

To: All Councillors

Our Ref CS/KK  
Contact Krystyna Kowalewska kkowalewska@westsomerset.gov.uk  
Date 11 August 2015

**THE PRESS AND PUBLIC ARE WELCOME TO ATTEND THE MEETING  
THIS DOCUMENT CAN BE MADE AVAILABLE IN LARGE PRINT, BRAILLE, TAPE FORMAT  
OR IN OTHER LANGUAGES ON REQUEST**

Dear Councillor

I hereby give you notice to attend the following meeting:

**COUNCIL MEETING**

**Date: Wednesday 19 August 2015**  
**Time: 4.30 pm**  
**Venue: Council Chamber, Council Offices, Williton**

Please note that this meeting may be recorded. At the start of the meeting the Chairman will confirm if all or part of the meeting is being recorded.

You should be aware that the Council is a Data Controller under the Data Protection Act. Data collected during the recording will be retained in accordance with the Council's policy.

Therefore unless you advise otherwise, by entering the Council Chamber and speaking during Public Participation you are consenting to being recorded and to the possible use of the sound recording for access via the website or for training purposes. If you have any queries regarding this please contact Committee Services on 01643 703704.

Yours sincerely



**BRUCE LANG**  
Proper Officer

## RISK SCORING MATRIX

Report writers score risks in reports uses the scoring matrix below

**Risk Scoring Matrix**

<b>Likelihood</b>	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
<b>Impact</b>							

<b>Likelihood of risk occurring</b>	<b>Indicator</b>	<b>Description (chance of occurrence)</b>
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

- Mitigating actions for high ('High' or above) scoring risks are to be reflected in Service Plans, managed by the Group Manager and implemented by Service Lead Officers;
- Lower scoring risks will either be accepted with no mitigating actions or included in work plans with appropriate mitigating actions that are managed by Service Lead Officers.

## WEST SOMERSET DISTRICT COUNCIL

Meeting to be held on Wednesday 19 August 2015 at 4.30 pm

Council Chamber, Williton

### AGENDA

1. Apologies for Absence

2. Minutes

Minutes of the Meeting of Council held on 22 July 2015 to be approved and signed as a correct record – **SEE ATTACHED.**

3. Declarations of Interest

To receive and record any declarations of interest in respect of any matters included on the agenda for consideration at this meeting.

4. Public Participation

The Chairman to advise the Committee of any items on which members of the public have requested to speak and advise those members of the public present of the details of the Council's public participation scheme.

For those members of the public wishing to speak at this meeting there are a few points you might like to note.

A three-minute time limit applies to each speaker and you will be asked to speak before Councillors debate the issue. There will be no further opportunity for comment at a later stage. Your comments should be addressed to the Chairman and any ruling made by the Chair is not open to discussion. If a response is needed it will be given either orally at the meeting or a written reply made within five working days of the meeting.

5. Chairman's Announcements

6. Corporate Debt Policy

To consider Report No. WSC 124/15, to be presented by Councillor M Chilcott, Lead Member for Resources and Central Support – **SEE ATTACHED.**

The purpose of the report is to introduce the new Corporate Debt Policy.

7. Revenue and Capital Outturn Report 2014/15

To consider Report No. WSC 125/15, to be presented by Councillor M Chilcott, Lead Member for Resources and Central Support – **SEE ATTACHED.**

The purpose of the report is to provide Members with details of the Council's financial outturn position for both revenue and capital budgets, together with

information regarding end of year reserve balances, for the financial year 2014/15.

**8. Clanville Grange Purchase**

To consider Report No. WSC 126/15, to be presented by Councillor K Turner, Lead Member for Housing, Health and Wellbeing – **SEE ATTACHED**.

The purpose of the report is to request approval of a supplementary capital estimate for the purchase of a property at Clanville Grange, Minehead.

**9. Regulation of Investigatory Powers Act (RIPA) Policy**

To consider Report No. WSC 127/15, to be presented by Councillor S Pugsley, Lead Member for Executive Support and Democracy.

The purpose of the report is to advise the Council on the outcome of the review of the Council's management of covert activities and to seek endorsement of the actions taken/required to implement recommendations emanating from the review.

**10. Standards Advisory Committee**

To adopt the minutes of the Standards Advisory Committee held on 16 June 2015 – **SEE ATTACHED**.

**COUNCILLORS ARE REMINDED TO CHECK THEIR POST TRAYS**

**The Council's Vision:**

**To enable people to live, work and prosper in West Somerset**

**The Council's Corporate Priorities:**

- Local Democracy:  
Securing local democracy and accountability in West Somerset, based in West Somerset, elected by the people of West Somerset and responsible to the people of West Somerset.
- New Nuclear Development at Hinkley Point  
Maximising opportunities for West Somerset communities and businesses to benefit from the development whilst protecting local communities and the environment.

**The Council's Core Values:**

- Integrity
- Fairness
- Respect
- Trust

**WEST SOMERSET COUNCIL**

**Minutes of the Meeting held on 22 July 2015 at 4.30 pm**

**in the Council Chamber, Williton**

**Present:**

Councillor G S Dowding ..... Chairman  
Councillor B Heywood ..... Vice-Chairman

Councillor I Aldridge  
Councillor A Behan  
Councillor M O A Dewdney  
Councillor A P Hadley  
Councillor I Jones  
Councillor B Maitland-Walker  
Councillor J Parbrook  
Councillor R Thomas  
Councillor A H Trollope-Bellew  
Councillor D J Westcott

Councillor D Archer  
Councillor M J Chilcott  
Councillor S Y Goss  
Councillor T Hall  
Councillor R P Lillis  
Councillor K M Mills  
Councillor S J Pugsley  
Councillor N Thwaites  
Councillor T Venner  
Councillor R Woods

**Officers in Attendance:**

Chief Executive (P James)  
Director of Operations/Section 151 Officer (S Adam)  
Assistant Chief Executive/Monitoring Officer (B Lang)  
Assistant Director Operational Delivery (C Hall)  
Assistant Director Energy Infrastructure (A Goodchild)  
Economic Regeneration and Tourism Manager (C Matthews)  
Media and Communications Officer (D Rundle)  
Meeting Administrator (K Kowalewska)

**C28      Apologies for Absence**

Apologies for absence were received from Councillors R Clifford, H J W Davies, B Leaker, C Morgan, P Murphy and K Turner.

**C29      Minutes**

(Minutes of the meeting of Council held on 17 June 2015, circulated with the Agenda.)

**RESOLVED** that, subject to the inclusion of Councillor R Thomas declaring an interest in his capacity as a Member of Minehead Town Council, the Minutes of the meeting of Council held on 17 June 2015 be confirmed as a correct record.

**C30      Declarations of Interest**

Members present at the meeting declared the following personal interests in their capacity as a Member of a County, Parish or Town Council:

<b>Name</b>	<b>Minute No.</b>	<b>Member of</b>	<b>Action Taken</b>
Cllr I Aldridge	All	Williton	Spoke and voted
Cllr D Archer	All	Minehead	Spoke and voted
Cllr S Goss	All	Stogursey	Spoke and voted
Cllr B Maitland-Walker	All	Carhampton	Spoke and voted
Cllr J Parbrook	All	Minehead	Spoke and voted
Cllr R Thomas	All	Minehead	Spoke and voted
Cllr N Thwaites	All	Dulverton	Spoke and voted
Cllr A H Trollope-Bellew	All	Crowcombe	Spoke and voted
Cllr T Venner	All	Minehead & SCC	Spoke and voted
Cllr D J Westcott	All	Watchet	Spoke and voted

In addition, the following interests were declared:

<b>Name</b>	<b>Minute No.</b>	<b>Description of interest</b>	<b>Personal or Prejudicial</b>	<b>Action Taken</b>
Cllr D Archer	C36	Landlord	Personal	Spoke and voted
Cllr M Chilcott	C36	Landlord	Personal	Spoke and voted
Cllr G S Dowding	C36	Landlord	Personal	Spoke and voted
Cllr S Pugsley	C36	Landlord	Personal	Spoke and voted
Cllr A Trollope-Bellew	C36	Landlord	Personal	Spoke and voted
Cllr D Westcott	C36	Landlord	Personal	Spoke and voted

**C31 Public Participation**

No members of the public spoke at the meeting on any items on the agenda.

**C32 Chairman's Announcements**

12 July 2015	Attended Sedgemoor District Council's Civic Service in Cannington
13 July 2015	Attended the funeral of Rob Johnson who served in the Burma Campaign and who would be much missed, especially by the Burma Star Association

The Chairman advised Members that VJ Day would be commemorated on 15 August 2015 in Blenheim Gardens, Minehead and hoped that many would attend the Burma Star memorial service in the morning.

**C33 HPC Planning Obligations Board – Allocations of CIM Funding**

(Report No. WSC 115/15, circulated with the Agenda.)

The purpose of the report was to present the recommendations of the Hinkley Point C Planning Obligations Board (HPC POB) and West Somerset Council Cabinet, for the allocation of monies from the Community Impact Mitigation (CIM) Fund secured through the Section 106 legal agreement for the Site Preparation Works at Hinkley Point.

The Lead Member for Resources and Central Support presented the item and provided Members with the background information, as well as a brief outline of the applications which had been considered by the HPC POB and Cabinet. The Lead Member emphasised that it was vital for applicants to provide as much relevant information as possible about the project in order to make the application stronger and that there was a need to take on board the POB's comments. The Council would be able to offer advice and there was a second opportunity for unsuccessful applicants to resubmit a revised application. Attention was drawn to the financial and resource implications contained within the report and to the current approved and uncommitted balances for the HPC CIM fund. She advised that the allocation of monies from the CIM fund did not have an impact on the Council's funds and resources but did enable the community to deliver great projects.

The Lead Member proposed the recommendations of the report, which were seconded by Councillor M Dewdney.

During the discussion, the following main points were raised:

- It was hoped that the issues raised by POB in respect of the Holford and District Village Hall Amenity Enhancement Project and the Kilve Village Hall Refurbishment would be addressed by the applicants and that a more positive outcome would be achieved following the resubmission of these applications.
- Clarification was provided on the need for applicants to provide evidence of engaging with young people in the process.
- Interrelationship work with Stogursey, Holford and Kilve parishes would be undertaken by Engage to help all three committees/parish councils to develop a complementary offer and activities for the community.

**RESOLVED (1)** that the decision of the Planning Obligations Board to award funding of £750 to Stogursey Football Club for the purchase of removable goal posts from the Small Grant allocation of the CIM Fund be noted.

**RESOLVED (2)** that the recommendations of the Hinkley Point C Planning Obligations Board and Cabinet be endorsed, as follows:

- That the Holford and District Village Hall application for £507,984 is refused as it does not demonstrate value for money given the level of funding sought relative to the size of the community who would benefit and the lack of match funding.
- That the Kilve Village Hall Refurbishment application for £54,290 is refused given lack of a link between the refurbishment and the impacts that HPC will cause.
- That the North Petherton Playing Fields application for £46,000 is approved subject to securing the remaining match funding and the grant of planning permission.

- That the Sydenham Together application for £60,000 is approved.

**C34 Request for Allocation of Planning Obligations Funding**

(Report No. WSC 112/15, circulated with the Agenda.)

The purpose of the report was to make proposals for the allocation of monies secured through planning obligations to individual schemes.

The item was presented by the Lead Member for Resources and Central Support who reported that this would not impact on the use of un-ring-fenced capital resources (capital receipts). She went on to propose the recommendation which was seconded by Councillor M Dewdney.

**RESOLVED** that the allocation of £149,500 for phase 1 of the Williton Pavilion project to be added to the capital programme and funded from planning obligations contributions be approved.

**C35 Hinkley Point C: Section 106 Agreement – Provisional Allocation of Leisure Contribution**

(Report No. WSC 111/15, circulated with the Agenda.)

The purpose of the report was for Council to consider the list of projects set out within the report and agree that they were invited to make application within the allocation of £250,000 paid from the Section 106 agreement for Site Preparation Works at Hinkley Point C. The projects would then be asked to submit information via an application process similar to that provided for other Section 106 agreement allocations before any release of funding, including the desire to see match funding.

In the absence of the Lead Member for Energy Infrastructure the report was presented by the Leader who proposed the recommendations of the report which were duly seconded by Councillor S J Pugsley.

Concern was expressed as it was felt that there was slight ambiguity concerning the 'key facts on West Somerset which the Leisure Fund could impact upon', and it was questioned whether the statistics related to the whole of the West Somerset district; clarification was also sought as to whether the outlining villages and towns were disadvantaged. Assurance was provided that all parish and town councils had been written to and advertisements were placed in the West Somerset Free Press which gave the whole of the community full opportunity to partake in the consultation process which took place as part of the feasibility study undertaken by the Somerset Sports Action Partnership (SASP).

It was noted that SASP had agreed to work with organisations to help develop funding bids with the aim of leveraging in significant match funding. Members acknowledged the challenges faced by the community groups to achieve these projects and wished them all well.



**RESOLVED (1)** that the list of projects at paragraph 5.4 of the report be invited to make an application within the allocation of £250,000 paid from the Section 106 agreement for Site Preparation Works at Hinkley Point C.

**RESOLVED (2)** that delegated powers be granted to the Lead Member for Resources and Central Support, the Lead Member for Energy Infrastructure, the Lead Member for Community and Customer and the Assistant Director Energy Infrastructure to grant monies to projects in accordance with the list of projects at paragraph 5.4 of the report upon receipt of the necessary financial and governance information.

**C36**     **HPC Section 106 – Housing Funding Strategy: Amendment to Private Sector Renewal Policy**

(Report No. WSC 110/15, circulated with the Agenda.)

The purpose of the report was for Members to consider and approve the attached amendment, at Appendix 1 to the report, to the Somerset West Private Sector Housing Renewal Policy, which set out the types of financial assistance that the Council could offer owner occupiers and landlords to carry out essential repairs on their property, and to bring empty properties back into use. The Policy needed to be amended in order to be able to offer the grants and loans for empty properties, Landlord Accreditation and the Living Over the Shops grant, contained within the Hinkley Housing Funding Strategy approved by West Somerset Council on 19 November 2014.

In the absence of the Lead Member for Housing, Health and Wellbeing the Lead Member for Environment presented the report, providing background information. He proposed the recommendation of the report which was duly seconded by Councillor M Chilcott.

**RESOLVED** that the amendments to the Private Sector Housing Renewal Policy be approved.

**C37**     **Allocation of HPC S106 Tourism Information Funds**

(Report No. WSC 113/15, circulated with the Agenda.)

The purpose of the report was to consult with Council on a suggested approach for the allocation of the HPC S106 Phase 2 (Part Two) Visitor Information funds.

The Lead Member for Regeneration and Economic Growth presented the item and outlined the details contained within the report; she also provided an explanation on the resource allocation to-date and the reasons why it had been agreed to utilise less than half of the allocation available. The Lead Member stated that tourist information centres were vital assets to the community and businesses who rely on them for tourism and thanked the many volunteers for their hard work and commitment. She went on to propose the recommendation of the report which was duly seconded by Councillor D Westcott.

**RESOLVED** that the allocation of the Phase 2 (Part Two) S106 tourism allocation of £50,000 to those Local Authorities and Visitor Centres identified as requiring support by the Local Authorities party to the S106 Agreement be agreed as follows:

- £20,000 to West Somerset Council for the purposes of supporting Minehead, Porlock and Watchet Visitor Information Services.
- £20,000 to Sedgemoor District Council for the purposes of supporting Burnham-on-Sea, Cheddar and Bridgwater Tourism Information Services.
- £10,000 reserved for Somerset County Council to be released upon production of a fully costed proposal to be submitted to the Hinkley Tourism Action Partnership for delegated approval.

**C38**      **Annual Treasury Management Review 2014/15**

(Report No. WSC 114/15, circulated with the Agenda.)

The purpose of the report was to review the treasury management activity and the performance against the Prudential Indicators for the 2014/15 financial year as prescribed by the revised Chartered Institute of Public Finance and Accountancy (CIPFA) Code of Practice and in accordance with the Council's Treasury Management Strategy and Annual Investment Policy.

The Lead Member for Resources and Central Support presented the item and highlighted the key points contained within the report. She proposed the recommendation of the report which was seconded by Councillor A Trollope-Bellew.

Various questions were raised regarding short term and internal borrowing, and in response the Director of Operations advised that the Council had borrowed £1m from the Police and Crime Commissioner for West Yorkshire. It was noted that a seminar would be arranged, hosted by Arlingclose, the Council's treasury management advisors, to help Members gain a better understanding of treasury management matters, and the Chairman urged everyone to attend.

**RESOLVED** that the Treasury Management activity for the 2014/15 financial year (attached at Appendix A to the report) be noted.

**C39**      **Minutes and Notes for Information**

(Minutes and Notes relating to this item, circulated via the Council's website.)

**RESOLVED (1)** that the notes of the Watchet, Williton and Quantock Vale Area Panel held on 9 June 2015 be noted.

**RESOLVED (2)** that the notes of the Minehead Area Panel held on 10 June 2015 be noted.

**RESOLVED (3)** that the notes of the Exmoor Area Panel held on 18 June 2015 be noted.

**C40**      **Exclusion of the Press and Public**

**RESOLVED** that the press and public be excluded from the meeting during consideration of C41 on the grounds that, if the press and public were present during that item, there would be likely to be a disclosure to them of exempt information of the class specified in Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 as amended as follows:

The item contained information that could release confidential information relating to the financial or business affairs of any particular person (including the authority holding that information). It was therefore proposed that after consideration of all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**C41**      **Street and Toilet Cleaning Services Contract**

(Report No. WSC 117/15, circulated prior to the Meeting.)

The report set out the history of the Veolia contract and sought support from Council Members to extend this for a further 12 months.

The Lead Member for Environment presented the item and outlined the details contained within the report.

The Lead Member proposed the recommendations which were seconded by Councillor A Trollope-Bellew.

**RESOLVED (1)** that the existing contract be extended for 12 months.

**RESOLVED (2)** that the use of the savings to deliver the functions as identified be supported.

The meeting closed at 5.29 pm.

*Report Number:* WSC 124/15  
*Presented by:* Cllr Mandy Chilcott  
*Author of the Report:* Steve Perkins  
*Contact Details:*  
*Tel. No. Direct Line* 01984 635247  
*Email:* srperkins@westsomerset.gov.uk

*Report to a Meeting of:* Full Council  
*To be Held on:* 19 August 2015  
*Date Entered on Executive Forward Plan  
Or Agreement for Urgency Granted:*

## **CORPORATE DEBT POLICY**

### **1. PURPOSE OF REPORT**

- 1.1 To introduce a new Corporate Debt Policy (“the Policy”).
- 1.2 The Policy is key in outlining operational debt recovery activities for a range of debt types. It is essential that all monies owed to the Council are actively pursued. The Policy therefore reflects a range of measures to help customers pay sums due, maximising the level of resources available to support front line public services.
- 1.3 The Policy is underpinned by the following key principles:
  - taking early and co-ordinated debt recovery action;
  - taking account of all relevant circumstances relating to the debt;
  - offering a range of payment methods to make it easier to settle debts;
  - providing links to debt advice; and
  - adopting a debt hierarchy to prioritise those debts where non-payment could directly impact on an individual’s wellbeing.

### **2. CONTRIBUTION TO CORPORATE PRIORITIES**

- 2.1 West Somerset recognises the importance of fair treatment and are committed to ensuring everyone has access to its services. The Policy will make sure everyone is treated equally and fairly.

### **3. RECOMMENDATIONS**

- 3.1 That Full Council:
  - (a) approve the adoption of the new Policy detailed in [Appendix 1](#)
  - (b) note the Council’s commitment to engage with those customers in debt, helping them to pay by providing advice and guidance and involving relevant welfare and debt agencies; and

(c) note the Policy will be reviewed on an annual basis, taking into account changes in legislation, service improvements, regulations and wider policy initiatives.

#### 4. **RISK ASSESSMENT (IF APPLICABLE)**

- 4.1 The scoring of the risks identified in the table below has been based on the scoring matrix. Each risk has been assessed and scored both before and after the mitigation measures have been actioned.

**Risk Matrix**

<b>Description</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Overall</b>
The lack of a Corporate Debt Policy would expose the Council to the risk that we do not recover debts effectively or consistently thereby resulting in a potential loss of income.	4	4	16
<i>The risk is managed by ensuring a robust but sensitive Corporate Debt Policy is in place that endeavours to collect the maximum amounts possible over a period of time.</i>	2	3	6
In introducing a Corporate Debt Policy there is reputation risk to the Council, as we utilise stronger collection processes at a time when our customers are looking for more flexibility, rather than less.	3	3	9
<i>The risk is managed by ensuring that all officers will be aware there is a need to provide details of organisations that can give help and advice on debt to customers struggling to fulfil their debt obligations with the Council.</i>	2	2	4

#### 5. **BACKGROUND INFORMATION**

- 5.1 The Council has not previously had a Corporate Debt Policy. Having such a policy in place is considered essential and deemed to be good practice.

- 5.2 The Corporate Debt Policy covers the management of all debts owed to the Council. This includes the billing/invoicing, collection, enforcement and write offs for the four income streams of Council Tax, Business Rates, Housing Benefit Overpayments and other miscellaneous debts (known as Sundry Debts). Examples of Sundry Debts include Housing Deposits, Rent of Premises, Licensing Fees and Water Sampling charges.

- 5.3 The Policy follows the following debt recovery principles:

- **Proportionality:** establishing an appropriate balance between the potential loss of income to the Council, recovery costs and any emerging Council or third party costs relating to welfare, care or housing support;
- **Consistency:** the Council aims to achieve consistency in the advice it gives, the use of its powers and the recovery procedures adopted. Council officers will take account of the social circumstances of the debtor, the debtor's payment history and their ability to pay in pursuing sums due; and
- **Transparency:** ensuring people understand what is expected of them and what they should expect from the Council, including explaining clearly the reasons for taking debt recovery action. The Council aims to take early recovery action before debts become unmanageable for the customer.

- 5.4 Customers, citizens and businesses within West Somerset have a responsibility to pay for the services they receive and the charges and rents they are liable for. Personal indebtedness levels are increasing and there may be circumstances where our customers are suffering hardship and need and advice in paying sums due. The Council is committed

to providing appropriate support and will engage with relevant welfare and debt agencies.

- 5.5 Where the Council is pursuing multiple debt then payments will be allocated firstly to debts where non-payment could lead to loss of the customer's home or have direct implications for an individual's wellbeing.
- 5.6 A small proportion of the Council's overall income may not be collectable due to matters outside its control. Where a debt is assessed to be irrecoverable it will be subject to a write-off process that is consistent with recognised accounting practices and in line with the Council's Financial Regulations. The Council will seek to minimise the cost of write-offs by taking all appropriate action to recover what is due.
- 5.7 Prompt recovery action is essential for effective debt management and the level and age of key debt types will be regularly reviewed. A range of indicators have been developed to monitor performance against agreed targets and to ensure the Policy achieves its objectives these will be included in the Council's performance reporting updates. Some key indicators include the in-year collection targets for both Council Tax and Business Rates and a percentage of overall collection of Housing Benefit Overpayments. The top ten (by value) of overdue Sundry debt cases are reported to the Joint Management Team on a quarterly basis and all of these cases have an updated progress report. It is also crucial that service areas regularly monitor their own overdue invoices and have the necessary processes in place to facilitate payment.
- 5.8 The Policy ensuring that both businesses and customers that owe monies will be treated equally and fairly and all the people involved in the collection of money owed to the Council have a consistent approach and an understanding what that approach is.
- 5.9 The debts being collected/recovered vary widely in terms of their nature and the legislation that covers them. This variety impacts greatly upon the way in which we administer, collect and enforce payment of these debts and this Policy tailors specific policies to fit each individual debt types.
- 5.10 The Policy was discussed at the meeting of the Policy Advisory Group on 25 March 2015. No amendments to the policy were suggested by the Policy Advisory Group, however, the sheer size of the document was commented upon by several members. These comments have been taken on board and the policy has now been condensed thus reducing its size from the original 108 pages to just 27 pages. The Policy was also discussed at the meeting of Cabinet on 5 August 2015 and no alternations to its content were recommended.

## **6. FINANCIAL/RESOURCE IMPLICATIONS**

- 6.1 The recovery actions detailed in the Policy are responsible for the annual collection of over £34 million over the four income streams.

