

# Minute

## Special General Meeting of the Council

Thursday, 11 June 2020, 10:30.

Microsoft Teams.



### Present

Councillors J Harvey Johnston, Stephen G Clackson, Alexander G Cowie, Norman R Craigie, Robin W Crichton, David Dawson, Andrew Drever, Barbara Foulkes, Steven B Heddle, Rachael A King, W Leslie Manson, John T Richards, Stephen Sankey, John A R Scott, Gwenda M Shearer, Graham L Sinclair, James W Stockan, Magnus O Thomson, Owen Tierney and Duncan A Tullock.

### Clerk

- Gavin Mitchell, Head of Legal Services.

### In Attendance

- John W Mundell, Interim Chief Executive (for Items 1 to 16).
- Gavin Barr, Executive Director of Development and Infrastructure (for Items 1 to 16).
- Gillian Morrison, Executive Director of Corporate Services.
- James Wylie, Executive Director of Education, Leisure and Housing (for Items 1 to 16).
- Gareth Waterson, Head of Finance.
- Karen Greaves, Head of Executive Support (for Items 1 to 16).
- Hayley Green, Head of IT and Facilities (for Items 1 to 14).
- Andrew Groundwater, Head of HR and Performance.
- Roddy Mackay, Head of Planning, Development and Regulatory Services (for Items 1 to 12).
- Darren Richardson, Head of Infrastructure and Strategic Projects (for Items 1 to 10).
- Graeme Christie, Estates Manager (for Items 11 to 14).
- Hazel Flett, Senior Committees Officer (for Items 1 to 16).

### Observing

- James Buck, Head of Marine Services, Transport and Harbour Master (for Items 11 and 12).
- Paul Kemp, Strategic Finance Manager (for Items 1 to 16).
- Kirsty Groundwater, Project Officer (Communications and Engagement) (for Items 1 to 14).

### Declaration of Interest

- Councillor Duncan A Tullock – Item 13.

## **Chair**

- Councillor J Harvey Johnston, Convener.

### **1. Disclosure of Exempt Information**

The Council noted the proposal that the public be excluded from the meeting for consideration of Items 11 to 14, 16 and 17, as the business to be discussed involved the potential disclosure of exempt information of the classes described in the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

### **2. Disclosure of Confidential Information**

The Council noted that the public required to be excluded from the meeting for consideration of Item 15, as the business to be discussed involved the potential disclosure of confidential information of the class described in Section 50A(3)(a) of the Local Government (Scotland) Act 1973 as amended.

### **3. Orkney Health and Care Committee**

#### **Appointments to Vacancies**

After consideration of a report by the Chief Executive, copies of which had been circulated, and after hearing a report from the Head of Executive Support, the Council:

Noted:

- 3.1.** That, following the death of Councillor Kevin F Woodbridge, a vacancy existed on the Orkney Health and Care Committee.
- 3.2.** That the late Councillor Woodbridge was also Vice Chair of the Orkney Health and Care Committee.
- 3.3.** The proposal to fill the vacancy on the Orkney Health and Care Committee, together with the post of Vice Chair, as outlined in section 4 of the report by the Chief Executive.
- 3.4.** That the appointment made to fill the vacancy on the Orkney Health and Care Committee, together with the post of Vice Chair, would last for the remainder of the term of this Council, namely until May 2022.

After a secret ballot, the result of which was as follows:

- Councillor Alexander G Cowie – 15 votes.
- Councillor John A R Scott – 5 votes.

The Council resolved:

- 3.5.** That Councillor Alexander G Cowie be appointed to the vacancy on the Orkney Health and Care Committee.

The Council **suspended Standing Orders** in order to make an appointment to the post of Vice Chair of the Orkney Health and Care Committee.

The Council resolved:

**3.6.** That Councillor Stephen Sankey be appointed Vice Chair of the Orkney Health and Care Committee.

## **4. Orkney Ferries Limited**

### **Nomination of Board Member**

After consideration of a report by the Chief Executive, copies of which had been circulated, and after hearing a report from the Head of Executive Support, the Council:

Noted:

**4.1.** That, following the death of Councillor Kevin F Woodbridge, a vacancy existed on the Board of Directors of Orkney Ferries Limited.

**4.2.** That the appointment made to fill the vacancy on the Board of Directors of Orkney Ferries Limited, if accepted by the Board, would last for the remainder of the term of this Council, namely until May 2022.

The Council resolved:

**4.3.** That Councillor David Dawson be nominated to fill the vacancy on the Board of Directors of Orkney Ferries Limited.

## **5. Detailed Revenue Budgets for 2020 to 2021**

After consideration of a report by the Head of Finance, copies of which had been circulated, the Council:

Noted:

**5.1.** That, on 3 March 2020, when setting the budget and Council Tax levels for 2020/21, the Council delegated powers to the Head of Finance to revise the approved General Fund revenue budget, following confirmation of outstanding funding levels from the Scottish Government.

**5.2.** That, although the Scottish Government revenue grant funding to the Council for financial year 2020/21 had been confirmed at £78,182,000, Scottish Government departments had advised the Council of further amended funding distributions, as detailed in section 4.3 of the report by the Head of Finance.

**5.3.** That the General Fund revenue budget for financial year 2020/21 had now been set at £86,464,800.

**5.4.** The detailed revenue budgets for financial year 2020/21, in respect of the undernoted services, attached as Annex 1 to the report by the Head of Finance:

- General Fund Services.
- Housing Revenue Account.
- Scapa Flow Oil Port.
- Miscellaneous Piers and Harbours.
- Orkney College.
- Corporate Holding Accounts.
- Strategic Reserve Fund.
- Orkney Islands Council Pension Fund.

**5.5.** That reports would be presented to the Council, in due course, detailing the financial impact of the coronavirus pandemic on the 2020/21 budget.

## **6. Provisional Budget Outturn for 2019 to 2020**

After consideration of a report by the Head of Finance, copies of which had been circulated, the Council:

Noted:

**6.1.** That the coronavirus pandemic had markedly changed the financial outlook in the current financial year and, whilst the Council would make savings in some areas, those savings would fall well short of what would be required to offset additional costs and significantly reduced income.

**6.2.** That, on 3 March 2020, when setting the budget and Council Tax levels for 2020/21, the Council agreed that General Fund underspends would be applied to the accelerated repayment of capital debt.

**6.3.** That accelerated repayment of capital debt improved the affordability of the capital programme as well as the ability of the Council to fund an expanded capital programme.

**6.4.** That, as a result of the changed financial circumstances brought about by the coronavirus pandemic, maximum flexibility for the Council would be afforded in 2020/21, as well as for the budget setting process for 2021/22, through retaining a higher General Fund non-earmarked balance and limiting debt repayments to minimum scheduled debt repayments levels.

**6.5.** That, after payment of scheduled debt repayments and interest, £2,431,000 of the loan charges budget for 2019/20 was available to make a contribution to a General Fund underspend which could be carried forward to 2020/21 as part of the General Fund non-earmarked balance.

**6.6.** That the provisional budget outturn for 2019/20 indicated an underspend on General Fund services of £766,000 and an unused General Fund contingency of £800,000, making a total of £1,566,000.

**6.7.** That the following elements from the 2019/20 budget could therefore make a contribution of £3,997,000 to the General Fund non-earmarked balance which could be carried forward into 2020/21:

- Loan charges – £2,431,000.
- Unused General Fund contingency – £800,000
- General Fund provisional underspend – £766,000.

**6.8.** That, although a decision in respect of applying General Fund underspends to accelerated debt repayment rather than the General Fund non-earmarked balance was taken within the last 12 months, in accordance with Standing Order 23.2, the Chief Executive was satisfied that a material change of circumstances had occurred and, accordingly, Standing Order 23.1 would not require to be suspended in order to consider the resolutions at paragraphs 6.9 and 6.10 below.

The Council resolved:

**6.9.** That the following elements from the 2019/20 outturn be applied to the General Fund non-earmarked balance rather than accelerated debt repayment as previously agreed on 3 March 2020:

- Loan charges – £2,431,000.
- Unused General Fund contingency – £800,000
- General Fund provisional underspend – £766,000.

**6.10.** That, should the sums referred to at paragraph 6.8 above not be required, in full, to meet the undernoted pressures, any remaining balance be applied to accelerated debt repayments, when it was deemed financially prudent to do so:

- Additional pressures in 2020/21.
- Consequential budget setting pressures for 2021/22.
- Further contingency to address the coronavirus pandemic.

## **7. Joint Inspection of Services for Children and Young People in need of Care and Protection**

### **Improvement Plan – Progress Update**

After consideration of a joint report by the Chief Executive and the Executive Director, Orkney Health and Care, copies of which had been circulated, the Council:

Noted:

**7.1.** The Orkney Partnership Child Protection Improvement Plan Register prepared in response to the Joint Inspection of Services for Children and Young People in need of Care and Protection in Orkney, attached as Appendix 1 to the joint report by the Chief Executive and the Executive Director, Orkney Health and Care.

**7.2.** That, although additional resources to support work associated with the Improvement Plan had been allocated by Orkney Islands Council and NHS Orkney, challenges remained in filling key vacancies and in management capacity, with the situation continuing to be exacerbated as a result of the coronavirus pandemic and through associated shielding.

**7.3.** That the Chief Officer Group monitored progress on the actions contained within The Orkney Partnership Child Protection Improvement Plan and was currently meeting on a regular fortnightly basis.

## **8. Police and Fire Sub-committee**

After consideration of the draft Minute of the Meeting of the Police and Fire Sub-committee held on 25 February 2020, copies of which had been circulated, the Council:

Resolved, on the motion of Councillor Andrew Drever, seconded by Councillor David Dawson, to approve the Minute of the Meeting of the Police and Fire Sub-committee held on 25 February 2020, attached as Appendix 1 to this Minute, as a true record.

## **9. Pension Fund Sub-committee, together with Pension Board**

After consideration of the draft Minute of the Meeting of the Pension Fund Sub-committee, together with the Pension Board, held on 26 February 2020, copies of which had been circulated, the Committee:

Resolved, on the motion of Councillor W Leslie Manson, seconded by Councillor Rachael A King, to approve the Minute of the Meeting of the Pension Fund Sub-committee, together with the Pension Board, held on 26 February 2020, attached as Appendix 2 to this Minute, as a true record.

## **10. Exclusion of Public**

On the motion of Councillor J Harvey Johnston, seconded by Councillor James W Stockan, the Council resolved that the public be excluded for the remainder of the meeting, as the business to be considered involved:

- The disclosure of confidential information of the class described in Section 50A(3)(a) of the Local Government (Scotland) Act 1973 as amended.
- The disclosure of exempt information of the classes described in the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

## **11. Investments Sub-committee**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraphs 4 and 6 of Part 1 of Schedule 7A of the Act.

After consideration of the draft Minute of the Meeting of the Investments Sub-committee held on 27 February 2020, copies of which had been circulated, the Committee:

Resolved, on the motion of Councillor W Leslie Manson, seconded by Councillor Rachael A King, to approve the Minute of the Meeting of the Investments Sub-committee held on 27 February 2020, attached as Appendix 3 to this Minute, as a true record.

## **12. Business and Economy Response and Recovery**

### **Proposed Governance and Spending Priorities**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraphs 4 and 6 of Part 1 of Schedule 7A of the Act.

After consideration of a joint report by the Chief Executive and the Executive Director of Development and Infrastructure, copies of which had been circulated, the Council:

Noted:

**12.1.** That, on 20 March 2020, the Council's Economic Development services, including Business Gateway, and Highlands and Islands Enterprise's regional teams jointly established a Business and Economy Response and Recovery Group (BERRG).

**12.2.** That the key outputs from the BERRG in the response phase to the coronavirus pandemic were establishment of a Council Business Hardship Grant Scheme, launched on 1 May 2020 and a Council Business Loan Scheme, launched 25 May 2020.

**12.3.** That, in parallel to the work of the BERRG, a number of Orkney business professionals independently established a Task Force, on which the Chief Executive and the Executive Director of Development and Infrastructure were invited to participate.

**12.4.** The summary of outputs from the Task Force which had been prepared by the business representatives, attached as Appendix 1 to the joint report by the Chief Executive and the Executive Director of Development and Infrastructure, which included a number of requests from the Council for support, and a refined prioritisation list, attached as Appendix 2 to the joint report.

**12.5.** That the Task Force also undertook a survey of Orkney businesses, the outputs of which were summarised in section 3 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure, with the full survey output report attached as Appendix 3 to the joint report.

**12.6.** That business representatives had indicated a willingness to assume a strong leadership role in the recovery phase of the coronavirus pandemic and, in order to achieve that, it was considered necessary to establish a Governance Structure as a legitimate basis for representation.

**12.7.** The proposed Governance Structure, summarised in section 4 of the joint report by the Chief Executive and the Executive Director of Development and Infrastructure and provided in detail at Appendix 4 to the joint report.

**12.8.** That Orkney Community Planning Partnership's Vibrant Economic Delivery Group met and discussed the proposed Governance Structure on 2 June 2020, while the Partnership Board considered the proposal on 10 June 2020.

**12.9.** The proposal to establish the Governance Structure as a Short Life Working Group, acting for the duration of the coronavirus pandemic recovery response.

The Council resolved:

**12.10.** That the Governance Structure, attached as Appendix 4 to this Minute, including establishment of a short life working group which would be associated with the Vibrant Economic Delivery Group of the Orkney Community Planning Partnership, be endorsed.

**12.11.** That the Chief Executive be authorised to finalise and implement the proposed nominations process for sector representative appointments to the Steering Group and the Business and Economy Response and Recovery Group.

**12.12.** That Council representation on the Steering Group should comprise the Chief Executive, the Executive Director of Development and Infrastructure and five elected members.

**12.13.** That the following members be appointed to represent the Council on the Steering Group:

- Councillor Barbara Foulkes.
- Councillor Rachael A King.
- Councillor John T Richards.
- Councillor Graham L Sinclair.
- Councillor James W Stockan.

**12.14.** That the Chief Executive, in consultation with the Leader, the Chair and Vice Chair of the Development and Infrastructure Committee and the Head of Finance, should undertake further dialogue with business representatives to confirm priority actions for business support.

**12.15.** That the Chief Executive should submit a report to the Council, in due course, presenting the Steering Group Cross Sector/Cross Agency Recovery Plan, together with any financial implications for the Council arising from the Plan.

### **13. Request to Purchase Site at Hatston Industrial Estate, Kirkwall**

Councillor Duncan A Tullock declared a non-financial interest in this item and was not present during consideration thereof.

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraphs 2, 6 and 9 of Part 1 of Schedule 7A of the Act.

After consideration of a joint report by the Executive Director of Development and Infrastructure and the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Head of IT and Facilities, the Council:

Resolved what action should be taken with regard to a request to purchase a site at Hatston Industrial Estate, Kirkwall.



**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **14. Proposed Disposal of Property in Stromness**

### **St Peter's House, Stromness**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraphs 6 and 9 of Part 1 of Schedule 7A of the Act.

After consideration of a report by the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Head of IT and Facilities, the Council:

Noted:

**14.1.** That St Peter's House, Stromness, was no longer required by Orkney Health and Care following completion and opening of Hamnavoe House.

**14.2.** That, on 4 February 2020, the Development and Infrastructure Committee recommended that, in order for the Council to demonstrate broad support of its aims, the Stromness Place Plan, which included a community aspirational project relating to St Peter's House, Stromness, be endorsed.

**14.3.** That, following a surplus property consultation process, together with an options appraisal, as detailed in section 5 of the report by the Executive Director of Corporate Services, disposal by sale on the open market was the favoured outcome.

The Council resolved:

**14.4.** That, as the former St Peter's House care home, Stromness, had been declared surplus to the operational requirements of Orkney Health and Care, it should be reclassified as a surplus property within General Fund Services and accounted for accordingly.

**14.5.** That the former St Peter's House care home, Stromness, be advertised for sale on the open market, at not less than market value, and thereafter sold on terms and conditions to be determined by the Solicitor to the Council.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **15. Regulation of Investigatory Powers (Scotland) Act 2000**

### **15.1. Inspection by Investigatory Powers Commissioner's Office**

Under section 50A(2) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of confidential information as defined in section 50A(3)(a) of the Act.

After consideration of a joint report by the Chief Executive and the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Head of Legal Services, the Council:

Noted:

**15.1.1.** That, in February 2020, the Investigatory Powers Commissioner's Office (IPCO) undertook an examination of the arrangements made by the Council to ensure compliance with the statutory provisions which govern the use of covert surveillance.

**15.1.2.** The findings and observations of the IPCO inspection, attached as Appendix 2 to the joint report by the Chief Executive and the Executive Director of Corporate Services.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

Councillor John A R Scott left the meeting at this point.

### **15.2. Revised Policies and Procedures**

Under section 50A(2) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of confidential information as defined in section 50A(3)(a) of the Act.

After consideration of a joint report by the Chief Executive and the Executive Director of Corporate Services, together with an Equality Impact Assessment, copies of which had been circulated, and after hearing a report from the Head of Legal Services, the Council:

Noted:

**15.2.1.** The Council's existing policies and procedures in relation to the use of covert surveillance, attached as Appendices 1 to 6 of the joint report by the Chief Executive and the Executive Director of Corporate Services, which had been amended and updated.

**15.2.2.** The proposed new protocol in relation to research through social media in child protection cases, attached as Appendix 7 to the joint report by the Chief Executive and the Executive Director of Corporate Services.

The Council resolved:

**15.2.3.** That the following revised policies and procedures, attached as Appendices 5 to 10 of the Minute respectively, be approved:

- Policy on Covert Surveillance.
- Procedure for Authorisation of Covert Surveillance.
- Policy on Use of Covert Human Intelligence Sources.
- Procedure for Authorisation of the use of Covert Human Intelligence Sources.
- Surveillance through Social Media Policy.
- CCTV Code of Practice.

**15.2.4.** That the Protocol for Online Social Media Research in Child Protection Cases, attached as Appendix 11 to this Minute, be approved.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

Councillor Steven B Heddle left the meeting at this point.

## **16. Staff Appeals Sub-committee**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 7A of the Act.

After consideration of the draft Minute of the Meeting of the Staff Appeals Sub-committee held on 11 February 2020, copies of which had been circulated, the Committee:

Resolved, on the motion of Councillor W Leslie Manson, seconded by Councillor Robin W Crichton, to approve the Minute of the Meeting of the Staff Appeals Sub-committee held on 11 February 2020, attached as Appendix 12 to this Minute, as a true record.

## **17. Governance Arrangements**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 7A of the Act.

After consideration of a report by the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Head of HR and Performance, the Council:

Resolved what action should be taken with regard to governance arrangements, including Appendix 13 to this Minute (page 164).

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **18. Conclusion of Meeting**

At 16:20 the Convener declared the meeting concluded.

Signed:

## **Minute**

### **Police and Fire Sub-committee**

Tuesday, 25 February 2020, 14:00.

Council Chamber, Council Offices, School Place, Kirkwall.



### **Present**

Councillors Andrew Drever, David Dawson, Alexander G Cowie, J Harvey Johnston, Gwenda M Shearer and Kevin F Woodbridge.

### **Clerk**

- Sandra Craigie, Committees Officer.

### **In Attendance**

- Gillian Morrison, Executive Director of Corporate Services.
- Les Donaldson, Safety and Resilience Manager.

### **Police Scotland:**

- Chief Inspector Matthew Webb, Area Commander.

### **Scottish Fire and Rescue Service:**

- Raymond Fallon, Group Manager.

### **Not Present**

- Councillor Magnus O Thomson.

### **Declaration of Interest**

- Councillor Andrew Drever – Item 2.

### **Chair**

- Councillor Andrew Drever.

## **1. Scottish Fire and Rescue Service**

### **Performance Against Orkney Fire and Rescue Plan**

After consideration of a report by Iain Macleod, Local Senior Officer, copies of which had been circulated, and after hearing a report from Raymond Fallon, Group Manager, the Sub-committee:

Scrutinised the statistical performance of the Scottish Fire and Rescue Service, Orkney Islands area, for the period 1 October to 31 December 2019, detailed in the Quarterly Performance Report, attached as Appendix 1 to the report by the Local Senior Officer for Orkney, Shetland and the Western Isles, and obtained assurance.

Councillor J Harvey Johnston joined the meeting during discussion of this item.

## **2. Performance Against Local Policing Plan**

Councillor Andrew Drever declared a non-financial interest in this item, in that he was Chair of Orkney Drugs Dog, but as the matter was not discussed in detail, he did not leave the meeting.

After consideration of a report by Chief Inspector Matthew Webb, Area Commander, copies of which had been circulated, the Sub-committee:

Scrutinised progress made against the objectives set within the Orkney Islands Local Policing Plan 2017 to 2020 Year 3, attached as Appendix 1 to the report by the Area Commander, for the period covering 1 April to 31 December 2019, and obtained assurance.

## **3. Conclusion of Meeting**

At 14:43 the Chair declared the meeting concluded.

Signed: A Drever.

## Minute

### **Pension Fund Sub-committee, together with Pension Board**

Wednesday, 26 February 2020, 10:30.

Council Chamber, Council Offices, School Place, Kirkwall.



## Present

### **Pension Fund Sub-committee:**

Councillors W Leslie Manson, Alexander G Cowie, Rachael A King and Stephen Sankey.

### **Pension Board:**

### **Employer Representatives:**

Councillors Owen Tierney and Duncan A Tullock, Orkney Islands Council.

### **Trade Union Representative:**

Karen Kent (Unison) and Eoin Miller (Unite).

## Clerk

- Sandra Craigie, Committees Officer.

## In Attendance

- Gareth Waterson, Head of Finance.
- Colin Kemp, Corporate Finance Senior Manager.
- Bryan Hay, Payroll and Pensions Manager.
- Shonagh Merriman, Accounting Manager (Corporate Finance).
- Michael Scott, Solicitor.

### **Audit Scotland:**

- Colin Morrison, Senior Auditor.

## Apologies

### **Pension Fund Sub-committee:**

- Councillor Barbara Foulkes.
- Councillor Steven B Heddle.
- Councillor James W Stockan.



