above).

4. AUTHORISATION PROCEDURE FOR COVERT SURVEILLANCE

(Directed Surveillance and CHIS)

The appropriate RIPA forms are available from the Intranet, under Documents; Policies and Governance; Covert Surveillance.

Application Forms:

- Application for the use of Directed Surveillance form
 - Application for the use of CHIS form
 - Judicial Application / Order form
- 4.1 Before covert surveillance can be conducted, an application for the use of directed surveillance form and/or an application for the use of CHIS form must be completed and authorised in writing by the authorising officer.

4.2 Local Authorities can no longer rely on the provision for urgent authorisation being given orally by the authorising officer as there is the requirement of obtaining judicial approval. There are however guidelines for obtaining urgent judicial approval and these are detailed below at paragraph 4.15. It should be remembered that no RIPA authority is required in situations where surveillance is an immediate response to events i.e. where criminal activity is observed during routine duties and officers conceal themselves to observe what is happening.

4.3 The application should include:

- the reason why the authorisation is necessary i.e. for the purpose of preventing and detecting crime or of preventing disorder (*this is the only permitted ground open to Local Authorities*)
- an adequate explanation of the reason why the surveillance is considered proportionate to what it seeks to achieve;
- the nature of the surveillance including what surveillance equipment is to be used (the operation must be spelt out in sufficient detail on the application form for the Authorising Officer to have a clear idea of exactly what they are being asked to authorise);
- a map showing where the surveillance will take place;
- details of other methods considered and why they were deemed not to be appropriate;
- the identities, where known, of those to be the subject of the surveillance;
- an explanation of the information desired from the surveillance;
- the details of any potential collateral intrusion and why the intrusion is justified;
- the details of any confidential information that is likely to be obtained as a consequence of the surveillance.
- the level of authority required (or recommended where that is different) for the surveillance;
- a subsequent record of whether authority was given or refused, by whom and the time and date.

Good practice hints:

- ensure all questions are answered properly and appropriate boxes ticked
- prior to submitting the application review the case file and discuss the case with the authorising officer to tease out additional information required and to fill any gaps, provide adequate information on the application form for it to stand alone.
- Information must be clear and un-ambiguous

4.4 To enable application forms for directed surveillance to be completed with sufficient detail drive bys are permitted to identify whether a location is suitable for surveillance. However, the practice should not be abused and repeated and/or systematic use of drive bys may require application for surveillance forms to be completed and authorisation granted by an Authorising Officer. If surveillance is to commence immediately authorisation **must** be sought first.

Authorisation:

- 4.5 Responsibility for authorising the carrying out of covert surveillance rests with the authorising officer and requires the personal authority of the authorising officer. **In no circumstances should an officer authorise until appropriately trained.**
- 4.6 Authorising Officers must insist on the operation being described in sufficient detail *on the application form* for them to have a clear idea of exactly what they are being asked to authorise and so that they have a sufficient *aide-memoir* to be able to withstand cross-examination in Court, maybe after a lapse of some years. The application form must stand alone in supporting the authorisation. Only what is written on the form would be used in Court to justify authorisation of surveillance being granted, therefore authorising officers must clearly describe exactly what activities they are authorising.
- 4.7 An authorisation can only be granted by the authorising officer where he/she believe that the use of covert surveillance is **necessary** in the investigation for the purposes of preventing and detecting crime or of preventing disorder and that the surveillance is **proportionate** to what it seeks to achieve, i.e it satisfies the test set out at 2.5 above.
- 4.8 In completing their authorisation the Authorising Officer should include a statement detailing their reasons for considering that application is necessary and proportionate incorporating the 5 “W’s”; these being: “who”, “what”, “where”, “when”, “why” and “how”.
- 4.9 In addition, when an authorisation is sought for the use of CHIS, the authorising officer must be satisfied that:
- (a) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have day-to-day responsibility for dealing with the source on behalf of that authority, and for the source's security and welfare;
 - (b) that there will at all times be another person holding an office, rank or position with the relevant investigating authority who will have general oversight of the use made of the source;
 - (c) that there will at all times be a person holding an office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of the source;
 - (d) that the records relating to the source that are maintained by the relevant investigating authority will always contain particulars of all such matters (if any) as may be specified for the purposes of this paragraph in regulations made by the Secretary of State; and
 - (e) that records maintained by the relevant investigating authority that disclose the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons.
 - (f) that a risk assessment has been carried out to determine the risk to the source of any tasking and the likely consequences should the role of the source become known. The ongoing security and welfare of the source, after

the cancellation of the authorisation, should have also be considered at this stage.

For further information please refer to paragraphs 1.22 to 1.29 above.

- 4.10 Authorising Officers should always complete their authorisation by hand to avoid being challenged at a later date as to the authenticity of their authorisation.
- 4.11 Where a previously unidentified subject is identified or an additional subject is subsequently identified during the course of surveillance, the surveillance may continue in order to maintain contact. Thereafter, a revised authorisation will be required to cover the additional subject etc. New individuals **must not** be added to the original authorisation retrospectively.

Judicial Approval:

- 4.12 As soon as an authorisation has been granted through the internal procedure the following steps must be taken to obtain judicial approval:
 - 1. HMCTS administration at the magistrates' court should be contacted by calling 01622 671041 for a hearing to be arranged – such hearings will be held in private.
 - 2. A copy of the original RIPA authorisation and supporting documentation should be provided to the JP (a District Judge or lay magistrate) and **should contain all information that is relied upon.**
 - 3. Two copies of the partially completed judicial approval/order form should be provided to the JP – one for the Court to keep and one for the Council.
 - 4. Attend hearing. For details of who should attend please see the following paragraph.
- 4.13 Consideration should be given as to who is the most appropriate person to attend the hearing to request judicial approval. As it is likely that the JP will have questions for whoever attends it should be someone with a detailed knowledge of the case. The OSC Guidance suggests that the most appropriate person to attend is the authorising officer as only they can explain their reasoning on necessity, proportionality, collateral intrusion and risk. It is recognised that this is not always practicable, and in these cases it is likely that the investigating officer should attend and promptly report back any comments made by the JP to the authorising officer. *Any officer that attends on behalf of the Council must be authorised to do so by the Head of Legal under section 223 of the Local Government Act 1972. A list of those authorised will be kept with the central record of authorisations.*

*NB: All evidence of necessity and proportionality **must** be in the RIPA/CHIS application form as it is not sufficient to provide oral evidence at the hearing where this is not reflected or supported in the papers provided.*

- 4.14 Following consideration of the case the JP will complete the order section of the judicial application / order form recording their decision to either approve or refuse the authorisation or to refuse and quash the original authorisation.
- 4.15 Whilst Home Office Guidance urges Local Authorities to make local arrangements to deal with out of hours access to a JP for urgent cases our local HMCTS legal staff have advised that they do not envisage there to ever be a need for the authority to

require urgent access, therefore all applications should be made in Court hours. The Senior Responsible Officer will continue to review the situation and if it is proven that there is a need for local arrangements for urgent cases to be made we will contact the Court again.

NB: It should be remembered that in most emergency situations it is likely that the police would have the power to act, and in such cases they would be able to authorise the activity without prior judicial approval.

- 4.16 Authorising officers should not be responsible for authorising investigations or operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially in the case of small organisations, or where it is necessary to act urgently.

Directed surveillance conducted from premises
(ref: R v Kenneth Johnson)

- 4.17 In the event that covert surveillance is required to be conducted from premises the following guidelines must be followed:
- Prior to covert surveillance being conducted from premises the line manager (or above) responsible for the investigation must visit the premises to ascertain the attitude of the occupiers to the surveillance activities and to the possible disclosure of information which might enable them to be identified.
 - Immediately before trial the Head of Services (or above) must ascertain whether the occupiers of the premises are the same as when the surveillance took place and, whether they are or not, what their feelings are as to the disclosure of information which might cause them to be identified.

Reviews:

Forms:

- Review of the use of Directed Surveillance form
- Review of the use of CHIS form

- 4.18 Written authorisations granted under RIPA for a CHIS cease to have effect twelve months after the date of granting of the authorisation. All other written authorisations under RIPA cease to have effect three months after the authorisation was granted.
- 4.19 Regular reviews of authorisations should be undertaken by the officer responsible for conducting the investigation (Investigation Manager), and approved by the authorising officer, to assess the need for the surveillance to continue. *There is no requirement for the JP to consider internal reviews.* A copy of the review form should be retained by the officer responsible for conducting the investigation (Investigation Manager) and the original should be passed to the RIPA Co-ordinating Officer. Particular attention is drawn to the need to review authorisations frequently where the surveillance provides access to confidential information or involves collateral intrusion.
- 4.20 In each case the authorising officer should determine how often a review should take place. This should be as frequently as is considered necessary and practicable, *recommended at least monthly and immediately after the date the surveillance is due to end.*

Renewals:

Forms:

- Renewal of Directed Surveillance form
- Renewal of CHIS form

- 4.21 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 or twelve months**.
- 4.22 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 shortly before the authorisation period is drawing to an end. Any person who would be entitled to grant a new authorisation can renew an authorisation.
- 4.23 Applications for renewal of an authorisation for covert surveillance should record:
- whether this is the first renewal or every occasion on which the authorisation has been renewed previously;
 - any significant changes to the information at paragraph 4.3
 - the reasons why it is necessary to continue with the directed surveillance;
 - the content and value to the investigation or operation of the information so far obtained by the surveillance;
 - the result of regular reviews of the investigation or operation.
- 4.24 Authorisations may be renewed more than once, provided they continue to meet the criteria for authorisations. A copy of the renewal forms should be retained by the officer responsible for conducting the investigation (Investigation Manager) and the original should be passed to the Co-ordinating Officer for the required information to be recorded in the Central Record of Authorisations (see paragraph 2.7).
- 4.25 **Following the internal authorisation for renewal process it will again be necessary to obtain judicial approval for the authorisation to be renewed and the same process detailed in 4.12 to 4.14 above should be followed.**

NB: Where renewals are timetabled to fall outside of court hours it is for the Local Authority to ensure that the renewal is completed ahead of the deadline.

Cancellations:

Forms:

- Cancellation of Directed Surveillance form
- Cancellation of CHIS form

- 4.26 A written authorisation granted by an authorising officer will cease to have effect (unless renewed) at the end of a period of **three months in relation to Directed Surveillance** or **twelve months in relation to CHIS** beginning with the day on which it took effect, however the authorising officer who granted or last renewed the authorisation must promptly cancel the authorisation if he is satisfied that the covert surveillance no longer meets the criteria for authorisation, including, but not limited to, where during the investigation it becomes clear that the offence being investigated no longer meets the crime threshold.

- 4.27 As soon as the decision is taken that covert surveillance should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject(s) and a record made of the date and time when the instruction was given. A Cancellation of the use of directed surveillance form must be completed by the officer responsible for conducting the investigation (Investigation Manager) and signed by the Authorising Officer. *There is no requirement for the JP to consider cancellations.*
- 4.28 Cancellation forms should be retained by the Investigating Manager and the original should be passed to the RIPA Co-ordinating Officer for the required information to be recorded in the Central Record of Authorisations (see paragraph 2.7).

To ensure prompt cancellation Investigation Managers should advise the authorising officer as soon as surveillance activity has ceased.

5. AUTHORISATION PROCEDURES FOR COMMUNICATIONS DATA

- 5.1 Only officers authorised by the Council's Designated Person can submit applications via the NAFN secure website facility. Authorised officers are assigned a website username and password to access the NAFN SPoC application system.
- 5.2 Applications should detail the necessity, purpose and proportionality of each request for information, in addition to consideration of collateral intrusion arising from the request for information. The level of detail should be as required for covert surveillance and CHIS applications – See 4.3.
- 5.3 Applications which do not provide adequate detail will be returned to applying officers for reworking prior to submission to the Council's Designated Person for consideration and approval. Applications will only be approved where the DP considers the application to be necessary and proportionate to the investigation.
- 5.4 As soon as an authorisation has been granted through the internal procedure it will be for the Council to obtain judicial approval following the procedure detailed above at paragraphs 4.12 to 4.14. The JP will complete the order section of the judicial application / order form reflecting their decision after which the Council will then be required to upload a copy of this order to the NAFN SPoC system.

6. Authorisation Control Matrix/ Aide-memoire:

- 6.1 To assist officers responsible for conducting investigations (Investigation Managers) to maintain appropriate records and comply fully with the Regulations a suitable Authorisation Control Matrix has been included at Appendix C. Dates of Reviews and when Authorisations cease should also be diarised as a further aid-memoire so that Reviews, Renewals and Cancellations are properly completed in a timely manner.

7. Complaints Relating to the use of RIPA

- 7.1 The Investigatory Powers Tribunal is a court which investigates and determines complaints which allege that public authorities or law enforcement agencies have unlawfully used covert techniques and infringed an individual's right to privacy, as well as claims against the security and intelligence agencies for conduct which breaches a wider range of our human rights. Where a member of the public wishes to complain about the Council's use of, or conduct of these powers they should be directed towards the Tribunal's website at <http://www.ipt-uk.com/>.

8. Non-RIPA Surveillance

Where the crime threshold for surveillance cannot be met, surveillance can still be considered as a last resort if it is deemed to be both necessary and proportionate. In such cases the same internal procedure used for the authorisation, renewal, review and cancellation of a RIPA application set out on pages **15 to 19** are to be followed, however the relevant non-RIPA form is to be used with all documentation being held centrally by the RIPA Co-ordinating Officer. For non RIPA applications there is no requirement to obtain Judicial Approval.

Relevant Legislation and Guidance

The Data Protection Act 2018

The Act provides six principles to be observed to ensure that the requirements are complied with. They provide that personal data (which includes personal data obtained from **covert surveillance techniques**) must:

- 1 be used fairly, lawfully and transparently;
- 2 be used for specified, explicit purposes;
- 3 be used in a way that is adequate, relevant and limited to only what is necessary;
- 4 be accurate and, where necessary, kept up to date;
- 5 be kept for no longer than is necessary; and
- 6 be handled in a way that ensures appropriate security, including protection against unlawful or unauthorised processing, access, loss, destruction or damage.

The Human Rights Act 1998

Article 8, of the European Convention on Human Rights is relevant in the context of **covert surveillance** in that it states:

- everyone has the right to respect for his private and family life, home and correspondence;
- there is to be no interference with the exercise of these rights by the local authority, except where such interference is in accordance with the law and is necessary in a democratic society in the interest 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

Article 6, of the Convention is also relevant in the context of **covert surveillance** in that everyone has the right to a fair trial, including internal procedures or hearings, and fairness extends to the way in which evidence is obtained.

The Regulation of Investigatory Powers Act 2000

- The Act strikes a balance between community responsibilities, including effective law enforcement and individual rights and freedoms. The principles of RIPA are as follows:
- Surveillance is an intrusion into the privacy of the citizen. It should not be undertaken unless it is necessary, proportionate to the alleged offence and properly authorised. Where there is an alternative legal means of obtaining information that is less intrusive on the rights of the citizen, the alternative course rather than surveillance should be taken.
- Surveillance will be conducted within the constraints of the Council. It will cease when evidence sought has been obtained or when it becomes clear that the evidence is not going to be obtained by further surveillance. At that point authorisation must be cancelled.

- In every instance where surveillance is authorised the officer who conducts surveillance will consider and make plans to reduce the level of collateral intrusion into the privacy of third parties.
- All outstanding surveillance authorisations will be reviewed at regular intervals and cancelled where there is no further need for surveillance.
- All officers involved in applying for, authorising or undertaking surveillance will understand the legal requirements set out in RIPA and the Code of Practice. They will personally take responsibility of their involvement.
- All authorisations, notebooks, surveillance logs and other ancillary documentation that relates to surveillance will be maintained to the required standard for three years. All documentation will be volunteered for any management or regulatory inspection on demand.
- Any failure of any part of the process will be brought to the attention of the manager responsible for the investigation.
- Wilful disregard of any part of the Surveillance Code of Practice or of internal procedures will be dealt with in line with Council policy.

