



Walsall Council

You are hereby summoned to attend a meeting of the Council of the Metropolitan Borough of Walsall to be held on **MONDAY the 3rd day of October 2022 at 6.00 p.m.** at the Council House, Walsall.

Public access via: <https://aisapps.sonicfoundry.com/AuditelScheduler/CreateSchedules/Past/41>

Dated this 23rd day of September, 2022.

Yours sincerely,

Chief Executive.

The business to be transacted is as follows:

1. To elect a person to preside if the Mayor and Deputy Mayor are not present.
2. Apologies.
3. To approve as a correct record and sign the minutes of the meeting of the Council held on 23rd May, 2022 (**pages 7 to 20**)
4. Declarations of interest.
5. **Local Government (Access to Information) Act, 1985 (as amended):**
To agree that the public be excluded from the private session during consideration of the agenda items indicated for the reasons shown on the agenda.
6. Mayor's announcements.

7. To receive any petitions
8. To answer any questions in accordance with Council procedure rules:
 - (a) From the public:

Bobbi Owen – Black Country Plan

Can council confirm that any recommendation for the Black Country Plan from the Scrutiny Meeting of the 10th November could be incorporated in Regulation 19 before the Black Country Plan is submitted for Public Examination or does a decision at Cabinet on the 19th October preclude that?

- (b) From members of the Council:

Councillor Pete Smith – Resilience within Communities

Would the appropriate Portfolio Holder join me in;

- a) thanking the several Community Associations and other Community Groups across the Borough that have been and still are working in partnership with Walsall Council to address the difficulties that residents, especially vulnerable residents have endured due to Covid and could endure due to Cost of Living problems especially around fuel and food poverty and the difficulty that many may have in being able to access help via the internet

and
- b) Giving a brief outline of some of the splendid work that these organisations have been doing and are prepared to do in the future, in order to give vulnerable individuals and local communities the capacity for greater resilience as we go forward?

Councillor Pete Smith – School Uniform Policies

Given that Statutory guidance from the Department for Education on the Cost of School Uniforms was published on 19th November 2021 under the Education (Guidance about Costs of School Uniforms) Act 2021 and that this Act requires the appropriate authorities of relevant schools to have regard to this guidance when developing and implementing their school's uniform policy, including local authorities, and further given that the main Points of the Guidance are as follows:

- Parents should not have to think about the cost of a school uniform when choosing which school(s) to apply for. Therefore, schools need to ensure that their uniform is affordable.

- In considering cost, schools will need to think about the total cost of school uniforms, taking into account all items of uniform or clothing parents will need to provide while their child is at the school.
- Schools should keep the use of branded items to a minimum.
- A school's uniform policy should be published on the school's website, be available for all parents, including parents of prospective pupils, and be easily understood.
- Schools should ensure that their uniform supplier arrangements give the highest priority to cost and value for money (including the quality and durability of the garment).
- Single supplier contracts should be avoided unless regular tendering competitions are run where more than one supplier can compete for the contract and where the best value for money is secured. This contract should be re-tendered at least every 5 years.
- Schools should ensure that second-hand uniforms are available for parents to acquire. Information on second-hand uniforms should be clear for parents of current and prospective pupils and published on the school's website.
- Schools should engage with parents and pupils when they are developing their school uniform policy.

Can the appropriate Portfolio holder inform me, this Council and the public, of the extent to which local authority controlled schools have, in the light of this recent Government guidance, made changes to the development and implementation of their Schools' Uniform policies as well as the extent to which the local authority can influence Academy Trusts to do likewise?

Councillor Pete Smith – Working Arrangements

Given that whilst it may be the case for some that “work is what you do, not where you do it from” but also given that for many other public sector workers as well as arguably large sections of Walsall residents (and Council tax payers) “work is not just what you do but where you do it from”, would you share with me, this Council and the public, information on the following question, in 5 sub-sections:

- a) How many Council employees worked entirely from the Council House/Civic Centre before Covid caused a re- think?
- b) How many Council employees presently work entirely from the Council House/Civic Centre?
- c) How many Council employees work entirely from home?

- d) How many Council employees work from a mixture of home and The Council House/Civic Centre?
- e) How many Council employees work on site, at their place of work, due to the impracticability of working from home due to the nature of their work?

Councillor Richard Worrall – Commonwealth Games

Could the Portfolio Holder explain to Council how it was that, of all seven West Midlands Metropolitan Districts, only Walsall did not host any competitive Commonwealth Games events, and what permanent legacy projects are proposed, so that the people of Walsall have significant lasting benefit from the unique opportunity provided by the 2022 Commonwealth Games?

- 9. Amendments to Planning and Building Control delegations under Part 3.5 of the Council's Constitution and adoption of Policy and Guidance to mitigate the impact of new residential development in respect of the Cannock Chase Special Area of Conservation.

Report **Enclosed (Pages 21 to 60)**

- 10. To confirm the following recommendations of **Cabinet**:

Surveillance and Access to Communications Data

- 1. That the use of the Regulation of Investigatory Powers Act 2000 for the years ending 31 March 2018, 31 March 2019, 31 March 2020, 31 March 2021 and 31 March 2022 and is assured by the Executive Director Economy Environment and Communities, as the Council's Senior Responsible Officer for this legislation, that usage is consistent with the Council's Policy and Procedures, be noted;
- 2. That the draft Corporate Policy and Procedures on the Regulation of Investigatory Powers Act 2000, be approved;
- 3. That the Executive Director Economy Environment and Communities be delegated authority to make administrative amendments to the policy as part of the report to Council.

(Note: Report to Cabinet held on 7th September, 2022 reproduced for this meeting **(pages 61 to 135)**)

- 11. Committee appointments

To confirm that Councillor Samra be appointed Vice Chair of Licensing for the remainder of the municipal year.

To note that Councillor Nawaz has become a member of the Audit Committee for the remainder of the municipal year.

12. **Portfolio holder briefings.** To receive a 5 minute presentation from the following portfolios:

- Leader of the Council - Councillor Bird (**pages 136 to 145**)
- Education and Skills – Councillor Mark Statham (**pages 146 to 158**)

(Note: A member of the Council may ask the portfolio holder any question and another associated question without notice upon each report. Questioning by members is limited to 10 minutes for each report presented.)

13. To consider the following motion, notice of which has been duly given by **Councillor Nawaz and Councillor Hussain.**

That this Council:

- Recognises that due to the decision of the current administration to close the Councils 'First Stop Shop' residents are unable to access much needed face to face support for issues including housing benefit, council tax, planning issues, taxi licensing issues and homelessness, leading to inconvenience and distress for many; and
- Understands that many residents are unable, for various reasons, to access the Councils Services by electronic means and that many residents are still coming to the Civic Centre to access the One Stop Shop.

This Council urges the current administration to reconsider its decision to close this much needed facility and to reinstate some form of 'face to face' access, within the First Stop Shop for the borough's residents.

14. To consider the following motion, notice of which has been duly given by **Councillor Nawaz and Councillor Hussain.**

This Council:-

- Recognises that the continued increases in the cost of energy will impact upon Walsall's already tight school budgets;
- Notes that this increase must be met within existing schools budgets;
- Is concerned that the education of our borough's children may be affected as schools have to spend more of their budgets on energy costs.

This council calls upon the Leader to write to the relevant Government Minister to request that specific ringfenced funding be made available to meet the increased cost of energy for schools.

15. To consider the following motion, notice of which has been duly given by **Councillor Smith.**

This Council is aware that given the increasing and likely ongoing cost of living problems especially for those on lower incomes and others with problems that put them at a disadvantage, there is an understandable corresponding increase in the demand and expectation for help, assistance or advice, not just via online help but face to face help, by large numbers of our Borough's residents.

This Council is also aware that thousands of its local residents will not have access to, or the ability to use, a computer and/or the internet, especially, though not exclusively, older generation residents, residents with certain learning difficulties, those who are on the lowest incomes and those who are inadequately housed or homeless.

This Council is further aware that following the closure of the Council's One Stop Shop at the Civic Centre due to Covid, there is now no official Council office anywhere in the Borough for residents of its 104,000 plus households to go to, to seek Council help or advice on Council related matters of concern to them, such as concerns over Council tax, Benefits, food poverty, fuel poverty, cost of living issues, Blue Badges and other disability issues, Planning matters, etc. etc.

The Council is also aware that its drive to save money (predominantly due to the government controlled system that funds local Councils) has been through more digital technology which simply translated means possibly greater convenience and possibly monetary savings to the Council but greater difficulties and social costs for those referred to in the last paragraph, as well as greater reliance by the Council on the Community Centres and Hubs that are now increasingly being called upon to take on the extra work generated by the Cost of living crisis, especially more so now that the One Stop Shop at the Civic Centre is closed to the public.

Therefore this Council, as a matter of urgency calls on its Leader and Cabinet to work with their Executive Directors to address this concerning issue by either re- opening the One –Stop- Shop at the Civic Centre and/or working out a fully funded strategy of partnership with local Community Organisations & Hubs to help plug the increasing disconnect that is taking place between a growing number of our Borough's local residents and their Council.

Minutes of the **ORDINARY MEETING** of the Council of the Walsall Metropolitan Borough held on **Monday 23rd May, 2022, at 6.00 p.m.** at the Council House, Walsall.

Present

Councillor R. Burley (Mayor) in the Chair

Councillor G. Ali

“ B. Allen
 “ A. Andrew
 “ B. Bains – Adj Cll
 “ H. Bashir
 “ M.A. Bird
 “ C. Bott
 “ P. Bott
 “ S. Cheema
 “ A.G. Clarke
 “ S.J. Cooper
 “ C. Creaney
 “ S.K. Ditta
 “ S. Elson
 “ K. Ferguson
 “ G. Flint
 “ M. Follows
 “ N. Gandham – Adj Cll
 “ A. Garcha
 “ N. Gultasib
 “ A. Harris
 “ L.A. Harrison
 “ A.J. Hicken
 “ C. Horton
 “ A. Hussain
 “ K. Hussain
 “ S. Hussain
 “ D. James
 “ S. Johal – Adj Cll

Councillor T. Jukes

“ P. Kaur
 “ R. Larden
 “ E. Lee
 “ Mrs. R.A. Martin
 “ F. Mazhar
 “ R. K Mehmi
 “ K. Murphy
 “ J. Murray
 “ S. Nasreen – Adj Cll
 “ A.A. Nawaz
 “ A. Nazir
 “ K. Pedley
 “ G. Perry
 “ W. Rasab
 “ L.J. Rattigan
 “ S. Samra
 “ K. Sears
 “ G. Singh Sohal
 “ P. Smith
 “ C.A. Statham
 “ M.A. Statham
 “ C.D.D. Towe
 “ V.J. Waters
 “ J. Whitehouse
 “ T.S. Wilson
 “ R.V. Worrall
 “ A. Young

1. **Welcome to new members**

The Mayor extended a welcome to the newly elected members of the Council – Councillors Amandeep Garcha, Bobby Bains, Shakila Hussain, Tina Jukes, Connor Horton, Izzy Hussain, Ram Mehmi, Rob Larden and Simran Cheema.

2. **Apologies**

Apologies were received on behalf of Councillor B. Bains, N. Gandham, I Hussain, S. Johal, and A. Underhill.

****Note:** Councillors Bains, Johal, Gandham and Nasreen joined the adjourned meeting on 25th May, 2022*

3. **Election of Mayor 2022/23**

It was **moved** by Councillor Perry and seconded by Councillor Bird:

That Councillor Rose Martin be elected Mayor of this Borough for the municipal year 2022/23.

On being put to the vote the motion was declared carried and it was:

Resolved

That Councillor Rose Martin be elected Mayor of this Borough for the municipal year 2022/23.

The Council adjourned to enable the Mayor to put on the robes and chain.

Councillor R. Martin (Mayor) in the Chair

The Mayor read and signed her Declaration of Acceptance of Office and thanked the Council for the honour conferred upon her. In doing so, the Mayor paid tribute to former Councillor Sarohi, who, due to his sad passing was unable to become Mayor himself this year. The Mayor noted that, as many knew, Councillor Sarohi was a kind and caring gentleman that was missed by many.

4. **Appointment of Deputy Mayor 2022/23**

It was **moved** by Councillor Andrew and seconded by Councillor Bird:

That Councillor Christopher Towe be appointed Deputy Mayor of this Borough for the municipal year 2022/23.

On being put to the vote the motion was declared carried and it was:

Resolved

That Councillor Christopher Towe be appointed Deputy Mayor of this Borough for the municipal year 2022/23.

5. **Minutes**

Resolved

That the minutes of the meeting held on 25th April, 2022, a copy having been sent to each member of the Council, be approved as a correct record.

6. **Declarations of interest**

None.

7. **Local Government (Access to Information) Act, 1985 (as amended)**

There were no items to be considered in private session.

8. **Mayor's announcements**

(a) **Mayor's Chaplain**

The Mayor stated that the The Reverend Alison Morris from St. Michael and All Angels Pelsall would be her Chaplain during his year of office.

(b) **Mayor's Civic Service**

The Mayor said that a Civic Service would be held in December, 2022 and intertwined with a Civic Carol Service. Members would be informed of the date once agreed.

(c) **Charities**

The Mayor announced that monies raised during her year of office would be donated to The Manor Trust, NHS, Well Wishers Charity, Walsall Community Network and FastAid Walsall.

9. **Presentation of badges to retiring Mayor and Mayoresses**

The Chief Executive presented badges to the retiring Mayor and Mayoress, Councillor Burley, Maria Micallef and Jade Micallef.

10. **Adjournment**

It was **moved** by the Mayor, duly seconded and:

Resolved

That the Council adjourn until 6.00 p.m. on Wednesday 25th May, 2022.

The meeting adjourned at 6.53 p.m.

Meeting reconvened at 6.00 p.m. on Wednesday 25th May 2022

The Mayor reminded the meeting that 2 hours 7 minutes remained for business to be transacted.

**Note: Councillors C. Bott, P. Bott, A.G. Clarke, I. Husain, W. Rasab and A. Underhill were not in attendance.*

11. **Election results – 5th May 2022**

The report was submitted.

Resolved

That the report be noted.

12. **Formation of political groups**

The report of the Chief Executive was circulated around the Council Chamber.

Resolved

That the receipt of returns from political groups be noted.

13. **Members appointed to the Executive**

A schedule of portfolio responsibilities was submitted.

Resolved

That the following Cabinet responsibilities for the municipal year 2022/23 be noted:

Description of portfolio	Names of portfolio holder
<p>Leader of the Council</p> <p><i>Council Plan Vision: Inequalities are reduced and all potential is maximised. Together we are committed to developing a healthier, cleaner and safer Walsall and creating an environment that provides opportunities for all residents, communities and businesses to fulfil their potential and thrive.</i></p> <p>Overall responsibility for Council strategy, the Council Plan, Proud Way of Working, communications and public relations, emergency planning, government relations and liaison with local MPs and West Midlands leaders. West Midlands Combined Authority, Association of Black Country Authorities and Black Country Joint Committee. Transformation and digital (incl. Information Governance). Financial vision and strategy. Finance including payroll and pensions, insurance, risk management, financial reporting, policy led budgeting and MTFO. Financial Regulations, Audit, Counter Fraud and Corruption, Treasury Management, financial systems, external funding Legal and Democratic Services, Performance. Member Development. Governance, Business Insights (intelligence), Policy and Strategy Unit.</p>	<p>Cllr Mike Bird</p>
<p>Deputy Leader and Regeneration</p> <p><i>Supporting a dynamic, resilient and diverse economy where businesses invest and everyone has the right jobs and the right housing in the right place.</i></p> <p>Statutory Deputy Leader as required by Schedule A1 of Local Government Act 2000</p> <p>Economic development, physical development, markets, property and strategic asset management, Black Country Consortium, sub regional regeneration issues. Town and district centres, planning policy and local development framework. Strategic housing role. Traffic and transportation, car parks, strategic transport and highways. Business liaison. Programme Delivery.</p>	<p>Cllr Adrian Andrew</p>

<p>Deputy Leader and Resilient Communities</p> <p><i>Children and young people grow up in connected communities and feel safe everywhere</i></p> <p><i>Our communities will be more resilient and supportive of each other</i></p> <p>Oversight role for all Cabinet portfolios;</p> <p>Resilient Communities including Locality co-ordination, community development, engagement and consultation, community associations, voluntary and community sectors, Community Safety, community cohesion, Safer Walsall Partnership, public protection. Leisure and culture services including the New Art Gallery, libraries, sports and museums. Cemeteries and crematoria.</p>	<p>Cllr Garry Perry</p>
<p>Education and Skills</p> <p><i>Education, training and skills enable people to contribute to their community and our economy</i></p> <p>Schools and education services, interagency cooperation, involvement of children and young people, special educational needs, disabilities and inclusion. Adult learning.</p>	<p>Cllr Mark Statham</p>
<p>Adult Social Care</p> <p><i>People can access support in their community to keep safe and well and remain independent at home</i></p> <p>Care services for older people and people with learning disabilities, people with physical disabilities and people with mental health needs, health partnership, commissioning and CCG/health interface lead supporting people, protection for vulnerable adults, transition arrangements between Children's and Adult Social Care.</p>	<p>Cllr Keir Pedley</p>
<p>Clean and Green</p> <p><i>The people of Walsall feel safe in a cleaner, greener Borough</i></p> <p>Gateways and corridors, pollution control, waste strategy, refuse collection, recycling, street cleaning, parks (maintenance) and the Council's vehicle fleet.</p>	<p>Councillor Kerry Murphy</p>

<p>Children's</p> <p><i>Children and young people thrive emotionally, physical, mentally and feel they are achieving their potential</i></p> <p>Statutory role as Lead Member for Children's Services</p> <p>Services for children in need of help and protection, children looked after and care leavers, early help, involvement of children and young people, transition arrangements between Children's and Adult Social Care and Walsall children's Safeguarding board, Chair of Corporate Parenting Board</p>	<p>Cllr Tim Wilson</p>
<p>Customer</p> <p><i>The Council will deliver trusted, customer focused, and enabling services which are recognised by customers and our partners for the value they bring</i></p> <p>Customer Experience Centre, Customer Access Management, Revenues and Benefits, Housing and Welfare, Housing Standards and Improvement, Migrant Support</p>	<p>Cllr Gaz Ali</p>
<p>Internal Services</p> <p><i>We get things right, first time and make all services accessible and easy to use.</i></p> <p>HR, Organisation Development. Learning and development, workforce equalities, procurement, Corporate Landlord including facilities and general asset management, catering, cleaning, caretaking. Admin and Business Support. Workforce.</p>	<p>Cllr Ken Ferguson</p>
<p>Health and Wellbeing</p> <p><i>People are supported to maintain or improve their health, wellbeing and quality of life</i></p> <p>Public Health functions and activities including commissioning services that affect the long term health of residents. Health protection for local outbreak management, infection prevention and control, immunisation. Healthy Spaces. Mental and emotional wellbeing.</p> <p>Chair of Health & Wellbeing Board.</p>	<p>Cllr Gary Flint</p>

14. **Constitution, Officer Scheme of Delegation and timetable of meetings 2022/23**

A report was submitted [annexed].

It was **moved** by Councillor Bird, seconded by Councillor Andrew and:

Resolved

1. The proposed amendments to the Constitution (**appendix 1**), Officer Delegations (**appendices 2 and 3**) and timetable of meetings for the 2022/23 municipal year (**appendix 4**), be approved; and
2. That the Director of Governance be authorised to make minor and/or necessary changes to the Constitution

15. **Appointments to Committees**

A list of nominations from the political groups was circulated around the Council Chamber.