**Pension Board:**

**Employer Representatives:**

- Councillor J Harvey Johnston, Orkney Islands Council.
- Andrew Blake, Orkney Ferries Limited.

**Not Present**

**Pension Board:**

**Trade Union Representatives:**

- Peter Trodden (Unison).
- Mark Vincent (GMB).

**Declarations of Interest**

- No declarations of interest were intimated.

**Chair**

- Councillor W Leslie Manson.

**1. Disclosure of Exempt Information**

The Sub-committee noted the proposal that the public be excluded from the meeting for consideration of Item 11, as the business to be discussed involved the potential disclosure of exempt information of the class described in the relevant paragraph of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

**2. Revenue Expenditure Monitoring**

After consideration of a report by the Head of Finance, copies of which had been circulated, the Sub-committee:

Noted:

**2.1.** The revenue financial summary statement in respect of Pension Fund services for the period 1 April to 31 December 2019, attached as Annex 1 to the report by the Head of Finance, indicating a surplus position of £19,461,100.

**2.2.** The revenue financial detail by Service Area statement for the period 1 April to 31 December 2019, attached as Annex 2 to the report by the Head of Finance.

**2.3.** The explanations given, and actions proposed in respect of significant budget variances, as outlined in the Budget Action Plan, attached as Annex 3 to the report by the Head of Finance.

### **3. Pension Fund – Draft Budget**

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Corporate Finance Senior Manager, the Sub-committee:

Noted the draft revenue budget for the Orkney Islands Council Pension Fund for financial year 2020 to 2021, attached as Annex 1 to the report by the Head of Finance, which formed part of the assumptions in the overall budget setting process considered by the Policy and Resources Committee at its special meeting held on 25 February 2020.

### **4. Orkney Islands Council Pension Fund – Annual Audit Plan**

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Senior Auditor, Audit Scotland, the Sub-committee:

Noted the external audit plan for 2019 to 2020 in respect of the Council's Pension Fund, prepared by Audit Scotland, attached as Appendix 1 to the report by the Head of Finance.

### **5. Review of Pension Fund Training**

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Accounting Manager (Corporate Finance), the Sub-committee:

Noted:

**5.1.** Progress made over the 12-month period to 31 December 2019 in relation to meeting the training needs of members of the Pension Fund Sub-committee and the Pension Board, against core areas of the Public Sector Pensions Finance Knowledge and Skills Framework, attached as Appendix 1 to the report by the Head of Finance.

**5.2.** That, over the 12-month period to 31 December 2019, all members of the Pension Fund Sub-committee achieved the minimum requirement of participating in at least one training event, or the equivalent to five hours training.

**5.3.** That, over the 12-month period to 31 December 2019, two members of the Pension Board did not achieve the required minimum participation level.

**5.4.** That one member of the Pension Board cited work pressure making it difficult to attend training events, while the other member recently intimated their intention to stand down as a member of the Pension Board.

**5.5.** That a replacement had been nominated to fill the vacant position on the Pension Board.

The Sub-committee resolved, in terms of delegated powers:

**5.6.** That the Annual Training Plan for 2020 for members of the Pension Fund Sub-committee and the Pension Board, attached as Appendix 1 to this Minute, be approved.

## **6. Review of Pension Risk Register**

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Accounting Manager (Corporate Finance), the Sub-committee:

Noted:

**6.1.** The Risk Register, attached as Appendix 1 to the report by the Head of Finance, which had been updated to reflect relative shifts in threats faced by the Pension Fund's performance in meeting target objectives, and which identified a total of 23 potential risks to delivering the key objectives of the Pension Fund, categorised across operational, governance and investment themes.

The Sub-committee resolved, in terms of delegated powers:

**6.2.** That powers be delegated to the Head of Finance, in consultation with the Chair of the Pension Fund Sub-committee, to further amend the Risk Register referred to at paragraph 6.1 above, in response to matters raised by members and thereafter circulate the amended Risk Register to members for information.

## **7. Risk Management Strategy**

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Accounting Manager (Corporate Finance), the Sub-committee:

Noted:

**7.1.** That, although the Pension Fund had a Risk Register in place, which was reviewed regularly, it was considered best practice, as part of overseeing the risk management process, for the Sub-committee to develop and approve a Risk Management Strategy.

**7.2.** The draft Risk Management Strategy for the Orkney Islands Council Pension Fund, attached as Appendix 1 to the report by the Head of Finance

The Sub-committee resolved, in terms of delegated powers:

**7.3.** That powers be delegated to the Head of Finance, in consultation with the Chair of the Pension Fund Sub-committee, to further amend the Risk Management Strategy, referred to at paragraph 7.2 above, in response to matters raised by members and thereafter circulate the amended Risk Management Strategy to members for information.

## **8. Pension Administration Performance Standards**

After consideration of a report by the Head of Finance, copies of which had been circulated, the Sub-committee:

Noted:

**8.1.** That, in order to address recommendations included in the Pension Fund Annual Audit Report issued by Audit Scotland on 17 September 2019, a review of the administration performance standards of the Orkney Islands Council Pension Fund had been undertaken.

**8.2.** That, following a benchmarking exercise with the other Scottish Pension Fund Administering Authorities, no revisions were proposed at this time in respect of the administration performance standards of the Orkney Islands Council Pension Fund.

The Sub-committee resolved, in terms of delegated powers:

**8.3.** That the administration performance standards of the Orkney Islands Council Pension Fund, attached as Appendix 2 to this Minute, be approved.

## **9. Court of Appeal Judgement – Update**

After consideration of a report by the Head of Finance, copies of which had been circulated, the Sub-committee:

Noted:

**9.1.** That, as a result of the Court of Appeal judgement in December 2018 in the McCloud case and the subsequent unsuccessful appeal by the UK Government in June 2019, transitional protections applicable to public sector pension scheme members, who were within 10 years of normal retirement age on 1 April 2012, had been ruled to be unlawful on the grounds of age discrimination.

**9.2.** That HM Treasury was currently developing the exact method of remedying the discrimination, referred to at paragraph 9.1 above, with a cross Local Government Pension Scheme approach that was expected to be announced shortly.

**9.3.** That the estimated impact of the McCloud ruling on the Orkney Islands Council Pension Fund was an increase in active member liabilities of £1,000,000, from £234,000,000 to £235,000,000, as at 31 March 2019.

## **10. Statement of Investment Principles**

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Corporate Finance Senior Manager, the Sub-committee:

Noted:

**10.1.** The requirement of the Council, as administering authority for the Orkney Islands Council Pension Fund, to review the Statement of Investment Principles at least every three years.

**10.2.** That the Statement of Investment Principles, which set out a number of detailed investment principles for achieving the prime objective of the Pension Fund, namely to be able to meet employers' pension liabilities into the future, as set out in the Funding Strategy Statement, were last reviewed and updated on 21 November 2018.

**10.3.** That the Statement of Investment Principles had been further revised to reflect a further review of the investment strategy, as detailed in section 4.7 of the report by the Head of Finance.

The Sub-committee resolved, in terms of delegated powers:

**10.4.** That the Statement of Investment Principles, including the Statement of Compliance with the Chartered Institute of Public Finance and Accountancy Principles, attached as Appendix 3 to this Minute, be approved.

## **11. Statement of Managed Funds**

On the motion of Councillor W Leslie Manson, seconded by Councillor Rachael A King, the Sub-committee resolved that the public be excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 6 of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Corporate Finance Senior Manager, the Sub-committee:

Noted:

**11.1.** The review of the investment manager's performance for the quarter to 31 December 2019, attached as Appendix 1 to the report by the Head of Finance, prepared by Hymans Robertson, the Council's appointed investment advisors.

**11.2.** That the Pension Fund investments returned a gain of 3.0% over the quarter to 31 December 2019, which was 2.6% ahead of the target and was considered very good.

**11.3.** That the value of the Pension Fund had increased by 20.8% over the 12-month period to 31 December 2019, being 5.3% ahead of the target, which was considered excellent.

**11.4.** That an average return of 11.1% per annum for the Pension Fund remained 2.1% ahead of the target over the five-year period.

**11.5.** The Governance Summary extracted from the Fund Manager's performance report for the quarter ending 31 December 2019, attached as Appendix 2 to the report by the Head of Finance.

## **12. Conclusion of Meeting**

At 13:04 the Chair declared the meeting concluded.

Signed: L Manson.



## **ORKNEY** **ISLANDS COUNCIL**

# **Pension Fund Training Plan**

## **2020**

### **1. Introduction**

The Orkney Islands Council Pension Fund is committed to providing training to those involved in the governance of the Fund to ensure that they have the skills and understanding required to carry out their stewardship role. This includes regular events to cover the latest developments in the Local Government Pension Scheme, investment strategy and performance monitoring. In April 2015, the Pension Fund Sub-committee adopted the CIPFA Code of Practice on Public Sector Pensions Finance Knowledge and Skills.

It is important that members of both the Pension Fund Sub-committee and the Pension Board receive appropriate training to allow them to carry out their roles effectively

This training plan sets out how levels of understanding will be assessed, and how the knowledge and skills requirement and other regulatory requirements will be supported through training events over the next financial year.

### **2. Knowledge and Skills Framework**

There are six areas of knowledge and skills that have been identified as the core requirements for those with decision making responsibility for Local Government Pension Scheme funds. They are:

- Pensions legislative and governance context.
- Pensions accounting and auditing standards.
- Financial services procurement and relationship management.
- Investment performance and risk management.
- Financial markets and products knowledge.
- Actuarial methods, standards and practices.

Members of the Pension Fund Sub-committee and the Pension Board are expected to have a collective understanding and Officers are expected to have detailed understanding of these areas of knowledge and skills.

### **3. Pension Board Specific Requirements**

Members of the Pension Board are required to have the capacity to take on the role of assisting the Scheme Manager in relation to compliance with scheme regulations and the requirements of the Pensions Regulator.

In addition, in accordance with Section 248A of the Pensions Act 2004 which was introduced to make provision relating to pensions and financial planning for retirement, it is expected that every individual who is a member of a Local Pension Board will receive training, and as a result:

- Be conversant with the regulations governing the Local Government Pension Scheme, such as the Transitional Regulations and the Investment Regulations.
- Be conversant with any policy document relating to administration of the Fund.
- Have knowledge and understanding of the law relating to pensions.
- Have knowledge and understanding of such other matters as may be prescribed.

### **4. Committee and Pension Board Training**

Training for the Pension Fund Sub-committee and the Pension Board during 2020 will continue to focus on the following areas:

#### **Knowledge and Skills Framework**

All training will focus on maintaining the six areas of knowledge and skills, with any gaps in knowledge identified throughout the past year and including the periodic use of member's self-assessment returns where appropriate.

#### **Training Events**

An annual pension's group training event will be provided for all members to attend. In addition, to that, expressions of interest will also be sought from members to attend relevant industry events, including conferences and seminars throughout the year. In the event that there is more interest to attend an event than places available, a decision to determine who should get approval to attend will be made by the Head of Finance, in consultation with the Chair of the Pension Fund Sub-committee, will determine appropriate representation and approve attendance.

#### **Informative Review Presentations**

Members will receive regular reports on the performance of the administration and investment functions throughout the year. In addition to this Members will be invited to attend informative review presentations by external advisors including the Pension Fund's appointed actuaries, investment advisors and fund managers.

## Electronic Resources

Members are invited to access training information available on the Pension Regulator's website setting out the governance requirements of the local government pension scheme, including the respective roles of the Pension Fund Sub-committee and Pension Board at the following link:

<https://trusteetoolkit.thepensionsregulator.gov.uk/login/index.php>

Additionally, resources from previous training events have been made available to Councillors on their Council electronic device under "Training". Training materials will be added to this folder going forward as and when events occur.

## 5. Other Training

Where gaps in individual members' knowledge have been identified that will not be met by the core training described above, then Members should approach Officers in the first instance with a view to addressing those needs.

Specific training can also be provided for the Chair of the Pension Fund Sub-committee and Pension Board to support them in their role, if required.

## 6. Officer Training

It is important that Officers have the required training to carry out the tasks of managing the Fund's investments and administering the payment of benefits. The knowledge and skills required of staff are set out in their job descriptions, including any formal qualifications required. Officers should be familiar with the requirements of the CIPFA Code of Practice on Knowledge and Skills and should have knowledge of the six areas of the framework.

Officers will attend relevant professional training events, conferences and seminars during the year to ensure that they remain up-to-date with the latest requirements. In addition, they will be expected to keep up-to-date through use of the internet, and conduct research on relevant issues where required. Individual training plans will be put in place and these will be recorded and reviewed as part of the annual staff appraisal process.

For Officers, there will be a particular focus on the following areas:

**Governance** – Understanding the guidance and regulations in relation to local pension boards and keeping up-to-date with how other Funds are working with their boards, in order that the Pension Board can be supported effectively and add value to the governance of the Fund.

**New Investment Arrangements** – Understanding the implications of how the Financial Conduct Authority will implement the Markets in Financial Instruments Directive (MiFIDII) and what the Fund will need to do to comply.

**New Investment Products** – Keeping up-to-date with what the market is offering, in order to assess the validity of new products for investment by the Fund.



**Accounting Issues** – Keeping up-to-date with the latest CIPFA guidance on the format of the Pension Fund Statement of Accounts and the content of the Annual Report.

**Pensions Admin Regulations** – Understanding the latest guidance and interpretation of changes to LGPS Regulations and their impact on procedures.

**Pensions Admin Systems** - Keeping up-to-date with updates/new releases to the software system Altair, passing training onto all staff.

**Wider Pensions Issues** – Understanding the impact of wider Government reforms to pensions, such as “freedom and choice” on the LGPS.

## **7. Reporting and Compliance**

In line with the CIPFA Code of Practice, a disclosure will be made in the Fund’s Annual Report and Accounts that covers:

- How the Skills and Knowledge framework has been applied.
- What assessment of training needs has been undertaken.
- What training has been delivered against the identified training needs.

Fund. Task.	Orkney Islands Council.	Dumfries and Galloway.	Falkirk.	Fife.	Highland Council.	Lothian.	North East Scotland.	Scottish Borders.	Shetland.	Strathclyde.	Tayside.
Issue new entrant information.	10.		21.	20.	14.	20.			40.	15.	
Issue a leaver form.	10.								15.		
Issue a pension estimate.	10.		1 month.	13.	10.	10.	10.		30.	20.	
Pay a retirement lump sum.	5.	10.	15.	5.	By date of entitlement.	7.	10.		15.	By date of entitlement.	
Issue confirmation of deferred pension benefits.	1 month.		1 month.		2 months.	10.	10.		30.	7.	
Provide member with final transfer-in details.	10.		1 month.	10.	14.	10.			20.		

Fund. Task.	Orkney Islands Council.	Dumfries and Galloway.	Falkirk.	Fife.	Highland Council.	Lothian.	North East Scotland.	Scottish Borders.	Shetland.	Strathclyde.	Tayside.
Make a transfer value payment.	10		1 month.	10.	14.	20.			20.		
Pay a refund of pension contributions.	5	30.	1 month.	5.		7.	10.		10.	7.	

Figures shown above are number of working days unless stated.

## Statement of Investment Principles

This is the Statement of Investment Principles (the “Statement”) required by the Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Regulations 2010 (the “2010 Regulations”).

The Statement has been adopted by the Pension Fund Sub Committee (the “Committee”), which acts on the delegated authority of the Orkney Islands Council, the administering authority for the Orkney Islands Council Pension Fund (“the Fund”). The Statement is subject to review from time to time and certainly within six months of any material change in investment policy or other matters as required by law. In preparing this Statement the Committee has consulted with the administering authority and has taken and considered written advice from the Investment Practice of Hymans Robertson LLP.

### Fund Objective

The primary objective of the Fund is to provide pension and lump sum benefits for members on their retirement and/or benefits on death, before or after retirement, for their dependents, on a defined benefits basis.

The Committee aims to fund the Fund in such a manner that, in normal market conditions, all accrued benefits are fully covered by the value of the Fund's assets and that an appropriate level of contributions is agreed by the employer to meet the cost of future benefits accruing. For employee members, benefits will be based on service completed but will take account of future salary increases.

This funding position will be reviewed at each triennial actuarial valuation, or more frequently as required.

### Investment Strategy

The Committee has translated its objectives into a suitable strategic asset allocation benchmark for the Fund (details of which are set out in the Fund's CIPFA Adherence document, attached to this Statement). The strategic benchmark is reflected in the investment structure adopted by the Committee; this comprises a mix of segregated and pooled investments. The Fund benchmark is consistent with the Committee's views on the appropriate balance between generating a satisfactory long-term return on investments whilst taking account of market volatility and risk and the nature of the Fund's liabilities.

The Committee monitors investment strategy relative to the agreed asset allocation benchmark. It is intended that investment strategy will be reviewed at least every three years following actuarial valuations of the Fund.

### Limits on Investments

In 2010, the Committee agreed to increase the limit on investments in open-ended investment companies where the collective investment schemes constituted by the companies are managed by one body, from 25% to 35% (the upper limit specified in Schedule 1 of the 2010 Regulations). Before taking this decision, the Committee took appropriate advice from its investment adviser, Hymans Robertson LLP, in relation to the impact of the increase on overall risk within the Fund and how the Committee monitors and manages that risk. The Committee made this decision on the basis that investment in the pooled funds concerned was effective both in terms of cost and in terms of broader portfolio diversification within the pooled funds concerned.

This decision was reviewed in 2018 in light of amendments to the Fund structure and the exposure to underlying pooled funds. The Committee continues to believe the upper limit is appropriate and has also taken written advice on this matter. The decision will be reviewed on a triennial basis or more frequently if required.

### Types of investment to be held

The Fund may invest in quoted and unquoted securities of UK and overseas markets, including equities, fixed interest and index linked bonds, corporate bonds, alternative credit, cash, property, infrastructure and commodities, either directly or through pooled funds.

The Fund may also make use of contracts for differences and other derivatives either directly or in pooled funds investing in these products, for the purpose of efficient portfolio management or to hedge specific risks. The Committee considers all of these classes of investment to be suitable in the circumstances of the Fund.

The strategic asset allocation of the Fund includes a mix of asset types across a range of geographies in order to provide diversification of returns.

### Balance between different kinds of investments

The Committee has appointed investment managers who are authorised under the Financial Services and Markets Act 2000 to undertake investment business in respect of various different asset classes.

The Committee, after seeking appropriate investment advice, has agreed specific benchmarks with each manager so that it is consistent with the overall asset allocation for the Fund. The Fund's investment managers will hold a mix of appropriate investments which reflect their views relative to their respective benchmark. Within each major market and asset class, each manager will maintain appropriately diversified portfolios through direct investment or pooled vehicles.

### Risk

The Fund is exposed to a number of risks which pose a threat to the Fund meeting its objectives. The principal risks affecting the Fund are:

#### Funding risks:

- Financial mismatch – 1. The risk that Fund assets fail to grow in line with the developing cost of meeting Fund liabilities. 2. The risk that unexpected inflation increases the pension and benefit payments and the Fund assets do not grow fast enough to meet the increased cost.
- Changing demographics – The risk that longevity improves and other demographic factors change increasing the cost of Fund benefits.
- Systemic risk - The possibility of an interlinked and simultaneous failure of several asset classes and/or investment managers, possibly compounded by financial 'contagion', resulting in an increase in the cost of meeting Fund liabilities.

The Committee measures and manages financial mismatch in two ways. As indicated above, it has set a strategic asset allocation benchmark for the Fund. It assesses risk relative to that benchmark by monitoring the Fund's asset allocation and investment returns relative to the benchmark. The Committee will also consider rebalancing the asset allocation if it is deemed to deviate significantly from the benchmark. It also assesses risk relative to liabilities by monitoring the delivery of benchmark returns relative to liabilities.

The Committee keeps under review mortality and other demographic assumptions which could influence the cost of the benefits. These assumptions are considered formally at the triennial valuation.

The Committee seeks to mitigate systemic risk through a diversified portfolio but it is not possible to make specific provision for all possible eventualities that may arise under this heading.

### Asset risks

- Concentration - The risk that significant allocation to any single asset category and its underperformance relative to expectation would result in difficulties in achieving funding objectives.
- Illiquidity - The risk that the Fund cannot meet its immediate liabilities because it has insufficient liquid assets.
- Manager underperformance - The failure by any of the Fund's managers to achieve the rate of investment return assumed in setting its mandate.
- Currency risk – The risk that the currency of the Fund's assets underperforms relative to Sterling (i.e. the currency of the liabilities).

The Committee manages asset risks as follows. It provides a practical constraint on Fund investments deviating greatly from the intended approach by setting itself diversification guidelines and by investing in a range of investment approaches each of which has a defined objective, performance benchmark and manager process which, taken in aggregate, constrain risk within the Committees' expected parameters. By investing across a range of assets, including quoted equities and bonds, the Committee has recognised the need for some access to liquidity in the short term. The Committee has recently diversified its manager underperformance risk following recent amendments to the Fund strategy and structure. This has helped to reduce the concentration risk the Fund was previously exposed to. In appointing new managers in the private markets space and by looking to appoint a new passive bond specialist, the Fund has reduced their risk exposure to the underperformance of one manager creating a material drag on overall investment performance.

### Other provider risk

- Transition risk - The risk of incurring unexpected costs in relation to the transition of assets among managers. When carrying out significant transitions, the Committee takes professional advice and considers the appointment of specialist transition managers.
- Custody risk - The risk of losing economic rights to Fund assets, when held in custody or when being traded.
- Credit default - The possibility of default of a counterparty in meeting its obligations.

The Committee monitors and manages risks in these areas through a process of regular scrutiny of its providers and audit of the operations they conduct for the Fund.

### Expected return on investments

Over the long term, the overall level of investment returns is expected to exceed the rate of return assumed by the actuary in funding the Fund.

### Realisation of investments

The majority of assets held by the Fund may be realised quickly if required.

### Environmental, Social and Governance (ESG) Considerations

The Committee recognises that ESG issues are among the factors which investment managers will take into account, where relevant, when selecting investments for purchase, retention or sale. The managers have produced statements setting out their policies in this regard. The managers have been delegated by the Committee to act accordingly. The Committee requires all managers appointed to manage assets for the Fund to be signatories to the United Nations Principles for Responsible Investment (UN PRI). The principles are set out in the appendix to this document.

