

Democratic Services

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Date: 10 May 2017
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To: All Members of the Council

Chief Executive and other appropriate officers
Press and Public

Dear Member

Annual Council: Thursday, 18th May, 2017

You are invited to attend the Annual meeting of the **Council** to be held on **Thursday, 18th May, 2017** at **6.30 pm** in the **Council Chamber - Guildhall, Bath**.

The agenda is set out overleaf.

Refreshments will be available for Councillors from 5pm in the Aix-en-Provence Room (next to the Banqueting Room) on Floor 1.

Yours sincerely



Jo Morrison
Democratic Services Manager
for Chief Executive

Please note the following arrangements for pre-group meetings:

Conservative	Brunswick Room, Ground Floor
Liberal Democrat	Kaposvar Room, Floor 1
Labour	Labour Group Room, Floor 2
Independent	Independent Group room

If you need to access this agenda or any of the supporting reports in an alternative accessible format please contact Democratic Services or the relevant report author whose details are listed at the end of each report.

This Agenda and all accompanying reports are printed on recycled paper

NOTES:

1. **Inspection of Papers:** Any person wishing to inspect minutes, reports, or a list of the background papers relating to any item on this Agenda should contact Jo Morrison who is available by telephoning Bath 01225 394358.
2. **Details of decisions taken at this meeting** can be found in the minutes which will be circulated with the agenda for the next meeting. In the meantime, details can be obtained by contacting as above. Papers are available for inspection as follows:

Public Access points:- Reception: Civic Centre - Keynsham, Guildhall - Bath, The Hollies - Midsomer Norton. Bath Central and Midsomer Norton public libraries.

For Councillors and officers, papers may be inspected via Political Group Research Assistants and Group Rooms/Members' Libraries.

3. **Recording at Meetings:-**

The Openness of Local Government Bodies Regulations 2014 now allows filming and recording by anyone attending a meeting. This is not within the Council's control.

Some of our meetings are webcast. At the start of the meeting, the Chair will confirm if all or part of the meeting is to be filmed. If you would prefer not to be filmed for the webcast, please make yourself known to the camera operators.

To comply with the Data Protection Act 1998, we require the consent of parents or guardians before filming children or young people. For more information, please speak to the camera operator

The Council will broadcast the images and sound live via the internet www.bathnes.gov.uk/webcast An archived recording of the proceedings will also be available for viewing after the meeting. The Council may also use the images/sound recordings on its social media site or share with other organisations, such as broadcasters.

4. **Spokespersons:** The Political Group Spokespersons for the Council are the Group Leaders, who are Councillors Tim Warren (Conservative Group), Dine Romero (Liberal Democrat Group), Robin Moss (Labour Group) and Sarah Bevan (Independent Group).
5. **Attendance Register:** Members should sign the Register, which will be circulated at the meeting.
6. **Public Speaking at Meetings:** The Council has a scheme to encourage the public to make their views known at meetings. They may make a statement relevant to what the meeting has power to do. They may also present a petition or a deputation on behalf of a group. They may also ask a question to which a written answer will be given. **Advance notice is required not less than two full working days before the meeting. This means that for meetings held on Thursdays notice must be received in Democratic Services by 5.00pm the previous Monday.** Further details of the scheme can be obtained by contacting Jo Morrison as above.
7. THE APPENDED SUPPORTING DOCUMENTS ARE IDENTIFIED BY AGENDA ITEM NUMBER.
8. **Emergency Evacuation Procedure**

When the continuous alarm sounds, you must evacuate the building by one of the designated exits and proceed to the named assembly point. The designated exits are sign-posted.

Arrangements are in place for the safe evacuation of disabled people.

9. **Presentation of reports:** Officers of the Council will not normally introduce their reports unless requested by the meeting to do so. Officers may need to advise the meeting of new information arising since the agenda was sent out.

A G E N D A

1. EMERGENCY EVACUATION PROCEDURE

The Chairman will draw attention to the emergency evacuation procedure as set out under Note 8.

2. APOLOGIES FOR ABSENCE

3. DECLARATIONS OF INTEREST

At this point in the meeting declarations of interest are received from Members in any of the agenda items under consideration at the meeting. Members are asked to complete the green interest forms circulated to groups in their pre-meetings (which will be announced at the Council Meeting) to indicate:

(a) The agenda item number in which they have an interest to declare.

(b) The nature of their interest.

(c) Whether their interest is **a disclosable pecuniary interest** or an **other interest**, (as defined in Part 2, A and B of the Code of Conduct and Rules for Registration of Interests)

Any Member who needs to clarify any matters relating to the declaration of interests is recommended to seek advice from the Council's Monitoring Officer or a member of his staff before the meeting to expedite dealing with the item during the meeting.

4. MINUTES - 23RD MARCH 2017 (Pages 7 - 16)

To be confirmed as a correct record and signed by the Chair(man)

5. ANNOUNCEMENTS FROM THE CHAIRMAN OF THE COUNCIL OR FROM THE CHIEF EXECUTIVE

These are matters of information for Members of the Council. No decisions will be required arising from the announcements.

6. TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

If there is any urgent business arising since the formal agenda was published, the Chairman will announce this and give reasons why he has agreed to consider it at this meeting. In making his decision, the Chairman will, where practicable, have consulted with the Leaders of the Political Groups. Any documentation on urgent business will be circulated at the meeting, if not made available previously.

7. QUESTIONS, STATEMENTS, PETITIONS AND DEPUTATIONS FROM THE PUBLIC

The Democratic Services Manager will announce any submissions received. The Council will be invited to decide what action it wishes to take, if any, on the matters

raised in these submissions. As the questions received and the answers given will be circulated in written form there is no requirement for them to be read out at the meeting. The questions and answers will be published with the draft minutes.

8. APPOINTMENT OF COMMITTEES & PANELS AND OTHER ANNUAL BUSINESS
(Pages 17 - 70)

This report invites the Council to consider its non-executive and regulatory Committee arrangements for the Council Year May 2017 to May 2018 and associated annual business.

9. REVIEW OF ELECTORAL ARRANGEMENTS IN BATH AND NORTH EAST SOMERSET COUNCIL (COUNCIL PROPOSAL FOR NO. OF ELECTED MEMBERS)
(Pages 71 - 88)

The Local Government Boundary Commission for England (LGBCE) is conducting an electoral review of Bath and North East Somerset Council. This is the first such review to take place in the area since 1997. This review will determine the correct number of councillors for the Bath and North East Somerset area as well as the correct boundaries for that number. This paper lays out the Council's recommended position for the first stage of the review (councillor numbers), for which there is a mid-June deadline.

10. ANNUAL REPORT ON USE OF REGULATORY INVESTIGATIONS POWERS ACT (RIPA) USAGE AND UPDATED POLICY (Pages 89 - 128)

This report updates Council as to the use of RIPA powers in the previous year. It also sets out the powers of the Council and the revised Policy.

11. QUESTIONS, STATEMENTS, PETITIONS AND DEPUTATIONS FROM COUNCILLORS

The Democratic Services Manager will announce any submissions received. The Council will be invited to decide what action it wishes to take, if any, on the matters raised in these submissions. As the questions received and the answers given will be circulated in written form there is no requirement for them to be read out at the meeting. The questions and answers will be published with the draft minutes.

The Committee Administrator for this meeting is Jo Morrison who can be contacted on 01225 394358.

Protocol for Decision-making

Guidance for Members when making decisions

When making decisions, the Cabinet/Committee must ensure it has regard only to relevant considerations and disregards those that are not material.

The Cabinet/Committee must ensure that it bears in mind the following legal duties when making its decisions:

- Equalities considerations
- Risk Management considerations
- Crime and Disorder considerations
- Sustainability considerations
- Natural Environment considerations
- Planning Act 2008 considerations
- Human Rights Act 1998 considerations
- Children Act 2004 considerations
- Public Health & Inequalities considerations

Whilst it is the responsibility of the report author and the Council's Monitoring Officer and Chief Financial Officer to assess the applicability of the legal requirements, decision makers should ensure they are satisfied that the information presented to them is consistent with and takes due regard of them.

BATH AND NORTH EAST SOMERSET COUNCIL

MINUTES OF COUNCIL MEETING

Thursday, 23rd March, 2017

Present:- **Councillors** Patrick Anketell-Jones, Rob Appleyard, Tim Ball, Colin Barrett, Cherry Beath, Jasper Becker, Sarah Bevan, Colin Blackburn, John Bull, Neil Butters, Anthony Clarke, Matt Cochrane, Paul Crossley, Chris Dando, Fiona Darey, Matthew Davies, Sally Davis, Douglas Deacon, Emma Dixon, Michael Evans, Andrew Furse, Charles Gerrish, Ian Gilchrist, Bob Goodman, Francine Haeberling, Alan Hale, Liz Hardman, Deirdre Horstmann, Eleanor Jackson, Steve Jeffries, Les Kew, Barry Macrae, Paul May, Shaun Stephenson-McGall, Alison Millar, Robin Moss, Paul Myers, Michael Norton, Lisa O'Brien, Bryan Organ, Lin Patterson, June Player, Christopher Pearce, Vic Pritchard, Joe Rayment, Liz Richardson, Caroline Roberts, Nigel Roberts, Dine Romero, Mark Shelford, Brian Simmons, Peter Turner, David Veale, Martin Veal, Karen Walker, Geoff Ward, Tim Warren, Karen Warrington and Chris Watt

Apologies for absence: **Councillors** Donal Hassett, Steve Hedges, Marie Longstaff and Will Sandry

76 EMERGENCY EVACUATION PROCEDURE

The Chairman drew attention to the emergency evacuation procedure, as set out on the agenda.

77 DECLARATIONS OF INTEREST

Councillors Liz Hardman, Eleanor Jackson, Robin Moss and Joe Rayment all declared an 'other' interest in item 13 on EU Nationals due to family or personal reasons of non-British status.

78 MINUTES - 14TH FEBRUARY 2017

On a motion from Councillor Tim Warren, seconded by Councillor Vic Pritchard, it was

RESOLVED that the minutes of the meeting of 14th February 2017 be approved as a correct record and signed by the Chairman.

79 ANNOUNCEMENTS FROM THE CHAIRMAN OF THE COUNCIL OR FROM THE CHIEF EXECUTIVE

Earlier in the meeting, following the announcement of the emergency evacuation procedure, the Chairman had made a statement about the tragic incident in London the previous day, expressing support for all those affected and praising the work of the emergency services. He invited the Council to stand for a minute's silence.

The Chairman then made the customary announcements regarding mobile phones, webcasting, Councillors accessing their meeting papers via iPads and a comfort break. At the Chairman's request, the Council's Monitoring Officer made a brief

statement reminding Councillors that the Council was currently in the pre-election period for the Walcot ward and, for that reason, item 15, and several speakers, had been deferred to the July meeting.

80 TO ANNOUNCE ANY URGENT BUSINESS AGREED BY THE CHAIRMAN

There were no items of urgent business.

81 QUESTIONS, STATEMENTS, PETITIONS AND DEPUTATIONS FROM THE PUBLIC

Statements were made by the following people;

John Branston made a statement concerning the impact of HMOs in Oldfield Park. He explained the threat to the social balance and detrimental impact on the community and commented that the Article 4 Direction of 2013 had been too little too late. He cited examples from other areas of the country where measures had been taken to address this, and reminded Councillors of their Corporate Strategy priority of putting residents first in everything the Council does. The Chairman thanked John for his statement which was referred to the relevant Cabinet Member.

David Redgewell made a statement regarding transport issues in the South West. He welcomed more subsidy for bus services as a result of the West of England Combined Authority (WECA) but also urged the Council to work with Wiltshire, Gloucester and North Somerset. Further details can be read in the statement which has been placed on the Council's Minute book and attached to the online minutes. Councillor Shaun Stephenson-McGall asked for David's view of the effect of not implementing the half hourly service he recommended through Oldfield Park; to which David responded that he thought there could be severe overcrowding for passengers coming in from West Wiltshire and Frome, and also difficulty moving students into Bristol and Bath. Councillor Liz Hardman asked David if, as he was aware that there was no bus service from the Paulton area to Bristol on a Sunday, whether David felt this could be remedied, to which David responded that he hoped that the WECA transport review would enable working with the constituent authorities to restore some of the links. Councillor Sarah Bevan sought clarity from David about his reference to the 179 bus service. The Chairman thanked David for his statement which was referred to the relevant Cabinet Member.

Graham Thomas Widger, Chair of Broadmoor Lane Residents Association Weston, made a statement seeking the Council's support to secure the future of their open space and playground, which was currently uncertain. Further details can be read in the statement which has been placed on the Council's Minute book and attached to the online minutes. In response to a question from Councillor Tim Warren, Graham confirmed that the current owner of the land was Redcliffe Homes. Councillor Dine Romero asked Graham if he knew why this open space had not been adopted by the Council, to which Graham responded that recently they had been told there were financial reasons, but added that they had been trying to secure this for 10-12 years which was why they were bringing it to Council now. Councillor Eleanor Jackson asked if the Group were in a position to form an Association to lease and maintain the land, to which Graham responded that they probably could, but at this stage they were just trying to achieve clarity over the status of the land and a response to their

proposals. The Chairman thanked Graham for his statement which was referred to the relevant Cabinet Member.

Alice Murphy, a 12 year old resident of Broadmoor Lane, presented a petition (approximately 500 signatures) on behalf of the Broadmoor Lane Park Action group entitled "We want to save our park at Broadmoor Lane and want B&NES Council to work with us to save the park from closure!" She explained that she had been visiting the park since she was 3 years old. Further details can be read in the statement which has been placed on the Council's Minute book and attached to the online minutes. Councillor Tim Warren offered to put the Group in touch with some Parish Councils who had found themselves in a similar situation, which was welcomed. Councillor Dine Romero asked if there was a similar idyllic location close by, to which Alice responded that there was another park about 2 miles away. The Chairman thanked Alice for her statement which was referred to the relevant Cabinet Member.

Bob Hollingdale, Chair of the Bath Taxi Association, made a statement calling for Uber's operating licence to be withdrawn. He set out his many concerns with how Uber operate and cited examples from other parts of the UK where their licences had been removed. In response to a query from Councillor Tim Warren, Bob clarified that Uber had been operating for 18 months. Councillor Eleanor Jackson asked if Uber took disabled people, to which Bob responded that they did not. The Chairman thanked Bob for his statement which was referred to the relevant Cabinet Member.

At the end of the above statement, Councillor Caroline Roberts called for a 10 minute debate on this issue, which had the agreement of the qualifying Group Leaders, in accordance with Part 4A, rule 34 of the Constitution. The Chairman agreed to take this debate at the end of the public speaking item.

Robert Kirkwood made a statement on the same issue. He explained how the city had been swamped and the detrimental effect this was having on his livelihood and that of local taxi businesses. He outlined his concerns over safety and related an incident when he had been physically threatened by an Uber driver, which he had reported but no action had been taken. Councillor Tim Warren asked if it was the case that Uber, like other private hire companies, were not permitted to pick up passengers from the street; Robert responded that this was correct but recounted an incident where he had seen this happening. Councillor Caroline Roberts asked if Robert considered that he had gone through a rigorous process to test if he was a fit and proper person to be a taxi driver, to which he responded that he certainly agreed and was proud that it was a rigorous process and that drivers wanted to be accountable. Councillor Robin Moss asked why Enforcement officers had not been able to take action following his report of the assault, to which Robert explained that he had not had proof. Councillor June Player asked if Robert had considered leaving the profession due to difficulties he had experienced, to which he replied that he wasn't thinking of it personally, but did consider there needed to be a level playing field. The Chairman thanked Robert for his statement which was referred to the relevant Cabinet Member.

Sarah Harrington made a statement on the same subject. She described many examples of how her local knowledge had enabled her to enhance her customers' experience by advising on local facilities or going the extra mile carrying in shopping for an elderly person. Drivers from outside the area could not offer this same level of

service. Councillor Robin Moss asked if Sarah felt a London style Knowledge test would be a good idea, to which she responded that local drivers certainly knew all the shortcuts so were able to deliver a faster and cheaper service, something which Uber drivers from outside the area could not provide. In response to a question from Councillor June Player about how safe Sarah felt in the job, she replied that she had an emergency button so personally felt safe, but would be concerned for young people. The Chairman thanked Sarah for her statement which was referred to the relevant Cabinet Member.

Paul Roles made a statement on the same subject, explaining that he had set up a Facebook site for taxi drivers. He gave some statistics about how taxis from out of town were not able to cater for disabled people. He questioned how drivers from outside the area had been able to get their licences and explained that he didn't think they had a proper office base, displaying their liability insurance. Councillor Caroline Roberts asked when he had been told about Uber's licence being granted, to which Paul responded that they had learnt this from a Council press release on September 22nd, although the licence had been issued on August 10th. Councillor Sarah Bevan asked if Paul knew if Uber allowed guide dogs, to which he cited a recent article in a national newspaper of a man with a guide dog being refused a pick up 13 times by Uber. The Chairman thanked Paul for his statement which was referred to the relevant Cabinet Member.

82 URGENT DEBATE - UBER TAXI LICENCE

The Council had earlier agreed to hold a 10 minute debate arising from the issues raised by the Taxi drivers who had made statements to the meeting.

On a motion from Councillor Caroline Roberts, seconded by Councillor Paul Crossley, it was

RESOLVED unanimously that, in view of;

- the widespread concerns about the lack of transparency over the awarding of a Taxi Operating License to Uber; and
- the impact on taxi and private hire services in our area

Council asks the Cabinet Member for Transport to produce a report for July Council on the issues and options for a way forward on this matter.

83 WEST OF ENGLAND COMBINED AUTHORITY OVERVIEW & SCRUTINY & AUDIT COMMITTEE ARRANGEMENTS & APPOINTMENT OF LOCAL RETURNING OFFICER FOR THE WEST OF ENGLAND COMBINED AUTHORITY MAYORAL ELECTION

The Council considered a report seeking representatives for the West of England Combined Authority Overview and Scrutiny and Audit Committees. The Council was also asked to appoint the Local Returning Officer for the West of England Combined Authority Mayoral Election.

On a motion from Councillor Tim Warren, seconded by Councillor Dine Romero, it was

RESOLVED

1. To give effect to the Combined Authorities (Overview and Scrutiny Committees, Access to Information and Audit Committees) Order 2017 (the Order) and provide nominations to the West of England Combined Authority Overview and Scrutiny and Audit Committees;
2. To agree to the establishment of a voluntary joint scrutiny committee between the Overview and Scrutiny Committee established under the Order referred to in resolution 1 and North Somerset Council; and
3. To appoint the current Returning Officer, Maria Lucas as Local Returning Officer for the Mayoral election in May 2017.

[Notes;

1. *During debate, an unsuccessful amendment was moved by Councillor Joe Rayment and seconded by Councillor Robin Moss which proposed an alternative proportionality calculation based upon population rather than Councillor numbers. This was lost, with 7 Councillors voting in favour, 44 Councillors voting against and 9 Councillors abstaining.*
2. *The substantive motion was carried with 47 Councillors voting in favour, 8 Councillors voting against and 5 Councillors abstaining.]*

84 REPORT OF THE INDEPENDENT REMUNERATION PANEL ON MEMBERS ALLOWANCES

The Council considered the report of the Independent Remuneration Panel on Members Allowances.

Councillor Tim Warren thanked the Independent Panel for their work.

On a motion from Councillor Tim Warren, seconded by Councillor Patrick Anketell-Jones, it was unanimously

RESOLVED to note the report of the Independent Remuneration Panel on Members Allowances and to agree the following recommendations from the report:

1. That Members use the HMRC-approved Travel and Subsistence rates on the B&NES on-line claims system, bringing Members Travel and Subsistence in line with those of officers and representing a slight reduction against the current rates; and
2. That any uplifts or changes to Members' Allowances be implemented on the same date and by the same amount as officers' salaries are adjusted, and in line with National Joint Conditions.

85 PLANNING APPLICATION FEES - THE GOVERNMENT'S OFFER

The Council considered a report regarding a Government increase in nationally set planning fees which Local Authorities can adopt, within fixed terms. Approval was sought to accept the 20% increase in fees.

On a motion from Councillor Liz Richardson, seconded by Councillor Colin Blackburn, it was unanimously

RESOLVED

1. To accept the increase in planning application fees by 20% from July 2017 by committing to investing this further income within the planning department; and
2. To agree the adjustment to the planning service budget as outlined in Appendix 1 of the report.

86 STANDARDS COMMITTEE ANNUAL REPORT 2016

The Council considered the Annual Report of the Standards Committee for 2016.

On a motion from Councillor Tim Warren, seconded by Councillor Sarah Bevan, it was unanimously

RESOLVED to note the work of the Standards Committee as set out in the Annual Report.

87 AGENDA MOTION FROM THE LABOUR GROUP - GRAMMAR SCHOOLS

The Council considered a motion from the Labour Group opposing the re-introduction of Grammar schools. This was subsequently amended as set out below.

On a motion from Councillor Michael Evans, seconded by Councillor Fiona Darey, it was

RESOLVED that this Council:

1. Notes the high quality and diverse range of school provision in the area which provides some parental choice; enables faith-based and non-faith-based education; single-sex and co-educational schools; and a varied curricular offer including the more vocationally-based Studio School provision.
2. Notes that the Government's education Green Paper 'Schools that Work for Everyone' contained a number of proposals to increase parental choice through the provision of more Good and Outstanding school places, including greater involvement of universities in schools, removing barriers to sponsorship by faith organisations, bringing Independent Schools and their resources to the service of state schools, and expanding the provision of selective places.

3. Notes that there is no intention to re-create the binary system of the fifties, but a desire to expand the variety of provision to meet the needs of different children, provide greater parental choice, and raise standards.
4. Recognises the role that selection and streaming by aptitude and ability plays in providing a good, tailored, education for all children, and notes the government's encouragement of Secondary Schools and Multi Academy Trusts to improve provision for the most academically able pupils.
5. Notes that the Government has stated that any proposals for new selective schools would need to demonstrate support from the community.
6. Notes that, under the Government's proposals, there is no provision for local authorities themselves to establish and run new schools, whether Grammar or other schools, and that all Councillors and members of the public were able to respond to the Green Paper consultation, and that further comments and submissions can be made as and when the White Paper is published.

[Notes:

1. *The original agenda motion, moved by Councillor John Bull and seconded by Councillor Lin Patterson, was replaced by a successful amendment, which was carried on a vote of 35 Councillors voting in favour, 23 Councillors voting against and 1 Councillor abstaining.*
2. *The substantive motion above was carried with 35 Councillors voting in favour, 22 Councillors voting against and 1 Councillor abstaining.]*

88 AGENDA MOTION FROM THE LIBERAL DEMOCRAT GROUP - EU NATIONALS

The Council considered a motion from the Liberal Democrat Group.