## **7. COMMENTS ON BEHALF OF SECTION 151 OFFICER**

- 7.1 It is essential all monies owed to the Council are actively pursued to drive down arrears. Following this policy will ensure efficiency, effectiveness and consistency in the billing/invoicing and collection of debt - all essential to ensure the maximisation of cash flow/resources that the Council needs to deliver front line services. A clear Corporate Debt Policy will aid both the services and customers of West Somerset.

## **8. EQUALITY & DIVERSITY IMPLICATIONS**

- 8.1 **Members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process.** The three aims the authority **must** have due regard for are:

- Eliminate discrimination, harassment, victimisation
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

8.2 The Council will ensure that the provisions outlined in the Corporate Debt Policy are accessible to everyone and that customers are treated fairly and equitably. The Council will ensure all relevant equality standards are being met, ensure appropriate staff receive cultural awareness, disability discrimination and mental health awareness training and communicate to customers using plain English and help customers whose first language is not English.

## **9. CRIME AND DISORDER IMPLICATIONS**

9.1 There are no crime and disorder implications in this policy.

## **10. CONSULTATION IMPLICATIONS**

10.1 Consultation was undertaken with elected members at the Policy Advisory Group on 25 March 2015, Council Officers and the local Citizen Advice Bureau. The Policy also draws from advice provided from Local Government, Audit and The Local Government Ombudsman in detailing best practices throughout its content.

10.2 The Council will make every effort to support customers in managing their Council debts and will engage with relevant welfare and debt agencies on an ongoing basis.

## **11. ASSET MANAGEMENT IMPLICATIONS**

11.1 There are no asset management implications in this policy.

## **12. ENVIRONMENTAL IMPACT IMPLICATIONS**

12.1 There are no environmental impact implications in this policy.

## **13. HEALTH & WELLBEING**

13.1 Demonstrate that the authority has given due regard for:

- People, families and communities take responsibility for their own health and wellbeing;
- Families and communities are thriving and resilient; and
- Somerset people are able to live independently.

## **14. LEGAL IMPLICATIONS**

14.1 There are a variety of different debt recovery methods depending on the nature of the debt and these are set out clearly in the policy.

# West Somerset Council - Corporate Debt Policy



## 1. Overview

This document details the Council's policies on the billing, collection and recovery of money due to West Somerset Council.

Sums due to the Council can be a mixture of statutory and non-statutory charges. Statute tightly prescribes methods for billing and recovery of the statutory debts. Our enforcement practices must take account of this diversity.

Effective debt management is crucial to the success of any organisation. The Council needs an effective policy to support the maximisation of debt collection in an efficient, consistent and sensitive manner. In developing this policy we have considered guidance issued by the Local Government Ombudsman as well as best practice in debt recovery.

This document sets out the general principles we will apply to debt management across all the services we provide.

This corporate policy covers all of the Council's service areas which raise bills or invoices for payment. We will process personal information and financial details for the purposes of administering and collecting local taxes and other revenue. Where necessary we will share some or all of this information, as appropriate, with debt collection and tracing agencies, local and central Government, courts and tribunals in accordance with our data protection registration and in observance of the requirements of the Data Protection Act.

### Mission Statement

*"West Somerset Council seeks to collect all monies owed to the Council for the benefit of all its residents. Bills and invoices will be issued promptly and correctly and in cases where recovery action is required, the Council will act quickly, fairly and impartially, but with due regard to the social welfare and human rights of all of our customers"*

## 2. Key Aims of the Policy

This Policy aims to strike a fair balance between the financial needs of the Council and the social needs of our customers by:

- coordinating income collection, recovery and debt management activities;
- ensuring circumstances are taken into account when determining appropriate recovery action, including potential emerging costs for ongoing support and care;
- adopting a debt hierarchy for multiple debts;
- providing advice and or signposting to receive appropriate support to those owing money to the Council, ensuring they are maximising reliefs, discounts or benefit entitlements;
- taking prompt recovery action before debts become unmanageable for the customer;



- applying best practice debt collection methods e.g. timely and accurate billing;
- offering a range of cost effective payment methods;
- ensuring that we treat everybody with integrity, fairness, respect and trust;
- recognising that failure to recover monies due impacts on the Council's ability to provide key services;
- aiming to be consistent in our approach in similar circumstances to achieve similar ends;
- taking a proportional view will be taken against loss of income and costs incurred;
- being transparent to maintain public confidence;
- producing accurate and timely management reports;
- identifying vulnerability and acting or responding appropriately.

### 3. Scope

This Policy applies to the collection of all debts, including:

- Council Tax
- Non-Domestic Rates (Business Rates)
- Housing Benefit Overpayments
- Sundry Debts (invoices raised on the Corporate Finance system for a variety of Council Services)

### 4. Debt Recovery Principles

The Council's debt recovery principles are outlined below.

- **Proportionate:** establishing an appropriate balance between the potential loss of income to the Council, recovery costs and any emerging Council or third party costs relating to welfare, care or housing support.
- **Consistent:** the Council aims to achieve consistency in the advice it gives, the use of its powers and the recovery procedures adopted. Council officers will take account of the social circumstances of the debtor, the debtor's payment history and their ability to pay.
- **Transparent:** ensuring people understand what is expected of them and what they should expect from the Council, including explaining clearly the reasons for taking debt recovery action. The Council aims to take early recovery action before debts become unmanageable for the customer.
- **Offset:** where a customer owes money to the Council but this is less than any funds due from the Council, this will be offset against what is owed and the net balance settled. Where a customer owes money to the Council that is greater than any funds due to them by the Council, these funds will be used to reduce the amount owed and the customer contacted about arrangements to repay the outstanding balance. Any such arrangements will be undertaken in a fair and legal manner and with the customer's agreement wherever possible.
- **Appropriate Costs/Fees:** where legislation permits, the Council will seek to apply and recover from the debtor any costs/fees that are legitimately due to the Council or its agents. Only in exceptional cases, where it would not be in the public interest to pursue such costs/fees, will these be waived.
- We will also ensure that we pay suitable regard to our Core Values of:
  - **Integrity** - we will be honest, do what is right and stick to it
  - **Fairness** - we will consistently treat everyone equally, respecting their individual needs and abilities
  - **Respect** - we will always show respect for everyone

- **Trust** - we will show trust and confidence in our staff and Councillors.

We intend to be firm and fair and our manner will be polite and professional.

Detailed recovery action for the key debt types is outlined in the appendices to the Corporate Debt Policy.

## 5. Hierarchy of Debt

Customers, citizens and businesses within West Somerset have a responsibility to pay for the services they receive and the charges and rents they are liable for. In some instances customers will owe more than one debt to the Council. The Council will adopt a co-ordinated approach when dealing with multiple debts, taking into account the person's circumstances, legislation, the level of debt and the potential for financial hardship.

Where the Council, or its identified collection agent, is pursuing multiple debt then payments will be allocated firstly to debts where non-payment could lead to loss of the customer's home or have direct implications for an individual's wellbeing.

Priority debts have then been ranked as follows:

- Council Tax
- Non-Domestic Rates (Business Rates)
- Housing Benefit Overpayments / Sundry Debts

All debt will be actively pursued in accordance with the Corporate Debt Policy, however, for accounting and collection purposes the above debts will have priority.

The Council's Corporate Debt Policy and complementary third party collection arrangements will ensure that incidences of multiple debt are effectively monitored. These arrangements will provide timely and regular information to facilitate the annual review of the Policy and assess the ongoing appropriateness of the hierarchy of debt.

## 6. Vulnerability

This protocol has been drawn up in agreement with representatives of West Somerset's Advice Bureau (WSAB). It sets out a strategy to increase the likelihood of successful collection without causing unreasonable distress to those liable.

### Definition

A vulnerable person is a person who, by characteristics and/or circumstances, is unable to act or respond appropriately to the normal collection procedures, or for the same reason is unreasonably affected by them. The Council recognises that vulnerability can come in many forms and it can also be multi layered. Vulnerability can also be temporary, permanent or come in a series of episodes and anyone at any time could potentially be deemed vulnerable. The characteristics or circumstances that **may** lead to identifying a person as vulnerable are as follows:

- Carers
- Cognitive Impairment
- Debt Management Agency involvement and overall debts need to be managed
- Disability
- Financial Impoverishment
- Learning Difficulty (including literacy difficulties)
- Language Difficulty
- Late Term Pregnancy
- Lone Parents – with young children

- Medication
- Mental Health (including personality disorders)
- Physical Health (including fragility due to advance years)
- Possession Proceedings
- Probation Service Involvement
- Recent Bereavement
- SMI (Severely Mentally Impaired)
- Substance Abuse
- Social Services Involvement
- Terminal Illness
- Victim of Abuse
- Victim of War

This list of factors is not definitive and all the circumstances must be taken into account.

## **7. Methods of Payment**

The Council recognises that the easier it is to pay, the more likely that payment will be made and the less likely that debts will accrue. The Council's preference is for low cost payment options that provide a high degree of accuracy and certainty, such as Direct Debit. However to provide our customers with the greatest flexibility a range of payment types appropriate to the debt type and size is offered. Customers currently use a mixture of payment methods and channels for different services, including cash, cheque, postal order, debit cards, standing orders and other electronic banking methods, such as online internet banking and touch tone telephone payments. Payments can also be made via the Council's website [www.westsomersetonline.gov.uk](http://www.westsomersetonline.gov.uk) by clicking on the "Pay for it" tab. Specific services can also be paid by credit card.

## **8. Write-offs**

The Council recognises that a small proportion of its overall income may not be collectable due to matters beyond its control. Where a debt is assessed to be irrecoverable it will be subject to a write-off process that is consistent with recognised accounting practices. The Council will seek to minimise the cost of write-offs by taking all appropriate action to recover what is due including the use, where appropriate, of inhibitions. Income deemed irrecoverable must satisfy one of the pre-determined criteria including but not restricted to:

- the customer has died and there are no or insufficient funds in the estate;
- the customer cannot be traced;
- it is uneconomical to pursue the debt;
- the income is uncollectable due to insolvency;
- all recovery methods have been exhausted;
- it is not in the public's interest to pursue e.g. at risk and vulnerable service users; and
- the debt is prescribed under the limitation act 1980.

All write-offs will be carried out in accordance with the relevant provisions contained within the Council's Financial Regulations, as supplemented by the Finance Rules.

It should be noted that just because a debt is written off it does not rule out the possibility of writing the debt back and pursuing it to the full extent of the law. An example of when this may occur is if a debtor absconds with no forwarding address but is subsequently traced. A further example would be in insolvency cases where an individual/company goes bankrupt or is made insolvent, partial/full dividend(s) can be received many years later.

## **9. Performance Monitoring**

The Council recognises that prompt recovery action is essential for effective debt management. The Council will:

- regularly monitor the level and age of its debt;
- set clear targets for the recovery of debt;
- have written recovery procedures;
- assess recovery methods to ensure maximum returns; and
- regularly review irrecoverable debts for write-off.

To ensure the Corporate Debt Policy achieves its objectives a range of indicators has been developed to monitor performance. Key quarterly indicators (unless stated otherwise) include:

- In year collection targets (Council Tax, Business Rates & Housing Benefit Overpayments) - Monthly
- Value of Sundry Debt greater than 90 days
- Sundry Debt invoices outstanding (value)
- Top 10 Sundry Debts outstanding with progress reports (reported to JMT)
- Invoices / Credit Notes raised
- Total Sundry Debt balance broken down by age of debt and recovery stage
- Sundry debt cases on hold

The Council recognises that failure to achieve income and collection targets will have financial and service consequences. Performance will be reviewed on a quarterly basis by the Finance Manager, liaising as appropriate with relevant service managers, and this information will be reported as part of the Council's wider performance updates to members.

Where an external agency assists the Council's collection and recovery process it will also be required to produce detailed performance and management information.

## **10. Stakeholders**

The Council recognises that personal indebtedness is increasing and that any debt recovery action can potentially cause distress, particularly where the person has other debts or is on a low income. The Council will make every effort to support customers in managing their Council debts and will engage with relevant welfare and debt agencies where appropriate.

## **11. Confidentiality**

The Council will ensure that all information about a customer's personal and/or financial circumstances is dealt with in the strictest confidence.

## **12. Review**

The Corporate Debt Policy will be reviewed on an annual basis. This review will take account of changes in legislation, service improvements, regulations and wider policy initiatives. Any proposed changes will be discussed with appropriate stakeholders and updated in line with related policies.

## **13. Segregation of Duties**

The Council will ensure that income and debt recovery transactions are governed by robust controls, with clear segregation of duties. Financial decisions will be made by identified officers and reviewed by appropriate managers. These arrangements will be clearly detailed in relevant service operation manuals and the Finance Rules.

## **Supporting Policy Documents**

Appendix 2 – Council Tax & Business Rates Recovery Strategy (page 6-13)

# 1. Council Tax & Business Rate accounts

## Recovery Strategy for Local Taxation

- 1.1. Our ultimate aim is to recover 100% of Council Tax and Business Rate debt by taking a “**Firm but Fair**” approach.  
  
Our key objective is:  
**“To support those who cannot pay and take action against those who will not pay”**
- 1.2. We will issue a recovery timetable each year and we will aim to recover outstanding instalments in a timely and efficient manner maximising cash flow and driving down arrears.
- 1.3. We recognise people and businesses do not pay debts for a variety of reasons:
  - Some customers genuinely struggle to meet their payments and need advice and help in budget management
  - Some customers deliberately choose to set out to delay and not pay their debts
  - Some customers are not receiving the benefits or reductions they are entitled to
  - Some customers go through personal difficulties that result in short-term and long-term problems in paying their debts
  - The national and local economy affects individuals and businesses
  - Diversity brings complications in customer understanding and guidance may be needed.
- 1.4. At each stage we will encourage customer contact and liaise with internal departments and outside agencies e.g. Citizens Advice Bureaux and welfare rights agencies to offer specialised advice and/or debt counselling to those we feel may be in need of help.
- 1.5. The Local Government Association and the Citizens Advice Bureau published the “Collection of Council Tax Arrears Good Practice Protocol” first launched in July 2009 and refreshed in 2013. Officers of the Council and contractors acting on its behalf in Council Tax enforcement roles will comply with these standards.
- 1.6. The Lord Chancellor's Department has produced Taking Control of Goods: National Standards for Enforcement Agents brought in on 6 April 2014. Officers of the Council and contractors acting on its behalf in enforcement roles will comply with these standards.
- 1.7. We have guidelines and a Code of Practice for Enforcement Agents. Council officers and contractors acting on its behalf in enforcement roles will comply with these standards.
- 1.8. If we have reason to believe a customer is “vulnerable”, we will manage their account following our Vulnerable Policy.
- 1.9. If any customer is unable to maintain a payment arrangement or is unhappy with the suggested level of payment under an arrangement, they will have recourse to a Senior Revenues Officer to appeal.

## Demand Notices

- 1.10. We will issue annual Council Tax and Business Rate bills as soon as practical after the Council has set its Council Tax for the forthcoming year.
- 1.11. We will issue adjustment notices as soon as practicable after the liability is known with payment(s) being due on the earliest date(s) allowed by legislation.
- 1.12. All bills include a monthly instalment arrangement. If the customer wants to change their instalment date, they must contact us as soon as possible.
- 1.13. We offer several different payment methods and dates for customers to pay their accounts. We offer an instalment date of the 1st of the month to all non-direct debit payers. We promote payment by direct debit, as it is the most efficient payment method. It also helps customers avoid missing instalments and being subjected to recovery action.
- 1.14. To encourage customers to pay by direct debit, we offer a choice of 4 instalment dates: 1st, 8th, 15th & 23rd of the month. We promote the setting up of Direct Debit over the telephone.
- 1.15. If a customer pays regularly, but fails to do so by the instalment date, we will still take recovery action, as payments are late.
- 1.16. In line with Council Tax and Non-Domestic Rating legislation customers can request payments over 12 monthly instalments. This request must be made before 1st April to allow us sufficient time to issue a bill over the whole period. Where this request is made part way through the year, instalments are reduced accordingly. Where applicable when a customer clearly demonstrates they are struggling to pay, this payment option should be made known to them.
- 1.17. Where a Council Tax or Business Rate customer cannot pay on the set instalment date, Revenue Officers will have the discretion to vary the instalment dates. However, the final instalment date must be before 31st March of the financial year in question. Such arrangements will only be considered where no recovery action has yet started for the account in question.
- 1.18. Where recovery action has started, payment arrangements will generally only be entered into where the debt is secured by a liability order and/or the debtor agrees to pay by direct debit. Arrangements will only be agreed by approved staff and will generally only be agreed where:
  - The debt will clear by the end of the financial year
  - The debtor's proposals are reasonable in comparison with the amounts that could be secured by taking alternative action
  - The debtor demonstrates a clear intent to honour the arrangement.
- 1.19. In cases where exceptional circumstances exist and it would not be in the interests of tax payers to pursue enforcement action, arrangements may be made by authorised staff before obtaining a liability order and without the debtor agreeing to pay by direct debit.

## Reminders and Final Notices

- 1.20. We will issue reminders and final notices as requested after 14 days of the payment default to which they relate, following the recovery timetable. The reminder gives 7 days for the customer to bring their account up to date.
- 1.21. If we issue a reminder or final notice, we will advise the customer that if they pay by direct debit, they can spread any arrears over the remaining months of the financial year under a "special arrangement". This will be a "one time" offer. If the customer subsequently cancels the direct

debit mandate or if the payment is rejected by the bank we will issue further reminders and if still unpaid we will escalate the account to requesting a Summons from the Magistrates Court.

- 1.22. If the overdue instalment is paid, but the customer misses a future instalment, we will issue a second reminder. We will tell the customer that we will not issue any further reminder and that they must bring their account up to date within 7 days and maintain future instalments on the due date or we will issue a summons. A Business Rate debtor will only receive one further notice, followed by a summons if the account is not brought up to date.
- 1.23. A "Final Notice" is a courtesy letter and is not required in law. We will not issue more than three reminders in a financial year - a maximum of two instalment reminders and one final notice. We will issue Final Notices as an exception rather than a rule to closed accounts at year end to encourage cash flow.
- 1.24. If we have agreed a special arrangement and the customer fails to meet their duties under that arrangement, we will only allow further instalments by direct debit on immediate payment of any arrears i.e. before any future instalment. If we are not able to agree an instalment plan, then the whole outstanding balance becomes payable.
- 1.25. If we do not receive payment, we will request a summons from the Magistrates' Court. Once a summons has been issued, the full amount of Council Tax or Business Rates is due, as well as the summons costs.

## Summonses

- 1.26. We will issue summonses as soon as reasonably practicable after the default to which they relate. If the customer does not pay as the reminder, or final reminder instructs, we will request a summons from the Magistrates' Court. The summons gives details of when the customer must attend court to explain why they have not paid their bill. The cost of sending the summons is added to their bill.
- 1.27. If the customer pays the full amount of the summons, including costs, before the hearing date, the customer does not have to attend court.
- 1.28. If the customer makes a payment arrangement with us before the hearing, they do not have to attend court. However, we will ask the Magistrates' Court to grant a "liability order" to secure the debt (explained below). Providing the customer keeps to the payment arrangement, we will not take any further recovery action.
- 1.29. At the court hearing, we must satisfy the Magistrates' Court we have followed the correct procedures that is, sending a bill, reminder and summons to the customer's property, or their last known address. We must also confirm the customer is liable for Council Tax or Business Rates and the debt is outstanding. If the Magistrates' Court are satisfied with the evidence we present they will grant a liability order and costs.

## Liability Orders

- 1.30. A liability order is a decision by the court confirming the customer is liable to pay Council Tax or Business Rates and has not done so in accordance with the law. It gives us powers to recover the outstanding debt using other methods. These are explained in more detail below.
- 1.31. A Liability Order gives us the power to:
  - ask for financial information including the customer's employment status and employer details that must be provided
  - prosecute for failing to provide financial information (Council Tax only)

- take money directly from the customer's wage using an Attachment of Earnings Order (Council Tax only)
- prosecute employers for failing to implement Attachment of Earnings (Council Tax only)
- take money directly from Members' Allowances (Council Tax only)
- take money directly from the customer's benefits, for example, Income Support, Jobseekers Allowance, Pension Credit, Employment Support Allowance or Universal Credit (Council Tax only)
- use enforcement agents to remove the customer's goods and sell them to pay the debt
- start insolvency proceedings (against companies)
- seek a Charging Order against the customer's property
- start committal proceedings for an individual customer's imprisonment for up to 90 days
- start bankruptcy proceedings (against individuals)
- instigate County Court proceedings, as an alternative to the Magistrates' Court.

These methods shall only be used with consideration to the principles set out within **2. The key aims of the policy**

1.32. The Magistrates' Court may not grant a liability order if the customer can provide a valid defence, such as:

- we have not demanded the Council Tax or Business Rates as the law sets out
- the customer/company has already paid the amount on the summons and provides evidence of the payment
- the customer/company is exempt
- the property is not entered into the relevant Valuation list
- the customer/company is not the person liable for Council Tax or Business Rates
- more than 6 years have passed since we sent a bill for the amount
- Bankruptcy, Debt Relief Order (DRO), winding up proceedings have commenced or an Administration Order has been made (and evidence is provided).

To save the court time it is reasonably expected that if any of the above situations apply (or the customer believes they may apply) the customer should contact the Council for clarity before the actual hearing as it may be possible to resolve the enquiry and therefore there will be no need to attend court. If the customer is not satisfied with the Council's response they have the right to appear before the Magistrates and dispute the application for a liability order.

1.33. It is not a valid defence if the customer is unable to pay because they have:

- applied a discount/exemption or relief (including Council Tax Support ) that may reduce their Council Tax or Business Rates
- appealed to the Valuation Office Agency against the valuation band or rateable value
- money problems and simply cannot afford to pay.

## Request for financial information

1.34. When we have a Liability Order we will send a "request for information form" asking the customer to supply details about their income and expenditure. They have 21 days to complete and return it. This letter also details what will happen if we ask enforcement agents to collect the outstanding debt.



1.35. If the customer does not complete and return the income details form within 21 days we can take action. Under Schedule 3 of the Local Government Finance Act 1992 a penalty can be imposed ranging from £70.00 to £280.00.

## Attachment of Earnings

1.36. We can tell employers to deduct directly from the customer's salary or wages to pay their Council Tax debt. The amount deducted depends on how much the customer earns. If they have multiple Liability Orders we can make two deductions.

**Table of deductions from monthly earnings for each order issued after 1 April 2010**

Take home (net) wage	Percentage we can deduct	Amount to be deducted
Under £300	0%	Nil
Over £300 but under £550	3%	£9 - £16.47
Over £550 but under £740	5%	£27.50 - £36.95
Over £740 but under £900	7%	£51.80 - £62.93
Over £900 but under £1,420	12%	£108.00 - £170.28
Over £1,420 but under £2,020	17%	£241.40 - £343.23
Over £2,020	17% of first £2,020 plus 50% of the rest	£343.40 plus 50% of the rest

**Table of deductions from weekly earnings for each order issued after 1 April 2010**

Take home (net) wage	Percentage we can deduct	Amount to be deducted
Under £75	0%	Nil
Over £75 but under £135	3%	£2.25 - £4.02
Over £135 but under £185	5%	£6.75 - £9.20
Over £185 but under £225	7%	£12.95 - £15.68
Over £225 but under £355	12%	£27.00 - £42.48
Over £355 but under £505	17%	£60.35 - £85.68
Over £505	17% of first £505 plus 50% of the rest	£85.85 plus 50% of the rest

1.37. The employer can deduct a further £1 per order for their administration costs each time they make a deduction. Deductions continue until the Council Tax is paid in full. Customers must tell us within 2 weeks of any change in their employment.

## Deductions from benefits

1.38. We can ask the Department for Work and Pensions to deduct directly from the customer's Income Support, Jobseekers Allowance, Employment Support Allowance or Universal Credit.

1.39. The money deducted is sent to us each month and continues until the Council Tax is paid in full, or benefit entitlement stops.

1.40. Customers must tell us within 2 weeks of any changes in their benefit.

## Recovery of Council Tax through Member Allowances

- 1.41. Regulation 44 Council Tax (Administration & Enforcement) Regulations 1992 relates to an elected member of West Somerset Council or a relevant precepting authority.
- 1.42. The Regulations allow an attachment of the allowances of an elected member to be made when West Somerset Council has obtained a Liability Order. These provisions do not extend to Members of Parliament.
- 1.43. West Somerset Council can make an order under which they can attach 40% from a member's allowances.
- 1.44. The allowances to which the order relates are those paid under:
  - **Section 18 Local Government & Housing Act 1989**
    - This includes schemes for basic, attendance and special responsibility allowances for Local Authority Members.
  - **Section 175 Local Government Act 1972**
    - This includes allowances for attending both conferences and meetings.
- 1.45. Any decision on an attachment of allowances should be referred to the Principal Revenues Officer and the Council's Assistant Chief Executive (Monitoring/Proper Officer).