The list was **moved** by Councillor Bird, seconded by Councillor Andrew and:

Resolved

That the following members be appointed to Committees for the municipal year 2022/23:

Audit Committee

Councillors Bains, Elson, S Hussain, Larden, Mehmi, Singh Sohal
Sureya Ajaz (Independent member) 1 Independent member vacancy

Corporate Parenting Board

Councillors Hicken, A. Hussain, I. Hussain, Jukes, Mazhar, Wilson, Worrall.

Health and Wellbeing Board

Councillors Flint, Nawaz, Pedley, Wilson,

Licensing and Safety Committee

Councillors Bains, C. Bott, Cooper, Gandham, A. Hussain, I. Hussain, K. Hussain, Kaur, Nasreen, Nawaz, Rasab, Samra (2 vacancies).

Personnel Committee

Councillors Andrew, Bird, Elson, Garcha, Gultasib, K. Hussain, Nawaz, Towe, Whitehouse

Planning Committee

Councillors Allen, Bains, Bashir, Bird, P. Bott, Cheema, Cooper, Gandham, Harris, A. Hussain, I. Hussain, K. Hussain, Larden, Murray, Nawaz, Perry, Samra, M. Statham, Underhill, Waters

Standards Committee

Councillors Allen, Andrew, Burley, Elson, James, Lee, Kaur, Nazir, Towe, Young

Scrutiny Overview

Councillors P. Bott, Cooper Ditta, Follows, Hicken, K. Hussain, Johal, Murray, Nawaz, Samra, Singh Sohal

Children's Services Overview and Scrutiny

Councillors Garcha, Harrison, Hicken, Horton, Jukes, Kaur, Mazhar, Nasreen, Rattigan, C. Statham, Waters.

Education Overview and Scrutiny

Councillors Bains, Burley, Cheema, Ditta, Elson, A. Hussain, I. Hussain, S. Hussain, Kaur, Rattigan, Towe.

Economy and Environment

Councillors Allen, P. Bott, Creaney, Follows, Garcha, I. Hussain, Kaur, Larden, Nazir, Whitehouse, Worrall.

Social Care and Health

Councillors Clarke, Cooper, Elson, K. Hussain, Mehmi, Rasab, Rattigan, Sears, Smith, Waters, Worrall.

19. **Appointment of Chairmen and Vice-Chairmen**

A list was circulated around the Council Chamber.

It was **moved** by Councillor Bird, seconded by Councillor Andrew and:

Resolved

That the following members be appointed Chairmen and Vice-Chairmen of Committees for 2022/23:

Committee	Chair	Vice-Chair
Audit	Independent Person	Councillor Singh Sohal
Corporate Parenting Board	Councillor Wilson <i>(Portfolio Holder for Children's Services)</i>	Councillor Jukes
Health and Wellbeing Board	Councillor Flint <i>(Nominee of controlling group)</i>	<i>To be appointed by Health and Wellbeing Board</i>
Licensing and Safety	Councillor Gandham	Councillor Sears
Personnel	Councillor Bird	Councillor Perry
Planning	Councillor Bird	Councillor Perry
Standards	Councillor P. Kaur	Councillor Burley
Scrutiny Overview	Councillor J. Murray	Councillor Nawaz
Children's Services Overview and Scrutiny	Councillor Hicken	Councillor Jukes
Education Overview and Scrutiny	Councillor S Ditta	Councillor Elson
Economy and Environment Overview and Scrutiny	Councillor M Follows	Councillor Allen
Social Care and Health Overview and Scrutiny	Councillor K Hussain	Councillor Waters

20. **Appointment of representatives to outside bodies and charities**

A list was circulated around the Council Chamber.

It was **moved** by Councillor Bird, seconded by Councillor Andrew and:

Resolved

That the following members be appointed to the undermentioned bodies for the municipal year 2022/23 (unless otherwise stated):

(a) Outside bodies

Birmingham Airport Consultative Committee

Councillors Kaur and Lee

Birmingham Airport Holdings Ltd

Councillor Bird

Black Country Cluster Board (NHS)

Councillor Pedley

Black Country Commonwealth Games 2022 Steering Group

Councillor Perry

Black Country Consortium

Councillor Andrew

Black Country Partnership NHS Foundation Trust

Councillor S Hussain

Bus Lane Adjudication Service Joint Committee

Councillor Singh-Sohal

Dudley and Walsall Mental Health Partnership Trust

Councillor R K Mehmi

Forest of Mercia Advisory Group

Councillors Harrison, Murphy, A Nawaz

Investigation of Air Pollution Standing Conference

Councillor Hicken

Joint Committee for Civil Parking Enforcement of Parking and Traffic Regulations

Councillors Larden and R. K. Mehmi (Deputy)

Local Government Association – General Assembly

Councillors * Allen (allocated 2 votes), Hicken, Nawaz and K. Hussain

Project WR2 Contract Management Board

Councillor Murphy

River Trent Regional Flood and Coastal Committee

Councillors Murphy and Lee (Deputy)

Steps to Work (Walsall) Limited

Councillor Martin

Walsall Citizens Advice Bureau

Councillors Rattigan and S. Hussain

Walsall Museum and Art Galleries Development Trust

Councillor Follows

Walsall Society for the Blind

Councillor Towe and Jukes

West Midlands Combined Authority Board

Councillors Bird, Andrew (Sub), R Burley, K Hussain (Sub)

West Midlands Combined Authority – Overview and Scrutiny Committee

Councillor Waters, *(Vacant – Sub)

West Midlands Combined Authority – Audit, Risk and Assurance Committee

Councillor R Mehmi, *(Vacant – Sub)

West Midlands Combined Authority – Transport Delivery Committee (£)

Councillor Singh Sohal, R Worrall

WMCA Investments Board

Councillor Bird

WMCA Public Service Perform Board

Councillor Flint

WMCA Strategic Economic Development Board

Councillor Andrew

WMCA Wellbeing Board

Councillor Flint

WMCA Environment & Energy Board

Councillor Murphy

WMCA Transport Scrutiny Sub-Committee

Councillor Waters

West Midlands Fire and Rescue Authority

Councillors Waters (To answer questions on the discharge of the functions of the Fire Authority) and A. Young

West Midlands Pension Fund Committee

Councillor Underhill and x1 vacancy

West Midlands Police and Crime Panel

Councillor Samra

West Midlands Shareholders Airport Committee

Councillor Kaur, (x2 observers vacant)

West Midlands Strategic Migration Partnership Board

Councillor Nawaz

West Midlands Superannuation Committee, Investment Advisory Sub-Committee and Joint Consultative Panel

Councillors Waters and Harris

(b) Charities

Barr Beacon Trust

Councillors Bird, P. Kaur, Wilson, Bains, Andrew, Towe, Johal, Pedley, Samra and Murphy

Harper, Marsh and Crumps Almshouses

Councillor Singh Sohal

Henry Boys Almshouses

Councillor Nawaz

(c) Advisory and statutory bodies

Fostering Panel

Councillor Murphy

Standing Advisory Council for Religious Education

Councillors Pedley, M. Statham, Lee, Singh-Sohal, R K Mehmi, C Horton, F Mazhar

Walsall Admission Forum

Councillors Samra and C. Horton

The meeting terminated at 6.21 p.m.

Mayor:

Date:

Amendments to Planning and Building Control delegations under Part 3.5 of the Council's Constitution and adoption of Policy and Guidance to mitigate the impact of new residential development in respect of the Cannock Chase Special Area of Conservation.

Ward(s): All

Portfolios: All

1. Aim

- 1.1 To ensure that decision-making by officers is clear, transparent and lawful and to meet Walsall MBC's duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations) and that these decisions are executed efficiently and effectively.

2. Summary

- 2.1 The Council must ensure that it has a Scheme of Delegations which clearly sets out the delegated powers given to holders of various posts within the Council.
- 2.2 Prior to the start of each municipal year, a review of delegations is undertaken to ensure appropriateness for the forthcoming municipal year and, where appropriate, implement changes to the delegations to ensure that they comply with any internal audit recommendations, best practice requirements, or changes in legislation.
- 2.3 Audit Committee received and noted a report on the proposed amendments to planning delegations and broader constitutional changes, relating to Planning matters, on 27th June, 2022. This report has been circulated to Group Leaders and independent members for information.
- 2.4 On 7th September, 2022 Cabinet agreed to join the Cannock Chase Special Area of Conservation Partnership, adopt the Habitats Regulation Assessment and enter into a Memorandum of Understanding with the partnership. To progress this, the Council is required to adopt a mitigation Policy and Guidance to enable the assessment and implementation of mitigation upon the Cannock Chase SAC including by means of collection of financial contributions in order to meet Walsall MBC's duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regs.) to ensure that planning application decisions which have an impact on Cannock Chase SAC comply with the Habitats Regulations.

3. Recommendations

That Council:

- 3.1 Approves the amendments to the Constitution as set out in Appendix 1;
- 3.2 Approves the Policy for inclusion within the Local Plan in respect of the Cannock Chase Special Area of Conservation, as set out in Appendix 2; and
- 3.3 Approves the guidance in respect of the Cannock Chase Special Area of Conservation as set out in Appendix 3.

4. Report detail – know

- 4.1 The proposed amendments and updates to Planning and Building Control delegations reflect new and updated legislation and operational changes across the Council during the last municipal year. This has resulted in all Building Control and Strategic Planning Policy functions now sitting under the Head of Planning and Building Control in addition to High Hedge Complaints, which all formerly operated within various different service areas.
- 4.2 The proposed changes to the Constitution also take account of a suite of recommendations made in the Peer Challenge Review report based on findings of the review carried out by the Planning Advisory Service (PAS) between 3rd and 5th November 2021. The amendments aim to ensure that decisions made by Members of the Planning Committee focus on proposals of strategic and corporate importance, to help speed up the decision-making process for other applications and to provide greater certainty to, and build confidence with, applicants / developers wishing to invest in the Borough. This includes strengthening officers' existing delegations to determine all policy compliant schemes (including major proposals), to pursue any necessary enforcement action and to determine applications where there is public interest (except where a petition is lodged).
- 4.3 Planning law prescribes that planning applications must be determined in accordance with the Council's 'Development Plan' which sets out the policy basis against which development proposals are assessed. This is also embodied within the government's National Planning Policy Framework. Given that Walsall Council's currently adopted Development Plan has been previously subject to public consultation, public examination and Member engagement and endorsement at full Council, it is considered appropriate that such decisions are delegated to the Head of Planning and Building Control and that, in turn, senior officers may be empowered to determine policy compliant applications. This does not override the ability for Members to call-in a planning application to be heard before Planning Committee. Furthermore, public engagement is not affected as members of the public will still have the right to make representations as part of the statutory planning consultation process on individual planning applications and to speak on an item presented at a Planning Committee meeting.
- 4.4 The service area has consulted with the Leader and Deputy Leader on the PAS findings and resulting proposed changes to the Constitution and the improvements to planning processes. Officers have also briefed Members on the Peer Challenge

Review findings and recommendations, including the overarching aims of the delegation review which intends to increase officer delegation and to provide a greater focus on strategic proposals presented at Planning Committee.

- 4.5 Proposed changes to the Member call-in procedure also reflect the Peer Challenge findings and recommendations to provide a greater focus on strategic proposals presented at Planning Committee. The updated call-in form already requires material planning reason(s) for the call-in to be selected from a pre-defined list and the changes to the delegation reflect this, whilst also setting a clear 28 day period for receipt of the completed form from the start of public consultation. This aims to improve the customer experience in terms of timeframes.
- 4.6 Proposed changes to public speaking include clarification on the ability to speak on an item which has been deferred from a previous meeting. Where speakers have already addressed the committee at a previous meeting, they will only be entitled to address the committee again on any new material planning matters arising as part of any significant changes made to a proposal. This is because matters previously raised and discussed will have already been considered and addressed and should not be re-opened for further debate. This ensures that speaking and debate is focussed on the points at hand.
- 4.7 In response to the PAS review, a number of other Councils' constitutions were reviewed. A number of helpful and important points around code of conduct and Member engagement were identified within Birmingham City Council's constitution, specifically in relation to planning which are considered directly relevant and applicable to Walsall. Where appropriate, the constitution in relation to planning delegations has been amended and updated in regard to these matters to offer increased probity, clarity and transparency to the process, to better safeguard the Council against potential future challenge, including Judicial Review.
- 4.8 The report to Scrutiny Overview Committee on 9 November 2021 set out the agreed process in relation to Ward Member engagement on the potential areas of spend of secured contributions within a Section 106 agreement. This process will remain, and is not affected by the proposed changes. Officers will aim to secure the policy compliant level of Planning Obligations in relation to development proposals, and where this cannot be achieved (due to the issues around viability of a scheme for example) the application would be presented to Members at a Planning Committee.
- 4.9 The proposed changes have been made with input from the Council's Principal Planning Solicitor and the Head of Law & Democratic Services to ensure the legal aspects of the amended constitution are correct and acceptable. The proposed changes aim to provide a clearer delegation structure. This will help officers, Members and our external customers to better understand, and interpret, this part of the Council's constitution.
- 4.10 It should be noted that whilst authority is sought to enable the discharge of functions directly under the delegation to the Head of Planning and Building Control, this does not prevent any matter being referred to Planning Committee where it may be deemed appropriate or of particular strategic importance. In addition, Members have the ability to call-in a planning application to be heard

before Planning Committee if they consider there to be material planning considerations that render it appropriate to do so.

- 4.11 In terms of potential risks associated with the changes, there may be a public perception that public engagement in the overall planning process may be affected but this is not the case. The statutory consultation process in relation to planning applications will not be affected. Interested parties will continue to be able to make representations which will be taken into account, and addressed in the officer's report when determining an application. An application may also still be presented at a Planning Committee meeting where it has been called-in by a Member and / or where a petition has been lodged where the Local Planning Authority's (LPA) recommendation would be contrary to the subject of the petition. Guidance contained within correspondence to customers and the Council's website will be updated to provide interested parties with clear signposting on how to engage in the process to help mitigate and manage any such perception.
- 4.12 The Council carries out continued monitoring of overall planning performance against national indicators along with monitoring the outcome of appeal decisions and costs against the Council to check the quality and robustness of decisions made. To assess the effectiveness of the proposed changes, officers will continue to carry out this monitoring and results will be included in the quarterly report to Planning Committee. Customer satisfaction will also be monitored by the number, and nature of received complaints / compliments and from feedback at future planning agent and developer forums, which forums have also been established following the recommendations of the Peer Challenge Review.
- 4.13 To assist with Members' deliberations, the proposed changes to delegations are set out in Appendix 1.
- 4.14 In addition, Council is asked to note that Cabinet agreed to join the Cannock Chase SAC Partnership on 7th September, 2022 and a copy of this report is referred to in the background papers. Council now needs to adopt a Policy and guidance for the collection of financial contributions towards an established mitigation scheme. The proposed Policy and guidance is set out in Appendix 2 and 3 and will be read in conjunction with the following existing adopted policies and the National Planning Policy Framework:
- Black Country Core Strategy Policies CSP3 (Environmental Infrastructure), CSP4 (Place-Making) & ENV1 (Nature Conservation);
 - UDP Saved Policy ENV23 (Nature Conservation); and
 - SAD Policy EN1 (Natural Environment Protection, Management and Enhancement).
- 4.15 The Cannock Chase Special Area of Conservation Mitigation Policy (Appendix 2) and Guidance (Appendix 3) provides a mechanism for securing appropriate mitigation for Cannock Chase SAC. This will be incorporated within future development plans.
- 4.16 The proposed changes in Appendix 1 incorporate the necessary delegations for the collection of financial contributions in connection with the mitigation of Cannock Chase SAC.

5. Financial information

- 5.1 Payments towards Cannock Chase SAC mitigation will be collected from applicants and developers at the time of issuing a planning decision. The monies will then be transferred to the SAC Partnership who manage the expenditure of monies collected from development within the 15km zone of influence across all affected Local Authority administrative boundaries.

6. Legal implications

- 6.1 Walsall MBC has a duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2010 (Habitat Regs.) to ensure that planning application decisions comply with the Habitats Regulations.

7. Reducing Inequalities

- 7.1 It is imperative that the Council's decision making structures and processes are lawful, clear and transparent, accessible to all. This ensures that powers are used responsibly and reasonably to give confidence to the entire borough that decision making is fair and beyond reproach.

8. Decide

- 8.1 There is a requirement to undertake an annual review of the delegations in place.
- 8.2 There is a requirement to agree an approach to the collection of financial contributions towards the SAC.

9. Respond

- 9.1 Subject to approval of the recommendation, the LPA will apply the approach to securing appropriate mitigation for the Cannock Chase SAC set out in Appendix 2.

10. Review

- 10.1 There is an ongoing requirement to review officer delegations annually to ensure that the Council acts within the law.
- 10.2 A review of the Cannock Chase SAC mitigation Policy and Guidance will be carried out by the SAC Partnership and will be incorporated in future Development Plans.

Background papers

Reports to:-

Cabinet 7th September, 2022 – Cannock Chase Special Area of Conservation: Mitigation Strategy

Audit Committee 27th June, 2022 - Amendments to Planning and Building Control delegations under Part 3.5 of the Council's Constitution

Scrutiny Overview Committee 9 November 2021 - Section 106 Planning Obligations

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10. PLANNING COMMITTEE

Membership

20 Members appointed by the Council on the basis of 1 Member per ward

N.B. This arrangement constitutes alternative arrangements for the purposes of Section 17 of the Local Government and Housing Act, 1989.

Substitutes

No provision for substitutes.

Chair and Vice-Chair

The Chair and Vice-Chair will be appointed at the Annual Council meeting for the municipal year.

Quorum

The quorum of the Committee shall be one third of the membership, subject to a minimum of 2.

Meetings

The Committee will meet every 4 weeks, or thereabouts at the Council House, Walsall at a time to be agreed by the Chair to enable the business to be dealt with in an expeditious manner.

Attendance at meetings

It is important to ensure that Members taking planning decisions are in possession of all the relevant facts, including matters pointed out, matters that may have been raised during public speaking and matters that may have been discussed and considered by Planning Committee on earlier occasions. Attendance of Members on all occasions during the application phase, i.e. once the application has been submitted, will not only demonstrate that Members are fully informed but will also ensure that high quality, consistent and sound decisions are made, and that the risks of legal challenge are minimised.

A Planning Committee Member should not vote in relation to any planning application unless they have been present in the meeting of the Planning Committee for the whole of the deliberations on that particular application. In the case of a virtual committee meeting that means having listened to the entire presentation and debate relating to a particular application. By taking part in the vote on a particular item, Planning Committee Members will be deemed to have made a declaration to that effect.

In cases where an application has been discussed at Planning Committee on more than one occasion, if a Member has not attended on each occasion during the application phase and wants to take part in the decision on an application, they should consider whether or not they are fully apprised of all the facts and relevant information necessary to properly reach a decision. If there is any doubt, legal advice should be sought by the Member concerned.

Conduct at meetings

The Chair of the Planning Committee is responsible for the conduct of the meeting in accordance with the relevant Council procedure rules and for the effective delivery of business.

Planning Committee meetings are open to the public and they are often well attended particularly when there is a contentious application on the agenda. Meetings are also attended by the applicants/agents and/ or other parties supporting an application and/or objectors against an application. It is important to demonstrate that decisions have been made fairly and transparently and in the correct manner. Any debate should be confined to the material planning considerations of the matter only.

