



NOTTINGHAM CITY COUNCIL
EXECUTIVE BOARD

Date: Tuesday, 16 April 2019

Time: 2.00 pm

Place: Ground Floor Committee Room - Loxley House, Station Street, Nottingham,
NG2 3NG

Councillors are requested to attend the above meeting to transact the following business

Corporate Director for Strategy and Resources

Governance Officer: Kate Morris, Constitutional Services, Tel: 0115 8764353 **Direct**
Dial: 0115 8764353

AGENDA

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| 6 | EXCLUSION OF THE PUBLIC
To consider excluding the public from the meeting during consideration of the remaining item(s) in accordance with Section 100A(4) of the Local Government Act 1972 on the basis that, having regard to all the | |

circumstances, the public interest in maintaining the exemption outweighs in the public interest in disclosing the information

**7 UPDATED REGULATION OF INVESTIGATORY POWERS (RIPA)
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Report of the Portfolio Holder for Portfolio Holder for Finance,
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ALL ITEMS LISTED 'UNDER EXCLUSION OF THE PUBLIC' WILL BE HEARD IN PRIVATE FOR THE REASONS LISTED IN THE AGENDA PAPERS. THEY HAVE BEEN INCLUDED ON THE AGENDA AS NO REPRESENTATIONS AGAINST HEARING THE ITEMS IN PRIVATE WERE RECEIVED

IF YOU NEED ANY ADVICE ON DECLARING AN INTEREST IN ANY ITEM ON THE AGENDA, PLEASE CONTACT THE GOVERNANCE OFFICER SHOWN ABOVE, IF POSSIBLE BEFORE THE DAY OF THE MEETING

CITIZENS ATTENDING MEETINGS ARE ASKED TO ARRIVE AT LEAST 15 MINUTES BEFORE THE START OF THE MEETING TO BE ISSUED WITH VISITOR BADGES

CITIZENS ARE ADVISED THAT THIS MEETING MAY BE RECORDED BY MEMBERS OF THE PUBLIC. ANY RECORDING OR REPORTING ON THIS MEETING SHOULD TAKE PLACE IN ACCORDANCE WITH THE COUNCIL'S POLICY ON RECORDING AND REPORTING ON PUBLIC MEETINGS, WHICH IS AVAILABLE AT WWW.NOTTINGHAMCITY.GOV.UK. INDIVIDUALS INTENDING TO RECORD THE MEETING ARE ASKED TO NOTIFY THE GOVERNANCE OFFICER SHOWN ABOVE IN ADVANCE.

NOTTINGHAM CITY COUNCIL

EXECUTIVE BOARD

MINUTES of the meeting held at Ground Floor Committee Room - Loxley House, Station Street, Nottingham, NG2 3NG on 19 March 2019 from 2.01 pm - 2.36 pm

Membership

Present

Councillor Jon Collins (Chair)
Councillor Graham Chapman (Vice Chair)
Councillor Dave Liversidge (minute 89 onwards)
Councillor David Mellen
Councillor Toby Neal (minute 89 onwards)
Councillor Neghat Khan
Councillor Dave Trimble
Councillor Linda Woodings

Absent

Councillor Sally Longford
Councillor Andrew Rule

Colleagues, partners and others in attendance:

Councillor Jim Armstrong
Chris Henning - Corporate Director for Development and Growth
Nick Murphy - Nottingham City Homes
Candida Brudenell - Corporate Director for Resources and Strategy /Assistant Chief Executive
David Bishop - Deputy Chief Executive/ Strategic Director of Development
Alison Michalska - Corporate Director for Children and Adults
Kate Morris - Governance Officer

Call-in

Unless stated otherwise, all decisions are subject to call-in. The last date for call-in is 27 March 2019. Decisions cannot be implemented until the working day after this date.

86 APOLOGIES FOR ABSENCE

Councillor Sally Longford – Council Business
Councillor Andrew Rule – Council Business

Ian Curryer – Chief Executive

87 DECLARATIONS OF INTERESTS

None.

88 MINUTES

The minutes of the meeting held on 19 February 2019 were confirmed as a true record and were signed by the Chair.

89 SCHOOLS CAPITAL MAINTENANCE GRANT ALLOCATION 2019/20 - KEY DECISION

The Board considered the report of the Portfolio Holder for Education and Skills seeking approval in advance of receipt of the funding announcement on the School Capital Maintenance Grant Allocations for 2019/20 to enable project prioritisation and delivery to commence once funding has been allocated.

RESOLVED to:

- (1) delegate authority to the Corporate Director of Children and Adults to accept the School Capital Maintenance Funding grant allocation from the Department for Education (DfE) to Nottingham City Council;**
- (2) delegate authority to the Corporate Director of Children and Adults to allocate funding from the School Capital Maintenance funding grant to the projects detailed in the published appendix A;**
- (3) note that £0.173 million is set aside as a contingency fund to allow the adjustment of the number of projects prioritised in the published appendix A;**
- (4) approve £0.0025 million to allow the scoping and prioritisation from a programme of works in 2020/21 to commence in Autumn 2019 with Nottingham City Council Design Services delivering these works;**
- (5) amend the capital Programme to include the allocation of the grant;**
- (6) delegate authority to the Corporate Director of Children and Adults to make adjustments of the number of projects prioritised in the published appendix A and the contingency should it be necessary;**
- (7) delegate Authority to Corporate director for Children and Adults to allocate contingency funding to projects such as health and safety or condition issues which arise during 2019/20, and to adjust the funding allocation for each project once cost information is finalised, subject to value for money being demonstrated and costs being within the overall budget allocated for this programme of works;**
- (8) appoint NCC Design Services to design, procure and manage the projects;**
- (9) approve the procurement of the works through the East Midlands Regional construction framework – an OJEU (the Official Journal of the European Union) compliant framework;**
- (10) delegate authority to the Head of Legal Services to sign contracts with the preferred contractors following procurement exercises to allow the projects to be delivered; and**

(11)approve a payment of £0.100m from the Building Schools for the Future (BSF) Lifecycle Reserve fund to Rosehill Special School to undertake condition and maintenance works to the building.

Reasons for Decision

The prioritisation of the funding is based on advice received and an extensive review of schools. There are two areas where funding has been prioritised:

- Health and Safety issues likely to impact on children and staff.
- Condition issues likely to impact on the operation of the school.

The balance of the funding for the School Condition grant has been identified as part of the prioritisation process and £0.173 million will be held as a contingency amount to deal with urgent health and safety or condition issues that arise during the financial year 2019/20. Delegating authority to the Corporate Director for Children and Adults to approve these projects will enable a swift response to urgent issues as they arise.

It is assumed that the DfE will continue to allocate the Capital Maintenance grant to Local Authorities. In order to plan ahead for the delivery of future schemes, £0.025 million will be allocated to begin the prioritisation for a programme of works in 2020/21. Further approvals will be sought to allocate funding to this programme of works in Spring 2020 on the assumption that funding will be allocated by the DfE. This forward planning will ensure that the Local Authority prepares for delivery and sets out a clear programme of future works to maintain schools, subject to funding being received.

Rosehill Special School was rebuilt under wave 2 of the BSF programme. As part of this programme to meet the requirements of the Department for Education (DfE), both the school and the City Council had to commit to funding a lifecycle fund so that the building could be maintained to the same standard as a new Private Finance Initiative (PFI) school for 25 years. Rosehill Special School has now been operational for eight years and the school are undertaking minor works to the building that will improve the education environment, health & safety and security. The works will be procured directly by the school in line with financial regulations and with the support of the Major Projects team

Other Options Considered

Consideration was given to combine the Condition funding and the Basic Need funding. If combined this funding could be used to address the shortfall in school places across the city.

Consideration was also given to amalgamating the Condition grant with broader City Council capital funding.

Both of these options have been rejected, as they would leave schools at risk of closure through health and safety or condition issues. It would also mean that school buildings would continue to deteriorate, increasing the risk of forced closure for emergency repairs.

With regard Rosehill School, to 'do nothing' has been rejected as, while this would retain the funding within the Lifecycle Reserve; it would not support the maintenance of the school as a positive environment for education

90 NOTTINGHAM CITY HOMES PARTNERSHIP AGREEMENT - KEY DECISION

The Board considered the report of the Portfolio Holder for Housing and Planning setting out proposed new partnership agreement between Nottingham City Homes (NCH) and Nottingham City Council (NCC).

It was noted that tenant overall satisfaction is up to 90%, and satisfaction with repairs is up to 88% having been around 50% at the beginning of the existing agreement. This agreement aims to put tenants at the heart, and has gone out to tenants for consultation.

RESOLVED to:

- (1) agree the proposed heads of terms for a new partnership agreement as set out in the published appendix 1;**
- (2) delegate authority to the Portfolio Holder for Housing and Planning to sign a new agreement based on these terms;**
- (3) develop a number of service level agreements setting out expectations for the delivery of the services by the Council which support Nottingham City Homes in their work;**
- (4) develop further Service Level Agreements for those tenant-facing services carried out by the Council in and around housing estates, giving tenants greater transparency and understanding of the services for which they pay their rent;**

Reasons for Decision

The existing agreement is no longer fit for purpose and requires updating to provide officers with greater clarity about responsibilities and expectations

NCH now delivers a greater range of services via the main company and its subsidiaries, and this is not reflected in the current agreement

Rather than wait for the current agreement to expire in two years' time it is appropriate to bring some certainty about future arrangements now.

The Council delivers a number of services to NCH to support it in the delivery of its operations – for example, ICT, human resources, marketing and communications etc. The expectations around delivery of these services should be part of this agreement, therefore it is necessary to ensure that robust service level agreements underpin the NCC-NCH main agreement.

In addition to the services provided direct to NCH, there are a number of tenant-facing services such as grounds maintenance, tree services, lighting etc on council-owned housing estates and land held within the housing revenue account (HRA). Transferring the oversight of these to NCH will promote a more joined-up 'one Council' approach to dealing with issues which are often the subject of complaints from tenants to councillors. These services also require SLAs to give the necessary clarity of responsibility and accountability.

Other Options Considered

To allow the current agreement to expire in 2021: this was rejected as this would lead to uncertainty; furthermore there would continue to be in place an agreement which does not properly reflect the current situation.

91 FUTURE CITY REGENERATION

The Board considered the report of the Leader of the Council/Portfolio Holders for Regeneration and Growth setting out the City Council's approach to ensuring the momentum of this regeneration is maintained, whilst recognising the limits of the current Capital Programme

The document outlines the expectations of Nottingham City Council of developers ensuring a good standard of regeneration through the city, being both ambitious and forward looking for the city. The Board agreed that the design features set out are complimentary to the current progressing development projects.

RESOLVED to:

- (1) Endorse the approach to master planning across the City as set out in the published report; and**
- (2) Endorse the approach being taken to create a vehicle to deliver regeneration in the City.**

Reasons for Decision

To facilitate its desire to promote further investment and regeneration in the City as part of its next phase of development activity the Council wants to deliver the following:

- Provide a strong and coherent master planning framework to give clarity to investors and developers on how the City will continue to evolve, enabling a range of developments that will underpin economic growth in a quality urban landscape that provides a clear sense of place; and
- Supplement this approach by giving consideration to using its own land holdings to bring further development forward in certain areas, as shown in Appendix 1: Master Planning Areas. In order to maximise the impact of these assets, the Council is keen to attract private sector investment to potentially bring projects forward on these sites, for example the opportunity for circa £2billion development over 0.5sq mile at Nottingham Southside (Appendix 5).

Other Options Considered

Not provide a clear planning framework. This will lead to areas being developed in a piecemeal manner, which may be to the detriment of the creation of a quality sense of place and / or sustainable economic growth and for this reason this option was rejected.

Not bringing Council assets forward. This option was rejected because it will miss an

opportunity for the regeneration of certain sites within the city.

Disposing of sites on an individual basis. Ongoing individual disposals will still take place when the circumstances are right to do this. However having this as a sole approach will mean that some of the less viable sites may not be taken forward as they may not be as attractive to the market, thereby missing a regeneration opportunity.