Protection of Freedoms Act 2012

The Act amended the Regulation of Investigatory Powers Act 2000 (RIPA) to make local authority authorisation subject to judicial approval. It also limited a Local Authorities use of RIPA so that authorisations could only be obtained for directed surveillance to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least six months imprisonment or are related to the underage sale of alcohol and tobacco.

Investigatory Powers Act 2016

The Act will provide a new framework to govern the use and oversight of investigatory powers by law enforcement and the security and intelligence agencies. The aim of the Act is to bring together all of the powers already available to law enforcement and the security and intelligence agencies to obtain communications and data about communications and will make these powers and the safeguards that apply to them clear and understandable. In addition it creates a powerful new Investigatory Powers Commissioner to oversee how these powers are used and ensures powers are fit for the digital age.

Criminal Procedures & Investigation Act 1996 (CPIA)

The Act sets out legal obligations concerning criminal investigations. The principles of the Act are as follows:-

- **Record** - Information must be recorded in a durable and retrievable form. It must be full & factual. File notes must be contemporaneous, dated & preferably timed. There should be no personal comments, biased opinions, and prejudiced observations.
- **Retain** - All material obtained in the course of an investigation must be retained in the investigation file. The origin, date & if appropriate the time it was obtained must be recorded. The reasons for action must be recorded, including any request for authorised surveillance, and details of the risk assessment.

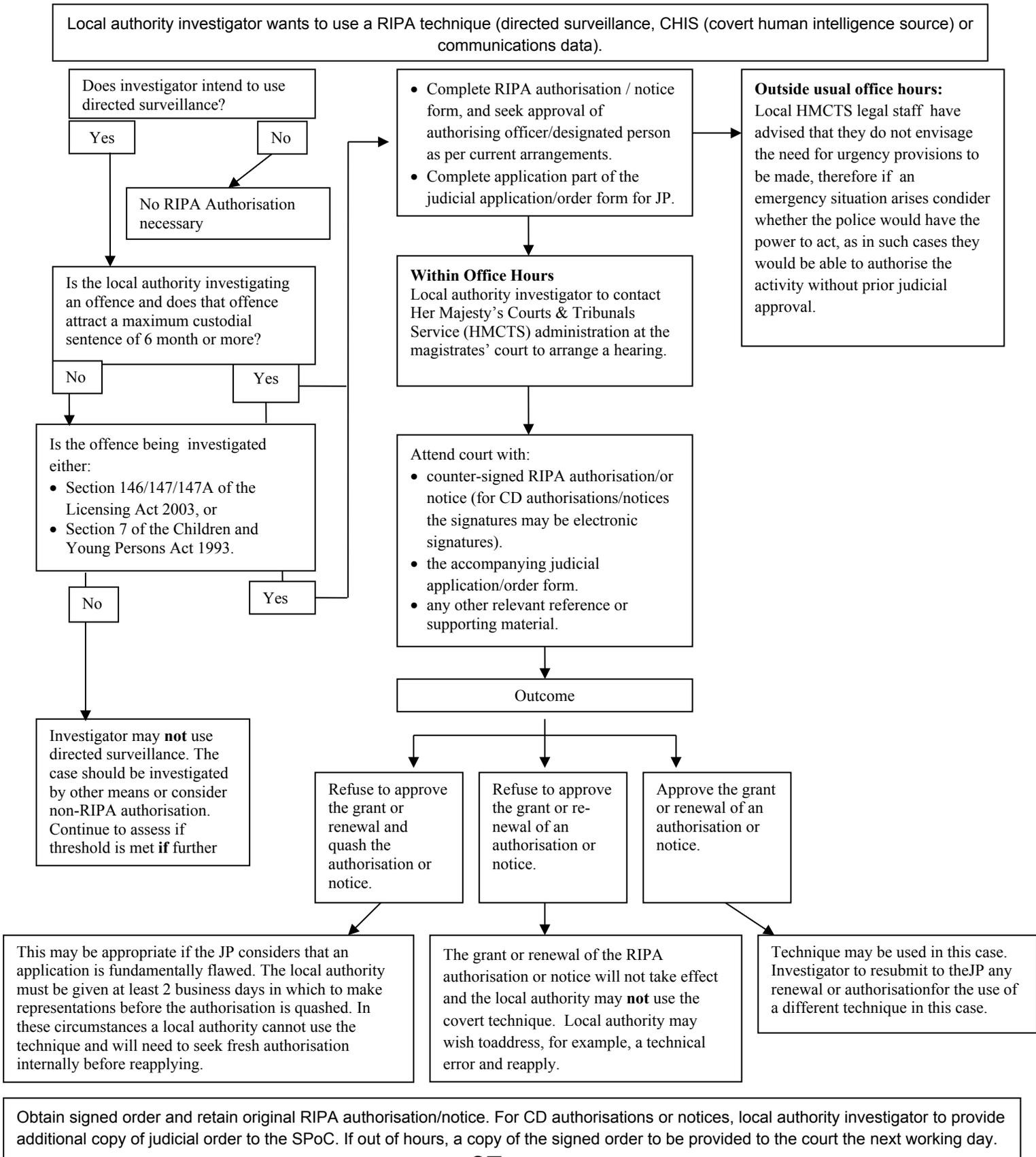
- **Reveal** - 3 clearly identifiable roles on all investigation files:-
 - Investigator
 - Officer in Charge of the Investigation
 - Disclosure Officer
- Unused material is listed on two schedules: -
- Non-sensitive
 - Sensitive.

Guidance Notes and Codes of Practice:

- Office of Surveillance Commissioners Procedures and Guidance 2016
<https://www.ipco.org.uk/docs/OSC%20Procedures%20&%20Guidance%20-%20%20July%202016.pdf>
- Covert Surveillance and Property Interference Code of Practice – Home Office
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384975/Covert_Surveillance_Property_Interference_web_2_.pdf
- Covert Human Intelligence Source Code of Practice – Home Office
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384976/Covert_Human_Intelligence_web.pdf
- Acquisition and Disclosure of Communications Data Code of Practice – Home Office
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426248/Acquisition_and_Disclosure_of_Communications_Data_Code_of_Practice_March_2015.pdf
- Guidance to local authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance – Home Office, October 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/118173/local-authority-england-wales.pdf

Information can also be obtained from the website of the Investigatory Powers Commissioner's Office at <https://www.ipco.org.uk/> who has absorbed the powers of the Office of Surveillance Commissioners and the Interception of Communications Commissioners Office.

**LOCAL AUTHORITY PROCEDURE:
APPLICATION TO A JUSTICE OF THE PEACE SEEKING AN ORDER TO APPROVE THE
GRANT OF A RIPA AUTHORISATION OR NOTICE**



AUDIT, GOVERNANCE AND STANDARDS

**16 September
2019**

CONTRACT MANAGEMENT UPDATE

Final Decision-Maker	Audit, Governance and Standards
Lead Head of Service	Mark Green – Director of Finance and Business Improvement
Lead Officer and Report Author	Georgia Hawkes – Head of Commissioning and Business Improvement
Classification	Public
Wards affected	All

Executive Summary

In November 2018 an Internal Audit report gave contract management a weak rating. Since then, significant improvements have been made in the corporate approach to contract management and the Internal Audit team have revised the rating to Sound. The report details the progress made since the last report to this Committee in March 2019.

Purpose of Report

This report is to update this Committee on the improvements to contract management and is for noting.

This report makes the following recommendations to this Committee:

1. That the progress to improve contract management corporately be noted.

Timetable

Meeting	Date
Audit, Governance and Standards Committee	16 September 2019

Contract Management update

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>We do not expect the actions already taken and those planned to directly affect achievement of corporate priorities. However, improvements to contract management ensure that any outsourced services which do directly impact on delivery of the corporate priorities are well managed and more likely to deliver the desired outcomes.</p>	Head of Commissioning and Business Improvement
Cross Cutting Objectives	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendation does not directly support the achievement of any of the cross cutting objectives, but the improvements to contract management will ensure that specific contracts for the delivery of goods, works and services that do contribute to the achievement of the objectives are well managed.</p>	Head of Commissioning and Business Improvement
Risk Management	Covered in the risk section –section 4.	Head of Commissioning and Business Improvement
Financial	Most actions have already been delivered. No new funding is required.	Section 151 Officer & Finance Team

Staffing	A new role of Corporate Contracts and Resilience Advisor has been created to strengthen the corporate approach to contract management. We will deliver any further improvements to contract management with our current staffing.	Head of Commissioning and Business Improvement
Legal	Legal Services have advised on all aspects of the contract management service and are content that compliant best practice is now on offer to the Council.	Contracts and Commissioning Team Leader
Privacy and Data Protection	No impact.	Policy and Information Team
Equalities	An equalities impact has been completed for the Council's contract management guidance.	Equalities and Corporate Policy Officer
Public Health	The report recommendation does not directly have an impact on population health or that of individuals, but the improvements to contract management will ensure that specific contracts for the delivery of good, works and services that do aim to improve public health are well managed.	Public Health Officer
Crime and Disorder	No impact	Head of Commissioning and Business Improvement
Procurement	No procurement required.	Head of Commissioning and Business Improvement

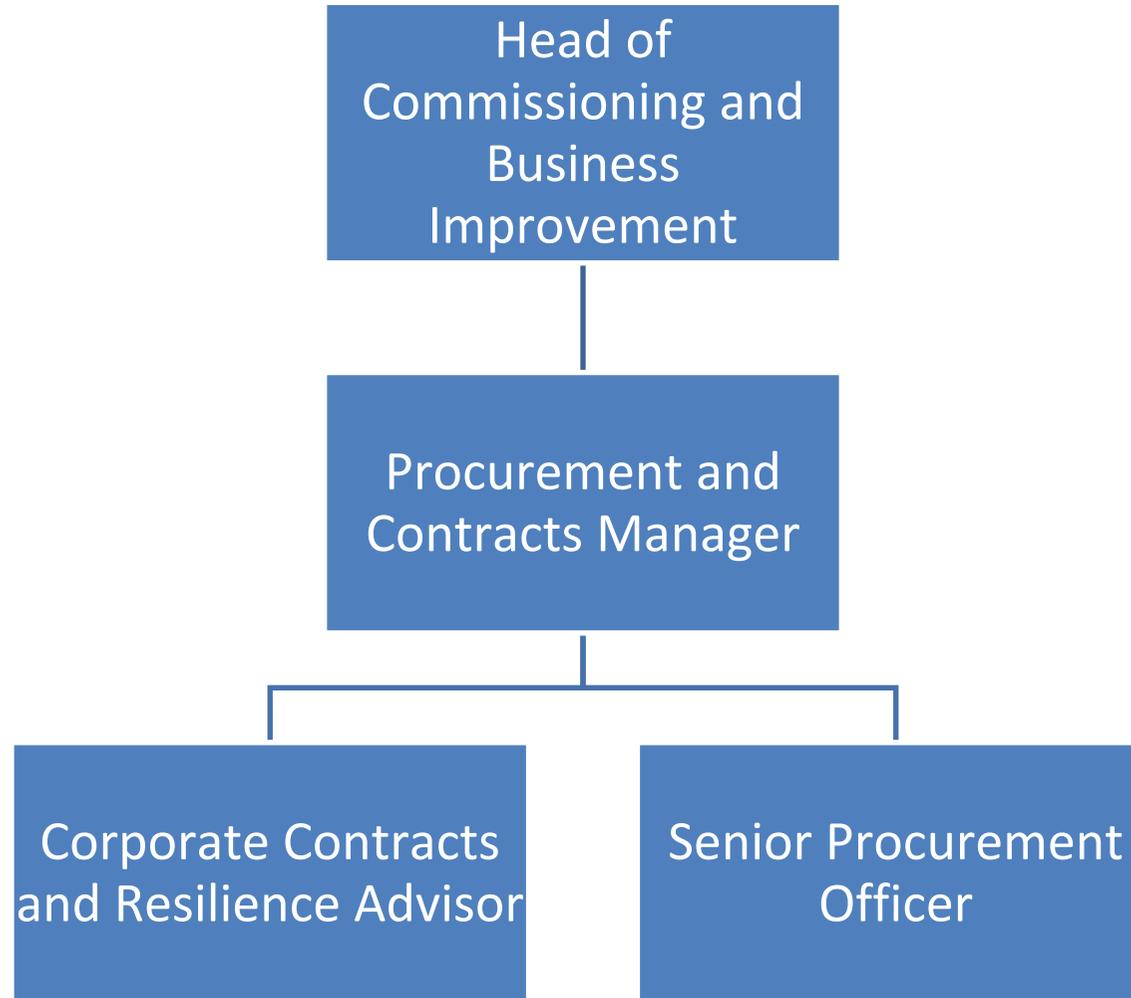
2. INTRODUCTION AND BACKGROUND

- 1.1 The Council outsources a number of its services, including management of Maidstone Leisure Centre and its waste and recycling service. These outsourced arrangements have to be monitored and managed to ensure that the services are being delivered to the specified level and that the envisaged outcomes are being achieved. The monitoring of these different contracts is done by the relevant service area, as opposed to a central team. The Contracts and Compliance Officer – Leisure and Culture role used to be managed centrally within the portfolio of the Head of Commissioning and Business Improvement, but the role has recently been transferred back into the Leisure team.

- 1.2 However, the responsibility for ensuring that contracts are well managed across the organisation rests with the Procurement and Contracts team, specifically with the Procurement and Contracts Manager and with the newly created role of the Corporate Contracts and Resilience Advisor. Both of these roles are currently filled. The team is constructed to make sure that the complementary disciplines of procurement and contract management work well together to get the best results from outsourced services. The Procurement and Contracts team staff structure is shown at Appendix A.
- 1.3 Contract management received a Weak level of assurance from an Internal Audit review in November 2018. The Internal Audit report concluded that, whilst there was clearly good practice in the management of the leisure and culture contracts, improvement in contract management was required corporately. An update on contract management was presented to this Committee in March 2019. Good progress has been made in the six months since that last report: all but one of the recommendations from the Internal Audit review has been fully addressed, and significant progress has been made on the one outstanding recommendation. The Internal Audit team has now reassessed the assurance rating for contract management to Sound.
- 1.4 Since March 2019, the following actions have been delivered:
- The Procurement and Contracts team has been restructured to remove the vacant Procurement Officer post and create the role of Corporate Contracts and Resilience Advisor, which ensures there is now enough expertise and capacity being devoted to contract management corporately. The new staff structure is shown at Appendix A.
 - All contracts and contract managers have been identified.
 - Contract management guidance has been written and published on the Council's intranet site for use by officers across the Council.
 - Nearly 50 officers have received training on the new guidance.
 - Officers who require further training due to the size and/or complexity of the contracts they manage have been identified and training options are being investigated.
 - Officers managing key contracts have all been made aware of the need for good exit plans and contract summaries and have been asked to prepare these if they do not exist for their contracts.
 - The Council's purchasing guide has been changed so that officers who are buying something that requires a contract now have to contact the Mid-Kent Legal Services Contracts team for advice early in the procurement process. This ensures that the correct level of contract advice and support is given in all cases.
 - A central digital repository has been created so that signed contract documents can be kept centrally and referred to as required – this will help the Corporate Contracts and Resilience Advisor ensure that contract documents are being prepared and signed after procurement but before the contract starts.

democracy/primary-areas/your-councillors?sq_content_src=%2BdXJsPWh0dHBzJTNBjTjGjTjGbWVldGluZ3MubWFpZHN0b25lLmdvdi51ayUyRmRvY3VtZW50cyUyRnM2NTE2OSUyRkNvbnRyYWN0JTlwbWFuYWdlbWVudCUyMHVwZGF0ZS5wZGYmYWxsPTE%3D

Appendix A - Procurement and Contracts Team Structure



Agenda Item 15

Audit, Governance and Standards Committee

16 September 2019

Annual Accounts 2018/19 (Update)

Final Decision-Maker	Audit, Governance and Standards Committee
Lead Head of Service/Lead Director	Mark Green, Director of Finance and Business Improvement
Lead Officer and Report Author	Chris Hartgrove, Interim Head of Finance
Classification	Public
Wards affected	All

Executive Summary

This report updates the Audit, Governance and Standards Committee on the completion of the external audit of the Council's 2018/19 Statement of Accounts, following the Committee meeting on 30th July 2019 and includes – at Appendix 1 – the Grant Thornton (MBC's external auditors) updated Audit Findings report.