## Charging Orders

- 1.46. Charging Orders are used when attempts to attach earnings, deduct from benefits and remove a debtor's goods have been unsuccessful. All Charging Order cases must be controlled by the Principal Revenues Officer.
- 1.47. If the debtor owns a property the Principal Revenues Officer can decide to apply for a Charging Order to be placed on it. This is similar to a mortgage and means we can recover the outstanding Council Tax debt from the proceeds of sale, should the debtor sell the property at a later date. While it is possible to enforce the sale of a property subject to a charging order, this would be the exception rather than the rule.
- 1.48. A Charging Order relating to Council Tax debt will not be pursued if the customer is considered as vulnerable. The Principal Revenues Officer will only decide a Charging Order is fair and proportionate after they have:
  - reviewed an accurate history of the origin of the debt and any attempts to recover it
  - considered information about the past, present, disputed or outstanding benefit claims or any discounts or exemptions that might be relevant
  - assessed that there is no realistic prospect of recovering the debt by other means in a reasonable timescale
  - gathered sufficient evidence about the debtor's circumstances
  - considered if a debtor's failure to pay and to respond to other recovery measures could arise from a disability (including a mental impairment with a long-term and substantial effect on normal day-to-day activities), and
  - considered if the debtor's personal circumstances warrant them being protected from the consequences of recovery action.
- 1.49. Decisions about applying for a Charging Order should be recorded and the records retained with the information considered by the Principal Revenues Officer.

## Bankruptcy

- 1.50. All cases must be controlled by the Principal Revenues Officer.
- 1.51. Any applications for bankruptcy relating to Council Tax debt will be scrutinised but will not be considered if the customer is considered as vulnerable.
- 1.52. The Principal Revenues Officer will only decide that pursuing bankruptcy is a fair and proportionate action after they have:
- reviewed an accurate history of the origin of the debt and any attempts to recover it
  - considered information about the past, present, disputed or outstanding benefit claims or any discounts or exemptions that might be relevant
  - assessed that the debtor has assets that will clear the debt if bankruptcy is pursued
  - assessed that there is no realistic prospect of recovering the debt by other means in a reasonable timescale
  - gathered sufficient evidence about the debtor's circumstances
  - considered if a debtor's failure to pay and to respond to other recovery measures could arise from a disability (including a mental impairment with a long-term and substantial effect on normal day-to-day activities), and
  - considered if the debtor's personal circumstances warrant them being protected from the consequences of recovery action.
- 1.53. Decisions about pursuing bankruptcy should be recorded and the records retained with the information considered by the Principal Revenues Officer.
- 1.54. Written information should to be provided to the debtor when bankruptcy proceedings are being considered. That information should:
- warn the debtor of the serious consequences of bankruptcy and their continued failure to make arrangements to pay the debt, and
  - urge them to seek independent advice and "sign-post" to local sources of advice.

## Committal

- 1.55. Where all other recovery options have been exhausted and residence has been confirmed the case can be reviewed for Committal to Prison proceedings. Such cases will remain under the strict control of the Principal Revenues Officer.
- 1.56. A pre committal letter will be issued to all cases warning of the seriousness of this course of action. This letter will also detail a final offer of repayment over a period deemed acceptable by the Principal Revenues Officer.
- 1.57. A Committal Summons or a warrant will be issued by the Council on behalf of the Magistrates' Court and this will include a request for reasonable costs.
- 1.58. Legislation states that for a Committal hearing to take place the individual concerned must be in attendance.
- 1.59. If an individual does not attend the Committal hearing due to illness both the Council and the Magistrates will only accept an official signed declaration from a doctor detailing why the individual cannot attend the hearing. The case will be adjourned to another time and date and the individual will be notified of this new hearing by the court. However, if there is no apparent reason for an individual's nonattendance the Council will have no alternative but to request an arrest warrant

from the Magistrates, due to non-attendance/contact. The Council is likely to ask for a warrant without bail, therefore, when arrested, the debtor could spend some time in custody until the Council and the court agree for the case to be heard.

- 1.60. In the case of a Committal Summons, warrants (both with and without bail) will be prepared in advance and will be taken to the court hearing in anticipation of nonattendance.
- 1.61. Any signed warrant will be promptly issued to an enforcement agent acting on behalf of the Council for the customer's immediate arrest. When any arrest is imminent or when it actually occurs it is essential the enforcement agent keeps in regular contact with the Council to keep them well informed of the situation. If the debtor is subsequently held in remand or released on bail, the Magistrates' Court will advise the Council of the hearing time and date.
- 1.62. At the Committal hearing the court must hold means enquiries for each unpaid financial year.
- 1.63. The Magistrates' decision should be duly noted and recorded on the customer's account for future reference. The maximum period of imprisonment the Magistrates can impose is three months (90 days).
- 1.64. Any Committal payment arrangements agreed by the Magistrates should be strictly monitored by the Council and where appropriate cases in default should be taken back to court for another Committal hearing.

## 2. Overpaid Housing Benefit

### General information

- 2.1. Recovery of overpaid Housing Benefit is carried out with due regard of the Department for Work and Pensions Good Practice Guide.
  - 2.2. An overpayment is any amount of Housing Benefit that has been paid but to which there was no entitlement.
  - 2.3. When we identify an overpayment, we will write to the benefit claimant and provide the following information:
    - Reason for the overpayment
    - Amount of the overpayment
    - Benefit period covered
    - Method of recovery
    - Rights of appeal
  - 2.4. We will calculate overpayments quickly and accurately and to provide quality information to the people affected, ensuring we recover the correct amount. To achieve this we will:
    - Invite claimants to apply for underlying entitlement to benefit
    - Calculate overpaid benefit on average, within 14 days of getting the information we need
    - Use the proper effective date of change to fix the correct overpayment period
    - Consider uncashed or returned cheques or underpayment of benefit.
  - 2.5. We will correctly classify overpayments for subsidy purposes to prevent loss of subsidy.
  - 2.6. We will only issue invoices when a recoverable overpayment of Housing Benefit exists and we cannot recover automatically through deductions from on-going benefit.
  - 2.7. The Housing Benefit (Recovery of Overpayments) Regulations 1997 allow us to recover overpayments from landlords from their current tenants' claim. We will, in appropriate circumstances, reduce payments to landlords for their current tenants to recover overpayments that arose for former tenants. We will take this action when the original tenant has no continuing Housing Benefit and when there was a misrepresentation or failure to disclose a material fact (blameless tenant deductions).
  - 2.8. We will maintain contact with debtors through telephone contact and visits to their properties to encourage repayment.
- 2.9. Prevention of overpaid benefit
- 2.10. West Somerset Council believes prevention of overpaid benefit debt is better than cure. Therefore strict measures are to be employed to prevent overpayments occurring. These will include:
    - Using a well laid out application form to collate accurate information which contains an unambiguous statement that failure to provide correct information could lead to overpayments of benefit and to prosecution

- Ensuring all benefit letters and relevant correspondence inform the people affected of their responsibility to tell the Council of any change of circumstances that may affect their claim
- Making use of the Verification Framework techniques and procedures for example:
  - Using checks for identity, residency and National Insurance numbers.
  - Tailored reviews for high-risk claimants.
  - Visiting programmes targeting high-risk claimants.
- Ensuring all staff involved with overpayments receive enough training with comprehensive access to overpayment recovery procedures and an awareness of problems relating to debt
- Providing regular fraud awareness training for staff who have contact with claimants
- Using and developing information technology to automate the identification and recovery of overpayments and to reduce error
- Dealing quickly with reported changes of circumstances
- Including publicity material, for example posters, guidance pamphlets sent with application forms and landlord undertakings, information on responsibilities for reporting changes of circumstances
- Ensuring procedures are in place for the prompt ending of benefit where a claimant does not comply with a review of their claim
- Taking part in various data matching exercises with external agencies and cross matching against internal databases while adhering to principles contained in Data Protection and Human Rights Acts.

## Recovery of overpaid benefit

- 2.11. Generally, all overpayments are recoverable, regardless of the reason they occurred, where the claimant or person to whom the benefit was paid can reasonably have been expected to know they were receiving benefit to which they were not entitled.
- 2.12. When an overpayment is classed as recoverable the Benefit Officer dealing with the claim must make a separate decision on whether to recover the overpayment.
- 2.13. Recovery of the overpaid benefit can be sought from the claimant or the person to whom the payment was made. Recovery will only be sought from the landlord or agent where they could be expected to have known about the change in circumstances leading to the overpayment.
- 2.14. In most cases recovery of a recoverable overpayment will be sought. However, consideration will be given to the personal and financial circumstances of the person from whom recovery would be sought. If the situation is unclear we will contact or visit the claimant for clarification.
- 2.15. Where we decide an overpayment is recoverable, recovery arrangements will proceed in the following hierarchy:
  - From arrears of Housing Benefit. Via lump sum recovery
  - From continuing Housing Benefit. This includes direct payments to a landlord for that claimant even if that claimant has moved or changed landlord. We will base recovery rates on DWP guidelines and will always initially apply the maximum recovery rate permissible. However officers will be empowered to consider applications from debtors to reduce the recovery rate in cases where there is demonstrable hardship
  - We will raise an invoice if there is no continuing Housing Benefit and no likelihood of continuing benefit or reduction through underlying entitlement

- We will produce all invoices, reminders and final notices using the Northgate Debtors (or whatever future revenues system that may be appropriate)
- At this point we will seek to recover the overpayment in full by a single payment, especially if the overpayment has occurred due to excess capital. However, where this is not possible, due to the debtor's financial circumstances we may agree a payment plan involving instalments (see 2.29 for guidance on maximum repayment periods)
- By deductions from other Social Security Benefits managed by the Department for Work and Pensions. Section 75(1) of the Social Security Administration Act 1992 allows recovery of overpaid Housing Benefit by deduction from prescribed benefits that are defined in Regulation 105 of the Housing Benefit Regulations 1987.

2.16. Where we raise an invoice and do not get payment after issuing a final notice, we will consider implementing a Direct Earnings Attachment (DEA) as provided for under the Social Security (Overpayments and Recovery) Regulations 2013. A DEA gives West Somerset Council the power to recover overpaid Housing Benefit by deductions from earnings without applying for a court order. DEAs give us the opportunity to recover these debts from employed people if they:

- refuse to repay
- cannot agree an acceptable repayment plan
- default on a voluntary repayment arrangement.

If a debtor fails to provide information requested to support a DEA, or an employer fails to comply with their duties they could be subject, on conviction, to a fine of up to £1,000 (Regulation 30 of the Social Security (Overpayments and Recovery) Regulations 2013).

2.17. In some circumstances, we may decide to instruct an external professional debt collection agent and their actions are governed by the Council's Service Level Agreement.

2.18. As an alternative to a DEA, we will consider issuing a claim against the debtor in the County Court. We will make this decision on the realistic prospect of obtaining payment of the debt by a County Court Judgement.

## Debt repayment arrangements

2.19. Officers will encourage people owing money for overpaid Housing Benefit to make contact at an early stage in the recovery process.

2.20. When a person makes contact, we aim to agree a realistic payment agreement. If there is any doubt as to whether the agreement is realistic (either because it appears to be too high or too low), officers will ask the individual to complete an income and expenditure form.

2.21. Officers will try to get as much detail as possible of a person's circumstances to make the best assessment of their ability to pay. However if a person refuses to divulge any information, this could be considered as a reason to refuse an arrangement.

2.22. In some cases it may be necessary to request documentary proof to confirm particular details when arriving at a payment arrangement. Individuals should not however be asked for documentary evidence unless it is absolutely necessary.

2.23. If it is necessary the individual should be told of the particular items that require confirmation and be given a specified reasonable time limit within which they are required.

2.24. The individual should be advised that if the evidence is not produced within the agreed timescale the offer of payment may be rejected and further action could be taken.

2.25. All information collected is governed by the Data Protection Act 1998 and the Revenues and Benefits Service has procedures in place to comply with the Act.

- 2.26. The Revenues and Benefits Service will closely monitor all payment arrangements and will take prompt recovery action for missed payments. Action may be taken, even where payment is received shortly after the due date.
- 2.27. The responsibility for making sure the payment reaches the account by the due date remains with the debtor. The debtor should be reminded the date on which instalments are to be paid is the final date on which money should reach the account.
- 2.28. This means that debtors must allow sufficient time for the payments to reach the Council by the due date.
- 2.29. We will individually consider repayment for every case and, where possible, will seek to recover the debt in full within 12 months. If it is not possible to recover the debt in full within 12 months, in exceptional circumstances, alternative repayments may be offered with an ideal maximum repayment term of five years. Very occasionally arrangements may need to extend beyond five years and in such instances, approval from a Senior Officer in the Revenues and Benefits Service must be obtained. No repayments should extend beyond 10 years.
- 2.30. It is important to remind the individual to contact the Revenues and Benefits Service if they anticipate problems in meeting any instalment due date. They will be advised not to wait until they have received a written response to their offer of payment, but to start and maintain payments.

### Monitoring recovery of overpaid Housing Benefit

- 2.31. The Council will monitor recovery of overpaid Housing Benefit by the Revenues and Benefits Service through success in meeting the following Performance Indicators:
- Amount of overpaid Housing Benefit recovered during the period as a percentage of total amount of overpaid Housing Benefit identified during the period
  - Amount of overpaid Housing Benefit recovered during the period as a percentage of the total amount of Housing Benefit overpayment debt outstanding at the start of the period **plus** amount of overpaid Housing Benefit identified during the period
  - Amount of overpaid Housing Benefit written off during the period as a percentage of total amounts of overpaid Housing Benefit debt outstanding at the start of the period plus amount of overpaid Housing Benefit identified during the period.
- 2.32. Statistics on the amounts of overpaid Housing Benefit are held from the 2008/09 financial year. These provide a useful yearly/quarterly/monthly comparison with all overpayments created, the recovery by deduction from weekly on-going Housing Benefit (OGB) and through manual invoice and the total amount outstanding being reported.



## 3. Sundry Debts

### Introduction

3.1. It is the Council's policy to recover all collectable debt owed to it. With this overall objective in mind this policy aims to:

- Maximise the Council's Income
- Reduce the time taken to collect charges
- Reduce the level of debt owed to the Council and hence its risk of bad debts, and
- Reduce the incidence of debt that cannot be collected.

3.2. This Policy supports these aims by:

- Promoting ownership of debts by service providers
- Ensuring wherever possible that collection of the fee or charge involved takes place prior to the service being provided so that credit is only given when it is essential to do so
- Promoting a system of active credit control
- Ensuring invoicing procedures are carried out on an accurate and timely basis
- Requiring that evidence to support the invoice exists in the form of an order or other written contract
- Encouraging debtors to pay promptly, and
- Making collection and enforcement activity more efficient.

3.3. The Director of Operations will set and monitor delivery of relevant targets for debt collection and will report performance against target to members.

3.4. The Council will publicise this policy and that it intends to pursue the collection and recovery of all debts owed to it.

### Scope

3.5. This part of the policy excludes the following debts as they are subject to their own legislation / regulations:

- Council Tax
- Business Rates (National Non Domestic Rates)
- Housing Benefits Overpayments and Excess Council Tax Support

### Key Objectives of Fees and Charges

3.6. The fee or charge imposed by the Council should be fair in relation to the goods and/or services provided.

3.7. The charge should reflect the principles outlined in the appropriate charging policy and in the Council's Financial Regulations.

3.8. The charge should, depending on legislation, always at least cover the cost of providing the goods or service and the costs of collection, unless the Council has taken a policy decision to subsidise the service.

- 3.9. The charge should wherever possible be obtained in advance of the goods and/or services being provided. If not, and where appropriate, the prior written agreement of the person receiving the goods and services should be obtained to pay for the goods and/or service.
- 3.10. The charge should be collectable.
- 3.11. Fees and charges must be reviewed at least annually.
- 3.12. There should be a clear and prompt billing and collection process.
- 3.13. There should be a clear and consistent council-wide approach to the giving of credit and the collection of debt that is led by this policy.
- 3.14. There should be a system that ensures Services only retain credit for an invoice if the income is actually collected.

## Responsibilities

- 3.15. Directors, Assistant Directors and Service Managers must ensure:
  - Financial Regulations for collecting sundry debt are adhered
  - The parts of this policy applying to their services are correctly followed
  - They proactively support the achievement of corporate targets for debt collection
  - Officers directly responsible for budgets are fully appraised of their responsibilities
  - Relevant systems and procedures are put in place
  - Staff involved in the debt collection process are appropriately trained, and
  - The success of training is kept under continuous review.
- 3.16. The Finance Manager and the ICT and Information Manager are responsible for providing central support and the relevant electronic processes needed to ensure adherence to this policy.

## General Principles

- 3.17. Service providers **must** try to get payment in advance or at the time of service delivery wherever permissible. Sundry debt accounts should **only** be raised where payment in advance for a service is inappropriate.
- 3.18. Checks can be made before the service is provided to minimise risks of bad debt. These checks can include vetting of a contractor to assess their financial strength and consequently assess the risk of future non-payment. Investigation can also be made to see if the customer has failed to re-pay a debt owed to the Council in the past.
- 3.19. It is crucial to ensure any debt is properly established. Inadequate legal proof of liability will make collection difficult. It is vital there is sufficient supporting documentation to enforce the debt through written agreements, or official order numbers. The full name and up-to-date address of the debtor should be clear before a service is provided.
  - If the potential debtor is a commercial organisation - the issuing service will consider the risk of trading with that company and the risk of providing credit duly assessed, including via the use of a credit check, and request payment in advance of the goods or service being provided, if necessary
  - If the debtor is a private individual - check if any existing debt exists in the Council against the individual, or whether the Council has had difficulty enforcing payment of previous debts in the past, and request payment in advance of the goods or service being provided if necessary

- If an invoice is to be raised - the issuing service will ensure enough supporting documentation exists to enforce the debt in the event of non-payment.
- 3.20. The minimum value of any demand will be determined annually by the Responsible Finance Officer. However such a minimum value shall not apply to accounts relating to legal charges for rights of access or drainage charges where a contractual duty exists to make such token payments.
- 3.21. Except for a demand payable by instalments, or as otherwise contractually agreed, the settlement terms for all demands will be 14 days.
- 3.22. Recovery action will start no later than 14 days after the demand has fallen due.
- 3.23. Raising sundry debtor invoices will be the responsibility of the service and should only be raised on the Corporate Financial System.
- The correct details of the debtor should be clearly shown on any invoice, with the most current address used. In the event the invoice is raised to a large organisation it should be clearly directed to the relevant department or contact
  - Details shown on the invoice should be comprehensive and clear to the invoice recipient so that the risk of dispute is minimised. Full details of the service provided should be clearly shown on any invoice, including relevant dates, order references, agreements and any other relevant information that will hasten quick payment and minimise any possible delays or disputes
  - An invoice must be raised within 2 days of the charge becoming known
  - Invoices raised must be sent to customers within 72 hours.

### Account collection & recovery

- 3.24. The Council has a pro-active approach to collection, to ensure that any disputes are quickly identified and resolved before the account is due for payment.
- 3.25. For individual debts with a value of £5,000 or greater, an officer within the service to which the debt relates will obtain details of a named individual who will receive the invoice (in the case of a company this is likely to be someone within that company's accounts payable team) and will diarise to check whether payment has been made on time. Where payment has not been received the officer will telephone the named individual to establish why payment has not been made and to obtain a date when payment will be made. Further follow-up calls will be made as necessary.
- 3.26. The Council will take prompt action in respect of any customer that:
- Fails to abide by any Terms and Conditions relating to any account or fails to keep any payment promise as set out within any contractual documentation or agreed verbally or in writing in the normal course of collection procedures
  - Refuses to pay without a valid reason
  - Refuses to pay interest charges on late payments in respect of invoices that have not been subject to a valid dispute
  - Refuses to pay collection costs when the services of a third party have been used.

### Recovery & Enforcement

- 3.27. In the event of non-payment of an invoice, all subsequent recovery action will be undertaken by the Corporate Recovery Team. This typically will be in the form of reminder letters, telephone calls, emails and liaising with service areas in accordance with documented procedures.

- 3.28. The extent of recovery procedures for particular types of debt will be agreed in advance between the Corporate Recovery Team and issuing services.
- 3.29. Once standard reminder letters have been completed, additional appropriate recovery action will be initiated by the Corporate Recovery Team where necessary, unless previously agreed with the issuing service. The exact nature of this action may vary case by case but typically will include a combination of individual letter, telephone calls, enquiries etc. as appropriate.
- 3.30. In the event that payment remains outstanding after this further recovery action (and no standing instruction exists), then the Corporate Recovery Team will refer back to the originating service for instructions to commence additional action as appropriate, and for the issuing service to suspend service provision if legally permissible until outstanding debts are settled. It is essential that services respond promptly to these requests and instruct the Corporate Recovery Team accordingly.
- 3.31. The type of recovery action will be agreed between the Corporate Recovery Team and the originating service. Options to consider will include:
- Telephone contact with the debtor
  - Referral to a debt collection agency
  - Legal action (obtaining a County Court Judgement). At the request of the originating service debts may be taken further by the Council's Corporate Recovery team if it is felt the debt is recoverable unless the individual circumstances are such that this does not represent best value for the Council. Further options available as the result of a County Court Judgement will then be considered if recovery of the debt is best progressed through:
    - Order to obtain information (making the debtor attend court to explain their financial circumstances)
    - Attachments of Earnings Order
    - Third party debt order (allowing the freezing of bank accounts)
    - Charging Order
    - Statutory demand prior to a Bankruptcy Order or Insolvency proceedings
    - Writ of Control (carried out by a High Court Enforcement Officer)
  - The cost of legal action will be initially charged to the originating section's budget although every effort will be made to recover legal costs from the debtor.
  - The Council's legal department are on hand to offer support/advice should the Corporate Recovery team require support. It is understood that the Legal Department will take control of certain cases for example where a breach of lease has occurred.
- 3.32. Ownership of all sundry debts rests with the originating service. It is only the originating service that may:
- Cancel an invoice relating to their service area via the raising of a credit note. However, an individual officer who has raised the invoice in question will not be permitted to request its cancellation and should not therefore attempt to do so
  - Correspond with or discuss with the debtor, issues about the validity of the debt.
- 3.33. The costs of enforcement action/litigation to recover sundry debtor invoices will be charged against the budget of the service raising the invoice. Any costs recovered from the debtor will be credited against these sums.

## Instalment arrangements

- 3.34. In the event of customers requesting the facility of paying their debt over a period of time, the matter will be referred to the Council's Corporate Recovery Team who may agree a suitable payment plan accordingly.
- 3.35. We will individually consider repayment for every case and where possible, will seek to recover the debt in full within 12 months. If it is not possible to recover the debt in full within 12 months, in exceptional circumstances, alternative repayments may be offered with an ideal maximum repayment term of five years. Very occasionally arrangements may need to extend beyond five years and in such instances, approval from a Senior Officer in the Revenues and Benefits Service must be obtained. No repayments should extend beyond 10 years.
- 3.36. Such payment plans will not be available as standard but may be available subject to negotiation between the Council's Corporate Recovery Team and the debtor. These negotiations may entail a "means enquiry" where necessary, where the customer will be asked to provide details of their financial circumstances to support their request to repay the debt over a period of time.
- 3.37. If there is any doubt as to whether the agreement is realistic (either because it appears to be too high or too low), officers will ask the individual to complete an income and expenditure form.
- 3.38. In the event instalment arrangements have been agreed with a debtor, the repayment plan will be monitored by the Council's Corporate Recovery Team. In the event of instalment payments being missed, suitable recovery action will be undertaken through reminder letters and other recovery action.
- 3.39. The Housing section may set up instalment arrangements at time of invoice however all further instalment arrangements will be the sole responsibility of the Council's Corporate Recovery Team.
- 3.40. Wherever possible long term payment arrangements should be subject to an annual review.

## Disputes/queries

- 3.41. Disputes must be resolved by the appropriate service in line with the timescales detailed in the own policy/procedures.
- 3.42. A dispute is not resolved unless it meets one of the following conditions:
- Customer is correct and gets full credit
  - Customer is partly correct and gets partial credit and accepts the charge
  - Customer is incorrect and accepts the charge
  - Customer is not correct and does not accept the situation but the service is prepared to instigate legal proceedings to recover debt.