### Exercise of Voting Rights

The Committee has delegated the exercise of voting rights to the investment manager(s) on the basis that voting power will be exercised by it with the objective of preserving and enhancing long term shareholder value alongside ensuring that investments meet the ESG considerations outlined in their policy statements in this regard. Papers to Committee will include information on voting, engagement and divestment activity which seeks to effect change on ESG considerations. Accordingly, where applicable each manager is required to produce written guidelines of its process and practice in this regard. Each manager is encouraged to vote in line with its guidelines in respect of all resolutions at annual and extraordinary general meetings of companies.

### Stock Lending

The policy on stock lending reflects the nature of the mandates awarded to investment managers by the Committee, which includes both pooled and segregated holdings.

Within segregated mandates, the Committee has absolute discretion over whether stock lending is permitted. The Committee has considered its approach to stock lending, taking advice from its investment adviser. After consideration of that advice, the Committee has decided not to permit stock lending within any of its segregated investment mandates.

Managers may undertake a certain amount of stock lending on behalf of unitholders within its pooled fund holdings. Where a pooled fund engages in this activity, the extent to which it does is disclosed by the manager. The Committee has no direct control over stock lending in pooled funds; nevertheless, it is comfortable that the extent and nature of this activity is appropriate to the circumstances of the Fund.

The Committee reviews its policy on stock lending (including the amount and type of collateral used) on a regular basis.

### Additional Voluntary Contributions (AVCs)

The Committee gives members the opportunity to invest in a range of vehicles at the members' discretion.

### CIPFA Compliance

The Committee has set out details of the extent to which the Fund complies with the six principles set out in the Chartered Institute of Public Finance and Accountancy's publication, 'Investment Decision Making and Disclosure in the Local Government Pension Scheme – a guide to the application of the Myners Principles' in the Fund's CIPFA Adherence document which is attached to this Statement.

Signed For and on Behalf of the Pension Fund Sub Committee of the Orkney Islands Council as Administering Authority for the Orkney Islands Council Pension Fund

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Position

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Position

## Appendix – UN Principles for Responsible Investment

The Principles for Responsible Investment were developed by an international group of institutional investors reflecting the increasing relevance of environmental, social and corporate governance issues to investment practices. The process was convened by the United Nations Secretary-General.

In signing the Principles, investors publicly commit to adopt and implement them, where consistent with their fiduciary responsibilities. They also commit to evaluate the effectiveness and improve the content of the Principles over time. They believe this will improve the ability to meet commitments to beneficiaries as well as better align investment activities with the broader interests of society.

The six principles are as follows:

### **Principle 1**

We will incorporate ESG issues into investment analysis and decision-making processes.

### **Principle 2**

We will be active owners and incorporate ESG issues into our ownership policies and practices.

### **Principle 3**

We will seek appropriate disclosure on ESG issues by the entities in which we invest.

### **Principle 4**

We will promote acceptance and implementation of the Principles within the investment industry.

### **Principle 5**

We will work together to enhance our effectiveness in implementing the Principles.

### **Principle 6**

We will each report on our activities and progress towards implementing the Principles.





# Orkney Islands Council Pension Fund

Statement of Compliance with the CIPFA Principles  
February 2020 Version 2020 V10

Prepared by the Pension Fund Sub Committee of Orkney  
Islands Council

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## CIPFA Principles of Investment Practice

This document forms the Statement of Compliance with the Principles of Investment Practice as set out by CIPFA, the Chartered Institute of Public Finance Accountancy. It is maintained by Hymans Robertson LLP and the Head of Finance on behalf of the Pension Fund Sub Committee (“the Sub Committee”) of Orkney Islands Council.

This document was brought into force on 30 June 2003. The practices described within this document form the basis for investment decision making by the Sub Committee. This document is reviewed from time to time, and is made available to members on request. Details of version control and changes are provided in the Appendix to this document.

The document also provides information on all of the Fund’s investment service providers (investment manager(s), custodian(s), adviser(s), etc.) along with details of the nature of the services they provide and how their performance in these roles is assessed.

This is current version of the document (2020 V10) was agreed by the Committee Members in February 2020.

**Signed:**

**Chairman of the Pension Fund Sub Committee**

**Orkney Islands Council Pension Fund**

**February 2020**

# 1 Effective decision making

## Principle

Administering authorities should ensure:

- That decisions are taken by persons or organisations with the skills, knowledge, advice and resources necessary to make them effectively and monitor their implementation; and
- That those persons or organisations have sufficient expertise to be able to evaluate and challenge the advice they receive, and manage conflicts of interest.

## Orkney Islands Council

The Council is responsible for the following activities.

- The Council will determine the allocation of new money to the managers. Similarly, in the event that assets need to be realised in order to meet the Fund's liabilities, the Council will determine the source of this funding.
- The Council will be responsible for any changes to the terms of the mandates of existing managers.
- The Council will be responsible for the appointment and termination of managers.
- The Council is responsible for socially responsible investment, corporate governance and shareholder activism. It has delegated these tasks to the Fund's managers, who conduct the delegated tasks in line with the Council's policies.
- The Council will be responsible for the appointment and termination of AVC providers.
- The Council is responsible for maintenance of the Statement of Investment Principles (SIP) and the document setting out the Fund's CIPFA Principles of Investment Practice disclosure.

The Council has delegated the Fund's monitoring responsibilities to the Pension Fund Sub Committee.

## Pension Fund Sub Committee Terms of Reference

The Sub Committee is responsible for monitoring all aspects relating to the investment of the assets of the Fund. Their specific responsibilities are as follows:

- The Sub Committee will formally review the Fund's asset allocation at least annually, taking account of any changes in the profile of Fund liabilities and any guidance regarding tolerance of risk. They will recommend changes in asset allocation to the Council.
- The Sub Committee will consider and monitor the Quarterly Reports produced by their Investment Manager and investment Consultant. In addition to managers' portfolio and performance reporting, the Sub Committee will also receive and review information from the managers on risk analysis, transaction costs, and details of corporate governance (including ESG matters).
- The Sub Committee will formally review annually each mandate, and its adherence to its expected investment process and style. The Sub Committee will ensure that the explicit written mandate of each of the Fund's managers is consistent with the Fund's overall objective and is appropriately defined in terms of performance target, risk parameters and timescale.
- The Sub Committee will consider the need for any changes to the Fund's investment manager arrangements (e.g. replacement, addition, termination) at least annually.
- In the event of a proposed change of managers, the Sub Committee will evaluate the credentials of potential managers.

- The Sub Committee will monitor the Fund's approach to Environmental, Social and Governance (ESG) issues.
- The Sub Committee will review the Fund's AVC arrangements annually. If they consider a change is appropriate, they will make recommendations to the Council.
- The Sub Committee will monitor the investment advice from their investment consultant and investment services obtained from other providers (e.g. custodian) at least annually. The Sub Committee will be responsible for the appointment and termination of providers.
- The Sub Committee will conduct and conclude the negotiation of formal agreements with managers, custodians and other investment service providers.
- In order to fulfil their roles, the members of the Sub Committee will be provided with appropriate training, initially and on an ongoing basis.
- The Sub Committee is able to take such professional advice as it considers necessary.
- The Sub Committee will keep Minutes and other appropriate records of its proceedings, and circulate these Minutes to the Council.
- The Sub Committee may also carry out any additional tasks delegated to it by the Council.

Any changes to the membership of the Sub Committee require the approval of the Council.

Membership of the Sub Committee consists of a minimum of seven members with a quorum of three members. All Sub Committee members are expected to have or, for new members, to develop sufficient expertise in investment matters to be able to conduct their Sub Committee responsibilities and to interpret the advice which they receive.

### Other Delegated Investment Decisions

#### Delegation to Officers

Preparation of annual budgets and business plan for the Fund.

#### Delegation to Investment Managers

Day to day management of the Fund's investment portfolios and related activities has been delegated to the Fund's investment managers. This includes:

- Investment of the Fund's assets.
- Tactical asset allocation around each mandate's benchmark within agreed guidelines.
- Preparation of quarterly reporting including a review of investment performance and where relevant, voting, and engagement activity in relation to ESG considerations and the purchase, retention and disinvestment of assets.
- Attending meetings of the Investment Sub Committee.
- Providing Fund accounting data concerning the investment portfolio and transactions.

Details of the appointed managers can be found in Section 2.

#### Delegation to Custodian

The Custodian is responsible for settlement of all investment transactions, collection of income, tax reclaims and corporate action administration.

### Actuary to the Fund

The Actuary is responsible for

- Undertaking a triennial valuation of the Fund's assets and liabilities.
- Setting the Fund's contribution rate.
- Providing advice on the funding level and maturity of the Fund which the Pension Fund Sub Committee can take into consideration when balancing the Fund's investment and funding objectives.

### Expert Advice

- The Sub Committee receives investment and actuarial advice from Hymans Robertson LLP.
- At the time of appointment of consultants, the Sub Committee did not invite tenders for actuarial and investment advice separately. The Sub Committee will arrange for separate competition when it next tenders either activity.
- At present there are no separate contracts in place.

### Other Advice

- In addition to the investment consultant, the Sub Committee also seeks advice (where relevant) from the Fund's Actuary and the Council's Head of Finance.
- There are no independent advisers appointed to the Pension Fund Sub Committee.

### Assessment of Advice

All advice is assessed as described in Section 4.

## 2 Investment objective

### Principle

An overall investment objective should be set out for the fund that takes account of the scheme's liabilities, the potential impact on local tax payers, the strength of the covenant for non-local authority employers, and the attitude to risk of both the administering authority and scheme employers, and these should be clearly communicated to advisers and investment managers.

### Fund Objective

The Fund is a Local Government Pension Scheme (LGPS).

The primary objective of the Fund is to provide pension and lump sum benefits for members on their retirement and/or benefits on death, before or after retirement, for their dependants, on a defined benefits basis. Benefits for active members increase in line with salaries. Benefits for preserved members are subject to statutory increases.

The Council aims to fund the Fund in such a manner that, in normal market conditions, all accrued benefits are fully covered by the value of the Fund's assets and that an appropriate level of contributions is agreed by the employer (Orkney Islands Council) to meet the cost of future benefits accruing. For employee members, benefits will be based on service completed but will take account of future salary increases.

### Basis of Evaluation

An actuarial valuation of the Fund is conducted at least every three years in accordance with the LGPS regulations. The last actuarial valuation was conducted as at 31 March 2017. The results disclosed an ongoing funding level of 113%.

The position of the Fund is monitored each year in consultation with the employers and the Actuary.

### Strategic Asset Allocation and Manager Structure

The Fund's investment strategy and manager structure was formally reviewed in 2018/19 following the completion of the 2017 actuarial valuation.

The Fund's investment manager arrangements are summarised in Table 2.1 below:

**Table 2.1**

Manager	Appointed	Brief	Target %
Baillie Gifford	April 1995	Multi-asset	90 (75)
Barings	October 2019	Private Debt	5
IFM	October 2019	Infrastructure	5
Passive bond specialist (TBC)	TBC	Bonds	0 (15)

### Custody

The Fund's custodian is the Bank of New York Mellon.

### Baillie Gifford

Baillie Gifford's mandate was formally reviewed as part of the 2018/19 exercise with a new strategy and structure implemented during Q4 2019 and Q1 2020. Previously responsible for managing all assets within the Fund

across a multi-asset mandate, under the new arrangement Baillie Gifford will focus solely on managing the Fund's growth mandates i.e. UK equities, global equities and diversified growth funds.

### Barings

Following the 2018/19 investment strategy review and a subsequent procurement exercise, Barings were appointed as the Fund's Private Debt manager in October 2019. The manager will build towards the new target allocation over a period of around 2 years as commitments are drawn down by the underlying private debt fund.

### IFM

Following the 2018/19 investment strategy review and a subsequent procurement exercise, IFM was appointed as the Fund's infrastructure manager in October 2019. The manager will build towards the new target allocation over a period of around 2 years as commitments are drawn down by the underlying infrastructure fund.

### Passive Bond Specialist (TBC)

A procurement exercise, through the National Passive Framework, is currently underway to appoint a specialist bond manager. Following the completion of this exercise, the new passive manager will be appointed by the end of Q1 2020. Until that time, the bonds will continue to be managed by Baillie Gifford.

**The target allocations and ranges that currently apply to each of these mandates are shown in Table 2.2. The associated benchmarks for the Scheme and mandates are addressed in Table 2.3. Furthermore, effective from February 2017, each manager has above benchmark outperformance targets which are assessed over rolling 5-year periods. These are outlined in Table 2.4**



Table 2.2

Asset Class	Target (%)	Range (%)
UK Equities	8.0	46-56
Overseas Equities	43.0	
Diversified Growth Funds	24.0	19 - 29
<b>Total Growth</b>	<b>75.0</b>	<b>65-85</b>
Infrastructure	5.0	N/A
Private Debt	5.0	N/A
<b>Total Income</b>	<b>10.0</b>	<b>N/A</b>
UK Gilts	7.5	2.5 – 12.5
Index-linked gilts	7.5	2.5 – 12.5
Cash	0.0	0 - 10
<b>Total Protection</b>	<b>15.0</b>	<b>5-25</b>
Total	100	

The managers oversee their respective mandates in line with the LGPS regulations. There are no restrictions in with manager agreements which prevents them from investing in any financial instrument permitted in these regulations, except to the extent that derivative instruments may only be used on a segregated basis for the purposes of risk reduction and efficient portfolio management.

The Sub Committee recognises that the pursuit of superior performance through active management also carries the risk of underperformance. However, they believe and the relevant manager(s) accept that the guidelines set will contain risk within the tolerance that the Sub Committee deems acceptable.

The Sub Committee has considered the extent to which their managers expect to achieve outperformance through stock and sector selection and asset allocation. They have considered the risks associated with stock and sector concentration in each of the markets in which they invest.

For the relevant actively managed mandates (the growth portfolio overseen by Baillie Gifford), the manager will provide details on the levels of turnover and commission levels on a quarterly basis. The Sub Committee will monitor transaction costs (every 6 months) (in line with the transaction cost reporting framework of the Fund Management Association with which the Baillie Gifford complies).

Baillie Gifford does not make use of soft commission arrangements.

The Sub Committee takes advice from its investment consultant relating to Baillie Gifford's transaction costs.

### Benchmarks

Each manager is assigned an appropriate benchmark with a composite benchmark constructed to assess the Fund's performance at Scheme level.

The benchmark is used

- To evaluate each manager's relative performance
- To monitor the extent of each manager's deviations from benchmark performance

At the asset class level, the manager's activity is assessed relative to specific stock market indices (e.g. the FTSE All-Share index for UK equities).

The use of benchmarks for assessing managers, providers, officers and the Sub Committee is discussed in Section 4.

### Benchmark Indices

The Sub Committee discusses the appropriateness of the asset class indices with its investment managers and investment consultant on an annual basis. The review takes account of changes in the constituency of indices, their degree of concentration, changes made by index providers, new classes of assets, and changes in the profile of liabilities which may affect the duration of bond indices. The benchmarks currently in place are set out in the table below. Please note the Fund will be gradually moving to the new target as the private debt and infrastructure mandates draw down capital over the next 2 years:

**Table 2.3**

Asset Class	Target (%)	Benchmark
UK Equities	8	FTSE All Share
Overseas Equities	43	MSCI All Countries World
Alternatives	24	UK base rate +3.5% p.a.
Infrastructure	5	Absolute 8.0% p.a.
Private Debt	5	Absolute 8.0% p.a.
UK Gilts	7.5	FTSE UK Gilts All Stocks
Index-linked gilts	7.5	FTSE Over 5 years index-linked gilts
Total	100	Composite

The Sub Committee recognises that the setting of index benchmark targets can encourage managers to closet index, i.e. to hug the index too closely to be able to deliver the performance target set. The Sub Committee has discussed this subject where relevant with its managers and investment consultant. In setting tracking error guidelines, the Sub Committee has indicated limits to its manager so that the risk it takes is consistent (i.e. neither too little or too great) in relation to its performance target. The Sub Committee monitors the manager's tracking error (see Section 4).

### Investment Structure

The Sub Committee has considered its investment structure, the choice between active and passive management, the number of managers it might employ, and where risk might best be exploited.

The Sub Committee has appointed specialist managers for each asset class within the benchmark allocation, thereby diversifying the manager risk.

Baillie Gifford are the active manager responsible for all growth assets. A specialist bond manager is to be appointed to passively manage the Funds bond allocation whilst IFM and Barings manage the infrastructure and private debt allocations respectively.

As the active growth manager within the Fund, Baillie Gifford are responsible for managing each of their growth mandates around their assigned benchmarks within the guideline set.

In choosing to diversifying by number of managers and style in the form noted above, the Sub Committee has considered, and is prepared to tolerate the potential risks associated with the Funds overall pursuit of outperformance.

## 3 Risk and liabilities

### Principle

In setting and reviewing their investment strategy, administering authorities should take account of the form and structure of liabilities.

These include the implications for local tax payers, the strength of the covenant for participating employers, the risk of their default and longevity risk.

### Basis for Determining Fund Benchmark

The Benchmark of the Fund is bespoke and reflects the objectives and circumstances of the fund.

The asset mix takes account of diversification between asset classes.

The Investment Managers have their own individual benchmarks as outlined in Section 2. The individual manager benchmarks are subsequently used to construct an aggregate Scheme benchmark.

### Risk

The return assumptions required to achieve and maintain the Fund Objective are set out in the Actuarial Valuation. The benchmark adopted by the Sub Committee for the Fund is designed to achieve that return over the long term. The Sub Committee recognises that there will be periods when market conditions do not permit those assumptions to be met and that the benchmark needs to be kept under periodic review in order to confirm that it is still suitable for the purpose for which it was designed.

### Asset Classes

In setting the Scheme benchmark, the Sub Committee considered all the principal asset classes listed in the CIPFA Guidance.

### Periodic Review

The Sub Committee most recently reviewed the Fund benchmark at their meeting in October 2019.

## 4 Performance assessment

### Principle

Arrangements should be in place for the formal measurement of performance of the investments, investment managers and advisers.

Administering authorities should also periodically make a formal assessment of their own effectiveness as a decision-making body and report on this to scheme members.

### Investment managers

Managers provide summaries and detailed portfolio valuations, consolidated transaction reports and balance sheet and income statements on a regular basis. They also provide details of performance. The Sub Committee obtains independent measurement of returns from a specialist agency and regular performance and manager monitoring from Hymans Robertson LLP with effect from 1 April 2017.

### Manager Monitoring Activity

The Sub Committee monitors the relative and absolute performance of its investment managers on a quarterly basis. However, more formal reviews also take place with the Fund undertaking more formal reviews of each manager annually.

These reviews consider not only investment returns but also an assessment of the managers' adherence to its mandate requirements including the full range of activities delegated to them. The Sub Committee also considers the manager's investment process, stability of key personnel, market position and Environmental, Social and Governance considerations.

### Investment Consultant Monitoring Activity

The Sub Committee monitors performance of its investment consultant, Hymans Robertson, at regular intervals (usually annually) against the CMA investment consultant objectives in place. The consultant provides guidance on asset allocation, benchmark setting, risk and goal setting of the investment managers, manager monitoring, manager selection and general information on legislation, industry background and securities markets (all from an investment perspective).

### Sub Committee and Officers

The Sub Committee reviews the investment decisions undertaken by officers and by the Sub Committee, to check their appropriateness and whether outcomes might have been improved. This includes:

- How the overall Fund benchmark has performed relative to liabilities and relative to its comparable LGPS peers.
- How the Sub Committee interpreted advice provided by the investment consultant.
- Sub Committee recommendations and Council decisions undertaken over year concerning service provider and manager changes, benchmark changes, mandate changes, and transitions between mandates.
- How the managers performed on voting rights and engagement to address ESG concerns.

## 5 Responsible ownership

### Principle

Administering authorities should

- adopt, or ensure their investment managers adopt, the Institutional Shareholders' Committee Statement of Principles on the responsibilities of shareholders and agents.
- include a statement of their policy on responsible ownership in the Statement of Investment Principles.
- report periodically to scheme members on the discharge of such responsibilities.

### Governance and Voting

The Council has delegated the following tasks to the investment managers.

- Engaging with companies in which the Fund invests concerning ESG matters.
- The exercises of voting rights on the basis that voting power will be exercised by the manager with the objective of preserving and enhancing long term shareholder value and exposure to the risks associated with poor ESG records.

Accordingly, managers at the request of the Fund have produced written guidelines of its process and practice in both matters where relevant to the mandate.

Managers are encouraged to vote in line with these guidelines in respect of all resolutions at annual and extraordinary general meetings of companies.

### Engagement and Activism

As the Fund's growth asset Baillie Gifford has disclosed its own policy on ESG, engagement and activism which it exercises on behalf of client's investment mandates when the client has delegated responsibility for these activities to Baillie Gifford. It votes proxies on behalf of the Fund and engages with the UK companies (and larger international companies) in which it invests. Baillie Gifford reports its voting activity to the Sub Committee on a regular basis.

In general, Baillie Gifford does not intervene in companies, except in unusual circumstances and then generally as part of an investment industry grouping. The Sub Committee accepts that it is not in the economic interests of the Fund for its manager to intervene more generally.

### UN Principles for Responsible Investment (PRI)

The Sub Committee have made it a requirement that all managers appointed to manage assets on behalf of the Fund are signatories to the UN PRI. All managers appointed are a signatory under UN PRI and therefore meet this requirement.

## 6 Transparency and reporting

### Principle

Administering authorities should

- act in a transparent manner, communicating with stakeholders on issues relating to their management of investment, its governance and risks, including performance against stated objectives.
- should provide regular communication to scheme members in the form they consider most appropriate.

### Approach

This document should be read in conjunction with the Fund's Statement of Investment Principles. Taken together, these documents provide the framework for the Fund's investment operations.

Section 1 of this document describes the structure for making investment decisions for the Fund, the split of responsibilities among the Council, Pension Fund Sub Committee, Investment Manager, Custodian, Scheme Actuary, Investment Consultant and other providers.