On a motion from Councillor Andy Furse, seconded by Councillor Liz Hardman, it was

RESOLVED that this Council:

- Recognises the invaluable contribution made by over 6,000 nationals from other EU countries living and working in Bath and North East Somerset.
- Recognises that their legal situation is uncertain, as is that of UK nationals living in other EU countries, and wishes to see their status resolved at the earliest possible moment.
- Agrees with government that reaching an agreement on reciprocal rights should be a priority for the forthcoming negotiations with the EU.
- Calls on government to simplify the administrative process for nationals from other EU countries already resident in the UK to obtain permanent residency and to ensure that there is no financial bar.
- Requests that these resolutions should be communicated to the MPs for Bath and North East Somerset and to the government.

- Encourages all those eligible to vote, including nationals from other EU countries resident in B&NES, to register to vote in the May 2017 West of England Mayoral election.

[Notes:

- 1. The above resolution was carried with 57 Councillors voting in favour and 1 Councillor abstaining.]*

89 AGENDA MOTION FROM THE LIBERAL DEMOCRAT GROUP - WEST OF ENGLAND MAYOR

The Council considered a motion from the Liberal Democrat group.

On a motion from Councillor Dine Romero, seconded by Councillor Lisa O'Brien, it was

RESOLVED unanimously to;

1. Note the forthcoming West of England Mayoral election; and
2. Call on the new Mayor, in cooperation with the Leaders of the three Councils of the West of England Combined Authority, to ensure that the running costs of the new combined authority are kept to a minimum and that the transparency arrangements of the new combined authority are maximised.

90 PETITION FOR DEBATE - "SAVE OUR 6/7 BUS"

This item was deferred until the July Council meeting.

91 ANNOUNCEMENT OF CHAIR(MAN) DESIGNATE FOR 2017/18

On a motion from Councillor Dine Romero, seconded by Councillor Tim Warren, it was unanimously

RESOLVED that Councillor Cherry Beath be designated as Council Chairman for the Council year 2016/17.

Council further indicated its support for the proposal from Councillor Sarah Bevan that Councillor Karen Walker be proposed as Vice-Chair at the AGM.

92 QUESTIONS, STATEMENTS, PETITIONS AND DEPUTATIONS FROM COUNCILLORS

Councillor Caroline Roberts presented a petition (76 signatures) on behalf of residents with the following request;

"We the undersigned call on the Council to consider carrying out a further consultation regarding parking within our area of Foxcombe Road, Chelsea Road, Warwick Road, Kennington Road and Park Road.

The initial consultation in August 2016 regarding parking covered too great an area and did not take into account the unique pressures that affect our small area.”

The petition was passed to the relevant Cabinet Member.

The meeting ended at 9.39 pm

Chairman

Date Confirmed and Signed

Prepared by Democratic Services

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Bath & North East Somerset Council	
MEETING:	Council
MEETING DATE:	18 th May 2017
TITLE:	Appointment of Committees and Panels and other Annual Business
WARD:	ALL
AN OPEN PUBLIC ITEM	
<p>List of attachments to this report:</p> <p>Appendix 1 – Previous political proportionality, committee and panel membership and charring arrangements.</p> <p>Appendix 2 – Revised political proportionality, committee and panel membership and charring arrangements - (an updated table will be circulated before the meeting.)</p> <p>Appendix 3 – Terms of Reference of Panels, Committees and other bodies in the Council's Constitution</p>	

1 THE ISSUE

- 1.1 This report invites the Council to consider its non-executive and regulatory Committee arrangements for the Council Year May 2017 to May 2018 and associated annual business.

2 RECOMMENDATION

Council is asked to:

- 2.1 Approve the structure for non-executive and regulatory decision making and Policy Development & Scrutiny working (set out in current form in appendix 3);
- 2.2 Accordingly, appoint those bodies with membership, terms of reference and delegated powers as set out in the Constitution, noting the revisions outlined in paragraphs 5.3 (and with any necessary amendments arising from this meeting);
- 2.3 Approve the allocation of seats on those Committees and Panels (such seats to be filled in accordance with the nominations made by the political groups);
- 2.4 Appoint to chair each committee and panel those Councillors as may from time to time be nominated by the political group to whom the chairmanship of the body is allocated;

- 2.5 Authorise the Monitoring Officer to fill any casual vacancies in membership of all the bodies constituted and vacancy in the office of Chair of such bodies in accordance with the wishes of the political groups;
- 2.6 Determine the bodies on which co-opted and independent members are to have seats as either voting or non-voting members and appoint such members accordingly (current arrangements are set out in Appendix 1);
- 2.7 Authorise the Monitoring Officer, in consultation with the Chairs of the Policy Development & Scrutiny Panels, to constitute and support any required Panel joint working as outlined in section 7;
- 2.8 Note the arrangements for the conduct of Cabinet business and the urgent decisions that have been taken in the last municipal year, as set out in section 8;
- 2.9 Instruct the Monitoring Officer, in consultation with Group Leaders, to make appointments on non-executive outside bodies and note that the Leader or Cabinet Members will do so for executive outside bodies, where such vacancies arise, and note the future intentions regarding reporting annually to Council as outlined in section 9;
- 2.10 Approve the amendment to the non-executive procedure rules in the Constitution as outlined in section 10;
- 2.11 Note the calendar of meeting dates that has been prepared up to May 2019 which is available on the Council's website;
- 2.12 Authorise the Monitoring Officer to make and publicise any amendment to the Council's Constitution required, or take any other necessary action, as a result of decisions taken at this meeting on this and other reports within the agenda, or otherwise as required by law.

3 FINANCIAL IMPLICATIONS

- 3.1 None.

4 CORPORATE OBJECTIVES

- 4.1 Collectively, the business of the Committees, Panels and partnership bodies contributes to developing all of the Council's corporate priorities;
- *A strong economy and growth*
 - *A focus on prevention*
 - *A new relationship with customers and communities*
 - *An efficient business*

5 APPOINTMENT OF COMMITTEES AND PANELS AND THEIR CHAIRS AND MEMBERS

- 5.1 The Council's Constitution sets out the approved non-executive and regulatory decision making structure and the Council's overview and scrutiny arrangements (known as Policy Development & Scrutiny). The size, terms of reference and delegated powers of those bodies are set out in the Constitution and attached as Appendix 3 to this report. Appendix 1 to this report lists the

relevant Committees etc, the present allocation of seats to political groups in accordance with the agreed political proportionality and the approved nomination rights for chairing those bodies – following consultation with Group Leaders, a revised table will be circulated.

5.2 Nominations are invited from the political groups for the appointment by the Council of Members to the bodies listed in Appendix 1 and for the Chairs of the Policy Development and Scrutiny Panels and the regulatory, non-executive committees.

5.3 The Parishes Liaison Meeting Terms of Reference are currently under review as part of the Parish Charter work; any amendments will be picked up when this is brought to Council later this year.

5.4 The Health & Wellbeing Board Terms of Reference have been amended to include a wider representation, as set out in the updated version included in Appendix 3.

6 PROPORTIONALITY REVIEW

6.1 The law gives detailed guidance on the principles to be applied in calculating the allocation of seats on Committees and Sub Committees but the basic principles are:-

- a) not all the seats on the body shall be allocated to one particular party;
- b) the majority of the seats on the body shall be allocated to a particular political group if the number of persons belonging to that group is a majority of the Authority's membership;
- c) Subject to paragraphs (a) and (b) above, the number of seats on the ordinary Committees of the Authority which are allocated to a political group shall bear the same proportion to the total of all the seats on the ordinary Committees of that Authority as is borne by the number of members of that group to the membership of that Authority;
- d) subject to paragraphs (a) to (c) above, the number of seats on the body which are allocated to each political group bears the same proportion to the number of all the seats on that body as is borne by the number of members of that group to the membership of the Authority.

6.2 Notwithstanding (a) to (d) above the Act does not restrict the ability of the Council, or Committees where they are authorised by the Council, to decide on the size and number of seats on Committees and Sub Committees, and to make the actual appointments. A Committee or Sub Committee must, however comprise at least two voting members.

6.3 Council is asked to note that the membership of the Restructuring Implementation Committee as currently constituted is not subject to the proportionality rules, as one representative from each political group attends. Council is therefore asked to confirm that this arrangement should continue.

7 ARRANGEMENTS CONCERNING OVERVIEW AND SCRUTINY BUSINESS

- 7.1 The trend towards collective scrutiny by West of England Councils and participation in a wider range of scrutiny activity on a regional basis is likely to continue. For this reason, it is proposed that any Panel should be able to participate in informal joint working with other Councils when it is expedient and cost-effective for there to be a collective approach.
- 7.2 The arrangements for the WECA governance are currently under negotiation and not yet formally approved.

8 CABINET WORKING & REPORT OF SPECIAL URGENT DECISIONS

- 8.1 Council is reminded that the arrangements for the discharge of executive (Cabinet) functions are the sole responsibility of the Leader of Council. The arrangements he has approved are incorporated within the Council's Constitution and he may address the Council if he so wishes in respect of any implemented or proposed changes to the arrangements.
- 8.2 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require any decisions taken by the Cabinet or single Cabinet Member under special urgency provisions in the previous year to be reported to Council (Constitution part 4b, rule 16 refers). This Council has decided that will happen on an annual basis.
- 8.3 The following such decisions were made and published;

Decision E2854 Keynsham Land Assembly – Leisure

Date of decision: 26/05/2016

Decision Makers: Cabinet Member - Community Services, Cabinet Member - Finance and Efficiency

The Cabinet Members agreed that £2.5M funding provisionally approved by Council in February 2016 for land assembly in Keynsham be fully approved.

Decision E2916 Property Acquisition Bath

Date of decision: 26/10/2016

Decision Maker: Cabinet Member - Finance and Efficiency

The Cabinet Member agreed that £1,861,650 of the £5million funding provisionally approved by Council in February 2016 for property acquisition be fully approved.

Decision E2964 Acquisition of an income generating office investment to incorporate within the Commercial Estate

Date of decision: 05/04/2017

Decision Maker: Cabinet Member - Finance and Efficiency, Leader of the Council

The Cabinet Members approved:

- 1) The acquisition of an investment property; and
- 2) Capital expenditure on the acquisition of the property and any necessary adjustments to the 2017/2018 capital budget to reflect this approval.

9 APPOINTMENTS ON OUTSIDE BODIES

- 9.1 Currently, appointments are made by full Council (through delegation to the Monitoring Officer in consultation with Group Leaders) for Council functions, and by the Leader for Cabinet ones.
- 9.2 A review of Outside body appointments is being conducted and will be brought to Council in July 2017, and thereafter reported annually.

10 CHANGES TO THE CONSTITUTION

- 10.1 An amendment to the Constitution is proposed to amend the non-executive procedure rules regarding a second/casting vote (Part 4F, rule 46) to address the fact that the 'convention' to which the rule refers no longer reflects current practice. The current section reads;

"While by convention in this Authority, the Chair does not exercise a second or casting vote to resolve issues where there is an equality of votes, the decision on whether or not to exercise a second or casting vote is that of the Chair alone. S/he retains the legal right to proceed as s/he sees fit."

The following wording is proposed;

"Chairman's Casting Vote

If there are equal numbers of votes for and against, the chairman will have a second or casting vote. There will be no restriction on how the chairman chooses to exercise a casting vote."

11 RISK MANAGEMENT

- 11.1 No risk assessment related to the issue and recommendations has been undertaken as the Council needs to put in place the arrangements contained in this report.

12 EQUALITIES

- 12.1 Equalities Impact Assessments have been carried out on the Access to the Democratic process and the Scrutiny function and are available for public inspection.

13 ADVICE SOUGHT AND CONSULTATION

- 13.1 The Council's Chief Executive, Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.
- 13.2 Group Leaders have been consulted on relevant aspects of this report.

Contact person	Jo Morrison, Democratic Services Manager (ext 4358)
Background papers	The Council's Constitution
Please contact the report author if you need to access this report in an alternative format	

POLITICAL PROPORTIONALITY TABLE – FROM MAY 2016

[illegible]

POLITICAL PROPORTIONALITY TABLE – FROM MAY 2016

Health & Wellbeing Board	3	3 (as appointed by the Leader)	1 (observer)	1 (observer)	1 (observer)		CON		
Licensing Committee	11	6	3	1	1		CON		

NB: Proportionality was not formally reviewed in May 2016 by agreement of Council

UPDATED POLITICAL PROPORTIONALITY TABLE – FOR MAY 2017

(The percentages and totals have been updated following the Newbridge by-election result. Group Leaders will discuss the allocation of places so that an updated table can be circulated for the Council meeting.)

Compulsory cumulative proportionality	# on Cttee	Conservative 37 = 57%	Liberal Democrat 16 = 25%	Labour 6 = 9%	Independent 5 = 8%	Green 1 = so 1%	Chair Allocation	Vice Chair Allocation	Co-opted members
Planning, Housing & Economic Development PD&S	7								
Resources PD&S	7								
Children & Young People PD&S	7								4
Communities, Transport & Environment PD&S	9								
Health and Wellbeing Select Cttee	7								
Development Management Cttee	10								
Regulatory access Cttee	4								
Corporate Audit Cttee	5								1
Pension Fund Cttee	5								7 voting, 4 non voting
Employment Cttee	3								
Standards Cttee	5								6 non voting
TOTALS	69	39	17	6	6	1			

UPDATED POLITICAL PROPORTIONALITY TABLE – FOR MAY 2017

Compulsory individual proportionality									
Licensing Sub-Committee	3	2	1				CON		
Pensions Investment panel	3	2	1				CON		3
Optional proportionality									
Health & Wellbeing Board	2	2 (appropriate Cabinet Members)	1 (observer)	1 (observer)	1 (observer)		Shared between CM & CCG Chair		
Licensing Committee	11	6	3	1	1		CON		

NB: Proportionality was not formally reviewed in May 2016 by agreement of Council

TERMS OF REFERENCE

1 Avon Pension Fund Committee

Bath and North East Somerset Council, in its role as administering authority, has executive responsibility for the Avon Pension Fund. The Council delegates its responsibility for administering the Fund to the Avon Pension Fund Committee which is the formal decision making body for the Fund.

Function and Duties

To discharge the responsibilities of Bath and North East Somerset Council in its role as lead authority for the administration of the Avon Pension Fund. These include determination of all Fund specific policies concerning the administration of the Fund, investing of Fund monies and the management of the Fund's solvency level. In addition, the Committee is responsible for all financial and regulatory aspects of the Fund. At all times, the Committee must discharge its responsibility in the best interest of the Avon Pension Fund.

The key duties in discharging this role are:

1. Determining the investment strategy and strategic asset allocation.
2. Determining the pensions administration strategy.
3. Making arrangements for management of the Fund's investments in line with the strategic policy.
4. Monitoring the performance of investments, investment managers, scheme administration, and external advisors.
5. Approving and monitoring compliance of statutory statements and policies required under the Local Government Pension Scheme Regulations.
6. Approving the Pension Fund's Statement of Accounts and annual report.
7. Approving the annual budget for the Pension Board subject to the approval of Pension Board's workplan.
8. Commissioning actuarial valuations in accordance with the provisions of the Local Government Pension Scheme Regulations.
9. Making representations to government as appropriate concerning any proposed changes to the Local Government Pension Scheme.
10. Nominating a representative from the Committee to represent the Committee on the Oversight Board for Brunel Pension Partnership.

Delegations

In discharging its role the Committee can delegate any of the above or implementation thereof to the Sub-Committee (referred to as the Investment Panel) or Officers. The current delegations are set out in Sections 2 & 3 below.

Membership of the Committee

Voting members (12)	5 elected members from B&NES (subject to the rules of political proportionality of the Council) 2 independent members 1 elected member nominated from each of Bristol City Council, North Somerset Council and South Gloucestershire Council 1 nominated from the Higher and Further education bodies 1 nominated by the trades unions
Non-voting members (4)	1 nominated from the Parish Councils Up to 3 nominated from different Trades Unions

The Council will nominate the Chair of the Committee.

Meetings

Meetings will be held at least quarterly. Meetings will be held in public, though the public may be excluded from individual items of business in accordance with the usual exemption procedures.

Quorum

The quorum of the Committee shall be 5 voting members, who shall include at least one Member who is not a Bath & North East Somerset Councillor.

Substitution

Named substitutes to the Committee are allowed.

2 Investment Panel

The role of the Avon Pension Fund Committee Investment Panel shall be to consider, in detail matters relating to the investment of the assets within the strategic investment framework and performance of investment managers in achieving the Fund's investment objectives.

The Investment Panel will:

1. Review strategic and emerging opportunities outside the strategic asset allocation and make recommendations to the Committee.
2. Review the Statement of Investment Principles and submit to Committee for approval.
3. Report regularly to Committee on the performance of investments and matters of strategic importance

and have delegated authority to:

4. Approve and monitor tactical positions within strategic allocation ranges.
5. Approve investments in emerging opportunities within strategic allocations.
6. Implement investment management arrangements in line with strategic policy, including the setting of mandate parameters and the appointment of managers.

7. Approve amendments to investment mandates within existing return and risk parameters.
8. Monitor investment managers' investment performance and make decision to terminate mandates on performance grounds.
9. Delegate specific decisions to Officers as appropriate.

Panel Membership

The Panel shall comprise a maximum of 6 voting Members of the Avon Pension Fund Committee, of which 3 shall be Bath and North East Somerset Councillors. The membership shall include the Chairman of the Committee and /or the Vice-Chair and 4 other Members (or 5 if the Chair or Vice-Chairperson is not a member of the Panel).

Note: The appointment of Bath and North East Somerset Councillors to the Panel is subject to the rules of political proportionality of the Council.

Members shall be appointed to the Panel for a term of one year.

The Council will nominate the Chair of the Panel.

Panel Meetings

Though called a "Panel", it is an ordinary sub-committee of the Committee. Accordingly, meetings must be held in public, though the public may be excluded from individual items of business in accordance with the usual exemption procedures.

The Panel shall meet at least quarterly ahead of the Committee meeting on dates agreed by Members of the Panel.

Panel Quorum

The quorum of the Panel shall comprise 3 Members, who shall include at least one Member who is not a Bath & North East Somerset Councillor.

Panel Substitution

Substitutes for the Panel must be members of Committee or their named Committee substitute.

Panel Minutes

Minutes of Panel meetings (whether or not approved by the Panel) shall appear as an item on the next agenda of the meeting of the Committee that follows a meeting of the Panel.

3 Officer Delegations

Officers are responsible for:

1. Day to day implementation and monitoring of the investment, administration, funding strategies and related policies.
2. Appointment of specialist advisors to support the Committee in discharging its functions.

3. The Section 151 Officer has authority to dismiss investment managers, advisors and 3rd party providers if urgent action is required (does not refer to performance failures but to their inability to fulfil their contractual obligations or a material failing of the company).
4. The Section 151 Officer has authority to suspend policy (in consultation with the Chairs of Committee and Panel) in times of extreme market volatility where protection of capital is paramount
5. Under its wider delegated powers, the Section 151 Officer has delegated authority to effectively manage the liabilities of the Fund including the recovery of debt.
6. Exercising the discretions specified in the Local Government Pension Scheme Regulations in connection with deciding entitlement to pension benefits or the award or distribution thereof.
7. Through delegations from Council, the S151 Officer has authority to progress the development of Brunel Pension Partnership pool.

Approved by Avon Pension Fund Committee 24 March 2017

Pension Board for Avon Pension Fund

Function and role

The regulations state that the role of the local Pension Board (the “Board”) is to assist the administering authority

a. to secure compliance with:

- i. The LGPS (Amendment) (Governance) Regulations 2014 (the “regulations”)
 - ii. Any other legislation relating to the governance and administration of the Scheme
 - iii. Requirements imposed by the Pensions Regulator in relation to the Scheme; and
- b. to ensure the effective and efficient governance and administration of the Scheme.

The Board has an advisory role in assisting the Administering Authority by making recommendations about compliance, process and governance. The Board does not have a decision making role with regard to strategy or policy nor will it ratify or challenge decisions made by the administering authority. Its role is to have oversight of the governance process for making decisions and agreeing policy.

The Board will exercise its duties in the following areas:

- i. Compliance with the relevant legislation and Codes of Practice set by The Pensions Regulator;
- ii. Policies and processes are in place to deliver the objectives of the pension fund;

- iii. Policies and processes are in place to ensure that employers comply with their obligations under the Scheme and regulations;
- iv. The processes for setting strategy, policy and decision-making are robust;
- v. A framework of controls is in place to ensure fund and employer compliance;
- vi. From time to time the administering authority may consult the Board or ask assistance on specific issues.

The costs of the Board will be met by the Avon Pension Fund (as set out in the regulations) subject to approval of their annual workplan and budget. This may enable the Board to commission independent advice as appropriate. It is important that the Board maintains its independence from the Avon Pension Fund Committee's decision-making process in order to effectively scrutinise the decision-making process.

Establishment

The Board is to be established by 1 April 2015 and must be operational by 31 July 2015. The Terms of Reference must be approved by the Administering Authority and formally adopted by the Board once it is established.

Board Membership

There will be seven Board members comprising three member representatives, three employer representatives and an Independent Chairperson. Member representatives can be drawn from the membership and are not restricted to Trades Union representatives. Employer representatives should be representative of the employers within the scheme. No officer or councillor of the administering authority who is responsible for the discharge of any function under the LGPS regulations can be a member of the Board. In respect of the Chairperson the term independent means having no current employment, contractual, financial or other material interest in either the Council or any scheme employer in the Avon Pension Fund, and not being a member of the Avon Pension Fund. The Chairperson can delegate to another Board member if unable to attend a meeting.

Appointment process

The Avon Pension Fund will facilitate the nominations process for all Board members; the appointment process will be undertaken by the Strategic Director of Resources. The appointment of the Chair will be following an advertised competitive process, which shall be subject to the Board's approval of the successful candidate.

The selection process for employer and employee reps will take into account their capacity to fulfil the role as set out in the Role and Person Specification.

Role of advisors

The Board may appoint professional advisors as appropriate to their work plan. The cost will be met within the budget approved by the administering authority. Where possible the advisors should be independent from those used by the administering authority.

Role of officers

Democratic Services will be responsible for providing secretariat services to the Board. The Strategic Director of Resources will ensure appropriate officer support is provided to the Board. Avon Pension Fund officers will be required to provide information to the Board for the Board to fulfil its task.

Frequency of meetings

The Frequency to be determined by Board once agreed workplan, with a minimum of three meetings annually.

Voting rights

The objective is to reach consensus on all issues; however, each employer and employee rep has one vote. The Under Regulation 106 (7) of the LGPS Regulations 2013 the Independent Chairperson is explicitly excluded from having the right to vote.

Board Quorum

The quorum of the Board shall comprise three members who shall include at least one member and one employer representative.

Substitutes

Substitutes will not be permitted as they would have to be nominated as part of the appointment process.

Sub-committees

Sub-committees will not be permitted.

Board work plan and Budget

The Board will agree its work plan annually and the budget required to deliver it. As the expenses of the Board are to be met by the Avon Pension Fund the Board's workplan and budget, having taken advice from the Strategic Director of Resources, will be submitted to the Avon Pension Fund Committee for approval annually. The Board will be required to operate within the approved budget and approved budget purposes. It is envisaged that the Board will review aspects of the pension fund over time rather than react to the regular monitoring cycle of the pension committee.