92 NOTTINGHAM SOUTHSIDE REGENERATION - CROCUS PLACE - KEY DECISION

The Board considered the report of the Leader of the Council/Portfolio Holder for Regeneration and Growth regarding the proposed development at Crocus Place of Grade A Offices supporting the regeneration of the Southern Gateway.

The Board heard that there is a shortage of Grade A office space within the city, and this development will bring forward plans to address that. It is hoped that developers can submit plans in later March starting the planning application process.

RESOLVED to:

- (1) commit a funding envelope as identified in exempt Appendix B from within the capital programme and to further progress the proposed development of Grade A office space accommodation in Nottingham;**
- (2) continue with the adopted approach, for progressing design development, as outlined in the Leaders Key Decision 3309 dated 30 October 2018, including the extension of advisors contracts through the Perfect Circle framework beyond RIBA Stage 4, thus allowing the project to move forward with due diligence;**
- (3) delegate authority to the Corporate Director for Development and Growth, in consultation with the Portfolio Holder for Regeneration and Growth, to enter into contracts for both design development and construction, subject to expenditure being within the Project Financial Model and subject to the Business Case being signed off by the project appraisal group (PAG).**
- (4) delegate authority to the Director for Strategic Assets & Property, in consultation with the Corporate Director for Development and Growth and the Portfolio Holder for Regeneration and Growth, to negotiate and agree an appropriate pre-let commercial lease(s) for the proposed office development that meets the requirements within the Project Financial Model and in advance of the Business Case being signed off;**
- (5) ensure that the proposed office development, once completed and occupied in accordance with the approved business case, sits within the Property Trading Account Portfolio of the Council and be managed under the Director for Strategic Assets & Property, together with all income and budgets for the property being allocated to the Property Trading Account Portfolio; and**
- (6) ensure that the proposed office development becomes a project within**

the Strategic Asset Management (SAM) Big Ticket programme and that the SAM Big Ticket income targets are re-profiled accordingly as detailed within the exempt appendices A & B;

Reasons for Decision

The feasibility exercise for the Southside Grade A Office Development has been developed to a mature stage and a date of 22 March 2019 is being targeted for the submission of a Planning Application.

Advanced talks with potential tenants are progressing well and potential space requirements could see leases being agreed for substantial, if not all the floor space within the building.

Further contracts, for construction, project management and design will need to be entered into to take the project beyond the currently approved RIBA Stage 4.

The current feasibility stage cost estimates have been included within the Project Financial Model and these details, together with the projected income to the Property Trading Account and SAM Big Ticket are set out within the exempt Appendix A and B

Other Options Considered

Do nothing – to not commit further funding for the Southside Office Development, at this stage, could lead to missed opportunities with leasing the building and impact on the Council's income and so this option was rejected.

Site disposal – this would generate a capital receipt for the land value but would not maximise the potential value from the site. This option was rejected because the investment value and revenue income generated through completing the development is significantly greater.

The do nothing and site disposal options have been rejected as the Council is in negotiation with potential tenants and the Project Financial Model indicates a healthy yield.

93 EXCLUSION OF THE PUBLIC

RESOLVED to exclude the public from the meeting during consideration of the remaining item in accordance with Section 100A(4) of the Local Government Act 1972 on the basis that, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information as defined in paragraph 3 of part 1, Schedule 12A of the Act.

94 NOTTINGHAM SOUTHSIDE REGENERATION - CROCUS PLACE - KEY DECISION – EXEMPT APPENDIX

The Board considered the exempt appendices for the report of the Leader of the Council/Portfolio Holder for Regeneration and Growth.

RESOLVED to approve the recommendations in the report.

Executive Board - 19.03.19

Reasons for decisions

As detailed in minute 92

Other options considered

As detailed in minute 92

Subject:	Nottingham City Council suspension from within the Nottingham and Nottinghamshire Integrated Care System (ICS)		
Corporate Director(s)/Director(s):	Ian Curryer, Chief Executive; Alison Michalska, Corporate Director for Children and Adults		
Portfolio Holder(s):	Councillor Sam Webster, Portfolio Holder for Adult Social Care and Health		
Report author and contact details:	Colin Monckton, Director of Strategy and Policy Colin.monckton@nottinghamcity.gov.uk Tel: 0115876 4832		
Subject to call-in:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Key Decision:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Criteria for Key Decision:			
(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			
and/or			
(b) Significant impact on communities living or working in two or more wards in the City			
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Type of expenditure:	<input type="checkbox"/> Revenue	<input type="checkbox"/> Capital	
Total value of the decision: n/a			
Wards affected: All wards			
Date of consultation with Portfolio Holder(s): 25 th March 2019			
Relevant Council Plan Key Theme:			
Strategic Regeneration and Development	<input type="checkbox"/>		
Schools	<input type="checkbox"/>		
Planning and Housing	<input type="checkbox"/>		
Community Services	<input type="checkbox"/>		
Energy, Sustainability and Customer	<input type="checkbox"/>		
Jobs, Growth and Transport	<input type="checkbox"/>		
Adults, Health and Community Sector	<input checked="" type="checkbox"/>		
Children, Early Intervention and Early Years	<input type="checkbox"/>		
Leisure and Culture	<input type="checkbox"/>		
Resources and Neighbourhood Regeneration	<input type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
<p>The Integrated Care System (ICS) in Nottingham and Nottinghamshire is a national accelerator site for the integration of health and care. This was formally called the Sustainability and Transformation Partnership (STP). The purpose of the ICS is to deliver improved Health and Social Care in an integrated manner in order to achieve an efficient and effective use of resources to meet an agreed set of priority outcomes relating to Health and Social Care.</p> <p>Social Care is therefore an integral part of achieving this. The City Council suspended its role within the ICS on November 20th 2018.</p> <p>The suspension is for a period of up to 6 months, and can be lifted subject to the agreement of how to move forward with local partners.</p> <p>An agreement on how to proceed has now been reached with substantial changes made by the ICS partnership that resolve the primary issues raised by Nottingham City Council that resulted in the decision to suspend. These changes include the creation of a dedicated City Integrated Care Partnership (ICP) that matches the boundary of the City Council, inclusion of democratic representation on the ICS Board, enhanced engagement activities and the incorporation of enhancements to procurement as far as is possible within the legal constraints.</p> <p>The ICS and ICP represent a significant change to the way in which decisions will be made going</p>			

forwards. As a result of this, specific mention is made to a new condition for unanimous voting at the ICS and ICP levels on matters relating to proposals that may result in privatisation or outsourcing.

Exempt information:

None

Recommendation(s):

- 1** To note the strong desire shown from local NHS partners to find solutions locally that will result in the lifting of our suspension, in the interests of the population health and care for City residents
- 2** To agree that the changes to the ICS locally are of significant benefit to City residents and to lift the suspension from the ICS, and re-join as a full member of the ICS, with immediate effect, subject to an agreement for unanimous voting on proposals which could lead to outsourcing or privatisation of NHS services at ICS and ICP level
- 3.** To confirm agreement to the ICS decision to have a three ICPs for Nottingham and Nottinghamshire, which includes the specific creation of an ICP for the City of Nottingham

1 REASONS FOR RECOMMENDATIONS

- 1.1 The City Council has suspended itself from the Nottingham and Nottinghamshire ICS and has been in active dialogue with local NHS partners, at the most senior level, in order to explore ways in which the issues that caused the suspension can be addressed.
- 1.2 The local NHS partners have been highly committed to work with us to resolve these issues and we are grateful for their demonstrable commitment to the importance of having the City Council within the ICS. Recommendation 1 notes this strong collaboration formally.
- 1.3 The ICS Board has addressed each of the issues raised by Nottingham City Council, making substantive changes as a result. The City Council is therefore now in a position to consider actively re-engaging with the ICS and lift the suspension.
- 1.4 One condition of the suspension being lifted is that the ICS agrees to move to a position where unanimous agreement is required around decisions that could result in privatisation or outsourcing of NHS services. The reason for adding this, is because the ICS and ICP's are not fully developed and will continue to evolve the way in which decision are made. In particular as the ICP in the City is not yet established, such a decision making process is not yet in place.
- 1.5 The major change agreed is the move to having a dedicated City ICP that matches the geography of the City Council. The re-engagement with the ICS will ensure that the focus on the City population is taken forwards through the new City ICP and that the City Council can be integral to the City Partnership and the way it makes decisions going forwards.
- 1.6 The other major changes agreed are the inclusion of democratic representation at the ICS Board going forwards, a significantly higher commitment to engagement of local plans with citizens, councillors and stakeholders, and the inclusion of significantly enhanced social value

elements to commissioning and procurement and adoption of wider best value decision making approaches in procurement.

- 1.7 The decision by the ICS to move to three Integrated Care Partnership (ICPs) for Nottingham and Nottinghamshire, which specifically includes the creation of an ICP for the City of Nottingham, is also attached to this report, for agreement (appendix 1).

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

- 2.1 There are three things that the City Council wanted to see developed within the Nottingham and Nottinghamshire ICS. This report sets out those three things with an update on the changes agreed with the ICS partners over the period of the City Council suspension.
- 2.2 Firstly, the City Council wanted to see a change to the geography of the ICS that would retain a strong identity for the City area, to enable continued progress on the community health and social care integration work.
- 2.3 The ICS conducted an independent evaluation of the pros and cons of different approaches to the geography of the ICPs. The outcome of this evaluation was to recommend the creation of a full City ICP to align to the City Council boundaries.
- 2.4 This is a major change because a wider range of decisions will be taken at the level of the ICPs. Having a dedicated City ICP ensures that the decisions taken for the city will be by the City organisations, which will include the City Council in the event that suspension is lifted.
- 2.5 The ICS Board confirmed this approach on 15th February 2019, subject to ratification by individual partner organisation boards.
- 2.6 Recommendation 3 is to agree the ICS decision to create the City ICP as one of three ICPs in the Nottingham and Nottinghamshire. The report from the ICS is attached in appendix 1 for approval.
- 2.7 Secondly, the City Council wanted to see changes to the governance of the ICS, to include greater levels of democratic involvement and believe there can be more robust and meaningful engagement with citizens and stakeholders.
- 2.8 The ICS Board has addressed these with a new TOR and new Board make up that now includes democratic representation from the City and County Council areas. This is in addition to the membership of the Local Authority Chief Executive Officers from both Councils. The Board is comprised of statutory partners only.
- 2.9 These changes have already been implemented and the newly configured Board is now in operation. In addition, the new ICS Board will also move to be a public board from April 11th 2019.
- 2.10 The appointment of a new post of Director of Communications and Engagement at the ICS has resulted in fresh energy and new approaches to the engagement of councillors and citizens. The development of local plans will now include significantly more meaningful engagement work, building on that which has already been achieved.