An unqualified audit opinion on the Accounts was issued by Grant Thornton on 16th August 2019. As the date of issue was beyond the statutory publication deadline of 31st July 2019, full compliance with the Accounts and Audit Regulations 2015 was not possible. The primary reason for the late opinion was the exceptional resourcing pressures experienced by the external auditors.

Full details of the audit issues and adjustments can be found in Appendix 1.

This report makes the following recommendation to Committee:

1. That the external auditor's updated Audit Findings Report, attached at **Appendix 1** is noted.

Timetable

Meeting	Date
Audit, Governance and Standards Committee	16 September 2019

Annual Accounts 2018/19 (Update)

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	We do not anticipate that the recommendations will by themselves materially affect the achievement of corporate priorities. However, they will support the Council's overall achievement of its aims in demonstrating accountability and value for money.	Interim Head of Finance (Deputy Section 151 Officer)
Cross Cutting Objectives	There are no specific implications, although sound financial management does support the delivery of the Council's cross cutting objectives.	Interim Head of Finance (Deputy Section 151 Officer)
Risk Management	Detailed within Section 6.	Interim Head of Finance (Deputy Section 151 Officer)
Financial	The Statement of Accounts provides an overview of the Council's income and expenditure, assets, liabilities and reserves for the financial year ended 31st March 2019.	Interim Head of Finance (Deputy Section 151 Officer)
Staffing	No implications identified.	Interim Head of Finance (Deputy Section 151 Officer)
Legal	The key legal point in this report is Regulation 10 of the Accounts and Audit Regulations 2015, which includes a requirement for the Council to (after approving the Statement of Accounts by 31st July) publish the Statement of Accounts together with any certificate or opinion, entered by the local auditor.	Interim Head of Finance (Deputy Section 151 Officer)

Privacy and Data Protection	No implications identified.	Interim Head of Finance (Deputy Section 151 Officer)
Equalities	No implications identified.	Interim Head of Finance (Deputy Section 151 Officer)
Public Health	No implications identified.	Interim Head of Finance (Deputy Section 151 Officer)
Crime and Disorder	No implications identified.	Interim Head of Finance (Deputy Section 151 Officer)
Procurement	No implications identified.	Interim Head of Finance (Deputy Section 151 Officer)

2. INTRODUCTION AND BACKGROUND

- 2.1 The Audit, Governance and Standards Committee approved the Council's Statement of Accounts 2018/19 on 30th July 2019. Most of the audit work had been completed at that point, although there were some matters outstanding if an audit opinion was to be issued on 31st July in time for compliance with the statutory publication deadline.
-

3. AUDIT CONCLUSION AND FINDINGS

- 3.1 Following the Committee meeting on 30th July 2019, further delays were experienced in concluding the outstanding audit work. This was primarily due to exceptional resourcing pressures experienced by the external auditors, Grant Thornton.
- 3.2 The Chair of the Committee was kept informed of the delay at all stages and an unqualified audit opinion was eventually issued on 16th August 2019.
- 3.3 The circumstances that led to the delayed opinion were not unique to Maidstone with the professional press reporting that over 40% of opinions missing the deadline nationally this year (a sharp increase from 13% for the 2017/18 financial statements).
- 3.4 The Audit Findings report presented to the Committee on 30th July 2019 identified "one adjustment to the financial statements that resulted in a £333,000 adjustment to the Comprehensive Income and Expenditure Statement". There was no impact on the General Fund outturn.
- 3.5 The updated Audit Findings report – which incorporates both the earlier and concluding audit work – identifies "two adjustments to the financial statements that resulted in a £3,531,000 adjustment to the Comprehensive Income and Expenditure Statement". Again there was no impact on the General Fund outturn. Full details are included within **Appendix 1**.
-

4. AVAILABLE OPTIONS

- 4.1 The report is for noting only.
-

5. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 5.1 The report is for noting only.
-

6. RISK

6.1 Failure to meet the statutory publication deadline for audited financial statements would – in normal circumstances – represent a reputational risk to the Council. However, on this occasion, external audit resourcing difficulties and the resulting late audit opinions is a national problem that does not reflect on individual councils. The draft accounts were produced and published in accordance with the 31st May 2019 deadline.

7. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

7.1 Members of the public have legal rights to inspect, ask questions about and challenge items in the Council's accounts. Details of this have been published on the Council's website and the statutory period ended on 12th July. No enquiries have been received in relation to this.

8. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

8.1 The report is for noting only.

9. REPORT APPENDICES

9.1 The following document is published with this report and forms part of the report:

- Appendix 1: Grant Thornton "The Audit Findings for Maidstone Borough Council"
-

10. BACKGROUND PAPERS

10.1 None.

APPENDIX 1

**GRANT THORNTON "THE AUDIT FINDINGS FOR
MAIDSTONE BOROUGH COUNCIL"**

The Audit Findings for Maidstone Borough Council

Year ended 31 March 2019

202

15 August 2019



Contents



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3. Value for money	13
4. Independence and ethics	21

Appendices

- A. Action plan
- B. Audit adjustments
- C. Fees
- D. Audit Opinion

The contents of this report relate only to those matters which came to our attention during the conduct of our normal audit procedures which are designed for the purpose of expressing our opinion on the financial statements. Our audit is not designed to test all internal controls or identify all areas of control weakness. However, where, as part of our testing, we identify control weaknesses, we will report these to you. In consequence, our work cannot be relied upon to disclose all defalcations or other irregularities, or to include all possible improvements in internal control that a more extensive special examination might identify. This report has been prepared solely for your benefit and should not be quoted in whole or in part without our prior written consent. We do not accept any responsibility for any loss occasioned to any third party acting, or refraining from acting on the basis of the content of this report, as this report was not prepared for, nor intended for, any other purpose.

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Headlines

This table summarises the key findings and other matters arising from the statutory audit of Maidstone Borough Council Council ('the Council') and the preparation of the Council's financial statements for the year ended 31 March 2019 for those charged with governance.

<p>Financial Statements</p> <p>104</p>	<p>Under International Standards of Audit (UK) (ISAs) and the National Audit Office (NAO) Code of Audit Practice ('the Code'), we are required to report whether, in our opinion, the Council's financial statements:</p> <ul style="list-style-type: none">• give a true and fair view of the financial position of the Council and its income and expenditure for the year; and• have been properly prepared in accordance with the CIPFA/LASAAC code of practice on local authority accounting and prepared in accordance with the Local Audit and Accountability Act 2014. <p>We are also required to report whether other information published together with the audited financial statements (including the Annual Governance Statement (AGS), Narrative Report), is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated.</p>	<p>Our audit work has been undertaken on site during July and August. Our findings are summarised on pages 5 to 15. We have identified two adjustments to the financial statements that have resulted in a £3,531k adjustment to the Council's Comprehensive Income and Expenditure Statement. There is no impact on the General Fund outturn. Audit adjustments are detailed in Appendix B.</p> <p>We received draft financial statements by the end of May 2019 and following internal checks by management after this date we received a revised set of financial statements to audit on 21 June 2019. This version changed the Core Financial Statements as follows:</p> <ul style="list-style-type: none">• the (Surplus) / Deficit on provision of service was amended from a surplus of £1,390k to a deficit of £1,980k. This reduced the 'Total Comprehensive Income and Expenditure' surplus of £18,088k in the draft statement of accounts, published on 31 May 2019, to £14,718k. This has been adjusted to reflect a change in the treatment of income from Retained Business Rates (£2.9 million) and a late Rent Allowance Payment (£0.5 million).• the Net Asset position on the Balance sheet reduced by £172k to £45,296k. <p>Our work is concluded and there are no matters of which we are aware that would require modification of our audit opinion (Appendix D) or material changes to the financial statements, subject to the following outstanding matters;</p> <ul style="list-style-type: none">- receipt of management representation letter- review of the final set of financial statements- review of post-balance sheet events. <p>We have concluded that the other information to be published with the financial statements is consistent with our knowledge of your organisation and the financial statements we have audited.</p> <p>Our anticipated audit report opinion will be unmodified.</p>
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Headlines

This table summarises the key findings and other matters arising from the statutory audit of Maidstone Borough Council Council ('the Council') and the preparation of the Council's financial statements for the year ended 31 March 2019 for those charged with governance.

Value for Money arrangements

Under the National Audit Office (NAO) Code of Audit Practice ('the Code'), we are required to report if, in our opinion, the Council has made proper arrangements to secure economy, efficiency and effectiveness in its use of resources ('the value for money (VFM) conclusion').

We have completed our risk based review of the Council's value for money arrangements. We have concluded that Maidstone Borough Council has proper arrangements to secure economy, efficiency and effectiveness in its use of resources. We therefore anticipate issuing an unqualified value for money conclusion, as detailed in Appendix D. Our findings are summarised on pages 15 to 18.

Statutory duties

The Local Audit and Accountability Act 2014 ('the Act') also requires us to:

- report to you if we have applied any of the additional powers and duties ascribed to us under the Act; and
- To certify the closure of the audit.

We have not exercised any of our additional statutory powers or duties. We plan to certify the completion of the audit at the same time as the opinion is issued.

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Acknowledgements

We would like to take this opportunity to record our appreciation for the assistance provided by the finance team and other staff during our audit.

Summary

Overview of the scope of our audit

This Audit Findings Report presents the observations arising from the audit that are significant to the responsibility of those charged with governance to oversee the financial reporting process, as required by International Standard on Auditing (UK) 260 and the Code of Audit Practice ('the Code'). Its contents have been discussed with management.

As auditor we are responsible for performing the audit, in accordance with International Standards on Auditing (UK) and the Code, which is directed towards forming and expressing an opinion on the financial statements that have been prepared by management with the oversight of those charged with governance. The audit of the financial statements does not relieve management or those charged with governance of their responsibilities for the preparation of the financial statements.

Audit approach

Our audit approach was based on a thorough understanding of the Council's business and is risk based, and in particular included:

- An evaluation of the Council's internal controls environment, including its IT systems and controls; and

- Substantive testing on significant transactions and material account balances, including the procedures outlined in this report in relation to the key audit risks

We have not had to alter or change our audit plan, as communicated to you in March 2019.

Conclusion

Our audit work is substantially complete and we anticipate issuing an unqualified audit opinion, as detailed in Appendix D. These outstanding items are as listed on page 3.

Our approach to materiality

The concept of materiality is fundamental to the preparation of the financial statements and the audit process and applies not only to the monetary misstatements but also to disclosure requirements and adherence to acceptable accounting practice and applicable law.

Materiality calculations remain the same as reported in our audit plan. We detail in the table below our determination of materiality for Maidstone Borough Council.

	Amount (£'000)	Qualitative factors considered
Materiality for the financial statements	1,800	This has been calculated based upon 2% of your prior year gross expenditure (rounded down)
Performance materiality	1,260	This has been calculated as 75% of headline materiality, based upon our assessment of the likelihood of a material misstatement in the financial statements
Trivial matters	90	This has been calculated based upon 5% of headline materiality.

Significant findings – audit risks

Risks identified in our Audit Plan	Commentary
<p>1 The revenue cycle include fraudulent transactions</p>	<p>Auditor commentary This risk was rebutted in our Audit Plan and there have been no changes to this assessment.</p>
<p>2 Management override of controls</p> <p>Under ISA (UK) 240 there is a non-rebuttable presumed risk that the risk of management override of controls is present in all entities. The Council faces external scrutiny of its spending and this could potentially place management under undue pressure in terms of how they report performance.</p> <p>We therefore identified management override of control, in particular journals, management estimates and transactions outside the course of business as a significant risk, which was one of the most significant assessed risks of material misstatement.</p>	<p>Auditor commentary</p> <p>Our audit work included:</p> <ul style="list-style-type: none"> • evaluating the design effectiveness of management controls over journals • analysing the journals listing and determine the criteria for selecting high risk unusual journals • testing unusual journals recorded during the year and after the draft accounts stage for appropriateness and corroboration • gaining an understanding of the accounting estimates and critical judgements applied made by management and consider their reasonableness with regard to corroborative evidence • evaluating the rationale for any changes in accounting policies, estimates or significant unusual transactions. <p>Our audit work has not identified any issues in respect of management override of controls.</p>

Significant findings – audit risks

Risks identified in our Audit Plan

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Valuation of land and buildings

The Council revalues its land and buildings on a rolling five-yearly basis. This valuation represents a significant estimate by management in the financial statements due to the size of the numbers involved and the sensitivity of this estimate to changes in key assumptions. Additionally, management will need to ensure the carrying value in the Council financial statements is not materially different from the current value at the financial statements date, where a rolling programme is used

We therefore identified valuation of land and buildings, particularly revaluations and impairments, as a significant risk, which was one of the most significant assessed risks of material misstatement.

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Commentary

Auditor commentary

Our audit work included:

- evaluating management's processes and assumptions for the calculation of the estimate, the instructions issued to valuation experts and the scope of their work
- evaluating the competence, capabilities and objectivity of the valuation expert
- discussing with the valuer the basis on which the valuation was carried out
- challenging the information and assumptions used by the valuer to assess completeness and consistency with our understanding
- testing revaluations made during the year to see if they had been input correctly into the Council's asset register
- evaluating the assumptions made by management for those assets not revalued during the year and how management has satisfied themselves that these are not materially different to current value at year end.

Our audit work has identified an error totalling £905k due to the Council's treatment of the depreciation charged in the year on assets that have been revalued in the year. The draft accounts included the 10 months of depreciation charged between April 2018 and January 2019 as part of the NBV of the assets. The Code requires this amount to be removed from the NBV as the revaluation should remove the accumulated depreciation as the new value is added to the asset register. This has resulted in an amendment to the Core Financial Statements as set out in Appendix B.

Our work did not identify any other findings in relation to the valuation of assets.

Significant findings – audit risks

Risks identified in our Audit Plan

Commentary

4

Valuation of pension fund net liability

The Council's pension fund net liability, as reflected in its balance sheet as the net defined benefit liability, represents a significant estimate in the financial statements.

The pension fund net liability is considered a significant estimate due to the size of the numbers involved (£77 million in the Council's balance sheet) and the sensitivity of the estimate to changes in key assumptions.

109 We therefore identified valuation of the Council's pension fund net liability as a significant risk, which was one of the most significant assessed risks of material misstatement.

Auditor commentary

Our audit work included:

- updating our understanding of the processes and controls put in place by management to ensure that the Council's pension fund net liability is not materially misstated and evaluate the design of the associated controls;
- evaluating the instructions issued by management to their management expert (an actuary) for this estimate and the scope of the actuary's work;
- assessing the competence, capabilities and objectivity of the actuary who carried out the Council's pension fund valuation;
- assessing the accuracy and completeness of the information provided by the Council to the actuary to estimate the liability;
- testing the consistency of the pension fund asset and liability and disclosures in the notes to the core financial statements with the actuarial report from the actuary; and
- undertaking procedures to confirm the reasonableness of the actuarial assumptions made.

In the 'Significant findings – other issues' on page 13 we set out the potential impact of the McCloud judgement on the pension fund net liability. We are satisfied that this has not resulted in a material difference in the 2018/19 accounts and the narrative disclosure in Note 32 has been updated to reflect the latest position.