Access to Board papers

Board meetings will be held in open session with closed sessions where appropriate. The agenda papers will be circulated in advance of meeting in line with council policy. The minutes of meetings will be recorded and published in line with Council policy.

Term of office

Two of the initial appointments (one employer representative and one member representative) will be for a two year period. All other appointments will be for a four year term with the maximum term of Board membership limited to two terms.

Code of Conduct

Board members are required to adhere to the Council's Code of Conduct.

Declarations of Interest and Conflicts of interest

Board members are required to adhere to the Council's policy for declarations of interests. Members must provide information that the administering authority may reasonably require from time to time.

The Board is required to act within its Terms of Reference. The Board should ensure that in addition to the Council Policy it has its own policy for managing conflicts of interest in line with any further stipulations from the Pensions Regulator and members must abide by this policy.

Removal from Board

A Board member can be removed from the Board in the following circumstances (but not limited to):

- ☐ A poor attendance record;
- ☐ If a member does not undertake training as requested by the administering authority; If a member is in breach of Council's Code of Conduct / Declarations policy; If a member has a conflict of interest that cannot be managed in accordance with the Board's conflicts policy;
- ☐ If a representative member ceases to represent his constituency e.g. leaves the employer so no longer has the capacity to represent the Fund's employers. If there is an unsatisfactory annual review of individual members

If there is a vote of no confidence in the Chairperson by the Board then the Administering Authority will conduct a process to appoint another Chairperson

The Council's Standards Committee and Monitoring Officer will determine any removal from the Board.

Expenses

The pension fund will meet reasonable meeting expenses, reasonable training expenses relevant to discharging the role and independent advice required to support work agenda (including legal, technical and other professional advice).

Allowances

An annual allowance will be paid to the Independent Chairperson.

Knowledge and understanding

The Board are required to agree and maintain a policy and framework to address the knowledge and understanding requirements, as set out in various legislation and the Pension Regulator's Code of Practice, that apply to its members. The knowledge and understanding requirement applies to each Board member individually rather than to the members as a collective group. The policy and framework will be considered in light of the role of the Board; however, Board members will need to understand the duties and obligations of the administering authority in order to be able to assist it.

Board members will be required to undertake training to ensure they acquire the appropriate level of knowledge and understanding and keep a record of the learning activities of individual members and of the Board as a whole.

Reporting

The Board will publish an annual report to Council containing any recommendations on process or governance. This should be circulated to members and employers.

The annual report will cover:

- i. summary of the work of the Board
- ii. details of areas the Board has investigated and how they have been dealt with
- iii. details of conflicts of interest that have arisen in respect of the Board members and how have been managed
- iv. whether there are any risks or other areas of potential concern which the Board wishes to raise with the Administering Authority
- v. details of training a future training needs
- vi. the work plan of the last year and draft work plan for following year
- vii. details of expenses and other costs incurred and anticipated expenses for forthcoming financial year

Direct reporting line if the Board has material concerns – The Strategic Director of Resources.

The Board minutes will be circulated to administering authority (the pension committee) S151 Officer and Monitoring Officer.

The Board is required to report breaches of law or material (and not actioned) breaches of the Code of Practice to the Pensions Regulator.

Where any breach of duty is committed or alleged to have been committed by the Administering Authority (the Pensions Committee) the Board shall:

1. Discuss the breach or alleged breach that is identified with Pension Committee Chair and the proposed actions to be taken by the Board
2. Enable the Chair of the Committee to review the issue and report back the Board on the breach
3. The Board will determine action and if sufficiently material will report the breach to the Pensions Regulator or the Scheme Advisory Board as set out in the regulations.

Data protection and Freedom of Information

For legal purposes the Board is considered a committee of and part of the administering authority legal entity. Therefore the Board must comply with the Council's Data Protection and Freedom of Information policies.

Charitable Trust Board

The purpose of the Charitable Trust Board is to facilitate the management of the charitable Trust for which the Council is the sole trustee; independently, in accordance with their governing documents and in the best interests of the charity.

In respect of the charities listed in Schedule 1 the Charitable Trust Board shall have the following powers delegated to it.

The Role of the Board is to exercise the powers delegated to it for the management of the trust, namely;

- to manage the charity in pursuit of the charitable purposes,
- to manage the finances of the charity and ensure its solvency,
- to ensure the charity acts within the governing documents,
- to ensure the charity deals with their regulatory and public accountability obligations, and
- to identify and manage potential conflicts of interest.

In respect of the charities listed in Schedule 2 the Charitable Trust Board shall investigate the governing documents of each charity and recommend to Council the inclusion of any Charity suitable for incorporation into Schedule 1 and until such time as the Council decides to delegate its functions in respect of such Trust to the Charitable Trust Board it shall advise the Council as trustee on;

- the strategic direction of those Trusts,
- the financial resources needed to operate those Trusts;

The Charitable Trust Board shall, in respect of all Trusts, ensure compliance with the Charity Commission's registration and reporting requirements and periodically consider if Trust's assets could be consolidated and more efficiently /effectively used in conjunction with another Trust. Where appropriate it should consult on consolidation proposals with the Charity Commission and interested parties and make any recommendations for consolidation in its annual report to Council.

Decisions about requests for works to be undertaken, or events to be approved that fall outside of the Charitable Trust Board cycle shall be delegated to the Chair of the Trust Board in consultation with the Lead Officer.

Urgent works required under health and safety legislation shall be delegated to the Lead Officer to action promptly.

The Board will comprise:

- Five councillors
(to include the Cabinet member responsible for Community Services and at least one councillor who is not a member of the controlling group but who's appointment is determined by the controlling group), and
- One independent person with suitable skills, experience or interests to be appointed by the Board from applicants who wish to be considered following advertisement of the role.

The Board will elect a Chair and Vice-Chair. Decisions will be by a majority of the councillors present. Quorum will be three councillors.

The Board shall have the power to create a sub-committee for each charity listed in Schedule 1 to ensure that each charity shall be separately administered. Each sub-committee shall consist of at least 3 councillors and co-opted non-voting members consisting of the ward councillor(s) for the area where any land subject to the Trust is situated and any other non- voting members who may be able to assist it in its work. The Trust Board and each sub-committee shall undertake its duties through meetings as required and will meet at least twice annually.

In any meeting, the affairs of each Trust will be considered separately and in relation to the purpose and governing document of each Trust.

Each sub-committee will report annually to the Trust Board after submitting any annual report to the Charity Commissioners and the Trust Board shall thereafter provide an annual report to Council on the financial standing of each Trust and update the Council on the work undertaken by each Trust in the preceding year

Support for the Board and sub-committees as necessary will be provided through the relevant Council sections. Lead advisors will be identified for each charitable Trust in Schedule 1.

Schedule 1 Charitable Trusts for which the Council is sole trustee	Schedule 2 Charitable Trusts for which the Council is responsible
The Alice Park Free Fields (Rainbow Woods)	Weston Recreation Ground 4, The Circus Firs Field Beechen Cliff Newbridge Meadows (Queen Elizabeth the Second Fields) Backstones Innox Park Post Office Museum Former Radstock Infant School

Alice Park Trust Sub Committee Terms of Reference

The Sub-Committee shall discharge the Council's functions as sole corporate trustee in respect of the Alice Park Trust, the site and its resources in accordance with Trust's objects and the duties it owes pursuant to the Charities legislation.

To report to the Board on an annual basis in September of each year detailing the work undertaken by the Trust in the preceding year and confirming to the Board that the Trust has complied with the objects of the charity and the Charities Legislation.

Appointed by: The Charitable Trust Board

Membership: - 3 Councillors from the membership of the Charitable Trust Board
- Ward members(s) for Lambridge as co-opted non-voting members
- 2 non-voting independent members

Quorum: 3 voting members

The Sub-Committee may co-opt other non-voting members as appropriate.

Lead Officer Head of Parks & Green Spaces
Deputy Officers Team Leader Parks & Green Spaces
Project Manager, Parks.

Decision Making Powers:

1. To discharge the Council's role as Corporate Trustee for the Alice Park Trust, in line with Charities Commission guidance. The objects of the Alice Park Trust are for use as a public park and children's recreation ground.
2. To agree the Trust's annual budget and business plan.

3. To approve the use of any reserves.
 4. To agree the Trust's annual accounts.
 5. To receive and respond to the audit findings relating to the annual accounts.
 6. To receive reports on the effective day to day management and financial performance of the Trust.
 7. To allow interested parties to give their view on the performance and direction of the Trust.
-

CORPORATE AUDIT COMMITTEE

Powers and Duties

The Council has delegated to this Committee its powers and duties relating to the following matters:

The Council delegates to the Corporate Audit Committee the following responsibilities:

1. To approve on behalf of the Council its Annual Accounts, as prepared in accordance with the statutory requirements and guidance.
2. To approve the External Auditors' Audit Plan and to monitor its delivery and effectiveness during the year.
3. To approve the Internal Audit Plan within the budget agreed by the Council and to monitor its delivery and effectiveness (including the implementation of audit recommendations).
4. To consider, prior to signature by the Leader of the Council and Chief Executive, the Annual Governance Statement (including the list of significant issues for action in the ensuing year), as prepared in accordance with the statutory requirements and guidance; and to monitor progress on the significant issues and actions identified in the Statement.
5. To review periodically the Council's risk management arrangements, make recommendations and monitor progress on improvements.
6. To review periodically the Council's key financial governance procedures, i.e. Financial Regulations, Contract Standing Orders, Anti-Fraud & Corruption Policy and to recommend any necessary amendments.
7. To consider the annual Audit & Inspection Letter from the External Auditor and to monitor progress on accepted recommendations.
8. To monitor and promote good corporate governance within the Council and in its dealings with partner bodies and contractors, including review of the Council's Code of Corporate Governance and in any such other ways as the Committee may consider expedient (within the budget agreed by the Council).
9. To consider and make recommendations of any other matters relating to corporate governance which are properly referred to the Committee or which come to its

attention.

10. To make an annual report to Council on the work [and findings] of the Committee, including (if necessary) any measures necessary to improve the effectiveness of the Committee.

In all of the above, the Committee will, as appropriate, wish to develop effective liaison with the following:

- A. the Standards Committee of the Council with regard to matters of ethical governance;
- B. the relevant Policy Development and Scrutiny Panel(s) - to complement but not to duplicate the exercise of their legitimate role in checking compliance with Council processes and policies and in reviewing policies and practice;
- C. relevant Cabinet Members, in particular the Leader and the Cabinet Member for Resources, whose portfolios include executive functions related to the matters covered by these terms of reference
- D. the Council when developing the Council's Code of Corporate Governance

Membership

The membership of the Committee shall be 5 Councillors (*political proportionality to be determined by Council AGM*) plus one independent voting co-opted Member.

Frequency of Meetings

The Committee will hold 4 meetings each Council year in the months of June/July, September/October, December/January and March/April. Additional meetings may be arranged to deal with the volume of business if required.

DEVELOPMENT MANAGEMENT COMMITTEE

Functions

1. The Committee will exercise all the Council's powers and duties in respect of Development Management (subject to the scheme of delegation set out in the Constitution and the provisions of Section 7 below).

The Committee will act in accordance with the Planning Policy Framework for B&NES which includes National Planning Policy Guidance .

2. The Committee is granted delegated authority to establish Development Management working practices and protocols for operation on a District-wide basis by this and all other area-based committees.

In exercising the above powers and duties, the Committee may also:

- a. establish such sub committees and working parties as are considered helpful in exercising the above functions.
- b. delegate any of its functions to a sub-committee and to delegate any of its non-policy making functions to Officers (see delegation scheme).

3. To monitor service delivery and service trends and to make recommendations.

4. To be a body of influence across its geographical area of responsibility and with the community in its area.
5. To engage in consultation with the community and specifically with other bodies which have an interest in the span of responsibility of this Committee.
6. To participate with others in joint initiatives on planning.

Limitation on delegation

7. The exercise of this delegated authority is subject to the Divisional Director, Development, or the Group Manager (or any of the other Managers specifically listed in the delegation scheme when standing in for the Group Manager) being authorised, in exceptional circumstances, to refer any decision or determination of the Development Management Committee which is clearly contrary to policy and against officer advice, to a subsequent meeting of the Development Management Committee. When such a decision or determination is referred, it shall be of no effect until the Committee has fully reconsidered the matter in the light of all the information originally before the Committee plus such additional information and advice as the Divisional Director, Development or the Group Manager considers necessary. Further to such reconsideration, the Committee shall be entitled to make such decision or determination as it sees fit.

Frequency

Monthly

Membership

10 Members in the political proportion – (*political proportionality to be determined by Council AGM*).

EMPLOYMENT COMMITTEE

To exercise all powers and duties of the Council under section 112 of the Local Government Act, 1972 relating to its role as an employer, except those reserved to the Restructuring Implementation Committee.

To hear staff appeals requiring Member level involvement, under accepted national or Council schemes of conditions of service.

To conduct investigatory hearings requiring Member level involvement under accepted national or Council schemes of conditions of service.

To determine on behalf of the Council its powers and duties as an employer relating to pensions.

The Committee's Span of Responsibility

All matters relating to the role of the Council as an employer except those reserved to the Restructuring Implementation Committee.

All appeals or investigatory hearings requiring Member consideration including those relating to disciplinary, capability, grievance, and redundancy matters for all staff, including teachers.

Membership

The Committee when meeting to consider ordinary business, or as a hearing, will comprise 3 Members in the political proportion .. (*political proportionality to be determined by Council AGM*).

Bath and North East Somerset Health and Wellbeing Board Terms of Reference



1. Statement of purpose

- 1.1 By working together the Board aspires to provide strategic leadership to reduce health inequalities and improve health and wellbeing in Bath and North East Somerset.
- 1.2 To achieve these aims the Board will work collaboratively with partners to join up commissioning and provision across the NHS, social care, public health and other areas related to health and wellbeing (where appropriate).

2 Roles and responsibilities

- 2.1 The Board will be responsible for:
 - developing a strong, place based vision for health and wellbeing
 - overseeing the development of local needs assessments, including joint strategic needs assessment (JSNA) and pharmacy needs assessment (PNA)
 - leading the development and delivery of the joint health and wellbeing strategy (JHWS)
 - considering whether the Clinical Commissioning Groups' (CCG) commissioning plan has given due regard to the JHWS
 - ensuring local placed-based health and social care commissioning plans have adequate regard to the JHWS
 - The Improved Better Care Fund for B&NES including sign off and ongoing oversight.
- 2.2 The Board will seek to:
 - influence the strategic planning and service delivery of the NHS and Council in B&NES through the promotion of the JSNA, PNA and JHWS
 - promote joint working and the use of the NHS Act 2006 flexibilities to increase joint commissioning, pooled and aligned budgets (where appropriate), to support the effective delivery of the JHWS
 - work with and influence services including planning, transport, housing, environment, economic development, education and community safety in order to address the wider determinants of health and wellbeing
 - work collaboratively across our local partnership framework
 - strategically performance manage key activity against the key priorities of the JHWS
- 2.3 Responsibility for the scrutiny of health and wellbeing will continue to lie with the Council's Policy Development and Scrutiny Panels.

3. Scope

- 3.1 The Boards' scope shall be set out within the Joint Health and Wellbeing Strategy.
- 3.2 The Health and Wellbeing Board may consider services beyond health and social care enabling the Board to look more broadly at factors affecting the health and wellbeing of the B&NES population.

4. Accountability

- 4.1 Those stakeholders with statutory responsibilities will retain responsibility for meeting their individual duties and responsibilities.
- 4.2 The Board is responsible for working with the Children and Young People's Sub Group to deliver strategic commitments and outcomes, in line with the JHWS.
- 4.3 Accountability for safeguarding lies with the Local Safeguarding Adults Board and Local Safeguarding Children's Board.
- 4.4 The Safeguarding Children Board, the Safeguarding Adult Board and the Children and Young People's Sub Group will report to the Board on relevant performance outcomes against the JHWS priorities, through a regular performance reporting process.

5. Membership

5.1 Membership of the Board is:

- B&NES Council x 6 (Cabinet Member for Adult Social Care and Health, Cabinet Member for Children's Services, Chief Executive, Strategic Director for People and Communities, Director of Integrated Health and Care Commissioning, Director of Public Health)
- Clinical Commissioning Group x 2 (CCG Clinical Chair, CCG Chief Officer)
- Healthwatch B&NES x 1
- Avon and Somerset Police x 1
- Avon Fire and Rescue x 1
- Housing provider representative x 1
- Higher and further education representative x 3
- Health and social care provider representatives x 4 (acute care, community care, primary care and voluntary, community and social enterprise sector)
- NHS England x 1

- 5.2 The Board will be co-chaired by the Council's Cabinet Member for Adult Social Care and Health and the Chair of the Clinical Commissioning Group. Chairing of each meeting will alternate between the two co-chairs and matters of agenda planning will be considered jointly. Co-chairs will also be able to provide cover and support to each other in the absence of one of them.

5.3 In the event of a vote on a substantive matter, the quorum for the meeting will be:

- 3 members of the Council
- 1 member of the CCG
- 1 member of Healthwatch B&NES
- 1 health and social care provider representative
- 1 member of Avon and Somerset Police, Avon Fire and Rescue, Higher and Further Education representative or Housing representative

- 5.4 Board members may nominate a named substitute from an appropriate member of their organisation or service.

6. *Wider engagement*

- 6.1 By working together the Health and Wellbeing Board will proactively embed good public and patient engagement within the day-to-day business of the Board through adhering to the following principles:

- Taking responsibility for good public engagement
- Clarity about purpose
- Harnessing a range of engagement methods
- Engaging with everyone
- Committed to cultural change
- Providing access to information
- In partnership
- Feeding back engagement results
- With Healthwatch B&NES
- Evaluating engagement

- 6.2 The Board will seek to engage all stakeholders (including key health and social care providers) on the JHWS and commissioning plans.

- 6.2 The Council's policy development and scrutiny function offers an opportunity for broader engagement on key issues.

- 6.3 It is intended that one representative of each Political Group on the council, not currently represented on the board, be invited to formal Board meetings in an observer capacity.

7. *Business management*

- 7.1 The Board is a statutory committee of the Council and will be treated as if it were a committee appointed by the Council under section 102 of the Local Government Act 1972.

- 7.2 The Board will act in accordance with the Council's committee procedures.

- 7.3 Formal Board meetings shall be held in public. The Board may resolve to hold closed sessions in accordance with the Access to Information rules.

- 7.4 The Board will develop a work programme framed by the JHWS which will guide its work.

- 7.5 The Board will meet at least 5 times per year.

- 7.6 The Board may establish sub-groups to lead on issues such as children and young people, JSNA, joint commissioning and health inequalities.

JOINT COMMITTEE FOR THE OVERSIGHT OF JOINT WORKING

Statement of purpose:

To oversee the operation of joint working partnership arrangements established between the B&NES Council and the B&NES CCG and described in the Joint Working Framework.

Roles and responsibilities

The joint committee is formally established to monitor and oversee the operation of partnership arrangements, and in particular:-

- pooled fund arrangements;
- the exercise of any NHS functions by the Council;
- the exercise of any health-related local authority functions by the CCG.

Accountability

The committee will be constituted as a joint committee of the Council and CCG and will provide reports to the Health & Wellbeing Board, B&NES Council (via the Health & Wellbeing Select Committee) and B&NES CCG annually and by exception as required.

Membership

Membership will include:

- Two members of the B&NES CCG governing body
- The Executive Members responsible for Adult Social Care and Children's Services
- The Council's Chair of Audit Committee
- B&NES CCG Chair of Audit Committee

Practical Arrangements for Conducting the Committee's Business

The chair will be rotated by the B&NES Council and B&NES CCG representatives.

A quorum will require 2 B&NES Council members and 2 B&NES CCG members.

Other CCG and Council Executive members and officers may be in attendance as appropriate.

The Committee will meet twice a year in May and November if required, and at other times as required to meet business needs.

The May meeting will be a public meeting and will include an annual review of the arrangements, evaluating their success and considering external views and relevant organisational/legislative developments.

In monitoring the partnership arrangements the Committee is also expected to consider the management and staffing arrangements that support the partnership arrangements as set out in the Joint Working Framework including the agreement under Section 113 of the Local Government Act 1972.

The Committee may act as a forum to try to resolve any disputes not resolved through normal management arrangements or through the offices of the B&NES CCG Chair and B&NES Council's CEO – as set out in the Joint Working Framework.

The committee will be supported by the B&NES Council's Democratic Services.

LICENSING COMMITTEE

Status of the Committee

The Licensing Committee is a statutory committee of the Council appointed to perform the discharge of the local authority's licensing functions, except the approval of licensing policies, the setting up of a Committee and the resolution not to issue casino licences.

Licensing policies shall be the responsibility of the Cabinet Member with responsibility for Community Services except where there is a statutory requirement for Full Council to determine policies.

The setting up of a Licensing Committee shall be the responsibility of Full Council.

Membership of the Committee

The Committee shall comprise 11 elected members of the authority in the political group proportion ..(*political proportionality to be determined by Council AGM*), or such other proportion agreed by the Council from time to time.

The Head of Legal and Democratic Services and Monitoring Officer shall be authorised, by the Council, to fill vacancies on this Committee in accordance with the nominations of the relevant political group which holds the nomination rights to the vacancy.

The Council's objectives on Licensing

In exercising its functions the Committee must have regard to the statutory licensing objectives under the Licensing Act 2003, i.e.

- the prevention of crime and disorder ;
- public safety;
- the prevention of public nuisance; and
- the protection of children from harm.

In addition the Committee will have regard to the statutory licensing objectives under the Gambling Act 2005, i.e.

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- ensuring that gambling is conducted in a fair and open way, and
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

In addition the Committee will, where applicable, have regard to –

- (a) the Council's Statement of Licensing Policy, published under section 5 of the Licensing Act 2003;
- (b) the Council's Statement of Principles published under section 349 of the Gambling Act 2005;
- (c) any other policy determined by Council or Cabinet;
- (d) any Codes of Practice and Guidance issued from time to time by the Secretary of State;
- (e) the Council's Corporate Plan and improvement priorities insofar as these do not conflict with statutory requirements which take precedence.

The Committee will also have regard to the Council's Corporate Priorities:-

- A strong economy and growth
- A focus on prevention
- A new relationship with customers and communities
- An efficient business

Powers and Duties of the Committee

1. At the request of the Council, to review the Council's licensing policies at any time within the statutory period under the Licensing Act 2003 and Gambling Act 2005 and to make recommendations to the Council for change, after the prescribed consultation has been completed.
2. To carry out all of the Council's licensing functions as covered in the Licensing Act 2003 and the Gambling Act 2005, excluding the making of licensing policies, the setting up of a Licensing Committee and the

resolution not to issue casino licences (these being functions of the Council).

