



CABINET

16TH FEBRUARY 2017

AGENDA ITEM (13)

**POLICY MATTERS - COUNTER FRAUD AND ANTI-CORRUPTION; WHISTLE BLOWING; AND
REGULATION OF INVESTIGATORY POWERS ACT (COMMUNICATIONS DATA)**

Accountable Members	Councillor C Hancock Cabinet Member for Enterprise and Partnerships
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Purpose of Report	To present, for approval and adoption, a revised Counter Fraud and Anti-Corruption Policy; a draft Whistle Blowing Policy; and a draft Regulation of Investigatory Powers Act (Communications Data) Policy.
Recommendation(s)	(a) That the Cabinet formally adopts all three Policies attached to this report; (b) that the Chief Finance Officer be given delegated authority to approve future minor amendments to the Policies, in consultation with the Cabinet Member and appropriate Officers (to include a representative of the Legal Team).
Reason(s) for Recommendation(s)	To replace the existing Counter Fraud and Anti-Corruption policy to reflect the position in relation to counter fraud provision within the Authority. To update and replace the existing Whistle Blowing Policy with one which reflects key legislation and roles and responsibilities across the partnership. To introduce a new Regulation of Investigatory Powers Act (Communications Data) Policy to ensure legislative powers are used for the proper purpose and in the correct way; these policies and guidance will ensure that that happens and that elected members are kept fully informed.
Ward(s) Affected	Not applicable
Key Decision	No
Recommendation to Council	No

Financial Implications	There are no direct financial implications arising from the report. However, the adoption and approval of these Policies will help support the prevention and detection of misuse of public funds and fraud therefore reducing potential financial loss to the Council.
Legal and Human Rights Implications	<p>With regard to the RIPA (Communications Data) Policy, this report ensures that the Council complies with the legislation and guidance issued by the Home Office.</p> <p>The Council may where it is necessary and proportionate need to apply for communications data to assist with an investigation. RIPA provides a legal framework for the control and regulation of surveillance and information techniques which public authorities undertake as part of their duties.</p> <p>The Council's RIPA Policies will provide information and advice to those seeking authorisation and those officers granting authorisation. It will also provide the public with information about how the Council approaches the use of surveillance and communication data access.</p> <p>Judicial approval will be required before an Authorisation is granted</p>
Environmental and Sustainability Implications	None directly arising from the report.
Human Resource Implications	<p>In relation to the Counter Fraud and Anti-Corruption Policy and the Whistle Blowing Policy, employees will need to be made aware of the changes and procedures therein.</p> <p>It is essential that any Officer involved in an internal investigation work closely with Human Resources to ensure the Council's Disciplinary Process is followed and any criminal investigation is not compromised.</p>
Key Risks	<p>If the Council does not have effective counter fraud and anti-corruption controls it risks both assets and reputation.</p> <p>The Council is required to adopt a Counter Fraud and Anti-Corruption Policy to enable Officers to proactively tackle fraudulent activity against the Council or other public sector bodies.</p> <p>If the Council does not have an effective Whistle Blowing Policy it puts staff members and its reputation at risk. The Authority must fulfil its obligations in relation to whistle-blowing arrangements.</p> <p>If the Council obtains communications data without due regard to RIPA, Ministry of Justice Codes of Practice and the CDC policy and procedural guidance then there are risks to an individual's rights, including any breach of Human Rights – right to privacy, and to the Council's reputation.</p>
Equalities Impact Assessment	Not Required

Related Decisions	Counter Fraud and Anti-Corruption Policy; Cabinet adoption and approval on 21 January 2016. Whistle Blowing Policy; Audit Committee considered and commented on 23 August 2016. RIPA (Communications Data) Policy; Audit Committee considered and commented on 24 January 2017.
Background Documents	Counter Fraud and Anti-Corruption Policy (October 2015) Whistle Blowing Policy (November 2006)
Appendices	Appendix A - Revised Counter Fraud and Anti-Corruption Policy Appendix B - Revised Whistle Blowing Policy Appendix C - Draft RIPA (Communications Data) Policy
Performance Management Follow Up	Adoption of the Policies. Publication and subsequent staff and Member awareness.
Options for Joint Working	These Policies are being presented and adopted across partner Authorities.