Our audit work has not identified any other issues in respect of the valuation of the pension fund net liability.

Significant findings – key judgements and estimates

Accounting area	Summary of management's policy	Audit Comments	Assessment
Revenue recognition	<p>Revenue in respect of services provided is recognised when, and to the extent that, performance occurs, and is measured at the fair value of the consideration receivable.</p> <p>The Council has three principal revenue streams:</p> <ol style="list-style-type: none"> 1) Taxation revenues in respect of council tax and business rates are recognised in the year that the tax was levied 2) Grant income is recognised in accordance with the terms of the grant, whether specific or non-specific 3) Income from fees and charges in the provision of services is recognised when the service has been provided or when the title to goods has passed. 	<ul style="list-style-type: none"> • The revenue recognition policy is in line with the CIPFA 2018/19 Accounting Code. The Council use accruals based accounting recognising revenue when significant risks and rewards of ownership to the purchaser and it is probable that economic benefits or service potential associated with the transaction will flow to the Council. 	 Green
Provisions for NNDR appeals - £1.886m	<p>The Council is responsible for repaying a proportion of successful rateable value appeals. Management rely on the expert opinion of Analyse Local in order to determine the level of provision required. The calculation is based upon the latest information about outstanding rates appeals provided by the Valuation Office Agency (VOA) and previous success rates. As part of the Kent pool, Maidstone BC 's share of the total appeals provision is at 40%, hence the £1,886k. The provision has decreased by £421k in 2018/19.</p>	<p>We assessed management's provision for NNDR appeals by considering:</p> <ul style="list-style-type: none"> • the appropriateness of the underlying information used to determine the estimate • the impact of any changes to valuation method • the consistency of estimate against peers • the reasonableness of increase/decrease in estimate • the adequacy of disclosure of estimate in the financial statements <p>We consider management's process is appropriate.</p>	 Green

Assessment

- We disagree with the estimation process or judgements that underpin the estimate and consider the estimate to be potentially materially misstated
- We consider the estimate is unlikely to be materially misstated however management's estimation process contains assumptions we consider optimistic
- We consider the estimate is unlikely to be materially misstated however management's estimation process contains assumptions we consider cautious
- We consider management's process is appropriate and key assumptions are neither optimistic or cautious

Significant findings – key judgements and estimates

	Summary of management’s policy	Audit Comments	Assessment
<p>Land and Buildings – Other - £58.5m</p> <p>111</p>	<p>Other land and buildings comprises specialised assets such as the leisure centre and theatre, which are required to be valued at depreciated replacement cost (DRC) at year end, reflecting the cost of a modern equivalent asset necessary to deliver the same service provision. The remainder of other land and buildings are not specialised in nature and are required to be valued at existing use in value (EUV) at year end. The Council has engaged Harrison’s Chartered Surveyor to complete the valuation of properties as at 31 January 2019 on a five yearly cyclical basis. The valuation of properties valued by the valuer has resulted in a net increase of £6,582k. Management have considered the year end value of non-valued properties to determine whether there has been a material change in the total value of these properties. Management’s assessment of assets not revalued has identified no material change to the properties value.</p>	<p>We have assessed management’s estimate, considering;</p> <ul style="list-style-type: none"> • an assessment of management’s expert; • the completeness and accuracy of the underlying information used to determine the estimate; • the consistency of estimate against near neighbours and a report produced by our auditors expert, Gerald Eve; • the reasonableness of the assumptions behind the valuations; • the reasonableness of increase in estimate; and • the adequacy of disclosure of estimate in the financial statements. <p>We consider management’s process is appropriate,</p>	<p> Green</p>

Assessment

- We disagree with the estimation process or judgements that underpin the estimate and consider the estimate to be potentially materially misstated
- We consider the estimate is unlikely to be materially misstated however management’s estimation process contains assumptions we consider optimistic
- We consider the estimate is unlikely to be materially misstated however management’s estimation process contains assumptions we consider cautious
- We consider management’s process is appropriate and key assumptions are neither optimistic or cautious

Significant findings – key judgements and estimates

	Summary of management's policy	Audit Comments	Assessment																						
112	<p>Net pension liability – £77.618m</p> <p>The Council's total net pension liability at 31 March 2019 comprises £77.618m (PY £77.481m) in relation to the Local Government Pension Scheme as administered by Kent County Council.</p> <p>The Council uses Barnett Waddingham to provide actuarial valuations of the Council's assets and liabilities derived from these schemes. A full actuarial valuation is required every three years. The latest full actuarial valuation was completed in 2016. A roll forward approach is used in intervening periods, which utilises key assumptions such as life expectancy, discount rates, salary growth and investment returns. Given the significant value of the net pension fund liability, small changes in assumptions can result in significant valuation movements.</p>	<p>Our assessment of the estimate has considered:</p> <ul style="list-style-type: none"> Assessment of management's expert Use of PWC as auditors expert to assess actuary and assumptions made by actuary. The assumptions employed by the actuary have been assessed as reasonable. 	 Green																						
	<table border="1"> <thead> <tr> <th>Assumption</th> <th>Actuary Value</th> <th>Assessment</th> </tr> </thead> <tbody> <tr> <td>Discount rate</td> <td>2.40%</td> <td style="text-align: center;">●</td> </tr> <tr> <td>Pension increase rate</td> <td>2.40%</td> <td style="text-align: center;">●</td> </tr> <tr> <td>Salary growth</td> <td>3.90%</td> <td style="text-align: center;">●</td> </tr> <tr> <td>Mortality assumptions – longevity at 65 for current male pensioners (years)</td> <td>22.0</td> <td style="text-align: center;">●</td> </tr> <tr> <td>Mortality assumptions – longevity at 65 for future male pensioners (years)</td> <td>23.7</td> <td style="text-align: center;">●</td> </tr> <tr> <td>Mortality assumptions – longevity at 65 for current female pensioners (years)</td> <td>24.0</td> <td style="text-align: center;">●</td> </tr> <tr> <td>Mortality assumptions – longevity at 65 for future female pensioners (years)</td> <td>25.8</td> <td style="text-align: center;">●</td> </tr> </tbody> </table>	Assumption	Actuary Value	Assessment	Discount rate	2.40%	●	Pension increase rate	2.40%	●	Salary growth	3.90%	●	Mortality assumptions – longevity at 65 for current male pensioners (years)	22.0	●	Mortality assumptions – longevity at 65 for future male pensioners (years)	23.7	●	Mortality assumptions – longevity at 65 for current female pensioners (years)	24.0	●	Mortality assumptions – longevity at 65 for future female pensioners (years)	25.8	●
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Assessment

- We disagree with the estimation process or judgements that underpin the estimate and consider the estimate to be potentially materially misstated
- We consider the estimate is unlikely to be materially misstated however management's estimation process contains assumptions we consider optimistic
- We consider the estimate is unlikely to be materially misstated however management's estimation process contains assumptions we consider cautious
- We consider management's process is appropriate and key assumptions are neither optimistic or cautious

Significant findings - Going concern

Our responsibility

As auditors, we are required to “obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation and presentation of the financial statements and to conclude whether there is a material uncertainty about the entity's ability to continue as a going concern” (ISA (UK) 570).

Going concern commentary

Management's assessment process

The Council's accounts have been prepared on the going concern basis. Public sector bodies are assumed to be going concerns where the continuation of the provision of a service in the future is anticipated, as evidenced by inclusion of financial provision for that service in published documents.

Auditor commentary

- As auditors, we are required to “obtain sufficient appropriate audit evidence about the appropriateness of management's use of the going concern assumption in the preparation and presentation of the financial statements and to conclude whether there is a material uncertainty about the entity's ability to continue as a going concern” (ISA (UK) 570).
- We have subjected the 2019/20 budget and high level revenue MTFS to detailed scrutiny, and reviewed the planned savings proposals for 2019/20 and 2020/21 in our consideration of the appropriateness of management's use of the going concern assumption.

Concluding comments

Auditor commentary

- Based on the audit work performed, we are satisfied that no additional disclosures relating to going concern are required within the Accounts.

Significant findings - other issues

Issue	Commentary	Auditor view
<p>Potential impact of the McCloud judgement</p> <p>The Court of Appeal has ruled that there was age discrimination in the judges and firefighters pension schemes where transitional protections were given to scheme members.</p> <p>The Government applied to the Supreme Court for permission to appeal this ruling, but this permission to appeal was unsuccessful. The case will now be remitted back to employment tribunal for remedy.</p> <p>The legal ruling around age discrimination (McCloud - Court of Appeal) has implications not just for pension funds but also for other pension schemes where they have implemented transitional arrangements on changing benefits.</p>	<p>Discussion is ongoing in the sector regarding the potential impact of the ruling on the financial statements of Local Government bodies.</p> <p>The Council has requested an estimate from its actuary of the potential impact of the McCloud ruling. The actuary's estimate was of a possible increase in pension liabilities of £1,282k, and an increase in service costs for the 2019/20 year of £126k.</p> <p>Management's view is that the impact of the ruling is not material for the Council, and will be considered for future years' actuarial valuations.</p>	<p>We have reviewed the analysis performed by the actuary, and consider that the approach that has been taken to arrive at this estimate is reasonable.</p> <p>Although we are of the view that there is sufficient evidence to indicate that a liability is probable, we have satisfied ourselves that there is not a risk of material error as a result of this issue. We also acknowledge the significant uncertainties relating to the estimation of the impact on the Council's liability.</p> <p>The Council has updated the narrative in Note 32 for this judgement.</p> <p>We have included this as an uncertainty within Appendix B.</p>

Other communication requirements

We set out below details of other matters which we, as auditors, are required by auditing standards and the Code to communicate to those charged with governance.

Issue	Commentary
① Matters in relation to fraud	<ul style="list-style-type: none"> We have previously discussed the risk of fraud with the Audit, Governance and Standards Committee. We have not been made aware of any other incidents in the period and no other issues have been identified during the course of our audit procedures.
② Matters in relation to related parties	<ul style="list-style-type: none"> We are not aware of any related parties or related party transactions which have not been disclosed. However, our review of the related party declaration process identified that the Council does not follow good practice as our testing found a number of declarations from members were older than the 2018/19 year. The declarations should be made annually after the end of the financial year to ensure the accounts include all disclosures needed.
③ Matters in relation to laws and regulations	<ul style="list-style-type: none"> You have not made us aware of any significant incidences of non-compliance with relevant laws and regulations and we have not identified any incidences from our audit work.
④ Written representations	<ul style="list-style-type: none"> A standard letter of representation has been requested from the Council.
⑤ Confirmation requests from third parties	<ul style="list-style-type: none"> We requested from management permission to send (a) confirmation requests to holders of the Council's investments and bank balances. This permission was granted and the requests were sent. All of these requests were returned with positive confirmation.
⑥ Disclosures	<ul style="list-style-type: none"> Our review found no material omissions in the financial statements and amendments have been summarised on page 21
⑦ Audit evidence and explanations/significant difficulties	<ul style="list-style-type: none"> All information and explanations requested from management was provided.

Other responsibilities under the Code

Issue	Commentary
<p>① Other information</p>	<ul style="list-style-type: none"> We are required to give an opinion on whether the other information published together with the audited financial statements (including the Annual Governance Statement and Narrative Report), is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. <p>No inconsistencies have been identified. We plan to issue an unmodified opinion in this respect – refer to appendix D.</p>
<p>② Matters on which we report by exception</p>	<p>We are required to report on a number of matters by exception in a numbers of areas:</p> <ul style="list-style-type: none"> If the Annual Governance Statement does not meet the disclosure requirements set out in the CIPFA/SOLACE guidance or is misleading or inconsistent with the other information of which we are aware from our audit If we have applied any of our statutory powers or duties <p>We have nothing to report on these matters.</p>
<p>③ Specified procedures for Whole of Government Accounts</p>	<p>We are required to carry out specified procedures (on behalf of the NAO) on the Whole of Government Accounts (WGA) consolidation pack under WGA group audit instructions.</p> <p>Note that work is not required as the Council does not exceed the threshold.</p>
<p>④ Certification of the closure of the audit</p>	<p>We intend to certify the closure of the 2018/19 audit of Maidstone Borough Council in the audit opinion, as detailed in Appendix D.</p>

Value for Money

Background to our VFM approach

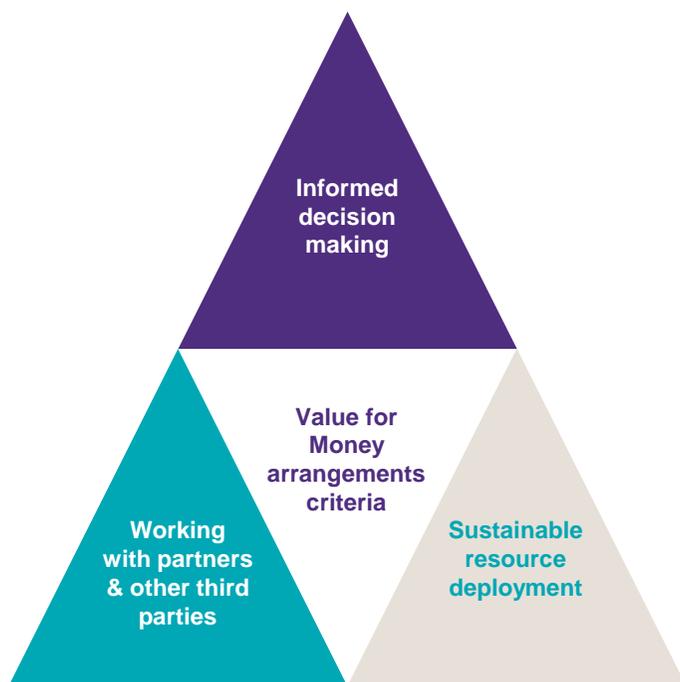
We are required to satisfy ourselves that the Council has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. This is known as the Value for Money (VFM) conclusion.

We are required to carry out sufficient work to satisfy ourselves that proper arrangements are in place at the Council. In carrying out this work, we are required to follow the NAO's Auditor Guidance Note 3 (AGN 03) issued in November 2017. AGN 03 identifies one single criterion for auditors to evaluate:

"In all significant respects, the audited body takes properly informed decisions and deploys resources to achieve planned and sustainable outcomes for taxpayers and local people."

This is supported by three sub-criteria, as set out below:

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Risk assessment

We carried out an initial risk assessment in February 2019 and identified a number of significant risks in respect of specific areas of proper arrangements using the guidance contained in AGN03. We communicated these risks to you in our Audit Plan in March 2019.

We have continued our review of relevant documents up to the date of giving our report, and have not identified any further significant risks where we need to perform further work.

We carried out further work only in respect of the significant risks we identified from our initial and ongoing risk assessment. Where our consideration of the significant risks determined that arrangements were not operating effectively, we have used the examples of proper arrangements from AGN 03 to explain the gaps in proper arrangements that we have reported in our VFM conclusion.

Value for Money

Our work

AGN 03 requires us to disclose our views on significant qualitative aspects of the Council's arrangements for delivering economy, efficiency and effectiveness.

We have focused our work on the significant risks that we identified in the Council's arrangements. In arriving at our conclusion, our main considerations were:

- The Council's 2018/19 financial outturn;
- The robustness of the Council's 2019/20 budget and Medium Term Financial Plan, including savings and income proposals; and
- The Council's response to Brexit.

We have set out more detail on the risks we identified, the results of the work we performed, and the conclusions we drew from this work on pages 18 to 20.

Overall conclusion

Based on the work we performed to address the significant risks, we are satisfied that the Council had proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

The text of our report, which confirms this can be found at Appendix D.

Significant difficulties in undertaking our work

We did not identify any significant difficulties in undertaking our work on your arrangements which we wish to draw to your attention.

Significant matters discussed with management

There were no matters where no other evidence was available or matters of such significance to our conclusion or that we required written representation from management or those charged with governance.