3. To determine individual licence applications which fall outside Officer delegations, or which are referred by Officers for Member attention, in relation to the issue and renewal of all registrations, licences, permits, consents etc. in relation to the enactments listed below and all such other enactments as may fall within the remit of the Committee:

Animal Boarding Establishments Act
1963
Animal Welfare Act 2006
Breeding of Dogs Act 1973
Breeding of Dogs Act 1991
Caravan Sites and Control of Development Act 1960
Charities Act 2006
Dangerous Wild Animals Act 1976
Environmental Protection Act 1990
Fireworks Act 2003
Food Act 1984
Food Safety Act 1990
Gambling Act 2005
Game Act 1831
Guard Dogs Act 1975
Highways Act 1980 Part VIIA
House to House Collections Act 1939
Hypnotism Act 1952
Licensing Act 2003
Local Government (Miscellaneous Provisions) Act 1976
Mobile Homes Act 2013
Local Government (Miscellaneous Provisions) Act 1982
Performing Animals (Regulation) Act 1925
Pet Animals Act 1951
Pet Animals 1951 (Amendment) Act 1983

Petroleum (Regulation) Acts
1928 & 1936
Poisons Act 1972
Police Factories, etc. (Miscellaneous Provisions) Act 1916
Public Health (Control of Disease) Act 1984
Public Health Acts Amendment Act 1907
Riding Establishments Act 1964
Riding Establishments Act 1970
Scrap Metal Dealers Act 2013
Theatres Act 1968
Town Police Clauses Act 1847
Town Police Clauses Act 1889
Transport Act 1981
Vehicles (Crime) Act 2001
Violent Crime Reduction Act 2006
Zoo Licensing Act 1981

4. To determine appeals against decisions made by the Proper Officer under the Marriages and Civil Partnerships (Approved Premises) Regulations 2005.
5. To establish one or more Sub-Committees and, subject to statutorily prescribed exceptions, to delegate any of its functions to such Sub Committee(s).
6. Subject to statutorily prescribed exceptions, to delegate any of its functions to an Officer of the authority

How the Committee will operate, including Substitution and Delegated Powers

The Committee will meet in full to consider any matters on which it is asked or required to submit a recommendation to the Council.

Substitutions will be permitted at meetings of the Licensing Committee from among other members of the Council, in accordance with non-Executive Committee Procedure Rule 11, as set out in the Constitution.

The Committee has delegated to the Sub-Committee and Officers the power to determine applications in the circumstances set out in the tables below.

The Committee has appointed a Sub-Committee to act as a hearing Panel as follows:

- Licensing (Regulatory) Sub-Committee [3 Members – *political proportionality to be determined by Council AGM*] – this Sub-Committee hears and determines all licence applications, not delegated to officers, listed in the Powers and Duties of the Committee section above.

(Chairing nomination rights for the Sub-Committee are allocated to the Conservative Group).

Substitutes for the Sub Committee will be drawn from the membership of the Licensing Committee. Any member of the Licensing Committee substituting at Sub-Committee meetings will do so in accordance with the wishes of the political group arranging the substitution.

TABLE OF DELEGATIONS OF LICENSING FUNCTIONS

MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
LICENSING ACT 2003				
Approval of Statement of Licensing Policy and review	All cases			
Application for Personal Licence			If a police objection is made	If no objection made
Application for Personal Licence, with unspent convictions			If a police objection is made	If no objection made
Consideration of revocation or suspension of personal licence where convictions or immigration penalties come to light.			All cases	
Application for Premises Licence/Club			If a relevant representation is made	If no relevant representation is made

MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
Premises Certificate				
Application for Provisional Statement			If a relevant representation is made	If no relevant representation is made
Application to vary Premises Licence/Club Premises Certificate			If a relevant representation is made	If no relevant representation is made
Application to vary Designated Premises Supervisor			If a police objection is made	All other cases
Request to be removed as Designated Premises Supervisor				All cases
Application for transfer of Premises Licence			If a police objection is made	All other cases
Application for interim authorities			If a police objection is made	All other cases
Application to review Premises Licence/Club Premises Certificate			All cases	
Decision on whether a complaint is irrelevant, frivolous, vexatious, etc.				All cases
Decision to object when local authority is a consultee and not the relevant authority considering the application			All cases	
Determination of a police and/or environmental health officer objection to a standard Temporary Event Notice			Where a police/environmental health officer objection is made and not withdrawn	All other cases
Issue of a Counter Notice where police and/or environmental health officer object to a late Temporary Event Notice				All cases

MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
Issue of a Counter Notice where the entitlement of the number of Temporary Event Notices has been exceeded				All cases
Determination of Minor Variation applications for premises licences and for club premises certificates				All cases
Determination of the removal of a Designated Premises Supervisor or Personal Licence Holder at community premises			If a relevant representation is made	All other cases
Applications for the classification of unclassified films			All cases	
GAMBLING ACT 2005				
Approval of three year Statement of Licensing Principles and review	X			
Resolution not to issue casino licences	X			
Fee Setting - when appropriate				X (to be approved by Cabinet Member)
Application for premises licences			Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a variation to a licence			Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Application for a			Where	Where no

MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
transfer of a licence			representations have been received and not withdrawn	representations have been received/representations have been withdrawn
Application for a provisional statement			Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Review of a premises licence			X	
Application for club gaming /club machine permits			Where representations have been received and not withdrawn	Where no representations received/representations have been withdrawn
Cancellation of club gaming/ club machine permits			X	
Applications for other permits				X
Cancellation of licensed premises gaming machine permits				X
Consideration of temporary use notice				X
Decision to give a counter notice to a temporary use notice			X	
Consideration of an Occasional Use Notice				X
Designation of "authorised person".				X
Exchange of information between various persons/ bodies listed in the Act				X
Decision to initiate criminal proceedings.				X
Power to make Orders disapplying exempt gaming and the automatic				X

MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
entitlement to gaming machines in relation to specified premises.				
Functions relating to the registration and regulation of small society lotteries.				X
To appoint an Advisory Panel		X		
Stage 1 of an application for a casino licence			X	
Stage 2 of an application for a casino licence		X		

OTHER				
MATTER TO BE DEALT WITH	FULL COUNCIL	LICENSING CTTEE	SUB COMMITTEE	OFFICERS
Determination of applications for hackney carriage/private hire drivers' licences where applicants are aged 70 or over with no medical problems				X
Determination of new applications for a Sex Establishment		X		
Determination of uncontested renewal applications for a Sex Establishment				X
Agreement of standard conditions to licences		X		

POLICY DEVELOPMENT AND SCRUTINY PANELS – GENERAL TERMS OF REFERENCE

Role of Overview and Scrutiny¹ Panels

Overview and Scrutiny Panels allow citizens to have a greater say in Council matters by holding public inquiries into some matters of local concern. These lead to reports and recommendations to the Cabinet and the Council as a whole on its policies, budget and service delivery.

Overview and scrutiny bodies also monitor the decisions of the Cabinet and other executive persons/bodies. They may of their own volition, or be asked to, ‘call-in’ a decision which has been made by the Cabinet but not yet implemented. The “call-in” rules and procedure are set out in Part 4D-1 of this Constitution.

Overview and Scrutiny bodies may also be consulted by the Cabinet or by the Council on forthcoming decisions and on the development of policy.

The proceedings of all overview and scrutiny bodies will be conducted in accordance with the Overview and Scrutiny Procedure Rules set out in this Constitution.

Within their allocated remits, each Panel

- (i) has broad-based responsibility for Overview and Scrutiny in its particular area of responsibility, in line with the Council's objectives;
- (ii) scrutinises Performance Management information for the allocated performance areas on a scheduled basis and advises the Cabinet accordingly;
- (iii) receives and carries out work as allocated, including;
 - (a) determination of Call-Ins of executive decisions made but not yet implemented
 - (b) carrying-out of in-depth reviews, as set out in their Overview and Scrutiny Work Plan
 - (c) undertaking scrutiny of particular Key Decisions and other aspects of Cabinet activity
 - (d) offering overview advice and reports of policy development issues
 - (e) evaluating the impact of Council and Cabinet decisions and policies
 - (f) undertaking scrutiny of agreed Action Plans and Policies, to ensure compliance (including those required by the District Auditor)
 - (g) reviewing and/or scrutinising decisions made or actions taken in connection with the discharge of any of the Council’s functions

¹ Overview and Scrutiny is the legal and generic term for the function carried out by Policy Development and Scrutiny Panels

- (h) dealing with any relevant Councillor Call for Action
- (i) carries out its roles within the Council's petition scheme
- (iv) may send communications and reports directly to other Overview and Scrutiny Panels, Cabinet and Council, and provide them to any member of the Council, subject to provisions regarding confidential and exempt information;
- (v) may invite persons to be co-opted non-voting members (excepting those statutory co-optees with voting rights);
- (vi) may invite participants to give evidence, either verbally or in writing, on any issue contained within their Overview and Scrutiny Work Plan, giving a minimum of two weeks notice unless mutually agreed otherwise;
- (viii) may require officers of the Council and members of the Cabinet to attend to give evidence, subject to the provisions of the Overview and Scrutiny Procedural Rules;
- (ix) may form discretionary joint bodies with other Councils for the purpose of enabling joint scrutiny of bodies/activities beyond the remit of Bath and North East Somerset, without delegation of any responsibilities or powers.

All Overview and Scrutiny Panels may also:

- **on scrutiny issues**
 - i) review and scrutinise the decisions made by and performance of the Cabinet and Council Officers both in relation to individual decisions and over a period of time;
 - ii) review and scrutinise the performance of the Council in relation to its policy objectives, performance targets and/or particular service areas;
 - iii) question members of the Cabinet and Officers about their decisions and performance*, whether generally in comparison with service plans and targets over a period of time, or in relation to particular decisions, initiatives or projects (*this does not relate to the performance review ("appraisal") process which is a staff managerial responsibility);
 - iv) make recommendations to the Cabinet arising from the outcome of the scrutiny process;
 - v) invite any person to give evidence and answer questions (subject to the Overview and Procedure Rules);
- **on overview issues**
 - (i) assist the Council and the Cabinet in the development of its budget and policy framework by in-depth analysis of policy issues;
 - (ii) conduct research, community and other consultation in the analysis of policy issues and development of possible options for the future;

- (iii) consider and implement mechanisms to encourage and enhance community participation in the development of policy options;
- (iv) liaise with other external organisations operating in the area, whether national, regional or local, to ensure that the interests of local people are enhanced by collaborative working;
- (v) carry out in-depth reviews of key local issues, subject to the provisions of the Overview and Scrutiny Work Plan;
- (vi) request reports from Officers and Cabinet Members.

Meeting Frequency:

Panels will determine their own frequency relevant to the requirements of the Overview and Scrutiny Work Plan, and within resources allocated to them.

PDS Panel Remits

PLANNING, HOUSING & ECONOMIC DEVELOPMENT

(Designated Flood Risk Management Panel)

Panel remit is –

- Housing, Housing delivery and travellers
- Housing choices for vulnerable people
- Regeneration Projects
- West of England Partnership
- Planning
- Economic Enterprise and Business Development
- Tourism (Heritage Services, Destination Management, Arts & Festivals including the film office)
- World Heritage Management

Membership and chairing: *determined by Council AGM.*

RESOURCES

Panel remit is –

- Customer Services including Revenues & Benefits and Council Connect
- Finance
- Risk and assurance
- ICT
- Procurement
- Property
- Finance
- Strategy and Performance including, Public Sector Partnerships
- Change Programme
- Equalities
- Legal and Democratic services

Membership and chairing: *determined by Council AGM.*

CHILDREN & YOUNG PEOPLE

(Designated Curriculum Complaints Panel)

(Designated Panel for determining appeals for transport to school/college for post 16 Learners with learning difficulties and/or disabilities)

Panel remit is –

- Learning and inclusion
- Children, young people and family support
- Safeguarding children
- Primary, secondary and further education
- Improving environment and opportunities for disadvantaged teenagers
- Corporate Parenting, including transition of vulnerable/looked after children to Adult care
- Health, commissioning and planning (Children)²

Membership and chairing: *determined by Council AGM.*

COMMUNITIES, TRANSPORT & ENVIRONMENT

Panel remit is –

- Transport Development (transport planning/policy, major transport infrastructure)
- Major Transport Schemes
- Highways, Parking and Transport
- Community Safety
- Big Society/3rd Sector Funding Initiatives
- Improve the quality of life of the communities (older people and of children, young people and families) at risk and narrow the gap between the worst performing wards / neighborhood's and other areas across the district.
- Leisure and Culture (Sport & Active Lifestyles),
- Libraries
- Environmental Services
- Natural Environment, Green Infrastructure & Sustainability

Membership and chairing: *determined by Council AGM.*

In addition to General Terms of Reference

Further to the Police and Justice Act 2006 (and associated regulations), the designated Crime and Disorder Panel in relation to responsible authorities (or co-operating bodies or persons) may

- a. review the decisions and performance at least once per year;
- b. with reasonable notice, require the attendance of an officer or employee to answer questions, and more recently to include the new Police and

² When relevant, issues will also be referred to the Health & Wellbeing Select Committee

Crime Commissioner

- c. require a response in writing to reports and recommendations of the Panel within 28 days, or as soon as reasonably possible

HEALTH & WELLBEING SELECT COMMITTEE

(Delegated Committee for the statutory health scrutiny function under the Health & Social Care Act 2012)

Panel remit is –

- Adult health and social care
- Public Health (Improving health and reducing health inequalities)
- Health Scrutiny
- Healthwatch
- *[When relevant - Health, commissioning and planning (Children)].³*

Health Scrutiny - The Health and Social Care Act 2012 requires local authorities with social services responsibilities to have in place arrangements to scrutinise health services. This function is bestowed on the local authority's Full Council but can be delegated however the Full Council sees fit. In Bath & North East Somerset Council, the function is delegated to the Health & Wellbeing Select Committee. Councillors on the Health & Wellbeing Select Committee therefore have a role, as representatives of the public, to hold to account local Health organisations when they are making big decisions about the future of health care provision in Bath & North East Somerset.

Membership and chairing: *determined by Council AGM.*

In Addition to General Terms of Reference

Further to the Local Government and Public Involvement in Health Act 2007 (and associated regulations), the designated Health Scrutiny Committee may

- a. receive referrals from the Local Healthwatch and acknowledge receipt,
- b. decide which if any of its powers are exercisable in relation to the matter and whether to exercise them (either by Council or by the delegated Committee), and
- c. keep the referrer informed of the Committee's actions and decisions in relation to the matter.

HEALTH SCRUTINY: Background

Local Authorities with social services powers are required to ensure that the Council has the power to scrutinise the planning, provision and operation of health services. This power may be undertaken by the Full Council, a designated health scrutiny committee/panel or any other method that the Council deems appropriate. This power relates to reviewing, scrutinising and reporting on NHS services and

³ Principle responsibility rests with Children and Young People PDS Panel – Health & Wellbeing Select Committee to be involved when relevant

institutions, and helps the Council build on existing health partnerships and other work to tackle causes of ill-health and health inequalities.

Under the Health and Social Care Act 2012, this function will now apply to any provider of health care services including private and third sector suppliers.

Provisions of the Health Scrutiny Regulations

- The council's overview and scrutiny body can scrutinise any NHS Commissioning Board, Clinical Commissioning Group or NHS body that provides services for people in the council's area.
- Local NHS bodies must provide any information the council reasonably requires (excluding information about individuals), and NHS staff can be required to attend and provide information.
- Scrutiny reports can be made to the council and to NHS bodies. If requested, the NHS body must respond within 28 days.
- NHS bodies must consult the designated health scrutiny function of the council about proposals for substantial development or variation of NHS services in the area. The designated health scrutiny function can refer a matter to the Secretary of State for Health, if the local authority is not satisfied of the merits for change or if it considers there has been inadequate consultation on the proposals.
- Councils can set up joint health scrutiny committees with one or more other councils. Councils can delegate aspects of this role to another council's overview and scrutiny body. Joint Health Scrutiny Committees also have the power to directly refer a matter to the Secretary of State for Health.
- County councils can co-opt neighbouring authority council members onto their scrutiny committees dealing with health scrutiny, either for an indefinite time or for a particular project.

Reporting Arrangements

Following any health overview & scrutiny topic undertaken, the Committee will make a report with recommendations to NHS bodies and B&NES Council. Such reports will also be copied to key stakeholders including local MPs, Healthwatch, Clinical Commissioning Groups and/or the NHS Commissioning Board.

JOINT HEALTH SCRUTINY FUNCTION

Working across Local Authority Boundaries

Some health issues will be specific to the B&NES area whilst others (e.g. performance of large hospitals or regional health services with a wide catchment area) will extend beyond the B&NES local authority boundaries. In such cases, B&NES will adopt the following approach:

Protocols for a Joint Health Scrutiny Committee for cross-boundary overview and scrutiny of health issues and institutions have been established with the other Councils in the former Avon area (as agreed at Council November 2003).

Membership

The membership of each Joint Health Scrutiny Committee should be made up of not more than 3 Councillors from each Council participating in the review(s) being undertaken by that Committee.

The requirement to observe political proportionality in making appointments to these Joint Committees has been waived by all four Councils so as to give each Council maximum flexibility in making its appointments.

The three B&NES Councillors participating in the Joint Health Scrutiny will be agreed by and appointed from the Committee designated as the health overview and scrutiny Committee, as and when it is agreed to participate in a Joint Health Scrutiny Committee.

It is intended that these arrangements form the basis for constituting Joint Health Overview and Scrutiny Committees with other neighbouring local authorities e.g. Somerset or Wiltshire County Councils.

Terms of Reference

- 1) Where more than one local authority is consulted by a local NHS body in respect of any proposal that it has under consideration for the substantial development of the health service or the substantial variation of such service, to review and scrutinise such proposal jointly with any other local authority so consulted.
- 2) Where more than one local authority has an interest in the planning, provision and operation of health services which cross-geographical boundaries, to review and scrutinise any such matters jointly with any such other local authority.
- 3) To require the local NHS body to provide information about the proposal under consideration and where appropriate to require the attendance of a representative of the NHS body to answer such questions as appear to it to be necessary for the discharge of its function in connection with the consultation.
- 4) To prepare a report to the health body and the participating local authorities, setting out any comments and recommendations on any matter reviewed or scrutinised.
- 5) To report to the Secretary of State in writing where it is not satisfied that consultation on any proposal referred to in paragraph (1) has been adequate in relation to the content or time allowed.
- 6) To report to the Secretary of State in writing in any case where it considers that the proposal would not be in the interests of the health

service in the area of the joint committees participating local authorities.

Health Services located within B&NES

E.g. Royal United Hospital (RUH), Bath.

B&NES Council will take the lead on any health overview & scrutiny activities based in its area and invite participation from neighbouring authorities that have an interest. Neighbouring authorities may provide a Member of their council for co-opted membership.

Health Services located elsewhere but used by B&NES residents

E.g. Bristol Royal Infirmary (BRI)

B&NES Council would expect that a 'host' local authority would take the lead on a major issue within its area, given that they are likely to have the majority of residents affected by the service. In such cases, B&NES could seek to have representative(s) from the health overview and scrutiny Committee co-opted (on a reciprocal agreement, as above) to the host authority's own Health Overview & Scrutiny arrangements so that it may contribute and represent B&NES residents on the specific topic.

A Member of the B&NES Health & Wellbeing Select Committee attend such joint meetings, as are relevant, and report back to the rest of the Panel at B&NES' own Health Overview & Scrutiny meetings.

WEST OF ENGLAND JOINT SCRUTINY COMMITTEE

Membership and chairing: *determined by Council AGM.*

Background

The West of England Partnership comprised the 4 Councils that were previously Avon (Bristol, Bath and North East Somerset, South Gloucestershire, North Somerset), in order to jointly progress key infrastructure projects and funding bids. In 2011, this was changed to the statutorily based Local Enterprise Partnership.

There are no statutory powers to establish a joint overview and scrutiny committee, therefore each of the four Councils established their own politically balanced scrutiny body (September 2008) comprising three non-executive Councillors.

These meet together in public session, known as the West of England Joint Scrutiny Committee:

- and will conduct overview and scrutiny on behalf of the Local Enterprise Partnership (statutory);
- and may also meet individually in their own right and as and when necessary to consider their authority's position on a particular issue.

Political makeup of each is at the discretion of each Council. Substitute members may be appointed where a designated member is unable to attend.

Bath and North East Somerset Council's West of England Partnership Joint Scrutiny Committee

This comprises 3 non-executive Councillors with the politically proportionate balance of 2 Conservatives, 1 Liberal Democrat. Each Group will also nominate a reserve Councillor. Substitutes to be allowed. For the avoidance of doubt, a substitute takes the place of the committee member for the entire meeting.

Reporting Arrangements

Members of this Scrutiny Committee may be requested to provide a briefing to a B&NES Panel Chair, or to attend Panel with a related remit, to discuss the activities of the Joint Scrutiny Committee.

Terms of Reference

Three members have been nominated to a West of England Scrutiny Committee by each of the four authorities to meet jointly as the the West of England Joint Scrutiny Committee. It will conduct an overview and scrutiny function on their behalf of the Local Enterprise Partnership (LEP).

The Committee shall be concerned with the aspects of the Local Enterprise Partnership that relate to public funding and resources. Within the LEP structure the Committee shall:

1. scrutinise any relevant proposals from the Joint Transport Executive Committee, Planning Housing and Communities Board and the Strategic Leaders Board in relation to the activities outlined in their terms of reference;
2. scrutinise other relevant proposals related to public funding and resources made from the Local Enterprise Partnership Board and the Skills Sub-Group;
3. review actions taken and decisions made by these bodies related to public funding and resources;
4. make reports or recommendations to these bodies, as appropriate and/or the constituent authorities' respective Overview and Scrutiny Committees or equivalent.
5. scrutinise the activities of private sector companies, recognising that the private sector is not under the same obligation to appear in public or have regard to recommendations made by a Scrutiny committee in the same way that public service providers are required to do so.

[NB : for the most part, this Committee will hold its meetings "jointly" with the equivalent scrutiny committees of the 3 partner authorities].

As a general rule (taking account of the limited resources available), sub groups will only be contemplated where absolutely necessary and should be of a task and finish variety.

*It follows that if members wish to amend the ToR that it will be necessary to make recommendations to the leaders and chief executive of the participating unitary authorities via their respective overview and scrutiny management committees

Where scrutiny is focussing on the activities of the Local Economic Partnership and/or executive committees/bodies, only those authorities involved in or affected by the executive committee activity should be involved in the scrutiny.

Work Programme

A work programme will be developed for approval by the Joint Scrutiny Committee

Chair/Vice Chair

The Chair and Vice Chair of the Committee will be agreed at the annual meeting.

Expert Witnesses

It shall be for the Joint Committee to decide whether expert witnesses are necessary. Expert witnesses will only be sought where it is clear that there is a significant gap in the expertise which is readily available to the committee. Expert witnesses can only be appointed in an advisory capacity and do not have voting rights.

Quorum and Voting Arrangements

As the Joint Scrutiny Committee is a combined meeting of the LEP scrutiny bodies of the 4 unitary authorities, a “quorum” will require that a minimum of 2 representatives per authority attend the meeting. In the event of one or more of the component scrutiny bodies not being quorate, a combined meeting may still take place but the minutes should indicate which scrutiny bodies were quorate and which were not.