A legal officer should always attend meetings of the Planning Committee to ensure the probity and propriety of the planning and decision-making processes.

Where there is any doubt as to the voting or of the actual counting of votes in relation to any particular application, clarification should be immediately sought by the Chair prior to dealing with the next agenda item, and if considered necessary this may include requesting from each Member as to how they have voted, noting this and the Member's name.

Decisions different to the officer recommendation

Decisions on planning applications must be taken in accordance with the Development Plan unless material considerations indicate otherwise. From time to time the Committee may attach different weight to the potential planning considerations and, therefore, take a decision which differs from the officer recommendation.

Where this occurs, Members must be able to give a clear material planning basis and reason for not taking the officer recommendation. It is important to ensure, as far as possible, that any decision made will be capable of surviving a legal challenge or appeal. The reasons for the decision must be given before the vote and be recorded. The officer attending the meeting should be given the opportunity to explain the implications of such a decision and Planning Committee Members should ensure they clearly identify and understand the planning reasons leading to this conclusion. These reasons will then be recorded in the minutes of the meeting.

Access to information

The Committee will comply with the Access to Information Rules set out in Part 4 of the Constitution.

Training

All Members of the Planning Committee shall attend a training session on Planning Law, Policy and Probity for which the course content will be approved by the Director of Economy Environment & Community prior to sitting on the Committee the first time and subsequently to attend training annually.

Disclosable Pecuniary Interests

Where Members of Planning Committee have a disclosable pecuniary interest in an application before Planning Committee they must not submit representations in relation to the application, even as a member of the public, unless they have a dispensation from the Head of Governance. No Members with a disclosable pecuniary interest (whether they are a member of the Planning Committee or not) are entitled to address the Committee.

Planning Committee Members having a disclosable pecuniary interest in an application must either declare that interest or bring it to the attention of the meeting and may not participate in the discussion or vote on the matter and must leave the room.

Predetermination and Bias

In making their decisions, Members of the Planning Committee should not be seen to side with either the applicant or the objector/s prior to the hearing of the application when all

the relevant facts are known. Planning Committee Members are required to keep an open mind and to exercise an independent mind on issues before the Committee. This is a requirement of the law.

Member contact with applicants and developers

The provisions of these paragraphs are designed to ensure that planning decisions are taken on proper planning grounds, are applied in a consistent and open manner and that Members and officers making such decisions are held accountable for those decisions. They are also designed to assist Members and officers in dealing with approaches from property / land owners / occupiers or developers.

The Government encourages applicants to enter into pre-application discussions. Such discussions are a normal part of the planning process to seek further information and to seek to identify improvements to proposals at an early stage. These discussions and meetings provide an opportunity for the potential applicant to receive advice and information about the policy and technical requirements that must be met and advice on design, on community engagement and other issues which may improve the chances of an application being acceptable to the Local Planning Authority. However, it should be made clear that any guidance given will not bind the LPA to making a particular decision. To minimise the prospect of challenges based on predetermination and bias, the guidelines below should be followed:

- It will always be made clear that any information or statements made cannot bind the LPA to making a particular decision.
- Wherever possible, Members should be accompanied by an officer when meeting with applicants.
- Members should refer applicants who approach them for advice to officers.
- A written record of the discussion should be made by the officer.
- Planning Committee Members are free to take part in meetings with potential applicants or their agents but extra care is needed to avoid any perception of predetermination or bias.

Roles and responsibilities

Members and officers have different but complementary roles in the planning process. Members have more than one role in the process – as Ward Members and as Planning Committee Members.

Members who are on the Planning Committee

The role of Members who are involved in the planning decision making process is to exercise their judgment properly on the planning application before them – and be seen to do this. In coming to a decision on a planning application Planning Committee Members should make this decision based solely on material planning considerations. Officer reports to the Planning Committee will identify what is regarded as material to a decision and if Planning Committee Members are unclear on what matters may or may not be material to a decision they should seek advice from officers.

Whilst Members must act within the law, the exercise of planning judgment is theirs and theirs alone. The Planning Committee must take into account all relevant ministerial guidance, local plans (and related documents) and the advice of officers. The weight Members attach to the relevant considerations is a matter of their planning judgment and Members should not give weight to non-planning related matters that may be raised by members of the public.

Planning Committee Members often receive correspondence from constituents, applicants and developers asking them to support or oppose a particular proposal. Members should forward a copy of the correspondence to the Head of Planning and Building Control and the relevant case officer. Merely forwarding the correspondence onto the relevant officer would not prevent the Planning Committee Member being involved in determining the application.

Where Planning Committee Members are involved in any discussions prior to an application being made or determined, they should be advised by the appropriate officers of the Council, which should always include a senior planning officer. The involvement of Planning Committee Members in such discussions should be recorded as a written file record and the Planning Committee Member may need to consider declaring an interest in the matter, depending upon their level of involvement. Members should seek legal advice if they are unsure as to whether they have an interest which may prevent them from taking part in a discussion or vote on a particular planning application. The responsibility for declaring an interest rests with individual Members and officers.

Planning Committee Members should not, whether orally or in writing, organise support or opposition to a proposal, lobby other Councillors, act as advocate or put pressure on officers for a particular recommendation.

Planning Committee Members are democratically accountable to their electors and to the wider public on whose behalf they act.

Ward Members not on the Planning Committee

Ward Members who are not on the Planning Committee are in a position to represent the interests of their Ward when it comes to planning and related applications. Ward Members may:

- Observe meetings of the Planning Committee
- Submit written representations to the Planning Committee
- Register to speak at Planning Committee in accordance with the section below (12. Public Speaking at Planning Committee)
- Be consulted on the draft heads of terms for section 106 agreements

Officers

The Director of Economy Environment and Communities and the Head of Planning and Building Control have a dual role in the decision making process:

- i. Making decisions on planning applications under delegated powers.
- ii. Making recommendations on planning matters which are determined by Members at Planning Committee.

When making such recommendations the function of officers is to support and advise Members, ensure that any decision they make is lawful and identify any possible consequences of taking decisions.

Development Proposals submitted by Members and Employees of EE&C Directorate

Where development proposals are submitted by Members and employees of the EE&C Directorate in respect of property or land that they own or have an interest in, it is particularly important that the Council ensures that such applications are handled in a transparent way.

Serving Members of Council who submit applications or act as agents should play no part in the decision making process for that application. Further, they should not take part in

the processing of the application nor should they lobby employees or officers either directly or indirectly.

Any officer of the EE&C Directorate who submits an application for property or land which they own or have an interest in, or on behalf of a friend or family member will inform the Director of EE&C and Head of Planning and Building Control in writing and such applications will be determined in accordance with the Scheme of Delegation.

Officers are required under the Employee Code of Conduct to make a declaration declaring any matters which may conflict with duties as an employee and their personal interests such as:

- Any financial interest in any planning application;
- Other interest where others may think that a conflict of interest may arise, such as for proposals near their residence.

In circumstances where there is a conflict of interest, the officer has no involvement in any part of the decision making process.

Remit

(a) **Planning and conservation** - Functions relating to town and country planning and development management as specified in Part A of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) (the "Functions Regulations").

(b) **Commons registration** – Functions relating to the registration of common land and town or village greens, unlawful works on common land, powers to protect unclaimed registered common land and unclaimed town and village greens against unlawful interference and powers to institute proceedings for offences as specified in Part A of Schedule 1 to the Functions Regulations.

(c) **Highways use and registration** - The exercise of powers relating to Public Rights of Way as set out in paragraphs 1 to 34, 41 and 46 - 47 of Part I and paragraphs 47 to 55 of Part B of Schedule 1 to the Functions Regulations

(d) **Trees** - Functions relating to the preservation of trees and protection of important hedgerows as specified in Part I of Schedule 1 to the Functions Regulations.

(e) **Planning Enforcement** - Functions relating to planning enforcement as specified in Part A of Schedule 1 to the Functions Regulations.

Delegations

Within approved Council policy and in accordance with overall aims and objectives of the Council, this Committee shall exercise the following powers:

(1) The powers and duties of the Council as Local Planning Authority and other functions as set out below:

A Functions relating to town and country planning and development management	
5. Power to determine applications for planning permission or permission in principle.	Sections 59(A)(1)(b), 70(1)(a) and (b) of the Town and Country Planning Act 1990 (c.8), as amended.

6. Power to determine applications to develop land without compliance with conditions previously attached.	Section 73 of the Town and Country Planning Act 1990, as amended.
7. Power to grant planning permission for development already carried out.	Section 73A of the Town and Country Planning Act 1990, as amended.
8. Power to decline to determine application for planning permission or permission in principle or Listed Building applications.	Section 70A, 70B and 70C of the Town and Country Planning Act 1990, as amended and sections 81A and 81B of the Planning (Listed Buildings and Conservation Areas) Act 1990.
9. Duties relating to the making of determinations of planning applications.	Sections 69, 76 and 92 of the Town and Country Planning Act 1990, as amended and Arts 8, 10 to 13, 15 to 22, 25 and 26 of the Town and Country Planning (Development Management Procedure) Order 2010 and directions made thereunder.
10. Power to determine applications for planning permission or permission in principle made by a local authority, alone or jointly with another person.	Section 316 of the Town and Country Planning Act 1990 and the Town and Country Planning General Regulations 1992.
11. Power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights.	Parts 6, 7, 11, 17, 19, 20, 21 to 24, 26, 26, 30 and 31 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended)
12. Power to enter into agreement regulating development or use of land.	Section 106 of the Town and Country Planning Act 1990.
13. Power to issue a certificate of existing or proposed lawful use or development.	Sections 191(4) and 192(2) of the Town and Country Planning Act 1990.
14. Power to serve a completion notice.	Section 94(2) of the Town and Country Planning Act 1990.
15. Power to grant consent for the display of advertisements and other advertisement powers.	Sections 220, 225A-225K and 324 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) Regulations 1992.
16. Power to authorise entry onto land.	Section 196A of the Town and Country Planning Act 1990.
17. Power to require the discontinuance of a use of land.	Section 102 of the Town and Country Planning Act 1990.
18. Power to serve a planning contravention notice, breach of condition notice or stop notice and to seek any necessary orders as required.	Sections 171C, 171BA, 171BB, 187A and 183(1) of the Town and Country Planning Act 1990, as amended.

18A Power to issue a temporary stop notice	Section 171E of the Town and Country Planning Act 1990
19. Power to issue an enforcement notice and to give written assurance as regards prosecution for person served with a planning enforcement notice and power to withdraw such assurance as appropriate.	Section 172 and 172A of the Town and Country Planning Act 1990.
20. Power to apply for an injunction restraining a breach of planning control.	Section 187B of the Town and Country Planning Act 1990.
21. Power to determine applications for hazardous substances consent, and related powers.	Sections 9(1) and 10 of the Planning (Hazardous Substances) Act 1990.
22. Duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject.	Paragraph 2(6)(a) of Schedule 2 to the Planning and Compensation Act 1991, paragraph 9(6) of Schedule 13 to the Environment Act 1995 and paragraph 6(5) of Schedule 14 to that Act.
23. Power to require proper maintenance of land.	Section 215(1) of the Town and Country Planning Act 1990.
24. Power to determine application for listed building consent, and related powers.	Sections 16(1) and (2), 17 and 33(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
26. Duties relating to applications for listed building consent	Sections 13(1) and 14(1) and (4) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulations 3 to 6 and 13 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 and paragraphs 8, 15 and 22 of Department of the Environment Circular 14/97.
27. Power to serve a building preservation notice, and related powers.	Sections 3(1) and 4(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
28. Power to issue enforcement notice in relation to demolition of unlisted building in conservation area.	Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
29. Powers to acquire a listed building in need of repair and to serve a repairs notice.	Sections 47 and 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

30. Power to apply for an injunction in relation to a listed building.	Section 44A of the Planning (Listed Buildings and Conservation Areas) Act 1990.
31. Power to execute urgent works.	Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
32. Duty to enter land in Part 2 of the brownfield land register	Regulation 3 of the Town and Country Planning (Brownfield Land Register) Regulations 2017

Other Functions	
B Licensing and registration functions (in so far as not covered by any other paragraph of this Schedule)	
47 Power to permit deposit of builder's skip on highway.	Section 139 of the Highways Act 1980 (c 66).
48 Power to license planting, retention and maintenance of trees etc in part of highway.	Section 142 of the Highways Act 1980.
49 Power to authorise erection of stiles etc on footpaths or bridleways.	Section 147 of the Highways Act 1980.
50 Power to license works in relation to buildings etc which obstruct the highway.	Section 169 of the Highways Act 1980.
51 Power to consent to temporary deposits or excavations in streets.	Section 171 of the Highways Act 1980.
52 Power to dispense with obligation to erect hoarding or fence.	Section 172 of the Highways Act 1980.
53 Power to restrict the placing of rails, beams etc over highways.	Section 178 of the Highways Act 1980.
54 Power to consent to construction of cellars etc under street.	Section 179 of the Highways Act 1980.
55 Power to consent to the making of openings into cellars etc under streets, and pavement lights and ventilators.	Section 180 of the Highways Act 1980.
72. Functions relating to the registration of common land and town or village greens	Part I of the Commons Act 2006 and the Commons Registration (England) Regulations 2008 (SI 2008/1961)
I Miscellaneous Functions	
Part I: functions relating to public rights of way	
1 Power to create footpath, bridleway or restricted byway by agreement.	Section 25 of the Highways Act 1980 (c 66).
2 Power to create footpaths, bridleways and restricted byways.	Section 26 of the Highways Act 1980.
3 Duty to keep register of information with respect to maps, statements and declarations.	Section 31A of the Highways Act 1980.
4 Power to stop up footpaths, bridleways and restricted byways.	Section 118 of the Highways Act 1980.

5 Power to determine application for public path extinguishment order.	Sections <u>118ZA</u> and <u>118C(2)</u> of the Highways Act 1980.
6 Power to make a rail crossing extinguishment order.	Section <u>118A</u> of the Highways Act 1980.
7 Power to make a special extinguishment order.	Section <u>118B</u> of the Highways Act 1980.
8 Power to divert footpaths[, bridleways and restricted byways].	Section <u>119</u> of the Highways Act 1980.
9 Power to make a public path diversion order.	Sections <u>119ZA</u> and <u>119C(4)</u> of the Highways Act 1980.
10 Power to make a rail crossing diversion order.	Section <u>119A</u> of the Highways Act 1980.
11 Power to make a special diversion order.	Section <u>119B</u> of the Highways Act 1980.
12 Power to require applicant for order to enter into agreement.	Section <u>119C(3)</u> of the Highways Act 1980.
13 Power to make an SSSI diversion order.	Section <u>119D</u> of the Highways Act 1980.
14 Duty to keep register with respect to applications under <u>sections 118ZA, 118C, 119ZA</u> and <u>119C</u> of the Highways Act 1980.	Section <u>121B</u> of the Highways Act 1980.
15 Power to decline to determine certain applications.	Section <u>121C</u> of the Highways Act 1980.
16 Duty to assert and protect the rights of the public to use and enjoyment of highways.	Section <u>130</u> of the Highways Act 1980.
17 Duty to serve notice of proposed action in relation to obstruction.	Section <u>130A</u> of the Highways Act 1980.
18 Power to apply for variation of order under <u>section 130B</u> of the Highways Act 1980.	Section <u>130B(7)</u> of the <u>Highways Act 1980</u> .
19 Power to authorise temporary disturbance of surface of footpath, bridleway or restricted byway	Section <u>135</u> of the Highways Act 1980.
20 Power temporarily to divert footpath, bridleway or restricted byway.	Section <u>135A</u> of the Highways Act 1980.
21 Functions relating to the making good of damage and the removal of obstructions.	Section <u>135B</u> of the Highways Act 1980.
22 Powers relating to the removal of things so deposited on highways as to be a nuisance.	Section <u>149</u> of the Highways Act 1980.
23 Power to extinguish certain public rights of way.	Section <u>32</u> of the Acquisition of Land Act 1981 (c 67).
24 Duty to keep definitive map and statement under review.	Section <u>53</u> of the Wildlife and Countryside Act 1981 (c 69).
25 Power to include modifications in other orders.	Section <u>53A</u> of the Wildlife and Countryside Act 1981.
26 Duty to keep register of prescribed information with respect to applications under <u>section 53(5)</u> of the Wildlife and Countryside Act 1981.	Section <u>53B</u> of the Wildlife and Countryside Act 1981.
28 Power to prepare map and statement by way of consolidation of definitive map and statement.	Section <u>57A</u> of the Wildlife and Countryside Act 1981.
29 Power to designate footpath as cycle track.	Section <u>3</u> of the Cycle Tracks Act 1984 (c 38).
30 Power to extinguish public right of way over land acquired for clearance.	Section 294 of the Housing Act 1981 (c 68).
30A Power to authorise stopping up or diversion of highway.	Section <u>247</u> of the Town and Country Planning Act 1990 (c 8).

31 Power to authorise stopping-up or diversion of footpath, bridleway or restricted byway]	Section 257 of the Town and Country Planning Act 1990.
32 Power to extinguish public rights of way over land held for planning purposes.	Section 258 of the Town and Country Planning Act 1990.
33 Power to enter into agreements with respect to means of access.	Section 35 of the Countryside and Rights of Way Act 2000 (c 37).
34 Power to provide access in absence of agreement.	Section 37 of the Countryside and Rights of Way Act 2000.
41. Power to make limestone pavement orders	Section 34(c) Wildlife and Countryside Act, 1981
46. Powers relating to the protection of important hedgerows.	The Hedgerows Regulations, 1997.
47. Powers relating to the preservation of trees.	Sections 197 to 214D of the Town & Country Planning Act, 1990 and the Trees Regulations 1999 (S.I. 1999/1892).
47A. Powers relating to complaints about high hedges	Part 8 of the Anti-Social Behaviour Act 2003
51. Power to apply for an enforcement order against unlawful works on common land	Section 41 of the Commons Act 2006
52. Power to protect unclaimed registered common land and unclaimed town or village greens against unlawful interference	Section 45(2)(a) of the Commons Act 2006
53. Power to institute proceedings for offences in respect of unclaimed registered common land and unclaimed town or village greens	Section 45(2)(b) of the Commons Act 2006
Other Functions	
Approval of and amendment to the local list of buildings	Section 111 Local Government Act 1972
Approval of or amendments to sites of importance for nature conservation (SINCS) and sites of local importance for nature conservation (SLINCS)	Section 111 Local Government Act 1972
Power to act as the Competent Authority in assessing impacts of development on Special Areas of Conservation	Conservation of Habitats and Species Regulations 2017

- (2) In relation to the tables above the following categories of application for planning permission will be determined by the Committee unless expressly delegated in respect of a particular application:
- (a) All major applications i.e. those applications for permission to develop 10 or more dwellings or a building(s) with 1,000 sq metres or more floor space and over 0.5 ha, or new or extended mineral working or waste disposal, except that authority shall be delegated to the Head of Planning and Building Control to determine applications that do not conflict with national, regional or local planning policy;

- (b) Applications that would be a significant departure from the development plan (requiring publicity) where they do not comply with national or local planning policy;
 - (c) Applications where an objection is received from a statutory consultee (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended) where the recommendation is contrary to the consultee comments and where that consultee doesn't already have the power to prevent the determination of the application;
 - (d) Applications made by or on behalf of a member of the Council or a senior officer of the Council (defined for these purposes as any officer who holds a politically restricted post) or any officer employed within Planning and Building Control, and Planning Policy;
 - (e) Applications called in by a Councillor under the procedure set out in paragraph 11 below;
 - (f) Applications that do not comply with the development plan and are recommended for approval;
 - (g) Applications on Council owned land or Council assets where the Council intends to develop, or dispose of that land or asset with the benefit of planning permission and where the value of the land or asset would be increased by more than £100,000;
 - (h) Applications where any petition has been submitted where the recommendation would be contrary to the subject of the petition.
- (3) In consultation with the relevant Overview and Scrutiny Committee to make appropriate recommendations to the Executive on the formulation of the development plan and related local development documents for the Borough.
 - (4) To consider development plans prepared by neighbouring authorities, and other consultations on planning policies and proposals by outside bodies and persons to make appropriate recommendations thereon to the Executive.
 - (5) All matters arising in connection with the West Midlands Local Government Association Regeneration Conference and to make appropriate recommendations thereon to the Executive.
 - (6) To carry into effect Sections 222 and 223 of the Local Government Act, 1972 so far as they affect this Committee and to exercise the powers of the Council in relation thereto and in particular to authorise any appropriate officer to institute or defend on behalf of the Council proceedings before any court or tribunal or to appear on behalf of the Council before any such court or tribunal in any proceedings instituted by the Council or on its behalf or against it.
 - (7) To obtain information as to interests in land under Section 330 Town and Country Planning Act 1990.