Key findings

We set out below our key findings against the significant risks we identified through our initial risk assessment and further risks identified through our ongoing review of documents.

Significant risk	Findings
<p>1 Overall Financial Position – Medium Term Financial Strategy</p> <p>Whilst the Council has been able to set a balanced budget over the short term, currently there is a requirement for a considerable level of savings of the life of the current Medium Term Financial Strategy (MTFS).</p> <p>We propose to:</p> <ul style="list-style-type: none"> - review the assumptions behind the latest MTFS, covering the period up to March 2024; - consider the 2018/19 budget outturn, and any implications this may have for the MTFS, along with the latest outturn against the 2019/20 budget; and - review the savings proposals which have been identified to date in respect of the savings requirements, along with the plans that the Council has to identify the additional savings currently required for the life of the MTFS. 	<p><u>Revenue outturn for 2018/19</u></p> <p>Despite the continued challenging funding settlement for local authorities nationally, you have continued your good track record of delivery of services within budget and attainment of planned targets.</p> <p>The Council has had a challenging year but has been able to deliver a provisional revenue budget underspend of £0.154m (after deducting resources to be carried forward). This represents good financial performance in the context of the reduction in central government funding, the need to make significant savings, and increasing pressure on services.</p> <p><u>Budget for 2019/20 onwards</u></p> <p>The Council presented three budget scenarios as part of their Medium Term Financial Strategy – ‘adverse’, ‘neutral’ and ‘favourable’. The ‘neutral’ budget includes circa £1.17m of savings in 2019/20 and cumulative savings of £5.2m by 2023/24.</p> <p>We have analysed your detailed breakdown of the reductions in income and increased expenditure budgeted for 2019/20. We discussed the key items with management and looked at the assumptions behind these and concluded that they were realistically and prudently estimated but remain challenging.</p> <p>We have discussed with management the assumptions and estimates which underlie their estimates of the additional revenue which you plan to generate and the savings plans. We found the estimates were reasonable. The Council has a very good track record in setting budgets which are accurate and very close to the reality shown in the outturn position.</p> <p>We are satisfied that management have demonstrated that sound financial planning processes and robust financial controls are in place.</p>

Key findings

We set out below our key findings against the significant risks we identified through our initial risk assessment and further risks identified through our ongoing review of documents.

Significant risk	Findings
1	<p data-bbox="414 278 828 307"><u>Fiscal Indicators and reserves levels</u></p> <p data-bbox="414 335 1989 421">The level of reserves in the Council's draft accounts is £45,468k comprising usable reserves of £15,221k and unusable reserves of £30,247k. The general fund and earmarked general fund reserves as a percentage of net service revenue expenditure is 56%. The level of usable reserves, which include the general fund, earmarked reserves and capital receipts reserve, has increased from 2017-18 by 23%.</p> <p data-bbox="414 449 1989 566">For the short to medium term, the Council's reserves level provides it with a sufficient cushion to weather the on-going financial challenges that you face over the next few years due to reductions in central government funding and forecast increases in demand for your core services. However, you only have finite reserves available and it is important that you continue to maintain appropriate budgetary controls on spending and ensure that savings plans are fully delivered.</p>

Auditor view

120 On the basis of this work, we have concluded that the risk was sufficiently mitigated.

Key findings

We set out below our key findings against the significant risks we identified through our initial risk assessment and further risks identified through our ongoing review of documents.

Significant risk	Findings	Conclusion
<p>2 Brexit</p> <p>With the UK due to leave the European Union on 29 March 2019, there will be national and local implications resulting from Brexit that will impact on the Authority and which it will need to plan for.</p> <p>In response to this risk we will:</p> <ul style="list-style-type: none"> Review your arrangements and plans to mitigate any risks on Brexit. Our review will focus on areas such as workforce planning, supply chain analysis, regulatory impact and impacts on finances including investments. 	<p>At the time of writing our audit plan, the UK was due to exit from the EU on 29 March 2019. This was delayed and Brexit is now expected to happen on a revised date of 31 October 2019. Therefore the expected risk related to the impact of Brexit has not materialised within the period covered by this report. However we have considered the level of preparedness and planning undertaken by the Council.</p> <p>The Council is part of the Kent Resilience Forum and work undertaken to assess the risk and prepare for Brexit have included work undertaken with in the Council as part of a multi agency approach. The overall approach has involved considering the risk from a no-deal scenario and the areas which it would impact;</p> <ul style="list-style-type: none"> Co-ordination of the approach and risk assessment across the county through the Kent Resilience Forum. Through this body the Council has participated in exercises to test plans related to identified risks such as transport Brexit briefings have been provided to the Council in order keep members informed of progress. The Council has tested the ability of its systems to cope with staff working from home and the ability of sufficient staff to get to work for customer facing roles and to ensure the continuing provision of key Council services such as waste collection. The Council's website also provides helpful links to where residents and businesses can get the most up to date advice including government's official source for a wide-range of information for residents and businesses about the UK leaving the EU. 	

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Auditor view

On the basis of this work, we have concluded that the risk was sufficiently mitigated based on the information the Council has had in order to prepare for the impact of Brexit at this time.

Independence and ethics

We confirm that there are no significant facts or matters that impact on our independence as auditors that we are required or wish to draw to your attention. We have complied with the Financial Reporting Council's Ethical Standard and confirm that we, as a firm, and each covered person, are independent and are able to express an objective opinion on the financial statements

We confirm that we have implemented policies and procedures to meet the requirements of the Financial Reporting Council's Ethical Standard and we as a firm, and each covered person, confirm that we are independent and are able to express an objective opinion on the financial statements.

Further, we have complied with the requirements of the National Audit Office's Auditor Guidance Note 01 issued in December 2017 which sets out supplementary guidance on ethical requirements for auditors of local public bodies.

Details of fees charged are detailed in Appendix C

Audit and Non-audit services

For the purposes of our audit we have made enquiries of all Grant Thornton UK LLP teams providing services to the Council. The following non-audit services were identified.

	Fees £	Threats identified	Safeguards
Audit related			
Certification of Housing Benefits grant	10,000	Self-Interest (because this is a recurring fee)	The level of this recurring fee taken on its own is not considered a significant threat to independence as the fee for this work is low in comparison to the total fee for the audit and in particular relative to Grant Thornton UK LLP's turnover overall. Further, it is a fixed fee and there is no contingent element to it. These factors all mitigate the perceived self-interest threat to an acceptable level.
Presentation to council on Grant Thornton's vibrant Economy index	nil	Self interest	This was performed by a separate team to that involved in the audit and there was no related fee income.

These services are consistent with the Council's policy on the allotment of non-audit work to your auditors. All services have been approved by the Audit, Governance and Standards Committee. None of the services provided are subject to contingent fees.

Action plan

We have identified 1 recommendation for the Council as a result of issues identified during the course of our audit. We have agreed our recommendation with management and we will report on progress on this recommendation during the course of the 2019/20 audit. The matters reported here are limited to those deficiencies that we have identified during the course of our audit and that we have concluded are of sufficient importance to merit being reported to you in accordance with auditing standards.

1	Assessment	Issue and risk	Recommendations
123	●	<p>Creditors</p> <ul style="list-style-type: none"> During our creditor and accruals testing we identified items which had been incorrectly accrued for at year end. 	<p>Recommendations</p> <ul style="list-style-type: none"> We recommend that all accruals are reviewed by the budget holders at year end to ensure they remain valid and are accrued at the appropriate level based on supporting information. <p>Management response</p> <ul style="list-style-type: none"> We agree that budget holders should be engaged in determining outstanding liabilities at year end. We will reflect this in our ongoing programme of training for budget holders and we will implement a process for budget holders to sign off outstanding liabilities in their areas at year end.

Controls

- High – Significant effect on control system
- Medium – Effect on control system
- Low – Best practice

Audit Adjustments

We are required to report all non trivial misstatements to those charged with governance, whether or not the accounts have been adjusted by management.

Impact of adjusted misstatements

All adjusted misstatements are set out in detail below along with the impact on the key statements and the reported net expenditure for the year ending 31 March 2019.

Detail	Comprehensive Income and Expenditure Statement £'000	Balance Sheet £' 000	Impact on total net expenditure £'000
1 Property, plant and equipment (note 18)			
The Council revalues its assets as at 31 January 2019. The depreciation charge for the year includes £905k for the 10 months to January 2019. However, on revaluation this should be written out of the asset register as an accumulated depreciation adjustment.			
The accumulated depreciation was not written out which meant the valuation of the asset was misstated. The accounts have been amended as follows:			
Dr Accumulated Depreciation and Impairment – Accumulated Depreciation		905	
Cr Cost or valuation – revaluation increases/(decreases) recognised in the RR		(572)	
Cr Cost or Valuation – revaluation increases/(decreases) recognised in the Surplus/Deficit on provision of services	(333)		(333)
2 Property, plant and equipment (note 18)			
The PPE additions testing identified £373k of costs in Assets under Construction that should not have been capitalised as they were not enhancing the asset. The Council has obtained legal advice about the additional costs incurred on the project that are not capital in nature and have made a judgement that these can be recovered. The accounts have been amended as follows:			
Dr Debtors		373	
Cr PPE additions – Assets under Construction		(373)	
Overall impact	£ (333)	£ nil	£ (333)

There is nil impact on the Balance Sheet for the above amendment as there are capital accounting entries in the Movement in Reserves Statement which also impact on the Balance Sheet. These have not been shown in the table for simplicity.

Audit Adjustments

We are required to report all non trivial misstatements to those charged with governance, whether or not the accounts have been adjusted by management.

Impact of adjusted misstatements (continued)

All adjusted misstatements are set out in detail below along with the impact on the key statements and the reported net expenditure for the year ending 31 March 2019.

Detail	Comprehensive Income and Expenditure Statement £'000	Balance Sheet £' 000	Impact on total net expenditure £'000
Overall impact (continued)	£ (333)	£ nil	£ (333)
3 Short term debtors and Short term creditors The balance on a creditor cost code was misclassified within debtors. This has been amended as follows:			
Dr Creditors		1,064	
Cr Debtors		(1,064)	
4 Comprehensive Income and Expenditure Statement The testing of the Movement in Reserves statement identified an omission in the adjustment between reserves of £3,198k. This resulted in the identification of adjustments in the MiRS statement which had not been reflected in the CIES. The accounts have been amended as follows:			
Cr Comprehensive Income and Expenditure Statement – income	(3,198)		(3,198)
Overall impact	£ (3,531)	£ nil	£ (3,531)

There is nil impact on the Balance Sheet for the amendment 4 as there are adjusting entries in the Movement in Reserves Statement which also impact on the Balance Sheet. These have not been shown in the table for simplicity.

Audit Adjustments

Misclassification and disclosure changes

The table below provides details of misclassification and disclosure changes identified during the audit which have been made in the final set of financial statements.

Misclassification / disclosure	Detail	Auditor recommendations	Adjusted?
Expenditure and Funding Analysis (Note 1) - disclosure	The Expenditure and Funding Analysis was not consistent with the supporting note and the CIES.	<ul style="list-style-type: none"> MBC have amended the disclosure in the final version of the accounts 	✓
Property, Plant and Equipment (note 18) - misclassification	<p>The Revaluation increases/(decreases) recognised in the 'Revaluation Reserve' and 'Surplus/Deficit on Provision of Services' for Land and Buildings included:</p> <ul style="list-style-type: none"> Valuation of assets Accumulated depreciation written out upon revaluation <p>These amounts should not be netted off and should be disclosed on separate lines within the disclosure note. The 2018/19 accumulated depreciation was £2,714k which was deflating the true revaluation gain in the year in the note. The note has been amended to show the accumulated depreciation as Other movements in cost or valuation with an explanation below the table to explain the movement.</p> <p>The 2017/18 disclosure note has also been amended and shown as restated in the accounts. The 2017/18 accumulated depreciation was £2,600k.</p>	<ul style="list-style-type: none"> MBC have amended the misclassification in the final version of the accounts 	✓
External audit costs (note 15) - disclosure	The fees payable for the certification of grant claims during the year was understated for the 18/19 HB claim by £1k. Also, the fee did not include the additional fee for 2017/18 HB work of £10k. Total fee for grant claims is £20k.	<ul style="list-style-type: none"> MBC have amended the disclosure in the final version of the accounts 	✓
Capital commitments (note 18) - disclosure	The capital commitments disclosed in the note did not agree to the signed contracts as at 31 March 2019. The accounts have been amended to state the actual costs committed at year end.	<ul style="list-style-type: none"> MBC have amended the disclosure in the final version of the accounts 	✓
Trust Funds (note 27) - disclosure	The Trust Funds note was prepared on estimated figures as the draft accounts were not available. These have now been received and there are differences greater than our trivial level in the Gross Expenditure and Income totals and Balance Sheet.	<ul style="list-style-type: none"> MBC have amended the disclosure in the final version of the accounts 	✓
Disclosure only	Various	<ul style="list-style-type: none"> We have agreed a number of other minor disclosure changes such as typos, formatting and presentation. 	✓

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Audit Adjustments

Impact of unadjusted misstatements

The Audit, Governance and Standards Committee is required to approve management's proposed treatment of all items recorded within the table below.

Detail	CIES		Balance sheet		Reason for not adjusting
	Debit (£000)	Credit (£000)	Debit (£000)	Credit (£000)	
1 Creditors			189		
Expenditure		189			(189)
The creditor accruals balance is overstated as sample testing of the creditors balance identified four errors. All the errors resulted in an over accrual in the accounts.					The error is immaterial so we have declined to amend the accounts.
127 Impact on total net expenditure					(189)

Impact of unadjusted estimates

We are not proposing an amendment for the below estimate but are bringing to your attention as it was a significant judgement in the accounts.

Detail	Impact	Reason for not adjusting
McCloud pension liability estimates	Discussion is ongoing in the sector regarding the potential impact of the ruling on the financial statements of Local Government bodies. This will therefore constitute an unadjusted estimate.	The Council has requested an estimate from its actuary of the potential impact of the McCloud ruling. The actuary's estimate was of a possible increase in pension liabilities of £1,282k, and an increase in service costs for the 2019/20 year of £126k.
		Management's view is that the impact of the ruling is not material for Maidstone Borough Council, and will be considered for future years' actuarial valuations. We accept this view. Narrative has been added to the Pensions Note to explanation the ruling.

Fees

We confirm below our final fees charged for the audit and provision of non-audit services.

Audit Fees

	Proposed fee	Final fee
Council Audit	38,866	38,866
Additional fees in relation to additional work required for the following issues in 2018/19: * McCloud judgement		TBC
Total audit fees (excluding VAT)	£38,866	£TBC

The proposed fees for the year were in line with the scale fee set by Public Sector Audit Appointments Ltd (PSAA).

*In common with all other councils there will be proposed additional fees related to McCloud and other regulatory requirements for 2018/19. We do not propose any additional fees for other matters. We have not yet discussed the additional fees with management and will do so once the audit is complete.

Fees in respect of grant work, such as reasonable assurance reports, are shown under 'Fees for other services' below.

Non Audit Fees

Fees for other services	Fees
Audit related services:	
Certification of Housing Benefits claim 2018/19	10,000
Additional fee for 2017/18 Housing Benefits claim	10,000

Audit opinion

We anticipate we will provide the Council with an unmodified audit report

Independent auditor's report to the members of Maidstone Borough Council Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of Maidstone Borough Council (the 'Authority') for the year ended 31 March 2019 which comprise the Movement in Reserves Statement, the Comprehensive Income and Expenditure Statement, the Balance Sheet, the Cash Flow Statement, the Collection Fund Statement and notes to the financial statements, including a summary of significant accounting policies. The notes to the financial statements include the FFA, Notes to the Statements, Policies and Judgements, and Notes to the Collection Fund Statement. The financial reporting framework that has been applied in their preparation is applicable law and the CIPFA/LASAAC code of practice on local authority accounting in the United Kingdom 2018/19.