Voting - meetings will aim for consensus. In the event of members considering it necessary to have a formal vote on a matter before them then each component authority's scrutiny body will vote separately, and the outcomes will be recorded in the minutes.

The Chair of the Joint Scrutiny Committee will not have a casting vote.

Where the Joint Scrutiny Committee is responding to consultation on proposals by a LEP executive committee/body, then the scrutiny report will make clear the outcome of any voting which took place.

Meeting Frequency:

The Committee will determine their own frequency relevant to the requirements of the Overview and Scrutiny Work Plan, and within resources allocated to them.

PARISH LIAISON MEETING

Membership

1. Bath & North East Somerset Council will appoint representatives to the Parish Liaison meetings in such numbers as it decides. One of its representatives (usually the Chair of Council) will chair each meeting.
2. The Parish and Town Councils will each be entitled to send their nominated representative and Clerk to the meetings
3. The Local Councils Association for the Council's area will be entitled to send representation to the meetings in their own right
4. Officers of Bath & North East Somerset Council will attend meetings as necessary to advise and assist discussion

Purpose

5. The Liaison Meeting will provide an opportunity for the discussion of issues of common interest, identified by the Council or by Parish/Town Councils (individually or collectively), that are relevant for discussion in this forum
6. Items of relevance are likely to be those:
 - That have direct impact on all, or a significant number of, Parish/Town Councils
 - That support an effective working partnership between tiers of local government
 - Relating to the Parish Charter
 - Where a collective view from Local Councils would be helpful
7. Items that are not likely to be relevant for the Liaison meeting include;
 - Those that relate to a single, or small number of, Parish/Town area(s)
 - Those for which other effective channels of communication exist (including issues that are already the subject of detailed consultation)
8. The infrequency of Liaison Meetings means that it is not a practical forum through which to engage in routine consultation

REGULATORY (ACCESS) COMMITTEE

The Committee is granted delegated authority to exercise all the Council's powers and duties in respect of:

- (1) Modification Orders, Reclassification Orders and Public Path Orders where the matters are contentious

(2) Commons Registration (including Town and Village Greens)

***Note 1** – *The Group Manager: Highways and Traffic and Team Manager - Highway Maintenance and Drainage have been delegated general as well as specific responsibility in respect of these functions.*

***Note 2** – *The Committee's delegated authority is framed in such a way that it will be able, if appropriate, to deal with matters other than strict "quasi-judicial" functions relating to Public Rights of Way. This would, however, be within the overall policy framework set by the Council.*

Membership:

4 members of the Council in the political proportion - (*political proportionality to be determined by Council AGM*).

RE-STRUCTURING IMPLEMENTATION COMMITTEE

The Committee's Span of Responsibility

To determine all necessary arrangements for implementing the indicative senior management structure.

To decide on numbers of 1st and 2nd Tier officers and the span of work responsibility allocations for those officers.

To determine appointments to or dismissal from the posts of Director and other JNC Officers reporting to the Chief Executive, or Head of Paid Service, subject to there being no objection to the appointment / dismissal being lodged by the Leader of the Council.

To recommend to the Council the appointment or dismissal of the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer.

Membership

The Committee shall comprise 5 Members in the political proportion 1 Conservative Member, 1 Liberal Democrat Member, 1 Labour Member, 1 Independent Member and 1 Green Member.

EDUCATION (SCHOOL APPEALS) PANELS

Function

To hear and to determine appeals under the School Standards and Framework Act 1998, School Admissions (Appeal Arrangements) (England) regulations 2012, School Admissions Code 2012, Education Act 2002 as amended by Education Act 2011, School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 and Education and Inspections Act 2006 relating to school admission, exclusion and reinstatement matters as applicable, within the general framework contained in the Code of Practice on Procedure produced by the local authority associations.

Membership

No fixed membership - panels are constituted from independent persons in accordance with the provisions of the above legislation and Code of Practice. Councillors are not eligible to serve.

Timetable

Meetings fixed as and when necessary.

STANDARDS COMMITTEE

- (a) Promoting and maintaining high standards of conduct by Councillors, co-opted members and church and parent governor representatives
- (b) Assisting the councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) To recommend to the Council one or more Codes of Conduct and Practice or protocols for members and/or employees of the Council;
- (d) To monitor and from time to time review such Codes and Protocols and make recommendations to the Council;
- (e) To make representations to the Government, Local Government Association and other external bodies on matters relating to the general principles of conduct for members and employees of the Council;
- (f) To liaise with the District Auditor and the Local Government Ombudsman in connection with any matter within the committee's terms of reference;
- (g) To provide advice and guidance to members, co-opted members and employees and to make arrangements for training in connection with any matter within the terms of reference of the Committee.
- (h) To consider any reports from the Council's Monitoring Officer regarding illegality, unlawfulness or maladministration and any report of the Local Government Ombudsman.
- (i) To oversee the effectiveness of the Council's constitutional arrangements from an ethical perspective including Standing Orders and the Terms of Reference of Committees and internal and external codes of conduct and make recommendations to the Council on any desirable or necessary changes concerning matters of accountability, transparency, good administration or the promotion of high standards of conduct in the administration of local government.

- (j) To recommend to the Council a Code of Practice on relations between members and officers.
- (k) To develop support mechanisms for councillors in all their roles, in conjunction with a member level steering panel.
- (l) To oversee the democratic decision making process and make recommendations to the Council from time to time on any desirable or necessary changes.
- (m) To consider the Council's procedures for investigating and responding to complaints and other procedures referred to it by the Monitoring Officer.
- (n) To oversee the register of member interests.
- (o) To approve a code of practice on planning issues.
- (p) To undertake such other functions as the Secretary of State may by regulations refer to a local authority Standards Committee.
- (q) To consider and determine the Council's response to any Internal or District audit regulatory recommendations referred to the Committee by the Monitoring Officer.
- (r) To recommend to the Council from time to time as necessary the appointment of co-opted members to the Committee following open advertisement, short listing and interview.
- (s) To exercise the functions at (a) to (g) above and (x) below in relation to the Parish Councils wholly or mainly in the B&NES area and the members of those Parish Councils.
- (t) Considering i) any application for exemption from political restrictions in respect of a post, by the holder of that post, and ii) any application from any person for a direction requiring a post to be included in the list of politically restricted posts.
- (u) Granting dispensations to Councillors, co-opted members and church and parent governor representatives from requirements relating to disclosable pecuniary interests as set out in the Localism Act 2011.
- (v) Dealing with any reports from a case tribunal or interim case tribunal, and any report from the monitoring office of any matter which is referred by an ethical standards officer, the Standards Board or a Case Tribunal to the monitoring officer.
- (w) Determination, following complaint by a majority of members of a Policy Development and Scrutiny Panel, of whether or not a Member of the Cabinet, or the Chair of a Committee (including Policy Development and Scrutiny Panels) has acted without good cause or reason either in breach of any requirement of the Constitution or in breach of the Council's Local Code of Conduct for Councillors.
- (x) To consider and determine any allegations of misconduct against Members of the Council

Membership of the Standards Committee

5 x elected members (voting) - (*political proportionality to be determined by Council AGM.*)

3 x independent members selected by an independent panel (non-voting)

3 x parish representatives

Quorum

3 members, at least one of whom shall be an independent member, for ordinary business.

When considering parish matters, the quorum of 3 shall include the parish representative.

The quorum for considering individual cases shall be 5 members.

WEST OF ENGLAND COMBINED AUTHORITY ARRANGEMENTS

WECA OVERVIEW AND SCRUTINY COMMITTEE ⁴

Terms of Reference of the West of England Combined Authority Overview and Scrutiny Committee (“the WECA Overview and Scrutiny Committee”)

The functions of the Overview and Scrutiny committee primarily relate to scrutinising the work of the WECA and making appropriate recommendations as to the discharge of its function.

The WECA Overview and Scrutiny Committee shall have the power to:-

1. review or scrutinise decisions made, or other actions taken, in connection with the discharge of any functions which are the responsibility of the WECA;
2. make reports or recommendations to the WECA on matters that affect the WECA area or the inhabitants of the area;
3. make reports or recommendations to the WECA with respect to the discharge of any functions which are the responsibility of the WECA;
4. in so far as the business of the Local Enterprise Partnership Business Board (LEP) relates to the discharge of functions of the WECA, the WECA Overview and Scrutiny Committee shall have the power to scrutinise the LEP as set out in 1 – 3 above.

Save for the provision in the WECA Constitution, Section A – Standing Orders (Descriptions and Rules of Procedure) that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings of the Overview and Scrutiny Committee.

⁴ The arrangements for the WECA are currently under discussion and not yet formally approved.

WECA JOINT OVERVIEW AND SCRUTINY ARRANGEMENT

Terms of Reference of the Joint Overview and Scrutiny Arrangement comprising of the constituent Councils of the West of England Combined Authority, the Mayor and North Somerset Council (“The Joint Overview and Scrutiny Arrangement”)

Joint Overview and Scrutiny shall have the power to:-

1. review or scrutinise decisions made, or other actions taken, in connection with the discharge of any functions which are the responsibility of the Joint Committee;
2. make reports or recommendations to the Joint Committee on matters that affect the Joint Committee or the inhabitants of the area;
3. make reports or recommendations to the Joint Committee with respect to the discharge of any functions which are the responsibility of the Joint Committee.

Save for the provision in the WECA Constitution, Section A – Standing Orders (Descriptions and Rules of Procedure) that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings of the Voluntary Joint Scrutiny Arrangement.

WECA AUDIT COMMITTEE

Terms of Reference of the West of England Combined Authority Audit Committee (“the WECA Audit Committee”)

The functions of the Audit committee shall include:

1. reviewing and scrutinising the authority’s financial affairs;
2. reviewing and assessing the authority’s risk management, internal control and corporate governance arrangements;
3. reviewing and assessing the economy, efficiency and effectiveness with which resources have been used in discharging the authority’s functions; and
4. making reports and recommendations to the combined authority in relation to the reviews they have conducted.

Save for the provision in the WECA Constitution, Section A – Standing Orders (Descriptions and Rules of Procedure) that can only apply to a meeting of the West of England Combined Authority, the rules of procedure will apply to meetings of the Audit Committee.

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Bath & North East Somerset Council		
MEETING	Council	
MEETING DATE:	18 May 2017	
TITLE:	Review of Electoral Arrangements in Bath and North East Somerset Council (Council proposal for no. of elected members)	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix - Developing a Bath and North East Somerset Position for the Local Government Boundary Commission for England – Technical Report on the number of councillors.		

1 THE ISSUE

- 1.1 The Local Government Boundary Commission for England (LGBCE) is conducting an electoral review of Bath and North East Somerset Council. This is the first such review to take place in the area since 1997. This review will determine the correct number of councillors for the Bath and North East Somerset area as well as the correct boundaries for that number. This paper lays out the Council's recommended position for the first stage of the review (councillor numbers), for which there is a mid-June deadline.

2 RECOMMENDATION

The Council is asked to:

- 2.1 Note the findings of the technical report and outline recommendation.
- 2.2 Delegate to the Chief Executive and Head of Legal and Monitoring officer sign-off of the final wording of the technical report pending any material changes to underlying evidence.

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 Resources to support the ongoing boundary review are met from within existing budgets.

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Council's position on the correct number of Councillors does not carry more or less weight than any other recommendation that may be received by the LGBCE.

5 THE REPORT

5.1 Based on LGCE guidance, the council has assessed the best available evidence in light of the following recommended technical factors:

- (1) Arrangements for current and future decision making
- (2) Scrutiny and partnership requirements
- (3) Democratic accountability.

5.2 Bath and North East Somerset has a larger number of councillors when compared to most similar local authorities. In addition, the following factors have been identified as supporting the case for a reduction in the number of Councillors:

- (1) The shift from the council as an organisation that delivers a comprehensive range of direct services to a more commissioning focussed organisation.
- (2) The reduction in central government funding.
- (3) Social media and new technology making it easier to engage with constituents and more easily resolve queries with Council services.

5.3 The rationale for a reduction is mitigated by a number of factors

- (1) The amount of time taken working on day-to-day representation, particularly for those areas with a greater number of parish councils.
- (2) The significant variation in electorate population density across the authority area and the need to ensure effective representation for rural areas.

5.4 The technical report therefore makes the following outline recommendation for a small reduction in the number of Councillors.

- (1) *The view of the working group is that the changing role of the Council in terms of Leadership, and Partnerships and political representation can be taken together to create a case for a **reduction** in the number of members to 59.*

6 RATIONALE

6.1 The rationale for the recommendation is covered in the technical report.

7 OTHER OPTIONS CONSIDERED

7.1 Options and calculations are considered in the technical report.

8 CONSULTATION

8.1 Underlying evidence behind the technical report has been published on the Council website and developed with input from officer and elected member working groups. The LGCE encourage as many parties as possible to make representations to them.

8.2 A survey of all elected members was conducted as part of this process.

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	<i>Maria Lucas</i>
Background papers	<i>Underlying evidence used in the review can be accessed at www.bathnes.gov.uk/local-boundary-review</i>
Please contact the report author if you need to access this report in an alternative format	

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Developing a Bath and North East Somerset Position for the Local Government Boundary Commission for England – Technical Report on the number of councillors.

V0.4 – 21/04/2017

1. Background

The Local Government Boundary Commission for England (LGBC) is conducting an electoral review of Bath and North East Somerset Council (B&NES). The last review was conducted in 1997, shortly after the local authority was formed.

The review has two aims, which are to identify:

- The correct number of councillors for the Council.
- Where the boundaries should be set for this number (and the names of any created/revised wards).

This report seeks to make representations as to **council size** on behalf of the Council as a corporate body by considering the following technical factors:

- Arrangements for current and future decision making,
- Scrutiny and Partnership requirements.
- Democratic Accountability.

There have been a number of notable changes to governance arrangements between the 1997 review of electoral arrangements and now. These are outlined in tables following each section.

Evidence has been gathered through published and internal documentation and through a Councillor survey conducted in March 2017¹. The Council has published underlying data to support the development of this case at www.bathnes.gov.uk/local-boundary-review.

2. Decision Making and Governance

2.1. Leadership and Decision Making

The Council operates a Cabinet/Executive model comprised of a Leader with eight Cabinet Members. The role of Council Leader is considered equivalent to a full time role. The Proposed Members' Allowances scheme works on the basis of Leader 60 hours per week, Deputy Leader and Cabinet Members 40 hours p/w, Scrutiny Chairs 20 hours per week.

Cabinet meets seven times a year plus special meetings. Over a six month period, Cabinet considered 11 items compared to approx. 30 taken as Single Member decisions. The level of delegation to single Member has varied according to political make-up of the Council.

Delegation schemes included in the Constitution are:

¹ http://www.bathnes.gov.uk/sites/default/files/siteimages/Your-Council/Local-Research-Statistics/2017_boundary_review_members_survey_results.pdf

- Planning (Development Management Committee meets 12x p.a.)
- Environmental Services (Licensing Committee meets 12-16 x p.a.)
- Housing Services
- Public Rights of Way. (Committee rarely meets)

40 councillors currently sit on constituted committees and membership is standing. Most committee meetings are scheduled in advance except for urgent business. Inquoracy has only very rarely resulted in meetings not taking place or being cut short.

2.2. Budget position

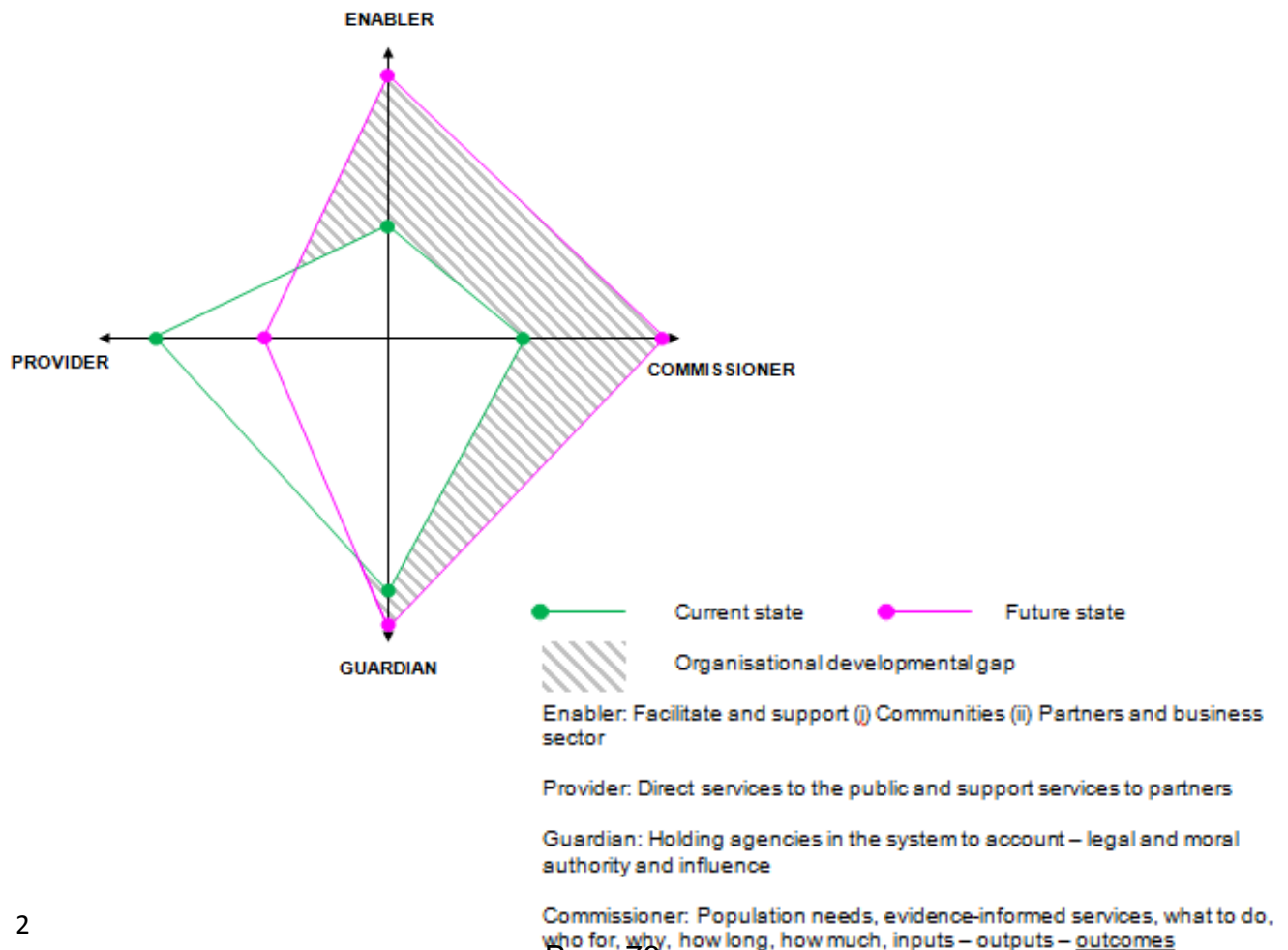
The 2016/17 Budget included proposals to meet the £49m savings required to balance the budget to 2019/20. These are in addition to £33m saved from 2012 onwards. These savings have been required through a combination of increases in demand from factors such as an ageing population as well as a reduction in government grants.

In an unprompted question 34% of respondents to the councillor survey highlighted budget reductions as the single issue which would have the largest impact on their role as a councillor in the next five years (the greatest response to a single issue).

2.3. The Council's Transformation approach

In acknowledgement of the changing role of the Council and the ongoing financial challenges, a transformation approach is emerging within the authority. Fig 1 demonstrates, visually, the nature of this change.

Fig 1 – B&NES Transformation Approach



2.4. Table 1 – Summary of key changes to decision making

Position in 1998	Date of Main Change	Position in 2017	Future trends
Council and Committee structure	2002	Leader and Cabinet arrangements introduced in 2002	
A number of joint arrangements in place particularly relating to structure planning and strategic transport	2017	West of England Combined Authority established in 2017 with devolved budgets	Potential for future phases of devolution deals
Council structure comprising Chief Executive and six Directorates	2013	Council structure comprising Chief Executive and three Directorates	
44 Parish and 2 town councils	2011	48 parish and town councils, alongside 3 parish meetings. Two new town councils (Midsomer Norton and Radstock) and one new parish council (Westfield) created from the dissolution of the existing Norton Radstock Town Council following a community governance review.	
Council primarily a provider of all services within unitary authority set of functions	2013	New Local Engagement Framework established in 2013: significant number of local initiatives in place including asset transfers (e.g. Beacon Hall), community libraries and local projects such as Community@67	The Council will increasingly act as an enabler with plans for community libraries and helping communities do more for themselves- e.g. local litterpicks, A Community Empowerment Fund has also been established to help support parish councils and the Bath City Forum to do more for their areas. A revised Parish Charter setting out devolution principles is currently being developed jointly with parish and town councils.
Bath Tourist Information Centre managed “in-house”	2003	Bath Tourism Plus established as separate body in 2003	Council taking over ownership of Bath Tourism Plus as a wholly owned company.

Leisure services operated in-house	2003	External provider operating leisure facilities since 2003 Greenwich Leisure Limited (GLL) operating Council leisure facilities from 2015	
Separate arrangements for health and social care	2006	Commissioning of Child Health services transfers to Council using Section 113 Local Government Act 1972	The expectation is that further integration will occur.
Community Health and social care services provided directly by Council and Primary Care Trust	2009	Integrated team of adult commissioners, with Clinical Commissioning Group (CCG), in place for adult health, social care and housing commissioning.	
	2011	Community Health & Social Care Services transferred to Sirona Care and Health CIC (Community Interest Company)	
	2012	Health and Social Care act moves Public Health into Local Authority Control and creates Health and Wellbeing Board.	
	2017	Services within scope of “Your Care Your Way” transferred to Virgin Care in April, creating a new “Prime Provider” model for the delivery of Community Health and Social Care, taking a more strategic oversight for the delivery of these services.	
Local government powers restricted to specific functions established through	2011	Power of general competence introduced under Localism Act 2011	

legislation			
Council- retained housing stock and housing management functions	1999	Somer Community Housing Trust (latterly Curo) established in 1999 following the transfer of housing stock from Bath & North East Somerset Council	
		.	
Local Education Authority role for Council operating through Local Management of Schools	2010 (Academies Act) 2017	40 schools are now academies. LA role reduced to cover sufficiency, Place Planning, Admission coordination, Exclusion, SEN and Disabilities and Home to School Transport Final Move to “national” school Funding Formula – LA role in determining formula removed.	More academies expected
Limited commercial interests	1997	ADL established, Audit West, Brunel Pension in place. LA Commercial Estate and Heritage Services managed as commercial operations to generate income for Council. Aequus Developments Ltd, Audit West established. Aequus Construction, Brunel Pensions established. Bath Tourism Plus becomes LA controlled company	Adoption West, Bath Tourism Plus shortly to be established as Council commercial bodies and further commercial interests expected. Further commercial operations to be established including Adoption West.