## Interest on debts

- 3.43. Interest may be applied to all non-consumer debt as laid down in the Late Payment of Commercial Debts Act 1998. Similar interest may be applied to consumer overdue debt providing the consumer has received prior notification of such charge.
- 3.44. When legal proceedings are issued, interest can be charged for any debt at a rate of 8% from the date the debt arose until judgement is entered (S69 County Court Act 1984).

- 3.45. So not to make the financial position of the debtor worse, interest is not usually added to the vast majority of debts and where it is known that the debtor is on benefits. The debt will already have increased in any event by the addition of court costs.

### Loans to staff

- 3.46. Any Council loans, for example an assisted car purchase or training costs for professional qualifications, are repayable in accordance with the terms set out in the Council's Human Resources policies. If the employee leaves the authority any outstanding loan amount becomes repayable in full by the last day of service. Any remaining amount unpaid will be administered through the Corporate Finance System and collected following the usual Sundry Debt processes.

### Management reporting

- 3.47. Age Debt Analysis reports are available in the Corporate Financial System. These reports should be run regularly (at least monthly) by services so that each service can make an informed judgment on its bad debt position to ensure the Council's overall bad debt provision remains appropriate, as part of its budgetary monitoring process.
- 3.48. Quarterly the amount of invoices and credit notes raised in the previous quarter are reported to individual departments for their signing off. Upon completion these signed documents are scanned into the Council's Document Management System. The Finance Manager is notified of all invoices and credit notes raised each quarter.
- 3.49. Quarterly the Finance Manager receives a report detailing the total amount raised on the Corporate Finance System. This value is broken down by the recovery codes of Not Yet Due, On Hold, Paying, Collection Agent, 7 Day Letter, County Court and Write Offs. The total amount is also broken down by aged debt into the classifications of less than 3 months, 3-6 months, 6 months to 1 year and more than a year.
- 3.50. Quarterly the Finance Manager receives a listing of all cases on hold.
- 3.51. Quarterly the Senior Debt and Recovery Officer in liaison with the Corporate Strategy and Performance Manager will prepare a report to the Joint Management Team (JMT) detailing the following information:

#### **Top 10 Overdue Sundry Debts**

Name	Customer Reference	Invoice Number	Invoice Date	Due Date	Invoice Details	AD Owner	Total Due	Recovery Action Taken	Officer Comments	On Last Quarters Report Y/N



# Good Practice Protocol

## Introduction

Council Tax payers will receive a better level of service if Local Authorities and debt advice agencies work together.

This good practice protocol makes a number of suggestions on how relations can be strengthened. It has been developed through partnership work between the national bodies representing advice agencies and local government throughout England and Wales. It reflects best practice at local level and is intended to facilitate regular liaison on practices and policy concerning Council Tax debt collection. In setting down clear procedures and keeping them regularly under review all parties can ensure that cases of arrears are dealt with quickly and realistically whilst complaints are handled efficiently.

By signing up to the protocol you can help ensure that taxpayers pay their Council Tax bills on time while accessing timely debt advice when needed.

In its report of June 2013 the Government endorses the Citizens Advice Local Government Association Good Practice Protocol and recommends Local Authorities who have not done so already to commit to it.

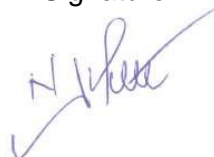
Use the section below to sign up to the protocol as a public commitment to its principles of fairness, partnership working and transparency in Local Authority debt collection.

Signature



S R Perkins - Local Authority representative (West Somerset Council)

Signature



West Somerset Advice Bureau Manager – 18 December 2014



### Partnership

The following items cover effective liaison between Local Authorities and advice agencies.

- Local Authorities and advice agencies should meet regularly to discuss practical and policy issues with a recommendation to meet quarterly at officer level and annually with elected members.
- All parties should have dedicated contacts accessible on direct lines and electronically so that issues can be taken up quickly.
- All parties should promote mutual understanding by providing training workshops and/or exchange visits.
- Advice agencies and Local Authorities should work together to develop a fair collection and enforcement policy highlighting examples of vulnerable people and specifying clear procedures in dealing with them. Contractual arrangement with enforcement agents should specify procedures for the Council to take back cases involving vulnerable people.
- Local Authorities should consider informal complaints as evidence of problems with collection or enforcement with enforcement agents. Debtors may be afraid to complain formally where enforcement agent activity is ongoing. Informal complaints received from advice agencies can indicate problems worthy of further investigation.

### Information

Literature should be reviewed as part of liaison work between Local Authorities and advice agencies.

- Publicise debt advice contact details on literature and notices. Local Authorities can provide Council Tax payment plans to help people budget. Advice agencies can help by promoting the need for debtors to contact their Local Authority promptly in order to agree payment plans. Both parties can work together to ensure the tone of letters is not intimidating but encouraging of engagement.
- Local Authorities should consider providing literature about concerns council tax debtors may have on Enforcement Agents and enforcement. Information could cover charges Enforcement Agents are allowed to make by law, how to complain about Enforcement Agent behaviour or check Enforcement Agent certification and further help available from the Local Authority or advice agencies.
- All parties should work together to promote engagement by Council Tax payers. Include information on how bills can be reduced through reliefs, exemptions and Council Tax support schemes, how tax payers should contact the local authority if

they experience financial hardship and the consequences of allowing debts to accumulate. Information should be made available on Local Authority and advice agency websites, via social media and available at offices of relevant agencies. This is an opportunity for joint campaign work.

- Promote different payment dates within the month as options available to Council Tax payers. This can allow people to budget more effectively.

### Recovery

If a Council Tax bill is not paid then the recovery process comes into play. The first stage of the recovery process will involve reminders but if the account remains unpaid the Billing Authority obtaining a Liability Order from the Magistrates' Court. While authorities strive to make contact with a debtor the first point of contact often occurs only when an Enforcement Agent visits the premises. The following items should be considered to ensure an appropriate response.

- Local Authorities should work in partnership with advice agencies on the content of all documents produced by the Billing Authority and agents acting its behalf which are part of the enforcement process. This should ensure that the rights and responsibilities of all parties are clearly set out.
- Enforcement Agents should provide the debtor with a contact number should they wish to speak to the Local Authority.
- All charges associated with recovery should be kept regularly under review to ensure they are reasonable. Enforcement Agents are employed by the Billing Authorities and should only make charges in accordance with the Taking Control of Goods (Fees) Regulations 2014.
- The level of debt (inclusive of liability order fees) should be considered before Enforcement Agent action is taken.
- Local Authorities may have different definitions of a vulnerable person/household. Recovery action will be referred to the Local Authority where these criteria are found to have been met.
- The debtor may have outstanding claims for Council Tax Support or Housing Benefit which are contributing to arrears. Recovery can be suspended once it is established that a legitimate claim is pending.
- Local Authorities should prioritise direct deduction from benefits or attachment of earnings in preference to using Enforcement Agents. This avoids extra debts being incurred by people who may already have substantial liabilities.
- Procedures should exist for debt advisors to negotiate payments on behalf of the taxpayer at any point in the process including when the debt has been passed to

the Enforcement Agent. In some cases the debtor may only, contact an advice agency following a visit from the Enforcement Agent.

- Set down, as part of contractual arrangements, a clear procedure for people to report complaints about recovery action. Local Authorities will regularly monitor the performance of those recovering debts on their behalf and ensure that contractual and legal arrangements are met.
- A key part of the recovery is treating each case on its merits. Arrangements need to be affordable and sustainable while ensuring that the debt is paid off within a reasonable period.

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*Report to a Meeting of:* FULL COUNCIL  
*To be Held on:* 19<sup>th</sup> August 2015  
*Date Entered on Executive Forward Plan  
Or Agreement for Urgency Granted:*

## REVENUE AND CAPITAL OUTTURN 2014/15

### 1. **PURPOSE OF REPORT**

- 1.1 The purpose of this report is to provide Members with details of the Council's financial outturn position for both revenue and capital budgets, together with information regarding end of year reserve balances, for the financial year 2014/15.

### 2. **CONTRIBUTION TO CORPORATE PRIORITIES**

- 2.1 The Council's financial performance is directly linked to the 'Local Democracy' priority in terms of local accountability and maximising government funding. Additionally, financial performance and monitoring of financial information is crucial to monitoring the progress being made in delivering all Council services.

### 3. **RECOMMENDATIONS**

- 3.1 It is recommended that Full Council notes the reported General Fund Revenue Budget net overspend of £228,348.
- 3.2 It is recommended that Full Council approves the proposed transfer of £2,183,884 to the Business Rates Smoothing Reserve to mitigate the deficit on the Collection Fund in 2014/15 and the estimated deficit in 2015/16 due to the outcome of the recent Hinkley Point appeal, as well as future risks in this area.
- 3.3 It is recommended that Full Council approves a Supplementary 2015/16 Revenue Budget allocation of £40,000 for essential asset maintenance and health and safety works to be funded from the Sustainability Earmarked Reserve.
- 3.4 It is recommended that Full Council notes the transfers to and from Earmarked Reserves as set out in Table 4 and Appendix B of this report, and supports the recommended Budget Carry Forward of 2014/15 underspends for specific service costs in 2015/16 totalling £206,394 as set out in Appendix B.
- 3.5 It is recommended that Full Council approves the Capital Programme Budget Carry Forwards totalling £577,719 for general schemes to be funded using capital receipts, capital grant and S106 contributions (as set out in Appendix C of this report).

- 3.6 It is recommended that Full Council approves Capital Programme Budget Carry Forwards totalling £898,149 for Hinkley S106-funded schemes (as set out in Appendix C of this report).
- 3.7 That Full Council notes the net overspend of £39,204 in relation to the Capital Programme for general schemes in the current year and that this overspend has been funded from the useable capital receipts reserve.
- 3.8 It is recommended that Full Council approves Revenue Budget Carry Forwards for Hinkley S106-funded schemes (Stogursey Parish Council £2,640 and HTAP Action Plan £125,385)

#### 4. **RISK ASSESSMENT (IF APPLICABLE)**

##### **Risk Matrix**

<b>Description</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Overall</b>
That the Authority overspends against the approved budget	3	4	12
<i>Regular budget monitoring reports are produced and managers actively manage the budgets under their responsibility</i>	1	4	4

- 4.1 The scoring of the risks identified in the above table has been based on the scoring matrix. Each risk has been assessed and scored both before the mitigation measures have been actioned and after they have.

#### 5. **BACKGROUND INFORMATION**

- 5.1 Members have received financial performance information throughout the year, with reports submitted to Scrutiny and Cabinet in line with the agreed reporting arrangements. This report provides details of the position at the end of the financial year, and enables Members to compare in year forecasts with the actual outturn (end of year) position. It also describes how the year end position impacts on the important objective for achieving financial sustainability.
- 5.2 Effective financial management forms an important part of the Council's overall performance management framework. It is also vital that the Council maintains strong financial management and control in the face of continuing and unprecedented financial pressures as funding for council services is squeezed, and our community continues to face up to the effects of wider economic pressures.
- 5.3 The Outturn figures in this report are provisional (pending end of year audit) and have been used as part of the completion of the Unaudited Statement of Accounts, which has been approved by the S151 Officer. Should the External Auditor identify any changes to the Accounts these will be reported to the Audit Committee in September 2015.
- 5.4 This report provides some detail behind the financial performance for the year. The high level headline information can be summarised as follows:
- The Outturn against the revised Revenue Budget is a net overspend of £228,348. Despite achieving an underspend against controllable budgets, the Council has had to account for the impact of a substantial business rates appeal, which has pushed the authority into an overspend position. As well as triggering a financial problem from 2014/15, the impact of this appeal will be felt on our ongoing financial position (see report later on the agenda - MTFP Report).

- The General Reserves Balance at the end of the financial year (subject to audit) is £529,899, which is just above the recommended minimum balance of £500,000.
- Total Capital Expenditure for the year after taking into account the use of funding from capital grants plus S106 contributions, produces a £39,204 overspend against revised budget. This overspend has been funded using the Capital Receipts Reserve.

5.5 2014/15 has been the second year of Business Rates Retention. This continues to provide risks for the Council, as reported to Members previously. This report provides a summary of the overall impact during the year, which is significantly affected by the outcome of the Hinkley B Rateable Value appeal.

## **6. COMMENTS AND DISCUSSION FROM SCRUTINY COMMITTEE**

6.1 In response to a specific question it was detailed that a proposed £10,000 Health and Safety spend in relation to the Alcombe Sure Start Children's Centre building was currently under review.

6.2 The Hinkley Point business rate appeal issue was considered at length. This had a big effect on the financial outturn due to the size of the business as it accounted for 30% of the overall business rate income. In response to a question, it was explained that this was not necessarily a one off situation as there was always the risk that other business rate appeals could be successful in the future. The Committee questioned if everything was being done in regard to lobbying Central Government about this issue which appeared to be very unfair for authorities like West Somerset. The Leader confirmed that contact had already been made with government in this respect and that the Council would work with other authorities who were facing similar challenges; nevertheless he did warn that at present there was no sign that the current business rate retention process being altered.

6.3 In reply to a question it was agreed to provide a written response in regard to the background to an overspend in relation Townsend Farm disposal costs detailed in appendix C to the report.

6.4 It was also noted that with the one 'correction' of the figure to £2,183,984 in recommendation 3.2 of the Scrutiny Report, the recommendations were supported by the Scrutiny Committee.

## **7. REVENUE BUDGET OUTTURN 2014/15 AND RESERVES**

7.1 As reported to both Scrutiny and Cabinet, the Council has reported an overall net overspend of £228,348. This comprises of a £121,846 underspend in respect of net expenditure on services before reserve transfers, plus a further underspend in respect of surplus funding received during the year of £1,509,698. However this is offset by an over spend against transfer to / from earmarked reserves of £1,859,892. For information the forecast outturn as at Q3 (April to December 2014) was a projected underspend of £60,833. It is worth noting that the Council was heading for an underspend until the Business Rates Retention position following the outcome of Hinkley B business rates appeal became clear.

7.2 Below is a table showing the main variances between Q3 and the final outturn position:

***Table 1 –Main Differences between Q3 and Outturn Variances 2014/15***

	<b>Q3 £000</b>	<b>Change £000</b>	<b>Q4 £000</b>
Legal	(13)	(16)	(29)
Corporate and Democratic Core		(21)	(21)

Coast Protection		(30)	(30)
Building Control	59	0	59
Public Conveniences – All	13	10	23
Open Spaces	12	(24)	(12)
Garden Waste (accounting timing difference)		65	65
Street Cleansing	20	(10)	10
Council Tax Benefit	10	0	10
Housing Benefits	(82)	40	(42)
Finance	(12)	12	0
Estates – Assets	(11)	36	25
Private Sector Renewal	38	(3)	35
Development Control	(37)	(55)	(92)
Salaries / Shared Service Costs		(67)	(67)
Transfers From Earmarked Reserves	0	(109)	(109)
Transfers To Earmarked Reserves	0	1,969	1,969
Business Rates Funding	0	(1,445)	(1,445)
Collection Fund Surplus (budget error)		(46)	(46)
Others	(58)	(17)	(75)
<b>TOTAL – over / (under) spend</b>	<b>(61)</b>	<b>289</b>	<b>228</b>

7.3 The main changes since the Q3 report are explained below:

- **Legal:** Underspend in relation to the Mendip District Council legal contract as well as lower than expected general legal fees.
- **Corporate and Democratic Core:** Lower than budgeted Audit Fees as external audit costs have reduced.
- **Coast Protection:** Includes a budget that was created to provide revenue funding of £25,000 to fund the Blue Anchor Coastal Protection Scheme, however the scheme was discontinued meaning the revenue funding was not required.
- **Building Control:** Lower than budgeted income received during the year, partly as a result of increased competition from private sector suppliers.
- **Public Conveniences:** Approved savings target that was included in the budget were not fully achieved.
- **Open Spaces:** General underspends against budget.
- **Waste:** The reported overspend is essentially due to a correction to historic accounting practices for the treatment of garden waste kerbside collection service. The majority of income for 2015/16 garden waste service is received from customers in February/March of 2014/15 financial year, whereas the cost of the service is paid for during 2015/16. It is therefore appropriate to transfer (accrue) the income in 2015/16 so that income and costs are reported in the same accounting year.
- **Street Cleansing:** Approved savings target that was included in the budget were not fully achieved.
- **Housing Benefits:** Ongoing Benefit Adjustments – Payments recovered from ongoing benefits in respect of Housing Benefit overpayments.
- **Estates – Assets:** Generally income received higher than budgeted however this has been offset by the setting aside of funding for essential works on general asset compliance and Dulverton Mill Leat which members approved to be funded/offset by in-year underspends.
- **Development Control:** Increased application fees received compared to prediction at Q3 and budget. During Q4 applications in respect of Premier Inn / Brewers Fayre and Lidl were received, which contributed to the surplus income for the year.

- **Salaries / Shared Service costs:** Through the period of restructuring to implement the shared service structure there have been vacancies or delayed appointments in some posts which have resulted in savings against budget.
- **Transfers from Earmarked Reserves:** Earmarked reserve balances have been reviewed in light of the impact of the business rates refund costs on the outturn and general balances, and it is proposed to return monies to the General Fund.
- **Transfers to Earmarked Reserves:** An additional sum transferred to the Business Rates Smoothing Reserve to provide for the Collection Fund loss reported in 2014/15 and the predicted loss in 2015/16 – primarily related to appeal refunds.
- **Business Rates Funding:** The impact of the major cost of appeals results the Council being due to receive a “safety net payment” to maintain funding in year close to the funding baseline. This payment will partly offset the Council’s share of the Collection Fund loss referred in previous bullet point.
- **Collection Fund:** This was a budget error for the omission of the previous year’s surplus on the Council Tax Collection Fund which was identified as part of the year-end closedown process.

7.4 Table 2 below provides a summary the revenue budget and outturn for the year.

**Table 2 – Summary Revenue Outturn 2014/15**

	Revised Budget £	Outturn £	Variance £
Corporate Operations	389,396	385,295	-4,101
Housing and Communities	3,872,661	3,817,325	-55,336
Growth and Development	343,629	393,079	49,450
Hinkley Central Support Recharges	288,882	200,306	-88,576
	-122,059	-115,683	6,376
<b>Subtotal - Net Service Costs</b>	<b>4,772,509</b>	<b>4,680,322</b>	<b>-92,187</b>
Interest costs and income	7,850	3,191	-4,659
Revenue Contribution for Capital Outlay (RCCO)	25,000	0	-25,000
Provision for capital debt repayment	200,400	200,400	0
<b>Subtotal – Net Costs before reserve transfers</b>	<b>5,005,759</b>	<b>4,883,913</b>	<b>-121,846</b>
Transfers from Earmarked Reserves	-602,164	--712,026	-109,862
Transfers to Earmarked Reserves	1,267,679	3,237,433	1,969,754
Transfers to/from General Reserves	-233,619	-233,619	0
<b>NET BUDGET AND EXPENDITURE</b>	<b>5,437,655</b>	<b>7,175,701</b>	<b>1,738,046</b>
<i>“Below the line” Funding items:</i>			
Business Rates Funding	-1,876,810	-3,321,464	-1,444,654
Revenue Support Grant	-1,224,738	-1,224,738	0
New Homes Bonus	-443,644	-447,252	-3,608
Other Grants	50,581	35,045	-15,536
Council Tax	-1,823,221	-1,869,121	-45,900
Estimated Surplus on 13/14 NNDR	-119,823	-119,823	0
<b>TOTAL FUNDING</b>	<b>-5,437,655</b>	<b>-6,947,353</b>	<b>-1,509,698</b>
<b>NET OVERSPEND FOR THE YEAR</b>	<b>0</b>	<b>228,348</b>	<b>228,348</b>

7.5 Further analysis and commentary on the main variances reported for the year is provided in **Appendix A**. The net underspend automatically transfers to General Fund Reserves as part of the financial year end process.

### General Reserves

7.6 The following table summarises the movement on the General Reserves Balance during the year. The reserve balance as at 31 March 2015 is £529,899, which is £461,967 less than at the start of the financial year.



**Table 3 – General Reserves Balance 31 March 2015**

	Actual £
Balance Brought Forward 1 April 2014	991,866
Original Budget	-321,108
Supplementary Estimates:	
Sand Clearance	-10,000
Blenheim Gardens	-5,500
Blue Anchor Coastal Protection	-25,000
Planning Policy – Local Plan	-74,750
2014/15 In Year Budget Savings	95,158
Transfer of Uncommitted Earmarked Reserve Balances	107,581
2014/15 Outturn Overspend	-228,348
<b>Balance Carried Forward 31 March 2015</b>	<b>529,899</b>

- 7.7 As a result of the reported overspend in the year, the year-end balance is now only very marginally above the current recommended minimum balance within the Council's financial strategy. The financial challenge is well reported and this balance provides very little resilience to cover any additional costs or funding reductions arising in 2015/16.

#### **Supplementary Budget Approvals – Allocations from Reserves**

- 7.8 There are emerging essential asset maintenance costs totalling £40,000 that are not sufficiently covered within the existing approved budget for 2015/16. It is proposed that a supplementary budget is approved to cover these costs to enable the works to be completed, however there is insufficient capacity within general reserves for these to be affordable from general balances therefore – as the costs are identified as essential – the funding is withdrawn from the Sustainability earmarked reserve. The funding is needed for:

- a) Quayside Road Minehead £5,000  
West Somerset has previously carried out slope management works along the rear of properties at Minehead harbour to prevent any soil or rock slippage, including the introduction of high tensile nets and fixings. However a Quayside resident property owner has raised concerns about the trees and banking at the rear of their property and officers from both Property Services and Open spaces have visited to assess the situation. There are some accessibility issues and in order to complete a full assessment a large tree at the rear of the property will require cutting back and a full survey of the area and holding nets undertaken, with an estimated cost of £5000. It is anticipated the survey will identify further works required of a maintenance/replacement nature which may be extensive and costly.
- b) Minehead Harbour £10,000  
During 2015 we have carried out a large amount of maintenance works at Minehead harbour in order for it to continue as a working harbour, including removing a large amount of stone/pebbles from the harbour entrance, removing sand along the edge of the slipway, and renewing the majority of the boundary tubular fencing. However we have identified additional works required including: replace timber harbour uprights which protect the boats when either being launched or berthed; recasting/re-fixing access steps leading to the moorings in order to prevent slips or accidents; replacing a number of the signs in use on the harbour that have corroded and become sharp. We estimate costs of up to £10,000 for these works.
- c) Compliance Works £25,000  
Following approval to allocate £40,000 in 2014/15 to fund essential compliance reviews for council assets, the council's Property Service is on track to complete the initial compliance surveys. The Council has a large number of commercial premises, some of

which are covered by lease agreements or party to alternative contractual arrangements. All will need to comply with the various aspects of legislation which will relate to their individual occupation. Most if not all premises will need an asbestos survey, an electrical test, legionella testing and require a fire risk assessment. If occupied by West Somerset staff they will also require PAT testing. This also includes all public conveniences, shelters, band stands, light houses and marinas. We are working through the survey stages and it is expected this will identify compliance associated works that will need to be completed to bring the properties in line with legal requirements. A budget increase of £25,000 is requested based on existing demands, and a further request may be needed depending on the findings of the compliance reports.

## **Earmarked Reserves**

- 7.9 Earmarked Reserves are amounts that have been set aside for specific purposes from existing resources, where the expenditure is expected to be incurred in future years. The table below provides a summary of the movement in earmarked reserve balances during 2014/15 financial year, highlighting that earmarked reserve balances have increased by £2,525,407 to a total of £3,901,346 at 31 March 2015.