In our opinion, the financial statements:

- give a true and fair view of the financial position of the Authority as at 31 March 2019 and of its expenditure and income for the year then ended;
- have been prepared properly in accordance with the CIPFA/LASAAC code of practice on local authority accounting in the United Kingdom 2018/19; and
- have been prepared in accordance with the requirements of the Local Audit and Accountability Act 2014.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the 'Auditor's responsibilities for the audit of the financial statements' section of our report. We are independent of the Authority in accordance with the ethical requirements that are relevant to our audit of the financial statements in the UK, including the FRC's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusions relating to going concern

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the Director of Finance and Business Improvement's use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Director of Finance and Business Improvement has not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the Authority's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

Other information

The Director of Finance and Business Improvement is responsible for the other information. The other information comprises the information included in the Statement of Accounts, the Narrative Report, and the Annual Governance Statement, other than the financial statements and our auditor's report thereon. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge of the Authority obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact.

We have nothing to report in this regard.

Other information we are required to report on by exception under the Code of Audit Practice

Under the Code of Audit Practice published by the National Audit Office on behalf of the Comptroller and Auditor General (the Code of Audit Practice) we are required to consider

whether the Annual Governance Statement does not comply with the 'Delivering Good Governance in Local Government: Framework (2016)' published by CIPFA and SOLACE or is misleading or inconsistent with the information of which we are aware from our audit. We are not required to consider whether the Annual Governance Statement addresses all risks and controls or that risks are satisfactorily addressed by internal controls.

We have nothing to report in this regard.

Opinion on other matter required by the Code of Audit Practice

In our opinion, based on the work undertaken in the course of the audit of the financial statements and our knowledge of the Authority gained through our work in relation to the Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources, the other information published together with the financial statements in the Statement of Accounts, the Narrative Report and the Annual Governance Statement for the financial year for which the financial statements are prepared is consistent with the financial statements.

Matters on which we are required to report by exception

Under the Code of Audit Practice, we are required to report to you if:

- we issue a report in the public interest under section 24 of the Local Audit and Accountability Act 2014 in the course of, or at the conclusion of the audit; or
- we make a written recommendation to the Authority under section 24 of the Local Audit and Accountability Act 2014 in the course of, or at the conclusion of the audit; or
- we make an application to the court for a declaration that an item of account is contrary to law under Section 28 of the Local Audit and Accountability Act 2014 in the course of, or at the conclusion of the audit; or
- we issue an advisory notice under Section 29 of the Local Audit and Accountability Act 2014 in the course of, or at the conclusion of the audit; or
- we make an application for judicial review under Section 31 of the Local Audit and Accountability Act 2014, in the course of, or at the conclusion of the audit.

We have nothing to report in respect of the above matters.

Responsibilities of the Authority, the Director of Finance and Business Improvement and Those Charged with Governance for the financial statements

As explained more fully in the Statement of Responsibilities for the Statement of Accounts set out on page [X], the Authority is required to make arrangements for the proper administration of its financial affairs and to secure that one of its officers has the responsibility for the administration of those affairs. In this authority, that officer is the Director of Finance and Business Improvement. The Director of Finance and Business Improvement is responsible for

the preparation of the Statement of Accounts, which includes the financial statements, in accordance with proper practices as set out in the CIPFA/LASAAC code of practice on local authority accounting in the United Kingdom 2018/19, for being satisfied that they give a true and fair view, and for such internal control as the Director of Finance and Business Improvement determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, the Director of Finance and Business Improvement is responsible for assessing the Authority's ability to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless there is an intention by government that the services provided by the Authority will no longer be provided.

The Audit, Governance and Standards Committee is Those Charged with Governance. Those charged with governance are responsible for overseeing the Authority's financial reporting process.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

A further description of our responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at: www.frc.org.uk/auditorsresponsibilities. This description forms part of our auditor's report.

Report on other legal and regulatory requirements - Conclusion on the Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources

Conclusion

On the basis of our work, having regard to the guidance on the specified criterion issued by the Comptroller and Auditor General in November 2017, we are satisfied that the Authority put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2019.

Responsibilities of the Authority

The Authority is responsible for putting in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources, to ensure proper stewardship and governance, and to review regularly the adequacy and effectiveness of these arrangements.

Auditor's responsibilities for the review of the Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources

We are required under Section 20(1)(c) of the Local Audit and Accountability Act 2014 to be satisfied that the Authority has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources. We are not required to consider, nor have we considered, whether all aspects of the Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources are operating effectively.

We have undertaken our review in accordance with the Code of Audit Practice, having regard to the guidance on the specified criterion issued by the Comptroller and Auditor General in November 2017, as to whether in all significant respects the Authority had proper arrangements to ensure it took properly informed decisions and deployed resources to achieve planned and sustainable outcomes for taxpayers and local people. The Comptroller and Auditor General determined this criterion as that necessary for us to consider under the Code of Audit Practice in satisfying ourselves whether the Authority put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources for the year ended 31 March 2019.

We planned our work in accordance with the Code of Audit Practice. Based on our risk assessment, we undertook such work as we considered necessary to be satisfied that the Authority has put in place proper arrangements for securing economy, efficiency and effectiveness in its use of resources.

Report on other legal and regulatory requirements - Certificate

We certify that we have completed the audit of the financial statements of the Maidstone Borough Council in accordance with the requirements of the Local Audit and Accountability Act 2014 and the Code of Audit Practice.

Use of our report

This report is made solely to the members of the Authority, as a body, in accordance with Part 5 of the Local Audit and Accountability Act 2014 and as set out in paragraph 43 of the Statement of Responsibilities of Auditors and Audited Bodies published by Public Sector Audit Appointments Limited. Our audit work has been undertaken so that we might state to the Authority's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume

responsibility to anyone other than the Authority and the Authority's members as a body, for our audit work, for this report, or for the opinions we have formed.

[Signature]

Elizabeth Jackson, Key Audit Partner
for and on behalf of Grant Thornton UK LLP, Local Auditor
London

[Date]

AUDIT, GOVERNANCE AND STANDARDS COMMITTEE

16 September 2019

Budget Strategy – Risk Assessment Update

Final Decision-Maker	Audit, Governance and Standards Committee
Lead Head of Service/Lead Director	Mark Green, Director of Finance and Business Improvement
Lead Officer and Report Author	Mark Green, Director of Finance and Business Improvement
Classification	Public
Wards affected	All

Executive Summary

This report provides an update on the budget risks facing the Council. The two principal budget risks continue to be uncertainty about future local government funding arrangements and the potential financial consequences of a disorderly exit from the EU.

This report makes the following recommendations to this Committee:

That the Audit Governance and Standards Committee notes the updated risk assessment of the Budget Strategy provided at Appendix A.

Timetable

Meeting	Date
Audit, Governance and Standards Committee	16 September 2019

Budget Strategy – Risk Assessment Update

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	The Medium Term Financial Strategy and the budget are a re-statement in financial terms of the priorities set out in the strategic plan. They reflect the Council's decisions on the allocation of resources to all objectives of the strategic plan.	Director of Finance and Business Improvement
Cross Cutting Objectives	The cross cutting objectives are reflected in the MTFS and the budget.	Director of Finance and Business Improvement
Risk Management	Matching resources to priorities in the context of the significant pressure on the Council's resources is a major strategic risk. Specific risks are set out in Appendix A.	Director of Finance and Business Improvement
Financial	The budget strategy and the MTFS impact upon all activities of the Council. The future availability of resources to address specific issues is planned through this process.	Director of Finance and Business Improvement
Staffing	The process of developing the budget strategy will identify the level of resources available for staffing over the medium term.	Director of Finance and Business Improvement
Legal	The Council has a statutory obligation to set a balanced budget and development of the MTFS and the	Director of Finance and Business Improvement

	strategic revenue projection in the ways set out in this report supports achievement of a balanced budget.	
Privacy and Data Protection	No implications.	Director of Finance and Business Improvement
Equalities	The Council's budgeted expenditure will have a positive impact as it will enhance the lives of all members of the community through the provision of resources to core services. In addition it will affect particular groups within the community. It will achieve this through the focus of resources into areas of need as identified in the Council's strategic priorities.	Director of Finance and Business Improvement
Public Health	None identified.	Director of Finance and Business Improvement
Crime and Disorder	None identified.	Director of Finance and Business Improvement
Procurement	None identified.	Director of Finance and Business Improvement

2. INTRODUCTION AND BACKGROUND

2.1 The remit of the Audit Governance and Standards Committee includes consideration of risk. Members have requested that the Budget Risk Matrix and Risk Register be updated and reported to each meeting of the Committee, so that it continues to be fully briefed on factors likely to affect the Council's budget position.

Delivering the revenue budget

2.2 The immediate risks to delivering the revenue budget include:

- failure to contain expenditure within agreed budgets

- failure to deliver planned savings
- shortfall in fees and charges against budgeted income
- failure of commercial initiatives (eg property investment, income generating activities in parks).

The Council's track record in recent years on delivering against its revenue budget has been good, so whilst the above risks are highlighted in the risk register, their likelihood is generally assessed as low.

Delivering the capital budget

- 2.3 The capital programme plays a vital part in delivering the Council's corporate objectives and helps to secure revenue income generation. The Council will have to borrow to fund the capital programme, for the first time, this year. The availability of funding is therefore important, and whilst funding is currently readily available through the Public Works Loan Board, the risk that funding may no longer be available in the future is included in the risk register.

External factors

- 2.4 The main source of risk to the Council arises from factors that are outside its direct control. Firstly, the adverse financial consequences from a disorderly Brexit have been highlighted as a 'red' risk.
- In the short term, there may be direct financial costs arising from Brexit that are not fully covered by government grants. The Council has now been notified of three separate tranches of funding from central government, totalling £122,000. This is welcome, but if (for example) traffic congestion causes serious disruption to the delivery of Council services, this sum may not be adequate.
 - In the longer term, the impact of Brexit on the UK economy is difficult to predict. If it leads to a downturn in the economy, the Council would face increased service pressures (eg homelessness) and a reduction in income from Council Tax, business rates and fees and charges.
- 2.5 The other 'red' risk in the budget risk register is the potential for an adverse impact from changes in the local government funding regime. Although we are now largely dependent on locally generated resources, the amount of business rates that we are allowed to retain at a local level is a key variable in budget setting. There is also a risk that negative Revenue Support Grant, which was due to be levied on the Council in 2019/20 before political pressure forced it to be withdrawn, may be resurrected, even if in another guise.
- 2.6 The government has indicated that there will be a one year spending review covering 2020/21, and this is not expected to incorporate major changes in the local government funding regime. However, there are a number of variables that are still uncertain even within the existing arrangements, including the Council Tax referendum limit, the Business Rates baseline (which determines the level of Business Rates that we retain locally), future

specific grants, and the potential for the Council to suffer negative Revenue Support Grant.

- 2.7 In summary, it can be seen that the Council has been successful in managing risks over which it has some control locally, but it remains subject to further risks arising in the wider economic and political environment. The Budget Risk Register has been reviewed in light of developments since it was last reported to members. No changes are proposed to the assessments of risk likelihood and impact but Members are invited to consider further risks or to propose varying the impact or likelihood of any risks.
-

3. AVAILABLE OPTIONS

- 3.1 Option 1 - The Committee may wish to consider further risks not detailed in Appendix A or vary the impact or likelihood of any risks. This may impact the Council's service planning and/or be reflected in the developing Medium Term Financial Strategy.
- 3.2 Option 2 - The Committee notes the risk assessment set out in this report and makes no further recommendations.
-

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 2 – It is recommended that the Committee notes the risk assessment.
-

5. RISK

- 5.1 Risk is addressed throughout this report so no further commentary is required here.
-

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 Each year the council as part of the development of the MTFS and the budget carries out consultation on the priorities and spending of the council. A Residents' Survey was carried out as part of the consultation on the new Strategic Plan and the updated MTFS 2019/20 – 2023/24.
-

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 The Audit, Governance and Standards Committee plans to continue keeping the budget risk profile under review at subsequent meetings.
-

8. REPORT APPENDICES

The following document is to be published with this report and forms part of the report:

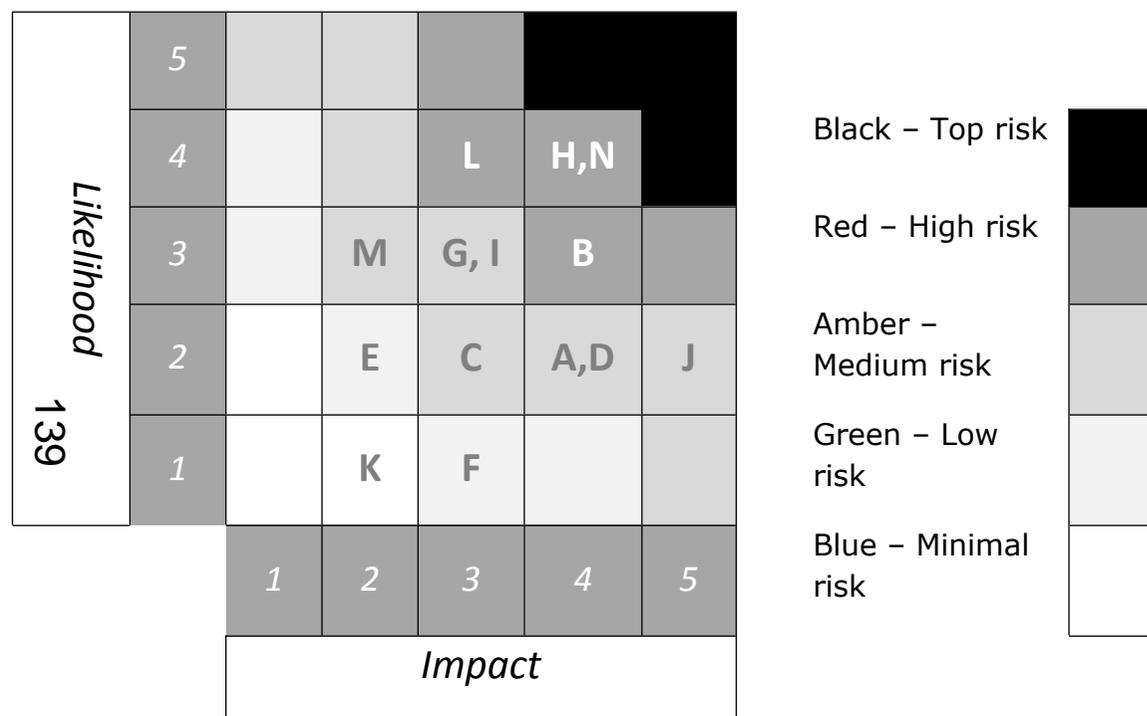
- Appendix A: Budget Strategy Risks

9. BACKGROUND PAPERS

None.

Budget Strategy Risks

The risk matrix below provides a summary of the key budget risks. The risk register that follows provides more detail.