Background Information

1. Counter Fraud and Anti-Corruption Policy (Appendix A)

1.1 The Counter Fraud and Anti-Corruption Policy was developed to reflect (i) latest legislation and (ii) the changes from the creation of the Single Fraud Investigation Services (operated by the Department for Work and Pensions) which subsumed the Council's responsibilities for investigating Housing Benefit Fraud.

1.2 The Policy was developed in consultation with the Gloucestershire and West Oxfordshire authorities, to provide a platform for the operation of the pilot counter-fraud unit.

1.3 At the time of drafting and subsequent approval, the counter fraud project was being managed within the Internal Audit Department. This is no longer the case, the Counter Fraud Unit works as a Support Service under the direction of the Chief Finance Officer. The Policy has been updated to reflect these current circumstances.

2. Whistle Blowing Policy (Appendix B)

2.1 The Counter Fraud Unit are undertaking a review of a number of Policies and Procedures to enable data matching and criminal investigations to be legally undertaken and in support of each service area.

2.2 All referrals received by the Counter Fraud Unit must be dealt with in the correct manner adhering to regulations, legislation and guidance. This includes internal alerts of wrongdoing which must adhere to whistle-blowing legislation.

2.3 As such the Counter Fraud Unit was asked to review the four separate Policies within the GOSS partnership (and Tewkesbury Borough Council) and redraft a best practice policy for all, to facilitate continuity.

2.4 The Whistle-Blowing Policy is a Human Resources Policy and as such it has been reviewed by Corporate Management Team, Joint Liaison Forum and the Joint Consultative Committee and Audit Committee as part of the consultation process.

2.5 This is a complete redraft and the Policy is therefore presented to Cabinet for approval and adoption due to the significant revisions.

3. Regulation of Investigatory Powers Act (Communications Data) Policy (Appendix C)

3.1 A new Policy and Procedures Document for the Acquisition of Communications Data using The Regulation of Investigatory Powers Act 2000 (RIPA) has been drafted by the Counter Fraud Unit to provide transparency and guidance on the process.

3.2 The Council has a procedural guide for the application of RIPA in relation to directed surveillance which has been in place for some time and it should be noted that this policy does not replace it. Any officer considering surveillance and the use of RIPA as part of an investigation should refer to the policy and follow the original guidance in the first instance.

3.3 A Local Authority must be a paid up member of the National Anti-Fraud Network (NAFN) in order to make use of its single point of contact (SPoC) service in relation to communications data. The Council is a member, primarily to make use of other services provided by NAFN (credit referencing, DVLA checks, debtor tracing etc.) but given that officers could now utilise the RIPA SPoC service and obtain communications data, legislative guidance needs to be in place to govern the process.

3.4 This procedural guide is based on the requirements of The Regulation of Investigatory Powers Act 2000 (RIPA) and the Home Office Code of Practice on the Acquisition and Disclosure of Communications Data. If any of the Home Office Codes of Practice change, the appropriate guide will be updated, and the amended version placed on the internet / published accordingly. Regular training sessions will also be provided to ensure that staff members are fully conversant with the Act.

3.5 The policy details how RIPA controls the process by which the Council obtains communications data. This data does not include the content of the communications i.e. the actual email message, letter, text or telephone conversation merely details basic subscriber information and the frequency of communication. Section 3.1 of the policy details the type of information the Council is allowed to obtain – subscriber information and service use data. The Council is not allowed to access traffic data as detailed within section 3.2 of the policy.

3.6 A Local Authority may only acquire communications data for the purpose of the prevention or detection of crime or the prevention of disorder.

3.7 Procedure for Obtaining Communications Data: There is now only one method that officers can use to obtain communications data; by way of the NAFN secure website. To use this system applicants have to individually register on the NAFN website. A Designated Person will also need to be registered to authorise the applicant's requests. Further information on this procedure is covered within section 5 of the policy and additional guidance can be provided by the Counter Fraud Unit.

3.8 The draft Policy has been developed in consultation with other partner Councils to provide continuity for the operation of the Counter Fraud Unit and shared Enforcement Officers.

3.9 The draft Policy was presented to the Audit Committee at its Meeting on 24th January 2017, and the Committee unanimously supported the Policy.

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