- (8) To obtain particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- (9) To appoint proper officers and deputies where required by an Act of Parliament for the discharge of the functions of the Council; delegated to this Committee;
- (10) To carry into effect so much of any Act of Parliament relating to any of the functions set out above and any Orders, Regulations, Schemes or Bye-Laws made under or in pursuance thereof and to exercise non-executive powers of the Council in relation thereto;

(11) Call-in procedure

Notwithstanding the terms of reference of Planning Committee any planning application can be called in by a Councillor for determination by the Committee by the following procedure;

- 1. The receipt by Planning and Building Control Service Area of a completed call-in form within 28 days of the commencement of public consultation;
- 2. The completed call-in form must identify:
 - 1. which material planning reason/s there are (as identified on the published call-in form) as to why the application should be determined by the Committee;
 - 2. the name of the Councillor calling the matter to Committee and whether the Councillor serves on Planning Committee;
 - 3. whether the Councillor calling the matter to Committee wishes to be a speaker for or against the matter; and
 - 4. where the Councillor sits on Planning Committee whether the Councillor wishes to declare an interest.
- 3. Note: The Committee report will identify the Councillor who called in the application along with the reason given and any interest declared.

(12) Public speaking at the Planning Committee:

- (a) Members, Applicants, agents and any other persons wishing to express a view about a planning application that is being reported to the Planning Committee may apply to do so by registering to speak at the Committee subject to the procedure set out in paragraphs (b) – (l) below. (Details of the procedure below will be included in the acknowledgment letter to agents/applicants and the notification letter/site notices to neighbours. Details will also be available on the Council's website)
- (b) Anyone wishing to speak must register using the online form or in writing (including by e-mail) to the Planning and Building Control Service Area by 5pm on the day before the committee meeting;

- (c) A list of persons wishing to speak arranged in order of the agenda will be produced for the Chair and Members of the Planning Committee. The Chair may, at their discretion alter the order of the agenda at the meeting;
- (d) Any person who has not registered using the online form or in writing will only be allowed to speak at the discretion of the Chair;
- (e) In relation to planning applications specifically, the Committee may hear speakers either only for the applicant or only for objectors provided all parties have been given the opportunity to speak;
- (f) The number of speakers will be restricted to a maximum of two in favour of the officer's recommendation for an item and two opposing the officer's recommendation for an item, chosen by order of notification of a wish to speak. The number of speakers allowed will include any Members who have registered to speak. Such Members are not permitted to take part in the determination of the agenda item whether they are a Planning Committee Member or not.
- (g) Speakers will be limited to 2 minutes each in respect of each item;
- (h) Members of the Committee may ask questions of speakers. Such questions will be put through the Chair.
- (i) If speakers wish to share any documents or images at the meeting these are to be provided to the Planning and Building Control Service Area in advance of the Committee Meeting and at the latest by 5pm 2 working days before the Committee Meeting. No additional documents information or images may be produced by speakers to Planning Committee as this does not give Members of the Planning Committee adequate time to consider the submissions or the issues raised in the material.
- (j) Where Members have a disclosable pecuniary interest in the item they must not submit representations in relation to the item, even as a member of the public, unless they have express dispensation from the Director of Governance.
- (k) In some cases, items may come before the Committee on more than one occasion for example because of a deferral from a previous meeting. Speakers will only be entitled to address the Committee on one occasion unless otherwise agreed by the Chair of Planning Committee on the grounds that the item has significantly changed or been amended or significant new information has been produced raising new material planning considerations. In these circumstances, speakers will only be able to speak about new matters or the amended details and not about matters which have been previously considered by the Committee.
- (l) It is important that speakers and members of the public attending in the public gallery are not permitted to communicate with or pass messages to individual Committee Members as this may give the appearance of partiality.

Guidance Note on Bias and Predetermination in the Planning Process

What is Bias and Predetermination?

- i. The law on bias and predetermination (which is a particular form of bias) is part of the general legal obligation on public authorities to act fairly.
- ii. Decision makers are entitled to be predisposed to particular views. However, predetermination occurs where someone closes their mind to any other possibility beyond that predisposition, with the effect that they are unable to apply their judgement fully and properly to an issue requiring a decision.
- iii. The leading case on local authority bias and predetermination acknowledges the difference between judges sitting judicially and councillors making decisions in a democratic environment. Given the role of councillors, there must be 'clear pointers' before predetermination is established (Section 25 Localism Act 2011).
- iv. Section 25(2) of the Localism Act 2011 provides that a decision maker is not to be taken to have had, or to have appeared to have had, a closed mind when making a decision just because – a) the decision maker had previously done anything that directly or indirectly indicated what view the decision maker took, or would or might take in relation to a matter, and b) the matter was relevant to the decision.
- v. The section makes it clear that if a councillor has given a view on an issue, this, considered in isolation, does not show that the councillor has a closed mind on that issue. So, the mere fact that a councillor has made statements about their approach to an item of council business does not prevent that councillor from being able to participate in discussion of that issue and to vote on it.
- vi. Having said this, the use of the words 'just because' in section 25 suggest that other factors when combined with statements made etc. can still give rise to accusations of predetermination. This has also been the approach that the courts have taken to this issue. When considering whether predetermination has taken place they will consider all events leading to the decision (and also, where appropriate, those following the decision) rather than looking at individual events in isolation.
- vii. The case law has also made it clear that the words used by particular councillors and the interpretation put on those words is of particular importance. So care needs to be taken when making statements in advance of the determination of planning applications as there is a risk that they can be misinterpreted or taken out of context.

Guidance

- viii. With this in mind, in the context of planning applications and decisions:
 - It is always advisable to avoid giving the impression that you have made up your mind prior to the decision making meeting and hearing the officer's presentation and any representations made on behalf of the applicant and any objectors.
 - It is advisable not to give a view in advance of the decision. If you do comment on a development proposal in advance of the decision, consider using a form of words that makes it clear that you have yet to make up your mind and will only do so at the appropriate time and in the light of the advice and material put before you and having regard to the discussion and debate in the Committee meeting.
 - Particular care should be taken where there are chance encounters with objectors to development proposals or in the context of meetings which are not formally minuted. These are situations where the risk of what you say being misrepresented or taken out of context is particularly high.
 - Planning Committee Members should avoid giving a view/making statements in advance of determination of a planning application. If such views are given, these should be declared to the Planning Committee and legal advice should be sought if necessary as to whether that particular Planning Committee Member can continue to be part of the decision-making process. Any views given in advance should avoid giving the impression that you have already made up your mind and that your part in the decision is a foregone conclusion.

18. Head of Planning and Building Control

18.1 To be responsible for the day to day management of the Planning and Building Control and Planning Policy functions and without prejudice to the foregoing shall, subject to compliance with the constitutional arrangements and any relevant provisions of the Council's financial and contract rules have authority to exercise the following powers and functions:

Development Management:

18.2 Authority to determine all planning and related applications other than those which have been expressly reserved to the Planning Committee ('Committee') under the terms of reference of that Committee or have been called in by a Councillor for determination by that Committee.

18.3 Authority to determine applications for non-material amendments under section 96 of the Town and Country Planning Act 1990 and variations under section 73 of the Town and Country Planning Act 1990 to existing permissions including for major development.

18.4 Authority to determine policy compliant major applications.

18.5 Authority to respond to various consultation documents received from government departments on planning related matters, except where the Head of Planning and Building Control is of the opinion that the consultation involves matters which should be considered by Committee, Group Leaders or the relevant Portfolio Holder.

18.6 Authority to respond to developers' notices of intention to carry out development under Part 22 of the Town and Country Planning (General Permitted Development) Order 1995 (mineral exploration only).

18.7 Authority to determine whether Environmental Assessments are necessary (Screening Opinion) under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

18.8 Authority to determine applications for lawful development certificates (existing and proposed).

18.9 Authority to determine all Prior Approval applications.

18.10 Authority to determine Permission In Principle applications.

18.11 Authority to sign decisions made by Committee.

18.12 Authority to determine applications for consent for the display of Advertisements.

18.13 Authority to determine Discharge of Condition applications.

18.14 Authority to respond to non-determination appeals.

- 18.15 Authority to remove any planning applications and 'Finally Dispose Of' applications that have not been determined or appealed from the Planning Register in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2010.
- 18.16 Authority to determine whether a submitted Pre-Information Process application complies with any Local Development Order adopted by the Council.
- 18.17 Authority to determine whether a formal application of details in respect of agricultural and forestry development should be submitted.
- 18.18 Authority to decline to determine applications in accordance with Section 70 of the Town and Country Planning Act 1990 (as amended).
- 18.19 Authority to make all types of applications relating to planning, listed buildings, adverts, trees and infrastructure etc.
- 18.20 Authority to respond to various consultation documents received from government departments on planning related matters, except where the Head of Planning and Building Control is of the opinion that the consultation involves matters which should be considered by Committee, Group Leaders or the relevant Portfolio Holder.
- 18.21 Authority to enter into, and accept, Legal Agreements under Section 106 for policy-compliant schemes including the collection of financial contributions towards mitigation of the Cannock Chase SAC and to make minor variations to section 106 agreements.
- 18.22 Authority to act as Competent Person under the Conservation of Habitats and Species Regulations 2017 and to issue associated decisions on affected applications.

Trees:

- 18.23 To determine the following applications and to take the following actions under Part VIII of the Town and Country Planning Act 1990 and Town and Country Planning (Tree Preservation) (England) Regulations 2012 and Section 192 of the Planning Act 2008:
- (a) authorise the making of Tree Preservation Orders where immediate action is necessary to protect a tree or trees under threat;
 - (b) determine applications to top, lop or prune trees protected by a Tree Preservation Order;
 - (c) determine applications to fell and remove trees protected by a Tree Preservation Order;
 - (d) confirm or not confirm Tree Preservation Orders;
 - (e) enforce legal requirement for replacement tree planting by the service of the appropriate notice;
 - (f) revoke or vary a TPO in circumstances when an order has been updated or a replacement order has been made; or where an order no longer protects any trees because the trees have been lawfully removed;

(g) undertake appropriate action in response to notifications of intention to lop, top, prune or fell trees in Conservation Areas.

18.24 To instigate action for the removal of dangerous trees under Section 23 of the Local Government (Miscellaneous Provisions) Act 1976, including the powers of entry for officers and contractors to undertake work to dangerous trees.

18.25 Authority to respond to Hedgerow complaints and issue a Hedgerow Retention Notice in accordance with the provisions of the Hedgerows Regulations 1997.

18.26 Authority to respond to High Hedge complaints and to issue notices, including remedial notices, and to carry out any necessary investigation and take action, including defending appeals in accordance with the Anti Social Behaviour Act 2003.

Building Control:

18.27 To carry out all powers and duties in accordance with the Building Act 1984 and Building Regulations 2010.

18.28 The administration of the Safety of Sports Grounds Act, 1975, in relation to the issue of Safety Certificates.

18.29 Authority to take action in respect of prohibition notices under Section 10 of the Safety of Sports Grounds Act, 1975;

Planning Enforcement:

18.30 Advertisements as set out in the Town and Country Planning (Control of Advertisement) (England) Regulations 2007 (as amended):

- a. Authority to remove or obliterate any placard or poster which is displayed.
- b. Authority to remove and dispose of any unauthorised display structure and to exercise any other powers (including the power to recover reasonable expenses in relation to advertisements).
- c. Authority to serve an action notice to resolve persistent problems with unauthorised advertisements and to exercise any other powers (including the power to recover reasonable expenses).
- d. Power to remove display structures, prevent or reduce unauthorised advertisements and / or remove or obliterate signs, so far as they relate to the operational land and premises of statutory undertakers, in accordance with sections 225A, 225C, 225F, 225K and 324 of the Town and Country Planning Act 1990 (as amended).

18.31 Other Development as set out in the Town and Country Planning Act 1990 (as amended) and the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended):

- a. Authority to issue and serve Listed Building Enforcement Notices re unauthorised development.

- b. Authority to issue and serve an Urgent Works Notice on a 'Listed' building, or on a registered park or garden or where a building is judged to be worthy of 'Listing' as a building of Special Architectural or Historic interest and is considered to be at risk due to failure by the owner to carry out reasonable maintenance/upkeep.
- c. Authority to issue and serve Enforcement Notices re unauthorised development.
- d. Authority to issue and serve Enforcement Notices and Temporary Stop Notices where immediate action is necessary.
- e. Authority to issue and serve a breach of condition notice.
- f. Authority to issue and serve a planning contravention notice.
- g. Authority to issue and serve a Stop Notice.
- h. Authority to issue and serve a planning enforcement order.
- i. Power to give written assurance as regards prosecution for person served with an enforcement notice, and power to withdraw such assurance.
- j. Power to remedy defacement of premises and to exercise powers (including the power to recover reasonable expenses), in accordance with sections 225F and 225I of the Town and Country Planning Act 1990 (as amended).
- k. Power to serve notices in respect of post boxes and to exercise any other powers, in accordance with section 225G of the Town and Country Planning Act 1990 (as amended).
- l. Power to exercise powers in respect of bus shelters and other street furniture, in accordance with sections 225F and 225H of the Town and Country Planning Act 1990 (as amended).
- m. Power to remedy defacement at owner or occupier's request and to exercise any other powers (including the power to recover reasonable expenses), in accordance with section 225J of the Town and Country Planning Act 1990 (as amended).
- n. Authority to issue an injunction in consultation with the Director of Governance, Ward Members and Chair of Planning Committee.
- o. Authority to issue and serve a Section 215 Notice.
- p. Authority to issue and serve Requests For Information notices under Section 330 of the Town and Country Planning Act, 1990 and Section 16 of the Local Government (Miscellaneous Provisions) Act 1976.
- q. Authority to grant powers of entry to appropriate officers.
- r. Authority:
 - (i) not to pursue enforcement action if it is considered that it is not expedient to do so, even when there are unresolved complaints;
 - (ii) to revoke authorities given for enforcement action;
 - (iii) to withdraw enforcement notices;
- s. Authority to take action under the following legislation and authorise officers from Planning and Building Control, other authorities and public agencies working on regional projects to exercise powers within the borough from time to time:

Building Act 1984
Building Regulations 2010
Cinemas Act 1985
Clean Air Act 1993
Clean Neighbourhoods and Environment Act 2005
Control of Pollution Act 1974
Control of Pollution Amendment Act 1989
Countryside Act 1968
Countryside and Rights of Way Act 2000
Criminal Procedure and Investigations Act 1996
Cycle Tracks Act 1981
Environment Act 1995
Environmental Damage (Prevention and Remediation) Regulations 2009
Environmental Noise (England) Regulations 2006
Environmental Noise (England) (Amendment) Regulations 2009
Environmental Noise (England) (Amendment) Regulations 2010
Environmental Protection Act 1990
Equality Act 2010
Factories Act 1961 and 1998
Fire Safety and Safety at Places of Sport Act 1987
Flood Risk Regulations 2009
Food and Environment Protection Act 1985
Flood and Water Management Act 2010
Highways Act 1980
Land Compensation Act 1973
Land Drainage Act 1991
Local Government Acts 1972, 1988, 2000 and 2003
Local Government (Miscellaneous Provisions) Acts 1976 and 1982
Local Government and Housing Act 1989
National Parks and Access to the Countryside Act 1949
Natural Environment and Rural Communities Act 2007
New Roads and Street Works Act 1991
Noise Act 1996
Noise and Statutory Nuisance Act 1993
Noise Insulation Regulations 1975
Noise Insulation (Amendment) Regulations 1988
Offices, Shops and Railway Premises Act 1963
Police and Criminal Evidence Act 1994
Pollution Prevention Control Act 1999
Public Health Acts 1875, 1925, 1936, 1961 and 1969
Regulation of Investigatory Powers Act 2000
Road Traffic Acts 1988 and 1991
Road Traffic (Consequential Provisions) Act 1988
Road Traffic Regulation Act 1984
Safety of Sports Grounds Act 1975
Sunday Trading Act 1994
Theatres Act 1968
Business and Planning Act 2020
Planning Act 2008

Planning and Compulsory Purchase Act 2004
Localism Act 2011
Town and Country Planning Act 1968
Town and Country Planning Act 1990
The Planning (Listed Buildings and Conservation Areas) Act 1990
Town Improvement Clauses Act 1847
Town and Police Clauses Acts 1847 and 1889
Transport Acts 1985 and 2000
West Midlands County Council Act 1980
Wildlife and Countryside Act 1981
Caravan Sites and Control of Development Act 1960
Caravan Sites Act 1968
Growth and Infrastructure Act 2013
Housing Act 1996
Housing Act 2004
Human Rights Act 1998
Infrastructure Act 2015
Local Democracy, Economic Development and Construction Act 2009
Planning (Hazardous Substances Act) 1990
Planning and Compensation Act 1991

Together with any related secondary legislation.

Strategic Planning Policy:

- 18.32 Authority to respond to various consultation documents received from government departments on planning policy related matters, except where the Head of Planning and Building Control is of the opinion that the consultation involves matters which should be considered by Committee, Group Leaders or the relevant Portfolio Holder.
- 18.33 Maintain a schedule of Local Sites (Sites of Importance/Local Importance for Nature Conservation) with the authority to add or remove sites from the schedule in line with published criteria and endorsement by the Birmingham and Black Country Local Sites Partnership.
- 18.34 To determine and review Conservation Areas and the Local List in accordance with Section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Functions:

- 18.35 Authority to vary fees and charges within the area of responsibility (excluding car parking charges), not fixed by statute.
- 18.36 Authority to approve short lists of consultants to be invited to tender for or to submit proposals for specific investigations, analyses or designs, subject to compliance with Contract Rules.