Sections 2 describes the roles and mandates of external providers (consultant, investment managers, etc).

### Other Advice

In addition to the investment consultant, the Sub Committee also seeks advice (where relevant) from the Fund's Actuary and the Council's Head of Finance.

There are no independent advisers appointed to the Pension Fund Sub Committee.

### Assessment of Advice and Decision Making

All advice and decision making is assessed as described in Section 4.

### Regular reporting

The Council makes the following documents available to Fund members on request.

- The Statement of Investment Principles.
- Details of the Fund's adoption of the CIPFA Principles of Investment Practice (i.e. this document).

Both documents are revised periodically, in any event, and when changes occur.

## Appendix A - Version control record

### Table of Amendments

The attached Table records changes to this document.

Version	Nature of Change	Implemented
2003 V1	Initial Creation	30 June 2003
2004 V2	Final Document	31 October 2004
2007 V3	Benchmark change	10 July 2007
2009 V4	Review document	30 June 2009
2010 V5	Update following structure change and consolidation on principles from 10 to 6	21 December 2010
2011 V6	Increase range limit on cash holding from 0-5% to 0-10%	27 September 2011
2013 V7	Regular review and update following valuation and proposal on pooled funds	28 February 2013
2017 V8	Review and update following completion of strategic review, discussions on ESG and adopting and implementation of new Fund specific benchmark	22 November 2017
2018 V9	Regular review and update following valuation	September 2018
2020 V10	Regular review and update following investment strategy review, including mandate and manager changes	February 2020



## Minute

### Investments Sub-committee

Thursday, 27 February 2020, 10:30.

Council Chamber, Council Offices, School Place, Kirkwall.



### Present

Councillors W Leslie Manson, Alexander G Cowie, Rachael A King and Stephen Sankey.

### Clerk

- Sandra Craigie, Committees Officer.

### In Attendance

- Gareth Waterson, Head of Finance.
- Colin Kemp, Corporate Finance Senior Manager.
- Shonagh Merriman, Accounting Manager (Corporate Finance).
- Michael Scott, Solicitor.

### Apologies

- Councillor Barbara Foulkes.
- Councillor Steven B Heddle.
- Councillor James W Stockan.

### Declarations of Interest

- No declarations of interest were intimated.

### Chair

- Councillor W Leslie Manson.

## 1. Disclosure of Exempt Information

The Sub-committee noted the proposal that the public be excluded from the meeting for consideration of Items 5 and 6 as the business to be discussed involved the potential disclosure of exempt information of the classes described in the relevant paragraphs of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

## 2. Revenue Expenditure Monitoring

After consideration of a report by the Head of Finance, and after hearing a report from the Corporate Finance Senior Manager, copies of which had been circulated, the Sub-committee:

Noted:

**2.1.** The revenue financial summary statement in respect of Strategic Reserve Fund services for the period 1 April to 31 December 2019, attached as Annex 1 to the report by the Head of Finance, indicating a budget surplus position of £7,792,300.

**2.2.** The revenue financial detail by Service Area statement for the period 1 April to 31 December 2019, attached as Annex 2 to the report by the Head of Finance.

**2.3.** The explanations given and actions proposed in respect of significant budget variances, as outlined in the Budget Action Plan, attached as Annex 3 to the report by the Head of Finance.

### **3. Temporary Loans**

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Accounting Manager (Corporate Finance), the Sub-committee:

Noted:

**3.1.** The status of the temporary loan portfolio as at 31 December 2019, as detailed in section 3 of the report by the Head of Finance.

**3.2.** That, for the period 1 April to 31 December 2019, the temporary loans portfolio made a return of £211,623.15 at an average interest rate of 1.01%.

**3.3.** That the Treasury Policy Statement was being adhered to by the Finance Service and was producing an acceptable rate of return.

### **4. Exclusion of the Public**

On the motion of Councillor W Leslie Manson, seconded by Councillor Rachael A King, the Sub-committee resolved that the public be excluded for the remainder of the meeting, as the business to be considered involved the disclosure of exempt information of the classes described in Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

### **5. Statement of Managed Funds**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 6 of Part 1 of Schedule 7A of the Act.

After consideration of a report by the Head of Finance, copies of which had been circulated, and after hearing a report from the Corporate Finance Senior Manager, the Sub-committee:

Noted:

**5.1.** The review of investment performance by Hymans Robertson, the Council's appointed investment advisors, for the quarter to 31 December 2019, attached as Appendix 1 to the report by the Head of Finance.

**5.2.** That the performance of the Strategic Reserve Fund investments over the quarter to 31 December 2019 was considered good, with the value of the Fund increasing by 1.8%, which was 0.6% ahead of the target.

**5.3.** That the performance of the Strategic Reserve Fund over the 12-month period to 31 December 2019 had been excellent in absolute terms, with the value of the Fund increasing by 12.6%, which was 1.4% ahead of the target of 11.2%.

**5.4.** The Sustainable Investment Report as at 31 December 2019, produced by Schroders, attached as Appendix 2 to the report by the Head of Finance.

**5.5.** The Investment Stewardship Report as at 31 December 2019, produced by Blackrock, attached as Appendix 3 to the report by the Head of Finance.

## **6. Proposed Investment in Local Company**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraphs 4 and 6 of Part 1 of Schedule 7A of the Act.

After consideration of a report by the Head of Finance, copies of which had been circulated, the Sub-committee:

Resolved, in terms of delegated powers:

**6.1.** What action should be taken with regard to a proposed investment in a local company.

**6.2.** That the Head of Finance should submit a report, to the Policy and Resources Committee, regarding revised guidelines for Council investment in renewable projects.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **7. Conclusion of Meeting**

At 12:42 the Chair declared the meeting concluded.

Signed: L Manson.

## Business and Economy Renew and Recovery Leadership Structure

The Leadership challenge is to create fast acting, collective leadership capacity across the business community and public bodies to provide both tactical support and strategic support.

The **tactical work is about acting fast to protect existing viable businesses**, particularly those that make a disproportionate contribution (e.g. employers / generators of work for other businesses / are in sectors that are strategically important or will be strategically important in the future). This has been the focus of the first two months' work of the **BERRG** – and resulted in the launching of a Business Hardship Scheme and a Business Loan Scheme. These will be kept under review in the coming weeks.

The **strategic work is about preparing for after / what comes next**. Key questions include:

- What might the world and economy look like post Covid?
- What are the scenarios?
- Where are Orkney's opportunities?
- What's the vision – where do we want to be after this?
- What are the particular challenges for Orkney?
- Are the policies and plans in place to create a sustainable economy in Orkney?
- What do we need to do/change to “build back better”?
- What will need to change/no longer be feasible or possible to continue?

The following factors are considered core to the foundation of the proposed structure:

1. Leadership.
2. Governance.
3. Legitimacy.
4. Sector knowledge and expertise.

Key elements of the proposed model are:

- **A Steering Group.**
- **A Delivery Group (BERRG).**
- **Think and do Group (s).**

The core purpose and initial membership of each of these elements is described further below.

## The Steering Group

This is the high level co-ordination group which will have the prime responsibility to set the strategic objectives and monitor and review delivery against those objectives. It will also provide the main formal feedback loop to the Council and Community Planning Partnership and means for public communications on the joint public/private sector Economic Recovery work. Any funding implications/recommendations for public bodies (including the Council) would require to be formally reported back through those bodies in the first instance, with the Steering Group having no direct authority to incur expenditure or direct public resources other than through existing delegated powers vested in Member officials.

A key issue to address at this stage should be the relationship with the CPP. One approach which has been considered is to establish the CPP as the mechanism for providing the steer for the BERRG and TG(s) through a renewed or revived Vibrant Economy Delivery Group (VEDG) structure. It is understood that this is the approach being adopted in some other council areas. This would have the advantage of having a pre-existing structure and process for reporting formally through the CPP. It would also remove potential for some duplication/additional resource requirements to service an additional body, should the VEDG continue to operate also.

The main disadvantage of this approach is the lack of business person representatives on the CPP. Whilst it is understood that the CPP could co-opt business representatives onto the Delivery Groups, this may not succeed in capturing the “new” dynamic whereby the Orkney business community has signalled willingness to lead in a coordinated and participative capacity which is a potentially new and positive factor arising from COVID 19. In this regard, business representatives have stated their firm view that a revived VEDG/ CPP model would not be the focused and joint private/public sector model which they believe is required. It is therefore likely that a proposal to operate directly through the CPP would not achieve the buy in and participation of business representatives moving forward.

It is for this reason that it is recommended that a new Steering Group is formed, with direct involvement and ownership of business representatives from the outset. However, it will remain important to ensure “tie back” to the CPP in relation to the formal responsibilities and role that the CPP has, which includes economic functions.

As noted above, any funding or direction of public expenditure would also require formal report back and approval through the relevant authorities. This relationship will require further development in due course but has been discussed informally with the Vibrant Economy Delivery Group on 2 June 2020 and is due to be discussed with the Community Planning Board on 10 June 2020.

Assuming that a new group is to be created, it is proposed that Membership would be drawn from the Council, HIE and Business representatives. Other public sector representatives from the VEDG could also attend. The Business Representatives would also attend either the BERRG or the ‘Think and Do Tank’.

Following feedback from the Member Seminar on 26 May 2020, it is proposed that the Council representation would be the Chief Executive and the Executive Director Development and Infrastructure and four Elected Members. The HIE representative would be the HIE Regional Manager and other public sector representatives would be nominated directly through the Vibrant Economic Delivery Group. It is proposed that the Group would be chaired by a business representative. Further information is provided below on the proposed private sector representation, and nomination process.

The Steering Group would be tasked with:

- Leading the process of planning and responding in a way that protects and strengthens the county's economy.
- Shaping and articulating a vision of what Orkney's economy can become.
- Integrating the national, regional and local pictures.
- Overseeing the creation, execution and evaluation of the Orkney Economic Recovery Plan (including monitoring of outputs).
- Ensuring consistency with, and maximising opportunity to be drawn from UK and Scottish Government schemes and resources.
- Through close partnership working, enable Orkney's local business community to take the leading role in establishing an effective Economic Recovery Plan, including considering where appropriate making recommendations for the targeting of public investment and resources to support Orkney's long-term economic prosperity.
- Providing a channel for key messaging and political engagement including the lead on public communications for the joint public/private sector economic recovery work.
- Manage cross sector collaboration and engagement.
- Providing a Political and ambassadorial role to promote Orkney on a range of national and international stages, work which pre-Covid had been focusing on Nordic/North Atlantic trade routes and the Climate Emergency which are likely to remain important areas for new business in the years ahead.

### **The Business and Economy Response and Recovery Group (BERRG)**

As noted above, the BERRG has a formal status within the Council Renew and Recovery Plan as part of the "External" response which is to be chaired by the Director Development & Infrastructure. The initial work of the BERRG has been on response, and formation of the Grant and Loan schemes. The next phase of work will be to plan and deliver the renew/recovery programme.

The BERRG is an executive/operational group and will continue to comprise membership from the Council and HIE teams, together with business sector representatives. It is proposed that the BERRG is chaired by the Director Development and Infrastructure with vice chair provided by the Head of Planning Development and Regeneration.

The BERRG will be tasked with:

- Assessing the economic implications and providing assistance and information to businesses.
- Where appropriate and in line with national Guidance to enable businesses affected by the emergency to resume trading as soon as possible.
- Deliver OIC Strategy for Economic Recovery through the development of a SMART action plan expanding the key RENEW strategic objectives.
- Develop an impact assessment based on the four strategic areas for RENEW namely Environment, Economy, People and Infrastructure, and incorporate the findings into the SMART action plan.
- Develop a resource plan to identify and establish the resource, key skills, experience, infrastructure requirements and expertise required for effective delivery.
- Advise and inform on national discussions that takes account of any longer-term strategic regeneration and economic development opportunities in the affected area.
- Engage with those able to provide grants and financial support for recovery/regeneration.
- To enable, where possible, enhanced local trading and economic activity following Circular Economy Models.
- To identify and seek support nationally for infrastructure requirements to enable economic recovery eg. Transport and digital.
- To ensure appropriate national profile and financial provision for the re-start and long term sustainability of core internal and external lifeline and business transportation requirements.
- Delivering response support including business grants and maintaining an overview of the success of the support mechanisms available to businesses.
- To formulate reports to the Steering Group including delivery of strategic outputs arising from the vision and objectives.
- To deliver operational outputs in pursuance of the strategic vision arising from the Steering Group.
- To establish the role the Council may have in contributing to recovery and renewal in the context of the need to retain capability to re-frame core public services, alongside an effective county wide Economic Recovery strategy and long term sustainability of community resources.
- To shape and co-ordinate the local structural support responses e.g. funding support, making recommendations to formal decision making authorities where appropriate and required.



## **The Think and Do Group(s)**

It is considered important to provide a mechanism for scenario planning/thought and challenge that is separate to the Steering Group and the BERRG. This will allow the freedom to explore innovative thinking and test scenarios outwith the more formal/resource constraints of the BERRG/Steering Group. The exact form of the Think and Do group (or groups) will be defined depending on the range of ideas/scenarios which are to be explored. These are expected in the main to be business/industry led tactical/ technical expert project teams working on more radical / longer term economic ideas. However, these need not exclusively be private sector groups, and it may be beneficial for other subject specific groups to form from the BERRG or associated action groups for example Transportation and Marketing.

Membership should be based on skills and experience rather than role / organisation and must have and maintain strong endorsement of the business community.

### **Some initial areas for Think and Do group work could include:**

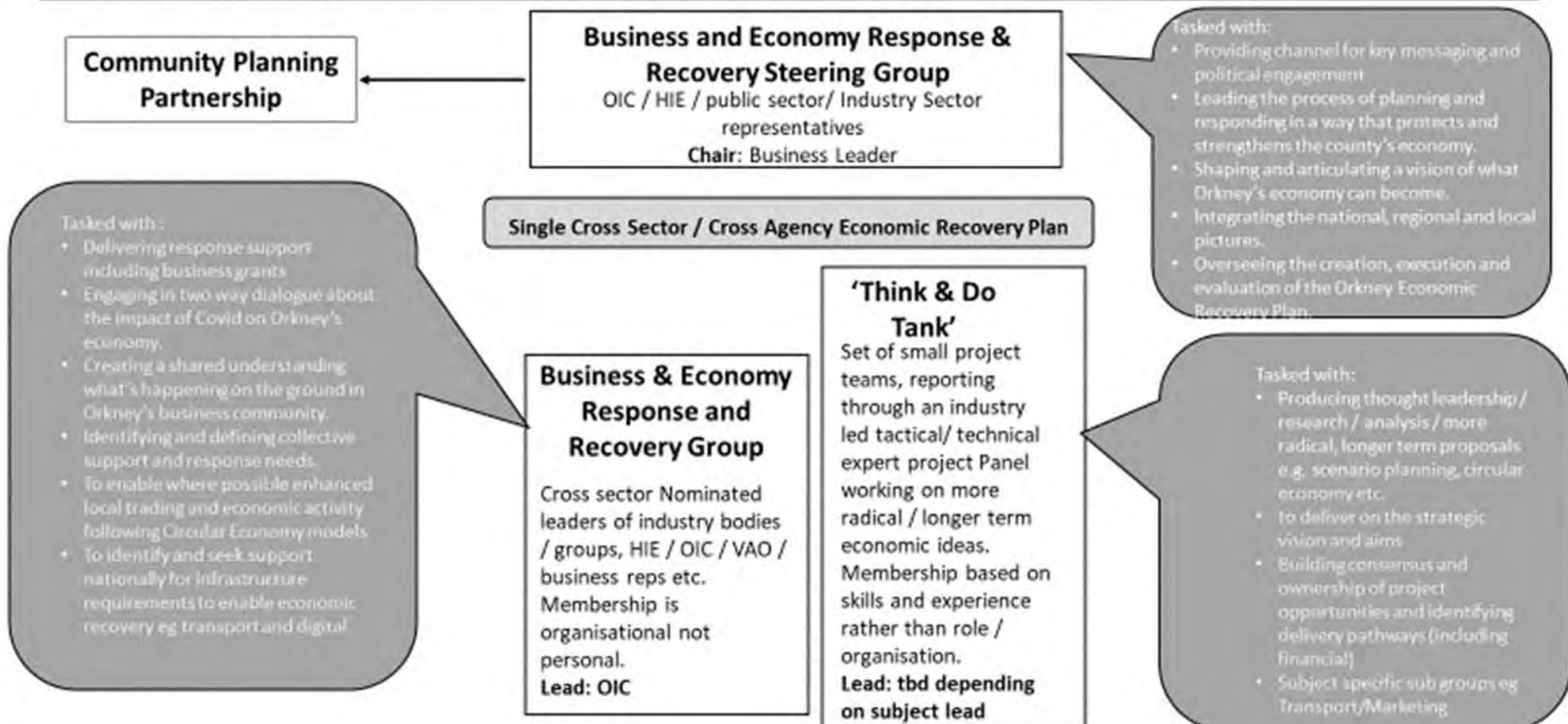
- Developing a vision and proposed action plan for deepening Orkney's circular economy.
- Partnering with a specialist provider to undertake scenario planning.
- Looking at ways to remove long term cost e.g. through enhanced energy efficiency. Explore creative ways to mobilise local funds/savings to invest in our local economy for the long term.
- Planning for the transportation implications arising from the lockdown release including ensuring communication and consistency across different transport providers, and the public.

The Think and Do groups would not be specifically empowered to execute actions. They would seek to collect and examine ideas and would therefore form something of a filter and preparer of work to aid BERRG discussions and decisions. These groups would not have any direct responsibility or capacity to incur public expenditure, other than where directly approved through specific consultancy or other spend allocations to deliver particular workstreams.

See summary diagram below.

## Possible Orkney Covid Business & Economy Response and Recovery Work: Leadership Structure

**Aim:** Create fast acting, collective leadership capacity across the community and public bodies to provide strategic vision, tactical support, to ensure that Orkney is enabled to compete as effectively as possible and to prepare and adapt to a different economic and business landscape





## **Policy on Covert Surveillance**

All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact Corporate Services on 01856873535 or email [corporateservices@orkney.gov.uk](mailto:corporateservices@orkney.gov.uk).

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## **1. Introduction**

### **1.1.**

In some circumstances, it may be necessary for council employees where evidence cannot be obtained in any other way, in the course of their duties, to make observations of a person or persons in a covert manner, i.e. without that person's knowledge. By their nature, actions of this sort are potentially intrusive (in the ordinary sense of the word) and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ("the right to respect for private and family life").

### **1.2.**

The Regulation of Investigatory Powers Act (2000) [RIPA], the Regulation of Investigatory Powers (Scotland) Act (2000) [RIP(S)A] and the Investigatory Powers Act 2016 ("the Acts") together provide a legal framework for covert surveillance by public authorities and an independent inspection regime to monitor these activities.

### **1.3.**

The Investigatory Powers Act 2016 establishes an Investigatory Powers Commission whose remit includes providing comprehensive oversight of the use of powers to which this Policy applies.

### **1.4.**

The Investigatory Powers Tribunal, established in terms of RIPA, has jurisdiction to investigate and determine complaints against public authority use of investigatory powers.

### **1.5.**

The Chief Executive is the RIPSAs Senior Responsible Officer, who has oversight and scrutiny in relation to the RIPSAs function and ensures the integrity of the processes in place and acts as the main point of contact with the Investigatory Powers Commission. In the Chief Executive's absence, the Executive Director of Corporate Services will deputise.

### **1.6.**

A detailed procedure has been developed for Covert Surveillance ("the Procedure").

## **2. Objective**

The objective of this policy is to ensure that all covert surveillance by council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Scottish Government's Code of Practice on Covert Surveillance and Property Interference ("the Code of Practice").

### **3. Scope of the Policy**

This Policy applies in all cases where “directed surveillance” is being planned or carried out. Directed surveillance is defined in section 1(2) of the RIP(S) Act as surveillance, which is covert but not intrusive, and undertaken:

#### **3.1.**

For the purposes of a specific investigation or specific operation.

#### **3.2.**

In such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation).

#### **3.3.**

Otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under the RIP(S) Act to be sought for the carrying out of the surveillance. In cases of doubt, the authorisation procedures described below should however be followed.

### **4. Principles of Surveillance**

#### **4.1.**

In planning and carrying out covert surveillance, council employees shall comply with the following principles.

##### **4.1.1.**

Lawful purposes – covert surveillance shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Acts); i.e. it must be:

- For the purpose of preventing or detecting crime or the prevention of disorder.
- In the interest of public safety.
- For the purpose of protecting public health.

Employees carrying out surveillance shall not cause damage to any property or harass any person.

##### **4.1.2.**

Necessity – covert surveillance shall only be undertaken where there is no reasonable and effective alternative way of achieving the desired objective(s).

##### **4.1.3.**

Effectiveness – planned covert surveillance shall be undertaken only by suitably trained or experienced employees, or under their direct supervision.

**4.1.4.**

Proportionality – the use and extent of covert surveillance shall be as defined in section 6(2) of the RIP(S) Act – that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out.

**4.2.**

Obtaining an authorisation under the RIP(S) Act and the 1997 Act will only ensure that there is a justifiable interference with an individual's Article 8 rights if it is necessary and proportionate for these activities to take place. The RIP(S)A first requires that the person granting an authorisation is satisfied that the authorisation is necessary in the circumstances of the particular case for one or more of the statutory grounds in section 6(3) of the RIP(S) Act for directed surveillance and in section 10(2)(a) of the RIP(S) Act for intrusive surveillance.

**4.3.**

Then, if the activities are necessary, the person granting the authorisation must be satisfied that they are proportionate to what is sought to be achieved by carrying them out. This involves balancing the intrusiveness of the activity on the target and others who might be affected by it against the need for the activity in operational terms. The activity will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. All such activity should be carefully managed to meet the objective in question and must not be arbitrary or unfair.

**4.4.**

Intrusive surveillance – no activity shall be undertaken that comes within the definition of "Intrusive Surveillance", as defined in section 1(3) of the RIP(S) Act as covert surveillance that:

**4.4.1.**

Is carried out in relation to anything taking place on any residential premises or in any private vehicle.