- 2.11 The changes on governance and engagement have therefore been agreed and implemented by the ICS
- 2.12 Thirdly, the City Council wanted to agree the shared adoption of key principles in line with the Nottingham City Council Plan priorities, such as the development of local jobs, training and development of local people and a preference for investment in public services, local businesses, SMEs and voluntary sector organisations.
- 2.13 The ICS has received the Nottingham City Council Business Charter and is appreciative of the importance of supporting the local economy and local jobs. The City CCG has already installed social value expectations with its commissioning and is keen to further enhance them using experience from the City Council. The ICS has committed to a desire to work towards similar strategic ambitions to ours within the constraints of procurement legislation.
- 2.14 Furthermore the City Council has strongly held views on the benefits associated with public service delivery and would like unanimous agreement for any decisions that move away from this principle that are taken at ICS and City ICP level (i.e. not at the level of individual organisations). The reason why this is specifically mentioned is because the ICS and the City ICP will continue to develop and therefore it is considered helpful to be clear on this at this stage.
- 2.15 As a result of this, the City Council has asked for agreement to strengthen the role of the ICS board in ensuring these are delivered, going as far as possible to do so within the constraints of the law around procurement for both Local Authorities and the NHS. The ICS senior management have confirmed it is taking the following actions:
- Commissioning Intentions are signed off by the ICS Board on an annual basis
 - The enhanced approach on social value is being taken to the May 9th ICS Board under the heading of Best Value Decision Making, which will seek to move forwards with all commissioning and procurement adopting enhanced social value considerations – this is broader than the ICS and will likely include all organisational commissioning in the area too
 - Legal advice is being taken to adjust the draft ICS TOR in order to further clarify what decisions are taken where and how to manage conflicts of interest that may occur
- 2.16 Note that the decisions on procurement by the ICS cover a geographical area wider than the City, and other decisions regarding procurement will continue to be taken by individual organisations including by the City Council. The ICS Board has majority voting in place for all decisions currently.
- 2.17 The legal and procurement advice contained in this report sets out the parameters within which this can be achieved. It should also be noted that the NHS Long Term Plan has resulted in proposed legislation around procurement and contracting which is very much in line with the Nottingham City Council principles. (ref: document referenced at 11.3)

- 2.18 The three requests of the ICS that were made as a result of the suspension have therefore all be progressed and changes made.
- 2.19 Recommendation 2 is therefore that the City Council lifts its suspension and re-joins the ICP with immediate effect, subject to an agreement for unanimous voting on proposals which could lead to outsourcing or privatisation of NHS services at ICS and ICP level
- 2.20 Further background to the City Council suspension decision can be found in the City Council Executive Board report dated November 20th 2018:
- 2.21 The lifting of the suspension as a result of these agreed changes will enable us to ensure that the following risks do not materialise:
- Loss of the identity for the city agreed through having a dedicated City ICP. A lack of involvement from the City Council could put this agreement to have a City ICP at risk
 - Loss of focus on city residents and their needs through having a less coherent and weaker partnership representing their interests
 - Loss of ability to influence the wider health and care of the City residents through the City Council not being part of the decision making processes of the ICS and ICP

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

3.1 To remain suspended from the ICS

This option was rejected. The City Council has been very reassured by the commitment of local NHS leaders to developing the local partnership.

There have been significant changes made as a result on all the areas that the City Council has been concerned about.

Furthermore the suspension report on 20th November made clear that it was the belief of the City Council that close integration between health and social care, as well as being required by statute, is very much in the interests of the citizens of Nottingham City

3.2 To formally notify NHS partners that the City Council does not wish to have any part in the development of the ICS in its current form and to remove our name from the partnership

This option was rejected because we are committed to the integration of health and social care and would wish to continue to strive towards closer integration where there are benefits to citizens of doing so. We know that the ICS will continue without the Local Authority if we were to leave now, and we would rather seek to influence changes to the ICS.

The local NHS partners have been keen to work with the City Council in a positive and constructive manner, building on the existing strong local relationships for the future benefit of citizens in the City.

To not be included in the ICS would prevent the City Council from being able to influence the decisions on behalf of the City population – one of the reasons for requesting democratic representation at the ICS Board.

4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 4.1 There are no direct financial implications from this decision but there is a potential for it to create material financial risks for the organisation if the recommendations are not approved.
- 4.2 Nottingham City Council receives significant levels of funding for social care either directly from Health or from central government. The national agenda could result in more funding being allocated for the social care system on an ICS basis; if Nottingham City Council are not part of the ICS this could put at risk not only the level of funding received but also being able to influence how the funding is allocated to needs and priorities of the City. It may also hinder the ability for the statutory officers to deliver on their roles and responsibilities.
- 4.3 The proposals of this report may need incorporating into the organisations constitution.

Ceri Walters – Head of Commercial Finance, 2 April 2019

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 This report recommends that the City Council re-joins the ICS. Re-joining the ICS will enable the City Council to fully participate in the integration of health and social care. The requirement for integration is set out in legislation, for example, the Health and Social Care Act 2012 requires the City Council to establish a Health and Wellbeing Board for the purpose of advancing the health and wellbeing of the people in its area and to encourage persons who arrange for the provision of any health or social care services in that area to work in an integrated manner. The legal basis for the suspension from the ICS is set out in the Executive Board report dated 20th November 2018.
- 5.2 It is currently not legally possible for the City Council to prevent any organisation from tendering for services. The CCGs and other entities who commission in the health sector are subject to the same procurement rules as the City Council. Those rules are set out in the Public Contracts Regulations 2015 (the 'Regulations'). Health services are subject to the 'light touch regime' within the Regulations which gives greater flexibility to commissioners however there is an overriding principle in the Regulations that all suppliers must be treated equally. That prevents the ability to discriminate on the basis of legal status. It would not be possible to exclude from a procurement process suppliers on the basis that they are private companies.
- 5.3 Subject to the statement above that it is not possible to have an absolute veto on privatisation there is some flexibility in the Regulations. The financial threshold at which a contract for services is caught by the light touch regime and requires a competitive tender process is currently £615,278. Below that threshold level a contract for services does not have to be competitively tendered and can be the subject of a direct award. In addition the Regulations provide for the ability to

reserve some contracts to qualifying organisations - essentially social enterprise but the scope is limited and subject to restrictions on duration of the contract.

- 5.4 Proposals to give greater flexibility for commissioners in the NHS are being considered which could give the ability to make direct awards which would assist in the selection of providers, although this seems to only apply to NHS providers not social enterprises and other entities that provide NHS services. (Ref: "Implementing the NHS Long Term Plan – proposals for possible changes to legislation", February 2019)

Andrew James – Team Leader, Commercial Employment and Education
Steve Oakley – Head of Contracting and Procurement, Strategy and Resources
2nd April 2019

6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

- 6.1 Not applicable

7 SOCIAL VALUE CONSIDERATIONS

- 7.1 There are no specific changes to services that result from this decision, however in regard to social value, some of the reasons why the City Council suspended its role within the ICS were in order to try and promote the inclusion of additional ways to increase the way in which the social, economic and environmental benefits that can arise out of the mechanisms by which health and social care integration are developed. The City Council believes that improvements to the way in which health and social care integrate have huge potential for increasing social value, and the improvements outlined in appendix 1 take this forwards.

8 REGARD TO THE NHS CONSTITUTION

- 8.1 The NHS belongs to the people and is there to improve our health and wellbeing, supporting us to keep mentally and physically well, to get better when we are ill and, when we cannot fully recover, to stay as well as we can to the end of our lives.
- 8.2 It works in partnership with other organisations in the interest of patients, local communities and the wider population. The NHS is committed to working jointly with other local authority services, other public sector organisations and a wide range of private and voluntary sector organisations to provide and deliver improvements in health and wellbeing.
- 8.3 The NHS is founded on a common set of principles and values that bind together the communities and people it serves – patients and public represented by the NHS constitution
- 8.4 Local authorities have a statutory duty to have regard to the NHS Constitution when exercising their public health functions under the NHS Act 2006. In making decisions relating to public health functions, we need to properly consider the NHS Constitution where applicable and take into account how it can be applied in order to commission services to improve the health of the local community.

- 8.5 The City Council intends to continue to support and abide by the Constitution in the exercise of its duties; the proposed suspension will not influence the carrying out of its statutory public health responsibilities, and towards improving health outcomes and reducing inequalities for our people and communities.

Alison Challenger, Director of Public Health, Nottingham City Council
29th March 2019

9 EQUALITY IMPACT ASSESSMENT (EIA)

- 9.1 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because:

(Please explain why an EIA is not necessary)

There are not any specific changes to service delivery proposed within this decision.

Yes



Attached as Appendix x, and due regard will be given to any implications identified in it.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

- 10.1 None

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

- 11.1 "Nottingham City Council suspension from within the Nottingham and Nottinghamshire Integrated Care System (ICS)", 20th November 2018, Nottingham City Council Executive Board
- 11.2 The Nottingham and Nottinghamshire Sustainability and Transformation Plan (June 2016) <http://www.stpnotts.org.uk/>
- 11.3 "Implementing the NHS Long Term Plan – Proposals for possible changes to legislation", engagement document, February 2019, NHS England
- 11.4 NHS Long Term Plan, 7th January 2019, NHS England, www.longtermplan.nhs.uk

Appendix 1

Report Title:	Independent Review and ICS Board decision to Confirm the Number of Integrated Care Providers (ICPs) in Nottingham and Nottinghamshire
Report Author:	Deborah Jaines, Deputy Managing Director Nottinghamshire ICS
Report Summary:	
<p>At the 15 February ICS Board meeting, members considered the outputs of an independent review concerning the optimal configuration of Integrated Care Providers (ICPs) for the Nottingham and Nottinghamshire ICS. This piece of work was commissioned following the decision in November 2018 to no longer progress with the development of LICPs – a construct that was unique to Nottinghamshire. (The National construct for parts of the new system is ‘Primary Care Network’ which are grouping of patients organised around primary care at scale with populations of 30-50,000 people, ‘Integrated Care Provider’, groups of providers responsible for the needs of patients in a place covering 250-300,000 people and ‘Integrated Care System’, responsible for at least 1,000,000 people.)</p> <p>The paper considered at the ICS Board meeting on 15 February, which built on the independent review, concluded that there should be three ICPs for the Nottinghamshire ICS:</p> <ul style="list-style-type: none">- An ICP for the City of Nottingham- An ICP for the area of Nottinghamshire covering Broxtowe, Gedling and Rushcliffe- An ICP for the area of Nottinghamshire covering Ashfield, Mansfield, Newark and Sherwood. <p>The review included a review of the emerging evidence base at this time.</p> <p>The ICS Board considered whether any additional information might change the recommendation and concluded that it would not. This is because the national guidance on population size and the importance of place is of such significance.</p> <p>On the basis of the recommendation of the independent review, the paper and the Board discussions, the ICS Board agreed through a vote that the preferred number of ICPs in the Nottingham and Nottinghamshire ICS would be three.</p> <p>Consistency of approach, principles and behaviours will be important to secure efficiency and effectiveness (in particular for those organisations that provide services across the whole of the city and county such as Nottingham University Hospitals NHS Trust and Nottinghamshire Healthcare NHS Trust). Therefore the ICS Board agreed that this decision be reviewed in 12 months’ time to support good governance and to provide assurance that ICPs are operating in line with agreed principles behaviours and guidelines. Arrangements to secure a consistent set of principles, and behaviours for the operation of the ICPs within the ICS context will be put in place by the end of March 2019.</p> <p>Nottingham City Council Executive Board is asked to consider this report and confirm support for three ICPs for Nottingham and Nottinghamshire.</p>	
Action:	

<input type="checkbox"/> To note <input type="checkbox"/> To agree <input checked="" type="checkbox"/> To agree the recommendation/s (see details below)	
Recommendations:	
1.	Consider this report.
2.	Confirm support for three ICPs for Nottingham and Nottinghamshire
3.	Note that representatives on the ICS Board from Nottingham City Council will be asked to provide a verbal update following this decision.

Independent Review and ICS Board decision to Confirm the Number of Integrated Care Providers (ICPs) in Nottingham and Nottinghamshire

Executive Board

April 11th 2019

Background

1. Up until November 2018, the direction of travel was that of establishing and resourcing two Integrated Care Providers (ICPs) (one in Mid Nottinghamshire and one in Greater Nottingham). This was on the basis of the Deloitte commission on our system architecture, which was agreed by the STP Leadership Board on 17 August 2018. The Deloitte work focused principally on the allocation of functions across the new system architecture, and did not form a view on ICP numbers.
2. On November 12 and November 13 2018, a timeout was held with system leaders to firm up arrangements for future system working, at which it was acknowledged that the Nottinghamshire architecture had created an additional 'tier' of system architecture (the Locality Integrated Care Partnerships – or LICPs) that was an addition to the national model at the time and the model that was subsequently re-iterated in the Long Term Plan. (This model being ICS, ICP and Primary Care Networks (PCNs)). A collective decision was therefore reached that the Locality Integrated Care Providers (LICPs) should not be progressed.
3. Consequently, the Nottingham City CCG, Nottingham City Council and City PCNs urged the ICS to reconsider the proposal for two ICPs and to consider establishing a south Nottinghamshire ICP and a Nottingham ICP in addition to the Mid Nottinghamshire ICP in order to retain the benefits of place based and population-focused working. This argument is predicated on the distinct and different needs and characteristics of the City population. In view of the decision about LICPs and the clarity afforded by the Long Term Plan about the anticipated population scales for places, the Nottingham City CCG and Nottingham City Council further articulated the importance of focus on its specific population. ICS partners reconsidered the conclusions that were reached by the Deloitte work about the number of ICPs and considered establishing a Nottingham City ICP in addition to the two already proposed.
4. All of the other outputs of the Deloitte commission remain extant and should be referred to in conjunction with this paper. Whilst the functions of the LICP no longer exist in isolation, they will be delivered through partnership working between ICPs and the forming PCNs.