- 18.37 Authority to approve short lists of contractors to be invited to tender for contracts for a specific scheme of works or for a schedule of rates contract for such works, subject to compliance with Contract Rules.
- 18.38 Authority to accept tenders for the supply of works, materials, equipment, plant, investigations, analyses or designs, subject to compliance with Contract Rules.
- 18.39 Authority to accept the tender which is next most economically advantageous to the Council in cases where the successful tenderer withdraws before entering into contract, subject to compliance with Contract rules.
- 18.40 Authority to utilise other contractors in the event of the successful tenderer being unable to meet the programme requirements. Additional or substitute contractors shall be chosen in order of their tenders' rank when assessed by officers, and appointed in compliance with Contract rules.
- 18.41 Authority to appoint consulting engineers after fee bidding, subject to compliance with Contract Rules.
- 18.42 Authority to appoint agency staff subject to compliance with Contract Rules.

19. Applications to be determined by Planning Committee:-

- (a) All major applications i.e. those applications for permission to develop 10 or more dwellings or a building(s) with 1,000 sq metres or more floor space and over 0.5 ha, or new or extended mineral working or waste disposal, except that authority shall be delegated to the Head of Planning and Building Control to determine applications that do not conflict with national, regional or local planning policy;
- (b) Applications that would be a significant departure from the development plan (requiring publicity) where they do not comply with national or local planning policy;
- (c) Applications where an objection is received from a statutory consultee (as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2010 (as amended) where the recommendation is contrary to the consultee comments and where that consultee doesn't already have the power to prevent the determination of the application;
- (d) Applications made by or on behalf of a member of the Council or a senior officer of the Council (defined for these purposes as any officer who holds a politically restricted post) or any officer employed within Planning and Building Control, and Planning Policy;
- (e) Applications called in by a Councillor under the procedure set out in paragraph 11;
- (f) Applications that do not comply with the development plan and are recommended for approval;

- (g) Applications on Council owned land or Council assets where the Council intends to develop, or dispose of that land or asset with the benefit of planning permission and where the value of the land or asset would be increased by more than £100,000;
- (h) Applications where any petition has been submitted where the recommendation would be contrary to the subject of the petition.

Policy EQ2: Cannock Chase Special Area of Conservation

Development will only be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect upon the integrity of the Cannock Chase Special Area of Conservation (SAC).

A net increase of housing development within the areas of Walsall that fall within the Zone of Influence around Cannock Chase SAC (as identified by current evidence and subject to further research) that is likely to have an adverse impact upon Cannock Chase SAC should mitigate for such effects, in line with the ongoing work to outline the pressures on the SAC caused by recreation and visitor pressure. This may include contributions to habitat management, access management and visitor infrastructure, publicity, education and awareness raising; and provision of suitable alternative natural green recreational space, within development sites where they can be accommodated and where they cannot by contributions to offsite alternative green space.

The effective avoidance of and/or mitigation for any identified adverse effects on the Cannock Chase SAC must be demonstrated to the Council as the Competent Authority and Natural England and secured prior to the Council giving approval of development. This Policy has jurisdiction over developments within Walsall only; however it will be implemented jointly with neighbouring authorities via the application of complementary policies in partner Local Plans.

Development proposals should be consistent with other local planning policies.

CANNOCK CHASE SPECIAL AREA OF CONSERVATION (SAC)

GUIDANCE TO MITIGATE THE IMPACT OF NEW RESIDENTIAL DEVELOPMENT

(September 2022)

1. Background

- 1.1. Walsall Council has a duty as a Competent Authority under the Conservation of Habitats and Species Regulations 2010 (Habitat Regs.) to ensure that planning application decisions comply with the Habitats Regulations. Local Plan policy EQ2 safeguards the Cannock Chase Special Area of Conservation (SAC), which has been designated under the Regulations for its unique heathland habitat.
- 1.2. Evidence produced to inform the production of the Council's Local Plan (Core Strategy) policy EQ2, by consultants Footprint Ecology, together with that of partner Local Planning Authorities in the Cannock Chase SAC Partnership (Stafford Borough Council, Cannock Chase Council, Lichfield Council, East Staffordshire Council, South Staffordshire Council, City of Wolverhampton Council and Walsall Council), shows that the "in combination" impact of proposals involving a net increase of one or more dwellings within a 15 kilometre radius of the SAC would have an adverse effect on its integrity unless avoidance and mitigation measures are in place.
- 1.3. The effects arise from an increase in recreation over the local plan period and comprise the creation of new paths, path widening, erosion and nutrient enrichment from visitor use and vehicle emissions. SAC Partners have therefore agreed to formally support the Footprint Ecology evidence base reports and acknowledge a 15km Zone of Influence. Walsall Council, together with other local authorities within the 15km radius of Cannock Chase SAC, have agreed to collect financial contributions from housing developments within the 15km zone and to spend these on a package of mitigation measures to mitigate harmful impacts on the SAC.
- 1.4. Following the production of the Footprint Ecology evidence base, additional advice has been received from Natural England. This has directed the Cannock Chase SAC Partnership authorities to consider mitigating any likely significant effects through the provision of on-site mitigation measures. The use of measures seeking to avoid significant effects, such as offsite Suitable Alternative Natural Greenspaces (SANGs), is not being pursued at this time. This is primarily due to uncertainties regarding

their effectiveness and their relatively high cost when compared to on-site mitigation measures.

1.5. Policy EQ2 states:

Policy EQ2: Cannock Chase Special Area of Conservation

Development will only be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect upon the integrity of the Cannock Chase Special Area of Conservation (SAC).

A net increase of housing development within the areas of Walsall that fall within the Zone of Influence around Cannock Chase SAC (as identified by current evidence and subject to further research) that is likely to have an adverse impact upon Cannock Chase SAC should mitigate for such effects, in line with the ongoing work to outline the pressures on the SAC caused by recreation and visitor pressure. This may include contributions to habitat management, access management and visitor infrastructure, publicity, education and awareness raising; and provision of suitable alternative natural green recreational space, within development sites where they can be accommodated and where they cannot by contributions to offsite alternative green space.

The effective avoidance of and/or mitigation for any identified adverse effects on the Cannock Chase SAC must be demonstrated to the Council as the Competent Authority and Natural England and secured prior to the Council giving approval of development. This Policy has jurisdiction over developments within Walsall only; however it will be implemented jointly with neighbouring authorities via the application of complementary policies in partner Local Plans.

Development proposals should be consistent with other local planning policies.

- 1.6. The Council must ensure that decisions made on planning applications, and policies in the Local Plan, will avoid and mitigate recreation impacts on Cannock Chase SAC. If there are any likely significant effects, the Council is either unable to grant planning permission due to the restrictions of the Habitat Regs., or it must ensure there are appropriate mitigation measures in place. Given the evidence now available that one or more net dwellings would have an adverse effect on the SAC's integrity, the Council has introduced Guidance, as set out below, which includes a simple regime of financial contributions as an alternative to developers providing Habitats Regulations Assessment information to inform mitigation so as to prevent harm to the SAC.

- 1.7. The Guidance should be read alongside other documents produced by the Cannock Chase SAC Partnership, including the most recent Cannock Chase SAC Partnership Frequently Asked Questions document, which are available on the Walsall Council Planning Policy webpages - https://go.walsall.gov.uk/special_areas_of_conservation
- 1.8. The mitigation measures are directly targeted at mitigating impacts arising from new planning permissions and Local Plan policies, where these increase the number of residents within the Zone of Influence.
- 1.9. Natural England supports the use of Guidance to mitigate the impact of new residential development

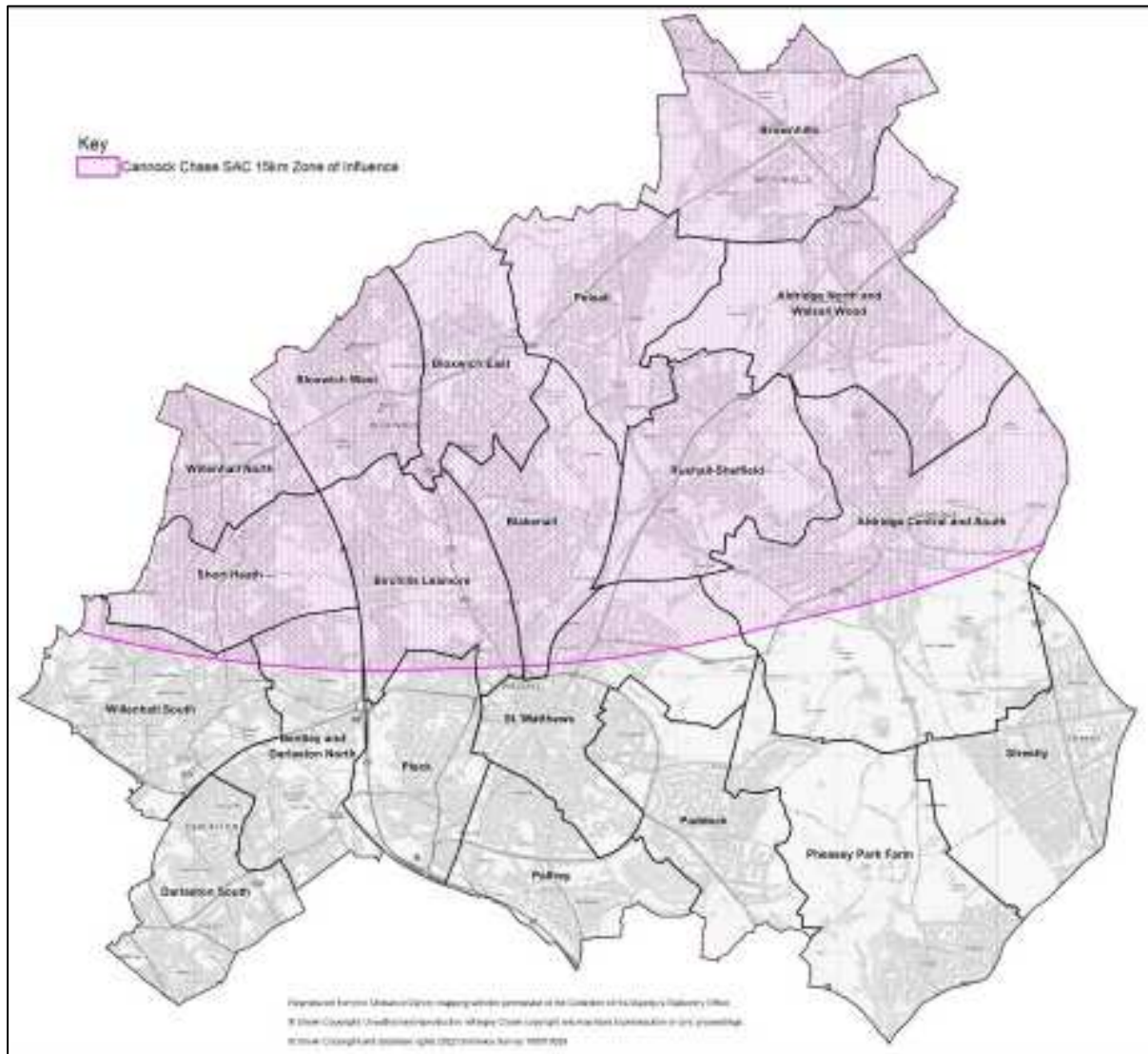
2. Which Developments are Affected?

- 2.1. Any development which would produce a net increase in the number of homes within 15km of Cannock Chase SAC will be required to undertake a Habitats Regulations Assessment (HRA) or make a financial contribution before development takes place. The map below (Map 1) shows the area of Walsall within 15km of the SAC.
- 2.2. The types of development affected includes any development which would produce a net increase in the number of homes, new homes arising through the conversion of existing buildings, houses in multiple occupation, sheltered accommodation and care homes falling within Use Class C3 and gypsy and traveller pitches.
- 2.3. Hotels, holiday lets, and camping & caravan sites will also need to undertake their own Habitats Regulations Assessment (HRA) or provide a financial contribution, as set up by the SAC Partnership and agreed by Walsall Council, if they could generate visitors to Cannock Chase SAC.
- 2.4. Prior approval and permitted developments, such as conversion of offices into new homes, are also affected by the Cannock Chase SAC requirement. The HRA process and consultation with Natural England must be undertaken before Walsall Council can determine if a development is permitted development or if prior approval can be granted.
- 2.5. Further detail on developments affected by the requirement and the prior approval / permitted development process can be found in the current Cannock Chase SAC Partnership Frequently Asked Questions document, which is available at: https://go.walsall.gov.uk/special_areas_of_conservation
- 2.6. Where a development is affected by the Cannock Chase SAC mitigation requirement, a Cannock Chase SAC HRA form, as set out in Appendix 1, must be

completed and submitted with the planning application. This form will be used to consult Natural England.

- 2.7. If the developer wishes to undertake a Habitats Regulations Assessment rather than make use of the financial contributions system further advice can be provided by the Planning Team.

Map 1. Map of the 15km Zone of Influence for Cannock Chase SAC in Walsall



3. Cannock Chase SAC Mitigation Payments in Walsall

- 3.1. Walsall Council will require a payment of £290.58 for each net new home created through development within 15km of Cannock Chase SAC. This figure will be subject to an annual increase which will apply each 1st April from 2023 onwards, in line with the All Items Group (Item reference CHAW) of the Retail Prices Index published by HM Government Office for National Statistics. Walsall Council may also make a charge for the administration costs of entering into the relevant legal agreement required to secure this financial contribution.
- 3.2. Walsall Council will require the developer to enter into either a S106 agreement or a Unilateral Undertaking in order to secure the contribution. The template Unilateral Agreement provided in Appendix 2 is recommended for developments of less than 10 homes, as these are unlikely to require a Section 106 Agreement. However, parties should take their own independent legal advice before entering into such an agreement.
- 3.3. In order to meet the requirements of the Habitats Regulations, any legal agreement must ensure that the financial contribution is paid before commencement of development.

Appendix 1 Cannock Chase SAC HRA Form



Habitat Regulation Assessment (HRA)

Screening Matrix and Appropriate Assessment Statement

PLEASE NOTE: Undertaking the HRA process is the responsibility of the decision maker as the Competent Authority for the purpose of the Habitats Regulations, however, it is the responsibility of the applicant to provide the Competent Authority with the information that they require for this purpose.

This template is to be used only for Cannock Chase SAC Partnership Local Planning Authorities

Application Reference:	
Application Address:	
Application Description:	
Proximity to SAC (km):	
Accordance with the development plan:	

STEP 1) - Scoping - Details of the Plan or Project	
European site potentially impacted by planning application, plan or project	Cannock Chase SAC
Is the planning application, project or plan directly connected with or necessary to the management of the site?	No
Are there any other projects or plans that together with the planning application/project being assessed could affect the site?	Yes. The evidence base shows that all new development resulting in a net increase in residential dwellings within 15km of the Cannock Chase SAC will have an adverse, in combination effect on the integrity of the Cannock Chase SAC in the absence of mitigation.

STEP 2)- HRA Stage 1, Screening Assessment, (likely significant effect?)
Test 1: the significance test - The Applicant is to provide evidence so that a judgement can be made as to whether there could be any potential significant impacts of the development on the integrity of the SPA/SAC/Ramsar.
<p>The proposed development is within 15km of the Cannock Chase SAC. In accordance with advice from Natural England, The Cannock Chase SAC Partnerships evidence base and the evidence base which underpins the development plan, any development within 15km of the SAC which is likely to increase recreational disturbance of the area is likely to result in significant harm to the SACs reasons for designation.</p> <p>Following the recent CJEU ruling (case C 323/17), LPAs can no longer consider any avoidance and mitigation measures as part of the application at this stage of HRA. For applications which may result in increases in recreational disturbance on Cannock Chase SAC, Natural England's advice is that such applications, without mitigation, are likely to significantly impact upon the reasons for designation of the SAC. Therefore, such applications will progress directly to Appropriate Assessment.</p>

STEP 3, PART 1) - HRA Stage 2, Appropriate Assessment (integrity test), Information Provided by the Applicant and Details of Proportional Mitigation

Appropriate Assessment under Regulation 63(1) - the integrity test - if there are any potential significant impacts, the applicant must provide evidence showing avoidance and/or mitigation measures to allow an Assessment to be made. The Applicant must also provide details which demonstrate any long-term management, maintenance and funding of any solution.

Development sites within the 15km zone of influence of the Cannock Chase SAC (both individually and in combination with other development within the zone of influence) will increase the human population within the zone and contribute to the creation of new paths, path widening, erosion and nutrient enrichment from visitor use and vehicle emissions. Further information regarding the impacts of increased recreation levels on the Cannock Chase SAC's integrity is set out in detail in the Impacts of Recreation to Cannock Chase SAC (2012) report.

The project being assessed would result in a net increase of residential dwellings within the 15km zone of influence. In line with the evidence base referenced earlier in this assessment, an adverse in combination effect on the integrity of the SAC would therefore be likely to result due to an increase in recreational disturbance as a result of the new development. As such, in order to lawfully be permitted, the effects resulting from the development will need to be avoided and mitigated through a package of suitable measures.

The Cannock Chase SAC Partnership has agreed a series of mitigation and avoidance measures with Natural England. These are referred to as Strategic Access Management and Monitoring Measures (SAMMM).

As set out in the SAMMM and the evidence base which supports it, the majority of visitors to the SAC from within the 0-15km zone of influence surrounding the Cannock Chase SAC. Therefore, the approach agreed through the SAMMM is to require mitigation payment per net residential dwelling from all new development within the 0-15km 'zone of payment'.

Furthermore, evidence indicates that the measures set out in the SAMMM can accommodate fluctuations in housing delivery from speculative growth (windfall), provided any fluctuations are within the parameters of currently adopted plans. This is set out in detail in the Cannock Chase SAC - Planning Evidence Base Review (2017).

Therefore, the Cannock Chase SAC - Planning Evidence Base Review (2017) suggests that any likely significant effects to the Cannock Chase SAC can be avoided or mitigated through the provision of a financial contribution per net residential dwelling proposed

towards the measures outlined in the SAMMM. A legal agreement or CIL contribution will be necessary to secure the required payment. Without the security of the mitigation being provided through a legal agreement, a significant effect would remain likely. As long as such a legal agreement is secured, the proposed development would not lead to a likely significant effect on the Cannock Chase SAC.

Provided that the application proposes to secure a financial contribution per net residential dwelling through a satisfactory legal agreement, the proposed development would deliver sufficient mitigation and avoidance measures to prevent an adverse in combination effect on the integrity of the Cannock Chase SAC.

STEP 3, PART 2)- Appropriate Assessment, Conclusion of the Competent Authority (LPA)

The authority concludes that the application will have a significant effect in the absence of avoidance and mitigation measures on Cannock Chase SAC. This represents the authority's Appropriate Assessment as a Competent Authority in accordance with requirements under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, Article 6 (3) of the Habitats Directive and having due regard to its duties under Section 40(1) of the NERC Act 2006 to the purpose of conserving biodiversity.

The authority has concluded that the adverse effects arising from the proposal are wholly consistent with the effects detailed in the Cannock Chase SAC evidence base referenced elsewhere in this assessment. The most up-to-date evidence suggests that these effects can be satisfactorily mitigated by the measures set out in the Strategic Access Management and Monitoring Measures agreed with Natural England.

As the development lies within the 0-15km zone of payment it is the authority's assessment that, subject to a satisfactory legal agreement or CIL contribution to secure the proportional financial contribution towards the SAMMMs, the application will deliver the required measures necessary to mitigate or avoid any likely significant effects. Therefore it can be concluded that there will be no adverse effect on the integrity of Cannock Chase SAC.