**Table 4 – Earmarked Reserves Balance 31 March 2015**

	Actual £
Balance Brought Forward 1 April 2014	1,375,939
Transfers to Revenue Account	-605,711
Transfers from Revenue Account	3,131,118
Balance Carried Forward 31 March 2015	3,901,346

- 7.10 The following paragraphs 6.11-6.20 provide explanation for the larger items included within the earmarked reserves balances. Further detail for all earmarked reserves is provided in **Appendix B**.
- 7.11 **Area Based Grant:** Was a general grant allocated directly to local authorities as additional revenue funding. It is allocated according to specific policy criteria rather than general formulae. Local authorities are free to use all of this non-ringfenced funding as they see fit to support the delivery of local, regional and national priorities in their areas. Members have previously earmarked the balance remaining to fund the employment costs of the Economic Regeneration Manager.
- 7.12 **Sustainability Reserve:** Earmarked for initiatives that have a positive impact upon the long term sustainability of the Authority.
- 7.13 **Joint Management and Shared Services:** During 2014/15 Members will be aware that as a result of bringing the entire officer teams of Taunton Deane Borough Council and West Somerset Council together during 2014/15 it has resulted in savings of £121,647 being achieved. This represents delivery of savings in year earlier than prudently allowed for within the business case, and as agreed through the Joint Partnership Advisory Group (JPAG), this sum has been transferred to the JMASS Earmarked Reserve to provide essential funding to support the transformation of services in the future. The JMASS Reserve balance is currently £275,714.
- 7.14 **Business Rates Smoothing Reserve:** With regards to net Business Rates Retention funding and the outstanding Hinkley Point appeal during 2014/15, it was recommended and approved throughout the year that any predicted retained growth would be transferred to the Business Rates Smoothing Reserve on top of the amount agreed as part of the 2014/15 original budget setting process. This was to assist with mitigating any potential impact of a successful appeal. Now that the appeal has been settled, this has proven to be

a wise strategy however the accrued reserve balance is not sufficient to cover the full impact of the Collection Fund loss now being reported in 2014/15 and the predicted loss to be incurred in 2015/16. Therefore an additional £2,183,984 has been transferred to the Smoothing Reserve at the year-end leaving the balance in March 2015 as £2,930,156. Whilst this may appear 'large' it is forecast that this balance will be needed in full to mitigate the Collection Fund deficit over the next two years. This leaves no contingency for additional losses.

- 7.15 **Land Charges:** Government grant specifically earmarked for providing refunds of personal searches following the introduction of Environmental Information Regulations (EIR).
- 7.16 **Discretionary Housing Payments Reserve:** Government grant specifically ring-fenced for discretionary housing payments.
- 7.17 **Homelessness Prevention:** Homelessness prevention grant received as part of Revenue Support Grant, therefore appropriate sum has been earmarked in 2014/15 along with the remainder of the Mortgage Rescue Grant.
- 7.18 **Assets of Community Value:** Government Grant set aside to support the administration of applications under regulations.
- 7.19 **Planning Policy Reserve:** As recognised in Member reports in 2014/15, monies have been set aside to be drawn down in 2015/16 to cover additional costs arising and relating to the West Somerset Local Plan preparation through to examination and beyond to adoption.
- 7.20 **General Budget Carry Forwards:** Funds have been transferred to earmarked reserves in respect of requests to carry forward budget underspends to support service costs in 2015/16. These total £278,452 and are set out in detail in Appendix B.

## **8. BUSINESS RATES RETENTION**

- 8.1 The Business Rates Retention (BRR) funding system is proving to be both challenging and volatile, with the Council facing significant risks particularly in respect of appeals against rateable values by rate payers. The required accounting arrangements also result in some 'timing differences' which can skew the funding position across financial years.

### **General Fund Retained Business Rates Funding**

- 8.2 The council's share of business rates funding is directly linked to the total amount of business rates due and collected in the area. The amounts credited to the General Fund Revenue Budget in 2014/15 are based on business rates yield and BRR figures from different sources – a combination of the 2014/15 NNDR1 (Original Budget Estimate) and the 2014/15 NNDR3 (End of Year position):

#### ***Business Rates Funding Timing Differences***

<p>In Year Funding based on NNDR1 Original Budget Estimates (fixed amount for the year based on budget):</p> <ul style="list-style-type: none"> <li>• 40% Standard Share of BR Income</li> <li>• Tariff to Government</li> <li>• Share of Previous Year's Collection Fund Surplus/Deficit</li> </ul>
<p>In Year Funding based on NNDR3 actual amounts due for the year (variable amount for the year based on actuals):</p> <ul style="list-style-type: none"> <li>• Section 31 Grant (Government-funded Reliefs/ Discounts)</li> <li>• Levy Payment to Government</li> <li>• Safety Net Receipt from Government</li> </ul>

- 8.3 At the end of the financial year there will be a Surplus or Deficit on the Business Rates Collection Fund, and this sum will be distributed in future years based on Standard Shares – so 40% for West Somerset Council.
- 8.4 The following table summarises the gain/loss for the council under the retention scheme by comparing the retained business rates income with the Funding Baseline set by Government. This will determine business rates income growth, which directly relates to the calculation of the Levy or Safety Net Payment due to/from central Government.

**Table 5 – West Somerset Council Gain/Loss under the Retention Scheme**

	Collection Fund	General Fund
Non Domestic Rating Income (Yield)	6,003,490	
Add back ½ Small Business Rates Relief plus Other Reliefs– funded by S31 Grant	853,047	
Adjusted Non Domestic Rating Income (Yield)	<b>6,856,537</b>	
40% Standard Share for WSC		2,742,615
Tariff to Government (fixed amount)		-2,979,434
Total Retained Income (negative = cost)		-236,819
WSC Business Rates Baseline		1,071,130
Safety Net Threshold		990,795
Safety Net Entitlement from Government		<b>1,227,614</b>

- 8.5 As the Table reports, our retained income amount is a ‘cost’ or ‘loss’ of £236,819. Under the Retention scheme our funding is protected so that it cannot fall below the Safety Net. As a result we will receive a safety net payment from government estimated at £1,227,614, to bring our actual retained funding from business rates back up to £990,795.
- 8.6 The following table summarises the net position in respect of retained business rates funding for the Council in 2014/15 based on required accounting entries.

**Table 6 – Business Rates Funding Outturn for West Somerset Council**

	Forecast Sept 2014 £	Forecast Dec 2014 £	Actual For 2014/15 £
40% Share of Business Rates Income	4,720,092	4,720,092	4,720,092
Tariff to Government (fixed amount)	-2,979,434	-2,979,434	-2,979,434
Section 31 Grant Funding for enhanced Small Business Rates Relief / Flooding Relief	323,461	354,616	353,192
50% Levy Payment to Government	-415,895	-432,694	0
Safety Net Entitlement from Government	0	0	1,227,614
<b>Subtotal</b>	<b>1,648,224</b>	<b>1,662,580</b>	<b>3,321,464</b>
Previous Year’s Collection Fund Surplus	119,823	119,823	119,823
<b>Total Retained Business Rates Funding 2014/15</b>	<b>1,768,047</b>	<b>1,782,403</b>	<b>3,441,287</b>

- 8.7 As has been previously reported, the introduction of the Business Rates Retention system has introduced new financial risks for the Council. The council’s share of business rates funding is directly linked to the total amount of business rates due and collected in the area. Although the total retained funding accounted in 2014/15 is above previous forecast, this is skewed by the timing differences in the required accounting and the fact that West Somerset has now accounted for a safety net payment from Government within its funding of £1,227,614. In reality the actual amount due for the year is below the reported amount, with the cost of appeals (see below) resulting in a very large deficit in the business rates Collection Fund.

- 8.8 As formally published by the Valuation Office Agency (VOA) on 6 May, the outcome of the Hinkley B appeal results in their Gross Rateable Value reducing to £8,000,000 (as at 1 April 2010) – a reduction of £3,180,000 in the 2010 Valuation. There has also been a spike in other appeals at the end of the final months of the financial year, it is assumed driven in part by a change in regulations introduced from April 2015. We have increased the provision for cost of appeals as part of the 2014/15 outturn to reflect these factors. The total provision on 31 March 2015 for estimated appeals and refunds for appeals is £7,946,041. The Council's share of this provision is £3,178,416 (40%).
- 8.9 The Council will need to pay additional funds into the Collection Fund in 2015/16 and 2016/17 to bring the Fund back into balance, and has set aside funds during the year into the Business Rates Smoothing earmarked reserve. As part of the outturn, the increase of £2,183,984 in the final quarter of the year has been transferred to the BR Smoothing Reserve, subject to formal approval by Cabinet and Council. The year-end balance on the Reserve is £2,930,156 (see 6.14 above; Appendix B). The Council's 40% share of the Collection Fund Deficit as at 31 March 2015 is £2,405,130. It is also projected there will be a further deficit in 2015/16 due to ongoing impact of appeals on annual business rates income, which together with the 2014/15 deficit will use up the majority of the Smoothing Reserve balance.
- 8.10 In summary our income in 2014/15 appears to be is higher due to the accounting for the safety net payment, but in reality this is not the real position and members need to take note of collection fund deficit.

## **9. CAPITAL BUDGET OUTTURN 2014/15**

- 9.1 The final Capital Programme budget for 2014/15 for General Schemes was £1,043,935, with actual spend incurred during the year of £505,420 on these schemes, funded through a combination of capital receipts plus grant funding received for disabled facilities grants. Budget carry forward is requested to complete approved schemes in the Programme totalling £577,719, with an actual overspend reported of £39,204 (3.8%).
- 9.2 The key areas of spend included: Watchet CCTV installation; disabled facilities grants; asset disposal costs; IT hardware and upgrades; and various other schemes. The main area of overspend related to the costs associated with the completion of the disposal of land at Townsend Farm, Carhampton.
- 9.3 During 2014/15 a number of Capital Budget allocations were approved for schemes funded through Hinkley S106 contributions, totalling £1,246,263. The costs for these schemes is expected to be incurred over more than one year, with £348,114 actually spent during 2014/15 and £898,149 carried forward to complete the approved schemes in subsequent years.
- 9.4 The following table summarises the position for both general schemes and Hinkley-funded programmes:

**Table 7 – Summary Capital Programme Outturn 2014/15**

	General Schemes £	Hinkley Funded Schemes £	Total £
Original Capital Budget 2014/15	672,618	0	672,618
Supplementary Budget Approvals	371,317	1,246,263	1,617,586
<b>Revised Capital Budget 2014/15</b>	<b>1,043,935</b>	<b>1,246,263</b>	<b>2,290,198</b>
Actual Spend in 2014/15	505,420	348,114	853,534
Carry Forward Requests	577,719	898,149	1,475,868
<b>Actual Plus Carry Forward Commitment</b>	<b>1,083,139</b>	<b>1,246,263</b>	<b>2,329,402</b>
<b>Net Overspend</b>	<b>39,204</b>	<b>0</b>	<b>39,204</b>

- 9.5 A scheme by scheme analysis summary of the 2014/15 Outturn by Scheme is set out in **Appendix C**.
- 9.6 There has been no increase in the underlying capital borrowing requirement during the year.
- 9.7 The overall General Fund capital funding position remains very limited for the Council, and it needs to be borne in mind that the approved capital programme for 2015/16 requires funding of £472,637 from the Useable Capital Receipts Reserve. Below is a table showing the latest forecast of the reserve, and shows that there is only a small uncommitted balance on the reserve (not including new receipts in 2015/16). The Council has allocated £1.8m of capital receipts during 2014/15 to reduce capital debt, as part of the agreed strategy to reduce debt by a total of £3.5m using receipts from asset sales.

**Table 8 – Useable Capital Receipts Reserve Balance 31 March 2015**

	Actual £
Balance Brought Forward 1 April 2014	786,566
Capital Receipts Received in 2014/15	2,051,488
Capital Receipts Used in 2014/15	-141,473
Repayment of capital borrowing	-1,800,000
Schemes carried over from 2014/15	-421,182
<b>Balance Carried Forward 31 March 2015</b>	<b>475,399</b>
2015/16 Approved Capital Programme (Appendix D)	-472,367
Uncommitted Balance	<b>3,032</b>

- 9.8 For information, details of the approved 2015/16 Capital Programme are set out in **Appendix D** of this report.
- 10. FINANCIAL/RESOURCE IMPLICATIONS**
- 10.1 Contained within the body of the report.
- 11. COMMENTS ON BEHALF OF SECTION 151 OFFICER**
- 11.1 Business Rates Retention and the settlement of the Hinkley Point appeal has been hugely significant to West Somerset Council and retained funding has been drastically affected as a result of this.
- 11.2 Accounting for this has resulted in an over spend of £228,348 being reported on the General Fund, which is not good news and means general reserves are now effectively at the minimum acceptable level.

- 11.3 The Business Rates Smoothing Reserve addresses the currently identified Collection Fund loss as a result of this appeal settlement, however it does not provide any contingency for further losses in the future.
- 11.4 It should also be noted that we are continuing to see unfunded costs emerging such as additional £40,000 requested for asset issues within this report.
- 11.5 The Capital Programme has reported a relatively small overspend, mainly related to the costs of disposing of identified surplus assets reflecting the complex nature of the particular disposal. Capital reserves have effectively all been committed to fund current approved schemes in 2014/15 and 2015/16 capital programmes. This presents an ongoing risk in terms of limited funds to meet planned debt repayment and respond to urgent/reactive capital spending requirements.
- 11.6 The Council is now facing a very serious financial challenge. The significant savings achieved in Phase 1 of the JMASS project has been eliminated (and more) by the impact of this one Business Rates appeal, which of course is completely out of the Councils control . Had this not happened, then the Council would have been looking at an underspend against budget (due to strong financial management), and would have been in a stronger position for the years ahead. The report later on this agenda on the MTFP shows the scale of the challenge and the Council must now focus on this as a priority. Phase 2 of the JMASS project is now underway and will report back to Councils on the way forward re transformation in the autumn.

## **12. EQUALITY & DIVERSITY IMPLICATIONS**

**Members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process.**

The three aims the authority **must** have due regard for:

- Eliminate discrimination, harassment, victimisation
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

12.1 None directly in this report.

## **13. CRIME AND DISORDER IMPLICATIONS**

13.1 None directly in this report.

## **14. CONSULTATION IMPLICATIONS**

14.1 None directly in this report.

## **15. ASSET MANAGEMENT IMPLICATIONS**

15.1 None directly in this report.

## **16. ENVIRONMENTAL IMPACT IMPLICATIONS**

16.1 None directly in this report.

## **17. HEALTH & WELLBEING**

17.1 None directly in this report.

**18. LEGAL IMPLICATIONS**

18.1 None directly in this report.



## SUMMARY OF REVENUE VARIANCES TO REVISED BUDGET 2014/15

Group and Detail	Q3 Forecast Variance £	Q4 Actual Variance £	Comments
<b>Corporate</b>			
Legal	-13,104	-29,401	Underspend in relation to the Mendip District Council legal contract.
Other minor variances	-6,045	25,300	
<b>Group Total</b>	<b>-19,149</b>	<b>-4,101</b>	
<b>Operations</b>			
Corporate and Democratic Core		-21,230	Lower than budgeted audit fees
West Somerset House		-11,872	Lower than budgeted running costs
Building Control	58,679	58,893	Reduction in predicted application fees being received. This is due to the demand for the service being below levels including in the budget estimates. The service operates in competition with other providers and is also affected by the volatility within the construction market.
Public Conveniences	12,656	27,384	Approved savings budget not achieved
Open Spaces	11,987	-11,968	General Underspends against budget
Street Cleansing	20,309	10,251	Approved savings budget not achieved
Waste		64,594	Change in accounting treatment, moving of garden waste collection income to receipts in advance as relates to the 2015/16 financial year.
Council Tax Benefit	10,000	10,000	Correction to original budget / assumption in this area as reported through budget monitoring during the year.
Housing Benefits	-81,500	-42,328	Ongoing Benefit Adjustments – Payments held to clear debts with the Housing Benefits system and therefore not actually paid to the claimant.
Finance	-12,190	-15,444	Underspend in respect of bailiff fees and past service pension costs.
Salaries / shared service costs		-67,545	
Other minor variances	-25,977	-56,071	
<b>Group Total</b>	<b>-6,036</b>	<b>-55,336</b>	

<b><i>Housing and Communities</i></b>			
Estates – Assets	-11,039	24,570	Generally income received higher than budgeted however this has been offset by the setting aside monies for essential works on general asset compliance and Dulverton Mill Leat which members approved to be funded from in-year underspends.
Homelessness Administration		-16,349	Underspend in relation to homelessness prevention fund (demand led).
Private Sector Renewal	37,500	33,298	Sedgemoor contract for 2013/14 not paid or accrued therefore both 2013/14 and 2014/15 to be paid in the current financial year.
Other minor variances	-21,948	7,931	
<b>Group Total</b>	<b>4,513</b>	<b>49,450</b>	
<b><i>Growth and Development</i></b>			
Development Control	-37,273	-92,401	Increased application fees received compared to prediction and budget.
Other variances	-2,888	10,201	
<b>Group Total</b>	<b>-40,161</b>	<b>-82,200</b>	
<b><i>Other Variances</i></b>			
Interest and other income		-4,659	Under spend on predicted external loan interest costs together with increased investment returns.
Revenue Contribution For Capital Outlay		-25,000	Supplementary Estimate requested in year with regard to the Blue Anchor Coastal Protection Scheme however the scheme was abandoned therefore budget not required.
Transfers To / From Earmarked Reserves		1,859,892	Additional transfers required at year-end in light of the settled Hinkley Point Business Rates Appeal.
Funding Variances		-1,509,698	Credit for previous year's Council Tax Collection Fund Surplus (not included in budget), extra New Homes Bonus Funding and New Burdens Grant received. Also includes a safety net payment to be received from Central Government as a result of the Hinkley Point Business Rates appeal.
<b>Total Underspend (-) / Overspend for the Year</b>	<b>-60,833</b>	<b>228,348</b>	



## SUMMARY OF EARMARKED RESERVES 2014/15

Earmarked Reserve Account	1 April Balance £	Transfers In	Transfers Out	Transfers Between Accounts	31 March Balance £	Comments
Area Based Grant	113,634		-29,250		84,384	Approved that £9,004 was returned to general fund balances with balance committed to fund 40% of the employment costs of the Economic Regeneration Manager.
Sustainability Reserve	57,698				57,698	Earmarked for initiatives that have a positive impact upon the long term sustainability of the Council
JMASS Reserve	374,983	121,647	-241,116	20,200	275,714	£150,000 in respect of Central Government (Transformation Challenge Grant) received. The other £224,983 is the remainder of the £358,000 allocated as part of the Business Case report following the payment of redundancy costs. It was also decided to amalgamate JMASS reserves and therefore the £20,200 set aside as part of the Business Case approval has been moved to this reserve (see below). Transfers in of £121,647 during 2014/15 were as a result of salary savings achieved from the restructure of Tiers 4, 5 and 6. Transfers out of -£241,116 during 2014/15 were as a result of the funding of severance payments as part of the restructure.
JMASS Project Reserve	20,200			-20,200	0	£20,200 set aside as part of the Business Case approval. Moved to the JMASS reserve above.
Business Rates Retention Smoothing Account	269,663	2,660,493			2,930,156	£219,823 transferred as part of the setting of the 2014/15 budget. As part of Q1 forecast, a surplus of £192,345 for retained BR is currently projected. As at Q2 a further surplus of £49,985 for retained BR is predicted. As at Q3 a further surplus of £14,356 for retained BR is predicted. It is again proposed to earmark these funds at this stage. At outturn a further £2,183,984 is to be earmarked following the outcome of the Hinkley Point appeal to set aside funds to mitigate the effect of 14/15 actual deficit and the projected 15-16 deficit figure on the Collection Fund.).

Earmarked Reserve Account	1 April Balance £	Transfers In	Transfers Out	Transfers Between Accounts	31 March Balance £	Comments
Community Safety	4,455		-922		3,533	External funding specifically earmarked for community safety initiatives
Land Charges	28,530		-3,019		25,511	Government grant specifically earmarked for providing refunds when due
Tourism	15,911		-3,804		12,107	Specifically earmarked for tourism and is topped up by ENPA
Seaside Towns	20,083		-22,273	2,190	0	Specifically earmarked for initiatives in Minehead
New Homes Bonus	113,850		-113,850		0	£51,820 to be used in 2014/15 for Rural Housing project and HIA contract. Approved that £62,030 was returned to general fund balances.
Minehead Events	9,651		-7,065	-2,190	396	Mary Portas grant – specifically earmarked
Housing Benefit Admin	11,782		-6,963	-4,819	0	Government Grant – specifically earmarked to provide support in times of recession
Council Tax Reform	49,308	59,659	-68,459	-40,508	0	Government Grant – specifically earmarked to support implementation of Council Tax Reforms
Benefits External Processing	1,657	10,621		-12,278	0	Underspend from Previous External Processing Benefit funded from Benefit Reform Grants
DHP Reserve	44,861				44,861	Government Grant – specifically ring-fenced for Discretionary Hardship Payments
Other Election Reserve	26,771		-3,108		23,663	Funds to meet the additional costs of IER.
Water Bathing Signs	1,266				1,266	Environmental grant specifically earmarked
Land Charges Surplus / Deficit	31,547		-31,547		0	Approved that £31,547 was returned to general fund balances.
Inspire	7,131				7,131	Earmarked for costs under the Inspire Directive
Transparency Code	2,588				2,588	Earmarked to meet the cost of complying with the transparency code
Exmoor at your Fingertips	1,780				1,780	LARC Fund to fund the “Exmoor at your Fingertip” project
Roughmoor Signage	1,011		-1,011		0	Contribution from business to fund sign for Roughmoor Enterprise centre. Works have been carried out.

<b>Earmarked Reserve Account</b>	<b>1 April Balance £</b>	<b>Transfers In</b>	<b>Transfers Out</b>	<b>Transfers Between Accounts</b>	<b>31 March Balance £</b>	<b>Comments</b>
Minehead Town Centre Signage	885		-385		500	Contribution from Minehead Chamber of Trade and Morrison s106 to fund the signs
Our Place	2,500	8,434			10,934	Contribution for the Our Place project
Eat Exmoor	500		-400	-100	0	Contribution from SCC for the Eat Exmoor Project
National Grid PPA	16,911		-16,911		0	Earmarked to part fund the post of Nuclear Programme Manager. Monies have been utilised.
CCTV	4,000		-2,435		1,565	Underspend in 13-14 earmarked to fund the purchase of a new CCTV camera
Homelessness Prevention	66,120		-22,500		43,620	£50,000 Homeless Prevention Grant (part of RSG) plus remainder of Mortgage Rescue Grant
Section 31 - Flooding	13,486		-13,486		0	Funds to support businesses after the winter flooding. Monies have been used to support businesses.
Planning Staff Salary	6,000		-6,000		0	Part of the 13-14 planning application fees income earmarked to fund additional salary costs in the planning service in 14-15. Monies have been utilised.
Coast Protection	2,275		-2,275		0	Underspend in 13-14 earmarked to fund sand clearance costs in 14-15. Works have been carried out.
Morrison's Footpath	6,000				6,000	Earmarked to part fund the footpath upgrade
Council Tax Discount Scheme	5,000		-5,000		0	Approved that £5,000 was returned to general fund balances.
Community Right to Challenge	8,547		-3,547		5,000	Government Grant set aside to support the administration of applications under regulations.
Assets of Community Value	7,855	2,145			10,000	Government Grant set aside to support the administration of applications under regulations.
Planning Policy Reserve		61,725			61,725	Monies set aside and to be drawn down in 2015/16 to cover additional costs arising and relating to the West Somerset Local Plan preparation through to examination and beyond to adoption.
<b>Sub Total</b>	<b>1,348,439</b>	<b>2,924,724</b>	<b>-605,326</b>	<b>-57,705</b>	<b>3,610,132</b>	

Earmarked Reserve Account	1 April Balance £	Transfers In	Transfers Out	Transfers Between Accounts	31 March Balance £	Comments
<b>Budget Carry Forwards For Specific Services</b>						
District Election Reserve	20,000	10,000			30,000	Earmarked for costs of 2015 elections
Watchet Harbour Dredging	7,500	5,700			13,200	Underspend in 13-14 earmarked to fund additional dredging in 14-15. Works have been carried out.
Customer Service Equipment Reserve		666			666	Specialised Chair Required (Health and Safety)
Car Parking Reserve		15,767			15,767	Monies set aside in respect of maintenance and signage required during 15-16
Environmental Health Reserve		3,718			3,718	Destitute Burial Reserve
Minehead Harbour Dredging Reserve		5,500			5,500	Earmarking of 14-15 unused budget carried forward to 15-16
Online DHP Reserve		5,375			5,375	Online Software Requirement
Compliance Works – Estates		27,121	-385		26,736	Carry forward of unused budget agreed as part of 14-15 financial monitoring reports
Strategic Housing Market Area Assessment Reserve		1,000			1,000	Contribution towards the Strategic Housing Market Area Assessment in 15-16
Business Development Reserve		3,095		100	3,195	Funding from various sources (Somerset Skills & Learning £500, Chairman Fund £1,500, Hinkley C S106 £1,000 plus £100 from Eat Exmoor ER) to fund initiatives to support small businesses
Planning Reserve		20,000			20,000	Carry forward of £20,000 from planning fee income to fund specialist technical advice for major planning applications. E.g. Landscape visual impact assessments, retail studies etc.