Independent Review to Confirm the Number of Integrated Care Providers

5. PWC were commissioned to undertake an independent review of the best arrangements for ICPs in the Greater Nottingham footprint, which included interviews with system leaders and an assessment of the emerging evidence base and best practice.
6. The outcomes of the PWC commission on ICP options have now been concluded and shared with those system partners specifically engaged in the review.
7. The ICS Board considered the findings of the review at its meeting on 15 February. Key decisions were made at this meeting for the constituent organisations to consider further:
 - ICS Board agreed through a vote that to maintain pace, no further work should take place on the review of ICPs. The review included a comprehensive review of the emerging evidence base and at this time, there is no further evidence to support decision making.
 - ICS Board agreed through a vote that the preferred number of ICPs in the Nottinghamshire ICS is three. The County Council agreed the recommendation with an addendum that a further piece of work be completed to explore how consistency will be maintained across ICPs.
 - ICS Board agreed that this decision be reviewed in 12 months' time to support good governance and to provide assurance that ICPs are working in line with principles and guidelines.
 - ICS Board agreed the proposed principles for ICPs to work within and that a workshop be facilitated to ensure common understanding of what these principles mean in theory and practice. By the end of March, a consistent set of principles, objectives and behaviours for the operation of the ICPs within the ICS context will be formulated.

Recommendations

8. The Executive Board of Nottingham City Council are asked to:
 - Consider this report.
 - Confirm support for three ICPs for Nottingham and Nottinghamshire
 - Note that representatives on the ICS Board from Nottingham City Council will be asked to provide a verbal update at the next ICS Board

Deborah Jaines
Deputy Managing Director
25 February 2019

Subject:	Updated Regulation of Investigatory Powers (RIPA) Policy		
Corporate Director(s)/Director(s):	Malcolm Townroe Director of Legal and Governance Services		
Portfolio Holder(s):	Councillor Graham Chapman, Portfolio Holder for Finance, Resources and Commercial Services		
Report author and contact details:	Naomi Matthews – RIPA Co-ordinating Officer and Data Protection Officer Naomi.matthews@nottinghamcity.gov.uk Telephone: 0115 8764415		
Subject to call-in:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Key Decision:	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Criteria for Key Decision:			
(a) <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			
and/or			
(b) Significant impact on communities living or working in two or more wards in the City			
	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Type of expenditure:	N/A		
Total value of the decision:	Not a financial decision – Policy Adoption		
Wards affected:	All		
Date of consultation with Portfolio Holder(s):	29 March 2019		
Relevant Council Plan Key Theme:			
Strategic Regeneration and Development	<input type="checkbox"/>		
Schools	<input type="checkbox"/>		
Planning and Housing	<input type="checkbox"/>		
Community Services	<input type="checkbox"/>		
Energy, Sustainability and Customer	<input type="checkbox"/>		
Jobs, Growth and Transport	<input type="checkbox"/>		
Adults, Health and Community Sector	<input type="checkbox"/>		
Children, Early Intervention and Early Years	<input type="checkbox"/>		
Leisure and Culture	<input type="checkbox"/>		
Resources and Neighbourhood Regeneration	<input checked="" type="checkbox"/>		
Summary of issues (including benefits to citizens/service users):			
To review and update the Council's Policies in relation to the Regulation of Investigatory Powers Act (RIPA) 2000 pursuant to recommendation made to the City Council by the Office of Surveillance Commissioners.			
Exempt information:			
The background paper to this report is exempt from publication under paragraphs 3 and 7 of Schedule 12A to the Local Government Act 1972 because it contains information relating to the finance or business affairs of the Council and in addition it provides information in relation to the Council's strategy for the prevention, investigation, detection and prosecution of crimes. Having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because it is likely to reveal actions that the Council is required to take to improve its strategy and processes for the investigation of crime, which may then jeopardise current or future investigations through such disclosure.			
Recommendation(s):			
1 To review and endorse the updated Regulation of Investigatory Powers Policy and Guidance			

	which now incorporates the revised Online Research and Investigation Policy, as attached at Appendix 1, for adoption by the City Council.
2	To endorse the RIPA training and awareness raising activity for elected members and council officers as set out in paragraph 2.5.
3	To delegate authority to the Director of Legal and Governance in consultation with the relevant Portfolio Holder to amend the policy when necessary and in accordance with any future legislative changes or statutory guidance.
4	To include future updates in relation to the compliance against the RIPA Policy within a wider annual assurance report on information and security to the Council's Audit Committee.
5	To submit general reviews of the Policy to the Council's Overview and Scrutiny Committee in line with the Home Office Code of Covert Surveillance Property Interference and the Code of Practice for Covert Human Intelligent Sources.
6	To note and endorse the current Council's Senior Responsible Officer (SRO) and Authorising Officers in relation to RIPA procedures and as set out in paragraph 2.7.

1 REASONS FOR RECOMMENDATIONS

1.1 The submission of the updated Policy is pursuant to previous recommendations made to the City Council by the Office of Surveillance Commissioners as part of an inspection report. The recommendation in relation to councillors involves 'upgrading' to a level of formality, which will bring to the attention of councillors to the seriousness of RIPA issues. The Home Office Code of Covert Surveillance Property Interference, at paragraph 4.47, and the Code of Practice for CHIS, 3.30 recommends that elected members, whilst not involved in making decisions or specific authorisations for the local authority to use its powers under Part II of the Act, should review the use of the legislation and provide approval to its policies.

2 BACKGROUND (INCLUDING OUTCOMES OF CONSULTATION)

2.1 The Regulation of Investigatory Powers Act 2000 ("RIPA") provides a statutory framework regulating the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities. The Act requires public authorities, including local authorities, to use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights. RIPA also provides for the appointment of a Chief Surveillance Commissioner to oversee the way in which public authorities carry out covert surveillance.

2.2 RIPA governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. The Council uses powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of six months or more, or is related to the underage sale of alcohol and tobacco.

2.3 The three powers available to local authorities under RIPA: the acquisition and disclosure of communications data; directed surveillance; and covert

human intelligence sources (“CHIS”). The Act sets out the procedures that the Council must follow if it wishes to use directed surveillance techniques or acquire communications data in order to support core function activities (e.g. typically those undertaken by Trading Standards, Environmental Health and the Counter Fraud team). The information obtained as a result of such operations can later be relied upon in court proceedings providing RIPA is complied with.

2.4 The Investigatory Powers Commissioners Office (IPCO) inspects every three years. The Office of Surveillance Commissioner (OSC) formerly undertook the inspections. The Council’s next inspection by IPCO is due anytime from April 2019 onwards. At the last inspection in April 2016, the OSC noted that Council officials had made considerable improvement and progress, but stated that in order to maintain the upward progress two specific recommendations were made to the Council as follows:

- (a) Raise RIPA awareness particularly in Council departments where officers at lower levels or within non- regulatory departments have little recourse to RIPA to achieve the same high level of awareness. This is important as it ensures that unauthorised surveillance does not inadvertently arise;
- (b) Ensure annual and regular RIPA reports be submitted to elected members. The recommendation in relation to councillors involves ‘upgrading’ to a level of formality, which will bring to the attention of councillors to the seriousness of RIPA issues. The Home Office Code of Covert Surveillance Property Interference, at paragraph 4.47, and the Code of Practice for CHIS, 3.30 recommends that elected members, whilst not involved in making decisions or specific authorisations for the local authority to use its powers under Part II of the Act, should review the use of the legislation and provide approval to its policies.
- (c) While not a recommendation, the OSC did draw attention to the use made by the Police of the Council’s CCTV equipment and suggested that the arrangement could benefit from some additional clarity around the authorisations in place.

2.5 The recommendations of the OSC, as set out in 1.4 above do not present undue difficulty as:

- (a) The RIPA Co-ordinating Officer, the SRO and all Authorising Officers are all up to date with their mandatory RIPA training. The Council has widened out the availability of training and workshops to include all Officers with responsibility for, or who have contact with CCTV directed surveillance. RIPA/DPA training has been delivered to Neighbourhood Development Officers in connection with their responsibilities around movable cameras. Furthermore, the Council is developing an online RIPA training module which will be available to all employees within the Council and which will be live as from June 2019. The availability of this training will be the subject of corporate messages to all employees shown on plasma screens around the Loxley House building. This online module will enable access by a wider audience and the Co-ordinating Officer will

continue to utilise any opportunity to identify additional officers for RIPA training, in order to safeguard against inadvertent surveillance activities when she delivers the wider face to face training on RIPA and Data Protections matters;

(b) RIPA compliance will be included within a wider annual assurance report on information and security to the Council's Audit Committee and reviews generally of the Policy will be submitted to the Council's Overview and Scrutiny Committee in line with the Home Office Code of Covert Surveillance Property Interference and the Code of Practice for CHIS;

(c) Arrangements are in place for an Authorising Officer to have closer oversight of the police use of the Council's CCTV.

2.6 The proposed updated Policy at Appendix 1 will provide guidance to all appropriate officers on how to make use of the powers. The City Council may use these powers to investigate a varied range of offences; however, the powers are used rarely in practice as they are only used when no alternative to covert surveillance can be found. It should be noted that the nature of criminal investigation has changed over the last few years due to increased use of social media by members of the public; therefore, this has prompted the need for a specific policy in relation to Online Research and Investigation, which forms an appendix to the wider RIPA policy. The updated Policy recommended to Members is compliant with the requirements of RIPA and when approved will be published on the Council's website.

2.7 Detailed in the table below are five distinct roles within the Policy and the names of the persons whom currently hold those positions:

Role	Role description	Post Holder (s)
Applicants	The applicant is usually the investigating officer who applies for authorisation to carry out covert surveillance.	This can be any authorised investigating officer.
Senior Responsible Officer (SRO)	Required by the IPCO with oversight of the authority's use of Part I and II powers.	Malcolm Townroe (Director of Legal and Governance and Monitoring Officer)
Authorising Officer (s)	Must be a senior officer of at least the level of Head of Service or equivalent authorised by the Council who will consider all applications for authorisation in accordance	The Council currently has four Authorising Officers: - Ian Curryer (Chief Executive and Head of Paid Service) - Andrew Errington (Director

	with RIPA.	of Community Protection) - Dave Walker (Head of Safer Housing and Anti-Social Behaviour) - Paul Millward (Head of Scrutiny and Resilience)
Co-ordinating Officer	Responsibility for the day-to-day RIPA management and administrative processes observed in obtaining an authorisation and advice thereon.	Naomi Matthews – Data Protection Officer and Solicitor Advocate

3 OTHER OPTIONS CONSIDERED IN MAKING RECOMMENDATIONS

- 3.1 Do nothing, this option is rejected as it would mean Nottingham City Council is either in breach of or not acting in accordance with the Investigatory Powers Act 2000.

4 FINANCE COLLEAGUE COMMENTS (INCLUDING IMPLICATIONS AND VALUE FOR MONEY/VAT)

- 4.1 There are no financial implications by updating this policy

Phil Gretton – Strategic Finance Business Partner 29 March 2019

5 LEGAL AND PROCUREMENT COLLEAGUE COMMENTS (INCLUDING RISK MANAGEMENT ISSUES, AND LEGAL, CRIME AND DISORDER ACT AND PROCUREMENT IMPLICATIONS)

- 5.1 Failure to observe the Regulation of Investigatory Powers Act 2000 could potentially constitute a breach of data protection and human rights legislation and could therefore result in significant reputational and/or financial damage to the Council.
- 5.2 Compliance with this policy and guidance document will help avoid legal challenges to evidence gathered during the course of investigations under the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000.
- 5.3 Compliance will furthermore assist the Council is working, with its partners, towards the reduction of crime and disorder by ensuring evidence gathered by the use of covert surveillance has been acquired legally and that the correct procedures have been followed, including authorisation by a justice of the peace or magistrate.