Natural England Comments and Further Advice:

Summary of Natural England's comments:

NATURAL ENGLAND INSERT TEXT HERE

Appendix 2 Template Unilateral Undertaking

Template to follow

Cabinet – 7 September 2022

Surveillance and Access to Communications Data

Portfolio: Councillor Perry - Resilient Communities

Related portfolios: Councillor Bird – Leader of the Council

Service: Resilient Communities

Wards: All

Key decision: No

Forward plan: Yes

1. Aim

- 1.1 This report is presented to Cabinet to report members on the use of the powers contained in the Regulation of Investigatory Powers Act 2000 (RIPA 2000) and the Investigatory Powers Act 2016 (IPA 2016) with regard to surveillance and acquisition of communications data. It further informs members of the draft amended policies on these matters that will be presented for adoption at the next full meeting of Council.

2. Summary

- 2.2 The RIPA and IPA policies have been updated to reflect changes in legislation and associated Codes of Practice issued by the Home Office, recommendations from the Investigatory Powers Commissioner's (IPC) annual report and to reflect organisational changes. These need to be referred to full Council for adoption.

3. Recommendations

- 3.1 That Cabinet notes the use of the Regulation of Investigatory Powers Act 2000 for the years ending 31 March 2018, 31 March 2019, 31 March 2020, 31 March 2021 and 31 March 2022 and is assured by the Executive Director Economy Environment and Communities, as the Council's Senior Responsible Officer for this legislation, that usage is consistent with the Council's Policy and Procedures.
- 3.2 That the draft Corporate Policy and Procedures on the Regulation of Investigatory Powers Act 2000 be presented to Council for approval.
- 3.3 That the Executive Director Economy Environment and Communities is delegated authority to make administrative amendments to the policies as part of the report to Council.

4. Report detail - know

Context

- 4.1. Where there is an interference by a local authority with the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights and where there is no other source of lawful authority, the consequence of not obtaining an authorisation under the RIPA 2000 Act and IPA 2016 may be that the action is unlawful by virtue of section 6 of the Human Rights Act 1998.
- 4.2 The Home Office has strongly recommended that local authorities seek an authorisation where the surveillance is likely to interfere with a person's Article 8 rights to privacy by obtaining private information about that person, whether or not that person is the subject of the investigation or operation. Obtaining an authorisation ensures that the action is carried out in accordance with law and subject to stringent safeguards against abuse.
- 4.3 Directed surveillance authorisations under RIPA 2000 may be granted in relation to covert surveillance undertaken in relation to a specific investigation or operation which is likely to result in the obtaining of private information about a person, and which is other than an immediate response to events or circumstances and for the use of Covert Human Intelligence Sources (CHIS). Authorisations under IPA 2016 may be granted for the acquisition of certain communications data.
- 4.4 Table 1 below summarises the authorisations which have been granted in Walsall for the last 5 financial years. Due to the introduction of the serious crime threshold, the use has in reality been limited to trading standards investigations into the sale of age restricted goods and counterfeiting. Other surveillance activities which were previously conducted by the use of RIPA have either ceased or are conducted overtly. In certain circumstances, surveillance may be carried out that is not within the scope of the RIPA regime. However, in these circumstances, the same considerations are applied to ensure the activity is necessary and proportionate. An example of such activity is the use of covert recording for the operations to ensure hackney carriage and private hire drivers are complying with appropriate legislation when conveying passengers with disabilities.

Regulatory Services – age restricted sales test purchasing (eg cigarettes, alcohol), counterfeit goods	Y/E 31/03/18	Y/E 31/03/19	Y/E 31/03/20	Y/E 31/03/21	Y/E 31/03/22
Directed Surveillance Authorisations	3	6	1	0	0
Covert Human Intelligence Source Authorisations	0	0	0	0	0

Table 1 RIPA authorisations 2016/18 to 2019/22

- 4.5 The Walsall Council Policy and Procedures on the Regulation of Investigatory Powers Act 2000 has been updated to reflect changes in the legislation and the codes of practice; to incorporate recommendations from the IPC's annual report and to reflect some organisational changes. The draft proposed policy is attached as **Appendix 1**.
- 4.6 The Walsall Council Policy and Procedures on the Investigatory Powers Act 2016 has also been updated to reflect changes in the legislation and the codes of practice, as well as some organisational changes. The draft proposed policy is attached as **Appendix 2**.

Council Plan priorities

- 4.7. By using the tools and powers in the legislation which is enforced by officers within the Regulatory Services teams of Walsall Council legally, the teams support the corporate priorities to ensure that:
- children are safe from harm and healthy for example in restricting the illegal sale of age restricted goods such as alcohol and tobacco.
 - there are greater local economic opportunities for all people, communities and businesses for example by investigating and restricting the supply of illicit and unsafe goods.
 - communities are empowered so they feel they are well connected and belong in Walsall, creating safe and healthy places that build a strong sense of community for example by ensuring communities are protected from crime linked to organised crime groups or from the disruption caused by children who have been drinking underage.

Risk management

- 4.8 Where there is an interference by a local authority with the right to respect for private and family life guaranteed under Article 8 of the European Convention on Human Rights and where there is no other source of lawful authority, the consequence of not obtaining an authorisation under the 2000 and 2016 Acts may be that the action is unlawful by virtue of section 6 of the Human Rights Act 1998. Failure to follow the procedures set out in the legislation and the Councils Policies (**Appendices 1 and 2**) may result in the Council's actions being deemed unlawful and consequently lead to claims for compensation, loss of reputation and information being ruled inadmissible in a prosecution action. Adherence to these Acts also provides an additional layer of protection under the Data Protection Act 2018 and the General Data Protection Regulations 2016. These risks are mitigated by the adoption of the policies and training of staff.

Financial implications

- 4.9 The financial implications of these procedures are in training of staff which is met from existing revenue budgets. There is a financial risk of failing to adhere to the 2000 and 2016 Acts in that it may lead to claims for compensation.

Legal implications

- 4.10 The legislation which is enforced by the teams within Regulatory Services contains tools and powers to enable them to investigate criminal offences. The 2000 and 2016 Acts provide some controls on the use of these powers. The legal implications of failing to follow these requirements is the same as is outlined in the risk management section described at paragraph 4.8 above.

Procurement Implications/Social Value

- 4.11 There are no procurement implications to this report.

Property implications

- 4.12 There are no property implications to this report.

Health and wellbeing implications

- 4.13 By using the 2000 and 2016 Acts appropriately, services are able to investigate criminal offences. This ensures that the Marmot objectives are met by protecting people at all life stages and promoting a fair and safe environment in which business can thrive.

Reducing Inequalities

- 4.14 The implications for reducing inequalities have been taken into account. The approvals process requires that all the circumstances of any persons identified are taken into account in each case. An equalities impact assessment (EqIA) has been carried out and is attached to this report as **Appendix 3**.

Staffing implications

- 4.15 The only staffing implications relevant to this report is in the provision of training to officers

Climate Impact

- 4.16 There are no climate implications to this report.

Consultation

- 4.17 Consultation has been undertaken with legal services, finance, public health, human resources and communications. External consultation is not required for this report.

5. Decide

- 5.1 This report is to enable members of cabinet to present the draft proposed policies to Council in order that they can be formally adopted to mitigate the risks identified in paragraph 4.8.

6. Respond

- 6.1 If cabinet accept the recommendations, a report will be presented to full Council on 19 September 2022 to adopt the draft policies.

7. Review

- 7.1 The Senior Responsible Officer provides oversight on the use of RIPA and IPA. An annual report will be presented to members as required in the Surveillance Code of Practice.

Appendices

Appendix 1 - Walsall Council Policy and Procedures on the Regulation of Investigatory Powers Act 2000

Appendix 2 - Walsall Council Policy and Procedures on the Investigatory Powers Act 2016

Appendix 3 - Equalities impact assessment

Background papers

There are no background papers for this report

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Simon Neilson
Executive Director Economy
Environment and Communities

30 August 2022



Councillor Perry
Resilient Communities

30 August 2022



Walsall Council

Regulation of Investigatory Powers Act 2000

Surveillance and Covert Human Intelligence Source Policy and Procedure

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Glossary

ANPR	Automated Number Plate Recognition
AO	Authorising Officer
CCTV	Closed Circuit Television.
CHIS	Covert Human Intelligence Source.
DVLA	Driver and Vehicle Licensing Agency
ECHR	European Contention on Human Rights
HRA	Human Rights Act 1998.
JP	Justice of the Peace
IPCO	Investigatory Powers Commissioners Office
RIPA	Regulation of Investigatory Powers Act 2000
SNS	Social Network Sites
SRO	Senior Responsible Officer.

Relevant Links

The Home Office have provided information relating to RIPA on the GOV.UK website

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

Forms relating to the use of RIPA can also be found at GOV.UK

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

If blank documents are stored locally regular checks ought to be made to ensure the forms remain up to date with current legal or best practice changes.

1. Policy Statement

- 1.1 The objective of this policy and procedure is to ensure that all investigations within the scope of the Regulation of Investigatory Powers Act 2000 ('RIPA'), as amended and the Codes of Practice issued by the Home Office are carried out effectively and are properly authorised. In addition, it provides guidance to officers and elected members on the requirements and outlines the procedures to be followed in utilising their investigatory powers.

This document should be in conjunction with the legislation and the Home Office's Codes of Practice.

- 1.2 The activities covered by this policy and guidance document are:

- covert surveillance
- the use of covert human intelligence sources (CHIS)

These investigatory powers should only be used in circumstances where it is necessary and proportionate having considered all the requirements of the legislation, codes of practice and this policy. The legislation and codes should be consulted from time to time, and at annual review to ensure this document remains up to date.

1.3 What RIPA Does and Does Not Do

RIPA does:

- Require prior authorisation of directed surveillance.
- Prohibit the council from carrying out intrusive surveillance.
- Require authorisation of the conduct and use of CHIS.
- Require safeguards for the conduct of the use of a CHIS.

RIPA does not:

- Make unlawful conduct which is otherwise lawful.
- Prejudice any existing power to obtain information by any means not involving conduct that may be authorised under RIPA. For example, it does not affect the council's current powers to obtain information via the DVLA or to obtain information from the Land Registry as to the owner of a property.
- Apply to activities outside the scope of Part II of RIPA, which may nevertheless be governed by other legislation, including the HRA. A public authority will only engage RIPA when in performance of its 'core functions' – i.e., the functions specific to that authority as distinct from all public authorities.

- 1.4 Further guidance on the requirements of the legislation, the codes of practice and this policy can be obtained from the Legal Services team of Walsall Council.

- 1.5 The requirements of RIPA, as supported by this document, are important for the effective and efficient operation of the Council's actions with regard to Covert Surveillance and Covert Human Intelligence Sources. This policy and procedure document will therefore be kept under annual review by the Executive Director of Economy, Environment & Communities, who is the nominated Senior Responsible Officer (SRO) for the purpose of RIPA. Authorising Officers must bring any suggestions for continuous improvement of this document to the attention of the Executive Director for Economy, Environment & Communities at the earliest opportunity.
- 1.6 In circumstances where RIPA does not apply, this does not mean that surveillance cannot be undertaken, but it must be carried out with due regard to all legal requirements, giving due attention to the necessity, reasonableness and proportionality tests (and relevant articles of ECHR) see 3.13.
- 1.7 This policy and guidance document will be considered by Cabinet on an annual basis and this report will include a review of the use of RIPA by the organisation. Where changes are required to the Policy either because of updates to legislation, codes of practice or other guidance; the Policy and details of the use to which it has been put will be considered by Cabinet before progressing for approval and adoption by full Council. Minor amendments to the policy, for example as a result of structural changes within the organisation or adding further Authorising Officers, may be made by the Executive Director Economy, Environment and the Communities during the life of the policy and will be brought to the attention of Cabinet and full Council as part of the annual report.
- 1.8 **Consequences of Failing to Comply with this Policy**

Where there is interference with Article 8 of the ECHR, and where there is no other source of lawful authority for the interference, the consequences of not following the correct authorisation procedure set out under RIPA and this Policy may result in the Council's actions being deemed unlawful. This could in turn lead to claims for compensation, loss of reputation and in certain circumstances any information obtained that could be of help in a prosecution will be inadmissible.

2. Legislative Background

- 2.1 On 2 October 2000 the Human Rights Act 1998 ("HRA") made it unlawful for a local authority to breach any article of the ECHR. An allegation that the Council or someone acting on behalf of the Council has infringed the ECHR is dealt with by the domestic courts rather than the European Court of Justice.

The ECHR states:

- a) individuals have the right to respect for their private and family life, home and correspondence (Article 8 ECHR); and
- b) there shall be no interference by a public authority with the exercise of this right unless that interference is:

- in accordance with the law
- necessary and
- proportionate

2.2 RIPA, which came into force on 25 September 2000, provided a lawful basis for three types of investigatory activity to be carried out by local authorities which might otherwise breach the ECHR. The activities were:

- a) covert surveillance
- b) covert human intelligence sources (“CHIS”) and
- c) acquisition and disclosure of communications data.

This regime was further refined with the introduction of the Investigatory Powers Act 2016 (IPA). From April 2019, while the first two investigatory techniques above remained within RIPA and are still current, the legislative powers and controls relating to the acquisition and disclosure of communications data moved to the IPA. There is a separate policy within Walsall Council governing the acquisition of communications data under IPA.

2.3 RIPA set out procedures that must be followed to ensure the activity is lawful. Where properly authorised under RIPA, the activity will be a justifiable interference with an individual’s rights under the ECHR; if the interference is not properly authorised an action for breach of the HRA could be taken against the Council, a complaint of maladministration made to the Local Government Ombudsman or a complaint made to the Investigatory Powers Tribunal.

2.4 In addition, if the procedures are not followed any evidence collected may be disallowed by the courts. RIPA seeks to balance the rights of individuals against the public interest in the Council being able to carry out its statutory duties.

3. Surveillance

3.1 Surveillance can be defined as “overt”, “covert”, “directed” and “intrusive” and includes

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

3.2 Overt Surveillance

The majority of the Council’s surveillance activity will be overt surveillance i.e., will be carried out openly. For example

- where the Council performs regulatory checks on licensees to ensure they are complying with the terms of any licence granted

- where the Council advises a resident that their activities will be monitored as a result of neighbour nuisance allegations
- or where an officer uses body worn cameras and informs the individual that the camera will be switched on and recording will take place. This type of overt surveillance is normal Council business and is not regulated by RIPA.

3.3 Covert Surveillance

This is where surveillance is carried out in a way that ensures that the person subject to the surveillance is unaware it is taking place.

- 3.4 Where covert surveillance activities are unlikely to result in obtaining of any private information about a person (because the surveillance although covert is general or low level, and is not directed at particular individuals), no interference with Article 8 rights occurs, and an authorisation under RIPA is not required.
- 3.5 RIPA authorisation may however be required where the surveillance is repeated for a particular purpose and could amount to systematic surveillance of an individual. If in doubt advice should be sought from Legal Services.

3.6 Covert Directed Surveillance

Surveillance that is:

- covert
- not intrusive
- for the purposes of a specific investigation or operation
- likely to obtain private information about a person (whether or not that person was the target of the investigation or operation); and
- not carried out as an immediate response to events or circumstances which could not have been foreseen prior to the surveillance taking place

3.7 Directed Surveillance Crime Threshold

Following the changes to RIPA introduced by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 a crime threshold applies to the authorisation of directed surveillance by local authorities.

- 3.8 Authorising Officers (AO's) may not authorise directed surveillance unless it is for the purpose of preventing or detecting a criminal offence AND meets the following:
- The criminal offence is punishable by a maximum term of at least 6 months imprisonment, or
 - involves the sale of tobacco and alcohol to underage children which is an offence under sections 146, 147, or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1993 (offences).

3.9 Covert Intrusive Surveillance

Local authorities cannot lawfully carry out covert intrusive surveillance however to assist in decision making the following section describes what covert intrusive surveillance is.

- 3.10 Covert intrusive surveillance takes place when covert surveillance is carried out in relation to anything taking place on residential premises or in a private vehicle.
- 3.11 It also involves the presence of an individual or surveillance device on the premises or in the vehicle, or the use of a device placed outside the premises or vehicle which consistently provides information of the same quality and detail as expected of a device placed inside.
- 3.12 Additionally, the Regulation of Investigatory Powers (Extension of Authorisations Provisions: Legal Consultations) Order 2010 states that covert surveillance carried out in relation to anything taking place in certain specified premises is intrusive when they are being used for legal consultation.

3.13 Non RIPA Authorisations

- 3.14 Some activity (and bearing in mind the tests at 3.8) is not classed as directed surveillance and no authorisation is required nor can be given for that activity for example.

- Covert surveillance in immediate response to events. Where officers are carrying out their routine duties and an incident occurs that they decide to follow and it is not reasonably practicable to be expected to obtain an authorisation, then an authorisation is not required.
- Covert surveillance as part of general observation work. Where officers are carrying out routine work, such as walking through town to ensure there are no breaches of legislation which they enforce, monitoring publicly accessible parts of the internet which are not part of a specific investigation, then this is not classed as covert surveillance.
- Covert surveillance not related to the statutory grounds or core activities of the Authority. RIPA authorisation is only required for specific investigations or operations where it is necessary on the grounds specified in s28(3) of the 2000 Act. Covert surveillance carried out for any other purpose should be conducted in accordance with the relevant legislation and RIPA authorisation is not required. RIPA is required for core functions that are specific to that authority, e.g. the work of enforcement teams within the Council.

General activities that are carried out by all authorities, e.g. employment issues, are classed as ordinary functions and not subject to RIPA. However, other legislation such as the Human Rights Act, General Data Protection Regulations may apply.

- Overt use of CCTV and ANPR systems. CCTV systems are used by the Council in a number of situations and the public are normally made aware that they are in use. RIPA authorisation is not normally required where these systems are used for the general monitoring of the area or to review an incident and gather evidence of a crime after it has happened.

However, where the system is used in a covert manner to monitor a particular subject as part of a planned operation, this becomes directed surveillance and a RIPA authorisation should be obtained.

- Covert surveillance as part of an equipment interference warrant. Where a warrant has been obtained under part 5 of the 2016 Act, then a separate RIPA authorisation is not required.
- Recording equipment worn by a CHIS. Where a CHIS acting under a conduct authorisation wears a recording to record information obtained in their presence a separate RIPA authorisation is not required.
- Covert recording of noise recording sound levels only. A RIPA authorisation is not required where a covert noise recording device records only sound levels; machinery, music or other non-verbal noise; or verbal content is recorded at a level which does not exceed that which can be heard in the street outside or adjoining the property with the naked ear.

3.15 Where investigating Officers are undertaking surveillance examples of which are given above (3.14) should still give consideration to the necessity and proportionality of the surveillance and seek authorisation from an AO to proceed.

3.16 The appropriate 'Application for authorisation to carry out directed surveillance' forms at **APPENDIX 1** should be completed, authorised and stored securely by the relevant AO.

4 Private information

4.1 The 2000 Act states that private information includes any information relating to a person's private or family life. As a result, private information is capable of including any aspect of a person's private or personal relationship with others, such as family and professional or business relationships.

4.2 Private information may include personal data, such as names, telephone numbers and address details. Where such information is acquired by means of covert surveillance of a person having a reasonable expectation of privacy, a directed surveillance authorisation is appropriate.

4.3 Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information. This is likely to be the case where that person has a reasonable expectation of privacy even though acting in public and where a record is being made by a public authority of that person's activities for future consideration or analysis. Surveillance of publicly accessible areas of the internet should be treated in a similar way, recognising that there may be an expectation of privacy over information which is on the internet, particularly when accessing information on social media websites (see 9).