**4.4.2.**

Involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

**4.5.**

Collateral intrusion – reasonable steps shall be taken to minimise the acquisition of information that is not directly necessary for the purposes of the investigation or operation being carried out.

**4.6.**

Before authorising surveillance, the authorising officer should also take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the investigation or operation (collateral intrusion). Measures should be taken, wherever practicable, to avoid or minimise unnecessary intrusion into the lives of those not directly connected with the investigation or operation.

**4.7.**

Authorisation – all directed surveillance shall be authorised in accordance with the Procedure.

**5. The Authorisation Process****5.1.**

The statutory purposes for which covert surveillance authorisations may be issued must reflect the functions of the Council.

**5.2.**

Applications for directed surveillance where knowledge of confidential information is likely to be acquired shall be authorised by an Executive Director (other than the Executive Director of Corporate Services who has a role of deputising for the Senior Responsible Officer) and in their absence the Head of Legal Services.

**5.3.**

An Executive Director (or in their absence) the Head of Legal Services should be designated officers to give the necessary written authorisation for the use or conduct of covert surveillance. In urgent or exceptional circumstances written or oral authorisation might be given by an officer of Chief Officer grade.

**5.4.**

In terms of the Scottish Government's Code of Practice a written authorisation granted by an authorising officer will cease to have effect (unless renewed) at the end of a period of three months beginning with the day on which it took effect. Urgent oral authorisations granted by a person who is entitled to act only in urgent cases will unless renewed, cease to have effect after seventy-two hours, beginning with the time when the authorisation was granted or renewed. Further details are contained in the Procedure and Chapter 5 of the Code of Practice.

**6. Documents****6.1.**

The Procedure in implementation of this policy uses the following documents:

**6.1.1. Covert Surveillance – Written Authorisation**

This should be completed by the applicant in all cases not covered by oral authorisation (below). It is effective from the time that approval is given.



### **6.1.2. Covert Surveillance – Oral Authorisation**

This is a record of an oral authorisation, which should be completed by the applicant. It should be used only in cases where the urgency of the situation makes the submission of a written application impractical. The authorising officer should write out a separate authorisation as soon as practical.

### **6.1.3. Covert Surveillance – Renewal of Authorisation**

This should be completed by the applicant in all cases where surveillance is required beyond the previously authorised period (including previous renewals) and thereafter signed by the authorising officer.

### **6.1.4. Covert Surveillance – Cancellation**

This should be completed by both the applicant and the authorising officer when the authorisation ceases to be either necessary or appropriate.

## **7. Security and Retention of Documents**

### **7.1.**

Documents created under this procedure are highly confidential and shall be treated as such. Services must ensure that arrangements are in place for the handling, storage and destruction of material obtained through the use of covert surveillance. Authorising officers must ensure compliance with the requirements of data protection legislation, the Procedure for Authorisation of Covert Surveillance and Chapter 8 of the Scottish Government's Code of Practice on Covert Surveillance and Property Interference.

### **7.2.**

The Head of Legal Services shall maintain a register of current and past authorisations. Applicant officers shall ensure that sufficient information is provided to keep this up to date.

## **8. Central Record of all Authorisations**

### **8.1.**

A centrally retrievable record of all authorisations should be held by the Head of Legal Services and regularly updated whenever an authorisation is granted, renewed or cancelled. The record should be made available to the relevant Inspector from the Investigatory Powers Commission, upon request. These records should be retained for a period of five years from the ending of the authorisation and should contain the following information:

- The type of authorisation.
- The date the authorisation was given.
- Name and rank/grade of the authorising officer.
- The unique reference number (URN) of the investigation or operation.
- The title of the investigation or operation, including a brief description and names of subjects, if known.

- Whether the urgency provisions were used, and if so why.
- If the authorisation is renewed, when it was renewed and who authorised the renewal, including the name and rank/grade of the authorising officer.
- Whether the investigation or operations is likely to result in obtaining confidential information as defined in this code of practice.
- The date the authorisation was cancelled.

## **8.2.**

In all cases, Services should maintain for a period of three years the following documentation which need not form part of the centrally retrievable record:

- A copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorising officer.
- A record of the period over which the surveillance has taken place.
- 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.
- The date and time when any instruction was given by the authorising officer.

## Document Control Sheet

### Review / Approval History

Date	Name	Position	Version Approved
1 May 2018	Gavin Mitchell	Head of Legal Services	V1.2– approved at General Meeting of the Council
11 May 2020	Gavin Mitchell	Head of Legal Services	V1.3

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11 May 2020	Gavin Mitchell	V1.3	Final	Reflect observations contained in IPC Inspection Report



## **Procedure for Authorisation of Covert Surveillance**

All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact Corporate Services on 01856873535 or email [corporateservices@orkney.gov.uk](mailto:corporateservices@orkney.gov.uk).

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## **1. Foreword**

### **1.1.**

The use of surveillance to provide information is a valuable resource for the protection of the public and the maintenance of law and order. In order that local authorities and law enforcement agencies are able to discharge their responsibilities, use is made of unaided surveillance and surveillance devices. Where this surveillance is covert i.e. the subject of the surveillance is unaware that it is taking place, then it must be authorised to ensure that it is lawful. CCTV systems in the main will not be subject to this procedure as they are 'overt' forms of surveillance. However where CCTV is used as part of a pre-planned operation of surveillance then authorisation should be obtained. This includes circumstances where such use is sought by the Council or by a third party such as the Police. For the use of CCTV for covert surveillance, officers should refer to paragraph 10 of the Council's CCTV Code of Practice.

### **1.2.**

A legal framework ensures that the use of surveillance is subject to an authorisation, review and cancellation procedure.

## **2. Implications of this Procedure**

### **2.1.**

In some circumstances, it may be necessary for Orkney Islands Council employees, in the course of their duties, to make observations of a person or person(s) in a covert manner, i.e. without that person's knowledge. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ('the right to respect for private and family life').

### **2.2.**

The Regulation of Investigatory Powers Act (2000) [RIPA], the Regulation of Investigatory Powers (Scotland) Act (2000) [RIP(S) A] and the Investigatory Powers Act 2016 ('the Acts') together provide a legal framework for covert surveillance activities by public authorities (including local authorities) and an independent inspection regime to monitor these activities.

### **2.3.**

Whilst the Acts do not impose a requirement for local authorities to seek or obtain an authorisation, where one is available Orkney Islands Council employees will adhere to the authorisation procedure before conducting any covert surveillance.

**2.4.**

Employees of Orkney Islands Council will not carry out intrusive surveillance within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000. This is surveillance of anything taking place on residential premises or in a private vehicle that involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device capable of providing information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or in the house or vehicle.

**2.5.**

A number of practical examples of the use of directed surveillance are contained in sections 3 and 4 of the Scottish Government's Code of Practice on Covert Surveillance and Property Interference: <https://www.gov.scot/publications/covert-surveillance-property-interference-code-practice/>

**3. Objective****3.1.**

The objective of this procedure is to ensure that all work involving directed surveillance by Orkney Islands Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Regulation of Investigatory Powers (Scotland) Act 2000 and the Scottish Government's Code of Practice on Covert Surveillance and Property Interference ("the Code of Practice").

**3.2.**

Definitions:

**3.2.1.**

Covert surveillance means surveillance that is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is taking place.

**3.2.2.**

Authorising officer is the person who is entitled to give an authorisation for directed surveillance in accordance with section 6 of the Regulation of Investigatory Powers (Scotland) Act 2000.

**3.2.3.**

Private Information includes information about a person relating to his private or family life.

**3.2.4.**

Residential premises means any premises occupied or used, however temporarily, for residential purposes or otherwise as living accommodation.

**3.2.5.**

Private vehicle means any vehicle that is used primarily for the private purpose of the person who owns it or of a person otherwise having the right to use it. This does not include a person whose right to use the vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey. A vehicle includes any vessel, aircraft or hovercraft.

**4. Scope of the Procedure****4.1.**

This procedure applies in all cases where 'direct surveillance' is being planned or carried out. Direct surveillance is defined in the Code of Practice as surveillance undertaken "for the purposes of a specific investigation or operation" and "in such a manner as is likely to result in the obtaining of private information about a person."

**4.2.**

The procedure does not apply to:

- Ad-hoc covert observations that do not involve the systematic surveillance of specific person(s).
- Observations that are not carried out covertly.
- Unplanned observations made as an immediate response to events.

Particular attention should be made to Social Media Networking Sites. A separate policy is in place in connection with surveillance through social media and should be consulted as necessary.

**4.3.**

In cases of doubt, the authorisation procedures described below should be followed.

**5. Principles of Surveillance**

In planning and carrying out covert surveillance, Orkney Islands Council employees shall comply with the following principles.

**5.1. Lawful purposes**

Directed surveillance shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Acts) namely:

- For the purpose of preventing or detecting crime or the prevention of disorder.
- In the interests of public safety.
- For the purpose of protecting public health.

Employees carrying out surveillance shall not interfere with any property or harass any person.



## **5.2. Confidential material**

### **5.2.1.**

Particular care should be taken with applications where a significant risk of acquiring confidential material has been identified.

### **5.2.2.**

Confidential material consists of:

- Matters subject to legal privilege for example between professional legal advisor and client), in terms of the Regulation of Investigatory Powers (Modification of the Authorisation Provisions: Legal Consultations) (Scotland) Order 2015 directed surveillance carried out on premises in respect of matters subject to legal privilege is to be treated as intrusive surveillance and can only be carried out by the police.
- Confidential personal information (for example relating to a person's physical or mental health).
- Confidential journalistic material.

## **6. The Authorisation Process**

### **6.1.**

Applications for directed surveillance will be authorised by an Executive Director (other than the Executive Director of Corporate Services who has a role of deputising for the Senior Responsible Officer) or in their absence the Head of Legal Services. In urgent or exceptional circumstances written or oral authorisation might be given by an officer of Chief Officer grade who has not been designated which should as soon as practicable be followed up by a written authorisation from the relevant official.

### **6.2.**

Authorising officers within the meaning of this procedure should avoid authorising their own activities wherever possible and only do so in exceptional circumstances.

### **6.3.**

All applications for directed surveillance authorisations will be made on form OIC/auth/ds. The applicant in all cases should complete this. In urgent cases the authorising officer may give an oral authorisation. A statement that the authorising officer has expressly granted the authorisation should be recorded on the form or, if that is not possible, in the applicant's notebook or diary. This should be done by the person to whom the authorising officer spoke (normally the applicant) but should later be endorsed by the authorising officer. The authorising officer should write out a separate authorisation as soon as practical.

**6.4.**

All applications for directed surveillance renewals will be made on form OIC/ren/ds. The applicant in all cases should complete this where the surveillance requires to continue beyond the previously authorised period (including previous renewals). The renewal of the authorisation should be considered and signed by the authorising officer.

**6.5.**

Where authorisation ceases to be either necessary or appropriate the authorising officer will cancel an authorisation using form OIC/can.ds submitted by the applicant.

**6.6.**

Forms, codes or practice and supplementary material will be available from the Council Intranet.

**6.7.**

Any person giving an authorisation for the use of directed surveillance must be satisfied that:

- Account has been taken of the likely degree of intrusion into the privacy of persons other than those directly implicated in the operation or investigation ('collateral intrusion'). Measures must be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those affected by collateral intrusion.
- The authorisation is necessary (see below).
- The authorised surveillance is proportionate (see below).
- In particular when Environmental Health Investigators deploy DAT noise level monitors to assist in any enforcement action in relation to noisy neighbour complaints. These cases should be reviewed on a case by case basis and if necessary the appropriate authorisation sought.
- In relation to aerial surveillance, using, for example, drones, the same considerations should be made to determine whether a directed surveillance authorisation is appropriate. In considering whether the surveillance should be regarded as covert, account should be taken of the reduced visibility of a craft or device at altitude.

**6.8. Necessity**

Surveillance operations shall only be undertaken where an authorisation is necessary on grounds falling within S.6(3) of RIP(S)A if it is necessary-(a) for the purpose of preventing or detecting crime or of preventing disorder(b) in the interests of public safety; or(c) for the purpose of protecting public health.

**6.9. Effectiveness**

Surveillance operations shall be undertaken only by suitably trained or experienced employees, or under their direct supervision.

## 6.10. Proportionality

The use of surveillance shall be proportionate in terms of S6(2)(b) of RIP(S)A to what is sought to be achieved by carrying it out. Further there must be no other reasonable and effective way of achieving the desired objective(s).

A potential model answer would make clear that the following elements of proportionality had been fully considered:

- balancing the size and scope of the operation against the gravity and extent of the perceived mischief.
- explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others.
- that the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result.
- providing evidence of other methods considered and why they were not implemented.

## 6.11. Authorisation

### 6.11.1.

All directed surveillance shall be authorised in accordance with this procedure.

The authorising officer must take into account the following issues when considering an application:

- who is to conduct the operation.
- what is being proposed.
- where and when the proposed operation will take place.
- whether it is necessary and proportionate.

### 6.11.2.

Underlying all of these considerations is the requirement for the authorising officer to be satisfied that the terms of the legislation and relevant guidance are met.

### 6.11.3.

The case for the authorisation should be presented in the application in a fair and balanced way. In particular, all reasonable efforts should be made to take account of information which supports or weakens the case for the authorisation.

### 6.11.4.

The authorising officer should clearly complete the “Authorising Officer’s Statement” on the application form, preferably in their own hand, and articulate in their own words what activity they are authorising.

**The Authorising Officer must state explicitly what is being authorised.**

**6.11.5.**

The Authorising Officer must describe and specify what they are granting. This may or may not be the same as requested by the applicant. For the benefit of those operating under the terms of an authorisation, or any person who may subsequently review or inspect an authorisation, it is essential to produce, with clarity, a description of that which is being authorised (i.e. who, what, where, when and how). The Authorising Officer should as a matter of routine state explicitly and in their own words what is being authorised, and against which subjects, property or location.

**6.11.6.**

Mere reference to the terms of the application is inadequate. The Authorising Officer should specify the details of how and why they consider the application to be both necessary and proportionate.

**Authorisation different from application.****6.11.7.**

If an application fails to include an element in the proposed activity which in the opinion of the Authorising Officer should have been included (for example, the return of something to the place from which it is to be taken for some specified activity), or which is subsequently requested orally by the applicant, it may be included in the authorisation; if so, a note should be added explaining why. Conversely, if an Authorising Officer does not authorise all that was requested, a note should be added explaining why. This requirement applies equally to intrusive surveillance, property interference, directed surveillance and CHIS authorisations.

**The Senior Responsible Officer should avoid granting authorisations.****6.11.8.**

The role of the Senior Responsible Officer is to oversee the competence of Authorising Officers and the processes in use in their public authority. Whilst legislation does not preclude their use as an Authorising Officer, it is unlikely that they would be regarded as objective if they oversee their own authorisations.

**6.11.9.**

Applications for covert surveillance that may result in the acquisition of knowledge of matters subject to legal privilege within the meaning given in paragraph 1.1 of the Code of Practice should state whether the covert surveillance is likely or intending to obtain knowledge of matters subject to legal privilege. Where covert surveillance is likely or intended to result in the acquisition of knowledge of matters subject to legal privilege, an authorisation shall only be granted or approved if the authorising officer is satisfied that there are exceptional and compelling circumstances that make the authorisation necessary.

**6.11.10.**

Where the surveillance is not intended to result in the acquisition of knowledge of matters subject to legal privilege, such exceptional and compelling circumstances may arise in the interests of preventing or detecting serious crime.

#### **6.11.11.**

Where the surveillance is intended to result in the acquisition of knowledge of matters subject to legal privilege, such circumstances will arise only in a very restricted range of cases, such as where there is a threat to life or limb and the surveillance is reasonably regarded as likely to yield intelligence necessary to counter the threat.

## **7. Time Periods – Authorisations**

### **7.1.**

Urgent oral authorisations granted by a person who is entitled to act only in urgent cases unless renewed, cease to have effect after seventy-two hours, beginning with the time when the authorisation was granted or renewed.

### **7.2.**

In terms of the Scottish Government's Code of Practice a written authorisation granted by an authorising officer will cease to have effect (unless renewed) at the end of a period of three months beginning with the day on which it took effect.

## **8. Time Periods – Renewals**

### **8.1.**

If at any time before an authorisation would cease to have effect, the authorising officer considers it necessary and proportionate for the authorisation to continue for the purpose for which it was given, the authorisation may be renewed in writing for a further period of three months. Renewals may also be granted orally in urgent cases and last for a period of seventy-two hours. Applications should only be made shortly before the authorisation is due to expire.

### **8.2.**

Any person entitled to authorise may renew authorisations. They may be renewed more than once, provided they continue to meet the criteria for authorisation.

## **9. Review**

### **9.1.**

The Authorising Officer shall keep all authorisations under constant review and an authorisation will be cancelled immediately the requirement for surveillance ceases. The Authorising Officer should set review dates and ensure that all reviews are carried out with the review period tailored to meet the particular requirements of the investigation. Details of the review and the decision reached shall be noted on the Review Form.

**9.2.**

During a review, the authorising officer who granted or last renewed the authorisation may amend specific aspects of the authorisation, for example, to cease directed surveillance against one of a number of named subjects or to discontinue the use of a particular tactic.

**9.3.**

Particular attention should be given to the need to review authorisations frequently where they involve a high level of intrusion into private life or significant collateral intrusion, or particularly sensitive information is likely to be obtained. At the point when the Council is considering applying for an authorisation, it must have regard to whether the level of protection to be applied in relation to information obtained under the warrant or authorisation is higher because of the particular sensitivity of that information.

**9.4.**

In each case, unless specified by the Investigatory Powers Commission, the frequency of reviews should be determined by the Council. This should be as frequently as is considered necessary and proportionate.

**9.5.**

In the event that there are any significant and substantive changes to the nature of the operation during the currency of the authorisation, the Council should consider whether it is necessary to apply for a new authorisation.

**10. Cancellation****10.1.**

Those acting under an authorisation must keep their authorisations under review and notify the authorising officer if they consider that the authorisation is no longer necessary or proportionate, and so should therefore be cancelled.

**10.2.**

The authorising officer and the applicant must cancel an authorisation if he/she is satisfied that the directed surveillance no longer satisfies the criteria for authorisation.

## **11. Record Keeping**

Each Service or discrete location within Services must maintain a record of all applications for authorisation (including refusals), renewals, reviews and cancellations. A centrally retrievable record of all authorisations will be held by Legal Services and regularly updated whenever an authorisation is granted, renewed or cancelled. An application for authorisation cannot proceed until a unique reference number (URN) has been issued by Legal Services and Legal Services must have sight of each and every application. The central register should be kept up-to-date at all times. The record should be made available to the relevant Inspector from the Investigatory Powers Commission, upon request. These records should be retained for a period of at least five years. Orkney Islands Council Policy for Authorisation of Covert Surveillance contains further details at Paragraph 8 thereof.

## **12. Security and Retention of Documents**

### **12.1.**

Documents created under this procedure are highly confidential and shall be treated as such. Services shall make proper arrangements for their retention, security and destruction, in accordance with the requirements of data protection legislation and Chapter 8 of the Scottish Government's Code of Practice on Covert Surveillance and Property Interference.

### **12.2.**

Dissemination or copying of material must be limited to the minimum necessary for authorised purposes. The purposes are authorised if the material:

#### **12.2.1.**

Is, or is likely to become, necessary for any of the statutory purposes set out in RIPSAs in relation to covert surveillance or property interference;

#### **12.2.2.**

Is necessary for facilitating the carrying out of the functions of public authorities under RIPSAs;

#### **12.2.3.**

Is necessary for facilitating the carrying out of any functions of the Investigatory Powers Commission or the Investigatory Powers Tribunal;

#### **12.2.4.**

Is necessary for the purposes of legal proceedings; or

#### **12.2.5.**

Is necessary for the performance of the functions of any person by or under any enactment.

**12.3.**

Legal Services will maintain the Central Register of Authorisations. Authorising officers shall notify the Legal Services of the grant, renewal or cancellation of any authorisations and the name of the Applicant Officer within 1 working day to ensure the accuracy of the Central Register.

**12.4.**

The Authorising Officer shall retain the original Authorisation and Renewal Forms until cancelled. On cancellation, the original Application, Renewal and Cancellation forms shall be forwarded to Legal Services with the Authorising Officer retaining a copy.

**12.5.**

The Authorising Officer shall retain the copy forms for a period of three years after cancellation. Legal Services will retain the original forms for a period of five years after cancellation. In both cases these will not be destroyed without the authority of the authorising officer if practicable.

**13. Oversight**

The Investigatory Powers Act 2016 establishes an Investigatory Powers Commission to provide comprehensive oversight of the use of the powers to which this Procedure applies. This oversight includes inspection visits by Inspectors appointed by the Investigatory Powers Commission.

**14. Complaints**

The Investigatory Powers Tribunal has jurisdiction to investigate and determine complaints against public authority use of investigatory powers. Any complaints in respect of the use by the Council of its powers described in this Procedure should be directed to the Investigatory Powers Tribunal. Full details of how to present a complaint are available on the Tribunal's website – [www.ipt-uk.com](http://www.ipt-uk.com).



## Document Control Sheet

### Review / Approval History

Date	Name	Position	Version Approved
1 May 2018	Gavin Mitchell	Head of Legal Services	V1.2– approved at General Meeting of the Council
11 May 2020	Gavin Mitchell	Head of Legal Services	V1.3

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11 May 2020	Gavin Mitchell	V1.3	Final	Reflect observations contained in IPC Inspection Report



## **Policy on Use of Covert Human Intelligence Sources**

All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact Corporate Services on 01856873535 or email [corporateservices@orkney.gov.uk](mailto:corporateservices@orkney.gov.uk).

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## **1. Introduction**

### **1.1.**

In some circumstances, it may be necessary for Orkney Islands Council employees where evidence cannot be obtained in any other way, in the course of their duties, to make use of informants and to conduct 'undercover' operations in a covert manner, i.e. without a person's knowledge. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ("the right to respect for private and family life").