<b>Earmarked Reserve Account</b>	<b>1 April Balance £</b>	<b>Transfers In</b>	<b>Transfers Out</b>	<b>Transfers Between Accounts</b>	<b>31 March Balance £</b>	<b>Comments</b>
Somerset Growth Board		957			957	Growth Board core costs for 2015/16.
Dulverton Mill Leat		12,195			12,195	Carry forward of unused budget agreed as part of 14-15 financial monitoring reports
Hinkley Corporate Cost Reserve		50,000			50,000	To Earmark Hinkley Contribution to the Corporate Core (Full Cost as we are still under the SPW Agreement at 31st March) to cover salary cost in the event that the transition to the DCO is significantly delayed or does not happen.
Revenues and Benefits Reserve		10,300		57,605	67,905	Transfer to earmarked reserve to mitigate reduction in New Burdens grant.
Training Reserve		10,000			10,000	Underspend carried forward to 2015/16
Licensing Staff Reserve		10,000			10,000	To fund extra resource within West Somerset Council.
Finance Reserve		15,000			15,000	Underspend to provide resilience / maternity cover cost share
<b>Total - Budget Carry Forwards For Specific Services</b>	<b>27,500</b>	<b>206,394</b>	<b>-385</b>	<b>57,705</b>	<b>291,214</b>	
<b>GRAND TOTAL</b>	<b>1,375,939</b>	<b>3,131,118</b>	<b>-605,711</b>	<b>0</b>	<b>3,901,346</b>	



**CAPITAL PROGRAMME OUTTURN 2014/15****General Schemes**

Capital Scheme	Original Budget £	Revised Budget £	Actual Spend £	Variance Against Revised Budget £	Proposed Carry Forward £	Proposed Funding Of Carry Forward Requests		
						Capital Receipts £	Grants £	S106 £
<b>General Funded Schemes</b>								
Dulverton Weir		20,000	17,809	(2,191)	2,191	2,191		
IT Hardware Replacement Programme and Microsoft Licence	44,636	44,636	43,996	(640)				
Seaward Way (Housing Land) Disposal Costs	20,000	20,000	(1,500)	(21,500)	21,500	21,500		
Seaward Way (Leisure Land) Disposal Costs	16,000	16,000	8,792	(7,208)	7,208	7,208		
Watchet Harbour Impounding Wall	19,100	19,100	770	(18,330)	18,330	18,330		
Watchet Harbour Concrete Columns	27,000	27,000	3,426	(23,574)	23,574	23,574		
Watchet Harbour Ladder	3,000	3,000		(3,000)	3,000	3,000		
Street Cleaning Vehicles	138,000	138,000		(138,000)	138,000	138,000		
Former Aquasplash Site Disposal Costs	13,900	13,900		(13,900)	13,900	13,900		
Former Visitor Information Centre Disposal Costs	4,200	4,200		(4,200)	4,200	4,200		
Townsend Farm Disposal Costs	3,000	3,000	35,482	32,482				
Watchet CCTV Installation	65,000	65,000	66,807	1,807				
Disabled Facilities Grants	183,782	183,782	111,502	(72,280)	72,280		72,280	
Shared Service Costs With TDBC (JMASS IT)	135,000	135,000	10,405	(124,595)	124,595	124,595		
East Wharf Scheme		70,000	5,316	(64,684)	64,684	64,684		
Decent Homes			1,542	1,542				
Clanville Housing			1,250	1,250				
Fuel Poverty / Energy Efficiency			1,424	1,424				
Stair Lift Recycling			1,339	1,339				
<b>Sub Total General Fund</b>	<b>672,618</b>	<b>762,618</b>	<b>308,360</b>	<b>(454,258)</b>	<b>493,462</b>	<b>421,182</b>	<b>72,280</b>	<b>0</b>
<b>General S106 Funded Schemes</b>								
Minehead Heritage Trail		48,053	29,310	(18,743)	18,743			18,743
Burgage Road Play Area		2,000		(2,000)	2,000			2,000
Culvercliffe Play Area		6,250	6,250					

Capital Scheme	Original Budget £	Revised Budget £	Actual Spend £	Variance Against Revised Budget £	Proposed Carry Forward £	Proposed Funding Of Carry Forward Requests		
						Capital Receipts £	Grants £	S106 £
Watchet Outdoor Gym Project		24,995		(24,995)	24,995			24,995
Beechfield Affordable Housing Project		161,500	161,500					
Illuminations Project		38,519		(38,519)	38,519			38,519
<b>Sub Total General S106</b>		<b>281,317</b>	<b>197,060</b>	<b>(84,257)</b>	<b>84,257</b>			<b>84,257</b>
<b>Total General Schemes</b>	<b>672,618</b>	<b>1,043,935</b>	<b>505,420</b>	<b>(538,515)</b>	<b>577,719</b>	<b>421,182</b>	<b>72,280</b>	<b>84,257</b>

#### Hinkley S106 Funded Schemes

Capital Scheme	Original Budget £	Revised Budget £	Actual Spend £	Variance Against Revised Budget £	Proposed Carry Forward £	Proposed Funding Of Carry Forward Requests		
						Capital Receipts £	Grants £	S106 £
Tropiquaria		40,000	40,000					
Old Croft House		56,000	56,000					
SYCSA		9,600	9,600					
SDC – 3 Crowns Scheme		183,390	183,390					
Tropiquaria Play Equipment		37,350	19,879	(17,471)	17,471			17,471
Burgage Road		90,373	39,245	(51,128)	51,128			51,128
Steam Coast Trail		4,000		(4,000)	4,000			4,000
YMCA Somerset Coast		37,800		(37,800)	37,800			37,800
SHAL Housing Association		80,000		(80,000)	80,000			80,000
Williton Bowling Club		13,000		(13,000)	13,000			13,000
Westfield United Church		110,000		(110,000)	110,000			110,000
Roadwater Village Trust		25,000		(25,000)	25,000			25,000
Living Over The Shop		204,750		(204,750)	204,750			204,750
First Time Buyers		105,000		(105,000)	105,000			105,000
Wembdon Village Hall		250,000		(250,000)	250,000			250,000
<b>Total Hinkley S106</b>	<b>0</b>	<b>1,246,263</b>	<b>348,114</b>	<b>(898,149)</b>	<b>898,149</b>	<b>0</b>	<b>0</b>	<b>898,149</b>

Approved Capital Programme 2015/16

Capital Scheme	Draft Budget £	Proposed Funding		
		Capital Receipts £	Grants £	Revenue Funding £
<b>Superfast Broadband</b> Previously approved contribution to enhanced coverage (includes £109,000 expected carry forward from 2014/15)	<b>240,000</b>	240,000	0	0
<b>Shared Services ICT Projects</b> JMASS ICT Business Case £356k less £135k in 2014/15	<b>221,000</b>	221,000	0	0
<b>Disabled Facilities Grants</b> To enable the adaption of homes for the disabled	<b>241,000</b>	0	241,000	0
<b>7 The Esplanade, Watchet</b> To prevent further water ingress and to make the building watertight	<b>15,000</b>	0	0	15,000
<b>Microsoft License Fee</b> Annual license fee for use of Microsoft Office software	<b>12,000</b>	0	0	12,000
<b>IS Annual Projects</b> To replace applications which will be unsupported by Microsoft from July 2015	<b>61,000</b>	11,367	0	49,633
<b>TOTAL</b>	<b>790,000</b>	472,367	241,000	76,633



*Report Number:* WSC 126/15  
*Presented by:* Cllr K Turner, Lead Member Housing, Health & Wellbeing  
*Author of the Report:* Heather Crockford/Jo Humble, Housing Enabling  
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*Report to a Meeting of:* Full Council  
*To be Held on:* 19<sup>th</sup> August 2015  
*Date Entered on Executive Forward Plan  
Or Agreement for Urgency Granted:*

## **CLANVILLE GRANGE PURCHASE**

### **1. PURPOSE OF REPORT**

- 1.1 The purpose of the report is to request approval of a supplementary capital estimate for the purchase of a property at Clanville Grange, Minehead

### **2. CONTRIBUTION TO CORPORATE PRIORITIES**

- 2.1 Corporate Priority – New Nuclear Development at Hinkley Point – The availability of housing supply within West Somerset is increased to mitigate the extra demand linked to Hinkley Point Workers. Whilst the purchase of a property in Clanville Grange is not, in itself increasing the supply of bed-spaces, it is ensuring that Low Cost Home Ownership options remain available for local people.

### **3. RECOMMENDATIONS**

- 3.1 Council approve a supplementary capital estimate for the sum of £117,000 to purchase a property at Clanville Grange to be funded from Capital Receipts.
- 3.2 Council notes that the purchase will need to be funded from the existing planned capital receipts, with the intention of replacing this funding with the capital receipt from the onward sale of the property. Council also notes that in the event the onward sale is not completed, or other unallocated receipts balance is insufficient, in the current financial year the Council will need to fund this acquisition initially through borrowing and then set aside the capital receipt to repay the borrowing in subsequent year(s). This may also impact on current policy to use capital receipts to repay existing capital debt.

- 3.3 Council approve an update to the Minimum Revenue Provision Policy in respect of the Low Cost Home Ownership scheme:

“In respect of properties acquired under the Low Cost Home Ownership scheme, no MRP is applied in the financial year following acquisition where capital expenditure is funded through borrowing pending capital receipt from onward sale of the related property.”

#### 4. **RISK ASSESSMENT (IF APPLICABLE)**

##### **Risk Matrix**

<b>Description</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Overall</b>
The Council will be unable to secure the onward sale of property	3	2	6
<i>Mitigation to seek short term rental income should an onward sale not be secured</i>			

The scoring of the risks identified in the above table has been based on the scoring matrix. Each risk has been assessed and scored both before and after the mitigation measures have been actioned.

#### 5. **BACKGROUND INFORMATION**

- 5.1 In March 2007, Council approved the purchase of 11 dwellings at Clanville Grange for the Council to sell under its prevailing Low Cost Home Ownership Scheme. This enabled the Council to be in full control of the sales price of the properties to ensure that they were always sold at an affordable price which met what local people could afford.
- 5.2 The affordable homes were secured ‘in perpetuity’ using a Deed of Pre-emption which created a buy back option for the Council to enable it to vary the discount offered on each property.
- 5.3 Following the well known global and national economic downturn and the restrictions on the availability of mortgages, the Deed of Pre-emption has made the properties unmortgageable in their current form. This means that the current owners are unable to sell them on without Council intervention and the Council are, in turn, unable to sell them on with the Deed on Pre-emption in place.
- 5.4 In January 2013, the Council adopted amendments to its Low Cost Home Ownership Policy which means that the properties, when sold on, will use the standard mechanism of a discounted purchase. The properties will only have the ability to be sold to local people at a value not exceeding 75% of the open market value and the Council will have no ongoing liability within the scheme.
- 5.5 We have received notification that one of the property owners wishes to sell their property back. The purchase price based on the affordable housing policy is £114,925.
- 5.6 Whilst the Authority has identified the risk of purchasing two properties per year within its budget there is no provision within the capital budgets for these purchases to actually occur. The purchase therefore requires a supplementary capital estimate to be approved by Council.
- 5.7 The current owners of the property are purchasing another property and have an offer pending.
- 5.8 If the Council proceed to purchase this property, it will take the number of properties owned at the time of writing this report to four.

5.9 The status of the three additional properties is that one is in the early stages of marketing following its purchase in July, 2015, one is in the process of being sold for £100,000 and the third is currently tenanted.

## **6. FINANCIAL/RESOURCE IMPLICATIONS**

6.1 The proposed purchase will require a supplementary capital estimate of £117,000 in order to meet current financial regulations. This covers the acquisition price plus the estimated costs associated with the acquisition and onward sale.

6.2 Costs associated with the purchase include approximately £500 to meet obligations required by the Management Company, any Service Charges, Ground Rent and Insurance which might be payable (this is payable 6 monthly in advance and will be apportioned upon sale) and Council Tax should the property be empty for more than one month.

6.3 The property will be marketed for sale immediately upon acquisition with the aim of achieving a sale as quickly as possible. The situation will be reviewed after a period of three months.

6.4 As stated above the preferred funding arrangement to support the requirements to acquire properties covered by the scheme is to use the capital receipt generated by onward sale. This approach works well when the receipt from onward sale:

- a) Matches or exceeds the cost of acquiring, holding and disposing of the asset
- b) Arises within the same financial year that the Council takes ownership of the property

6.5 In this case the total costs have been estimated at £117,000 therefore the subsequent net receipt from disposal will need to at last match this sum in order to cover costs, or the Council will need to cover any 'shortfall' from other resources.

6.6 The Council has fully committed the balance of capital receipts reserve as at March 2015. New receipts are projected through asset sales in the current financial year, including properties acquired under this scheme. In the event that insufficient receipts are obtained during this year to meet the acquisition in this report – and any other supplementary capital approvals made during the year – then the Council will need to identify alternative funding arrangements. There is currently insufficient 'headroom' within revenue reserves to fund new capital costs therefore the only real options currently available are to fund capital costs through borrowing, or make cuts to existing approved schemes, pending the realisation of the capital receipts from planned asset sales.

6.7 In the event that additional borrowing is required on a temporary basis this will have implications for the Council's revenue costs, and could impact on future budget requirements if there is a significant delay in generating the planned receipts. It is advisable for the Council to consider an update to its "Minimum Revenue Provision" (MRP) policy to specifically deal with the funding timing issues of the Low Cost Home Ownership Scheme. If the Council needs to temporarily fund the acquisition through borrowing then MRP would apply from the following financial year pending the generation of capital receipts needed to fund the initial acquisition. It is acceptable to defer an MRP charge for a year provided the Council is actively pursuing an onward sale and intends to set aside the receipt to fund the initial purchase costs. It would not be prudent to defer by more than one financial year.

## **7. COMMENTS ON BEHALF OF SECTION 151 OFFICER**

7.1 The Council has an obligation to purchase this property, and therefore needs to ensure appropriate funding is put in place. The eventual onward sale of this property will hopefully result in a financial receipt to West Somerset Council which will cover this outlay. Until this

materialises, the Council needs to ensure there is sufficient funding in place to cover the costs committed should the scheme not proceed to sale.

- 7.2 The Council's unallocated capital resources at the end of the last financial year were minimal (less than £3,000) therefore the acquisition of this Clanville Grange property would need to be a 'first call' commitment on any receipts during the current financial year. Members are advised to note the impact in the event of delays and/or insufficient receipts where costs may be temporarily funded through borrowing. Alternatively it would be necessary to review existing approvals and re-prioritise schemes taking into account affordability.

The recommendation to revise the MRP policy is considered prudent and reflects the intention to immediately seek to sell any properties the Council must acquire under the current scheme.

## **8. EQUALITY & DIVERSITY IMPLICATIONS**

- 8.1 **Members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process.** The three aims the authority **must** have due regard for are:

- Eliminate discrimination, harassment, victimisation
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

- 8.2 This is not considered to have any issues that require any detailed assessment.

## **9. CRIME AND DISORDER IMPLICATIONS**

- 9.1 There are none identifiable specifically within this report.

## **10. CONSULTATION IMPLICATIONS**

- 10.1 This report implements the adopted policy of the Council so there are no current issues identified for consideration.

## **11. ASSET MANAGEMENT IMPLICATIONS**

- 11.1 These properties are Council assets for the time that they are in our ownership. We attempt to ensure that this time is as short as possible, which of course depends on market conditions at that time.

## **12. ENVIRONMENTAL IMPACT IMPLICATIONS**

- 12.1 There are no clear implications through this report or policy.

## **13. HEALTH & WELLBEING**

Demonstrate that the authority has given due regard for:

- People, families and communities take responsibility for their own health and wellbeing;
- Families and communities are thriving and resilient; and
- Somerset people are able to live independently.



13.1 The Low Cost Home Ownership Policy was designed to meet the needs and aspirations of the local community, improve the quality of housing across the district, increase housing supply and housing options, so could be expected to have a positive impact on health and wellbeing.

**14. LEGAL IMPLICATIONS**

14.1 The Council is applying its policy in relation to these properties so there are no identifiable issues for consideration in this report.

Report Number: WSC 127/15

Presented by: Councillor S Pugsley, Lead Member for Executive Support and Democracy

Author of the Report: Bruce Lang, Assistant Chief Executive

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Report to a Meeting of: Council

To be Held on: 19 August 2015

Date Entered on Executive Forward Plan  
Or Agreement for Urgency Granted:

## REGULATION OF INVESTIGATORY POWERS ACT (RIPA) 2000

### 1. PURPOSE OF REPORT

1.1 The purpose of the report is to advise the Council on the outcome of the review of the Council's management of covert activities and to seek endorsement of the actions taken/required to implement recommendations emanating from the review.

### 2. CONTRIBUTION TO CORPORATE PRIORITIES

2.1 None.

### 3. RECOMMENDATIONS

3.1 That the Council note the outcome of the review and the action taken to date.

3.2 That the Council approve the Corporate Policies and Procedures Document in respect of the Regulation of Investigatory Powers Act 2000 (RIPA) as set out in Appendix A.

### 4. RISK ASSESSMENT (IF APPLICABLE)

#### Risk Matrix

Description	Likelihood	Impact	Overall
That no action is taken in regard to the findings of the inspection and the Council does not comply with the requirements of RIPA	3	4	12
<i>To comply with the recommendations from the inspection</i>	1	4	4
If the Council is found wanting in terms of its processes and implementation of its powers under RIPA then it could face a legal challenge	4	4	16
<i>The Council keeps its processes up-to-date and periodically reviewed and keeps proper records</i>	2	4	8

The scoring of the risks identified in the above table has been based on the scoring matrix. Each risk has been assessed and scored both before and after the mitigation measures have been actioned.

## **5. BACKGROUND INFORMATION**

- 5.1 On 5 June 2014 Mr Neil Smart, an inspector acting on behalf of the Chief Surveillance Commissioner, visited the Council to undertake a review of the Council's management of covert activities under the powers conferred by RIPA.
- 5.2 A letter was subsequently received from the Rt. Hon. Sir Christopher Rose, the Chief Surveillance Commissioner, enclosing a report of the inspection.
- 5.3 The report confirmed that all the recommendations that were made following the inspection in 2011 had been successfully discharged. The Commissioner acknowledged that whilst the Council had not used its RIPA powers since April 2006, the Authority was taking its responsibilities in this regard seriously and that there are appropriate systems and processes in place and training had been conducted.
- 5.4 There were two recommendations emanating from the report in respect of the latest inspection:
- (1) That RIPA training should continue to be formally delivered to Council staff who are likely to engage the legislation to ensure it can be applied to an appropriate standard; this should be considered as ongoing professional development; and
  - (2) The policy/guidance document should be further amended in accordance with the details set out in the inspection report to ensure it is fit for purpose and up-to-date with all the relevant legislation.
- 5.5 Following the inspection, specialist training on RIPA was held for relevant staff on 13 January 2015. In addition, further work has been done on the policy document which is attached at Appendix A to this report for adoption by the Council. To facilitate more efficient working under the One Team arrangement, the wording of the policy document and requisite processes to be followed are broadly similar for both Taunton Deane and West Somerset Councils. This is with the full support of the inspector who has indicated an intention to carry out a joint inspection of the process which should be scheduled for 2017.

## **6. FINANCIAL/RESOURCE IMPLICATIONS**

- 6.1 There will be some officer resource required to monitor the updated procedures and attend training/briefing sessions. Where such sessions require external facilitation then there would be a direct training cost to be funded from the training budget; under the One Team arrangement such costs can be shared with Taunton Deane Borough Council.

## **7. COMMENTS ON BEHALF OF SECTION 151 OFFICER**

- 7.1 In the interest of good governance it is important that the Council's procedures and processes in relation to its RIPA powers are kept up-to-date and monitored.

## **8. EQUALITY & DIVERSITY IMPLICATIONS**

- 8.1 **Members need to demonstrate that they have consciously thought about the three aims of the Public Sector Equality Duty as part of the decision making process.** The three aims the authority **must** have due regard for are:
- Eliminate discrimination, harassment, victimisation
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it

- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

8.2 The application of the RIPA policy must be undertaken in such a way to ensure that the human rights of individuals are taken into account.

## **9. CRIME AND DISORDER IMPLICATIONS**

9.1 These are referred to in the updated operational procedure set out in Appendix A to the report.

## **10. CONSULTATION IMPLICATIONS**

10.1 The draft policy document was considered by the Corporate Policy Advisory Group at its meeting held on 29 July 2015 who were supportive of adopting the updated document. Any significant developments regarding the Council's use of its powers under RIPA would be reported to the Corporate Policy Advisory Group in the first instance.

## **11. ASSET MANAGEMENT IMPLICATIONS**

11.1 None.

## **12. ENVIRONMENTAL IMPACT IMPLICATIONS**

12.1 None.

## **13. HEALTH & WELLBEING**

Demonstrate that the authority has given due regard for:

- People, families and communities take responsibility for their own health and wellbeing;
- Families and communities are thriving and resilient; and
- Somerset people are able to live independently.

13.1 The application of the policy must be undertaken in such a way to ensure that the health and wellbeing of individuals in the community are taken into account.

## **14. LEGAL IMPLICATIONS**

14.1 It is incumbent upon the Council to ensure that it has proper processes in place to effectively manage and implement its powers under RIPA.



## CORPORATE POLICIES AND PROCEDURES ON THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

<b>ISSUE DETAILS</b>	
<b>TITLE</b>	<b>RIPA Policy &amp; Procedures Guide</b>
<b>VERSION CONTROL</b>	V5 April 2015
<b>OWNER</b>	Assistant Chief Executive and Monitoring Officer
<b>APPROVED By</b>	Corporate Policy Advisory Group [ 2015] Council [ 2015]
<b>REVIEW DATE</b>	March 2016

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## **A. Introduction and Key Messages**

1. This Policy & Procedures Document ('Document') is based upon the requirements of the Regulation of Investigatory Powers Act 2000 ('RIPA') and the Home Office's Code of Practices on Covert Surveillance and Covert Human Intelligence Sources (covert surveillance would be used only rarely and in exceptional circumstances).
2. The authoritative position on RIPA is, of course, the Act itself and any Officer who is unsure about any aspect of this Document should contact, at the earliest possible opportunity, the Assistant Chief Executive & Monitoring Officer, for advice and assistance.
3. Copies of this Document and related forms will be placed on the intranet, once this Document has been approved by the Council and the Office of Surveillance Commissioners. This Document (but not the RIPA forms or the list of Authorising Officers) will be placed on the Council's website.
4. The Assistant Chief Executive & Monitoring Officer is the Senior Responsible Officer ('SRO') who shall be responsible for ensuring the compliance of the Council with Part II of RIPA and will maintain (and check) the Central Record of Authorisations which shall include all RIPA authorisations, reviews, renewals, cancellations and rejections. However, it is the responsibility of the relevant Authorising Officer ('AO') to ensure that the Assistant Chief Executive & Monitoring Officer receives the original form as soon as practical after completion for completion of the Central Record of Authorisations, oversight and secure filing.
5. RIPA and this Document are important for the effective and efficient operation of the Council's actions with regard to Covert Surveillance and Covert Human Intelligence Sources. This Document will, therefore, be kept under 12-monthly review by the Assistant Chief Executive & Monitoring Officer. AO's must bring any suggestions for the improvement of this Document to the attention of the Assistant Chief Executive & Monitoring Officer at the earliest possible opportunity. The Council takes responsibility for ensuring that RIPA procedures are continuously improved.
6. The Assistant Chief Executive & Monitoring Officer is the Council's nominated Single Point of Contact ('SPOC') who will be the normal point of contact for the Chief Surveillance Commissioner or Surveillance Inspector and will field enquiries relating to RIPA.
7. If you are in any doubt on RIPA, this Document or the related legislative provisions, please consult the Assistant Chief Executive & Monitoring Officer at the earliest possible opportunity.
8. This Policy will be approved and monitored by the Corporate Policy Advisory Group on a regular basis.





raised by any proposed surveillance activity. Under no circumstances should an AO approve any RIPA form unless and until he/she is satisfied that the health and safety of Council employees has been suitably addressed, and/or risks minimised so far as is possible, and that those health and safety considerations and risks are proportionate to/with the surveillance being proposed. If an AO is in any doubt, he/she should obtain prior guidance from the Assistant Chief Executive & Monitoring Officer.