2.5. Support to elected members

No formal councillor job description has ever existed in the Council. All councillors receive mandatory training on Code of Conduct, Health and Safety, Information security, Safeguarding responsibilities, plus a range of Service specific briefings. Councillors sitting on Licensing and Planning Committees receive specific training for this role, and briefings are arranged as necessary for other Committees such as Employment Committee, Pensions etc.

2.5.1. Training

All Councillors receive mandatory training on Code of Conduct, Health & Safety, Information security and safeguarding responsibilities. The three Directorates also provide service-specific briefings.

Councillors sitting on Licensing and Planning Committees receive specific training for this role and briefings are arranged as necessary for other Committees such as Employment Committee and Pensions.

Policy Development and Scrutiny Panels have undertaken development activity in different ways and at different times. The PDSP Chairs and Vice Chairs meeting has recently agreed to pilot a more standardised approach to agenda planning and pre-panel briefing in order to standardise operation of each panel and manage workload.

2.5.2 Political Assistants

Since its creation, the Council has offered each of the Political Groups which qualify the support of a Political Research Assistant. These are Officers who are specifically recruited to give political support and advice directly to members of the group. They hold fixed term contracts and their terms of office expire on the day of the annual general meeting of the Council in a year of ordinary election.

The current position is that there are two full time Political Research Assistants assigned to the two major political parties and two part time Support Assistants, who support the two minority parties. The Political Research Assistants and Support Assistants provide the same research and organisational support in relation to casework and the councillors' representational roles.

2.5.3 The Future

This review presents an opportunity to develop a Role Profile/Job Description for all Councillors and for the specific additional roles which exist within the democratic structure.

The review also presents an opportunity for the Council as a corporate body to think about how it can support Councillors in their constituency duties e.g. Resident issues/complaints etc.

2.6. Summary of changes around leadership and decision making

The role and functions of the Council have shifted significantly since its establishment. This reflects the major legislative changes enabled by various Governments over that period. It also reflects local decisions to respond to legislative and other changes to the landscape within which the Council operates. Examples of local decisions relate to (i) general power of competence (ii) Rate support Grant reductions (iii) local partnership arrangements e.g. other local Councils, local NHS organisations.

The main legislative thrust over recent years has been to remove local “bureaucratic” controls. This is evident in local government e.g. Academies Act, Childcare Sufficiency and in the NHS e.g. Removal of Community Health Services from Primary Care Trusts, NHS Foundation Trust Status. Emphasis has been on local control at an individual institution level matched with individual relationships with central Government.

At the same time, local authorities have acquired a general power of competence and powers and duties in relation to place-making and community wellbeing. Again the intention behind the legislation is less about “direct delivery” and more about a commissioning approach and enablement.

Given these functional changes, the form of the Council has also changed. There are fewer functions and fewer staff and fewer Directorates. Emphasis has been placed on maintaining “frontline” services although capacity has reduced. Reduced capacity does mean that the governance of the Council also has to change.

Implications of these findings:

The majority of these changes demonstrate an overall shift in the role of the Council from the principle agency delivering services in the local area, to one which plays a more strategic role with fewer direct responsibilities and less direct service delivery. This means that a smaller number of councillors are required now than were in 1997 to provide representation for this activity.

3. Scrutiny and Partnerships

3.1. Policy Development and Scrutiny Panels

The current scrutiny model includes; 4 Policy Development & Scrutiny Panels and 1 Health & Wellbeing Select Committee:-

- Planning, Housing, & Economic Development PD&S Panel (Designated Flood Risk Management scrutiny Panel)
- Communities Transport & Environment PD&S Panel (statutory Crime Panel)
- Resources PD&S Panel
- Children & Young People PD&S Panel (Designated Curriculum Complaints Panel)
- Health & Wellbeing Select Committee (Statutory Health scrutiny Panel)

There are, on average, seven members per panel except for Communities, Transport & Environment which has nine. All Panels have a Chair & Vice Chair and the Health Select Committee just has a chair. The CYP Panel has four co-opted members.

The agendas of each of the Panels and Select Committee are often long and when they do appear short, the item has a large remit of discussion at that meeting. The Panels have attempted to move away from items 'to note' or updates. Currently the detailed engagement work that the Scrutiny Panels deliver is of good quality and has meaningful results.

On average, panels undertake two Scrutiny Inquiry Days a year, one Task & Finish Group and/ or one full review or one call-in meeting. There are smaller research projects that on average take one to two weeks to pull together. (Each of the above will involve on average three to four weeks scoping, analysing and reporting meetings and one public meeting- all separate from the formal Panel meetings)

Members will also attend regular agenda planning meetings and Chairs will attend the Chairs & Vice Chairs Meeting which is quarterly. There is difficulty in balancing the amount of focused scrutiny work that a panel is able to undertake and providing the right level of support and resources to deliver the number of Panel meetings effectively. The current structure is resource intensive which includes the planning for four panels and one committee plus agenda planning for each. The Officer support to the scrutiny function now equates to 1.0 FTE post.

Panel/Committee meetings also vary in length ranging between 2 and 5 hours. If agendas are not well planned and meetings adroitly chaired, then large numbers of officers from the Council and partner organisations can be kept waiting representing a significant drain on capacity.

A piece of work has been undertaken recently to review the number of scrutiny panels and meetings and will be consulted upon with Group Leaders and political groups.

3.2. Membership of External Bodies

Excluding Cabinet Members, 31 appointments are covered by 18 councillors. Typically bodies meet between four/five times a year. This is following work to review and reduce Membership of outside bodies. A survey of elected members identified that 40% of respondents were members of outside bodies.

3.3. Table 2 – Summary of key changes to scrutiny and partnership arrangements

Position in 1998	Date of Main Change	Position in 2017	Future trends
No Overview and Scrutiny arrangements	2002	Scrutiny Panels in place.	Review of Panels.
	2011	Remit changed to Policy Development and Scrutiny.	West of England Scrutiny requirements.
No strategic partnerships in place	Community Strategy published 2004, Sustainable Community Strategy 2009	Local Strategic Partnership and latterly Public Services Board established setting vision and strategy for the area, chaired by Council leader	

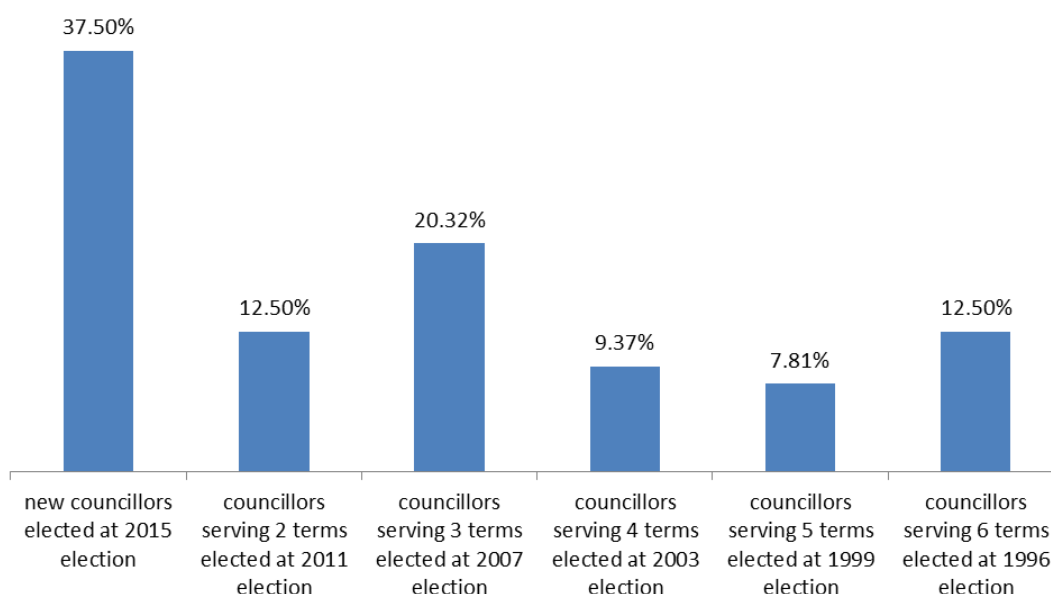
	2012 Health & Wellbeing Board established	HWB reformed and expanded	Impact of sustainability and Transformation Planning on local NHS form and relationships.
Audit Commission Indicators in place	2010	National indicator set obligations removed in 2010, although scrutiny on certain strategic areas, such as Safeguarding Children & Young people has increased.	

4. Representational Considerations

4.1. Member Retention

The Council has never had an unchallenged seat since its formation. Fig 2 demonstrates the makeup of the Council at March 2017 in terms of the year in which councillors are first elected².

Fig 2 - % Current councillors elected at each election since 1996.



Nearly 40% of councillors were new in 2015, with existing members having served on average 2.7 terms.

4.2. “Ward Work”

71% of respondents to the councillor survey said that they responded to casework from constituents on an almost daily basis, with all respondents saying that this activity was carried out at least monthly. 44% said that they went out and about in their ward to see

² http://www.bathnes.gov.uk/sites/default/files/siteimages/Your-Council/Local-Research-Statistics/march_2017_list_of_bnes_councillors_and_year_of_first_election.xlsx

what's going on almost every day, with all respondents saying that they had done this within the last six months.

In an unprompted question, 25% of respondents highlighted an increasing workload as the single issue that would have the biggest impact on their role as a councillor in the next five years.

Respondents also noted the impact of social media and modern technology on their role; 82% said it makes it easier for them to engage with their constituents, 82% said it helps them more easily resolve queries with council services and 70% said it makes it easier for them to manage their time.

Implication of these findings

With the current number of councillors, it is clear that 'ward work' in their local area is an activity which takes up a considerable amount of time and a number of councillors believe that this will increase. These factors may be mitigated in part by the role of social media and modern technology in making it easier to engage with local residents and resolve queries.

The Council needs to consider how to support Councillors when they inquire on behalf of constituents – this could save time and resource.

4.3. "Connecting Communities"

The Connecting Communities programme is designed to help public services and local residents to work better together to address the areas of local concern in our communities. To achieve this, the Council has worked with partners, parishes and councillors to establish Area Forums to streamline and simplify local engagement.

Area Forums are made up of Bath & North East Somerset elected members representing the wards within the Area, Parish Councils and representatives of local groups. The Forums set their own priorities based on an understanding of local needs. The Forums have produced area-based Action Plans, bringing together commitments from a wide range of partners such as the Police and Curo (the largest Registered Social Landlord in the area).

The Forums also provides an increasingly useful channel for residents to raise concerns with partners such as the Police, and each Forum has an open session at the start of each meeting where specific issues can be raised.

The Area Forum meetings are open for any member of the community to attend. At times the meeting agendas will have items included for which the Chair will limit speakers to members from the Forum only.

Under the Connecting Communities framework, Area Forums have been established for the whole of Bath and North East Somerset. In the unparished area a Bath City Forum has been

established with co-opted members sitting alongside elected members drawn from Bath City wards. Information on the composition of these Forums is available as supporting evidence³.

4.4. Geographical Variation

The population of Bath and North East Somerset is split, almost 50/50 between the City of Bath and the North East Somerset area. North East Somerset comprises a diverse mix of market towns (Keynsham, Radstock and Midsomer Norton) as well as a large number of dispersed rural villages. This creates a significant variation in population distribution amongst the existing wards. Fig 3 shows this distribution using the December 2016 electorate.

Fig 3 – Ward Electorate Population Density 2016

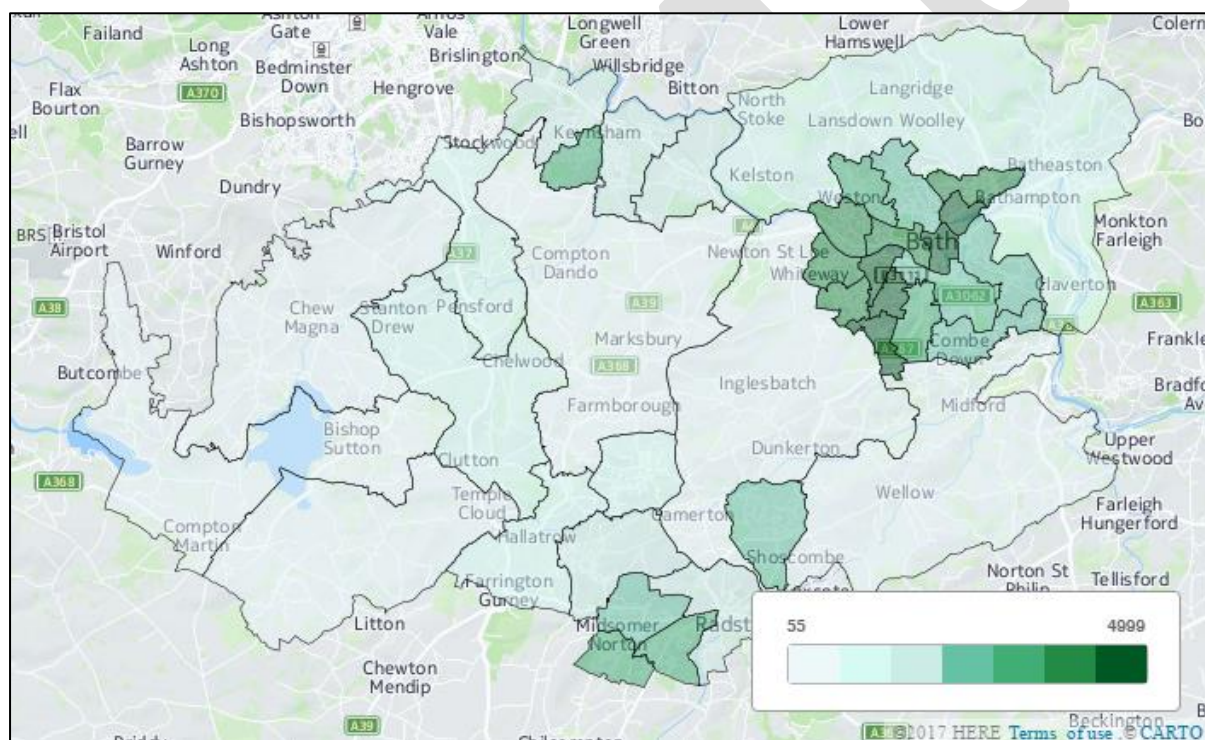


Fig. 3 demonstrates that electorate population density⁴ varies significantly between Bathavon West Ward (55 electors per SqKm) and Walcot Ward (4,999 electors per SqKM).

This demonstrates a significant need to provide effective geographic balance in any proposal.

³ http://www.bathnes.gov.uk/sites/default/files/siteimages/Your-Council/Local-Research-Statistics/parishes_to_connecting_communities_forum.xlsx

⁴ http://www.bathnes.gov.uk/sites/default/files/siteimages/Your-Council/Local-Research-Statistics/december_2016_electorate_population_density.xlsx

4.5. Parish Arrangements

The Bath City area is unparished with the 35 elected members for City wards acting as Charter Trustees⁵ for the City. The remainder of the district is covered by a mixture of town and parish councils which range from Keynsham Town Council being comprised of three wards, to Bathavon North, South and West with six parishes each within their area. The full breakdown of parishes and wards is published as supporting evidence⁶.

It should be noted, however, that the lack of a formal member job description means that no requirement is currently made on councillors regarding levels of engagement with Parish and Town Councils.

Implications of these findings:

This significant demographic variation means that any changes to councillor/elector ratio will need to be appropriately mitigated to allow for effective rural representation.

4.6. Table 3 – Summary of key changes to representational considerations

Position in 1998	Date of Main Change	Position in 2017	Future trends
No locality-based structure NB we did have some local committees but these were ineffective – should we reference these?	2015	Connecting Communities Forums for Somer Valley, Keynsham area, Chew Valley and Bathavon established.	
No specific representational structure for Bath (other than Charter Trustees role)	2015	Bath City Forum established in 2015.	
No local budgets for elected members	2011	Ward Councillors Initiative established in 2011 allocating small “pots” for local members to improve their areas	To be decided Pilot Community Empowerment Fund established 2017 to support Council/Parish Council Forum collaborative working.
Static Council website in place: 20 Council offices	2012 (Bath one stop shop)	Council established three one stop shops and adopted a Council Connect system to manage customer enquiries	More online transactional capability will be put in place through the Council's Digital Strategy. Can include Ward Councillor/Resident interface to Council?
No use of social media	2006 (Twitter launched)	All councillors e-enabled Webcasting	Further use of social media and technology to ease communications

⁵ <http://www.mayorofbath.co.uk/the-charter-trustees-of-the-city-of-bath>

⁶ http://www.bathnes.gov.uk/sites/default/files/siteimages/Your-Council/Local-Research-Statistics/wards_with_parishes.xlsx

		introduced. Council Services using Social Media to inform and engage the public.	
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Implication of these findings:

If successfully achieved, the aspiration of the Council to make it more straightforward for members of the public to find solutions to local problems and for local areas to do more for themselves should reduce demand on councillors time and further support the case for a reduction.

5. Determining an appropriate number of councillors

The number of councillors required purely to conduct statutory business at present has been identified by the Council's democratic services team as 40, excluding the Leader, Cabinet and Scrutiny (although many councillors will 'double up' between statutory committees and scrutiny panels).

At December 2015, there were 2,037 electors per councillor. This compares to an average of 2,877 electors per councillor for the statistically most similar local authorities⁷. This number should not be considered directive, but can provide a useful starting point for assessing numbers.

The LGBCE require local authorities to produce electorate forecasts as part of the review. The current draft position, suggests that there are likely to be 139,508 electors in the area by 22/23.

Were the ratio of electors to councillors change to the most similar authority, then Bath and North East Somerset would require 48 councillors.

Although statistically similar authorities might prove a useful starting point; some are markedly less rural than Bath and North East Somerset, this number is very close to the current minimum required for statutory business. It is suggested that a broadly half-way position between the current and most similar elector/councillor number can be determined. This accounts for similar authorities and the changing strategic role of the organisation, whilst also reflecting the more rural nature of much of the authority.

This would create an average of **2,365** electors per councillor and result in an adjusted position of **59** councillors.

6. General Conclusion and Recommendation

The view of the working group is that the changing role of the Council in terms of Leadership, Scrutiny and Partnerships and political representation can be taken together to create a case for a **reduction** in the number of members to 59.

⁷ http://www.bathnes.gov.uk/sites/default/files/siteimages/Your-Council/Local-Research-Statistics/electoral_arrangements_cipfa_nearest_neighbours_2015_electorate.xlsx

Whilst it must be acknowledged that the workload for some councillors may increase, this may be mitigated by the broader changes in the role of the councillor described in the report.

Draft

Bath & North East Somerset Council	
MEETING:	Council
TITLE:	Annual Report on use of Regulatory Investigations Powers Act (RIPA) usage and updated Policy
WARD:	All
AN OPEN PUBLIC ITEM	
List of attachments to this report: Appendix 1 usage statistics Appendix 2 RIPA Policy	

1 THE ISSUE

- 1.1 This report updates Council as to the use of RIPA powers in the previous year. It also sets out the powers of the Council and the revised Policy.

2 RECOMMENDATION

The Council is asked to:

- 2.1 Note the use of RIPA powers in the key statistics at Appendix 1
- 2.2 To consider and approve the revised RIPA policy at Appendix 2

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 There are no financial implications arising directly from this report

4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 4.1 The Regulation of Investigatory Powers Act came into force in 2000. The Act permits Councils to carry out covert (secret) surveillance of alleged offenders for the prevention and detection of crime and the protection of public health. This is undertaken by either the use of Directed Surveillance or the use of a Covert Human Intelligence Source (CHIS). The Act also allowed the Council to apply to telecommunications providers for information about individuals who

are suspected of committing crimes. When RIPA is followed it ensures that the actions taken by the Council comply with the Human Rights Act 1998, in particular the right to privacy and the right to a fair trial, when evidence is gathered in preparing cases for court.

- 4.2 The use of RIPA powers is subject to oversight by the Chief Surveillance Commissioner (OSC) who reports annually to the Prime Minister. All Councils are subject to Inspection by the Officers from the OSC. The Council was last subject to inspection in 2014 and is scheduled to be inspected again in 2017.
- 4.3 In light of the intrusive nature of the use of RIPA powers and the potential for Human Rights breaches, oversight, both by the OSC and internally, ensures that abuses do not take place, and, if they do, that they are quickly identified and reported to the OSC and remedial action taken. The OSC places high importance on training: clear policies and procedures: quality assurance processes and ongoing internal scrutiny, even where there is no use of the RIPA powers.

5 THE REPORT

- 5.1 The Council has a policy dealing with RIPA (Appendix 2), that covers use for Surveillance and Communications. The Policy is available via the Council's intranet site, along with guidance materials and pro forma application forms for use by Authorising Officers. Officers keep the policy under review and amend this, as and when required to ensure that the policy takes account of all relevant changes in guidance and any recommendations of the OSC inspectors.
- 5.2 In common with many Local Authorities, the Council has made no use of its Directed Surveillance powers in the last 2 financial years and only very limited use is made of its powers to obtain subscription data from telecommunications Providers, twice in the last financial year (Appendix 2). The Surveillance Commissioner in his last annual report, in 2015, advised

“my inspection regime has seen a significant drop in the number of authorisations for directed surveillance and CHIS by local authorities. The significant cutbacks in public spending and the lack of available officers to conduct such activities will have also played a part, as will the move towards more collaborative working between councils and with major bodies such as the Department for Work & Pensions”

The Council seeks to avoid use of its covert surveillance powers by acting overtly e.g. by advising residents of use of CCTV, and by seeking to be proactive and prevent offences occurring. Use of covert powers is therefore a last resort.

- 5.3 Although the Council's CCTV system is not subject to regulation under RIPA, due to the fact that its use is generally overt, there are occasions when the Council may receive requests from partner enforcement agencies to use the CCTV system for directed surveillance. On such occasions the enforcement agency requesting assistance is required to obtain the necessary RIPA

approvals before the Council undertakes directed surveillance at its request. There were no occasions when this happened in the last financial year.

6 RATIONALE

6.1 The Surveillance Commissioner requires that the Council report annually to members regarding the use of RIPA powers and that members have oversight of its Policy.

7 OTHER OPTIONS CONSIDERED

7.1 None

8 CONSULTATION

8.1 None

9 RISK MANAGEMENT

9.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

Contact person	Michael Hewitt tel: 01252 395125
Background papers	None
Please contact the report author if you need to access this report in an alternative format	

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Key Statistics 2016

SURVEILLANCE DATA

None

COMMUNICATIONS DATA*

2

*Requesting subscriber details only

REQUEST FOR USE OF COUNCIL CCTV BY PARTNER ENFORCEMENT AGENCIES

None

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Appendix 2

BATH AND NORTH EAST SOMERSET COUNCIL

Policy on Regulation of Investigatory Powers Act 2000 **(RIPA)**

BATH AND NORTH EAST SOMERSET COUNCIL

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

POLICY

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BATH AND NORTH EAST SOMERSET COUNCIL

POLICY ON REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

COVERT SURVEILLANCE

1 Purpose

The purpose of this Policy and accompanying guidance is to explain:

- the scope of RIPA
- the circumstances where it applies, and
- the authorisation procedures to be followed.