A. Failure to contain expenditure within agreed budgets	H. Adverse impact from changes in local government funding
B. Fees and Charges fail to deliver sufficient income	I. Constraints on council tax increases
C. Commercialisation fails to deliver additional income	J. Capital programme cannot be funded
D. Planned savings are not delivered	K. Increased complexity of government regulation
E. Shared services fail to meet budget	L. Collection targets for Council Tax and Business Rates missed
F. Council holds insufficient balances	M. Business Rates pool fails to generate sufficient growth
G. Inflation rate predictions in MTFS are inaccurate	N. Adverse financial consequences from a disorderly Brexit

The budget risks may be ranked, based on the scores shown below, as follows:

Risk	Ranking	Financial impact (in any one financial year)				
		Lower £000	Upper £000	Mid- point £000	Likelihood %	Weighted £000
H. Adverse impact from changes in local government funding	1=	250	750	500	75	375
N. Adverse financial consequences from a disorderly Brexit	1=	250	750	500	75	375
J. Capital programme cannot be funded	3	500	1,500	1,000	25	250
B. Fees and Charges fail to deliver sufficient income	4	200	600	400	50	200
L. Collection targets for Council Tax and Business Rates missed	5	100	300	200	75	150
D. Planned savings are not delivered	6	250	750	500	25	125
A. Failure to contain expenditure within agreed budgets	7=	200	600	400	25	100
G. Inflation rate predictions in MTFs are inaccurate	7=	100	300	200	50	100
I. Constraints on council tax increases	7=	100	300	200	50	100
C. Commercialisation fails to deliver additional income	10	100	300	200	25	50
M. Business Rates pool fails to generate sufficient growth	11	50	100	75	50	38
E. Shared services fail to meet budget	12	50	150	100	25	25
F. Council holds insufficient balances	13	100	300	200	5	10
K. Increased complexity of government regulation	14	50	150	100	5	5

Budget Strategy Risk Register 2019/20

The following risk register sets out the key risks to the budget strategy 2019/20 onwards. The register sets out the consequences of each risk and the existing controls in place.

Ref	Risk (title & full description)	Consequences	Key Existing Controls	Overall Risk rating		
				I	L	Σ
A 141	<p>Failure to contain expenditure within agreed budgets</p> <p>The Council overspends overall against its agreed budget for the year</p>	<p>Failure to meet the budget makes it more likely that the Council will have to rely on short term expedients to balance the budget from year to year, rather than following a coherent long term strategy.</p>	<ul style="list-style-type: none"> - Embedded and well established budget setting process - Medium Term Financial Strategy - Balanced budget agreed by Council for 2019/20. - Strong controls over expenditure and established process for recovering from overspends 	4	2	8
B	<p>Fees & Charges fail to deliver sufficient income</p> <p>Fee charging services may be affected if there is a downturn in the economy, resulting in Fees and Charges failing to deliver the expected level of income.</p>	<p>The total value of all Council income from fees and charges is around £20 million. A loss of income for service budgets will require restrictions on expenditure levels and delivery of all objectives may not be met.</p>	<ul style="list-style-type: none"> - Fees and charges are reviewed each year, paying careful attention to the relevant market conditions - Where the Council is operating in a competitive market, the aim is to ensure price sensitivity does not lead to a loss of income. - Procedures are in place to ensure that fees and charges are billed promptly (or in advance) and that collection is maximised. 	4	3	12
C	<p>Commercialisation fails to deliver additional income</p> <p>The commercialisation strategy, which is now centred on housing and regeneration, does not deliver the expected level of income.</p>	<p>The medium term financial strategy includes a contribution from commercial opportunities, so any shortfall would have an impact on the overall strategy.</p> <p>Income generation from commercial activities supports the revenue budget and is required in</p>	<ul style="list-style-type: none"> - The Council set aside a provision of £0.5m against losses from activities that do not deliver. This provision is cash limited but available to cover short term losses. - Individual risks associated with specific projects within commercialisation strategy 	3	2	6

Ref	Risk (title & full description)	Consequences	Key Existing Controls	Overall Risk rating		
				I	L	Σ
		ordered to pay back capital investment.	will be assessed, both as part of the project appraisal process and during the course of delivering the projects.			
142 D	<p>Planned savings are not delivered</p> <p>Failure to deliver savings and / or failure to monitor savings means that the Council cannot deliver a balanced budget</p>	<p>The level of saving required to achieve a balanced budget is significant and non-delivery of these savings will have a major consequence on managing financial viability of the organisation.</p> <p>Not achieving savings will impact the overall delivery of the Medium Term Financial Strategy and would require appropriate action, which might include the suspension of some Council services, redundancies, etc.</p>	<p>- The risks associated with delivery of savings proposed in the current Medium Term Financial Strategy have been reviewed as part of the budget setting process.</p> <p>- Savings proposals are separately identified and monitored in the Council's general ledger.</p> <p>- The ability to achieve the targeted savings is monitored quarterly in budget monitoring reports to the Corporate Leadership Team and to Service Committees.</p>	4	2	8
E	<p>Shared Services</p> <p>Shared services, which are not entirely under the Council's control, fail to perform within budgeted levels.</p>	<p>Failure of a shared service to manage within the existing budget will have the same consequences as for any overspending budget, ie it would require appropriate action, which might include the suspension of some Council services, redundancies, etc.</p>	<p>The arrangements governing shared services include a number of controls that minimise the risk of budget overspends and service failure, including quarterly reporting to a Shared Service Board comprising representatives of the authorities involved. The shared services are required to report regularly on financial performance and key indicators.</p>	2	2	4
F	<p>Insufficient Balances</p> <p>Minimum balance is insufficient to cover unexpected events</p> <p>OR</p> <p>Minimum balances exceed the real need and resources are held without identified purpose with low investment returns</p>	<p>Additional resources would be needed which would result in immediate budget reductions or use of earmarked reserves.</p> <p>The Council would not gain best value from its resources as Investment returns are low in the current market.</p>	<p>- The Council has set a lower limit below which General Fund balances cannot fall of £2 million.</p> <p>- At the beginning of the 2019/20 financial year usable reserves stood at £15.1 million.</p>	3	1	3
G	<p>Inflation rate predications in MTFS are inaccurate</p>	<p>Unexpected rises will create an unbudgeted drain upon resources and the Council may not achieve its</p>	<p>- Allowances for inflation are developed from three key threads:</p>	3	3	9

Ref	Risk (title & full description)	Consequences	Key Existing Controls	Overall Risk rating		
				I	L	Σ
	Actual levels are significantly above or below prediction	<p>objectives without calling upon balances.</p> <p>Services have supported the budget strategy through savings. Levels below those expected would result in an increase in balances or unused resources that could be used to achieve strategic priorities.</p>	<ul style="list-style-type: none"> ○ The advice and knowledge of professional employees ○ The data available from national projections ○ An assessment of past experience both locally and nationally <p>- MTFS inflation projections are based on the government's 2% inflation target.</p>			
143 ^H	<p>Adverse impact from changes in local government funding</p> <p>The financial implications of the new local government funding regime to be introduced in 2020/21 remain unclear.</p>	The Council no longer receives Revenue Support Grant (RSG), but the amount of Business Rates that it retains depends on the funding regime set by central government.	<p>- The Medium Term Financial Strategy to 2023/24 includes an adverse scenario which allows for a significant impact on the Council's resources,</p> <p>- The Council has developed other sources of income to ensure it can maximise its resources while dealing with the consequences of government strategy.</p>	4	4	16
I	<p>Constraints on council tax increases</p> <p>The limit on Council Tax increases means that the Council must manage expenditure pressures even if these potentially give rise to cost increases greater than the referendum limit.</p>	The limit on Council Tax increases means that additional pressures, such as those arising from providing temporary accommodation, have to be absorbed by making savings elsewhere.	<p>- The budget for 2019/20 incorporates a Council Tax increase of 3%.</p> <p>- Budget planning is based around the assumption of a 2% increase in 2020/21.</p>	3	3	9
J	<p>Capital Programme cannot be funded</p> <p>Reduction or total loss of funding sources means that the capital programme cannot be delivered</p>	<p>The main sources of funding are:</p> <ul style="list-style-type: none"> ○ Internal borrowing ○ PWLB borrowing ○ New Homes Bonus ○ Capital Grants ○ Developer contributions (S106) <p>A reduction in this funding will mean that future</p>	<p>- Council has been able to fund the capital programme without recourse to borrowing so far,</p> <p>- Council has confirmed in the past that borrowing is acceptable if it meets the prudential criteria.</p>	5	2	10

Ref	Risk (title & full description)	Consequences	Key Existing Controls	Overall Risk rating		
				I	L	Σ
		schemes cannot be delivered.	- Local authorities continue to be able to access borrowing at relatively low cost through the Public Works Loan Board but there is a risk that this may be subject to restrictions in future.			
K	<p>Increased complexity of government regulation</p> <p>Complexity of financial and other regulations along with increasing delays in providing guidance reduce the ability of the Council to identify risks at an early stage.</p>	<p>On a number of occasions, most recently with the introduction of GDPR, the financial consequences of government regulation have been significant. Failure to provide adequate warning would leave the council little time to prepare through the medium term financial strategy.</p> <p>In general these events bring consequences to other agencies and external relationships.</p>	<p>- The Council has formal procedures for monitoring new legislation, consultations and policy / guidance documents.</p> <p>- Our relationships with organisations such as the Council's external auditor provide access to additional knowledge regarding relevant future events.</p>	2	1	2
L	<p>Business Rates & Council Tax collection</p> <p>Council fails to maintain collection targets for business rates and council tax</p>	<p>Failure to achieve collection targets will reduce the level of key resources to ensure a balanced budget. This will mean further cuts in other budgets or the cost of financing outgoing cash flow to other agencies in relation to taxes not yet collected.</p> <p>Business rates amount to around £60 million in 2019/20 and Council Tax due amounts to around £110 million.</p>	<p>- The Council has a good track record of business rates and Council Tax collection.</p> <p>- Steps are taken to maximise collection rates, such as active debt collection, continual review of discounts, etc.</p> <p>- Nonetheless, increasingly difficult trading conditions for some businesses may lead to a deterioration in collection performance.</p>	3	4	12
M	<p>Business Rates pool</p> <p>Changes to rateable value (RV) or instability of business rates growth within the pool may not generate projected levels of income</p>	<p>Changes in RV or instability in growth will result in a reduction in income from business rates and a potential consequence for the Council.</p>	<p>- The pool is monitored quarterly Kent wide and Maidstone is the administering authority. The projected benefit of the pool across Kent as a whole is projected to be around £10m in 2019/20.</p> <p>- Provisions have been made when projecting</p>	2	3	6

Ref	Risk (title & full description)	Consequences	Key Existing Controls	Overall Risk rating		
				I	L	Σ
			business rates income for bad debts and losses on appeal so any loss of income would relate to the excess over the provisions already made.			
N	Adverse financial consequences from a disorderly Brexit. The increased probability of no deal with the EU means that the adverse financial consequences from Brexit are likely to be correspondingly higher.	Short term - Increased costs in delivering services, eg arising from traffic congestion Medium term/ long term – Risk of recession, which could lead to a fall in business rates income, increasing pressure on homelessness budgets, and adverse central government funding settlements.	- Thorough preparation for Brexit, with an officer Brexit business continuity planning group to co-ordinate our response and liaise with other Kent authorities	4	4	16

Impact & Likelihood Scales

RISK IMPACT

Level	Service risk	Reputation Risk	H&S	Legal Risk	Financial Risk	En'ment Risk
Catas-trophic (5)	Ongoing failure to provide an adequate service	Perceived as failing authority requiring intervention	Responsible for death	Litigation almost certain and difficult to defend. Breaches of law	Uncontrollable financial loss or overspend over £500k	Permanent, major environmental or public health damage
Major (4)	Failure to deliver Council priorities Poor service. Disrupted 5 days+	Significant adverse national publicity	Fails to prevent death, causes extensive perm injuries or LT sick	punishable by imprisonment or significant fines	Financial loss or overspend greater than £250k	Long term major public health or environmental incident (1yr+)
Moderate (3)	Unsatisfactory performance Service disrupted/ stopped 3-5 days	Adverse national publicity or significant adverse local publicity	Fails to prevent extensive, permanent injuries or LT sickness	Litigation expected, but defensible Breaches of law punishable by fines	Financial loss or overspend greater than £50k	Medium term major public health or environmental incident (up to 1yr)
Minor (2)	Marginal reduction in performance Service disrupted/ stopped 1-2 days	Minor adverse local publicity	Medical treatment required, potential long term injury or sickness	Complaint likely, litigation possible Breaches of regs or standards	Financial loss or overspend greater than £10k	Short term public health or environmental incident (weeks)
Minimal (1)	No significant service impact Service disruption up to 1 day	Unlikely to cause adverse publicity	First aid level injuries	Unlikely to cause complaint Breaches of local procedures	Financial loss or overspend under £10k	Environmental incident with no lasting detrimental effect

RISK LIKELIHOOD

Type	Probability	Detail description
Almost certain (5)	90%+	Without action is likely to occur; frequent similar occurrences in local government/Council history
Probable (4)	60%-90%	Strong possibility; similar occurrences known often in local government/Council history
Possible (3)	40%-60%	Might occur; similar occurrences experienced in local government/Council history
Unlikely (2)	10%-40%	Not expected; rare but not unheard of occurrence in local government/Council history
Rare (1)	0%-10%	Very unlikely to occur; no recent similar instances in local government/Council history

Agenda Item 17

Audit, Governance & Standards Committee

16 September 2019

Internal Audit Charter

Final Decision-Maker	Audit, Governance & Standards Committee
Lead Head of Service	Rich Clarke, Head of Audit Partnership
Lead Officer and Report Author	Rich Clarke, Head of Audit Partnership
Classification	Public
Wards affected	All

Executive Summary

The report proposes an updated Internal Audit Charter. The Charter is a key document that sets out the roles and responsibilities of the Council's internal audit service and its relationships with officers and Members. It is updated to reflect changes in standards and audit practice, most notably to reflect the Committee's expressed wish for greater engagement where internal audit issues adverse audit opinions.

Purpose of Report

Decision

This report makes the following recommendations to this Committee:

1. That the internal audit charter be approved.

Timetable

Meeting	Date
Audit, Governance & Standards Committee	16 September 2019

Internal Audit Charter

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	We do not expect the recommendation will by itself materially affect achievement of corporate priorities. However, it will support the Council's overall achievement of its aims by enhancing its governance.	Rich Clarke Head of Audit Partnership 4 September 2019
Cross Cutting Objectives	The recommendation is not directly relevant to the cross cutting objectives, but will enhance the Council's overall governance.	
Risk Management	See body of report.	
Financial	The proposals set out in the recommendation are all within already approved budgetary headings and so need no new funding for implementation.	
Staffing	We will deliver the recommendation with our current staffing.	
Legal	Accepting the recommendations help will fulfil the Council's duties under the Accounts & Audit Regulations 2015. Failure to accept the recommendations without agreeing suitable alternatives may place the Council in breach.	
Privacy and Data Protection	Accepting the recommendation will increase the volume of data held by the Council. We will hold that data in line with our retention schedules.	
Equalities	The recommendation does not propose a change in service therefore will not require an equalities impact assessment	
Public Health	The recommendation will not negatively impact on population health or that of individuals.	
Crime and Disorder	The recommendation will not in itself have any impact on crime and disorder.	
Procurement	The recommendation requires no new procurement to implement.	

2. INTRODUCTION AND BACKGROUND

- 2.1 Public Sector Internal Audit Standards (the “Standards”) prescribe a Charter that sets out the purpose, authority and responsibility of the Council’s internal audit service. The Charter also affirms and accepts the professional standards governing the practice of internal audit at the Council.
- 2.2 This Committee approved a previous version of the Internal Audit Charter. The Council must review and update the Charter periodically to reflect changes in Standards and practice, most notably the 2017 update to Standards. The Charter attached for approval draws from a model document published by the Institute of Internal Audit (IIA), adapted for the Council’s circumstances and edited for clarity.
- 2.3 An Audit Charter is prescribed by Public Sector Internal Audit Standards (Standard 1000) and is a foundational document setting out the size and scope of the service. A partial extract, describing the Standards requirement is below:

1000 Purpose, Authority and Responsibility

The purpose, authority and responsibility of the internal audit activity must be formally defined in an internal audit charter, consistent with the *Definition of Internal Auditing*, the *Code of Ethics* and the *Standards*. The chief audit executive must periodically review the internal audit charter and present it to senior management and the board for approval.

Interpretation:

The internal audit charter is a formal document that defines the internal audit activity’s purpose, authority and responsibility. The internal audit charter establishes the internal audit activity’s position within the organisation, including the nature of the chief audit executive’s functional reporting relationship with the board; authorises access to records, personnel and physical properties relevant to the performance of engagements; and defines the scope of internal audit activities. Final approval of the internal audit charter resides with the board.