5. AO's must also ensure that when sending copies of any forms to the Assistant Chief Executive & Monitoring Officer, (or any other relevant authority), the same are sent in SEALED envelopes and marked 'Strictly Private & Confidential'.

## **D. General Information on RIPA**

1. The Human Rights Act 1998 (which brought much of the European Convention on Human Rights and Fundamental Freedoms 1950 into UK domestic law) requires the Council (and organisations working on its behalf) to respect the private and family life of citizens, their home and their correspondence. See Article 8 of the European Convention.
2. The European Convention did not, however, make this an absolute right, but a qualified right. Accordingly, in certain circumstances, the Council may interfere with the citizen's right mentioned above, if such interference is:
  - (a) in accordance with the law;
  - (b) necessary (as defined in this Document); and
  - (c) proportionate (as defined in this Document).
3. RIPA provides a statutory mechanism (i.e. 'in accordance with the law') for authorising Covert Surveillance and the use of a Covert Human Intelligence Source ('CHIS') - e.g. undercover agents or informers. It seeks to ensure that any interference with an individual's right under Article 8 of the European Convention is necessary and proportionate. In doing so, RIPA seeks to ensure that both the public interest and the human rights of individuals are suitably balanced.
4. Directly employed Council staff and external agencies working for the Council are covered by RIPA during the time they are working for the Council. Therefore, all external agencies must comply with RIPA and work carried out by agencies on the Council's behalf must be properly authorised by one of the Council's designated AO's. AO's are those whose posts appear in Appendix 1 to this Document (as added to or substituted by the Assistant Chief Executive & Monitoring Officer).
5. If the correct procedures are not followed, evidence may be disallowed by the courts, a complaint of maladministration may be made to the Local Government Ombudsman, and/or the Council may be ordered to pay compensation. Were this to happen the good reputation of the Council will be damaged and it will

undoubtedly be the subject of adverse press and media interest. Therefore, it is essential that all involved with RIPA comply with this Document and any further guidance that may be issued from time to time by the Assistant Chief Executive & Monitoring Officer.

6. A flowchart of the procedures to be followed appears at Appendix 2.

## **E. What RIPA Does and Does Not Do**

1. RIPA does:
  - Require - prior authorisation of Directed Surveillance.
  - Prohibit - the Council from carrying out Intrusive Surveillance.
  - Require - authorisation of the conduct and use of a CHIS.
  - Require - safeguards for the conduct and use of a CHIS.
2. RIPA does not:
  - Make unlawful conduct which is otherwise lawful.
  - Prejudice or disapply any existing powers available to the Council to obtain information by any means not involving conduct that may be authorised under RIPA. For example, it does not affect the Council's current powers to obtain information via the DVLA or to get information from the Land Registry as to the ownership of a property.
3. If the AO or any Officer is in any doubt, he/she should ask the Assistant Chief Executive & Monitoring Officer before any Directed Surveillance and/or CHIS is authorised, renewed, cancelled or rejected.

## **F. Types of Surveillance**

1. 'Surveillance' includes
  - Monitoring, observing, listening to people, watching or following their movements, listening to their conversations and other such activities or communications.
  - Recording anything mentioned above in the course of authorised surveillance.
  - Surveillance by, or with the assistance of, appropriate surveillance device(s).

Surveillance can be overt or covert.

### **2. Overt Surveillance**

Most of the surveillance carried out by the Council will be done overtly - there will be nothing secretive, clandestine or hidden about it. In many cases, Officers will

be behaving in the same way as a normal member of the public and/or will be going about Council business openly.

3. Similarly, surveillance will be overt if the subject has been told it will happen.

#### 4. **Covert Surveillance**

Covert Surveillance is carried out in a manner calculated to ensure that the person subject to the surveillance is unaware of it taking place. (Section 26(9)(a) of RIPA).

5. RIPA regulates two types of Covert Surveillance (Directed Surveillance and Intrusive Surveillance) plus the use of Covert Human Intelligence Sources .

6. Powers relating to Directed Surveillance were amended by the Protection of Freedoms Act 2012 and the RIPA (Directed Surveillance and CHIS) (Amendment) Order 2012

### **G. Directed Surveillance and Intrusive Surveillance**

1. Directed Surveillance is surveillance which:-

- is covert; and
- is not Intrusive Surveillance (see definition below - the Council must not carry out any Intrusive Surveillance);
- is not carried out in an immediate response to events which would otherwise make seeking authorisation under the Act unreasonable, e.g. spotting something suspicious and continuing to observe it; and
- is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual (whether or not that person is specifically targeted for purposes of an investigation). (Section 26(10) of RIPA).

2. Private information in relation to a person includes any information relating to his private and family life, his home and his correspondence. The fact that Covert Surveillance occurs in a public place or on business premises does not mean that it cannot result in the obtaining of private information about a person. Prolonged surveillance targeted on a single person will undoubtedly result in the obtaining of private information about him/her and others that he/she comes into contact or associates with.

3. Similarly, although overt town centre CCTV cameras do not normally require authorisation, authorisation will be required if the camera is tasked for a specific purpose which involves prolonged surveillance of a particular person. The way a person runs he/she business may also reveal information about his or her private life and the private lives of others.

4. For the avoidance of doubt, only those Officers designated and certified to be an AO for the purpose of RIPA can authorise 'Directed Surveillance' if, and only if, the RIPA authorisation procedures detailed in this Document are followed. If an AO has not been 'certified' for the purposes of RIPA, he/she cannot carry out or approve/reject any action set out in this Document.

Further, an AO for RIPA purposes cannot delegate he/she power of authorisation to another Officer unless that Officer is also an AO for RIPA purposes (and listed in Appendix 1), in which case that Officer would be authorising in his own right. If in doubt, check with the Assistant Chief Executive & Monitoring Officer. Officers will bear personal responsibility for ensuring correct RIPA authorisation procedures.

5. Surveillance that is unforeseen and undertaken as an immediate response to a situation normally falls outside the definition of Directed Surveillance and therefore authorisation is not required. However, if a specific investigation or operation is subsequently to follow, authorisation must be obtained in the usual way before it can commence. In no circumstance will any Covert Surveillance operation be given backdated authorisation after it has commenced.
6. Intrusive Surveillance is surveillance which:-
  - is covert;
  - relates to residential premises and private vehicles; and
  - involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises/vehicle. Surveillance equipment mounted outside the premises will not be intrusive, unless the device consistently provides information of the same quality and detail as might be expected if they were in the premises/vehicle.
7. Intrusive Surveillance can be carried out only by police and other law enforcement agencies. Council Officers must not carry out Intrusive Surveillance.
8. AO's must not authorise surveillance that contravenes Part III of the Police act 1997 relating to interference with property or wireless photography.
9. If any "trespass" is being considered by Council Officers during the course of surveillance, the matter should be referred to the Assistant Chief Executive & Monitoring Officer as a matter of urgency.

10. **Examples of different types of Surveillance**

<b>Type of Surveillance</b>	<b>Examples</b>
Overt	<ul style="list-style-type: none"> <li>- Police Officer or Parks Warden on patrol.</li> <li>- Signposted Town Centre CCTV cameras (in normal use).</li> <li>- Most test purchases (where the Officer behaves no differently from a normal member of the public).</li> </ul>
Covert but not requiring prior authorisation	<ul style="list-style-type: none"> <li>- CCTV cameras providing general traffic, crime or public safety information.</li> </ul>
Directed (must be RIPA authorised)	<ul style="list-style-type: none"> <li>- Officers follow an individual or individuals over a period, to establish whether he/she is working when claiming benefit or genuinely on long term sick leave from employment.</li> <li>- Test purchases where the Officer has a hidden camera or other recording device to record information which might include information about the private life of a shop-owner, e.g. where he/she is suspected of running his business in an unlawful manner.</li> </ul>
Intrusive - (the Council cannot do this)	<ul style="list-style-type: none"> <li>- Planting a listening or other device (bug) in a person's home or in their private vehicle.</li> </ul>
Property Interference (the Council cannot authorise this)	<ul style="list-style-type: none"> <li>- Attaching or placing an alarm on a vehicle without the consent of the owner.</li> </ul>

**H. Conduct and Use of a Covert Human Intelligence Source (CHIS)**

**1. Introduction**

The Council does not propose to initiate involvement within this area of RIPA. Nevertheless, the Council does have the power to do so and, in the unlikely event that such a source presents him/herself unexpectedly, the Council will manage the source in accordance with RIPA , the current Code of Practice and will comply with this Section H.

**2. Definition of a CHIS**

CHIS is defined under Section 26(8)(a-c) of RIPA 2000, where information is obtained to assist in the investigation of a crime or to prevent a crime, by a CHIS who establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything, which is:

- Covertly using a relationship to obtain information or provide access to any information to another person; or

- Covertly disclosing information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship
- Where the relationship is conducted in a manner that is calculated to ensure that one of the parties to the relationship is unaware of its purpose.

The provisions of RIPA relating to CHIS do not apply:

- Where members of the public volunteer information to the Council as part of their normal civic duties;
- Where the public contact telephone numbers, set up by the Council, to receive information;
- Where test purchases are carried out in the normal course of business;
- Where members of the public are asked to keep diaries of incidents in relation to planning enforcement or anti-social behavior;

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

### 3. **Authorisation**

The Council is only likely to use a CHIS under very exceptional circumstances, and advice should be sought from the SRO before any authorisation is applied for or granted.

Before the AO grants authorisation to use CHIS, in consultation with the SRO, the SRO should consult with the District Commander of the Police Force Area, which is the Avon and Somerset Constabulary, to ensure that no conflict arises within the area of where the CHIS is deployed but this will not include disclosure of the identity of the CHIS.

Authorisations should not be drawn so narrowly that a separate authorisation is required each time the CHIS is tasked with an assignment. An authorisation can cover, in broad terms, the nature of the CHIS's task and only if this changes significantly would a new authorisation be needed.

If a CHIS is used, both the use of the CHIS and his or her conduct require prior authorisation.

- **Conduct** of a CHIS = Establishing or maintaining a personal or other relationship with a person for the covert purpose of (or incidental to the covert purpose of) obtaining and passing on information.
- **Use** of a CHIS = Inducing, asking or assisting a person to engage in the conduct of a source or to obtain information by means of the conduct of a source.

In the event of the Council deploying a CHIS they must take into account the safety and welfare of that CHIS. Before authorising the use or conduct of a CHIS the SRO shall ensure that a risk assessment is carried out and consideration given to ongoing security, welfare and management of any requirement to disclose information

(including that tending to reveal the existence of the CHIS) and should also include the risk to the CHIS from any tasking and the likely outcome should the role of the CHIS become known

When authorising the conduct or use of a CHIS, the AO, in consultation with the SRO, must also:

- be satisfied that the conduct and/or use of the CHIS is proportionate to the objective sought to be achieved;
- consider the likely degree of intrusion for all those potentially affected;
- consider any adverse impact on community confidence that may result from the use of the CHIS or the information obtained; and
- ensure that records contain the required particulars set out in Section 5 below and that these are not available except on a 'need to know' basis.

If a juvenile or vulnerable individual is contemplated as a CHIS the Chief Executive or SRO must be the AO for the purposes of the authorisation.

#### **4. Management of a CHIS**

There are specific legal rules, which must be followed in relation to the management of sources. Officers to act as Designated Handlers and Controllers (as set out in s.29(5) RIPA ) should be appointed. Officers who undertake these roles must have undergone the specific training required by the legislation. Details are given in the relevant Home Office Code of Practice, and further advice can be obtained from the SRO.

A Controller will have responsibility for the management and supervision of the Designated Handler and general oversight of the use of the CHIS.

Special safeguards apply to the use or conduct of juvenile sources (i.e. under 18 years of age). On no account can a child under 16 years of age be authorised to give information against his or her parents. Similar safeguards also apply to the use of vulnerable individuals as sources. (A vulnerable individual is a person who is a person or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or exploitation). Further advice must be sought from the SRO before using juveniles or vulnerable individual's as a source, to ensure that all necessary legal requirements are complied with.

A CHIS will have he/she identify protected under the relevant legal procedures.

#### **5. Specific CHIS Records**

In addition to records kept in accordance with paragraph 6 below the following matters will be recorded and maintained in relation to every CHIS.

- the identity of the CHIS and the identity, where known, used by the CHIS;



- the date when and the circumstances in which the CHIS was recruited;
- any significant information connected with the security and welfare of the CHIS;
- confirmation that any person granting or renewing an authorisation for the conduct or use of a CHIS that the information referred to in paragraph 3 above has been considered and that any identified risks have, where appropriate, been explained to and understood by the CHIS.
- the identities of the persons who in relation to the CHIS are acting as a Designated Handler or Controller and the periods during which those persons have so acted;
- all contact or communications between the CHIS and the person acting on behalf of the Investigating Officer, including all tasks given to and demands made of the CHIS; information received by the conduct or use of the CHIS and the dissemination of any information so obtained;
- in situations where the relevant investigating authority is different to the Council, the details of that investigation authority and the means by which the CHIS is referred to within each relevant investigating authority.

## 6. Corporate Manager Records

The following information should be maintained by the relevant member of the Joint Management Team for the Service Team where the authorisation application originated from in relation to the source;

- Any risk assessment in relation to the source;
- The circumstances in which tasks were given to the source;
- The value of the source to the investigating authority;
- 

A 'Surveillance Log Book' should be completed by the Investigating Officer(s) to record all operational details of authorised Covert Surveillance or the use of a CHIS. Once completed, the Log Book will be passed to the relevant member of the Joint Management Team or to their designated RIPA coordinator for safe keeping in a secure place. Each Service Team will also maintain a record of the issue and movement of all Surveillance Log Books

## I. Authorisation Procedures

1. Directed Surveillance and the use of a CHIS can only be lawfully carried out if properly authorised and in strict accordance with the terms of the authorisation. Appendix 2 provides a flow chart of the authorisation process from application consideration to recording of information.
2. The Regulation of Investigatory Powers (Directed Surveillance and Covert Human

Intelligence Sources) (Amendment) Order 2012 (made on 11 June 2012) came into force on 1<sup>st</sup> November 2012 and further restricts the Council's powers to grant a RIPA authorisation.

3. From this date authorisations can only be granted where the authorisation is for the purpose of preventing or detecting crime and that crime constitutes one or more criminal offences. Additionally the criminal offences being contemplated must be ones which are punishable by a prison sentence of at least six months. There are exceptions to this requirement covering various offences under s146 and s147 Licensing Act 2003 (effectively selling alcohol to children).
4. On 1<sup>st</sup> May 2012, the Protection of Freedoms Bill received Royal Assent to become the Protection of Freedoms Act 2012.
5. The Protection of Freedoms Act 2012 (Commencement No.2) Order 2012 (SI 2012/2075) ('the Order') was made on 7<sup>th</sup> August 2012 bringing in various provisions of the Protections of Freedoms Act 2012 which came into force during 2012.
6. Article 4 of the Order commences amendments to the Regulation of Investigatory Powers Act 2000 ("RIPA") on 1<sup>st</sup> November 2012.
7. The amendment in respect of RIPA authorisations is that when an authorisation is granted it will not take effect until such time (if any) as a Justice of the Peace has made an order approving the grant of the authorisation.

### **Authorising Officers (AO's)**

8. Forms can only be authorised by AO's who hold a Certificate of RIPA Eligibility from the Assistant Chief Executive & Monitoring Officer as shown in Appendix 3. AO posts are listed in Appendix 1. This Appendix will be kept up to date by the Assistant Chief Executive & Monitoring Officer and added to as needs require. The Assistant Chief Executive & Monitoring Officer has been duly authorised to add, delete or substitute posts listed in Appendix 1.
9. An AO should not normally be responsible for authorising operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable, especially in the case of small organisations, or where it is necessary to act urgently or for security reasons. Where an AO authorises such an investigation or operation the Central Record of Authorisations should highlight this and the attention of a Commissioner or Inspector should be invited to examine it during his next inspection.
10. As already mentioned, RIPA authorisations are for specific investigations only, and they must be renewed or cancelled once the specific surveillance is complete or about to expire. The authorisations do not lapse with time!

### **Training Records**

11. Proper training will be given or approved by the Assistant Chief Executive & Monitoring Officer before AO's are issued with a Certificate of RIPA Eligibility enabling them to sign any RIPA forms. The issue of a Certificate of RIPA Eligibility

will also have the dual purpose of confirming that the Officer has been RIPA trained and a Corporate Register of all those individuals who have been issued with such Certificates will be kept by the Assistant Chief Executive & Monitoring Officer.

12. If the Assistant Chief Executive & Monitoring Officer feels at any time that an AO has not complied fully with the requirements of this Document, or the training provided to him/her, the Assistant Chief Executive & Monitoring Officer is duly authorised to retract that Officer's Certificate of RIPA Eligibility until he/she has undertaken further approved training. Were this to happen the Officer could no longer authorise RIPA Procedures.

### **Application Forms**

13. Only the approved RIPA forms set out in this Document must be used.

For the most up to date forms see:-

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

### **Assessing the Application Form**

14. Before an AO signs a form, they must:
  - (a) Be mindful of this Policy & Procedures Document, the training provided or approved by the Assistant Chief Executive & Monitoring Officer and any other guidance issued, from time to time, by the Assistant Chief Executive & Monitoring Officer on such matters;
  - (b) Satisfy themselves that the RIPA authorisation is:
    - (i) In accordance with the law;
    - (ii) Necessary in the circumstances of the particular case on one of the grounds mentioned in paragraph 3 above; and
    - (iii) Proportionate to what it seeks to achieve.
  - (c) In assessing whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information. The least intrusive method will be considered proportionate by the courts. It is important to balance the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative or operational terms.
  - (d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance (Collateral Intrusion). Measures must be taken wherever practicable to avoid or minimise (so far as is possible) unnecessary Collateral Intrusion into the lives of those not directly connected with the investigation or operation. This matter may be an aspect of determining proportionality;
  - (e) Set a date for review of the authorisation and review on that date;

- (f) Allocate a Unique Reference Number (URN) for the application as follows:  
*Year / Group / Number of Application*
- (g) Ensure that the Central Record of Authorisations is duly completed, and that a copy of the RIPA forms (and any review/cancellation of the same) is forwarded to the Assistant Chief Executive & Monitoring Officer for inclusion in the Corporate Register within one week of the relevant authorisation, review, renewal, cancellation or rejection.

### **Additional Safeguards when Authorising a CHIS**

- 15. When authorising the conduct or use of a CHIS, the AO must also:
  - (a) Be satisfied that the conduct and/or use of the CHIS is proportionate to what is sought to be achieved;
  - (b) Be satisfied that appropriate arrangements are in place for the management and oversight of the CHIS and these arrangements must address health and safety issues through a risk assessment;
  - (c) Consider the likely degree of intrusion of all those potentially affected;
  - (d) Consider any adverse impact on community confidence that may result from the use or conduct or the information obtained; and
  - (e) Ensure records contain particulars and that they are not available except on a 'need to know basis'.
- 16. The AO must record a clear description of what authority is being granted for by reference to subjects, property or location and the type of surveillance permitted. This may not be the same as what is being requested.
- 17. If an application is granted, the AO must set a date for its review, and ensure that it is reviewed on that date. Records must be kept in relation to all RIPA applications and authorisations.
- 18. By law, an AO must not grant authority for the use of a CHIS unless they believe that there are arrangements in place for ensuring that there is at all times a person with the responsibility for maintaining a record of the use made of the CHIS. Certain particulars must be included in the records relating to each CHIS, and the records must be kept confidential. Further advice should be sought from the Assistant Chief Executive & Monitoring Officer or a Deputy Monitoring Officer on this point if authority is proposed to be granted for the use of a CHIS.

### **Urgent Authorisations**

- 19. Urgent authorisations should not be necessary. The Protection of Freedoms Act 2012 Schedule 9 (9)(2) removed the possibility of oral authorisation. Now authorisations must be in writing and have judicial approval before they are effective.

20. It will not be urgent or an exceptional circumstance where the need for authorisation has been neglected or the situation is of the Officer's own making.
21. In cases where emergency approval is required the AO must be visited by the applicant Officer with two completed RIPA application forms. The AO will then assess proportionality and necessity and the legality of the application. If approved, the applicant Officer must contact the out of hours HM Courts and Tribunal Service (HMCTS) representative to seek approval from a Justice of the Peace.

### **Duration**

22. The form must be reviewed at the time stated, and cancelled once it is no longer needed. The 'authorisation' to carry out/conduct the surveillance lasts for 3 months (from date of authorisation) for Directed Surveillance, expiring at 23.59 hours the preceding day for operational purposes and 12 months (from date of authorisation) for a CHIS. Any adjustments to the time period must be made by means of either a cancellation or a renewal.
23. However, whether or not the surveillance is carried out/conducted in the relevant period has no bearing on the authorisation becoming spent. In other words, the forms do not expire! The forms have to be reviewed and/or cancelled (once they are no longer required).
24. Authorisations shall be renewed in writing when the maximum period has expired. The AO must consider the matter afresh, including taking into account the benefits of the surveillance to date and any Collateral Intrusion that has occurred.
25. The renewal will begin on the day when the authorisation would have expired.

### **Reviewing Authorisations**

26. Regular review of all authorisations should be undertaken to assess the need for the surveillance activity to continue. The result of a review should be retained for at least three years. Particular attention is drawn to the need to review authorisations frequently where the surveillance or property interference involves a high level of intrusion into private life or significant Collateral Intrusion, or confidential information is likely to be obtained.
27. In each case the frequency of reviews should be considered at the outset by the AO or, for those subject to authorisation by the Secretary of State, the Member or Officer who made the application within the Council. This should be as frequently as is considered necessary and practicable.
28. The AO must assess whether the facts upon which he/she based the original decision to grant an authorisation have changed sufficiently to cause the authorisation to be revoked. Support staff can do the necessary research and prepare the review process but the actual review is the responsibility of the original AO and should, as a matter of good practice, be conducted by he/she or, failing

that, by another AO duly certified to take action, in the same terms, under this Document.

29. Any proposed or unforeseen changes to the nature or extent of the surveillance operation that may result in the further or greater intrusion into the private life of any person should also be brought to the attention of the AO by means of a review. The AO should consider whether the proposed changes are proportionate (bearing in mind any extra intended intrusion privacy or Collateral Intrusion), before approving or rejecting them.

Any such changes must be highlighted at the next renewal if the authorisation is to be renewed.

## **Cancellations**

30. During a review, the AO who granted or last renewed the authorisation may amend specific aspects of the authorisation, for example, to cease surveillance against one of a number of named subjects or to discontinue the use of a particular tactic. They must cancel the authorisation if satisfied that the Directed Surveillance as a whole no longer meets the criteria upon which it was authorised.

Where the original AO is no longer available, this duty will fall on the person who has taken over the role of AO or the person who is acting as AO (see Regulation of Investigatory Powers Act (Directed Surveillance and Covert Human Intelligence Sources) Order 2010).

31. Where a designated deputy gives an authorisation the reason for the absence of the AO should be stated.
32. As soon as the decision is taken that Directed Surveillance should be discontinued, the instruction must be given to those involved to stop all surveillance of the subject(s). The date the authorisation was cancelled should be centrally recorded and documentation of any instruction to cease surveillance should be retained. The AO must make a direction in respect of the surveillance product.

There is no requirement for any further details to be recorded when cancelling a Directed Surveillance authorisation. However, effective practice suggests that a record should be retained detailing the product obtained from the surveillance and whether or not objectives were achieved.

33. **Process for obtaining Judicial Approval**

Under S37 and S38 Protection of Freedoms Act 2012 a Local Authority who wishes to authorise the use of Directed Surveillance, and/or use of a CHIS under RIPA will need to obtain an Order approving grant/renewal of an authorisation from the Magistrates' Court before it can take effect.

If the Justice of the Peace (District Judge or lay magistrate) is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate, he/she will issue an order approving the grant or renewal for the use

of the technique as described in the application.

The process to be followed to obtain Judicial approval is set out in Appendix 2.