### **1.2.**

The Regulation of Investigatory Powers Act (2000) [RIPA], the Regulation of Investigatory Powers (Scotland) Act (2000) [RIP(S)A] and the Investigatory Powers Act 2016 ("the Acts") together provide a legal framework for use of Covert Human Intelligence Sources by public authorities and an independent inspection regime to monitor these activities.

### **1.3.**

The Investigatory Powers Act 2016 establishes an Investigatory Powers Commission whose remit includes providing comprehensive oversight of the use of powers to which this Policy applies.

### **1.4.**

The Investigatory Powers Tribunal, established in terms of RIPA, has jurisdiction to investigate and determine complaints against public authority use of investigatory powers.

### **1.5.**

The Chief Executive is the RIPSAs Senior Responsible Officer, who has oversight and scrutiny in relation to the RIPSAs function and ensures the integrity of the processes in place and acts as the main point of contact with the Investigatory Powers Commission. In the Chief Executive's absence, the Executive Director of Corporate Services will deputise.

### **1.6.**

A detailed procedure has been developed for Covert Human Intelligence Sources ("the Procedure").

## **2. Objective**

The objective of this Policy is to ensure that all use or conduct of a source by council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Scottish Government's Code of Practice on Use of Covert Human Intelligence Sources ("the Code of Practice").

### **3. Scope of the Policy**

#### **3.1.**

This Policy applies in all cases where the use of an undercover officer or source is being planned or carried out. All Officers involved should be suitably trained and experienced.

#### **3.2.**

This Policy does not apply to covert test purchase transactions under existing statutory powers where the officers involved do not establish a personal or other relationship for the purposes stated. As an example the purchase of music CD for subsequent expert examination would not require authorisation but where the intention is to ascertain from the seller where he/she buys suspected fakes, when he/she takes delivery etc. then authorisation should be sought beforehand; or tasks given to persons (whether that person is an employee of the Council or not) to ascertain purely factual information (for example the location of cigarette vending machines in licensed premises).

#### **3.3.**

In terms of Section 1(7) of RIP(S) Act a person is a covert human intelligence source if the person:

1. Establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating the doing of anything falling within paragraph 2 or 3 below.
2. Covertly uses such a relationship to obtain information or to provide access to any information to another person.
3. Covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

### **4. Principles of the Use and Conduct of a Source**

#### **4.1.**

In planning and carrying out the use of a covert human intelligence sources, council employees shall comply with the following principles.

##### **4.1.1.**

Lawful purposes – the use and conduct of a source shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Acts); i.e. it must be:

1. For the purpose of preventing or detecting crime or the prevention of disorder.
2. In the interest of public safety.
3. For the purpose of protecting public health.

Employees carrying out source work or using sources must be aware that a source has no licence to commit crime.

#### **4.1.2.**

Necessity – An authorisation for the use of a Covert Human Intelligence source is necessary on grounds falling within section 7 (3) of RIP(S)A if it is necessary-(a) for the purpose of preventing or detecting crime or of preventing disorder; (b) in the interests of public safety; or (c) for the purpose of protecting public health.

#### **4.1.3.**

Effectiveness – planned undercover operations shall be undertaken only by suitably trained or experienced employees, or under their direct supervision.

#### **4.1.4.**

Proportionality – the use and extent of a source shall be as defined in section 6(2) of the RIP(S) Act – that the authorised use and conduct of a source is proportionate to what is sought to be achieved by carrying it out.

#### **4.2.**

Obtaining an authorisation under the RIP(S) Act will only ensure that the authorised use or conduct of a source is a justifiable interference with an individual's Article 8 rights if it is necessary and proportionate for the source to be used. The RIP(S) Act first requires that the person granting an authorisation is satisfied that the authorisation is necessary in the circumstances of the particular case for one or more of the statutory grounds in section 7(3) of the RIP(S) Act.

#### **4.3.**

If the use of the source is necessary, the person granting the authorisation must be satisfied that the use of a source is proportionate to what is sought to be achieved by the conduct and use of that source. This involves balancing the intrusiveness of the use of the source on the target and others who might be affected by it against the need for the source to be used in operational terms. The use of a source will not be proportionate if it is excessive in the circumstances of the case or if the information which is sought could reasonably be obtained by other less intrusive means. The use of a source should be carefully managed to meet the objective in question and sources must not be used in an arbitrary or unfair way.

#### **4.4.**

Collateral intrusion – reasonable steps shall be taken to minimise the acquisition of information that is not directly necessary for the purposes of the investigation or operation being carried out.

#### **4.5.**

Before authorising the use or conduct of a source, the authorising officer should take into account the risk of intrusion into the privacy of persons other than those who are directly the subjects of the operation or investigation (collateral intrusion). Measures should be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those not directly connected with the operation or investigation.

#### **4.6.**

Authorisation – all use and conduct of covert human intelligence sources shall be authorised in accordance with the Procedure. Additionally the authorising officer must make an assessment of any risk to a source in carrying out the conduct in the proposed authorisation and satisfactory arrangements exist for the management of the source.

### **5. The Authorisation Process**

#### **5.1.**

Applications for use of a Covert Human Intelligence Source will be authorised by an Executive Director (other than the Executive Director of Corporate Services who has a role of deputising for the Senior Responsible Officer) or in their absence the Head of Legal Services.

#### **5.2.**

An Executive Director should be a designated officer to give the necessary written authorisation for the use or conduct of a Covert Human Intelligence Source or in their absence the Head of Legal Services. In urgent or exceptional circumstances written or oral authorisation might be given by an officer of Chief Officer grade which should as soon as practicable be followed up by a written authorisation from the relevant official.

#### **5.3.**

In terms of the Scottish Government's Code of Practice a written authorisation granted by an authorising officer will cease to have effect (unless renewed) at the end of a period of twelve months beginning with the day on which it took effect. Urgent oral authorisations granted by a person who is entitled to act only in urgent cases will unless renewed, cease to have effect after seventy two hours, beginning with the time when the authorisation was granted or renewed. Further details are contained in the Procedure. Particular special rules apply to the use of vulnerable individuals or juvenile sources. Additional guidance is contained in Chapter 5 of the Code of Practice.

## **6. Documents**

### **6.1.**

The Procedure in implementation of this Policy uses the following documents:

#### 1. Use or conduct of a covert human intelligence source – Written Authorisation

This should be completed by the applicant in all cases not covered by oral authorisation (below). It is effective from the time that approval is given.

#### 2. Use or conduct of a covert human intelligence source – Oral Authorisation

This is a record of an oral authorisation, which should be completed by the applicant. It should be used only in cases where the urgency of the situation makes the submission of a written application impractical. The authorising officer should write out a separate authorisation as soon as practical.

#### 3. Use or conduct of a covert human intelligence source – Renewal of Authorisation

This should be completed by the applicant in all cases where surveillance is required beyond the previously authorised period (including previous renewals) and thereafter signed by the authorising officer.

#### 4. Use or conduct of a covert human intelligence source – Cancellation

This should be completed by both the applicant and the authorising officer when the authorisation ceases to be either necessary or appropriate.

## **7. Security and Retention of Documents**

### **7.1.**

Documents created under this procedure are highly confidential and shall be treated as such. Services must ensure that arrangements are in place for the handling, storage and destruction of material obtained through the use of a covert human intelligence source. Authorising officers must ensure compliance with the requirements of data protection legislation, the Procedure for Authorisation of the use of Covert Human Intelligence Sources and Chapter 8 of the Scottish Government's Code of Practice on Covert Human Intelligence Sources.

### **7.2.**

The Head of Legal Services shall maintain a register of current and past authorisations. Applicant officers shall ensure that sufficient information is provided to keep this up to date.



## **8. Central Record of all Authorisations**

### **8.1.**

A centrally retrievable record of all authorisations should be held by the Head of Legal Services and regularly updated whenever an authorisation is granted, renewed or cancelled. The record should be made available to the relevant Inspector from the Investigatory Powers Commission, upon request. These records should be retained for a period of five years from the ending of the authorisation and should contain the following information:

- The type of authorisation.
- The date the authorisation was given.
- Name and rank/grade of the authorising officer.
- The unique reference number (URN) of the investigation or operation.
- The title of the investigation or operation, including a brief description and names of subjects, if known.
- Whether the urgency provisions were used, and if so why.
- If the authorisation is renewed, when it was renewed and who authorised the renewal, including the name and rank/grade of the authorising officer.
- Whether the investigation or operations is likely to result in obtaining confidential information as defined in this code of practice.
- The date the authorisation was cancelled.

### **8.2.**

In all cases, Services should maintain for a period of three years the following documentation which need not form part of the centrally retrievable record:

- A copy of the application and a copy of the authorisation together with any supplementary documentation and notification of the approval given by the authorising officer.
- A record of the period over which the activities of the source has taken place.
- A record of the result of each review of the authorisation; the results of which should be recorded in the central record.
- A copy of any renewal of an authorisation, together with the supporting documentation submitted when the renewal was requested.
- The date and time when any instruction was given by the authorising officer.

## Document Control Sheet

### Review / Approval History

Date	Name	Position	Version Approved
1 May 2018	Gavin Mitchell	Head of Legal Services	V1.2– approved at General Meeting of the Council
11 May 2020	Gavin Mitchell	Head of Legal Services	V1.3

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## **Procedure for Authorisation of the use of Covert Human Intelligence Sources**

All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact Corporate Services on 01856873535 or email [corporateservices@orkney.gov.uk](mailto:corporateservices@orkney.gov.uk).

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## **1. Foreword**

### **1.1.**

The use of human beings to provide information ('informants') is a valuable resource for the protection of the public and the maintenance of law and order. In order that local authorities and law enforcement agencies are able to discharge their responsibilities, use is made of 'undercover' officers and informants. These are referred to as 'covert human intelligence sources' or 'sources' and the area of work of undercover officers and informants to whom this procedure applies will be referred to as 'source work'.

### **1.2.**

A legal framework ensures that the use, deployment, duration and effectiveness of sources is subject to an authorisation, review and cancellation procedure.

## **2. Implications of this Procedure**

### **2.1.**

In some circumstances, it may be necessary for Orkney Islands Council employees, in the course of their duties, to make use of informants and to conduct 'undercover' operations in a covert manner, i.e. without a person's knowledge. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights and the Human Rights Act 1998 ('the right to respect for private and family life').

### **2.2.**

The Regulation of Investigatory Powers Act (2000) [RIPA] and the Regulation of Investigatory Powers (Scotland) Act (2000) [RIP(S) A] and the Investigatory Powers Act 2016 ('the Acts') together provide a legal framework for covert surveillance activities by public authorities (including local authorities) and an independent inspection regime to monitor these activities.

### **2.3.**

Whilst the Acts do not impose a requirement for local authorities to seek or obtain an authorisation, where one is available Orkney Islands Council employees will adhere to the authorisation procedure before using a source or allowing or conducting an undercover operation.

### **2.4.**

Employees of Orkney Islands Council will not carry out intrusive surveillance within the meaning of the Regulation of Investigatory Powers (Scotland) Act 2000 nor will they authorise any person for any covert human intelligence source activity as an opportunity to install any surveillance equipment into residential premises or private vehicle.

## 2.5.

A number of practical examples of the use of covert human intelligence sources are contained in sections 2, 3 and 4 of the Scottish Government's Code of Practice on Covert Human Intelligence Sources: <https://www.gov.scot/publications/covert-human-intelligence-sources-code-practice/>

## 3. Objective

### 3.1.

The objective of this procedure is to ensure that all work involving the use or conduct of a source by Orkney Islands Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Regulation of Investigatory Powers (Scotland) Act 2000 and the Scottish Government's Code of Practice on the Use of Covert Human Intelligence Sources ("the Code of Practice").

### 3.2. Definitions

#### 3.2.1.

Covert human intelligence source means a person who establishes or maintains a personal relationship with another person for the covert purpose of facilitating anything that:

1. Covertly uses such a relationship to obtain information or to provide information or to provide access to information to another person; or
2. Covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

A relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose.

#### 3.2.2.

Directed surveillance is defined in the Code of Practice as surveillance undertaken "for the purposes of a specific investigation or operation" and "in such a manner as is likely to result in the obtaining of private information about a person."

#### 3.2.3.

Authorising officer is the person who is entitled to give an authorisation for use and conduct of Human Intelligence Source in accordance with section 7 of the Regulation of Investigatory Powers (Scotland) Act 2000.

#### 3.2.4.

Handler means the person referred to in section 7(6) of the Regulation of Investigatory Powers (Scotland) Act 2000 holding an office or position within the local authority and who will have day to day responsibility for:

- Dealing with the source on behalf of the local authority.
- Directing the day to day activities of the source.
- Recording the information supplied by the source.
- Monitoring the source's security and welfare.

### **3.2.5.**

Controller means the person/the designated managerial officer within the local authority referred to in section 7(6)(b) of the Regulation of Investigatory Powers (Scotland) Act 2000, responsible for the general oversight of the use of the source.

### **3.2.6.**

The conduct of a source is action of that source, falling within the terms of the Regulation of Investigatory Powers (Scotland) Act 2000, or action incidental to it.

### **3.2.7.**

The use of a source is any action to induce, ask or assist a person to engage in the conduct of a source or to obtain information by means of an action of the source.

### **3.2.8.**

Private information includes information about a person relating to his private or family life.

### **3.2.9.**

Residential premises means any premises occupied or used, however temporarily for residential purposes or otherwise as living accommodation.

### **3.2.10.**

Private vehicle means any vehicle that is used primarily for the private purpose of the person who owns it or of a person otherwise having the right to use it. This does not include a person whose right to use the vehicle derives only from his having paid, or undertaken to pay, for the use of the vehicle and its driver for a particular journey. A vehicle includes any vessel, aircraft or hovercraft.

## **4. Scope of the Procedure**

### **4.1.**

This procedure applies in all cases where the use of an undercover officer or source is being planned or carried out.

## 4.2.

The procedure does not apply to:

- Covert test purchase transactions under existing statutory powers where the officers involved do not establish a personal or other relationship for the purposes stated (see definition of a covert human intelligence source). As an example the purchase of music CD for subsequent expert examination would not require authorisation but where the intention is ascertain from the seller where he buys suspected fakes, when he takes delivery etc. then authorisation should be sought beforehand.
- Tasks given to persons (whether that person is an employee of the Council or not) to ascertain purely factual information (for example the location of cigarette vending machines in licensed premises).
- Particular attention should be made to Social Media Networking Sites. A separate policy is in place in connection with surveillance through social media and should be consulted as necessary. In cases of doubt, the authorisation procedures described below should be followed.

## 5. Principles of Use or Conduct of Covert Human Intelligence Source

In planning and carrying out the source work, Orkney Islands Council employees shall comply with the following principles.

### 5.1. Lawful purposes

Source work shall only be carried out where necessary to achieve one or more of the permitted purposes (as defined in the Acts) namely:

- For the purpose of preventing or detecting crime or the prevention of disorder.
- In the interests of public safety.
- For the purpose of protecting public health.

Employees carrying out source work or using sources must be aware that a source has no licence to commit crime. Any source that acts beyond the acceptable limits of case law in regard to this principle risks prosecution.

It may be necessary to deploy directed surveillance against a potential source as part of the process of assessing their suitability for recruitment, or in planning how best to make the approach to them. An authorisation under this procedure authorising an officer to establish a covert relationship with a potential source could be combined with a directed surveillance authorisation so that both the officer and potential source could be followed.

### 5.2. Confidential material

#### 5.2.1.

Particular care should be taken with applications where a significant risk of acquiring confidential material has been identified.



### 5.2.2.

Confidential material consists of:

- Matters subject to legal privilege (for example between professional legal advisor and client); special rules apply in relation to directed surveillance carried out on premises where legal consultations are taking place and are referred to in the Procedure for Authorisation of Covert Surveillance.
- Confidential personal information (for example relating to a person's physical or mental health).
- Confidential journalistic material.

## 5.3. Vulnerable individuals

### 5.3.1.

Vulnerable individuals, such as a person aged 16 or over whose ability to protect him/herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise, will only be authorised to act as a source in the most exceptional circumstances.

### 5.3.2.

Special safeguards also apply to the use or conduct of juvenile sources, that is, those under the age of 18 years. The use or conduct of any source under 16 years of age living with their parents cannot be authorised to give information about their parents.

### 5.3.3.

Subject to the above, juvenile sources can give information about members of their immediate family in exceptional cases. A parent, guardian or other 'appropriate adult' should be present at meetings with the juvenile source under the age of 16 years.

### 5.3.4.

An authorisation for the conduct or use of a source may not be granted or renewed in any case where the source is under the age of 18 at the time of the grant or renewal, unless:

- A person holding an office, rank or position with the relevant investigating authority has made and, in the case of a renewal, updated a risk assessment sufficient to demonstrate that:
  - The nature and magnitude of any risk of physical injury to the source arising in the course of, or as a result of, carrying out the conduct described in the authorisation have been identified and evaluated.
  - The nature and magnitude of any risk of psychological distress to the source arising in the course of, carrying out the conduct described in the authorisation have been identified and evaluated.
- The person granting or renewing the authorisation has considered the risk assessment and is satisfied that any risks identified in it are justified and, if they are, that they have been properly explained to and understood by the source.

- The person granting or renewing the authorisation knows whether the relationship to which the conduct or use would relate is between the source and a relative, guardian or person who has for the time being assumed responsibility for the source's welfare, and, if it is, has given particular consideration to whether the authorisation is justified in the light of that fact.

## **6. The Authorisation Process**

### **6.1.**

Applications for the use or conduct of a source will be authorised by an Executive Director (other than the Executive Director of Corporate Services who has a role of deputising for the Senior Responsible Officer) and in their absence the Head of Legal Services who will give the necessary written authorisation for the use or conduct of the use of Covert Human Intelligence Source. In urgent or exceptional circumstances written or oral authorisation might be given by an officer of Chief Officer grade who has not been designed which should as soon as practicable be followed up by a written authorisation from the relevant official.

### **6.2.**

Authorising officers should ensure that arrangements are in place for the proper oversight and management of sources, including appointing individual officers as defined in section 7(6)(a) and (b) of RIP(S)A for each source as handler and controller. All Officers involved should be suitably trained and experienced.

### **6.3.**

Authorising officers should not be responsible for authorising their own activities, for example, those in which they, themselves, are to act as the covert human intelligence source or the handler of the covert human intelligence source. Furthermore, authorising officers should, where possible, be independent of the investigation. It is recognised that this is not always possible, especially in the cases of small organisations. However, where possible, clear separation should be maintained between those responsible for the investigation and those managing the covert human intelligence source to ensure that the safety and welfare of the covert human intelligence source are always given due consideration.

### **6.4.**

All applications for covert human intelligence source authorisations will be made on form OIC/auth/chis. The applicant in all cases should complete this. In urgent cases an oral authorisation may be given by the authorising officer. A statement that the authorising officer has expressly granted the authorisation should be recorded on the form or, if that is not possible, in the applicant's notebook or diary. This should be done by the person to whom the authorising officer spoke (normally the applicant) but should later be endorsed by the authorising officer. The authorising officer should write out a separate authorisation as soon as practical.

**6.5.**

The case for the authorisation should be presented in the application in a fair and balanced way. In particular, all reasonable efforts should be made to take account of information which supports or weakens the case for the authorisation.

**6.6.**

All applications for covert human intelligence source renewals will be made on form OIC/ren/chis. The applicant in all cases should complete this where the source work requires to continue beyond the previously authorised period (including previous renewals). The renewal of the authorisation should be signed by the authorising officer.

**6.7.**

Where authorisation ceases to be either necessary or appropriate the authorising officer and the applicant will cancel an authorisation using form OIC/can.chis.

**6.8.**

Forms, codes or practice and supplementary material will be available from the Council Intranet.

**6.9.**

Any person giving an authorisation for the use of a covert human intelligence source must be satisfied that:

- Account has been taken of the likely degree of intrusion into the privacy of persons other than those directly implicated in the operation or investigation ('collateral intrusion'). Measures must be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those affected by collateral intrusion. Particular consideration should be given in cases where religious, medical, journalistic or legally privileged material may be involved, or where the communications of a member of a relevant legislature may be involved.
- The authorisation is necessary (see below).
- The authorised surveillance is proportionate (see below).
- Satisfactory arrangements exist for the management of the source.
- In particular when Environmental Health Investigators deploy DAT noise level monitors to assist in any enforcement action in relation to noisy neighbour complaints. These cases should be reviewed on a case by case basis and if necessary the appropriate authorisation sought.

**6.10.**

Authorisation for use of a Covert Human Intelligence Source can only be granted if sufficient arrangements are in place for handling the source's case. The arrangements that are considered necessary are that:

**6.10.1.**

There will at all times be a person holding the requisite office, rank or position with the relevant investigating authority who will have day to day responsibility for dealing with the source on behalf of that authority and for the source's security and welfare – this should be the source's line manager (the Handler).

**6.10.2.**

There will at all times be another person holding the requisite office, rank or position with the relevant investigating authority who will have general oversight of the use made of that source – this should be the handler's line manager (the Controller).

**6.10.3.**

There will be at all times a person holding the requisite office, rank or position with the relevant investigating authority who will have responsibility for maintaining a record of the use made of that source – this should be the Authorising Officer.

**6.10.4.**

The record relating to the use of that source are maintained by Orkney Islands Council which will always contain particulars of such matters as may be specified in regulations made by the Scottish Ministers.

**6.10.5.**

The records maintained by Orkney Islands Council that discloses the identity of the source will not be available to persons except to the extent that there is a need for access to them to be made available to those persons. The records kept by Orkney Islands Council should be maintained in such a way as to preserve the confidentiality of the source and the information provided by that source. There should, at all times, be a designated person within the authority who will have responsibility for maintaining a record of the use made of the source.

**6.11. Necessity**

An authorisation for the use of a Covert Human Intelligence source is necessary on grounds falling within section 7 (3) of RIP(S)A if it is necessary - (a) for the purpose of preventing or detecting crime or of preventing disorder; (b) in the interests of public safety; or (c) for the purpose of protecting public health.

**6.12. Effectiveness**

Planned undercover operations shall be undertaken only by suitably trained or experienced employees, or under their direct supervision.