Malcolm Townroe – Director of Legal & Governance – 28 March 2019

6 STRATEGIC ASSETS & PROPERTY COLLEAGUE COMMENTS (FOR DECISIONS RELATING TO ALL PROPERTY ASSETS AND ASSOCIATED INFRASTRUCTURE)

- 6.1 Not applicable.

7 SOCIAL VALUE CONSIDERATIONS

- 7.1 This report does not involve the commissioning of public services and therefore the section is not applicable to this report.

8 REGARD TO THE NHS CONSTITUTION

- 8.1 There are no implications on the NHS Constitution.

9 EQUALITY IMPACT ASSESSMENT (EIA)

- 9.1 Has the equality impact of the proposals in this report been assessed?

No

☐

An EIA is not required because: No. it does not involve change of policy, services or functions and some aspects for information only.

Yes

☒

Attached as Appendix 4, and due regard will be given to any implications identified in it.

10 LIST OF BACKGROUND PAPERS RELIED UPON IN WRITING THIS REPORT (NOT INCLUDING PUBLISHED DOCUMENTS OR CONFIDENTIAL OR EXEMPT INFORMATION)

- 10.1 Letter from the Office of Surveillance Commissioners – dated 9 May 2016 and Inspection Report dated April 2016

11 PUBLISHED DOCUMENTS REFERRED TO IN THIS REPORT

- 11.1 Covert Surveillance and Property Interference - Revised Code of Conduct – August 2018
- 11.2 Covert Human Intelligence Sources – Revised Code of Conduct – August 2018

NOTTINGHAM CITY COUNCIL

REGULATION OF INVESTIGATORY POWERS

ACT 2000 (RIPA)

POLICY AND GUIDANCE ON PART II

CONTENTS

1. Policy
2. Guidance – Part II – Direct Surveillance and Covert Human Intelligence Source
3. Appendix A – Links to Home Office - Forms
4. Appendix B – Links to Home Office - Codes of Practice
5. Appendix C – NCC Online Research and Investigation Policy

NOTTINGHAM CITY COUNCIL

POLICY ON REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

Nottingham City Council only carries out covert surveillance where such action is justified and endeavours to keep such surveillance to a minimum. It recognises its obligation to comply with RIPA when such an investigation is for one of the purposes set out in that Act and has produced this Guidance document to assist officers.

Applications for authority

A senior officer of at least the level of Head of Service or equivalent authorised by the Council will consider all applications for authorisation in accordance with RIPA. Any incomplete or inadequate application forms will be returned to the applicant for amendment. The authorising officer shall in particular ensure that:-

- there is a satisfactory reason for carrying out the surveillance
- any directed surveillance passes the “serious crime” threshold
- 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
- Chief Executive’s authorisation is sought where confidential legal/journalistic/medical/spiritual welfare issues/parliamentary issues are involved
- The authorisations are reviewed and cancelled
- Records of all authorisations are sent to the Information Compliance team leader for entry on the Central Register and copies are sent to legal for a hard-copy central register.

Training

The Information Compliance team shall be responsible for the training of applicants and Authorising Officers.

Each Authorising Officer will then ensure that relevant members of staff are aware of the Act's requirements.

The Senior Responsible Officer shall ensure that refresher training is offered once a year to all directorates of the Council and also to require the legal team and the Information Compliance team to give advice and training on requests.

Central register and records

The Information Compliance Team Leader shall retain the Central Register of all authorisations issued by Nottingham City Council. The Information Compliance Team Leader, together with the Criminal Solicitors in Legal, will also monitor the content of the application forms and authorisations to ensure that they comply with the Act.

Senior Responsible Officer

The Senior Responsible Officer, a role required by IPCO with oversight of authority's use of Part I and II powers, is the Director of Legal and Governance, Mr Malcolm R Townroe.

RIPA Coordinating Officer

The RIPA coordinating officer role, with responsibility for the day-to-day RIPA management and administrative processes observed in obtaining an authorisation and advice thereon, will be performed by the Information Compliance Team leader, presently Naomi Matthews.

REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

GUIDANCE ON PART II

DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCE

1. Purpose

The purpose of this guidance is to explain

the scope of RIPA – Part II
the circumstances where it applies, and
the authorisation procedures to be followed

2. Introduction

- 2.1 This Act, which came into force in 2000, is intended to regulate the use of investigatory powers exercised by various bodies including local authorities, and ensure that they are used in accordance with human rights. This is achieved by requiring certain investigations to be authorised by an appropriate officer 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 6 months' imprisonment or are related to the underage sale of alcohol and tobacco, and the use of covert human intelligence sources. 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 the Home Office web site links for these are at **Appendix B.**
- 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 a human right is justified in the interests of the community as a whole, or whether the information could be gleaned in other ways.

3. Definitions

- 3.1 'Covert' is defined as surveillance carried out in such a manner that is calculated to ensure that the person subject to it is unaware that it is or may be taking place. (s.26 (9)(a))
- 3.2 'Covert human intelligence source' (CHIS) is defined as a person who establishes or maintains a relationship with a person for the covert purpose of obtaining information about that person. (s.26 (8))

3.3 'Directed surveillance' is defined as covert but not intrusive and undertaken:

- for a specific investigation or operations,
- in such a way that is likely to result in the obtaining of private information about any person
- other than by way of an immediate response (s.26 (2))

3.4 'Private information' includes information relating to a person's private or family life.

3.5 'Intrusive' surveillance is covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or using a surveillance device. **Nottingham City Council may not authorise such surveillance.**

3.6 An Authorising Officer must be the Chief Executive, Head of Service, Director, Head of Legal Services, a Corporate Director, Director or Head of Service (or equivalent) responsible for the management of an investigation (see Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (SI No. 521)). An Authorising Officer will have undergone training to support them in this role and a list of approved Authorising Officers will be retained by the Council's Information Compliance Team. The Senior Responsible Officer is the Director of Legal and Governance. The role of the Senior Responsible Officer is to oversee the compliance of the Authorising Officers and processes in use in Nottingham City Council.

3.7 The Senior Responsible Officer will authorise and maintain a list of Authorising Officers and Investigating Officers. This list will be retained by the Council's Information Compliance Team Office.

4. Scrutiny and Tribunal

5.1 External

4.1.1 The Investigatory Powers Commissioners Office (IPCO) was set up to monitor compliance with RIPA. IPCO 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 the Council's records and procedures for this purpose.

4.1.2 As of 1st November 2012 the Council has to obtain an order from a Justice of Peace 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

carried out. The Council can only appeal a decision of the Justice of the Peace on a point of law by Judicial Review.

4.1.3 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.

4.1.4 The Tribunal can order:

- Quashing or cancellation of any warrant or authorisation
- Destruction of any records or information obtained by using a warrant or Authorisation
- Destruction of records or information held by a public authority in relation to any person.

4.1.5 The Council has a duty to disclose to the tribunal all documents they require if any Council officer has:

- Granted any authorisation under RIPA
- Engaged in any conduct as a result of such authorisation.

4.2 Internal Scrutiny

4.2.1 The Council will ensure that at all times the Senior Responsible Officer is responsible for;

- the integrity of the process in place within the Council to authorise directed surveillance and CHIS
- Compliance with Part II of the Act and with the accompanying Codes of Practice
- Engagement with the Commissioners and inspectors when they conduct their inspections
- Overseeing the implementation of any post-inspection action plans or recommendations as suggested by the Inspector/Commissioner.

4.2.2 The elected members of the Council will review the authority's use of the Act and the Authority's policy and guidance documents at least once a year. They will also consider internal reports on the use of the Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. The Elected Members will not however be involved in making decisions with regards to specific authorisations.

6. Benefits of RIPA authorisations

- 5.1 The Act states that if authorisation confers entitlement to engage in a certain conduct and the conduct is in accordance with the authorisation, then it will be lawful for all purposes. Consequently, RIPA provides a defence to an accusation of an infringement of a human right by creating a statutory framework under which covert surveillance can be authorised and conducted compatibly with Article 8 of the Human Rights Act 1998 – a person's right to respect for their private and family life, home and correspondence.
- 5.2 Material obtained through properly authorised covert surveillance may be admissible evidence in criminal proceedings.

7. When does RIPA apply?

- 6.1 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.
- 6.2 The Council can only authorise **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:-
- a) S.146 of the Licensing Act 2003 (sale of alcohol to children)
 - b) S.147 of the Licensing Act 2003 (allowing the sale of alcohol to children)
 - c) S.147A of the Licensing Act 2003 (persistently selling alcohol to children)
 - d) S.7 of the Children and Young Persons Act 1933 (sale of tobacco, etc, to persons under eighteen)

CCTV

- 6.3 The normal use of CCTV is not usually covert because members of the public would normally require authorisation to view CCTV and are informed by signs that such equipment is in operation. However, authorisation should be sought where it is intended to use CCTV covertly and in a pre-planned manner as part of a specific investigation or operation to target a specific individual or group of individuals. Equally a request, say by the police, to track particular individuals via monitoring CCTV recordings may require authorisation (from the police). This policy should be read in conjunction with NCC CCTV policy.

7 Covert Human Intelligence Source

- 7.1 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

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 a CHIS are references to inducing, asking or assisting a person to engage in such conduct.

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

- b) 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
- c) 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.

7.3 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 for a covert purpose which is ultimately authorised in the 2000 Act, not whether or not the CHIS is asked to do so by the Council. When an informant gives repeat information about a suspect or about a family and it becomes apparent that the informant may be obtaining the information in the course of a 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 any information from such an informant.

7.4 Juvenile Sources

7.4.1 Special safeguards apply to the use or conduct of juvenile sources; that is sources under the age of 18 years. On no occasion should the use or conduct of a source under the age of 16 years be authorised to give information against his parents or any person who has parental responsibility for him. The duration of a juvenile chis is one month. The Regulation of Investigatory Powers (Juveniles) Order 2000 SI No. 2793 contains special provisions which must be adhered to in respect of juvenile sources.

7.5 Vulnerable individuals

- 7.5.1 A vulnerable individual is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself, or unable to protect himself against significant harm or exploitation. Any individual of this description should only be authorised to act as a source in the most exceptional circumstances.

8 Authorisations

8.1 Applications for directed surveillance

- 8.1.1 All application forms must be fully completed with the required details to enable the authorising officer to make an informed decision.

No authorisation shall be granted unless the authorising officer is satisfied that the investigation is:

- necessary for either the purpose of preventing or detecting crime or of preventing disorder
- Involves a criminal offence punishable whether summarily or on indictment by a maximum sentence of at least six months imprisonment or related to the underage sale of alcohol or tobacco (see para 6.2 for offences)
- proportionate to the ultimate objective. This has 3 elements, namely 1) that the method of surveillance proposed is not excessive to the seriousness of the matter being investigated, 2) the method used must be the least invasive method available to ensure the target's privacy, 3) the privacy of innocent members of the public must be respected and collateral intrusion minimised (see 8.1.2).
- and that no other form of investigation would be appropriate.

The grant of authorisation should indicate that consideration has been given to the above points and if there are any areas of concern these should be discussed with the Information Compliance Team specialist or Legal Services. The following however are crucial points that should be adhered to in every case;

Necessity: Covert surveillance cannot be said to be necessary if the desired information can reasonably be obtained by overt means. It must also be necessary for the purpose of preventing or detecting crime.

Proportionality: The method of surveillance proposed must not be excessive in relation to the seriousness of the matter under investigation. It must be the method which is the least invasive of the target's privacy.

Collateral intrusion, which affects the privacy rights of innocent members of the public, must be minimised and use of the product of the surveillance carefully controlled so as to respect those rights.

- 8.1.2 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 e.g. for any form of medical or professional counselling or therapy. The application must include an **assessment** of any risk of collateral intrusion for this purpose.

Steps must be taken to avoid unnecessary collateral intrusion and minimise any necessary intrusion.

Those carrying out the investigation 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. Where such collateral intrusion is unavoidable, the activities may still be authorised, provided this intrusion is considered proportionate to what is sought to be achieved.

8.1.3 **Special consideration 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, communications between a Member of Parliament and another person on constituency matters, confidential personal information or confidential journalistic material. (Sections 98-100 Police Act 1997).