#### 34. **Authorised Activity**

Before surveillance commences, Officers involved in the surveillance must read the authorisation and certify in writing that they have done so

## **J. Working With / Through Other Agencies**

1. When another agency has been instructed on behalf of the Council to undertake any action under RIPA, this Document and its forms must be used by the Council Officers concerned (in accordance with the normal procedure), the agency must be advised and kept informed of the various RIPA requirements. They must be made explicitly aware of what they are authorised to do, in writing (with a copy of the written instructions certified by the Officers as having been read by way of acknowledgement of their instructions and returned to the instructing Officer). If for reasons of urgency oral instructions are initially given, written confirmation must be sent and acknowledged within 4 working days. Officers must be satisfied that agencies are RIPA competent & RIPA trained before they are used.
2. When some other agency (e.g. Police, Customs & Excise, Inland Revenue etc):
  - (a) Wish to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and before any Officer agrees to allow the Council's resources to be used for the other agency's purposes he/she must obtain a copy of that agency's completed RIPA authorisation for the Council's records (a copy of which must be passed to the Assistant Chief Executive & Monitoring Officer for the Central Record of Authorisations or relevant extracts from the agencies RIPA form which are sufficient for the purposes of protecting the Council and use of its resources. The Council must only allow its equipment to be used in accordance with the authorisation.
  - (b) Wish to use the Council's premises for their own RIPA action, the Council Officer concerned should normally co-operate with such a request, unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may need to be sought from the other agency to protect the Council's legal position (the Council's insurance officer and/or the Assistant Chief Executive & Monitoring Officer can advise on this issue). In such cases the Council's own RIPA forms should not be used as the Council is only 'assisting' and not being 'involved' in the RIPA activity of the external agency.
3. With regard to 2(a) above, if the Police or other agency wish to use Council resources for general surveillance (as opposed to specific RIPA operations) an appropriate letter requesting the proposed use (and detailing the extent of remit, duration, who will be undertaking the general surveillance and the purpose of it) must be obtained from the Police or other agency before any Council resources are made available for the proposed use. The insurance/indemnity considerations

mentioned above may still need to be addressed.

4. In addition should any Officer wish to work in partnership with any other agency where the Council intend to share with that other agency any evidence obtained through surveillance activities then the advice of the Assistant Chief Executive & Monitoring Officer or a Deputy Monitoring Officer should be sought first.
5. If in doubt, please consult with the Assistant Chief Executive & Monitoring Officer at the earliest opportunity.

## **K. Covert use of the Internet and Social Networking Sites (SNS)**

Even if digital investigation can be routine or easy to conduct, this does not reduce the need for authorisation.

The AO must consider each service provider and services provided on an individual basis.

If access controls are applied to data by the author, there is a reasonable expectation of privacy. Where privacy settings are available but not applied, data may be considered as open source and authorisation is not normally required. However, repeat viewing of an open source may constitute Directed Surveillance on a case by case basis and this should be borne in mind.

If there is no warrant authorising interception, in accordance with S48(4) of RIPA, if it is necessary and proportionate to breach covertly access controls, an authorisation for Directed Surveillance will be needed as a minimum.

If an Officer wishes to set up a false identity for a covert purpose, authorisation must be obtained.

Use of photographs of third parties to support the false identity without the third party's permission is not permitted.

An Officer should not adopt the identity of a person known or likely to be known by the subject of interest or users of the site, without authorisation and also the consent in writing of the person whose identity is to be used and details of what is agreed can be done and not done. The Officer must also consider the protection of that party.

## **L. Records Management**

1. The Council must keep a detailed record of all authorisations, renewals, cancellations and rejections generated by officers. Original documents should go to the SRO/RIPA co-ordinator for central filing within the Central Record of Authorisations. Officers should work from copy documents at all times.



## 2. **Records maintained by individual services**

The following documents must be retained:

- a copy of any completed application form together with any supplementary documentation and notification of the approval given by the AO;
  - a record of the period over which the surveillance has taken place;
  - the frequency of reviews prescribed by the AO;
  - a record of the result of each review of the authorisation;
  - a copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested;
  - a copy of any cancellation of an authorisation;
  - the date and time when any instruction was given by the AO;
  - the Unique Reference Number\_for the authorisation (URN).
3. Each form will have a URN. The cross-referencing of each URN takes place within the forms for audit purposes. Rejected forms will also have URN's.

### **Central Record of Authorisations maintained by the Assistant Chief Executive & Monitoring Officer**

4. AO's must forward details of each form to the Assistant Chief Executive & Monitoring Officer for the Corporate Register within 1 week of the authorisation, review, renewal, cancellation or rejection. The Assistant Chief Executive & Monitoring Officer will monitor the same and give appropriate guidance from time to time or amend this Document, as necessary.
5. The Council will retain records for a period of at least three years from the ending of the authorisation. The Office of the Surveillance Commissioners (OSC) can audit/review the Council's policies and procedures, and individual authorisations.

## **M. Material obtained during investigations**

1. Generally, all material (in whatever media) obtained or produced during the course of investigations subject to RIPA authorisations should be processed, stored and destroyed in accordance with the requirements of the Data Protection Act 1998, the Freedom of Information Act 2000 and any other legal requirements including those of confidentiality. The following paragraphs give guidance on some specific situations, but advice should be sought from the Assistant Chief Executive & Monitoring Officer or the Data Protection Officer where appropriate.

2. Where material is obtained during the course of an investigation which might be relevant to that investigation, or another investigation, or to pending or future civil or criminal proceedings, then it should not be destroyed, but retained in accordance with legal disclosure requirements.
3. Where material is obtained, which is not related to a criminal or other investigation or to any person who is the subject of the investigation, and there is no reason to suspect that it will be relevant to any future civil or criminal proceedings, it should be destroyed immediately.
4. Material obtained in the course of an investigation may be used in connection with investigations other than the one that the relevant authorisation was issued for. However, the use or disclosure of such material outside the Council, unless directed by any court order, should only be considered in exceptional circumstances, and in accordance with advice from the Assistant Chief Executive & Monitoring Officer or a Deputy Monitoring Officer.
5. Where material obtained is of a confidential nature then the following additional precautions should be taken:
  - Confidential material should not be retained or copied unless it is necessary for a specified purpose;
  - Confidential material should only be disseminated in accordance with legal advice that it is necessary to do so for a specific purpose;
  - Confidential material which is retained should be marked with a warning of its confidential nature. Safeguards should be put in place to ensure that such material does not come into the possession of any person where to do so might prejudice the outcome of any civil or criminal proceedings;
  - Confidential material should be destroyed as soon possible after its use for the specified purpose.

If there is any doubt as to whether material is of a confidential nature, advice should be sought from the Assistant Chief Executive & Monitoring Officer.

## **N. Amendments to this Document**

1. The Assistant Chief Executive & Monitoring Officer is duly authorised to keep this Document up to date, and to amend, delete, add or substitute any provisions as he/she deems necessary. For administrative and operational effectiveness, he/she is also authorised to amend the list of 'Authorising Officer Posts' set out in Appendix 1, by adding, deleting or substituting any posts.
2. The [RIPA Authorising Officers Working Group] shall supplement any training requirements with exchanges of experiences in the operation of this Document and any recommendations to improve this Document will be considered by the Assistant Chief Executive & Monitoring Officer.

## O. Complaints Handling

### 1. West Somerset District Council's Surveillance Complaints Procedure

Complaints concerning breaches of the code may be made to the Council's Chief Executive, West Somerset District Council, West Somerset House, Williton Somerset, TA4 4QA.

If a complaint is received from a member of the public or a person who has been subject to any form of surveillance the complaint will be referred to the Assistant Chief Executive & Monitoring Officer for investigation.

Thereafter a decision will be taken, as to what action, if any, should be taken in line with the Council's Complaints Policy.

### 2. Independent Tribunal

RIPA also establishes an independent tribunal made up of Senior Members of the Judiciary and the Legal Profession and is independent of the government. The tribunal has full powers to investigate and decide any case within its jurisdiction. If a complaint is therefore received from an individual who has been subject to surveillance or by a member of the public then that person or persons should be referred immediately to the Investigatory Powers Tribunal.

The address for the Investigatory Powers Tribunal is PO Box 33220 London SW1H 9ZQ.

## P. Useful contacts

- 6.1 Local Authorities Coordinators of Regulatory Services (LACORS) - [www.lacors.gov.uk](http://www.lacors.gov.uk)
- 6.2 Office of the Surveillance Commissioner – <https://osc.independent.gov.uk/>
- 6.3 RIPA forms- <https://www.gov.uk/government/collections/ripa-forms--2>
- 6.4 RIPA codes of practice- <https://osc.independent.gov.uk/>
- 6.5 RIPA home office guidance – <https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa>

## **Q.Concluding Remarks of the Assistant Chief Executive & Monitoring Officer**

1. Where there is an interference with the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights, and where there is no other source of lawful authority for the interference, or if it is held not to be necessary or proportionate to the particular circumstances, the consequences of not obtaining or following the correct authorisation procedure set out in RIPA and this Document may be that the action taken (and the evidence obtained) will be held to be unlawful by the Courts pursuant to Section 6 of the Human Rights Act 1998. This could result in the Council losing a case and having costs (and possibly damages) awarded against it.
2. Obtaining an authorisation under RIPA and following the procedures set out in this Document will ensure that the particular action taken is carried out in accordance with the law and subject to stringent safeguards against abuse of anyone's human rights.
3. AO's will be suitably trained and they must exercise their minds every time they are asked to authorise a course of action. They must never sign or rubber stamp form(s) without thinking about both their personal responsibilities and the Council's responsibilities under RIPA and the European Convention.
4. Any boxes not needed on the form(s) must be clearly marked as being 'NOT APPLICABLE', 'N/A' or a line put through the same. Great care must also be taken to ensure that accurate information is used and inserted in the correct boxes. Reasons for any refusal of an application must also be kept on the form and the form retained for future audits.
5. Those carrying out surveillance must inform the authorising AO if the investigation or operation unexpectedly interferes with the privacy of individuals who are not covered by the authorisation.
6. For further advice and assistance on RIPA, please contact the Assistant Chief Executive & Monitoring Officer. Details are provided on the front of this document.

# APPENDIX 1

## List of Authorising Officer Posts

OVERALL RESPONSIBILITY: BRUCE LANG, ASSISTANT CHIEF EXECUTIVE/MONITORING OFFICER.

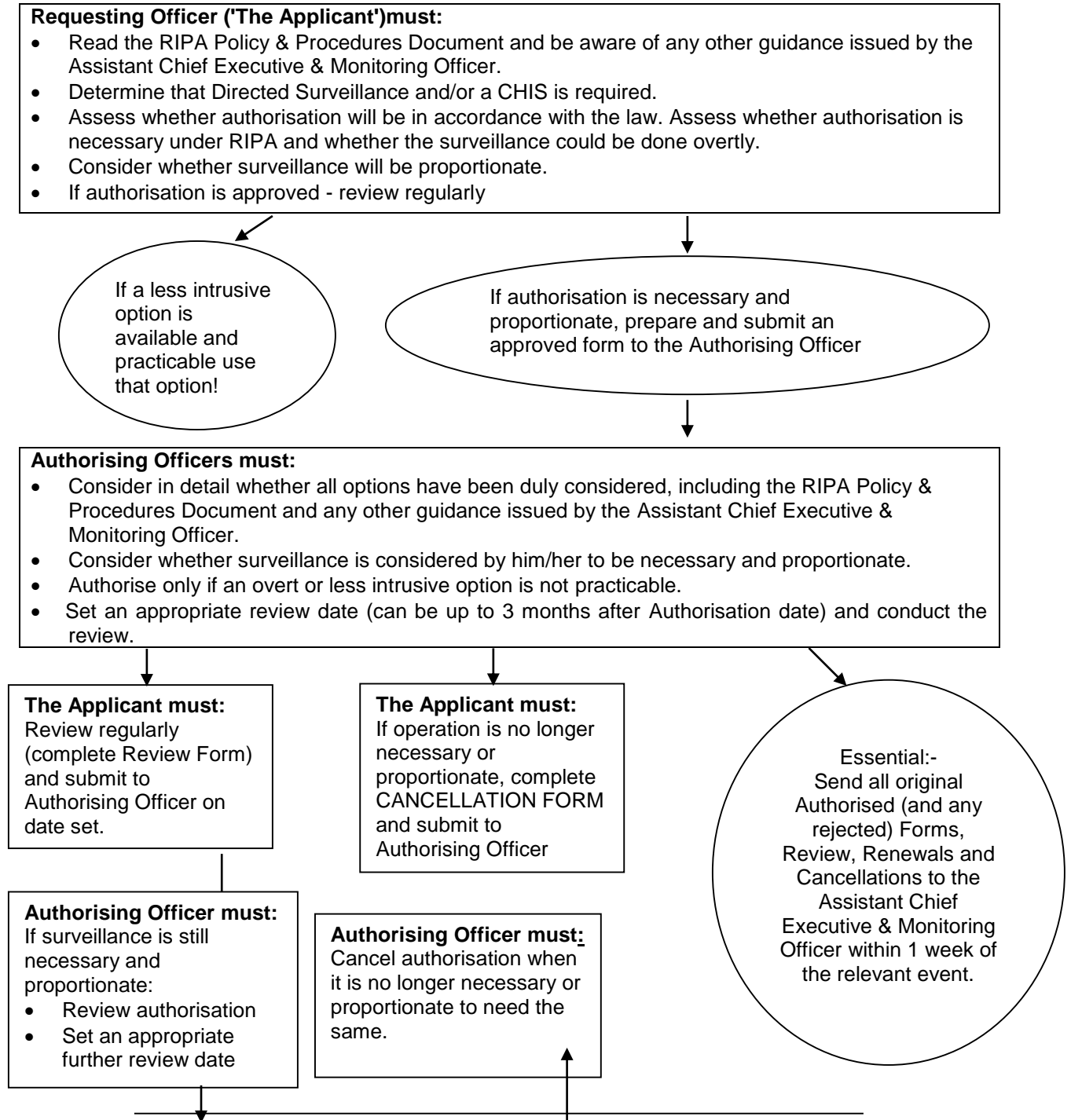
Authorising Officer's Name	Designation
Penny James	Chief Executive
Bruce Lang	Assistant Chief Executive & Monitoring Officer
James Barraah	Director of Housing & Communities
Chris Hall	Assistant Director of Operational Development
Heather Tiso	Revenues and Benefits Manager
Simon Doyle	Performance and Development Manager

### IMPORTANT NOTES

- A. Even if a post is identified in the above list the persons currently employed in such posts are not permitted to authorise any RIPA application forms (including a renewal or cancellation) unless he/she has been certified by the Assistant Chief Executive & Monitoring Officer to do so by the issue of a Certificate of RIPA Eligibility.
- B. Only the Chief Executive and the Assistant Chief Executive & Monitoring Officer are authorised to determine RIPA applications relating to Juvenile Sources and Vulnerable Individuals (see paragraph H of this document).
- C. Particular care should be taken in cases where the subject of the investigation or operation might reasonably expect a high degree of privacy, or where confidential information is involved. Confidential information consists of matters subject to legal privilege, confidential personal information or confidential journalistic material. In cases where through the use of surveillance it is likely that knowledge of confidential information will be acquired, the use of surveillance is subject to a higher level of authorisation; such authorisations will only be given by the Chief Executive or the Assistant Chief Executive & Monitoring Officer.
- D. If in doubt, seek the advice of the Assistant Chief Executive & Monitoring Officer before any directed surveillance and/or CHIS is authorised, renewed, rejected or cancelled.

# APPENDIX 2

## RIPA FLOW CHART



NB: If in doubt, ask the Assistant Chief Executive & Monitoring Officer before any Directed Surveillance and/or CHIS is authorised, renewed, cancelled, or rejected.

## **PROCEDURE FOR MAGISTRATES COURT**

Once authorisation has been granted, an application must be made to the Magistrates Court for a hearing. The Investigating Officers must contact HMCTS administration as soon as possible to request a hearing.

The Investigating Officers must be authorised to appear in order to give evidence, or provide information required by the JP.

The Magistrates will need a copy of the original authorisation/ and supporting documents and two copies of the partially completed judicial application/order. The original authorisation should be shown to the JP but retained by the Investigating Officer(s) so that it is available for inspection by the Commissioner's Officers and in the event of a legal challenge or investigations by the Investigatory Powers Tribunal.

The hearing will be held in private by one JP and the application must stand on its own.

If granted the JP will complete and sign the order and this must be retained as the official record of the JP's decision.

If out of hours access to a JP is required, the Investigating Officer(s) must make local arrangements with the relevant HMCTS legal staff. Two partially completed judicial application forms will be needed, one will be retained by the JP. The Investigating Officer(s) will provide the Court with a copy of the signed judicial application form the next working day

Advice and assistance can be sought from the Assistant Chief Executive & Monitoring Officer or a Deputy Monitoring Officer and reference should be made to the Home Office guidance before making the application.



**WEST SOMERSET DISTRICT COUNCIL**

**RIPA AUTHORISING OFFICER CERTIFICATE**

**No. [    ] / 200-**

I HEREBY CERTIFY that the Officer whose personal details are given below is an Authorising Officer for the purposes of authorising Covert Surveillance and the use and/or conduct of Covert Human Intelligence Sources under the provisions of the Regulation of Investigatory Powers Act 2000.

It is further certified that this Officer has received training to perform such authorisation procedures.

Certificate issued to:  
[Full name of Officer] \_\_\_\_\_

Job Title: \_\_\_\_\_

Service: \_\_\_\_\_

Location: \_\_\_\_\_

Certificate date: \_\_\_\_\_

(signed) \_\_\_\_\_

Bruce Lang  
Assistant Chief Executive & Monitoring Officer

(Please note:- This certificate and the authorisation granted by it is personal to the Officer named in it and cannot be transferred. Any change in personal details must be notified in writing to the Assistant Chief Executive & Monitoring Officer immediately. This certificate can be revoked at any time by the Assistant Chief Executive & Monitoring Officer by written revocation issued to the Officer concerned. It is the named Officer's personal responsibility to ensure full compliance with RIPA authorisation procedures and to ensure that he/she is fully trained in such procedures and that such training is kept up to date).



## **APPENDIX 4**

For the latest forms please go to this link

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

STANDARDS ADVISORY COMMITTEE

MINUTES OF THE MEETING HELD ON 16 JUNE 2015

AT 4.30 PM

IN THE COUNCIL CHAMBER, WILLITON

**Present:**

Mr T Evans ..... Chairman

Councillor J Davies

Mr J Gamlin

Councillor P H Murphy

Councillor D J Westcott

Councillor S O de Renzy-Martin

Mr I Gunn

Councillor N Thwaites

**Officers in Attendance:**

Monitoring Officer (B Lang)

Meeting Administrator (K Kowalewska)

Executive Assistant (J Miller)

**SA1      Apologies for Absence**

No apologies for absence were received.

**SA2      Welcome and Introductions**

The Chairman welcomed everyone to the meeting and Members and Officers introduced themselves.

**SA3      Appointment of Chairman**

**RESOLVED** that Mr T Evans be appointed Chairman of the Standards Advisory Committee for the remainder of the Municipal Year.

**SA4      Appointment of Vice-Chairman**

**RESOLVED** that Mr I Gunn be appointed Vice-Chairman of the Standards Advisory Committee for the remainder of the Municipal Year.

**SA5      Minutes of the Meeting held on 9 December 2014**

(Minutes of the Meeting of the Standards Advisory Committee held on 9 December 2014 - circulated with the Agenda.)

**RECOMMENDED** that the Minutes of the Meeting of the Standards Advisory Committee held on 9 December 2014 be noted and would be

confirmed as a correct record at the meeting of Council to be held on 17 June 2015.

**SA6      Declarations of Interest**

No declarations of interest were declared.

**SA7      Public Participation**

No member of the public had requested to speak.

**SA8      Composition of the Committee**

The Monitoring Officer advised that, following the elections in May 2015, the composition of the Standards Advisory Committee had not changed, however, as a result of Councillor J Fulwell no longer being a parish councillor in West Somerset, there was a vacancy for one of the town/parish council representative positions on the Committee. Mr Fulwell's good wishes were conveyed by the Monitoring Officer to the Committee Members.

Members of the Committee were asked to consider a course of action for filling the vacancy. As there was no prescribed process, the Monitoring Officer suggested that, on behalf of the Committee, he would write to all West Somerset town/parish council clerks informing them of the vacancy, giving a period of time for them to seek if anyone wished to put themselves forward for the position. Anyone interested would have to provide a brief résumé as to why they wished to be considered for the role.

During the debate the following specific issues were raised:

- Details of who applied were requested to be received by all members of the Committee, giving members a period of time to comment, before the Chairman and Monitoring Officer made a decision.
- It was necessary to have criteria in place to assist the selection process in order to demonstrate some form of objectivity and fairness.
- Parish/town councils should be given the chance to vote on the candidates so that it could be seen as a fair process and the responsibility of making the decision would not be solely placed on the Standards Advisory Committee.
- Delegate decision to Chair and Monitoring Officer, or set up a selection committee.
- There was no need to make the process too onerous.
- It was important that parish councils had confidence in the system and that the applications would be properly judged.
- No resources to run an election as was previously undertaken by the Somerset Association of Local Councils (SALC).

On consideration of the points raised, it was

**RECOMMENDED** that the process for filling the parish/town council representative position on the Standards Advisory Committee be as follows:

The Monitoring Officer would contact all West Somerset parish/town council clerks via email requesting nominations for the vacancy; the email would also include an explanation of the work of the Standards Advisory Committee and a description of the role. The submitted nominations would then be circulated to all Committee Members for their comments, and, at the same time, a follow-up email would be sent to parish/town councils detailing the list of applicants with a request for them to express a preference for any of the candidates. Four weeks would be allowed for each stage in the application process.

**SA9 Training for Councillors following the Elections in May 2015**

Further to discussions on Councillor training at the last meeting, the Monitoring Officer provided an update on the code of conduct training that was provided as part of the District Council Induction programme.

The Monitoring Officer outlined the proposals for providing training to parish and town councils. He advised that the training would be free of charge and up to three sessions, at different times of the day, would be offered over a 2-3 week period. The training would be held in the Council Chamber at West Somerset House, and offered to parish clerks as well as councillors, during early Autumn.

In response to a question, the Monitoring Officer confirmed that he would be liaising with SALC to ensure the content of the training was consistent.

The Committee would be advised of the dates, when confirmed, and Members would be invited to attend and become involved if they so wished.

During the discussion of this item, the Monitoring Officer explained the sanctions available to the Committee and the standards regime regarding a code of conduct complaint, and there was a request that the complaints process be expanded upon in the training programme.

**RECOMMENDED** that the Monitoring Officer's update be noted.

**SA10 Draft Annual Governance Statement 2014/15**

(A copy of the Draft Annual Governance Statement 2014/15 – circulated prior to the Meeting as a supplementary agenda item.)

The Committee was requested to make comments on the standards/code of conduct/behavioural elements which were referred to in the Draft Annual Governance Statement for 2014/15. The Monitoring Officer highlighted the key information contained within. He drew particular

attention to the fact that during the period from April 2014 to March 2015 no formal complaints had been received about any West Somerset Council Member and suggested this information should be included in the document as it was a good measure and reflected that Members of WSC were adhering to the code of conduct.

Concerns regarding better ways of promoting the Area Panels to encourage more members of the community to attend was raised during the discussion of this item.

**RECOMMENDED** to include in the Draft Annual Governance Statement 2014/15 that during the period from April 2014 to March 2015 no complaints had been received about Members of West Somerset Council.

**SA11**      **Monitoring Officer's Update**

The Monitoring Officer reported on activities undertaken since the last meeting and Members of the Committee noted that no formal complaints had been received.

Following the busy election period, training was the next priority. The Monitoring Officer reported that all 28 WSC Councillors had completed and submitted their Register of Interest forms and the information would be uploaded on to the Council's website in due course.

It was noted that due to limited resources, the publication of parish and town councillor register of interests on the website would be an ongoing piece of work, but the Monitoring Officer was aware of his responsibility and would continue to monitor and review the receipt of forms. He would provide an update on the matter at the next meeting of the Standards Advisory Committee.

**RECOMMENDED** that the Monitoring Officer's update be noted.

**SA12**      **Date of Future Meetings**

- Due to the Monitoring Officer not being able to facilitate at the next meeting of the Standards Advisory Committee, the date was rescheduled to 13 October 2015 at 4.30 pm.
- 8 December 2015 at 4.30 pm in the Council Chamber, West Somerset House.
- 1 March 2016 at 4.30 pm in the Council Chamber, West Somerset House.

The meeting closed at 5.35 pm