



COTSWOLD DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	AUDIT COMMITTEE – 14 NOVEMBER 2019
Report Number	AGENDA ITEM 12
Subject	COUNTER FRAUD UNIT REPORT
Wards affected	All indirectly
Accountable member	Cllr Mike Every, Deputy Leader and Cabinet Member for Finance Tel: 07850 373022 Email: Mike.Every@cotswold.gov.uk
Accountable officer	Emma Cathcart, Counter Fraud Manager Tel: 01285 623356 Email: Emma.Cathcart@cotswold.gov.uk
Summary/Purpose	<p>To provide the Audit Committee with assurance over the counter fraud activities of the Council. The Counter Fraud Unit will continue to provide Audit Committee with direct updates biannually.</p> <p>Work plans are presented to the Audit Committee detailing progress and results for consideration and comment as the body charged with governance in this area.</p> <p>The report also provides the Audit Committee with two Policies, for comment, in relation to the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and the Council's existing Policies and arrangements.</p>
Annexes	<p>Annex A – Work Plan 2019/2020</p> <p>Annex B – Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy (draft)</p> <p>Annex C – Investigatory Powers Act 2016 Acquisition of Communications Data Policy (draft)</p>
Recommendation/s	<p>Please write recommendations using letters and italics as below.</p> <p><i>a) That the Audit Committee notes the report and the work plan and makes comment as necessary.</i></p> <p><i>b) That the Audit Committee considers the Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy to comment thereon to Cabinet, to aid its deliberations and decision making.</i></p>

	<i>c) That the Audit Committee considers the Investigatory Powers Act 2016 Acquisition of Communications Data Policy to comment thereon to Cabinet, to aid its deliberations and decision making.</i>
Corporate priorities	Ensure that all services delivered by the Council are delivered to the highest standard.
Key Decision	NO
Exempt	NO
Consultees/ Consultation	The Policies have been reviewed by the Legal Team and have been issued to Governance Group and Joint Management Team for comment.

1. BACKGROUND

- 1.1. The Audit Committee oversees the Council's counter fraud arrangements and it is therefore appropriate for the Committee to be updated in relation to counter fraud activity.
- 1.2. Work plans for 2019/20 have been agreed with the Chief Finance Officer and Corporate Management and work is underway. The Audit Committee, as the body charged with governance in this area, is presented with a copy of the work plan for information.
- 1.3. Attached at [Annex A](#) is a copy of the work plan for 2019/2020.

2. MAIN POINTS

2.1. Counter Fraud Unit Update.

- 2.2. The Serious and Organised Crime Strategy (2013) introduced by government, raised concerns about the vulnerability of public procurement to organised crime. The Home Office conducted a pilot programme to explore the threat and produced a report detailing findings which showed areas such as waste, taxi and transport services and lower level spend are particularly at risk. The report suggested interventions which included the completion of a high level checklist to identify risks. The Counter Fraud Unit (CFU) have completed the checklist in relation to serious and organised crime and issued a copy to Governance Group for consideration. This piece of work has resulted in an action plan to raise awareness and review controls in areas of high risk such as procurement and housing.
- 2.3. The Counter Fraud and Anti-Corruption Policy has been reviewed and minor amendments were made to reflect changes to data protection legislation.
- 2.4. In addition to [Annex A](#), as a dedicated investigatory support service, the CFU undertakes a wide range of enforcement and investigation work according to the requirements of each Council. This includes criminal investigation and prosecution support for enforcement teams, investigations into staff/member fraud and corruption, or tenancy and housing fraud investigation work. As at the beginning of the year, the CFU had 7 open cases. During Quarters 1 and 2:
 - The team received 11 referrals from across the Council and closed 6 cases.
 - The team undertake disciplinary investigations for Publica across the partnership. 5 cases have been referred and 2 cases have been closed during the period. Both of the closed cases resulted in disciplinary hearings; a final written warning was issued and a member of staff was dismissed for gross misconduct.
 - Assisting the Planning, Heritage and Conservation Teams. The work undertaken by Council's Conservation Officer and the Counter Fraud Unit resulted in legal services being able to successfully prosecute a guilty plea under the Planning (Listed Buildings and Conservation Areas) Act 1990 for unlawful works to a II* listed building. The defendant received a fine of £20,000 and was ordered to pay £5,651 towards the Council's costs.