Public sector requirement

The internal audit charter must also:

- define the terms ‘board’ and ‘senior management’ for the purposes of internal audit activity;
- cover the arrangements for appropriate resourcing;
- define the role of internal audit in any fraud-related work; and
- include arrangements for avoiding conflicts of interest if internal audit undertakes non-audit activities.

1000.A1

The nature of assurance services provided to the organisation must be defined in the internal audit charter. If assurances are to be provided to parties outside the organisation, the nature of these assurances must also be defined in the internal audit charter.

1000.C1

The nature of consulting services must be defined in the internal audit charter.

- 2.4 Later this year the internal audit service will undergo an External Quality Assessment on conformance with the Standards. Ahead of that assessment provides a good opportunity to revisit the Charter and update it for changes to Standards and development of audit practice. We have also taken the opportunity to clarify and simplify the Charter.

2.5 Notable sections of the Charter include:

- Confirmation of adherence to the Standards and various other regulatory and professional guidance (paragraphs 3-5 of the Charter)
- Description of the Committee's role in support internal audit's independence and effectiveness (paragraphs 8-10 of the Charter)
- Confirmation of Mid Kent Audit's operational independence and details of how to identify and resolve conflicts of interest (paragraphs 12-19)
- The quality standards of internal audit and how these will be maintained (paragraphs 21-25)
- Responsibilities of the Head of Audit Partnership for the service (paragraphs 26-27).

2.6 We also draw to Members' attention the final bullet point under paragraph 8 in the Charter: "[The Committee will support the work of internal audit by] requiring suitable explanations of planned actions from lead officers, including through attendance in person, following adverse engagement opinions".

2.7 This section, an addition to previous Charters, reflects discussion at the previous Committee. In that discussion, Members expressed a desire to help support improvement in the Council's operation and governance by engaging directly with areas receiving adverse (that is, *weak* or *poor*) audit opinions.

2.8 The Charter sets out that expectation but is not prescriptive on how it is exercised. This is because the circumstances of adverse audit opinions, of which we see 2-4 in a typical year, will vary between those with quickly remedied technical issues to those with more deep-rooted or pervasive weaknesses. Accordingly, we expect the nature and extent of Members engagement will vary but will have a baseline assumed level of seeing the audit report in full, receiving a report in person from a relevant service officer and at least one follow up note subsequently when matters reach resolution.

2.9 Therefore, how we expect to see the process work is that on issue of a draft adverse audit report the Head of Audit Partnership will contact the Chair and Vice Chair of the Committee. This will begin a discussion about when and how the report might come to Committee after its final issue.

2.10 Sometimes a service will provide additional evidence that satisfies audit concerns so that the final report receives a positive assurance opinion (that is, *Sound* or *Strong*). In that instance the Head of Audit Partnership will advise the Chair and Vice Chair of the Committee and the report will not typically come to the Committee save as in summary as part of scheduled overall reporting on audit progress.

2.11 If the final report receives an adverse opinion, it will typically appear in full at the next suitable meeting of the Committee accompanied by a report from the relevant lead officer setting out the way forward on addressing concerns raised by the audit.

3. AVAILABLE OPTIONS

- 3.1 Having an internal audit charter is a duty set by the Accounts & Audit Regulations in their direction to adhere to the Standards.
 - 3.2 The Council currently has a Charter. That remains valid unless and until replaced. However it has fallen somewhat behind developments in Standards and also no longer accords to the practice of internal audit at the authority. For example, it does not clearly set out the required quality standards. The current Charter also does not set out clearly the Committee's expectations following adverse audit opinions.
-

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 We recommend the Committee approves the attached Charter. This will ensure continued adherence to professional Standards and the Council holds a Charter which fully and accurately sets out the purpose, authority and responsibilities of internal audit at the Council.
-

5. RISK

- 5.1 The risks associated with this proposal, including the risks if the Council does not act, have been considered in line with the Council's Risk Management Framework. We are satisfied that the risks associated are within the Council's risk appetite and will be managed as per the Policy.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 The Charter reflects discussion in previous Committee meetings, especially on the role of the Committee following issue of adverse audit opinions. More broadly, the Charter has been shaped by continuing discussions with officers and Members and reflects the current position of internal audit within the Council.
-

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION

- 7.1 The Charter will become effective once approved.
-

8. REPORT APPENDICES

- Appendix 1: Internal Audit Charter (September 2019)
-

9. BACKGROUND PAPERS

The Charter draws on various sources of external professional guidance and standards. These are hyperlinked within the document.

APPENDIX 1

INTERNAL AUDIT CHARTER

Internal Audit Charter

Maidstone Borough Council

Purpose & Mission

1. The purpose of Maidstone Borough Council's (the "Council") internal audit service ("Mid Kent Audit") is to provide independent, objective assurance and consulting services designed to add value and improve the Council's performance. The mission of internal audit is to enhance and protect organisational value by providing risk-based and objective assurance, advice and insight. Mid Kent Audit helps the Council achieve objectives with a systematic, disciplined approach to evaluating and improving effectiveness of governance, risk management and control.
2. Final approval of the Charter rests with the Audit, Governance & Standards Committee (the "Committee"). The Head of Audit Partnership will keep the Charter under review and re-present for approval each year after consultation with Senior Management.

Standards for the Professional Practice of Internal Auditing

3. Mid Kent Audit will govern itself by adherence to the compulsory parts of the Institute of Internal Auditors' (IIA) [International Professional Practices Framework \(IPPF\)](#). These include:
 - The Core Principles for the Professional Practice of Internal Auditing.
 - The [Code of Ethics](#).
 - The International Standards for the Professional Practice of Internal Auditing. In the UK by the Internal Audit Standards Advisory Board and the Relevant Internal Audit Standards Setters adapt these into [the Public Sector Internal Audit Standards](#) (the "Standards").
 - The Definition of Internal Auditing set out by the IIA.

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4. Mid Kent Audit will also govern itself under the *Local Government Application Note (2019 Edition)*¹ set out by the Chartered Institute of Public Finance & Accounting (CIPFA). Auditors who belong to other professional institutes will also adhere to the relevant Code of Ethics.
5. The Head of Audit Partnership will report periodically to Senior Management and the Committee on Mid Kent Audit's conformance to the Code of Ethics and the Standards.

Authority

6. Internal Audit is a statutory service for local authorities as set out in the [Accounts & Audit Regulations 2015](#) (the "Regulations"). Specifically, Regulation 5 demands that authorities:
 - "... undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance".
7. The Head of Audit Partnership will report functionally to the Committee and administratively to the Mid Kent Services Director. Within the Council, the Head of Audit Partnership will also liaise chiefly with the Director of Finance & Business Improvement as a representative of Senior Management.
8. To assure that Mid Kent Audit has authority to fulfil its duties the Committee will:
 - Approve the Internal Audit Charter.
 - Approve the risk-based internal audit plan (including proposed resources).
 - Receive communications from the Head of Audit Partnership on Mid Kent Audit's performance against its plan and other matters.
 - Through the Chair, be consulted on appointment or removal of the Head of Audit Partnership.

¹ The Application Note is a paid-for publication. We can provide copies to Members on request but cannot link in full through the public version of this Charter.

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- Through the Chair, contribute to Head of Audit Partnership appraisals carried out by the Mid Kent Services Director.
 - Make suitable enquiries of management and the Head of Audit Partnership to discover any improper limits to audit scope or resources.
 - Require suitable explanations of planned actions from lead officers, including through attendance in person, following adverse engagement opinions.
9. The Head of Audit Partnership will have unrestricted access to, and communicate and interact direct with, the Committee including in private meetings without management present.
10. The Committee and Senior Management authorise Mid Kent Audit to:
- Have full, free and unrestricted access to all works, records, property and personnel relevant to carrying out any engagement. This is subject to accountability for confidentiality and safeguarding records and information.
 - Assign resources, set frequencies, select subjects, decide scopes of work, apply techniques needed to perform audit objectives and issue reports.
 - Seek and receive any support needed from the Council's personnel, including contractors, to complete engagements.
11. These duties also stem from Regulations. These direct the Council to: "make available such documents and records and supply such information and explanations as are considered necessary by those conducting the internal audit".

Independence and Objectivity

12. The Head of Audit Partnership will ensure Mid Kent Audit remains free from all conditions that threaten the ability of internal auditors to carry out their responsibilities without bias. These include matters of audit selection, scope, procedures, frequency, timing and report content. The Head of Audit Partnership will report if independence or objectivity may be under threat in fact or appearance.

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13. Internal auditors will preserve an unbiased approach that allows them to perform engagements objectively. They will believe in their work, make no quality compromises, and not subordinate their audit judgement to others.
14. Internal auditors will have no direct responsibility or authority over any of the subjects audited. So, internal auditors will not set up internal controls, develop procedures, prepare records, or engage in any other action that may hinder their judgement. This includes:
 - Assessing services for which they had any responsibility within the previous year.
 - Setting up or approving transactions external to Mid Kent Audit.
 - Directing any Council employee not employed by Mid Kent Audit, except those properly assigned to help internal audit.
 - Reviewing parts of the Council staffed by close friends or family members.
15. Where the Head of Audit Partnership has roles that fall outside internal audit, the Council will set up safeguards to limit impacts to independence or objectivity.
16. At the Council, the Head of Audit Partnership has ancillary roles as set out in the *Risk Management Framework*, the *Counter Fraud Policy* and the *Whistleblowing Policy*. As set out in the audit plan, the Head of Audit Partnership also has on-demand ancillary advisory roles on counter fraud and investigative work.
17. In carrying out their roles auditors will follow the independence and objectivity principles in this Charter. On Risk Management, specifically, auditors will adhere to the guidance set out by the IIA in its position paper on *Risk Management and Internal Audit* [published on 11 July 2019](#).

18. Internal auditors will:

- Disclose any limit of independence or objectivity, in fact or appearance, to suitable parties.
- Display professional objectivity in gathering, evaluating and communicating information about audit engagements.
- Deliver balanced assessments of all available and relevant facts and circumstances.
- Take necessary precautions to avoid undue influence by their own interests or by others in forming judgements.

19. The Head of Audit Partnership will confirm to the Committee at least yearly the organisational independence of Mid Kent Audit.

20. The Head of Audit Partnership will disclose to the Committee any interference and related implications in fixing the scope of internal audits, performing work or communicating results.

Scope of Internal Audit Work

21. The scope of internal audit work covers the Council's whole control environment. This includes objective examination of evidence to create independent assessments to the Committee, management and others on the adequacy and effectiveness of governance, risk management and control. Internal audit assessments include evaluating whether:

- The Council properly identifies and manages risks on its strategic and other objectives.
- The actions of the Council's officers and contractors comply with the Council's policies, procedures and applicable laws, regulations and governance standards.
- The results of Council work and programs are consistent with agreed goals and objectives.
- The Council carries out its work and programs effectively and efficiently.
- Council systems enable compliance with the policies, procedures, laws and regulations that could cause significant impact.

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- Information and the means used to identify, measure, analyse, classify and report such information are reliable and have integrity.
 - The Council gains assets economically, uses them efficiently and protects them adequately.
22. These assessments will lead to a Head of Audit Partnership opinion as described by the Standards. The opinion will report on the adequacy and effectiveness of the Council's internal control, corporate governance and risk management.
23. The Head of Audit Partnership will report periodically to senior management and the Committee about:
- Mid Kent Audit's purpose, authority and responsibility.
 - Mid Kent Audit's plan, and performance against its plan.
 - Mid Kent Audit's conformance with the IIA's Code of Ethics and Standards and action plans to address any significant issues.
 - Significant risk exposures and control issues, including fraud risks, governance issues and other matters demanding the attention of, or sought by, the Committee.
 - Results of audit engagement or other work.
 - Audit resource use and need.
 - Any management risk response that may be unacceptable to the Council.
24. The Head of Audit Partnership also coordinates work where possible, and considers relying on the work of other internal and external assurance and consulting service providers as needed. Mid Kent Audit may perform advisory and related client service work. Mid Kent Audit will agree the nature and scope of such work with the client, provided Mid Kent Audit does not assume management responsibility.
25. Mid Kent Audit may identify opportunities for improving the efficiency of governance, risk management and controls during engagements. Where identified, Mid Kent Audit will communicate these opportunities to management.

Responsibility

26. The Head of Audit Partnership has the responsibility to:
- Present, at least yearly, to senior management and the Committee a risk-based internal audit plan for review and approval.
 - Communicate to senior management and the Committee the impact of resource limits on the internal audit plan.
 - Review and adjust the internal audit plan, as necessary, in response to changes in the Council's business, risks, programs, systems and controls.
 - Communicate immediately to senior management and the Committee any significant interim changes to the internal audit plan. A 'significant' change covers one or more of the following:
 - Removal of a 'high priority' audit engagement.
 - Commitments beyond the approved budget or resource envelope.
 - Other changes that, in the view of the Head of Audit Partnership, may inhibit ability of Mid Kent Audit to deliver a robust opinion as set out by the Standards.
 - Ensure each engagement of the internal audit plan adheres to quality standards. This includes:
 - Setting out suitable objectives and scope.
 - Assigning suitable and adequately supervised auditors
 - Documenting work programs and testing results.
 - Communicating results with applicable conclusions and recommendations to proper parties.
 - Follow up on engagement findings and corrective actions. Report periodically to senior management and the Committee any corrective actions not taken effectively.
 - Ensure application of and adherence to the principles of integrity, objectivity, confidentiality and competency.
 - Ensure that Mid Kent Audit collectively has or gains the knowledge, skills and other competencies needed to fulfil this Charter.

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- Ensure consideration of trends and emerging issues that could impact and communicating these to senior management and the Committee as fitting.
 - Ensure consideration of emerging trends and successful practices in internal auditing.
 - Set up and ensure adherence to policies and procedures designed to guide Mid Kent Audit's work.
 - Ensure adherence to the Council's relevant policies and procedures, unless such policies and procedures conflict with the Charter. Report any such conflicts to senior management and the Committee with a suggested path to resolution.
27. The Council will also consider CIPFA's Statement on the Role of the Head of Internal Audit in Public Sector Organisations ([2019 edition](#)). In particular when setting job roles and overseeing performance of the Head of Audit Partnership.

Quality Assurance and Improvement Programme

28. Mid Kent Audit will keep a quality assurance and improvement programme that covers all its work. The programme will include an evaluation of conformance with the Standards and an evaluation of whether internal auditors apply the IIA's Code of Ethics. The program will also assess the efficiency and effectiveness of Mid Kent Audit's work and identify opportunities for improvement.
29. The Head of Audit Partnership will communicate to senior management and the Committee on the quality and improvement plan. This will include results of internal assessments and an external assessment conducted at least once every five years by a qualified, independent assessor.

Charter Approval

This Charter is authorised within Maidstone Borough Council by:

Mark Green: Director of Finance & Business Improvement

Councillor Georgia Harvey: Chair of the Audit, Governance & Standards Committee

With the agreement of:

Rich Clarke: Head of Audit Partnership

Steve McGinnes: Mid Kent Services Director

Glossary and Standards Reconciliation

- **The Audit, Governance & Standards Committee (“Committee”)** is the ‘Board’ as referenced by Standard 1000 and elsewhere in the Standards.
- **The Head of Audit Partnership** is the ‘Chief Audit Executive’ as referenced by Standard 1000 and elsewhere in the Standards.
- **The Corporate Leadership Team (CLT)** are ‘Senior Management’ as referenced by Standard 1000 and elsewhere in the Standards. CLT includes the Council’s Chief Executive, Monitoring Officer and s.151 Officer.
- **The Wider Leadership Team (WLT)** or their delegates are ‘Management’ as referenced by Standard 1000 and elsewhere in the Standards.