**6.13. Proportionality**

The use of covert human intelligence sources must be proportionate or in terms of RIP(S)A section 7(b) that the authorised conduct or use is proportionate to what is sought to be achieved by that conduct or use.

A potential model answer would make clear that the following elements of proportionality had been fully considered:

- Balancing the size and scope of the operation against the gravity and extent of the perceived mischief.
- Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others.
- Whether there are any implications of the authorised conduct for the privacy of others, and an explanation of why (if relevant) it is nevertheless proportionate to proceed with the operation.
- That the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result.
- Providing evidence of other methods considered and why they were not implemented.

The degree of intrusiveness of an authorisation of a covert human intelligence source will vary from case to case, and therefore proportionality must be assessed on an individual basis.

## **6.14. Authorisation**

All use and conduct of covert human intelligence sources shall be authorised in accordance with this procedure.

The authorising officer must take into account the following issues when considering an application:

- Who is to be deployed as the source.
- What is being proposed.
- Where and when the proposed deployment will take place.
- Whether it is necessary and proportionate.

### **6.14.1.**

However, the tasking of a person should not be used as the sole benchmark in seeking an authorisation. It is the activity of the covert human intelligence source in exploiting a relationship for a covert purpose which is ultimately authorised by RIP(S)A, whether or not that source is asked to do so by the Council. It is possible therefore that a person will become engaged in the conduct of a covert human intelligence source without the Council inducing, asking or assisting the person to engage in that conduct. An authorisation should be considered, for example, where the Council is aware that a third party is independently maintaining a relationship (i.e. self-tasking) in order to obtain evidence of criminal activity, and the Council intends to make use of that material for its own investigative purposes.

### **6.14.2.**

Underlying all of these considerations is the requirement for the authorising officer to be satisfied that the terms of the legislation and relevant guidance are met.

**6.14.3.**

The authorising officer should clearly complete the “Authorising Officer’s Statement” on the application form, preferably in their own hand, and articulate in their own words what activity they are authorising.

**The Authorising Officer must state explicitly what is being authorised.****6.14.4.**

The Authorising Officer must describe and specify what they are granting. This may or may not be the same as requested by the applicant. For the benefit of those operating under the terms of an authorisation, or any person who may subsequently review or inspect an authorisation, it is essential to produce, with clarity, a description of that which is being authorised (i.e. who, what, where, when and how). The Authorising Officer should as a matter of routine state explicitly and in his own words what is being authorised, and against which subjects, property or location. Mere reference to the terms of the application is inadequate. The Authorising Officer should specify the details of how and why they consider the application to be both necessary and proportionate.

**Authorisation different from application.****6.14.5.**

If an application fails to include an element in the proposed activity which in the opinion of the Authorising Officer should have been included (for example, the return of something to the place from which it is to be taken for some specified activity), or which is subsequently requested orally by the applicant, it may be included in the authorisation; if so, a note should be added explaining why. Conversely, if an Authorising Officer does not authorise all that was requested, a note should be added explaining why. This requirement applies equally to intrusive surveillance, property interference, directed surveillance and CHIS authorisations.

**6.14.6.**

It is important to note that the reactive nature of the work of a covert human intelligence source, and the need for him/her to maintain cover, may make it necessary for the source to engage in conduct which was not envisaged at the time the authorisation was granted, but which is incidental to that conduct. Such incidental conduct is regarded as properly authorised by virtue of sections 1(6)(a), 5 and 7(5) of RIP(S)A, even though it was not specified in the initial authorisation.

**The Senior Responsible Officer should avoid granting authorisations.****6.14.7.**

The role of the Senior Responsible Officer is to oversee the competence of Authorising Officers and the processes in use in their public authority. Whilst legislation does not preclude their use as an Authorising Officer, it is unlikely that they would be regarded as objective if they oversee their own authorisations.

**6.14.8.**

Additionally, the authorising officer must assess risks to a source in carrying out the conduct in the proposed authorisation. The risk assessment must be made by the applicant and presented to the authorising officer for consideration. A risk assessment is carried out to determine the risk to the source of any tasking and the likely consequences should the role of the source become known. The ongoing security and welfare of the source, after the cancellation of the authorisation, will also be considered from the outset.

**Use of a covert human intelligence source with technical equipment.****6.14.9.**

A covert human intelligence source wearing or carrying a surveillance device and invited into residential premises or a private vehicle does not require special authorisation to record activity taking place inside the premises or vehicle. Authorisation for the use of that covert human intelligence source may be obtained in the usual way.

**6.14.10.**

Applicants should apply within their own line management structure unless other arrangements have been agreed or it is unreasonable or impractical in the circumstances.

**7. Security and Welfare**

The Council, when deploying a covert human intelligence source, should take into account the safety and welfare of that source when carrying out actions in relation to an authorisation or tasking, and the foreseeable consequences to others of that tasking. Before authorising the use or conduct of a covert human intelligence source, the authorising officer should ensure that a risk assessment is carried out to determine the risk to the source of any tasking and the likely consequences should the role of the source become known. This should consider the risks relating to the specific tasking and circumstances of each authorisation separately and should be updated to reflect developments during the course of the deployment, as well as after the deployment if contact is maintained.

**8. Time Periods – Authorisations****8.1.**

Urgent oral authorisations granted by a person who is entitled to act only in urgent cases will unless renewed, cease to have effect after seventy-two hours, beginning with the time when the authorisation was granted or renewed.

**8.2.**

In terms of the Scottish Government's Code of Practice a written authorisation granted by an authorising officer will cease to have effect (unless renewed) at the end of a period of twelve months beginning with the day on which it took effect. Authorisations for the deployment of a juvenile source are for one month.

## **9. Time Periods – Renewals**

### **9.1.**

Before an authorising officer renews an authorisation, they must be satisfied that a review has been carried out of the use of a source as outlined in paragraph 10.1.

### **9.2.**

If at any time before an authorisation would cease to have effect, the authorising officer considers it necessary for the authorisation to continue for the purpose for which it was given, they may renew it in writing for a further period of twelve months. Renewals may also be granted orally in urgent cases and last for a period of seventy-two hours.

### **9.3.**

A renewal takes effect at the time at which, or day on which the authorisation would have ceased to have effect but for the renewal. An application for renewal should not be made until shortly before the authorisation period is drawing to an end. Any person who would be entitled to grant a new authorisation can renew an authorisation. Authorisations may be renewed more than once, in necessary, provided they continue to meet the criteria for authorisation. The renewal should be kept/recorded as part of the authorisation record.

### **9.4.**

Authorisations for the deployment of a juvenile source are renewable for a further period or further periods of one month each.

## **10. Review**

### **10.1.**

The Authorising Officer shall keep all authorisations under constant review and an authorisation will be cancelled immediately the requirement for surveillance ceases. The Authorising Officer should set review dates and ensure that all reviews are carried out immediately after the source has been deployed with the review period tailored to meet the particular requirements of the investigation. Details of the review and the decision reached shall be noted on the Review Form.

### **10.2.**

Particular attention should be given to the need to review authorisations frequently where they involve a high level of intrusion into private life or significant collateral intrusion, or particularly sensitive information is likely to be obtained. At the point when the Council is considering applying for an authorisation, it must have regard to whether the level of protection to be applied in relation to information obtained under the warrant or authorisation is higher because of the particular sensitivity of that information.



### **10.3.**

In each case, unless specified by the Investigatory Powers Commission, the frequency of reviews should be determined by the Council. This should be as frequently as is considered necessary and proportionate.

### **10.4.**

In the event that there are any significant and substantive changes to the nature of the operation during the currency of the authorisation, the Council should consider whether it is necessary to apply for a new authorisation.

## **11. Cancellation**

### **11.1.**

The authorising officer and the applicant must keep each authorisation under review. The applicant must notify the authorising officer if they consider that the authorisation is no longer necessary or proportionate. The authorising officer must cancel an authorisation if they are satisfied that the use or conduct of the source no longer satisfies the criteria for authorisation or that procedures for the management of the source are no longer in place. Where possible, the source must be informed that the authorisation has been cancelled.

### **11.2.**

Where necessary and practicable, the safety and welfare of the covert human intelligence source should continue to be taken into account after the authorisation has been cancelled and risk assessments maintained. The authorising officer will wish to satisfy himself/herself that all welfare matters are addressed and should make appropriate comment in their written commentary.

## **12. Record Keeping**

### **12.1.**

Each Service or discrete location within Services must maintain a record of all applications for authorisation (including refusals), renewals, reviews and cancellations. A centrally retrievable record of all authorisations will be held by Legal Services and regularly updated whenever an authorisation is granted, renewed or cancelled. An application for authorisation cannot proceed until a unique reference number (URN) has been issued by Legal Services and Legal Services must have sight of each and every application. The central register shall be kept up-to-date all times. The record should be made available to the relevant Inspector from the Investigatory Powers Commission, upon request. These records should be retained for a period of at least five years. The Council's Policy for Authorisation on use of Covert Human Intelligence Sources contains further details at Paragraph 8 thereof.

## **12.2.**

In addition consideration should be given to maintaining auditable records for individuals providing intelligence who do not meet the definition of a covert human intelligence source. This will assist the Council to monitor the status of an individual and identify whether that person should be duly authorised as a covert human intelligence source. This should be updated regularly to explain why authorisation is not considered necessary.

## **13. Security and Retention of Documents**

### **13.1.**

Documents created under this procedure are highly confidential and shall be treated as such. Services shall make proper arrangements for their retention, security and destruction, in accordance with the requirements of data protection legislation and Chapter 8 of the Scottish Government's Code of Practice on Covert Human Intelligence Sources.

### **13.2.**

Dissemination or copying of material must be limited to the minimum necessary for authorised purposes. The purposes are authorised if the material:

- Is, or is likely to become, necessary for any of the statutory purposes set out in RIPSAs in relation to covert surveillance or property interference;
- Is necessary for facilitating the carrying out of the functions of public authorities under RIPSAs;
- Is necessary for facilitating the carrying out of any functions of the Investigatory Powers Commission or the Investigatory Powers Tribunal;
- Is necessary for the purposes of legal proceedings; or
- Is necessary for the performance of the functions of any person by or under any enactment.

### **13.3.**

Legal Services will maintain the Central Register of Authorisations. Authorising officers shall notify the Legal Services of the grant, renewal or cancellation of any authorisations and the name of the Applicant Officer within 1 working day to ensure the accuracy of the Central Register.

### **13.4.**

The Authorising Officer shall retain the original Authorisation and Renewal Forms until cancelled. On cancellation, the original Application, Renewal and Cancellation forms shall be forwarded to the Legal Services with the Authorising Officer retaining a copy.

### **13.5.**

The Authorising Officer shall retain the copy forms for a period of three years after cancellation. Legal Services will retain the original forms for at least five years after cancellation. In both cases these will not be destroyed without the authority of the authorising officer if practicable.

**13.6.**

All information recovered through the use of a source which is relevant to the investigation shall be retained for a period of five years after the cancellation of the authorisation or the completion of any Court proceedings in which said information was used or referred to. All other information shall be destroyed as soon as the operation is cancelled.

**14. Particulars to be Contained in Records**

1. The identity of the source.
2. The identity, where known, used by the source.
3. Any relevant investigating authority other than the authority maintaining the records.
4. The means by which the source is referred to within each relevant investigating authority.
5. Any other significant information connected with the security and welfare of the source.
6. Any confirmation made by a person granting or renewing an authorisation for the conduct or use of a source that the information in paragraph (e) has been considered and that any identified risks to the security and welfare of the source have where appropriate been properly explained to and understood by the source.
7. The date when, and the circumstances in which, the source was recruited.
8. The identities of the persons who, in relation to the source, are discharging or have discharged the functions.
9. The periods during which those persons have discharged those responsibilities.
10. The tasks given to the source and the demands made of him or her in relation to their activities as a source.
11. All contacts or communications between the source and a person acting on behalf of any relevant investigating authority.
12. The information obtained by each relevant investigating authority by the conduct or use of the source.
13. Any dissemination by that authority of information obtained in that way.
14. In the case of a source who is not an undercover operative, every payment, benefit or reward and every offer of a payment, benefit or reward that is made or provided by or on behalf of any relevant investigating authority in respect of the source's activities for the benefit of that or any other relevant investigating authority.

## **15. Oversight**

The Investigatory Powers Act 2016 establishes an Investigatory Powers Commission to provide comprehensive oversight of the use of the powers to which this Procedure applies. This oversight includes inspection visits by Inspectors appointed by the Investigatory Powers Commission.

## **16. Complaints**

The Investigatory Powers Tribunal has jurisdiction to investigate and determine complaints against public authority use of investigatory powers. Any complaints in respect of the use by the Council of its powers described in this Procedure should be directed to the Investigatory Powers Tribunal. Full details of how to present a complaint are available on the Tribunal's website – [www.ipt-uk.com](http://www.ipt-uk.com).

## Document Control Sheet

### Review/Approval History

Date	Name	Position	Version Approved
1 May 2018	Gavin Mitchell	Head of Legal Services	V1.2– approved at General Meeting of the Council
1 May 2019	Gavin Mitchell	Head of Legal Services	V1.3
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11 May 2020	Gavin Mitchell	1.4	Final	Reflect observations contained in IPC Inspection Report



## **Surveillance through Social Media Policy**

All our written information can be made available, on request, in a range of different formats and languages. If you would like this document in any other language or format, please contact Corporate Services on 01856873535 or email [corporateservices@orkney.gov.uk](mailto:corporateservices@orkney.gov.uk).

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## **1. Introduction**

### **1.1.**

This document sets out Orkney Islands Council's policy regarding internet surveillance using Social Media.

### **1.2.**

Reference is made to Orkney Islands Council's policies and procedures in respect of covert surveillance and use of covert human intelligence sources (hereinafter collectively referred to as 'the Council's RIPSAs policies and procedures'), to which this policy is subsidiary.

### **1.3.**

In some circumstances, it may be necessary for Orkney Islands Council employees, in the course of their duties, to access social media websites either by creating covert identities or through the officer's Service identity.

### **1.4.**

Directed online surveillance using an officer's private social media account should not be undertaken in any circumstances given the personal and operational security risks which such use would be liable to present.

### **1.5.**

Officers are referred to paragraphs 3.11 to 3.16 of the Scottish Government's Code of Practice on Covert Surveillance and Property Interference (December 2017) and paragraphs 4.7 to 4.14 of the Scottish Government's Code of Practice on Covert Human Intelligence Sources (December 2017) which provide operational examples that would assist staff in recognising situations where RIPSAs are potentially engaged in their investigations. Links to these Codes of Practice are published on the RIPSAs page of the Council's website: <https://www.orkney.gov.uk/Service-Directory/R/RIPSA.htm>

### **1.6.**

Whilst much of the work undertaken by social workers is not in pursuance of the prevention or detection of crime, and is not within the purview of RIPSAs, research conducted online in the interests of a child may still engage an individual's rights under Article 8 of the European Convention of Human Rights (right to respect for one's private and family life). This should be considered by staff prior to conducting any research online, being aware of their obligations in ensuring such Article 8 rights are not infringed by any online research conducted in child protection cases. Therefore, a protocol containing an auditable process has been developed for circumstances where online research is considered necessary in the interests of child protection. The process is similar to the procedure for seeking a RIPSAs authorisation as commended by the Investigatory Powers Tribunal. Orkney Health and Care shall be responsible for ensuring that this process is observed.



## **2. Statement of Intent**

The aim of this policy is to provide the framework outlining the Council's process for authorising and managing internet surveillance operations using social media, and to set the parameters for expected good practice.

## **3. Objective**

The objective of this policy is to ensure that all surveillance through social media conducted by Orkney Islands Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the Council's RIPSAs policies and procedures, the relevant legislation, the Scottish Government's Codes of Practice on Covert Surveillance and Property Interference and on Covert Human Intelligence Sources ('the Codes of Practice') and any guidance which the Investigatory Powers Commission may issue from time to time.

## **4. Orkney Islands Council's Social Media Presence**

The Council has four main social media accounts. The OIC Updates Facebook page and Orkney Council Twitter feed are managed by the communications team and provide information about a range of Council activities. The OIC School Transport Facebook page is managed by the Education Service. The OIC Roads Twitter Feed is managed by the Council's roads team and provides updates about road conditions on the Churchill Barriers during adverse weather.

In addition, a number of services manage Facebook and Twitter accounts including primary and secondary schools, the museum service, the library and St Magnus Cathedral.

## **5. Types of Investigators' Accounts**

There are two different ways in which social media websites may be accessed by council officers to carry out investigations:

- Through an identity created specifically as the service's representative.
- Through a covert identity using a false name.

## **6. Types of Surveillance**

Investigators utilise social media in two different ways:

- By simply visiting / viewing third party accounts or groups.
- By entering into a personal relationship with the third party/group member.

## **7. Privacy Settings of Account under Investigation**

### **7.1.**

Most social media websites will have a variety of privacy settings that users can apply to protect their accounts from others accessing the information contained therein. Facebook would be the social media website that would be most commonly used by Orkney Islands Council Officers to investigate service users or potential

service users and it has several different privacy settings. Therefore, Facebook will be used as an example in this policy. Depending on what privacy setting a user chooses, different people can access the account and see all or some of its contents.

#### **7.1.1. 'Public'**

All Facebook users can see the account and all of its content, including the user's "friends", their timeline and photographs. Non-Facebook users can see photographs and posts published on the account, but not who has 'liked' a post or the marital status or geographic location of the user.

#### **7.1.2. 'Friends'**

Only those whom the user has accepted as Facebook 'friends' are able to see the entire content of the user's page.

#### **7.1.3. 'Custom'**

The user can create lists of specific contacts and Facebook users and designate them as the audience for – or block them from view of – any posts.

Of these three options, the relevant options for investigating officers are 'public' and 'friends', as option 3 is a sub-category of 'friends'.

## **8. Utilisation of Social Media**

### **8.1. Surveillance using identity as department's representative or departmental account**

#### **'Public' privacy setting**

##### **8.1.1.**

If an investigating officer views a service user's Facebook profile, with whom they are not 'Friends' via a normal route, and where the content is not protected by any privacy settings, then information on this profile can be treated as being in the public domain. Any viewing / visiting of this profile will be overt and no authorisation under RIPSAs will be required.

##### **8.1.2.**

If the officer frequently or regularly views/visits the same individual's profile this must be considered as targeted. However if the service user posts publicly, they can have no expectation of privacy and will give everybody the right to view their posts at any time and as many times as that person wishes to. Therefore, strictly speaking, no authorisation under RIPSAs for directed surveillance is required. However, as a matter of best practice, an appropriate RIPSAs authorisation should be sought.

### **8.1.3.**

If an investigating officer enters into a 'conversation' with the service user, and if the officer informs them that they are contacting them in their role as an employee of Orkney Islands Council, then this contact will be overt and no authorisation under RIPSAs will be required.

### **'Friends' privacy setting**

### **8.1.4.**

To investigate a service user whose Facebook account is protected by privacy settings, the investigating officer will have to send the service user a 'friend request'. As it is obvious from the department name that the person behind it is an Orkney Islands Council employee, then the action could not be classified as covert. No RIPSAs authorisation would be needed.

### **8.1.5.**

In either of the above privacy settings, although the officer has been given access to the account with the consent of the owner, the officer will still need to consider whether the account may contain information about others who have not given their consent. If there is a likelihood of obtaining private information about others, the need for a directed surveillance authorisation should be considered, particularly where it is intended to monitor the account going forward.

## **8.2. Surveillance using covert identity**

### **8.2.1.**

If an investigating officer establishes a relationship with a service user under a covert identity in order to obtain, provide access to, or disclose information, then a covert human intelligence source ('CHIS') authorisation will always need to be in place before that is done.

### **8.2.2.**

However if a covert identity is presented but no steps are taken to form a relationship with the subject, a CHIS authorisation may not be required. For example, where a website or social media account requires a minimum level of interaction (such as sending or receiving a friend request before access is permitted) this may not in itself amount to establishing a relationship. Equally, the use of electronic gestures such as "like" or "follow" in order to react to information posted by others online would not in itself constitute forming a relationship. Nonetheless, it should be borne in mind that entering a website or responding to such gestures may lead to further interaction with that user or other users. A CHIS authorisation should be obtained if it is intended to engage in such interaction to obtain, provide access to, or disclose information.

## **9. Best practice for the use of social media in investigations**

As a matter of best practice, whenever a Council officer intends to investigate a particular service user through social media, rather than conducting a general sweep of social media sites, an appropriate RIPSAs authorisation should be completed.

## **10. Authorisation for all types of surveillance**

Please refer to Orkney Islands Council's Policies and Procedures on Covert Surveillance and Use of Covert Human Intelligence Sources.

## **11. Review of Policy**

This policy will be reviewed every three years from the date of approval.

## Document Control Sheet

### Review / Approval History

Date	Name	Position	Version Approved
1 May 2018	Gavin Mitchell	Head of Legal Services	V1.2– approved at General Meeting of the Council
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11 May 2020	Gavin Mitchell	V1.3	Final	Reflect observations contained in IPC Inspection Report



# CCTV Code of Practice

[name of location of cameras and service – the sections in RED are prompts to add text with the text in BLACK usually not to be changed].

## 1. Introduction

1.1. In order to use CCTV, OIC must have a legitimate basis for recording the personal data. OIC will use CCTV for several reasons, including to protect against crime and to protect staff and members of the public when they are on OIC premises. OIC should have due regard to this code of practice to ensure that it can justify its use of CCTV under Data Protection legislation and the Code of Practice published by the Information Commissioner's Office (ICO).

1.2. Images of people captured on CCTV that can identify individuals are defined as personal data under Data Protection legislation. Before CCTV cameras are introduced for any purpose a Data Protection Impact Assessment must be carried out.

1.3. The CCTV system chosen must be of sufficient quality to ensure that recordings and images produced are useable by the Council and the Police.

1.4. CCTV equipment, including digital recordings and removable media (e.g. cassette/CDs), must be held in a secure location (e.g. in a separate, locked room or in a locked cupboard where this is not possible) and access must be strictly confined to authorised staff.