4.4 Private life considerations are particularly likely to arise if several records are to be analysed together in order to establish, for example, a pattern of behaviour, or if one or more pieces of information (whether or not available in the public domain) are covertly (or in some cases overtly) obtained for the purpose of making a permanent record about a person or for subsequent data processing to generate further information. In such circumstances, the totality of information gleaned may constitute private information even if individual records do not. Where such conduct includes covert surveillance, a directed surveillance authorisation may be considered appropriate.

Practical examples of these differing scenarios can be found in the [Code of Practice for Covert Surveillance and Property Interference](#) on the Home Office website.

5 Confidential Information

- 5.1 A higher level of authorisation to apply to the Magistrates Court is required in relation to RIPA activity when the subject of the investigation might reasonably expect a high degree of privacy, or where "confidential information" might be obtained. For the purpose of RIPA this includes:
- communications subject to legal privilege
 - communications between a member of parliament and another person on constituency matters
 - confidential personal information and
 - confidential journalistic material
- 5.2 The AO and the person carrying out the surveillance must understand that such information is confidential and is subject to a stringent authorisation procedure. Authorisation can only be granted by the Chief Executive or in their absence by an officer acting as Head of Paid Service.
- 5.3 Any officer contemplating RIPA activity where the above circumstances may apply must seek advice from Legal Services prior to making any application.

6. Covert Human Intelligence Sources ("CHIS")

- 6.1 The Council is permitted to use CHIS subject to strict compliance with RIPA.
- 6.2 A CHIS is a person who establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating:
- (a) covertly using the relationship to obtain information or provide access to information to another person, or
 - (b) covertly disclosing information obtained by the use of the relationship or as a consequence of the existence of such a relationship.
- 6.3 A RIPA authorisation and order from a magistrate is required for the above activity and should be obtained whether the CHIS is a Council officer or another person who is asked to be a CHIS on the Council's behalf. Authorisation for CHIS can only be granted if it is for the purposes of preventing or detecting crime or of preventing disorder.
- 6.4 Members of the public who volunteer information to the Council and those engaged by the Council to carry out test purchases in the ordinary course of business (i.e., they do not develop a relationship with the shop attendant and do not use covert recording devices) are not CHIS and do not require RIPA authorisation.

- 6.5 However, by virtue of section 26(8) (c) of RIPA, there may be instances where an individual, who covertly discloses information though not tasked to do so may nevertheless be a CHIS.
- 6.6 The important question is how did the member of the public acquire the information which they volunteer? If they acquired it in the course of, or as a result of the existence of, a personal or other relationship, they are likely to fall within the definition of a CHIS. If the Council then makes use of the information, and the informant is thereby put at risk, the Council may be in breach of its duty of care owed to the individual. It is recommended that legal advice is sought in any such circumstances.
- 6.7 The [Covert Human Intelligence Sources Code of Practice](#) can be found on the Home Office website.
- 6.8 The [Covert Human Intelligence Sources \(Criminal Conduct\) Act 2021 \(legislation.gov.uk\)](#) restricts the authorisation of a CHIS who can carry out criminal conduct to certain organisations. Local authorities are not included within scope of this list. Therefore, Walsall Council will not authorise a CHIS to carry out criminal conduct.

7 Vulnerable Individuals / Juvenile CHIS

- 7.1 Although it is unlikely Walsall Council would use such persons additional requirements would apply to the use of a vulnerable individual or a person under the age of 18 as a CHIS. In both cases authorisation for an application to the Magistrates Court can only be granted by the Chief Executive or in their absence by an officer acting as Head of Paid Service. Any officer contemplating the use of a juvenile or a vulnerable person as a CHIS must seek advice from Legal Services prior to making the application.
- 7.2 The use or conduct of a CHIS under 16 years of age must not be authorised to give information against their parents or any person who has parental responsibility for them.
- 7.3 In other cases authorisations should not be granted unless the special provisions contained in The Regulation of Investigatory Powers (Juveniles) Order 2000 (as amended in 2018) are satisfied. This sets out rules about parental consent, meetings, risk assessments and the duration of the authorisation.
- 7.4 The Draft Revised Home Office Guidance on Covert Human Intelligence Sources (January 2021) sets out additional guidance on measure to protect a juvenile CHIS. These additional measures are that:
- An appropriate adult is present at any meeting with a CHIS under 16 or 17 years of age
 - Where a CHIS is 16 or 17 years of age, consideration should be given to the presence of an appropriate adult. In making this decision, consideration should be given to the maturity of the juvenile and their ability to make an informed decision.
 - The appropriate adult should normally be the parent or guardian of the juvenile unless they are unavailable or there are specific reasons for excluding them, e.g. their involvement in the matters under investigation or the juvenile provides a clear reason to exclude them.
 - Where the appropriate adult is not the parent or guardian, the person who acts as the appropriate adult should be someone with personal links to the juvenile, or someone who

has professional qualifications that enable them to carry out the role, such as a social worker. The appropriate adult should be someone who is independent of the AUTHORITY.

- A juvenile CHIS should only be approved by the Head of Paid Service or a person acting as Head of Paid Service.

7.5 Although these measures are still in draft form, it is the policy of Walsall MBC to adopt these measures.

7.6 A vulnerable individual is a person who by reason of mental disorder or vulnerability, other disability, age or illness, is or may be unable to take care of themselves or protect themselves against significant harm or exploitation.

8. CCTV

8.1 The installation and use of unconcealed CCTV cameras for the purpose of generally observing activity in a particular area is not surveillance requiring RIPA authorisation. However, there are specific provisions regulating the use of CCTV cameras in public places and buildings and the Council has drawn up a Corporate CCTV Policy which officers must comply with. However, if CCTV cameras are being used in such a way that the definition of covert directed surveillance is satisfied, RIPA authorisation should be obtained.

8.2 For instance the use of town centre CCTV systems to identify those responsible for a criminal act immediately after it happens will not require RIPA authorisation.

However, the use of the same CCTV system to conduct planned surveillance of an individual and record his movements is likely to require authorisation.

8.3 Protocols should be agreed with any external agencies requesting use of the Council's CCTV system. The protocols should ensure that the Council is satisfied that authorisations have been validly granted prior to agreeing that the CCTV system may be used for directed surveillance.

9. Use of Social Media / Internet

9.1 The internet may be utilised to obtain information including viewing specific user profiles on Social Networking Sites ('SNS') or searching SNS to try to find profiles that contain useful information. Used correctly, research of SNS might provide invaluable evidence or at least useful intelligence.

9.2 Some activity on SNS might however constitute Directed Surveillance or require CHIS authorisation, some may not. Similarly, some research might be likely to result in the obtaining of private information, some may not. Activity that does not meet the threshold for RIPA authorisation but might be likely to result in obtaining private information will require consideration of Human Rights issues such as balancing the protection of rights with the breach of privacy, necessity and proportionality.

- 9.3 It is important to note that images of persons are private information, and also for officers to be aware that it is possible they might obtain private information about other individuals not just the specific user on the profiles which are viewed, captured or recorded. These individuals might not even be aware this private information has been made public by the profile/account holder.
- 9.4 Whilst it is the responsibility of an individual to set privacy settings to protect unsolicited access to private information, and even though data may be deemed published and no longer under the control of the author, it is unwise to regard it as 'open source' or publicly available; the author has a reasonable expectation of privacy.
- 9.5 If it is necessary and proportionate for an officer to covertly record information from a SNS, the minimum requirement is an authorisation for directed surveillance.
- 9.6 An authorisation for the use and conduct of a CHIS is necessary if a relationship is established or maintained by a member of a public authority or by a person acting on its behalf (i.e., the activity is more than mere reading of the site's content). This could occur if an officer covertly asks to become a 'friend' of someone on a SNS and subsequently forms a relationship with them
- 9.7 Use of an established overt presence of the public authority on the SNS to look at publicly available information on the profile is possible and viable if the Council has a presence on the SNS which is used to publicly and overtly make the presence of the Council known, however this does not mean that information freely displayed on a profile is "fair game".
- 9.8 The first covert visit to an SNS profile which might be displaying lots of private information could be regarded as a 'drive by' however any subsequent covert visits, particularly on a regular basis are likely to require authorisation for directed surveillance if the Council is likely to obtain private information, and this would be obvious as a result of the initial visit.
- 9.9 In his [annual report for 2020](#) (published Jan 2022), The investigatory Powers Commissioner recommended that all activity relating to investigations where activity accessing the internet and social networking sites is recorded so that the SRO can monitor such activity to ensure it is being used in a "controlled and well understood manner".
- 9.10 In Walsall, such activity should already be recorded on the case worksheets for Regulatory Services. To enable better monitoring a new action code has been created against which this activity must be logged. Other services who carry out such activity should record it in a way in which it can be monitored.

10. Aerial Surveillance

- 10.1 Where surveillance is carried out using aircraft, whether manned, eg helicopters, or unmanned, e.g. drones, or other aerial devices then the same considerations need to be given to whether RIPA authorisation is needed as for any other type of surveillance. Particular consideration needs to be given to the reduced visibility and awareness of the device at height.

11 Residential Premises & Vehicles

- 11.1 Residential premises are defined as any premises for the time being occupied by any person, including on a temporary basis, for residential purposes or as living accommodation, including hotels. However, common areas to which a person has access in connection with that use are excluded. Residential premises occupied by a local authority for non-residential purposes are excluded. For example, a house covertly used by trading standards to which traders are invited to carry out maintenance work or repair known faults, to discover if they are acting honestly. (A “house of horrors” set up.)
- 11.2 Examples of locations which are and are not classed as residential premises are given below:

Examples of locations classed as residential premises	Examples of locations not classed as residential premises
Rented flat	Communal stairway in block of flats (unless used as temporary place of abode by a homeless person)
Hotel bedroom or suite	Hotel reception or dining room
	Front garden of premises readily visible to the public
	House of horrors

- 11.3 **Private vehicles** are defined as a vehicle, including a vessel, aircraft or hovercraft, which is used primarily for the private purposes of the person who owns it or having the right to use it. This includes a company car used for business and pleasure of an employee.
- 11.4 The use of a tracking or recording device in vehicles owned by a local authority is unlikely to be covert if members of staff are informed of that use. However, if they are used for a purpose that the employee has not been informed of, or for the purpose of covertly monitor, record, observe, listen to the occupants, then that may require authorisation.

12. Restrictions on Certain Activities

- 12.1 Local Authorities are not permitted within the legislation to undertake certain activities including:
- interference with private property e.g. placing tracking devices on private vehicles

- carrying out surveillance which is intrusive
- interception of communications

12.2 At no time should the Council or any officers undertake any surveillance if it falls within any of these categories. If in doubt seek the advice of the SRO, AO or legal services as soon as practicable.

13. Authorisation Procedures

13.1 Authorising Officers/Designated Persons for directed surveillance and CHIS

Authorising Officers are responsible for assessing and authorising covert directed surveillance and the use of a CHIS.

13.2 It is the responsibility of Authorising Officers to ensure that when applying for authorisation the principles of necessity and proportionality (see 13.9 below) are adequately considered and evidenced; and that reviews and cancellations of authorisations are carried out as required under this Policy.

13.3 A list of AOs is contained at **APPENDIX 2**. Any requests for amendments to the lists must be made in writing and sent to the SRO.

13.4 Schedule 1 of statutory instrument No. 521 (2010) prescribes the rank or position of authorising officers for the purposes of Section 30(1) of RIPA (covert surveillance and CHIS). For Local Authorities they prescribe a “Director, Head of Service, Service Manager or equivalent”.

The term Director is not defined within the Act but in Walsall Council it has been determined that it would normally equate to the Executive Director or a member of Corporate Management Team.

13.5 The SRO designates which officers can be AO's. Only these officers can authorise directed surveillance and the use of CHIS. All authorisations must follow the procedures set out in the Policy. AOs are responsible for ensuring that they have received RIPA training prior to authorising RIPA activity. When applying for or authorising RIPA activity under the Policy, officers must also take into account the corporate training and any other guidance issued from time to time by the SRO.

13.6 All forms that are used in the respect of RIPA applications, renewals, reviews or cancellations should be taken from the Home Office website.

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

13.7 Authorisation of Covert Directed Surveillance and Use of a CHIS

13.8 Whether by Council officers or external agencies engaged by the Council, RIPA applies to all covert directed surveillance and use of CHIS. Council officers wishing to undertake directed surveillance or use of a CHIS must complete the relevant application form and forward it to the relevant authorising officer.

13.9 Directed surveillance and use of a CHIS can only be authorised if the authorising officer is satisfied that the activity is: -

- (a) in **accordance with the law** i.e., it must be in relation to matters that are statutory or administrative functions of the Council.
- (b) **necessary** for the purpose of preventing or detecting crime or preventing disorder. This is the only ground available to the Council for authorising RIPA activity and there is a crime threshold for directed surveillance as described in paragraph 3.7 above; and
- (b) **proportionate** to what it seeks to achieve. This involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person as may be affected) against the need for the activity in investigative operational terms. Any conduct that is excessive as to the interference and the aim of the conduct, or is in any way arbitrary will not be proportionate. Serious consideration must be given to identifying the least intrusive method of obtaining the information required.

13.10 Officers making a RIPA application should ask the following types of questions to help determine whether the use of RIPA is necessary and proportionate:

- why it is believed the proposed conduct and use is necessary for the prevention of crime or the prevention of disorder (as appropriate)
- how the activity to be authorised is expected to bring a benefit to the investigation
- how and why the proposed conduct and use is proportionate to the intelligence dividend it hopes to achieve, having regard to the gravity and extent of the activity under investigation
- how and why the methods to be adopted will cause the least possible intrusion to the subject/s i.e., interfere with their rights under the ECHR
- what other reasonable methods of obtaining information have been considered and why they have been discounted
- Authorising officers/designated persons should not be responsible for authorising their own activities i.e., those operations/investigations in which they are directly involved. However, it is recognised that in exceptional circumstances this may sometimes be unavoidable.

13.11 Particular consideration should be given to collateral intrusion on or interference with the privacy of persons who are not the subject(s) of the investigation. Collateral intrusion occurs when an officer undertaking covert surveillance on a subject observes or gains information relating to a person who is not the subject of the investigation. An application for an authorisation must include an assessment of the risk of any collateral intrusion or interference and measures must be taken to avoid or minimise it. This must be taken into

account by the authorising officer/designated person, particularly when considering the proportionality of the surveillance.

- 13.12 Particular care must be taken in cases where confidential information is involved e.g., matters subject to legal privilege; confidential personal information; confidential journalistic material; confidential medical information; and matters relating to religious leaders and their followers. In cases where it is likely that confidential information will be acquired, officers must specifically refer this to Legal Services for advice.
- 13.13 The activity must be authorised before it takes place. At the time of authorisation, the authorising officer must set a date for review of the authorisation and review it on that date.
- 13.14 A copy of the completed relevant application and authorisation form must be forwarded to the SRO within one week of the authorisation for example by e-mail as a scanned document. The SRO will maintain a central register of the Council's RIPA activity and a unique reference number will be allocated to each application.

14. The Magistrates Court

- 14.1 Following changes under the Protection of Freedoms Act 2012, there is an additional stage in the process for the investigatory activities of Directed Surveillance and CHIS. After the Authorisation form has been countersigned by the AO, the Council is required to obtain judicial approval for either the authorisation or a renewal of an authorisation. The role of the Magistrates Court is set out in section 32A RIPA.
- 14.2 This section provides that the authorisation shall not take effect until the Magistrates Court has made an order approving such authorisation. The matters on which the Magistrates Court needs to be satisfied before giving judicial approval are that:
- There were reasonable grounds for the local authority to believe that the authorisation or notice was necessary and proportionate
 - In the case of a CHIS authorisation, that there were reasonable grounds for the local authority to believe that:
 - arrangements exist for the safety and welfare of the source that satisfy section 29(5) RIPA;
 - the requirements imposed by Regulation of Investigatory Powers (Juveniles) Order 2000 were satisfied;
 - The local authority application has been authorised by an authorising officer or designated person (as appropriate)
- 14.3 In cases where there is collaborative working with another agency, for example, the Police, as part of a single investigation or operation, only one authorisation from one organisation is required. This should be made by the lead authority of that particular investigation. Duplication of authorisation does not affect the lawfulness of the investigation or operation but could create an unnecessary administrative burden. Where the Council is not the lead authority in the circumstances, Council officers should satisfy themselves that authorisation has been obtained, and what activity has been authorised.

14.4 The grant of the authorisation was not in breach of any restriction imposed by virtue of an order made under the following sections of RIPA:

15 29(7)(a) (for CHIS),

16 30(3) (for directed surveillance and CHIS)

14.5 It should be noted that only the initial authorisation and any renewal of the authorisation require magistrates' approval.

14.6 There is no requirement for officers presenting authorisations to the Magistrates Court to be legally qualified.

15. The procedure for applying for directed surveillance or use of a CHIS.

- Applicant officer completes an application
- Authorisation is sought from the Authorising Officer
- Applicant officer creates court pack
- Applicant officer proceeds to court
- Applicant officer organises the directed surveillance or use of a CHIS to take place
- Applicant provides the SRO with updated paperwork relating to reviews, renewals or cancellations

At any stage and particularly for inexperienced staff or potentially contentious investigations advice from Legal Services ought to be sought.

16. Additional Requirements for Authorisation of a CHIS

16.1 A CHIS must only be authorised if the following arrangements are in place:

- there is a Council officer with day-to-day responsibility for dealing with the CHIS (CHIS handler) and a senior council officer with oversight of the use made of the CHIS (CHIS controller);
- a risk assessment has been undertaken to take account of the CHIS security and welfare
- a Council officer is responsible for maintaining a record of the use made of the CHIS
- any adverse impact on community confidence or safety regarding the use of a CHIS has been considered taking account of any particular sensitivities in the local community where the CHIS is operating and
- records containing the identity of the CHIS will be maintained in such a way as to preserve the confidentiality or prevent disclosure of the identity of the CHIS

17. Urgent Authorisations

- 17.1 By virtue of the fact that an authorisation under RIPA is not approved until signed off by a Magistrate, urgent oral authorisations are no longer available.

18. Review of Authorisations

- 18.1 AOs must make arrangements to periodically review any authorised RIPA activity.
- 18.2 Officers carrying out RIPA activity or external agencies engaged by the Council to carry out RIPA activity must periodically review it and report back to the authorising officer if there is any doubt as to whether it should continue. For Juvenile CHIS's, the Code of Practice stipulates that the authorisation should be reviewed on a monthly basis. Reviews should be recorded on the appropriate Home Office form.
- 18.3 A copy of the Council's notice of review of an authorisation must be sent to the SRO within one week of the review to enable the central record on RIPA to be authorised.

19 Renewal of Authorisations

- 19.1 If the AO considers it necessary for an authorisation to continue they may renew it for a further period, beginning with the day when the authorisation would have expired but for the renewal. They must consider the matter again taking into account the content and value of the investigation and the information so far obtained.

Renewed authorisations will normally be for a period of

1. up to 3 months for covert directed surveillance,
2. 12 months in the case of CHIS,
3. 4 months in the case of juvenile CHIS

Authorisations may be renewed more than once, provided they are considered again and continue to meet the criteria for authorisation.

- 19.2 Applications for the renewal of an authorisation for covert directed surveillance or CHIS authorisation must be made on the appropriate form. The reasoning for seeking renewal of a RIPA notice should be set out by the applicant in an addendum to the application form which granted the initial authorisation.
- 19.3 All renewals will require an order of the Magistrates Court.