Legal privilege

Generally, this applies to communications between an individual and his/her legal adviser in connection with the giving of legal advice in connection with or in contemplation of legal proceedings. Such information is unlikely ever to be admissible as evidence in criminal proceedings.

If in doubt, the advice of the Information Compliance Team leader and/or Legal Services should be sought in respect of any issues in this area.

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**.

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 to be confidential under RIPA may not necessarily be properly regarded as confidential under section 41 of the Freedom of Information Act.

Where such information is likely to be acquired, the surveillance may only be authorised by the Chief Executive, or, in his absence, a Chief Officer and should only be authorised where there are exceptional and compelling circumstances that make authorisation necessary.

8.1.4 Notifications to Inspector/Commissioner

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.

8.1.5 Special considerations in respect of social networking sites

The fact that digital investigations are routine or easy to conduct does not reduce the need for authorisation if the criteria are met. Any surveillance carried out on the internet must be carried out in accordance with the Nottingham City Council's policy and guidance on internet investigations (see Appendix C).

8.1.6 Applications for CHIS

This process is the same as for directed surveillance except that the serious crime threshold of investigating criminal offences with a sentence of at least 6 months in imprisonment does not apply. The authorisation must specify the

activities and identity (by pseudonym only) 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.

A risk assessment and record must be prepared and records need to be kept for this purpose.

All application forms must be fully completed with the required details to enable the authorising officer to make an informed decision.

8.1.7 Judicial Approval of authorisations

Once the authorising officer has authorised the Directed Surveillance or CHIS, the Investigating Officer who completed the application form should contact the Magistrates Court to arrange a hearing for the authorisation to be approved by a Justice of the Peace.

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

In addition the Investigator will provide the Justice of the Peace with a partially completed judicial application/order form.

The hearing will be in private and the officer will be sworn in and present evidence as required by the Justice of the Peace. Any such evidence should be limited to the information in the authorisation.

The Justice of the Peace 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 the case. They will also consider whether the authorisation was given by the appropriate designated person at the correct level within the Council and whether (in the case of directed surveillance) the crime threshold has been met.

The Justice of the Peace can:

- a) **Approve the grant of the authorisation**, which means the authorisation will then take effect.
- b) **Refuse to approve the grant of the authorisation**, which means the authorisation will not take effect but the Council could look at the reasons for refusal, make any amendments and reapply for judicial approval.

- c) **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 has at least 2 business days from the date of the refusal in which to make representations.

8.1.8 Working in Partnership with the Police and other agencies

Authorisation can be granted in situations where the Police or other agency rather than Nottingham City Council require the surveillance to take action, as long as the behaviour complained of, meets all criteria to grant and in addition is also of concern to the Council. Authorisation cannot be granted for surveillance requested by the police or other agency for a purely police or other agency purpose. Where the Authority is authorising the surveillance under RIPA, all required documentation must be completed by Council Officers.

Where another agency or organisation has an existing relationship with Nottingham City Council, any covert surveillance carried out by them must be under a RIPA obtained by Nottingham City Council and the authorisation must be subject to the safeguards as if Nottingham City Council carried out the surveillance.

9. Unique Operation Reference Numbers

Each application for Directed Surveillance and CHIS must have a Unique Reference Number (URN). This URN will begin with 2NCC for a Part II Nottingham City Council surveillance application, followed by the year in which the authority was granted followed by a sequential number, for example 2NCC/10/01.

10. Duration and Cancellation

- An authorisation for **directed surveillance** shall cease to have effect (if not renewed or cancelled) 3 months from the date the Justice of the Peace approves the grant.
- If renewed the authorisation shall cease to have effect 3 months from the expiry date of the original authorisation.
- An authorisation for **CHIS** shall cease to have effect (unless renewed or cancelled) 12 months from the date the Justice of the Peace approves the grant or renewal.

This does not mean that the authorisation should necessarily be permitted to last for the whole period so that it lapses at the end of this time. The authorising officer, in accordance with section 45 of the Act, must cancel each authorisation as soon as that officer decides that the surveillance

should be discontinued. Documentation of any instruction to cease surveillance should be retained and kept with the cancellation form.

On cancellation the cancellation form should detail what product has been obtained as a result of the surveillance activity. The form should include the dates and times of the activity, the nature of the product obtained and its format, any associated log or reference numbers, details of where the product is to be held and the name of the officer responsible for its future management.

11. Reviews

The Authorising Officer should review all authorisations at intervals determined by him/herself. A review date should always be set by the Authorising Officer. This should be as often as necessary and practicable (usually monthly). The reviews should be recorded using the review forms and copies of these sent to Information Compliance Team for monitoring and central recording.

Particular attention should be paid to the possibility of obtaining confidential information and an assessment as to the information gleaned should take place at each review.

If the directed surveillance authorisation provides for the surveillance of unidentified individuals whose identity is later established, the terms of the authorisation should be refined at review to include the identity of these individuals. It would be appropriate to call a review specifically for this purpose.

12. Renewals

Any authorised officer may renew an existing authorisation on the same terms as the original at any time before the original ceases to have effect. The renewal must then be approved by the Justice of the Peace in the same way the original authorisation was approved. The process outlined in paragraph 8.1.7 should be followed for renewals.

A CHIS authorisation must be thoroughly reviewed before it is renewed.

13. Central Register of authorisations

13.1 All authorities must maintain the following documents:

- Copy of the application and a copy of the authorisation form and the approval order from the Magistrates together with any supplementary documentation and notification of the approval given by the authorised officer;
- 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 supporting documentation submitted when the renewal was requested;
- The date and time when any instruction was given by the authorising officer (including an instruction to cease surveillance).

13.2 To comply with 13.1 the Information Compliance Team Leader holds the central register of all authorisations issued by officers of Nottingham City Council. The original of every authorisation, review, renewal and cancellation issued should be lodged immediately with the Information Compliance Team Leader. A copy should however be kept both by the applicant and Authorising Officer and any relevant review dates noted in their respective diaries. Any original authorisations and renewals taken to the Magistrates Court should be retained by the Council the Court must only keep copies of the authorisations or renewals.

13.3 The Council must also maintain a centrally retrievable record of the following information:

- type of authorisation
- date the authorisation was given
- date the approval order was given by the Justice of the Peace
- 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;
- details of renewal
- dates of any approval order for renewal given by the Justice of the Peace
- 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.

14. Retention of records

All documents must be treated as strictly confidential and the Authorising Officer and the local authority must ensure that arrangements are in place for the secure retention, handling, storage and destruction of material obtained through the use of surveillance under RIPA. The Authorising Officers through the Information Compliance Team Officer must ensure compliance with the Council's Data Protection Policy, the Data Protection Act 1998, RIPA and the RIPA codes of practice and any relevant practices relating to the handling or storage of materials.

15. Complaints procedure

- 15.1 The Council will maintain the standards set out in this guidance and the Codes of Practice (**See Appendix B**). The Chief Surveillance Commissioner has responsibility for monitoring and reviewing the way the Council exercises the powers and duties conferred by RIPA.
- 15.2 Contravention of the General Data Protection Regulation 2016/679 and the Data Protection Act 2018 may be reported to Information Commissioners office (ICO). Before making such a reference, a complaint concerning a breach of this guidance should be made using the Council's own internal complaints procedure. To make a complaint about this type of matter please contact the Data Protection Officer, Nottingham City Council, Loxley House, Station Street, Nottingham NG2 3NG or telephone 0115 8764415.

APPENDIX A

Forms

See Home Office website:

<https://www.gov.uk/government/collections/ripa-forms--2>

APPENDIX B

Codes of Practice

See Home Office website:

<https://osc.independent.gov.uk/advice-and-guidance/acts-legal-documents/>

APPENDIX C

NCC Online Research and Investigation Policy

See link:

[\\Nottinghamcity.gov.uk\\shd_res\\Legal\\RIPA\\RIPA Policies, CoPs and
Guidance\\NCC RIPA Online Research and Investigation Policy V1 - final
version.docx](\\Nottinghamcity.gov.uk\\shd_res\\Legal\\RIPA\\RIPA Policies, CoPs and Guidance\\NCC RIPA Online Research and Investigation Policy V1 - final version.docx)

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Nottingham City Council

Guidance relating to Online Research and Investigation

This document is intended to provide guidance to Local Authority staff engaged in research and investigation across the internet, including social media.

If you would like any advice regarding the guidance provided in this document please contact the Data Protection Officer or the Information Compliance Team, Legal and Governance, Nottingham.

This guidance for Online Research and Investigation is provided to assist staff members engaged in research and investigations that require the use of the internet. The document is circulated to promote good and consistent practices across the Local Authority.

This document must be considered together with the Covert Human Intelligence Sources code of practice and the Covert Surveillance and Property Interference code of practice 2018 (some sections have been referred to in this guidance).

It is important to emphasise that whether or not any RIPA authorisation is required by a Local Authority officer will depend on the precise circumstances of any particular case.

Senior Responsible Officer:

Malcolm R Townroe – Director of Legal and Governance

This guidance focuses on how the principles set out in legislation apply to the use of the internet, including social media, as an investigative tool. It does not replace statutory guidance. Each activity should be considered on a case by case basis.

Covert investigative techniques likely to interfere with a person's Article 8 rights should be used only when necessary and proportionate. Both the Regulation of Investigatory Powers Act (RIPA) and the General Data Protection Regulation (GDPR) 2016/679 and the Data Protection Act 2018 (DPA) provide a framework for ensuring that such action is lawful and in accordance with the European Convention of Human Rights (ECHR) and the Human Rights Act (HRA). RIPA Codes of Practice provide statutory guidance on the use of some of these techniques.

Online research and investigation is a powerful tool against crime. It also presents new challenges to law enforcement as the use of such a tool can still interfere with a person's right to respect for their private and family life which is enshrined in Article 8 of the Human Rights Act 1998 and ECHR.

Investigators working for Nottingham City Council must ensure that any interference with this right is:

- necessary for a specific and legitimate objective – such as preventing or detecting crime;
- proportionate to the objective in question;
- in accordance with the law.

Whenever you are using the internet to gather intelligence or evidence you must consider whether you are likely to interfere with a person's right to respect for their private and family life and, if so, whether you should seek authorisation under RIPA for your conduct. The principles in this guidance have been prepared to help you identify if such authorisation is appropriate.

It is also essential to consider the effect of any collateral intrusion on the private and family life of other people not directly connected with the subject of the research or investigation.

Case by case judgement is vital when researching or investigating online. Guiding Principles – Overview and operational risk considerations

Overview

- Online communication via the internet has, in recent years, become the preferred method of communication with other individuals, within social groups or with anyone in the world with internet access. Such communication may involve web sites, social networks (e.g. Facebook), chat rooms, information networks (e.g. Twitter) and/or web based electronic mail.
- Just because other people may also be able to see it, does not necessarily mean that a person has no expectation of privacy in relation to information posted on the internet. Using covert techniques to observe, monitor and obtain private information can amount to an interference with a person's right to respect for their private and family life. Authorisation regimes, such as RIPA, must be considered although RIPA is not the only legislation which can render such interference lawful.
- **Any online research and investigation leaves a trace or 'footprint'.** A decision will therefore need to be made as to whether you wish to ensure that your research is non-attributable i.e. cannot be traced back the Local Authority or to identifiable individuals, or whether you are happy for it to be attributable i.e. capable of being traced back to the Local Authority.
- Non-attributable research and investigation must be carried out on equipment that cannot be attributed to the Local Authority or identifiable individuals, just as attributable research and investigation must be carried out on attributable equipment. Carrying out any attributable activity on non-attributable equipment runs the risk of compromising the equipment and any operational activity which has been conducted on it.
- It is recommended that attributable research and investigation is restricted to publicly accessible search areas e.g. maps, street views, local authority sites, auction sites, etc. and websites which have no requirement to register details in order to gain access.
- It is acknowledged that many officers and staff will have considerable experience of using the internet for their own personal online research. However managers should ensure that staff members carrying out online research and investigation for the Local Authority are both competent and appropriately trained.