1.5. This Code of Practice applies where open use of CCTV is intended in public areas. Special provisions apply to targeted or covert surveillance activities and are referred to in section 10 below. Any operation of this kind may only be carried out with reference to the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) in consultation with the Council's Legal Services.

1.6. This code of practice applies to all CCTV systems, whether digital (recommended) or analogue.

1.7. This code of practice will be reviewed every two years or as legal advice changes. Any changes to be approved by the Information Governance Officer and IT Services.

## 2. Scope

A summary of what cameras have been installed, where, why and who will monitor them, who what, where and how e.g.:

The Orkney Islands Council have installed an image-only CCTV surveillance system within the public area of Customer Service, Council Offices, Kirkwall. All images will be monitored by Customer Service Staff in the Contact Centre, Council Offices, Kirkwall.

All staff operating the CCTV system will do so in compliance with the Council's policies on Data Protection and Freedom of Information.

This Code of Practice (Code) has been prepared for the guidance of managers and the operators of the CCTV system and for the information of all Council Staff and members of the public.

The purpose is to ensure that the CCTV system meets the objectives set out below and to ensure that its operation is consistent with the obligations on the Council imposed by Data Protection legislation and good practice guidance issued by the Information Commissioner.

## 3. Objectives

3.1. CCTV has been installed by the Council for the following purposes:

For example:

- To assist in the prevention and detection of crime.
- To facilitate the identification, apprehension and prosecution of offenders in relation to crime and public order.
- To help ensure public safety.
- To assist with the identification of actions that may result in disciplinary proceedings against staff.
- To provide and operate the system in a manner that is consistent with respect for individual's privacy.
- To assist with the provision of a safer public environment.
- To reduce the fear of crime and to reassure staff and visitors.

OIC must only use CCTV for the purposes we have stated in the Objectives, above.

## 4. System

### 4.1. Scope

The CCTV system encompasses [...], Council Offices, Kirkwall and is monitored [...]. References in this code to the "CCTV system" or "system" should be read accordingly.

## 4.2. Operation

The CCTV system operates throughout the year for 24 hours a day. [or, if different, what it is].

## 4.3. Public Notices

The public is made aware of the presence and its ownership of the CCTV system by appropriate signage. OIC will ensure that staff and all other people who use their buildings are informed of the use and purpose of CCTV. This should be done by means of clear and obvious notices placed where the cameras are located. Notices should include purpose/s for which CCTV is being used and who to contact about the scheme.

## 4.4. Privacy

To respect privacy, wherever practicable, the cameras are in areas that prevent intrusion. Where it is not practicable to prevent the cameras from focusing or dwelling on such areas, training will be given to the system operators to ensure that they are made aware of the rules that cover such areas.

## 4.5. Recordings, storage and access

Images captured on camera are recorded on a digital hard drive. The Customer Services Manager will have access to local recorders; persons monitoring the images will be permitted to record those images or to have access to archived images. Any images recorded in these systems will be held centrally and managed by the Customer Services Manager. Precautions must be in place to control access to CCTV equipment and to prevent unauthorised access and misuse. [This would include password protecting the systems.]

## 4.6. Data Controller

For the purposes of Data Protection legislation, the Data Controller is the Chief Executive, Orkney Islands Council and is legally responsible for the management and maintenance of the CCTV system.

# 5. Control Room

## 5.1. Captured images

The Control Room is the room where the CCTV system is monitored with restricted access, which is a secure area.

## 5.2. Authorised access

Other than emergencies, no unauthorised access to the Control Room is allowed at any time. Normal access is strictly limited to authorised persons, including:



For example:

- Customer Service Staff.
- Police officers.
- Data Protection Officer/Information Security Officer/Information Governance Officer.
- Other statutory officers, e.g. Health and Safety Executive officers.

### **5.3. Access control system**

A list of persons authorised for routine access to the Control Room will be held by the access control system and maintained by [the relevant manager].

### **5.4. Access procedures**

Before granting access to the Control Room, controllers must satisfy themselves of the identity of any visitor and ensure that the visitor has the appropriate authorisation.

### **5.5. Logging access**

All visitors will be logged, including details of their name, the department or the organisation they represent, the person who granted authorisation for the visit (if applicable) and the times of their entry to and exit from the Control Room.

## **6. Control Room administration and procedures**

### **6.1. Incident log**

An incident log will be maintained in the Control Room and details of incidents will be kept together with any consequential action taken.

### **6.2. Personal data**

CCTV images may be personal data and therefore fall within the scope of Data Protection legislation. All processing of personal data will be done in accordance with Council's Data Protection Policy.

### **6.3. Responsibility for procedures**

The relevant Head of Service will be responsible for the development of and compliance with the working procedures in the Control Room.

### **6.4. Recorded images**

Recorded images will only be reviewed with the authority of the Head of Service and [relevant manager/s].

### **6.5. Copies of recorded images**

Copies of digital images will only be made for the purposes set out in section 2 or otherwise required by law and following specific instruction by Head of Service. IT Support, following instruction by the Head of Service are responsible for the downloading of images onto appropriate digital media, the recording of such downloads.

## **7. Staff**

### **7.1. Staff and the Code**

All staff involved in the operation of the CCTV system will be required to have read and understood this Code.

### **7.2. Training**

The Head of Service [or alternative] will ensure that all staff are trained in respect of all functions, operational and administration arising within the CCTV control operation. Training in the requirements of Data Protection legislation and this Code will be provided.

### **7.3. Guidance for staff**

Guidance on Data Protection legislation and processing personal data are provided for staff on Council portal and the school's GLOW site.

### **7.4. Responsible staff**

The responsible staff are [names and/or post holders].

## **8. Recording, handling and retention**

### **8.1. Digital recording**

The Control Room CCTV is supported by digital hard drive recording facilities. The digital recording system can retrieve images to a dedicated server or to an external device. [amend if not accurate for the cameras in question.]

### **8.2. Identifying and recording discs and images**

All video, still photographs and printed images downloaded onto digital media as per section 6.5 above, will be uniquely identified. All activities relating to each digital media - for instance, the date and time of recording, purpose of viewing, the copies taken, whether retained - will be recorded for evidence. For images recorded digitally, all identifying retrieval dates and times will be recorded.

### **8.3. Logs**

A log will be maintained within the Control Room containing details as to the dates when the tape/disk/photograph/print was introduced into the system or created and when it was disposed of. An entry will be made in the log of any dates the tape/disk/photograph/print was removed from the control room, together with the identity of the person removing it and the reason for such removal.

## 8.4. Retention reassurance and disposal

Unless required for evidential purposes or the investigation of crime or otherwise required by law, recorded images will be retained for no longer than **30 days** from the date of recording. At the end of this retention period, all images on discs or digital media will be erased and securely disposed of as confidential waste. All still photographs, and hard copy prints also will be securely disposed of as confidential waste. Such erasure and disposal will be logged by the Control Room.

## 8.5. Accuracy

Features such as the location of the camera and/or date and time reference will be accurate.

# 9. Digital recording procedures

## 9.1. Requests to view or copy images

Requests to view or copy CCTV images will be considered on a case-by-case basis by the Head of Service IT and **[relevant manager/s]**. If access is denied the reasons should be documented in the Control Room.

## 9.2. Requests from the Police or law enforcement agencies

Requests from the Police or other law enforcement agencies may arise for several purposes, including:

- For the prevention or detection of a crime.
- For the apprehension or prosecution of offenders.
- For the assessment or collection of any tax or duty or any imposition of a similar nature.
- For immediate action relating to live incidents, e.g. an immediate pursuit.
- For, or in connection with, any legal proceedings (including prospective legal proceedings).
- Is otherwise necessary for the purposes of establishing, exercising or defending legal rights.
- For major incidents that may occur.

## 9.3. Guidance on how to deal with requests from the Police or law enforcement agencies

All requests from law enforcement agencies should be addressed to the Head of Legal Services and **[relevant manager/s]**.

Law enforcement agencies should provide appropriately authorised data disclosure forms which establish their identity and the purposes for which they require the disclosure.

## 9.4. Data subject access

Access to recorded images by data subjects will be dealt with in accordance with section 10 below.

## 9.5. Third party access

Access by other third parties to recorded images will be dealt with under the Freedom of Information (Scotland) Act 2002 and should be addressed to [foi@orkney.gov.uk](mailto:foi@orkney.gov.uk).

## 9.6. Access to recorded images

Access to recorded images will be restricted to only those staff concerned with the purposes set out in section 2 and will be documented by the Control Room.

## 9.7. Security of recorded images

It is the responsibility of the Head of Service and [relevant manager/s] to ensure that the method used to disclose images is secure.

## 10. Use of CCTV for Covert Surveillance

The Council's CCTV systems are normally used for purposes of overt surveillance, with signage advertising the existence of the cameras. However, on some occasions, the Council may wish to use the CCTV systems in order to undertake surveillance of specific individuals. Where CCTV cameras are to be used in a covert and pre-planned manner as part of a specific investigation or operation, for the surveillance of a specific person or group of people, the Head of Legal Services must be informed and he or she will consider whether a directed surveillance authorisation is required. Such covert surveillance is likely to result in the obtaining of private information about a person (namely, a record of their movements and activities) and therefore falls properly within the definition of directed surveillance.

The Police may also wish to use the Council's CCTV for covert surveillance. Such requests from the Police must be directed to the Head of Legal Services or his/her nominated depute who will scrutinise the circumstances of the request and advise whether an application for authorisation of directed surveillance is required. If the request is urgent and neither the Head of Legal Services nor his/her nominated depute are available, the matter shall be referred to the CCTV manager who shall satisfy themselves whether a directed surveillance authorisation requires to be submitted in terms of the Council's Procedure for Authorisation of Covert Surveillance and paragraph 3.36 of the Scottish Government's Code of Practice on Covert Surveillance and Property Interference

<https://www.gov.scot/publications/covert-surveillance-property-interference-code-practice/>

The CCTV manager shall, as far as reasonably practicable, have an opportunity to view any authorisation granted, suitably redacted if necessary, and ensure that the use of the CCTV is within the terms and extent of any authorisation granted.

## 11. Rights of individuals

### 11.1. Accessing personal data

The Council is obliged to supply individuals with their personal data under Data Protection legislation. Individuals wishing to access their personal information contained within CCTV images should in the first instance apply for a data subject access. Details of how to do this is on the Council's [website](#) under Data Protection Policy.

## 12. Complaints

The Head of Service is responsible for the operation of the CCTV system, and compliance with this Code. Any concerns in respect of the system's use or regarding compliance with this Code should be addressed to the Head of Service [and relevant manager/s].

## 13. Contacts

13.1. [relevant manager/s].

13.2. George Vickers, Information Governance Officer, extension 2162, Email [george.vickers@orkney.gov.uk](mailto:george.vickers@orkney.gov.uk)

# Protocol for Online Social Media Research in Child Protection Cases

## 1. Introduction

### 1.1.

Whilst much of the work undertaken by social workers is not in pursuance of the prevention or detection of crime, and is not within the purview of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA), research conducted online on social networking sites and the like in the interests of the child may still engage an individual's rights under Article 8 of the European Convention of Human Rights (right to respect for one's private and family life).

### 1.2.

This should be considered by staff prior to conducting any research online in ensuring that such Article 8 rights are not infringed by any online research conducted in child protection cases.

### 1.3.

As a result, the following authorisation process should be followed where online research in relation to any individual is considered necessary in the interests of child protection. The process is based on that used for seeking an authorisation in terms of RIPSA. A documented decision trail will ensure that parameters are set, both to avoid any interference with Convention rights which is or may be disproportionate to the legitimate aim pursued, and for the protection of individual employees.

## 2. The Authorisation Process

### 2.1.

Applications to conduct online research in child protection cases will be authorised by the Executive Director, Orkney Health and Care or in their absence the Head of Legal Services. In urgent or exceptional circumstances written or oral authorisation might be given by an officer of Chief Officer grade who has not been designated which should as soon as practicable be followed up by a written authorisation from the relevant official.

### 2.2.

Authorising officers within the meaning of this procedure should avoid authorising their own activities wherever possible and only do so in exceptional circumstances.

### **2.3.**

All applications to conduct online research in child protection cases will be made on a pro forma template produced for this purpose. The applicant in all cases should complete this. In urgent cases the authorising officer may give an oral authorisation. A statement that the authorising officer has expressly granted the authorisation should be recorded on the form or, if that is not possible, in the applicant's notebook or diary. This should be done by the person to whom the authorising officer spoke (normally the applicant) but should later be endorsed by the authorising officer. The authorising officer should write out a separate authorisation as soon as practical.

### **2.4.**

All applications for renewals of online research in child protection cases will be made on a pro forma template form. The applicant in all cases should complete this where the online research requires to continue beyond the previously authorised period (including previous renewals). The renewal of the authorisation should be considered and signed by the authorising officer.

### **2.5.**

Where authorisation ceases to be either necessary or appropriate the authorising officer will cancel an authorisation using a pro forma template form submitted by the applicant.

### **2.6.**

Forms will be available from the Council Intranet.

### **2.7.**

Any person giving an authorisation for online research to be carried out in child protection cases must be satisfied that:

- Account has been taken of the likely degree of intrusion into the privacy of persons other than those directly implicated in the research ('collateral intrusion'). Measures must be taken, wherever practicable, to avoid unnecessary intrusion into the lives of those affected by collateral intrusion.
- The authorisation is necessary (see below).
- The authorised online research is proportionate (see below).

### **2.8. Necessity**

Online research for child protection purposes shall only be undertaken where an authorisation is necessary for the protection of children / a child.

### **2.9. Effectiveness**

Online research shall be undertaken only by suitably trained or experienced employees, or under their direct supervision.

## 2.10. Proportionality

The use of online research shall be proportionate to what is sought to be achieved by carrying it out. Further there must be no reasonable and effective way of achieving the desired objective(s).

A potential model answer would make clear that the following elements of proportionality had been fully considered:

- Balancing the size and scope of the research against the gravity and extent of the perceived mischief.
- Explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others.
- That the activity is an appropriate use of the legislation and the only reasonable way, having considered all others, of obtaining the necessary result.
- Providing evidence of other methods considered and why they were not implemented.

## 2.11. Authorisation

### 2.11.1.

All online research in child protection cases shall be authorised in accordance with this procedure.

The authorising officer must take into account the following issues when considering an application:

- Who is to conduct the research.
- What is being proposed.
- Where and when the proposed research will take place.
- Whether it is necessary and proportionate.

### 2.11.2.

Underlying all of these considerations is the requirement for the authorising officer to be satisfied that the terms of the legislation and relevant guidance are met.

### 2.11.3.

The case for the authorisation should be presented in the application in a fair and balanced way. In particular, all reasonable efforts should be made to take account of information which supports or weakens the case for the authorisation.

### 2.11.4.

The authorising officer should clearly complete the “Authorising Officer’s Statement” on the application form, preferably in their own hand, and articulate in their own words what activity they are authorising.

**The Authorising Officer must state explicitly what is being authorised.**



**2.11.5.**

The Authorising Officer must describe and specify what they are granting. This may or may not be the same as requested by the applicant. For the benefit of those operating under the terms of an authorisation, or any person who may subsequently review or inspect an authorisation, it is essential to produce, with clarity, a description of that which is being authorised (i.e. who, what, where, when and how). The Authorising Officer should as a matter of routine state explicitly and in their own words what is being authorised, and against which subjects.

**2.11.6.**

Mere reference to the terms of the application is inadequate. The Authorising Officer should specify the details of how and why they consider the application to be both necessary and proportionate.

**Authorisation different from application.****2.11.7.**

If an application fails to include an element in the proposed activity which in the opinion of the Authorising Officer should have been included, or which is subsequently requested orally by the applicant, it may be included in the authorisation; if so, a note should be added explaining why. Conversely, if an Authorising Officer does not authorise all that was requested, a note should be added explaining why.

**2.11.8.**

Applications for online research in child protection cases that may result in the acquisition of knowledge of matters subject to legal privilege should state whether the research is likely or intending to obtain knowledge of matters subject to legal privilege. Where online research is likely or intended to result in the acquisition of knowledge of matters subject to legal privilege, an authorisation shall only be granted or approved if the authorising officer is satisfied that there are exceptional and compelling circumstances that make the authorisation necessary.

**2.11.9.**

Where the online research is not intended to result in the acquisition of knowledge of matters subject to legal privilege, such exceptional and compelling circumstances may arise in the interests of preventing or detecting serious crime.

**3. Time Periods – Authorisations****3.1.**

Urgent oral authorisations granted by a person who is entitled to act only in urgent cases unless renewed, cease to have effect after seventy-two hours, beginning with the time when the authorisation was granted or renewed.

### **3.2.**

A written authorisation granted by an authorising officer will cease to have effect (unless renewed) at the end of a period of three months beginning with the day on which it took effect.

## **4. Time Periods – Renewals**

### **4.1.**

If at any time before an authorisation would cease to have effect, the authorising officer considers it necessary and proportionate for the authorisation to continue for the purpose for which it was given, the authorisation may be renewed in writing for a further period of three months. Renewals may also be granted orally in urgent cases and last for a period of seventy-two hours. Applications should only be made shortly before the authorisation is due to expire.

### **4.2.**

Any person entitled to authorise may renew authorisations. They may be renewed more than once, provided they continue to meet the criteria for authorisation.

## **5. Review**

### **5.1.**

The Authorising Officer shall keep all authorisations under constant review and an authorisation will be cancelled immediately the requirement for the online research ceases. The Authorising Officer should set review dates and ensure that all reviews are carried out with the review period tailored to meet the particular requirements of the investigation. Details of the review and the decision reached shall be noted on the Review Form.

### **5.2.**

During a review, the authorising officer who granted or last renewed the authorisation may amend specific aspects of the authorisation, for example, to cease online research against one of a number of named subjects.

### **5.3.**

In each case, the frequency of reviews should be determined by the Council. This should be as frequently as is considered necessary and proportionate.

### **5.4.**

In the event that there are any significant and substantive changes to the nature of the operation during the currency of the authorisation, the Council should consider whether it is necessary to apply for a new authorisation.

## **6. Cancellation**

### **6.1.**

Those acting under an authorisation must keep their authorisations under review and notify the authorising officer if they consider that the authorisation is no longer necessary or proportionate, and so should therefore be cancelled.

### **6.2.**

The authorising officer and the applicant must cancel an authorisation if he/she is satisfied that the online research no longer satisfies the criteria for authorisation.

## **7. Record Keeping**

Orkney Health and Care must maintain a record of all applications for authorisation (including refusals), renewals, reviews and cancellations.

## **8. Security and Retention of Documents**

### **8.1.**

Documents created under this procedure are highly confidential and shall be treated as such. Orkney Health and Care shall make proper arrangements for their retention, security and destruction, in accordance with the requirements of all relevant data protection legislation.

### **8.2.**

The Authorising Officer shall retain the original Authorisation and Renewal Forms until cancelled.

### **8.3.**

The Authorising Officer shall retain the copy forms for at least one year after cancellation.

## Document Control Sheet

### Review / Approval History

Date	Name	Position	Version Approved
11 May 2020	Gavin Mitchell	Head of Legal Services	1.0

### Change Record Table

Date	Author	Version	Status	Reason

## Minute

### Staff Appeals Sub-committee

Tuesday, 11 February 2020, 10:30.

Committee Room 1, Council Offices, School Place, Kirkwall.



### Present

Councillors W Leslie Manson, Robin W Crichton, Steven B Heddle, John T Richards, Graham L Sinclair and Duncan A Tullock.

### Clerk

- Gavin Mitchell, Head of Legal Services.

### In Attendance

- Andrew Groundwater, Head of HR and Performance.
- Hazel Flett, Senior Committees Officer.
- Management Representative (for Item 2.2).

### Apologies

- Councillor Gwenda M Shearer.
- Councillor James W Stockan.

### Declarations of Interest

- No declarations of interest were intimated.

### Chair

- Councillor W Leslie Manson.

## 1. Exclusion of Public

On the motion of Councillor W Leslie Manson, seconded by Councillor John T Richards, the Sub-committee resolved that the public be excluded for the remainder of the meeting, as the business to be considered involved the disclosure of exempt information of the class described in the relevant paragraph of Part 1 of Schedule 7A of the Local Government (Scotland) Act 1973 as amended.

## **2. Appeal Against Dismissal**

As the meeting was convened for one item only, Councillors Gwenda M Shearer and James W Stockan had tendered their apologies as they had not been involved in previous discussions at the Sub-committee regarding this appeal and, accordingly, in terms of Standing Order 31, they could not take part in the discussion thereof.

### **2.1. Procedural Matters**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 7A of the Act.

After consideration of a report by the Executive Director of Corporate Services, copies of which had been circulated, and after hearing a report from the Head of Legal Services, the Sub-committee:

Noted:

**2.1.1.** The options available to the Sub-committee in respect of the outstanding appeal against dismissal, as detailed in section 4 of the report by the Executive Director of Corporate Services.

The Sub-committee resolved, in terms of delegated powers:

**2.1.2.** That the outstanding appeal against dismissal be heard.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **2.2. Hearing**

Under section 50A(4) of the Local Government (Scotland) Act 1973, the public had been excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 1 of Part 1 of Schedule 7A of the Act.

Following conclusion of its deliberations, the Sub-committee:

Resolved, in terms of delegated powers, what action should be taken with regard to an appeal against dismissal.

**The above constitutes the summary of the Minute in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

## **3. Conclusion of Meeting**

At 11:40 the Chair declared the meeting concluded.

Signed: L Manson.

Appendix 13.

## **Governance Arrangements**

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Resolved that, under section 50A(4) of the Local Government (Scotland) Act 1973, the public were excluded from the meeting for this item on the grounds that it involved the disclosure of exempt information as defined in paragraph 1 of Part I of Schedule 7A of the Act.

**This constitutes a summary of the Appendix in terms of the Local Government (Scotland) Act 1973 section 50C(2) as amended by the Local Government (Access to Information) Act 1985.**

### **Local Government (Scotland) Act 1973 – Schedule 7A**

#### **Access to Information: Descriptions of Exempt Information**

Paragraph 1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office holder, former office-holder or applicant to become an office-holder under, the authority.