- Assisting the Parking Services Team. The work undertaken by the Council's Projects and Contracts Officer and the Counter Fraud Unit resulted in the successful listing of a fraud case at Cheltenham Magistrates Court. The defendant failed to attend and a warrant without bail has been issued.

2.5. Regulation of Investigatory Powers Act 2000 / Investigatory Powers Act 2016 Policies

- 2.6.** The Council's Policies are based on the legislative requirements of these Acts and the Codes of Practice relating to directed surveillance and the acquisition of communications data. Attached at [Annex B](#) and at [Annex C](#), are revised draft Policies.
- 2.7.** The Investigatory Powers Act 2016 now governs communication data requests. The legislation widened the scope of information the Council may obtain for investigations, introduced the necessity for a serious crime threshold and removed the requirement for judicial approval.
- 2.8.** All applications for communications data are made online via the National Anti-Fraud Network (NAFN) which acts as the single point of contact for Councils. NAFN send requests to the Office for Communication Data Authorisations (OCDA) who ratify all applications from public authorities for approval and if granted, NAFN will then obtain the requested data for the applicant.
- 2.9.** There is a requirement for the Council to nominate a Designated Senior Officer who will confirm to NAFN that the Council is aware of any request and approve its submission. This role is undertaken by the Counter Fraud Manager and the Deputy Counter Fraud Manager.
- 2.10.** Surveillance and the use of a Covert Human Intelligence Source (CHIS) is still governed by the Regulation of Investigatory Powers Act 2000 (RIPA) and any applications are subject to the same application processes as outlined in the previous Policy – the offence must meet the serious crime threshold and the Council must obtain judicial approval.
- 2.11.** The Council must have a Senior Responsible Officer and Authorising Officers to approve the application before the Court is approached. These roles are as outlined in the Counter Fraud Unit Audit Committee Report April 2019.
- 2.12.** The refreshed Policy introduces a mandatory requirement for staff to complete a Non-RIPA Application Form where surveillance is being undertaken but the offence does not meet the serious crime criteria.
- 2.13.** The work plan and reactive case results are presented for information and comment.
- 2.14.** The Policies relating to surveillance, the use of a CHIS and the acquisition of communications data have been updated in line with legislative changes and are presented to Audit Committee for comment thereon.

3. FINANCIAL IMPLICATIONS

- 3.1.** The report details financial savings generated by the Counter Fraud Unit.

- 3.2. The adoption and approval of these Policies will support the Council's objectives in reducing crime and financial loss to the Council.

4. LEGAL IMPLICATIONS

- 4.1. In general terms, the existence and application of an effective fraud risk management regime assists the Council in effective financial governance which is less susceptible to legal challenge.
- 4.2. The Council is required to ensure that it complies with the Regulation of Investigatory Powers Act 'RIPA' 2000, the Investigatory Powers Act 2016 and any other relevant/statutory legislation regarding investigations. Any authorisations for directed/covert surveillance or the acquisition of communications data undertaken should be authorised by the appropriate Officer and recorded in the Central Register.
- 4.3. The Council has a statutory obligation for enforcing a wide range of legislation, where it is necessary and proportionate to do so. Human rights implications are a consideration of this type of activity and this is included within the Policy.

5. RISK ASSESSMENT

- 5.1. The Council is required to proactively tackle fraudulent activity in relation to the abuse of public funds. The Counter Fraud Unit provides assurance in this area.
- 5.2. Failure to undertake such activity would accordingly not be compliant and expose the authority to greater risk of fraud and/or corruption.
- 5.3. If the Council does not have effective counter fraud and corruption controls it risks both assets and reputation.
- 5.4. The Policies demonstrate the Council's consideration of necessity, proportionality and public interest when deciding on surveillance activity or the decision to obtain personal communication data.

6. EQUALITIES IMPACT

- 6.1. The promotion of effective counter fraud controls and a zero tolerance approach to internal misconduct promotes a positive work environment.
- 6.2. The application of these Policies, to govern surveillance and the obtaining of personal communications data, ensures that there is less risk that an individual's human rights will be breached. Furthermore it protects the Council from allegations of the same.

7. ALTERNATIVE OPTIONS

- 7.1. The Council is the lead authority for the Gloucestershire Counter Fraud Unit. This Unit is working with all of the Gloucestershire Local Authorities, West Oxfordshire District Council and other public sector bodies such as housing associations.

8. BACKGROUND PAPERS - NONE