Use of a false persona

It is recognised that there will, for **covert** online research and investigation, be a requirement to create and use false persona accounts to gather information. The creation of a false persona for the purposes of online research and investigation is likely to require a RIPA.

A log, recording the time, date, user and the purpose, should be maintained for each use of a false persona.

The OSC procedures and guidance document 2014 (now IPCO) states at paragraph 288.3 “it is not unlawful for a member of the public authority to set up a false identity but it is inadvisable for a member of a public authority to do so for a covert purpose without Authorisation.

Using photographs of a person without their permission to support the false identity infringes other law.

- Most of the information available on the internet is available to any person with internet access, either freely or for payment. Such information is widely known as open source information.
- Viewing open source information, by attributable means, does not amount to obtaining private information because that information is publicly available. This is therefore unlikely to require authorisation under RIPA. However, the repetitive viewings of what are deemed to be open sources for the purposes of intelligence gathering or data collection may require an authorisation under RIPA and advice should be sought on individual cases.
- Recording, storing and using open source information in order to build up a profile of a person or a group of people must be both necessary and proportionate and, to ensure that any resultant interference with a person’s Article 8 right to respect for their private and family life is lawful, it must be retained and processed in accordance with the principles of the General Data Protection Regulation 2016/679 Data Protection Act 2018.

Open source Definitions

- Open Source Research - The collection, evaluation and analysis of materials from sources available to the public, whether on payment or otherwise, to use as intelligence or evidence within investigations.
- Open Source Information - Publicly available information (i.e. any member of the public could lawfully obtain the information by request or observation). It includes books, journals, TV and radio broadcasts, newswires, internet WWW and newsgroups, mapping, imagery, photographs, commercial subscription databases and grey literature (conference proceedings and institute reports).

Restricted access information

- Access to some of the information on the internet is restricted by its “owner”. A common form of such restriction is in social networks where a profile owner may use the privacy settings to restrict access to online “friends”.

- Viewing restricted access information covertly, will generally constitute covert surveillance and, as the information is not publicly available, it is likely that private information will be obtained. Authorisation as directed surveillance should be sought in these circumstances.
- Recording, storing and using restricted access information, in order to build up a profile of a person or a group of people must be both necessary and proportionate, and it must be retained and processed in accordance with the principles of the GDPR and DPA legislation.
- The initial interaction involved in the act of bypassing privacy controls (the sending and acceptance of a friend's request) may be minimal. In many cases it is considered unlikely that this, by itself, will meet the RIPA definition of a "relationship" and will not require authorisation as a Covert Human Intelligence Source (CHIS). However, much work may have had to be conducted to get to that stage without arousing suspicion. In addition, it may be difficult to predict how or at what pace that "relationship" will need to develop. If it is intended or considered likely that direct one to one interaction with another person will go beyond the initial request/acceptance it will be appropriate to seek authorisation as a CHIS. The creation of a false persona involving other "friends", which are also false, in order to effect the deception and secure the information effectively amounts to "legend building" in support of the CHIS.
- Considerations of the potential for any subsequent interaction, that would qualify as a "relationship", should be appropriately documented as part of the decision making process. This should include the reasons for any decision not to authorise the use of the undercover online Local Authority officer undertaking the activity as a CHIS and contingency provisions for authorisation if subsequently considered appropriate.
- Although this minimal initial interaction will not require authorisation as a CHIS it is considered good practice for friends' requests to be sent by a trained undercover Local Authority officer.

The Law – Overview

Online research and investigation techniques may impact on all or any of the following:

- Human Rights Act 1998 / European Convention on Human Rights
- Regulation of Investigatory Powers Act 2000
- Part I – Interception of Communications and the Acquisition of Communications Data
- Part II – Surveillance and Covert Human Intelligence Sources
- Computer Misuse Act 1990
- General Data Protection Regulation 2016/679 and the Data Protection Act 2018

Human Rights Act / European Convention on Human Rights

Both of these provide a number of fundamental rights which are central to all actions of law enforcement.

The right most likely to be engaged by officers and staff undertaking online research and investigation is Article 8 which states:

8.1

Everyone has the right to respect for his private and family life, his home and his correspondence.

8.2

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Ensuring that RIPA authorisations are sought, where necessary, and that the material obtained is retained and processed in accordance with the provisions of the Data Protection Act should provide the lawful authority required by Article 8.2 for any perceived interference with Article 8.1.

Directed Surveillance

Under section 26(2) of RIPA, surveillance is 'directed' if it is covert but not intrusive and is undertaken

- **for the purposes of a specific investigation or a specific operation; and**
- **is likely to result in the obtaining of private information about a person; and**
- **is otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under RIPA Part II to be sought for the carrying out of the surveillance.**

The likelihood of obtaining private information will be one of the determining factors when considering whether authorisation as directed surveillance is appropriate.

Private Information

Private Information is information relating to a person's private or family life. It can include any aspect of a person's relationships with others, including professional or business relationships.

A person may have a reduced expectation of privacy when in a public place. But covert surveillance of their activities in public may still result in the obtaining of private information.

This principle applies equally to the online world, including social media sites, where access controls set by the owner of the information may be a determining factor in considering whether information posted on the internet is publicly available or whether, by applying the access controls, the owner has removed the information from a wholly public space to a more private space where the information could be considered private.

Covert Human Intelligence Source (CHIS)

Under section 26(8) of RIPA, a person is a CHIS if he establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything below:

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

The making and acceptance of a friend's request may constitute some interaction with a person; however it is minimal and is unlikely to satisfy the definition of a relationship. Authorisation as a CHIS need only be sought when it is anticipated that the relationship will be developed beyond this initial contact.

Computer Misuse Act 1990

Sections 1-3 of the Computer Misuse Act 1990 introduced three criminal offences:

- **unauthorised access to computer material;**
- **unauthorised access with intent to commit or facilitate commission of further offences; and**
- **unauthorised modification of computer material.**

The basic offence is to attempt or achieve access to a computer or the data it stores, by inducing a computer to perform any function with intent to secure access. The precondition to liability is to be aware that the access attempted is unauthorised. Thus the following activities may constitute the offence:

- **to use another person's username and password without lawful authority or consent to access data or a program;**
- **to alter, delete, copy or move a program or data;**
- **to impersonate that other person using e-mail, on-line chat or other web based services.**

Retention and processing of information. General Data Protection Regulation 2016/679 and the Data Protection Act 2018 and other relevant legislation / guidance

The GDPR and the DPA deals with how material obtained must be handled. The Data Protection guiding principles are that personal data must be processed fairly and lawfully, must not be processed in a manner that is not compatible with the purpose for which it was obtained, must be relevant and adequate but not excessive and must not be kept longer than is required.

Much of the information gathered by online research and investigation will meet the definition of personal data. Case law has established that the processing of personal data is capable of interfering with a person's Article 8 right to respect for their private and family life, irrespective of whether the information was obtained under the authority of RIPA or otherwise.

For any interference with a person's Article 8 rights resulting from the processing of such information to be in accordance with the law, as required by Article 8.2, it is therefore essential that all information so obtained is processed in accordance with the principles of the GDPR and DPA.

Please refer to the Nottingham City Council's Data Protection Act policy and Guidance for further information.

The retention of material obtained in a criminal investigation is also subject to the provisions of the Criminal Procedure and Investigations Act 1996 and its associated Code of Practice. This Act sets out a number of statutory criteria for the handling and retention of such material.

Covert Surveillance and Property Interference Code of practice – 2018 – Online Covert Activity Page 18.

3.10 The growth of the internet, and the extent of the information that is now available online, presents new opportunities for public authorities to view or gather information which may assist them in preventing or detecting crime or carrying out other statutory functions, as well as in understanding and engaging with the public they serve. It is important that public authorities are able to make full and lawful use of this information for their statutory purposes. Much of it can be accessed without the need for RIPA authorisation; use of the internet prior to an investigation should not normally engage privacy considerations. But if the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, RIPA authorisations may need to be considered. The following guidance is intended to assist public authorities in identifying when such authorisations may be appropriate.

3.11 The internet may be used for intelligence gathering and/or as a surveillance tool. Where online monitoring or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for directed surveillance should be considered, as set out elsewhere in this code. Where a person acting on behalf of a public authority is intending to engage with others online without disclosing his or her identity, a CHIS authorisation may be needed (paragraphs 4.10 to 4.16 of the Covert Human Intelligence Sources code of practice provide detail on where a CHIS authorisation may be available for online activity).

3.12 In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject(s) knowing that the surveillance is or may be taking place. Use of the internet itself may be considered as adopting a surveillance technique calculated to ensure that the subject is unaware of it, even if no further steps are taken to conceal the activity. Conversely, where a public authority has taken reasonable steps to inform the public or particular individuals that the surveillance is or may be taking place, the activity may be regarded as overt and a directed surveillance authorisation will not normally be available.

3.13 As set out in paragraph 3.14 below, depending on the nature of the online platform, there may be a reduced expectation of privacy where information relating to a person or group of people is made openly available within the public domain, however in some circumstances privacy implications still apply. This is because the intention when making such information available was not for it to be used for a covert purpose such as investigative activity. This is regardless of whether a user of a website or social media platform has sought to protect such information by restricting its access by activating privacy settings.

3.14 Where information about an individual is placed on a publicly accessible database, for example the telephone directory or Companies House, which is commonly used and known to be accessible to all, they are unlikely to have any reasonable expectation of privacy over the monitoring by public authorities of that information. Individuals who post information on social media networks and other websites whose purpose is to communicate messages to a wide audience are also less likely to hold a reasonable expectation of privacy in relation to that information.

3.15 Whether a public authority interferes with a person's private life includes a consideration of the nature of the public authority's activity in relation to that information. Simple reconnaissance of such sites (i.e. preliminary examination with a view to establishing whether the site or its contents are of interest) is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation. But where a public authority is systematically collecting and recording information about a particular person or group, a directed surveillance authorisation should be considered. These considerations apply regardless of when the information was shared online.

Example 1: *A police officer undertakes a simple internet search on a name, address or telephone number to find out whether a subject of interest has an online presence. This is unlikely to need an authorisation. However, if having found an individual's social media profile or identity, it is decided to monitor it or extract information from it for retention in a record because it is relevant to an investigation or operation, authorisation should then be considered.*

Example 2: *A customs officer makes an initial examination of an individual's online profile to establish whether they are of relevance to an investigation. This is unlikely to need an authorisation. However, if during that visit it is intended to extract and record information to establish a profile including information such as identity, pattern of life, habits, intentions or associations, it may be advisable to have in place an authorisation even for that single visit. (As set out in the following paragraph, the purpose of the visit may be relevant as to whether an authorisation should be sought.)*

Example 3: *A public authority undertakes general monitoring of the internet in circumstances where it is not part of a specific, ongoing investigation or 20*

should be sought for accessing information on a website as part of a covert investigation or operation, it is necessary to look at the intended purpose and scope of the online activity it is proposed to undertake. Factors that should be considered in establishing whether a directed surveillance authorisation is required include:

3.16 In order to determine whether a directed surveillance authorisation should be sought for

accessing information on a website as part of a covert investigation or operation, it is necessary to look at the intended purpose and scope of the online activity it is proposed to undertake. Factors that should be considered in establishing whether a directed surveillance authorisation is required include:

- Whether the investigation or research is directed towards an individual or organisation;
- Whether it is likely to result in obtaining private information about a person or group of people (taking account of the guidance at paragraph 3.6 above);
- Whether it is likely to involve visiting internet sites to build up an intelligence picture or profile;
- Whether the information obtained will be recorded and retained;
- Whether the information is likely to provide an observer with a pattern of lifestyle;
- Whether the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private life;
- Whether the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);
- Whether it is likely to involve identifying and recording information about third parties, such as friends and family members of the subject of interest, or information posted by third parties, that may include private information and therefore constitute collateral intrusion into the privacy of these third parties.

3.17 Internet searches carried out by a third party on behalf of a public authority, or with the use of a search tool, may still require a directed surveillance authorisation (see paragraph 4.32).