2 Introduction

- 2.1 RIPA, which came into force in 2000, regulates the use of investigatory powers exercised by various bodies including Local Authorities, and ensures that they are used in accordance with human rights. This is achieved by requiring certain investigations to be authorised by an appropriate officer and that, judicial approval is obtained before they are carried out.
- 2.2 The investigatory powers, which are relevant to a Local Authority, are directed covert surveillance in respect of specific operations involving 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 and the use of covert human intelligence sources (CHIS). The Act makes it clear for which purposes they may be used, to what extent, and who may authorise their use. There are also Codes of Practice in relation to the use of these powers and these can be viewed at <https://www.gov.uk/government/organisations/home-office/series/ripa-forms--2#this-series>
<https://osc.independent.gov.uk>
- 2.3 Consideration must be given, prior to authorisation as to whether or not the acquisition of private information is necessary and proportionate, i.e. whether a potential breach of human rights is justified in the interests of the community as a whole, or whether the information could be obtained in other ways.
- 2.4 This policy sets out Bath and North East Somerset Council's (the Council) position in relation to RIPA. It sets out the practice to be followed before any covert surveillance is undertaken. The Council will only carry out covert surveillance where such action is necessary, proportionate and justified and will endeavour to keep such surveillance to a minimum. It recognises its obligation to comply with RIPA when such an investigation is for the purpose of preventing or detecting crime, preventing disorder or the protection of public health and has produced this document as guidance to assist officers. The procedures and guidance set out in this Policy are based on the provisions of RIPA, the Home Office Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources (CHIS), the Home Office guidance to Local Authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillance and guidance issued by the Office of Surveillance Commissioners. See <https://osc.independent.gov.uk/>
<https://www.gov.uk/government/organisations/home-office/series/ripa-forms--2#this-series>

series

2.5 Officers should be aware of the scope and extent of activities covered by the provisions of RIPA. In many cases, investigations carried out by Council officers will not be subject to RIPA, as they involve overt rather than covert surveillance (see below).

2.6 RIPA does:

- require prior authorisation and judicial approval of directed covert surveillance
- prohibit the Council from carrying out intrusive surveillance
- require prior authorisation and judicial approval of the conduct and use of CHIS
- require safeguards for the conduct and use of CHIS.

2.7 RIPA does not:

- prejudice any existing powers available to the Council to obtain information by any means not involving conduct requiring authorisation under RIPA. For example, it does not affect the Council's current powers to obtain information via the DVLA or from the Land Registry as to the ownership of a property.
- authorise the use of directed covert surveillance unless the crime threshold is met.

3 Applications for Authorisations

3.1 All applications for authorisation in accordance with RIPA must be considered by one of the Council's designated authorising officers. Schedule 1 of this Policy identifies the officers authorised to act as the Council's designated persons. Any incomplete or inadequate application forms will be returned to the Applicant Officer for amendment. The Authorising Officer shall in particular ensure that:

- a criminal offence is being investigated;
- there is a satisfactory reason for carrying out the surveillance;
- the crime threshold is met or the offences relate to the underage sale of alcohol or tobacco;
- the covert nature of the investigation is necessary;
- proper consideration has been given to collateral intrusion;
- the proposed length and extent of the surveillance is proportionate to the information being sought;
- the authorisations are reviewed and cancelled;

- records of all authorisations are sent to the Monitoring Officer for entry on the Central Register;
- an analysis of alternative methods, other than directed covert surveillance has been considered as a way of obtaining the necessary information together with reasons why those alternatives are inappropriate. This is to ensure that RIPA powers are used as a last resort;

After authorisation has been obtained from an authorising officer the Applicant Officer must attend the Magistrates' Court in order to obtain Judicial approval for the authorisation.

4 Scrutiny and Tribunal

- 4.1 The Council must obtain an order from a Magistrate approving the grant or renewal of any authorisation for the use of directed surveillance or CHIS before the authorisation can take effect and the activity be carried out. The Council can only challenge a decision of the Magistrate on a point of law by way of judicial review.
- 4.2 The Office of Surveillance Commissioners (OSC) was set up to oversee and monitor compliance with RIPA operations carried out by public authorities. The OSC has "*a duty to keep under review the exercise and performance by the relevant persons of the powers and duties under Part II of RIPA*", and the Surveillance Commissioner will from time to time inspect and examine the Council's policies, records, operations and procedures for this purpose.
- 4.3 In order to ensure that investigating authorities are using the powers properly, the Act also establishes a Tribunal to hear complaints from persons aggrieved by conduct, e.g., directed surveillance. Applications will be heard on a judicial review basis. Such claims must be brought no later than one year after the taking place of the conduct to which it relates, unless it is just and equitable to extend this period.
- 4.4 The Tribunal can order:
 - the quashing or cancellation of any warrant or authorisation;
 - the destruction of any records or information obtained by using a warrant or authorisation;
 - the destruction of records or information held by a public authority in relation to any person.
- 4.5 The Council has a duty to disclose to the Tribunal all documents it requires, if any Council officer has:
 - granted any authorisation under RIPA;
 - engaged in any conduct as a result of such authorisation.

5 Benefits of RIPA Authorisations

- 5.1 RIPA states that if authorisation is given to engage in a certain conduct and the conduct undertaken is in accordance with the authorisation (including judicial

approval), then it will be lawful for all purposes. Consequently, RIPA provides a defence to an accusation of an infringement of a human right.

- 5.2 Material obtained through properly authorised covert surveillance is admissible evidence in criminal proceedings.

6 **Statutory Definitions**

- 6.1 'Surveillance' includes:

- monitoring, observing, listening to people, watching or following their movements, listening to their conversations and other such activities or communications.
- recording anything mentioned above in the course of surveillance.
- surveillance by, or with the assistance of, appropriate surveillance device(s).

Surveillance can be overt or covert.

- 6.2 **Overt surveillance** will include most of the surveillance carried out by the Council – there will be nothing secretive, clandestine or hidden about it. For example, signposted CCTV cameras normally amount to overt surveillance (but see 6.6 and 7.3 below). In many cases, officers will be behaving in the same way as a normal member of the public (e.g. in the case of most test purchases carried out by Environmental Health for food hygiene or other purposes), and/or will be going about Council business openly (e.g. a parking attendant walking through a Council car park).

- 6.2.1 Similarly, surveillance will be overt if the subject has been told it will happen. This will be the case where a noisemaker is warned that noise will be recorded if the noise continues; or where an entertainment licence is issued subject to conditions, and the licensee is told that officers may visit without notice or without identifying themselves to the owner/proprietor to check that the conditions are being met. Such warnings should be given to the person concerned in writing.

- 6.2.2 Overt surveillance does not require any authorisation under RIPA. Neither does **low-level surveillance** consisting of general observations in the course of law enforcement (for example, where a planning officer drives past a site to check whether planning conditions are being complied with). Repeated visits may amount to systematic surveillance, however, and require authorisation: if in doubt, legal advice should be sought. Home Office guidance also suggests that the use of equipment such as binoculars or cameras, to reinforce normal sensory perception by enforcement officers as part of a *general* observation does not need to be regulated by RIPA, as long as the *systematic* surveillance of an individual is not involved.

- 6.3 **Covert surveillance** (S. 26(9)(a)) is surveillance carried out in a manner calculated to ensure that the person subject to the surveillance is unaware that it is, or may be taking place. RIPA requires the authorisation to two types of covert surveillance (**directed surveillance** and **intrusive surveillance**) plus the use of CHIS.

- 6.4 **Directed surveillance** (s.26(2)) is surveillance which:

- is covert; and

- is not intrusive surveillance (see definition below – the Council is prohibited by law from carrying out any intrusive surveillance);
- is not carried out in an immediate response to events where it would not be practicable to obtain authorisation under the Act;
- is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for purposes of an investigation).

- 6.5 **Private information** in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that covert surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. The way a person runs his/her business may also reveal information about his or her private life and the private lives of others. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others that s/he comes into contact or associates with.
- 6.6 Similarly, although signposted town centre CCTV cameras do not normally require authorisation, this will be required if the camera is tasked for a specific purpose which involves prolonged surveillance on a particular person or place.
- 6.7 Other examples of directed surveillance include:
- officers following an individual over a period to establish whether s/he is working whilst claiming benefit.
 - test purchases where a hidden camera or other recording device is used.
- 6.8 Surveillance that is unforeseen and undertaken as **an immediate response** to a situation normally falls outside the definition of directed surveillance and, therefore, authorisation is not required. However, if a specific investigation or operation is subsequently to follow, authorisation must be obtained in the usual way before it can commence. In no circumstance will any covert surveillance operation be given backdated authorisation after it has commenced.
- 6.9 **Intrusive Surveillance (s.26(3))** occurs when surveillance:
- is covert;
 - relates to residential premises and private vehicles; and
 - involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if it were in the premises/vehicle.

Residential premises do not include common areas to which a person has access in connection with their use of occupation for example hotel reception area or communal stairways.

6.9.1 Directed surveillance carried out at the following locations for the purpose of legal consultation shall be treated as intrusive surveillance:

- Any place in which persons who are serving sentences of imprisonment or detention, remanded in custody or committed in custody for trial or sentence may be detained;
- Police stations;
- Hospitals where psychiatric services are provided;
- The place of business of any professional legal adviser;
- Any place used for the sittings and business of any court, tribunal, inquest or enquiry;
- Any place which persons may be detained under certain circumstances provided by the Immigration Act 1971 or UK Border Act 2007.

Intrusive surveillance can be carried out only by police and other law enforcement agencies. **Council officers must not carry out intrusive surveillance.**

6.10 **‘Cover human intelligence source’** (CHIS) (s.26(8)) is defined as a person who establishes or maintains a personal or other relationship with a person for the covert purpose of obtaining information or providing access to information to another person or covertly discloses information obtained through the use of such a relationship or as a consequence of the relationship.

6.11 **‘Authorising Officer’** in the case of Local Authorities these are specified as Assistant Chief Officers (and more senior officers), Assistant Heads of Service, Service Managers or equivalent, responsible for the management of an investigation (see Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010/521). The Council’s authorising officers are set out in Schedule 1 to this Policy.

6.12 **‘Applicant Officer’** those council officers who apply for RIPA authorisation.

6.13 **‘Crime Threshold’** applies to an authorisation for directed surveillance to prevent and detect conduct which constitutes one or more criminal offences. The criminal offences must be punishable, whether on summary conviction or indictment by a maximum term of at least 6 months imprisonment, or be an offence under:

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

7 When does RIPA apply?

7.1 Where the directed covert surveillance of an individual or group of individuals, or the use of a CHIS is necessary for the purpose of preventing or detecting crime or of preventing disorder.

- 7.2 The Council can only authorise directed covert surveillance to prevent and detect conduct which constitutes one or more criminal offences. The criminal offences must be punishable, whether on summary conviction or indictment by a maximum term of at least 6 months imprisonment, or be an offence under:
- S.146 of the Licensing Act 2003 (sale of alcohol to children);
 - S.147 of the Licensing Act 2003 (allowing the sale of alcohol to children);
 - S.147A of the Licensing Act 2003 (persistently selling alcohol to children);
 - S.7 of the Children and Young Persons Act 1933 (sale of tobacco, etc., to persons under eighteen).
- 7.3 CCTV – the normal use of CCTV is not usually covert because members of the public are informed by signs that such equipment is in operation. However, authorisation should be sought where it is intended to use CCTV to target a specific individual or group of individuals via CCTV recordings.
- 7.4 The use of RIPA powers must be in relation to the performance of a core function of the Council and not 'ordinary functions' such as employment issues or contractual arrangements. It will include criminal misconduct investigations.

8 Training

- 8.1 Each Director shall be responsible for ensuring that relevant members of staff, involved with any aspect of covert surveillance, are aware of the Act's requirements.
- 8.2 The Monitoring Officer shall ensure that refresher training is offered once a year to all services of the Council and also give advice and training on request. Applicant Officers must have received training and bi-annual refresher guidance on RIPA.

9 Central Register and Records

- 9.1 A Central Register of all authorisations including the application for judicial approval, and Order form shall be retained by the Monitoring Officer. The content of the application forms and authorisations will be monitored to ensure that they comply with the Act. The Monitoring Officer will report any breaches of this Policy or the Act's provisions to the Strategic Management Team of the Council

10 Overview and Scrutiny

- 10.1 The Monitoring Officer shall be the Senior Responsible Officer who will:
- ensure compliance with the Council's policy, relevant RIPA legislation and guidance;
 - engage with commissioners and inspectors when the Council's inspection is due (usually every three years);
 - oversee any post-inspection action plans recommended or approved by a Commissioner.
- 10.2 This policy shall be reviewed, and where necessary amended, at least once a year and the version control table at Schedule 2 updated accordingly. If requiring amendment, the revised policy shall be presented to and considered by the following:

- The Strategic Management Team
- The relevant Council Committee/Cabinet

- 10.3 The Senior Responsible Officer will report to the relevant Council committee/Cabinet, detailing the Council's use of RIPA powers, annually.
- 10.4 The Council's elected members will not be involved in any decisions made on specific authorisations granted.

11. **Internet & Social Media Policy**

11.1 In order to prevent and detect crime a social media policy has been introduced to ensure that a lawful process is followed when accessing Social Networking Sites "SNS" and the internet at Schedule 3

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

GUIDANCE – PART 1

DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE

1 Covert Human Intelligence Source

1.1 The RIPA definition (section 26) is anyone who:

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

1.2 Any reference to the conduct of a CHIS includes the conduct of a source which falls within a. to c. or is incidental to it. References to the use of CHIS are references to inducing, asking or assisting a person to engage in such conduct.

1.3 Section 26(9) of RIPA goes on to define:

- a. a purpose is covert, in relation to the establishment or maintenance of a personal or other relationship, if and only if, the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of that purpose; and
- b. a relationship is used covertly, and information obtained as mentioned in subsection (8)c above and is disclosed covertly, if and only if, it is used or, as the case may be, disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

1.4 The Council is only likely to use a CHIS in **very exceptional circumstances**, and advice should be sought from the Monitoring Officer before any authorisation is sought.

1.5 If the Monitoring Officer deems that the use of a CHIS is appropriate the application must be authorised and judicial approval obtained.

1.6 The provisions of RIPA relating to CHIS do **not** apply;

- a. where members of the public volunteer information to the Council as part of their normal civic duties;
- b. where the public contact telephone numbers set up by the Council to specifically receive information;
- c. where test purchases are carried out in the normal course of business

- d. where members of the public are asked to keep diaries of incidents in relation to planning enforcement or anti-social behaviour.

as none of these situations normally require a relationship to be established for the covert purpose of obtaining information.

- 1.7 If a CHIS is used, both the use of the CHIS and his or her conduct require prior authorisation and judicial approval;
 - a. conduct – establishing or maintaining a personal or other relationship with a person for the covert purpose of (or incidental to the covert purpose of) obtaining and passing on information
 - b. use – inducing, asking or assisting a person to engage in the conduct of a source or to obtain information by means of the conduct of such a source.
- 1.8 One person within the Council will be responsible for tasking the source, dealing with them, directing their day-to-day activities and recording information supplied by them and monitoring their welfare and security. A risk assessment MUST be carried out at the start, during and after the investigation (see Schedule 3 and Section 29(5) of RIPA for the specific requirements that need to be satisfied and for details of the different persons required to undertake separate responsibilities).
- 1.9 Special safeguards exist for the use of individuals who are under the age of 18 years old as a CHIS. The Regulation of Investigatory Powers (Juveniles) Order 2000 details the special provisions that must be satisfied.
- 1.10 Only an Authorising Officer may grant an authorisation for the use of a juvenile as a CHIS. Under no circumstances may a juvenile under the age of 16 be authorised to act as a CHIS against the wishes of his parents or person who has parental responsibility for him/her. The duration of an authorisation for the use of a juvenile as a CHIS is one month.
- 1.11 A vulnerable individual is a person who is or may be in need of community care services for reason of mental or other disability, age or illness or is unable to take care of himself or protect himself from significant harm or exploitation. Only in the most exceptional circumstances may an Authorising Officer grant an authorisation for the use of a vulnerable individual as a CHIS.
- 1.12 There is a risk that an informant who is providing information to the Council voluntarily may in reality be a CHIS even if not tasked to obtain information covertly. It is the activity of the CHIS in exploiting a relationship which is authorised in the 2000 Act, not whether the CHIS is asked to do so by the Council. Where an informant gives repeat information about a suspect or about a family and it becomes apparent that the informant may be obtaining the information in the course of a neighbourhood or family relationship it may mean that the informant is in fact a CHIS. Legal advice should always be sought in such instances before acting on the information from any such informant.

2 Directed Surveillance

- 2.1 All application forms see <https://www.gov.uk/government/organisations/home-office/series/ripa-forms--2#this-series> must be fully completed by the Applicant Officer

with the required details and sufficient information to enable to Authorising Officer to make an informed decision that he is satisfied and believes that RIPA is necessary and proportionate. The application form must also provide all the information required for approval by the Judiciary. No authorisation shall be granted unless the Authorising officer is satisfied that the RIPA authorisation is:

- Necessary for either the purpose of preventing or detecting crime or the prevention of disorder that involves a criminal offence or 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 (see paragraph 7.2 the policy above);
- Proportionate this means that:
 - the method of surveillance proposed is not excessive to the seriousness of the matter under investigation;
 - it must be the method that is least invasive of the individual or individual being observed;
 - the privacy of innocent members of the public must be respected and collateral intrusion minimised (see 2.2 below); and
 - that no other form of investigation would be appropriate.

The authorisation completed by the Authorising Officer should indicate that full consideration has been given to the above points and a record should be made on the appropriate forms.

Both the Applicant Officer and Authorising Officer should refer to their training notes regarding the completion of the RIPA forms, with particular attention to necessity and proportionality.

- 2.2 The Authorising Officer must also take into account the risk of **'collateral intrusion'** i.e. intrusion on, or interference with, the privacy of persons other than the subject of the investigation, particularly where there are special sensitivities e.g. premises used by lawyers, doctors or priests for any form of medical or professional counselling or therapy. The application form must include a detailed assessment of any risk of collateral intrusion for this purpose.
- 2.3 Steps must be taken to avoid unnecessary collateral intrusion and minimise any necessary intrusion. The Applicant Officer must inform the Authorising Officer of any unexpected interference with the privacy of individuals who are not covered by the authorisation, as soon as these become apparent.
- 2.4 A single authorisation may refer to a number of individuals but relate to a single investigation and are "same fact". However, necessity, proportionality and collateral intrusion should be considered individually. If particular subjects are subsequently ruled out of the investigation, those individuals should be removed at the next review. Such circumstances should prompt an early review.
- 2.5 Special consideration should be given in respect of confidential information. Particular attention is drawn to areas where the subject of surveillance may

reasonably expect a high degree of privacy e.g. where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material (S98 – 100 Police Act 1997). The Chief Executive, Monitoring Officer or Deputy Monitoring Officer must sign any authorisation before judicial authority is sought.

2.5.1 Legal Privilege

This applies to legal consultation and includes communications or consultation between an individual and his/her legal adviser or a person representing their client in connection with the giving of legal advice in connection with or in contemplation of legal proceedings. This also includes consultations with medical practitioners. Such information is unlikely ever to be admissible as evidence in criminal proceedings.

If in doubt, the advice of the Monitoring Officer should be sought in respect of any issues in this area.

2.5.2 Confidential Personal Information

This is oral or written information held in (express or implied) confidence, relating to the physical or mental health or spiritual counselling concerning an individual (alive or dead) who can be identified from it. Specific examples provided in the codes of practice are consultations between a health professional and a patient, discussions between a minister of religion and an individual relating to the latter's **spiritual welfare** or matters of **medical or journalistic confidentiality**.

2.5.3 Confidential Journalistic Material

This is material acquired or created for the purposes of journalism and held subject to an undertaking to hold it in confidence.

It should be noted that matters considered under RIPA may not necessarily be properly regarded as confidential under Section 41 Freedom of Information Act.

Where such information is likely to be acquired, the surveillance may only be authorised by the Monitoring Officer.

3 Judicial Approval of Authorisations

3.1 Once the Authorising Officer has authorised the Directed Surveillance or CHIS the Applicant Officer (who completed the application form) should contact the Magistrates' Court to arrange a hearing for the authorisation to be approved by a Magistrate.

3.2 The Applicant Officer will provide the Magistrate with a copy of the original authorisation and the supporting documents setting out the case. This forms the basis of the application to the Magistrate and should contain all the information that is relied upon.

3.3 In addition the Applicant Officer will provide the Magistrate with a partially completed judicial application/order form.

- 3.4 The hearing will be in the Magistrates' Court and the Applicant Officer will be sworn in and present the evidence as required by the Magistrate. Any such evidence should be limited to the information in the authorisation.
- 3.5 The Magistrate will consider whether he/she is satisfied that at the time the authorisation was given there were reasonable grounds for believing that the authorisation or notice was necessary and proportionate and whether that continues to be so. He/she will also consider whether the authorisation was given by the appropriately designated person at the correct level within the Council and whether (in the case of directed surveillance) the crime threshold has been met.
- 3.6 The Magistrate can:
- approve the grant of the authorisation which means that the authorisation will then take effect; or
 - refuse to approve the grant of the authorisation which means the authorisation will not take effect but the Council may look at the reasons for the refusal, make amendments and re-apply for judicial approval; or
 - refuse to approve the grant of the authorisation and quash the original authorisation. The Court cannot exercise its power to quash the authorisation unless the Applicant Officer has at least two business days from the date of the refusal in which to make representations.

4 Notifications to Inspector/Commissioner

- 4.1 The following situations must be brought to the Inspector/Commissioner's attention at the next inspection:
- where an officer has had to authorise surveillance in respect of an investigation in which he/she is directly involved;
 - where a lawyer is the subject of an investigation or operation;
 - where confidential personal information or confidential journalistic information has been acquired and retained.

5 Applications for CHIS

- 5.1 The process is the same as for directed surveillance except that the authorisation must specify the activities and identity of the CHIS and that the authorised conduct is carried out for the purposes of, or in connection with, the investigation or operation so specified.

All application forms <https://www.gov.uk/government/organisations/home-office/series/ripa-forms--2#this-series> must be fully completed with the required details to enable the Authorising Officer to make an informed decision and to be approved by the Magistrate.

6 URGENT AUTHORISATIONS

- 6.1 Urgent authorisations should not normally be necessary. However, in exceptional circumstances, if the authorisation cannot be handled on the next working day the Court's out-of-hours service can be contacted. Legal Advice should be sought from the Monitoring Officer about whether it is appropriate to utilise this facility.
- 6.2 If the need for authorisation has been neglected, or if the situation is of the Applicant Officer's own making, this will not amount to an urgent or exceptional circumstance.

7 Duration and Cancellation

- 7.1 Every authorisation and every renewal (except in the cases of oral authorisations or where the use of a juvenile CHIS is being authorised) must be for the designated statutory period. If the operation is to only last for a short time, this is information which should be considered in the review and/or cancellation.
- 7.2 An authorisation for directed surveillance shall cease to have effect (if not renewed) 3 months less one day from the date of judicial approval but still requires to be cancelled using the appropriate form even if the surveillance is required for less than 3 months.
- 7.3 An authorisation for CHIS shall cease to have effect (unless renewed) 12 months from the date of judicial approval but it is still necessary to cancel the authorisation using the appropriate form.

NOTE:

Authorisations should continue for the minimum period reasonable for the purpose they are given and then cancelled promptly.

8 Reviews

- 8.1 The Authorising Officer should review all authorisations prior to their expiry date and at intervals determined by him/herself. This should be as often as necessary and practicable. Particular attention should be paid to the possibility of obtaining confidential information. The Applicant Officer can do the necessary research and prepare the papers for the review but the actual review is the responsibility of the original Authorising Officer and should be conducted by him. Necessity and proportionality should be reconsidered if the surveillance is to continue.
- 8.2 The Applicant Officer must make the Authorising Officer aware of any proposed or unforeseen changes to the nature or extent of the surveillance operation which may result in further or greater intrusion into the private life of any person by means of a review. The Authorising Officer should consider whether the proposed changes are proportionate before approving or rejecting them.
- 8.3 Where authorisation is given for the surveillance of unidentified individuals whose identity is later established, the review should include reference to their identity. A fresh authorisation will not be necessary if the investigation remains the same.
- 8.4 Evidence of the review should be recorded.

9 Renewals

- 9.1 Any Authorising Officer may renew an existing authorisation on the same terms as the original at any time before the original ceases to have effect. This renewal must then be approved by a Magistrate in the same way the original authorisation was approved. The process set out in 3 above should be followed.
- 9.2 A CHIS authorisation must be thoroughly reviewed before any application for renewal is sought. Once the Authorising Officer has approved an application to renew, that application must then be approved by a Magistrate in the same way that the original authorisation was approved. The process set out in 3 above should be followed.

10 Central Register of Authorisations

- 10.1 The Council must maintain the following documents:
- a copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the Authorised Officer;
 - a copy of the order made by the Magistrate;
 - a record of the period over which the surveillance has taken place;
 - the frequency of reviews prescribed by the Authorising Officer;
 - a record of the result of each review of the authorisation;
 - a copy of any renewal of an authorisation and order made by the judiciary and supporting documentation submitted when the renewal was requested;
 - the date and time when any instruction was given by the Authorising Officer.
- 10.2 To comply with 10.1 above the Monitoring Officer will hold the central register of all authorisations issued by Authorising Officers of the Council. The original copy of every authorisation, judicial order, review, renewal and cancellation issued should be lodged immediately with Legal Services in an envelope marked 'Private and Confidential'.
- 10.3 The Council must also maintain a centrally retrievable record of the following information for a period of 3 years or until the next OSC inspection whichever is the latter:
- type of authorisation
 - date the authorisation was given
 - date the Order was made by the Magistrate
 - name and rank/grade of the Authorising Officer
 - unique reference number of the investigation/operation
 - title (including brief description and names of the subjects) of the investigation/operation;

- whether urgency provisions were used, and if so why
- details of renewal
- whether the investigation/operation is likely to result in obtaining confidential information
- whether the authorisation was granted by an individual directly involved in the investigation
- date of cancellation

These records will be retained for at least 3 years and will be available for inspection by the Office of Surveillance Commissioners.

11 Retention of Records

- 11.1 All documents must be treated as strictly confidential and the Authorising Officer must make appropriate arrangements for their retention, security and destruction, in accordance with the Council's Data Protection Policy and the RIPA codes of practice. The retention period of the purposes of this guidance is three years from the ending of the period authorised.
- 11.2 The Council's Records Retention and Disposal Policy should be referred to which sets out how different types of records are created as part of any investigation, their storage, retrieval, maintenance, protection and final disposal. The Council also has a separate Code of Practice which covers these issues specifically for CCTV tapes.

12 Complaints Procedure

- 12.1 The Council will maintain the standards set out in this guidance and the relevant Codes of Practice. The Chief Surveillance Commissioner has responsibility for monitoring and reviewing the way the Council exercises the powers and duties conferred by RIPA.
- 12.2 A contravention of the Data Protection Act 1998 may be reported to the Information Commissioner. Before making such a reference, a complaint concerning a breach of the guidance should be made using the Council's own internal complaints procedure. To request a complaints form, please contact the Complaints Officer, Bath and North East Somerset Council on 01225 394041 or via councilconnect@bathnes.gov.uk

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

GUIDANCE – PART II

ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA

1 Acquisition and Disclosure of Communications Data

- 1.1 With effect from 5 January 2004, and in accordance with Chapter II of Part I of Regulation of Investigatory Powers Act ("the Act"), Local Authorities can authorise the

acquisition and disclosure of 'communications data' provided that the acquisition of such data is necessary for the purpose of preventing or detecting crime or preventing disorder; and proportionate to what is sought to be achieved by acquiring such data.

Important: The Council is not Permitted to Intercept any Communications

- 1.2 The procedure is similar to that of authorisation for directed surveillance and CHIS but has extra provisions and processes. The purpose and effect of the procedure is the same i.e. to ensure proper consideration is given to permitting such investigations and to provide protection against a human rights challenge. The authorising officer is called a 'designated person'. Judicial approval for the acquisition and disclosure of communications data is required.

2 What is 'Communications Data'?

- 2.1 Communications Data is information relating to the use of a communications service e.g. postal service or telecommunications system. It is defined by Section 21(4) of the Act and falls into three main categories:

Traffic Data

Where a communication was made from, to whom and when.

Service Data

Use made of service e.g. itemised telephone records.

Subscriber Data

Information held or obtained by operator on person they provide a service to.

Local Authorities are restricted to subscriber and service use data and only for the purpose of preventing or detecting crime or preventing disorder.

3 Designated Person

- 3.1 A designated person must be at least the level of Director or equivalent.

4 Application Forms

- 4.1 All applications must be made on a standard form see <https://www.gov.uk/government/organisations/home-office/series/ripa-forms--2#this-series>

5 Authorisations

- 5.1 Authorisations can only authorise conduct to which Chapter II of Part I of the Act applies. In order to comply with the code, a designated person can only authorise the obtaining and disclosure of communications data if:

- a. it is necessary for any of the purposes set out in Section 22(2) of the Act. (NB The Council can only authorise for the purpose set out in Section 22(2)(b) which is the purpose of preventing or detecting crime or preventing disorder); and

- b. it is **proportionate** to what is sought to be achieved by the acquisition of such data (in accordance with Section 22(5) the Act).

Consideration must also be given to the possibility of **collateral intrusion** and whether any **urgent** timescale is justified.

5.2 Once a designated person has decided to grant an authorisation or a notice and judicial approval has been granted there are two methods:

a. by authorisation of some person in the same relevant public authority as the designated person, whereby the relevant public authority collects the data itself (Section 22(3) the Act). This may be appropriate in the following circumstances:

- the postal or telecommunications operator is not capable of collecting or retrieving the communications data;
- it is believed the investigation may be prejudiced if the postal or telecommunications operator is asked to collect the data itself;
- there is a prior agreement in place between the relevant public authority and the postal or telecommunications operator as to the appropriate mechanisms for the disclosure of communications data.

b. by notice to the holder of the data to be acquired (Section 22(4)) which requires the operator to collect or retrieve the data. Disclosure may only be required to either the designated person or the single point of contact.

5.3 The Service provider must comply with the notice if it is reasonably practicable to do so (S.22 (6)-(8) and can be enforced to do so by civil proceedings. The postal or telecommunications service can charge for providing this information. There are standard forms see <https://www.gov.uk/government/organisations/home-office/series/ripa-forms--2#this-series> for authorisations and notice.

6 Oral Authority

6.1 The Council is not permitted to apply or approve orally.

7 Single Point of Contact (SPOC)

7.1 Notices and authorisations should be passed through a single point of contact within the Council. This should make the system operate more efficiently as the SPOC will deal with the postal or telecommunications operator on a regular basis and also be in a position to advise a designated person on the appropriateness of an authorisation or notice.

7.2 SPOCs should be in a position to:

- where appropriate, assess whether access to communication data is reasonably practical for the postal or telecommunications operator;
- advise applicants and designated person on whether communications data falls under Section 21(4)(a), (b) or (c) of the Act;

- provide safeguards for authentication;
- assess any cost and resource implications to both the public authority and the postal or telecommunications operator.

7.3 A SPOC must be accredited which involves undertaking appropriate training. The Council has designated the:
Monitoring Officer and
Divisional Director: [Environmental Services](#)
as it's SPOCs (Schedule 1).

8 Duration

8.1 Authorisations and notices are only valid for one month beginning with the date on which the judicial approval is granted or the notice given. A shorter period should be specified if possible.

9 Renewal and Cancellation

9.1 An authorisation or notice may be renewed at any time during the month it is valid using the same procedure as used in the original application (including seeking judicial approval). A renewal takes effect on the date which the authorisation or notice it is renewing expires.

9.2 The code requires that all authorisations and notices should be cancelled by the designated person who issued it as soon as it is no longer necessary, or the conduct is no longer proportionate to what is sought to be achieved. The relevant postal or telecommunications operator should be informed of the cancellation of a notice.

10 Retention of Records

10.1 Applications, authorisations and notices must be retained until the Council has been audited by the Commissioner (see paragraph 9). Applications must also be retained to allow the Tribunal (see paragraph 9) to carry out its functions.

10.2 A record must be kept of:

- the dates of which the authorisation or notice is started or cancelled;
- any errors that have occurred in the granting of authorisations or giving of notices.

A report and explanation of any errors must also be sent to the Commissioner as soon as is practicable. Communications data, and all copies, extracts and summaries of it, must be handled and stored securely and the requirements of the Data Protection Act 1998 must be observed. The Monitoring Officer will maintain a centrally retrievable register.

11 Oversight and Complaints

11.1 The Act provides for an Interception of Communications Commissioner whose remit is to provide independent oversight of the use of the powers contained in Part I and

the code requires any person who uses the powers conferred by Chapter II to comply with any request made by the Commissioner to provide any information he requires to enable him to discharge his functions.

- 11.2 The Act also establishes an independent Tribunal to investigate and decide any case within its jurisdiction. Details of the relevant complaints procedure should be available for reference at The Council's public offices.

SCHEDULE 1

Designated Persons/Authorising Officers

Chief Executive
Monitoring Officer
Deputy Monitoring Officer

**Note: When the above are the Applicant Officer in a matter they may
NOT authorise the same application for surveillance.**

Designated SPOCs

Monitoring Officer
Divisional Director: [Environmental Services](#)

SCHEDULE 2

VERSION CONTROL TABLE Since 2014

RIPA POLICY VERSIONS	DATE	STATUS
Version 1	14 April 2014	Superseded
Version 2	06 April 2017	Current

SCHEDULE 3

AUTHORISING A CHIS: PROCEDURE

The Council will only authorise a CHIS in exceptional circumstances. Section 29 of RIPA sets out the criteria for authorising a CHIS.

The Authorising Officer

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI 2010 N0.521) states that the Authorising Officer for a local authority can be a Director, Head of Service, Service Manager or equivalent.

Where the surveillance involves the likelihood of obtaining confidential information, the deployment of juveniles or vulnerable people, then authorisation has to be sought from the Head of Paid Service and in their absence, the acting Head of Paid Service.

Time Limits

The current time limits for an authorisation 12 months for a CHIS (1 month if the CHIS is underage).

A renewal must be authorised prior to the expiry of the original authorisation, but it runs from the expiry date and time of that original authorisation. Authorisations may be renewed more than once if still considered necessary and proportionate and approved by a Magistrate.

Applications for renewals should not be made until shortly before the original authorisation period is due to expire but applicants must take account of factors, which may delay the renewal process (e.g. intervening weekends or the availability of the relevant local authority authorising officer and a Magistrate to consider the application).

Authorising Officer's Consideration

S.29 (2) states:

"A person shall not grant an authorisation for the conduct or the use of a covert human intelligence source unless he believes-

- (a) that the authorisation is necessary on grounds falling within subsection (3);
 - (b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use; and
 - (c) that arrangements exist for the source's case that satisfy the requirements of subsection (5) and such other requirements as may be imposed by order made by the Secretary of State.
- "

Consequently the following matters must be satisfied before authorising the deployment of a CHIS:

1. Necessity

The deployment of a CHIS has to be necessary on one of the grounds set out within in S.29 (3). Local authorities can only authorise on the following grounds; where it is necessary:

"for the purpose of preventing or detecting crime or of preventing disorder." (S.29 (3) (b)) or

The matter being investigated must be an identifiable criminal offence, constitute disorder or be for the purpose of protecting public health.

2. Proportionality

Proportionality means ensuring that the deployment of the CHIS is the least intrusive method to obtain the required information having considered all reasonable alternatives. This requires consideration of not only whether a CHIS is appropriate but also the method to be adopted, the duration and the equipment to be used. The CHIS Code Para 3.5 provides guidance on the elements of proportionality

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/384976/Covert_Human_Intelligence_web.pdf

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the subject and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result;
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.

3. Security and Welfare Arrangements

CHIS's are often placed in difficult and sometime dangerous situations. Appropriate security and welfare arrangements must also be in place in relation to each CHIS. S.29 (5) requires there to be:

- A person who will have day-to-day responsibility for dealing with the CHIS on behalf of that authority, and for his/her security and welfare; (**CHIS Handler**)
-
- A person who will have general oversight of the use made of the CHIS. (**CHIS Controller**) This person must be different to the one above.
-
- A person who will maintain a record of the use made of the CHIS. This can be one of the above or a separate person.
-
- Proper and secure records to be kept about the use made of the CHIS.

4. Risk Assessment:

An applicant considering deploying a CHIS should take into account the safety and welfare of that CHIS when carrying out actions in relation to an authorisation or tasking, and the foreseeable consequences to others of that tasking.

Before authorising the use or conduct of a CHIS, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the CHIS of any tasking and the likely consequences should the role of the CHIS become known. The ongoing security and welfare

of the CHIS, after the cancellation of the authorisation, should also be considered at the outset. Also, consideration should be given to the management of any requirement to disclose information tending to reveal the existence or identity of a CHIS to, or in, Court.

The CHIS handler is responsible for bringing to the attention of the CHIS controller any concerns about the personal circumstances of the CHIS, insofar as they might affect:

- the validity of the risk assessment;
- the conduct of the CHIS; and
- the safety and welfare of the CHIS.

Where appropriate, concerns about such matters must be considered by the authorising officer, and a decision taken on whether or not to allow the authorisation to continue.

SCHEDULE 4

Bath & North East Somerset Council Social Media Policy for the Purposes of Regulation of Investigatory Powers Act 2000' RIPA'

Bath & North East Somerset Council recognises the benefits and opportunities that the internet and multi-media provide to access and share information using a wide range of on line facilities. This is referred to Social Networking Sites – 'SNS'.

There are however some considerations and standards to apply when using such sites and this policy establishes the Council's position regarding the use of the internet, mobile web browsing and specifically social media websites when undertaking investigations under and in accordance with RIPA.

The Council's ICT Security Policy provides the basis for this policy and associated guidance. This policy should be read in conjunction with the supporting RIPA Policy and any guidance issued by the OSC – Office of the Surveillance Commissioners.

This policy covers external investigations, which could also apply to internal staff that may be subject to an investigation. Advice should be taken from HR should an investigation involve a member of staff.

Contents

1. This policy covers the use of social media, including social networking websites such as Twitter, Facebook, LinkedIn, and YouTube, content communities and blogs.
2. The policy and guidance aim to ensure that the council and its employees when undertaking investigations are protected and that a lawful and fair process is followed.
3. This policy closely relates to other council documents but in particular ICT Security policy.
4. The other legislation that may also be impacted by an investigation being carried out is as follows: Human Rights Act 1998, Freedom of Information Act 2000 and the Data Protection Act 1998

Conducting an investigation under the Social Media Policy.

5. The implications of enforcement through monitoring of social media and its human rights implications are difficult areas for law enforcement with complex privacy considerations:

5.1 The three main issues are:

- (1) What expectation of privacy a user may reasonably have when posting on the Internet;
and
- (2) How covert or overt the officer looking at information on the internet is being.
- (3) Whether or not a RIPA or CHIS authorisation should be obtained.

Investigatory 'Tools'

There are three main investigatory tools under RIPA that Officers may consider using in an investigation involving SNS. They are:

The use of 'Directed Surveillance, which is essentially covert surveillance carried out in places other than residential premises or private vehicles which is relevant where an investigatory technique might infringe Article 8 rights (e.g. where personal data or sensitive data is likely to be accessed or acquired and where there is an expectation of privacy) and which is subject to a 'crime threshold' when investigating criminal offences.

The use of Covert Human Intelligence Source (CHIS) which includes undercover officers (most significantly included covert profiles), informants and persons making test purchases; and

5.2 Powers to acquire or obtain 'communications data'.

5.3 The Council is seeking to focus on 3 broad categories so as to give an indication of what is and what is not acceptable for it to do. Prior to starting a browsing session an officer should consider what he/she is seeking to achieve and is likely to be doing and be aware of when their actions might cross the boundary from one "level" to another.

Three Broad Categories

6. **Category 1** – Viewing publically available postings or websites where **the person viewing does not have to register a profile, answer a question, or enter any significant correspondence in order to view.** E.g. a typical trader's website.

- There must be a low expectation of privacy and **no RIPA authorisation would normally** be required to view or record these pages.
- However, **repeated visits** over time to the extent that you might be perceived as **monitoring** a website, may require authorisation. Private information can remain private information even when posted on such a website and the European Convention on Human Rights has construed that the way a business is run can be private information. If you intend to monitor in this way therefore you may acquire private information and it is recommended that it is done in a **systematic** way with results recorded. Particularly note whether or not you happen to access private information. The fact that on previous visits a lack of private information is found could be good evidence that any subsequent acquisition was incidental and a RIPA authorisation is not required.
- There is unlikely to be **unfairness** (S78 PACE Act) in presenting the pages viewed as evidence. Pay attention to the requirements in Appendix B of the ACPO Good Practice Guide for Digital Evidence (in Chapter 2 of the D&S enforcement manual). If a test purchase is required, you may use a fictitious name and address without triggering the need for a CHIS (or Directed Surveillance) authorisation, provided no "relationship" is formed.

- As above, the **use of a fictitious identity or “covert” account** is not necessarily the trigger for a need for a RIPA authorisation, be it Directed Surveillance, or the in the case of a test purchase, CHIS. More relevant is the likelihood of acquisition of private information, or how far a “relationship” is formed.

7. **Category 2 – Viewing postings on social networks where the viewer has had to register a profile but there is not otherwise a restriction on access.** This would include Facebook where there is no need to be accepted as a “friend” to view. E.g.: Trader has a “shop window” on Facebook advertising a business and products.

- There are differences between this and Category 1. The person who posts information or runs such a website may reasonably expect viewers to work within the terms and conditions of the website.
- Viewing should therefore normally be conducted in an overt manner i.e. via an account profile which uses your correct name, and email address (which should be a B&NES.gov.uk etc. address) or an officer’s Service Sanctioned profile. If this is done there can be no objection to a recording of the visit being made and presented in evidence.
- If the posting or website contains no private information a viewing would not engage privacy issues and therefore a RIPA authorisation is not needed. However it is possible that a mixture of private and business material is displayed, and the ECHR has construed the way a business is run as being private information. The conditions regarding **repeat visits** in Level 1 are therefore relevant.
- A “Covert” account at this level should only be used in the context of a RIPA authorisation.

8. **Category 3– Viewing postings on social networks which require a “friend” or similar status to view.**

- These are **highly** likely to involve viewing private information.
- Repeated viewings will constitute Surveillance and require a RIPA authorisation. This may apply whether or not a “covert” or “overt” account is used, though this is probably best obtained via a CHIS authorisation with the use of a covert profile and appropriate risk assessments.
- An “Overt” account which gains “friend” or similar status may **still require a RIPA authorisation**. It may be that such a status may be given by a default on the part of the person posting or website owner. The officer should be especially sure that their access is being granted as a representative of the Service. For example, on Facebook it is stated that only people who know the person who maintains a profile should send a “friend” request to that profile. A person accepting that friend request may believe the person requesting is an acquaintance that they simply do not recall or know by another name. They still have a justifiable expectation of privacy. While requesting access may not comply with a strict interpretation of Facebook terms and conditions, a clearly identifiable **Officer’s Service Sanctioned profile** is a way to deal with that expectation of privacy, rather than a more neutral officer based profile.
- A “Covert” account at this level should only be used in the context of a RIPA authorisation.

Covert Facebook Accounts:

9. The use of covert Facebook accounts to access postings need to be covered by a RIPA authorisation. Currently there does not seem to be a mechanism for a Service to operate these on Facebook within the company's terms and conditions. Any evidence obtained via them can run a risk of being considered "unfair". It is quite likely that the profiles used will become "blown" at some stage and users need to monitor them to ensure this is identified early. Considerable officer time is required to maintain a covert identity.
10. Obtaining a RIPA authorisation will also present an officer with a defence should there be an allegation that they have breached the Computer Misuse Act 1990 – it is an offence to deliberately access unauthorised material.

Covert surveillance of Social Networking Sites (SNS)

11. The fact that digital investigation is routine or easy to conduct does not reduce the need for authorisation. Care must be taken to understand how the SNS being used works. Authorising Officers must not be tempted to assume that one service provider is the same as another or that the services provided by a single provider are the same.
12. Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as "open source" or publicly available; the author has a reasonable expectation of privacy if access controls are applied. In some cases data may be deemed private communication still in transmission (instant messages for example). **Where privacy settings are available but not applied the data may be considered open source and an authorisation is not usually required. Repeat viewing of "open source" sites may constitute directed surveillance on a case by case basis and this should be borne in mind.**
13. Providing there is no warrant authorising interception in accordance with section 48(4) of the 2000 Act, if it is necessary and proportionate for a public authority to breach covertly access controls, the minimum requirement is an authorisation for directed surveillance. An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e. the activity is more than mere reading of the site's content).
14. **It is not unlawful for a member of a public authority to set up a false identity but it is not advisable for a member of a public authority to do so for a covert purpose without authorisation.** Using photographs of other persons without their permission to support the false identity infringes other laws.
15. A member of a public authority should not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site without authorisation, and without the consent of the person whose identity is being used, and without considering the protection of that person. The consent must be explicit (i.e. the person from whom consent is sought must agree (preferably in writing) what is and is not to be done).

Recording Information

16. All information should be recorded on the appropriate form(s) should an authorisation be required.

Training

17. Training should be made available to Officers undertaking any covert or directed surveillance when undertaking investigations.

Related Documents

18. Documents that should be referred to are:
- RIPA Policy
 - Office of Surveillance Commissioners Codes
 - Council Code of Conduct
 - Council Email and Internet Policies