Example: *Researchers within a public authority using automated monitoring tools to search for common terminology used online for illegal purposes will not normally require a directed surveillance authorisation. Similarly, general analysis of data by public authorities either directly or through a third party for predictive purposes (e.g. identifying crime hotspots or analysing trends) is not usually directed surveillance. In such cases, the focus on individuals or groups is likely to be sufficiently cursory that it would not meet the definition of surveillance. But officers should be aware of the possibility that the broad thematic research may evolve, and that authorisation may be appropriate at the point where it begins to focus on specific individuals or groups.*

4.11 Any member of a public authority, or person acting on their behalf, who conducts activity on the internet in such a way that they may interact with others, whether by publicly open websites such as an online news and social networking service, or more private exchanges such as e-messaging sites, in circumstances where the other parties could not reasonably be expected to know their true identity¹², should consider whether the activity requires a CHIS authorisation. A directed surveillance authorisation should also be considered, unless the acquisition of that information is or will be covered by the terms of an applicable CHIS authorisation.

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Online Covert Activity

4.12 Where someone, such as an employee or member of the public, is tasked by a public authority to use an internet profile to establish or maintain a relationship with a subject of interest for a covert purpose, or otherwise undertakes such activity on behalf of the public authority, in order to obtain or provide access to information, a CHIS authorisation is likely to be required. For example:

- An investigator using the internet to engage with a subject of interest at the start of an operation, in order to ascertain information or facilitate a meeting in person.

- Directing a member of the public (such as a CHIS) to use their own or another internet profile to establish or maintain a relationship with a subject of interest for a covert purpose.
 - Joining chat rooms with a view to interacting with a criminal group in order to obtain information about their criminal activities.
- 4.13 A CHIS authorisation will not always be appropriate or necessary for online investigation or research. Some websites require a user to register providing personal identifiers (such as name and phone number) before access to the site will be permitted. Where a member of a public authority sets up a false identity for this purpose, this does not in itself amount to establishing a relationship, and a CHIS authorisation would not immediately be required, though consideration should be given to the need for a directed surveillance authorisation if the conduct is likely to result in the acquisition of private information, and the other relevant criteria are met.

Example 1: An HMRC officer intends to make a one-off online test purchase of an item on an auction site, to investigate intelligence that the true value of the goods is not being declared for tax purposes. The officer concludes the purchase and does not correspond privately with the seller or leave feedback on the site. No covert relationship is formed and a CHIS authorisation need not be sought.

Example 2: HMRC task a member of the public to purchase goods from a number of websites to obtain information about the identity of the seller, country of origin of the goods and banking arrangements. The individual is required to engage with the seller as necessary to complete the purchases. The deployment should be covered by a CHIS authorisation because of the intention to establish a relationship for covert purposes.

4.14 Where a website or social media account requires a minimal level of interaction, such as sending or receiving a friend request before access is permitted, this may not in itself amount to establishing a relationship. Equally, the use of electronic gestures such as “like” or “follow” to react to information posted by others online would not in itself constitute forming a relationship. However, it should be borne in mind that entering a website or responding on these terms may lead to further interaction with other users and a CHIS authorisation should be obtained if it is intended for an officer of a public authority or a CHIS to engage in such interaction to obtain, provide access to or disclose information.

Example 1: An officer maintains a false persona, unconnected to law enforcement, on social media sites in order to facilitate future operational research or investigation. As part of the legend building activity he “follows” a variety of people and entities and “likes” occasional posts without engaging further. No relationship is formed and no CHIS authorisation is needed.

Example 2: The officer sends a request to join a closed group known to be administered by a subject of interest, connected to a specific investigation. A directed surveillance authorisation would be needed to cover the proposed covert monitoring of the site. Once accepted into the group it becomes apparent that further interaction is necessary. This should be authorised by means of a CHIS authorisation.

4.15 When engaging in conduct as a CHIS, 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 considering the need for authorisation. Full consideration should be given to the potential risks posed by that activity.

4.16 Where use of the internet is part of the tasking of a CHIS, the risk assessment carried out in accordance with section 6.13 of this code should include consideration of the risks arising from that online activity including factors such as the length of time spent online and

the material to which the CHIS may be exposed. This should also take account of any disparity between the technical skills of the CHIS and those of the handler or authorising officer, and the extent to which this may impact on the effectiveness of oversight.

4.17 Where it is intended that more than one officer will share the same online persona, each officer should be clearly identifiable within the overarching authorisation for that operation, providing clear information about the conduct required of each officer and including risk assessments in relation to each officer involved.

Using the Internet for Investigative Purposes

1. Staff using the internet for investigative purposes must not use their own personal devices (PC, laptop, tablet, smart phone etc.) as a means of accessing the internet. It is important to bear in mind that all internet activity leaves a footprint. Websites routinely gather IP addresses and in some cases use data trawling software to gather more intrusive information from the device used, which is then potentially traceable.
2. Staff must not, under any circumstances, use their own personal Social Networking Sites (SNS) profiles or other online accounts to undertake investigative research. There have been cases where such practices have resulted in the safety of officers and their families being seriously compromised.
3. In order that the Local Authority can effectively manage online overt and covert profiles/accounts i.e. SNS profiles, Auction Site accounts, email accounts etc., which have been created for investigative purposes using false details, details of the investigation must be entered in a Local Authority log.
4. If a Local Authority officer wishes to look at a SNS site covertly i.e. by setting up false identity they should use a Nottingham City Council computer and use a Nottingham City Council social networking account. Any monitoring of SNS accounts should be recorded in a log.
5. When setting up a covert online account staff must not adopt the identity of a person known, or likely to be known, to the subject of interest or users of the site.
6. It should be noted that the viewing of open source material via the internet, by overt means, will not usually amount to obtaining private information as the material is publicly available. It is therefore unlikely that activity of this nature will require an authorisation under RIPA, unless there are repeated viewings, in which case legal advice should be sought.
7. Staff engaged in open source SNS research must not attempt to defeat privacy settings by submitting friend's requests to subjects in order to gain access to the information held in the private areas of their profiles. Such activity, dependent on the objective, would require at least a directed surveillance authority (DSA) and may require a CHIS authority if any form of interaction is required. Advice should be sought from Legal/ Information compliance if there is a need to deploy this tactic.

8. Staff with access to covert SNS profiles must not befriend other SNS users in order to build the credibility of their profiles. Such enhancements are not necessary for open source research as a covert profile will only become visible if some form of interaction takes place i.e. a friends request is submitted. Furthermore it is important to bear in mind that such activity would represent a breach of the ECHR as it effectively enables the Local Authority to access the personal information of unsuspecting SNS users without the necessary justification.
9. Staff conducting open source research must not engage in any form of interaction with other internet users irrespective of the forum i.e. any form of instant messaging, email etc.
10. The Covert Surveillance and Property Interference code of practice 2018 and the Covert Human Intelligence Sources Code of practice - 2018 should be adhered to when carrying out criminal investigations on the internet.

Advice should be sought from Legal and Governance as to whether a RIPA authorisation is required.

Equality Impact Assessment Form


screenip-sectionA

1. Document Control

1. Control Details

Title:	Updated Regulation of Investigatory Powers (RIPA) Policy		
Author (assigned to Pentana):	Naomi Matthews – RIPA Co-ordinating Officer		
Director:	Malcolm Townroe – Director for Legal and Governance Services		
Department:	Legal and Governance		
Service Area:	Data Protection		
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Strategic Budget EIA: Y/N	N		
Exempt from publication Y/N	N		

2. Document Amendment Record

Version	Author	Date	Approved
1.	Naomi Matthews	29 March 2019	

3. Contributors/Reviewers

Name	Position	Date

[illegible]

2. Assessment

Updated Regulation of Investigatory Powers (RIPA) Policy and Guidance.

2. Information used to analyse the effects on equality:

3. Impacts and Actions:

<u>screen tip-sectionD</u>	Could particularly benefit X	May adversely impact X
People from different ethnic groups.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Men	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Women	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Trans	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Disabled people or carers.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Pregnancy/ Maternity	<input checked="" type="checkbox"/>	<input type="checkbox"/>
People of different faiths/ beliefs and those with none.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Lesbian, gay or bisexual people.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Older	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Younger	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other (e.g. marriage/ civil partnership, looked after children, cohesion/ good relations, vulnerable children/ adults).		
<i>Please underline the group(s) /issue more adversely affected or which benefits.</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<u>screen tip-sectionE</u>	<u>screen tip-sectionF</u>
How different groups could be affected (Summary of impacts)	Details of actions to reduce negative or increase positive impact (or why action isn't possible)
All citizens but particularly protected groups of persons will benefit from the Council having an updated Policy and Guidance in relation	Inherent within the Policy and Guidance are processes which safeguard against unlawful and intrusive surveillance. The

<p>to RIPA. The main impact of such a policy is to prevent unnecessary and intrusive surveillance which has the potential to breach a person's human rights if not carried out in an authorised manner.</p>	<p>Council appoints and trains Authorised Officers to have the responsibility to review, approve or reject applications from Officers to undertake covert surveillance. The Act requires that there is a Senior Responsible Officer (SRO) in place with responsibility for the oversight of RIPA across the Authority and this position is currently held by the Director of Legal and Governance Services.</p>
<p>The Regulation of Investigatory Powers Act 2000 ("RIPA") provides a statutory framework which regulates the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities.</p>	<p>Investigating officers who are in positions and teams most likely to use surveillance must undertake annual refresher training in relation to RIPA.</p>
<p>The Act requires that Public Authorities (including local authorities) use covert techniques in a way that is necessary, proportionate and compatible with human rights.</p>	<p>Training and workshops in relation to RIPA are already offered generally across the Council.</p>
<p>The submission of the updated Policy and guidance is pursuant to previous recommendations made to the City Council by the Office of Surveillance Commissioners as part of their inspection report in April 2016 recommending that the Council raise the formality level of the Policy with Elected Members and also across the wider organisation in order to safeguard against inadvertent, unauthorised surveillance.</p>	<p>Plans are in place to ensure that newly elected Members are trained on information governance and RIPA as part of their Member Induction Programme after the May 2019 elections. It is noted that Elected Members are not part of the decision making process in relation to RIPA applications, however it is imperative that the level of seriousness in relation to this Policy is understood across the organisation.</p>
	<p>An Online Training Module in relation to RIPA is to be made available via Learning Zone by June 2019. Officers identified as having this training need will be required to complete the module.</p>
	<p>All of the above activity is either to raise awareness to prevent inadvertent surveillance and/or to ensure that any authorised activity is carried in accordance with RIPA.</p>

4. Outcome(s) of equality impact assessment:

<input checked="" type="checkbox"/>	No major change needed	<input type="checkbox"/>	Adjust the policy/proposal
<input type="checkbox"/>	Adverse impact but continue	<input type="checkbox"/>	Stop and remove the policy/proposal

5. Arrangements for future monitoring of equality impact of this proposal / policy / service:

1. Compliance against this Policy will be monitored annually by the Council's Audit Committee within a wider assurance report on information governance.
2. The Policy is proposed for regular review and scrutiny by the Council's Overview and Scrutiny function and any future updates will be reported to the Executive Board for review and approval. Each will require a review of the equality impact.
3. Inherent within the Policy and Guidance are processes and safeguards to ensure that surveillance is only carried out when necessary and proportionate.

Within all of the above, there will be a continuing need to monitor the equality impact of the policy.

6. Approved by (manager signature) and Date sent to equality team for publishing:

Approving Manager: The assessment must be approved by the manager responsible for the service/proposal. Include a contact tel & email to allow citizen/stakeholder feedback on proposals.	Date sent for scrutiny: Send document or Link to: equalityanddiversityteam@nottinghamcity.gov.uk
SRO Approval:	
Date of final approval:	

Before you send your EIA to the Equality and Community Relations Team for scrutiny, have you:

1. Read the guidance and good practice EIA's
<http://intranet.nottinghamcity.gov.uk/media/1924/simple-guide-to-eia.doc>

2. Clearly summarised your proposal/ policy/ service to be assessed.
3. Hyperlinked to the appropriate documents.
4. Written in clear user-friendly language, free from all jargon (spelling out acronyms).
5. Included appropriate data.
6. Consulted the relevant groups or citizens or stated clearly, when this is going to happen.
7. Clearly cross-referenced your impacts with SMART actions.

Document is Restricted

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