20 Cancellation of Authorisations

- 20.1 The person who granted or last renewed the authorisation must cancel it when they are satisfied that the covert directed surveillance or CHIS authorisation is no longer meets the criteria for authorisation. Cancellations must be made on the appropriate form.
- 20.2 Where necessary and practicable, the safety and welfare of the CHIS should continue to be taken into account after the authorisation has been cancelled, and all welfare matters are addressed.

- 20.3 A copy of the Council's notice of cancellation of an authorisation must be sent the SRO within one week of the cancellation to enable the central record on RIPA to be updated.

21. What happens if the surveillance has unexpected results?

- 21.1 Those carrying out the covert surveillance should inform the authorising officer if the investigation unexpectedly interferes with the privacy of individuals who are not the original subjects of the investigation or covered by the authorisation.
In some cases, the original authorisation may not be sufficient to cover the activity required or information likely to be gathered and in such cases, consideration should be given as to whether a separate authorisation is required.

22 Errors

- 22.1 Proper application of the RIPA provisions, and robust technical systems, should reduce the scope for making errors. At Walsall Council the SRO will undertake a regular review of errors and a written record will be made of each review.
- 22.2 An error may be reported if it is a "relevant error". Under section 231(9) of the Investigatory Powers Act 2016, a relevant error is an error by a public authority in complying with any requirements that are imposed on it by an enactment, such as RIPA, which is subject to review by a Judicial Commissioner.
- 22.3 Examples of a relevant error include where surveillance or CHIS activity has taken place without lawful authorisation, and/or without adherence to the safeguards set out within the relevant statutory provisions or the relevant Home Office Codes of Practice.
- 22.4 Where a relevant error has been identified, the Council should notify the Investigatory Powers Commissioner (IPCO) as soon as reasonably practical, and no later than 10 working days (unless otherwise agreed by IPCO). The process for informing IPCO is set out in the relevant Home Office Codes of Practice.

23. Records of RIPA Authorisations

- 23.1 There will be a central record of RIPA authorisations which is maintained by the SRO. The central record will contain the following information:
- the type of authorisation
 - the date it was given
 - the name and position of the AO
 - the unique reference number of the investigation or operation
 - the title of the investigation or operation, including a brief description and names of the subjects, if known
 - the date of attending the magistrates court

- the determining magistrate
- the decision of the court
- the date and time of that decision
- the dates of any reviews
- the date of any renewal
- the AO for the renewal
- judicial information relating to any renewal
- whether the activity is likely to result in obtaining confidential or privileged information
- whether the authorisation was granted by a person directly involved in the investigation
- the date the authorisation was cancelled

23.2 In addition, the following information will also be retained by the SRO in a central file:

- a copy of the application and authorisation along with any additional supporting documentation and any notification of approval given by the AO
- a record of the period over which the surveillance took place
- the frequency of reviews prescribed by the AO and a copy of the record of those reviews
- a copy of any renewal authorisation together with any supporting documentation
- the date and time when any instruction to cease surveillance was given by the AO
- the date and time when any other instruction was given by the AO
- a copy of the order approving or otherwise the grant or renewal of an authorisation from a Justice of the Peace.
- The officer making the application will be responsible for making sure that copies the original papers are given to that person as soon as practicable after each document is signed.
- The central record and copies of documents shall be maintained for seven years and provided to the Investigatory Powers Commissioner on request.

23.3 These records may be digital records only, provided they are a true record of the original documentation and are centrally available.

24. Handling of Material and Safeguards

24.1 When surveillance is carried out, information about the subject of the surveillance will be obtained. This may include information which an officer has observed and recorded, written communications, records, photographs, audio or video recordings. There may also be information

gathered about other persons (collateral intrusion). All such information is referred to here as material. As well as the legislation governing RIPA, due regard must also be given to data protection legislation and the Authority's policies thereunder to ensure that the handling of private information continues to be lawful, justified and strictly controlled and is subject to robust and effective safeguards.

- 24.2 Any breaches of the safeguards which are in place to protect material must be investigated. A record of the investigation, conclusion and corrective actions is to be made and reported to the IPCO. Where appropriate, the Information Commissioner must also be notified.
- 24.3 Material should only be copied, retained and disseminated to the minimum degree necessary for authorised purposes, namely:
- the material is, or is likely to become, necessary for any of the statutory purposes set out in the 2000, 1997 or 1994 Acts in relation to covert surveillance
 - the material is necessary for carrying out the functions of the Authority
 - the material is necessary for carrying out the functions of the IPC or the Investigatory Powers Tribunal
 - the material is necessary for legal proceedings
 - the material is necessary for the performance of the functions of any person by or under any enactment.
- 24.4 Material obtained may be used to further investigations where it is necessary and provided that the safeguards are followed.

25. Use of Material as Evidence

- 25.1 Material obtained may be used as evidence in criminal proceedings.
- 25.2 Ensuring the continuity and integrity of evidence is important and governed by other legislation. Material obtained as a result of covert surveillance is also subject to the disclosure rules of the Criminal Procedure and Investigations Act 1996 and its associated codes of practice. Particular attention needs to be paid to the requirement to disclose all material obtained during the course of an investigation which may be relevant to the investigation when making an application for RIPA and in carrying out and recording information during the course of surveillance.

26. Disseminating Material

- 26.1 It is necessary to share information internally within the Authority and with external organisations such as other local authorities, the police and oversight organisations. This must be limited to the minimum necessary for the authorised purposes of the investigation or functions of the relevant organisation. This includes restricting dissemination within the Authority to only those persons who have a bona fide need to know the information. The

amount of material disclosed should be the minimum necessary, including where relevant providing only a summary of the material.

- 26.2 Where material is disseminated outside the organisation, similar provisions will apply. The restrictions on further dissemination should be explicitly outlined in writing including, where relevant, the need to obtain written permission before disseminating the material further.
- 26.3 Material should not be disseminated to bodies outside the UK without ensuring that they have appropriate safeguards in place. The AO should be consulted before material is disseminated to bodies outside the UK.

27. Copying Material

- 27.1 Material, including extracts and summaries of it should only be copied to the minimum extent necessary for the authorised purposes. This also applies to any record which refers to the covert surveillance and the identities of any person to whom the material related.

28. Storage of Material

- 28.1 All material, copies, summaries and extracts of it must be stored to ensure no persons can access it without the proper authority. It must be stored to minimise the risk of loss or theft. Any person handling the material must adhere to this requirement. Measures in place to protect the material include:
- physical security – storage to be in buildings, rooms and cupboards etc where access is restricted
 - IT security to restrict access – storage is to be on shared servers, networks, databases etc where access is restricted to only those persons who need access to enable the material to be processed; to further the investigation or authorised purpose or to fulfil the functions of the legislation or this policy.

29. Retention and Destruction of Material

- 29.1 Where material is retained for an authorised purpose, it will be retained in accordance with the relevant retention policy. E.g. where material is retained for a prosecution, it will be retained in accordance with the document retention policy for prosecutions. The material, including and copies, extracts or summaries should then be destroyed in a secure manner at the end of that period. Where material is not retained for one of the authorised purposes, then it should be destroyed in a secure matter as soon as it the need for retaining it is no longer relevant.

30 Surveillance products

- 30.1 Where the product of surveillance could be relevant to pending or future criminal or civil proceedings, it should be retained in accordance with established disclosure requirements for a suitable further period, commensurate to any subsequent review.
- 30.2 Particular attention is drawn to the requirements of the Code of Practice issued under the Criminal Procedure and Investigations Act 1996. This requires that material which is

obtained in the course of a criminal investigation and which may be relevant to the investigation must be recorded and retained.

- 30.3 There is nothing in RIPA which prevents material obtained from properly authorised surveillance from being used in other investigations. The Council will ensure that adequate arrangements are in place for the handling and storage of material obtained through the use of covert surveillance to facilitate its use in other investigations.
- 30.4 Material obtained through the use of directed surveillance or CHIS containing personal information will be protected by the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA). In addition to the considerations above, material obtained must be used, stored and destroyed in compliance with any other legal requirements, including confidentiality, and the Council's Data Protection, Information Security and Records Management Policies available on the intranet at the Protecting Information pages.

31. Training & Advice and Departmental policies, procedures and codes of conduct

- 31.1 The SRO will arrange regular training on RIPA. All authorising officers; designated persons and investigating officers should attend at least one session every two years and further sessions as and when required. Training can be arranged on request and requests should be made to the SRO. In particular training should be requested for new starters within the Council who may be involved in relevant activities.
- 31.2 Where in practice, departments have any policy, procedures or codes of practice in relation to RIPA that are different from or in addition to this Code, they must immediately seek advice from the Legal Services or the SRO.

32. Complaints

- 32.1 Any person who believes they have been adversely affected by surveillance activity by or on behalf of the Council may complain to the SRO.

They may also complain to the Investigatory Powers Tribunal at:

Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ

Or via the website

<https://www.ipt-uk.com/content.asp?id=28>



Walsall Council

**APPLICATION FOR AUTHORISATION TO CARRY OUT
DIRECTED SURVEILLANCE
THIS IS NOT A RIPA AUTHORISATION FORM
THIS FORM SHOULD NOT BE USED FOR AUTHORISING RIPA
SURVEILLANCE**

Public Authority <i>(including address)</i>	Walsall Council Civic Centre Darwall Street Walsall WS1 1TP
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Name of Applicant		Unit/Branch/ Division	
Full address			
Contact Details	Address Tel		
Investigation/Operation Name (if applicable)			
Investigating Officer (if a person other than the applicant)			

DETAILS OF APPLICATION
1. Give rank or position of authorising officer
Has a pre-surveillance risk assessment been carried out? Yes <input type="checkbox"/> No <input type="checkbox"/>

2. Describe the purpose of the specific operation or investigation.

3. Describe in detail the surveillance operation to be authorised and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used.

4. The identities, where known, of those to be subject of the directed surveillance.

5. Explain the information that it is desired to obtain as a result of the directed surveillance.

6. Identify why surveillance is necessary in this particular case:

7. Explain why this directed surveillance is necessary in this particular case:

**8. Supply details of any potential collateral intrusion and why the intrusion is unavoidable.
Describe precautions you will take to minimise collateral intrusion.**

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10. Confidential Information. [Code paragraphs 3.1 to 3.12]

INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL INFORMATION:

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11. Applicant's Details

Name (Print)		Tel No.	
Grade / Rank		Date	
Signature			

~~9. Explain why this directed surveillance is proportionate to what it seeks~~

12. Authorising Officer's Statement [Spell out the "5 Ws" – Who; What; Where; When; Why and HOW – in this and the following box.]

~~On others? And why is this intrusion outweighed by the need for~~

surveillance in operational terms or can the evidence be obtained by any other means? I hereby authorise as follows:

Response

Initials

Why is authorised to conduct surveillance:		
What is authorised for the surveillance:		
Where is it to take place and for how long:		
Why it is being authorised:		
How will the surveillance be conducted:		

This written authorisation will cease to have effect at the end of a period of 3 months unless renewed (see separate form for renewals).

The Applicant and Authorised Officer will jointly review this authorisation on the date below to see whether authorisation should continue, be renewed or cancelled.

--

13. Authorised Officers statement explaining why in his / her view the directed surveillance is necessary and proportionate. This box must be completed and both aspects must be addressed.

--

14. (Confidential Information Authorisation.) Supply detail demonstrating compliance with Home Office Codes of Practice relating to this issue.

--

Expiry of authorisation (3 months from the date / time of authorisation unless otherwise stated here)	
--	--

Programme for subsequent reviews of this authorisation: Only complete this box if review dates after first review are known. If not or inappropriate to set additional review dates then leave blank.

--

Authorising Officer Name (Print)		Job Title	
Signature		Date and time	
Expiry date and time [e.g. authorisation granted on 1 April 2005 – expires on 30 June 2005, 23.59]			

15. Urgent Authorisation Authorising officer to explain why they considered the case so urgent that an oral instead of written authorisation was given.

Name (Print)		Job Title:		
Signature		Date and Time		
Urgent authorisation Expiry date:		Expiry time:		
<i>Remember the 72 hour rule for urgent authorities</i>	e.g. authorisation granted at 5pm on June 1 st expires 4.59 on 4 th June			

A COPY OF THIS FORM, ONCE IT HAS BEEN AUTHORISED OR REFUSED, MUST BE HELD ON THE INVESTIGATING OFFICER'S FILE

THERE IS NO REQUIREMENT TO PLACE A COPY OF THE AUTHORISATION ON THE CORPORATE DATABASE

Review of a Directed Surveillance authorisation

**REVIEW OF DIRECTED SURVEILLANCE AUTHORISATION
THIS IS NOT A RIPA REVIEW FORM
THIS FORM SHOULD NOT BE USED FOR REVIEWING RIPA
SURVEILLANCE**

Public Authority <i>(including address)</i>	
---	--

Applicant		Unit/Branch/ Division	
Full address			
Contact Details			
Operation Name		Operation Number* *Filing Ref	
Date of authorisation or last renewal		Expiry date of authorisation or last renewal	
Review Number			

Details of review:

1. Review number and dates of any previous reviews.	
Review Number	Date

--	--

2. Summary of the investigation / operation to date, including what private information has been obtained and the value of the information so far obtained.

--

3. Detail the reasons why it is necessary to continue with the directed surveillance.

--

4. Explain how the proposed activity is still proportionate to what it seeks to achieve.

--

5. Detail any incident of collateral intrusion and the likelihood of any further incidents of collateral intrusions occurring.

--

6. Give details of any confidential information acquired or accessed and the likelihood of acquiring confidential information.

--

--

7. Applicant's Details

Name (Print)		Tel No.	
Job Title		Date	
Signature			

8. Review Officer's Comments, including whether or not the directed surveillance should continue.

--

9. Authorising Officer's Statement

I, [insert name], hereby agree that the directed surveillance investigation/operation as detailed above [should/should not] continue until its next [until its next review/renewal] [should be cancelled immediately].

Name (Print)

Job Title

Signature

Date

10. Date of next review.

--

**A COPY OF THIS FORM, ONCE IT HAS BEEN AUTHORISED OR
REFUSED, MUST BE HELD ON THE INVESTIGATING
OFFICER'S FILE**

**THERE IS NO REQUIREMENT TO PLACE A COPY OF THE
AUTHORISATION ON THE CORPORATE DATABASE**



APPLICATION FOR RENEWAL OF A DIRECTED SURVEILLANCE

(PLEASE ATTACH A COPY OF THE ORIGINAL AUTHORISATION)

THIS IS NOT A RIPA RENEWAL FORM

**THIS FORM SHOULD NOT BE USED FOR AUTHORISING RIPA
RENEWALS**

Public Authority <i>(including address)</i>	
---	--

Name of Applicant		Unit/Branch/ Division	
Full address			
Contact Details			
Investigation/Operation Name (if applicable)			
Renewal Number			

Details of renewal:

1. Renewal numbers and dates of any previous renewals.	
Renewal Number	Date

--	--

2. Detail any significant changes to the information as listed in the original authorisation as it applies at the time of renewal.

--

3. Detail the reasons why it is necessary to continue with the directed surveillance.

--

4. Detail why the directed surveillance is still proportionate to what it seeks to achieve.

--

5. Indicate the content and value to the investigation or operation of the information so far obtained by the directed surveillance.

--

6. Give details of the regular reviews of the investigation or operation.

--

--

7. Applicant's Details			
Name (Print)		Tel No.	
Grade / Rank		Date	
Signature			

8. Authorising Officer's Comments. <u>This box must be completed.</u>

9. Authorising Officer's Statement	
<p>I, [insert name], hereby authorise renewal of the directed surveillance/operation as detailed above. The renewal of this authorisation will last for 3 months unless renewed in writing.</p> <p>This authorisation will be reviewed frequently to assess the need for the authorisation to continue.</p>	
Name (Print)	Job Title
Signature	Date
Renewal From:	Time: Date:

--

Date of first review.	
Date of subsequent reviews for this authorisation.	

A COPY OF THIS FORM, ONCE IT HAS BEEN AUTHORISED OR REFUSED, MUST BE HELD ON THE INVESTIGATING OFFICER'S FILE

THERE IS NO REQUIREMENT TO PLACE A COPY OF THE AUTHORISATION ON THE CORPORATE DATABASE



**CANCELLATION OF A DIRECTED
SURVEILLANCE AUTHORISATION
THIS IS NOT A RIPA AUTHORISATION FORM
THIS FORM SHOULD NOT BE USED FOR
AUTHORISING RIPA SURVEILLANCE**

Public Authority (including full address)	
Name of Applicant Full Address Contact Details Investigation/Operation Name (if applicable)	

Details of cancellation:

1. Explain the reason(s) for the cancellation of the authorisation:

--

2. Explain the value of surveillance in the operation:

--

3. Authorising Officer's statement:
--

I [insert name], hereby authorise the cancellation of the directed surveillance/operation as detailed above.

Name (Print)

Job Title

Signature

Date

4. Time and Date of when the authorising officer instructed the surveillance to cease:

Date:

Time:

5. Authorisation cancelled.

Date:

Time:

**A COPY OF THIS FORM, ONCE IT HAS BEEN
AUTHORISED OR REFUSED, MUST BE HELD ON THE
INVESTIGATING OFFICER'S FILE**

**THERE IS NO REQUIREMENT TO PLACE A COPY OF
THE AUTHORISATION ON THE CORPORATE
DATABASE**

APPENDIX 2 List of Authorised Officer Posts for Authorising Directed Surveillance

Post & Post Holder	Scope of Authorisation
Tony Cox Head of Law	<p>Applications for miscellaneous and any application in an urgent situation or absence of primary authorising officer as listed below except for authorising applications for juvenile and vulnerable persons to act as a CHIS</p> <p>Applications pertaining to a non-criminal investigation into the conduct of an employee (non RIPA)</p>
Simon Neilson Executive Director Economy & Environment	<p>Applications from Regulatory Services and Safer Walsall Borough Partnership – where the council is the lead agency</p> <p>Applications for covert human intelligence source (CHIS) except in the case of juvenile / vulnerable adults in which case Annex A of the relevant Home Office Codes of Practice apply.</p>
Dr Helen Paterson Chief Executive	<p>Applications for covert human intelligence source (CHIS) where the CHIS is a juvenile / vulnerable adults.</p> <p>In her absence, this can be a person acting as the Head of Paid Service.</p>
All EDs	Applications for covert human intelligence source (CHIS) where the CHIS is a juvenile / vulnerable adults ONLY IN THE ABSENCE OF THE CHIEF EXECUTIVE
David Elrington Head of Community Safety and Enforcement	<p>Applications from Regulatory Services and Safer Walsall Borough Partnership – where the council is the lead agency</p> <p>Applications for covert human intelligence source (CHIS) except in the case of juvenile / vulnerable adults in which case Annex A of the relevant Home Office Codes of Practice apply.</p>

In the absence of any post holder, this function is delegated to another trained AO, not to a person acting for the post holder. In the case of an approval of an

application for a CHIS who is a juvenile / vulnerable person, this role is restricted to the Head of Paid service, or in their absence a person acting as head of paid service.

Appendix 3 Legislation

The Regulation of Investigatory Powers Act 2000

<http://www.legislation.gov.uk/ukpga/2000/23/contents>

The Protection of Freedoms Act 2012

<http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, SI 2012/1500

<http://www.legislation.gov.uk/uksi/2012/1500/made>

The Human Rights Act 1998

<http://www.legislation.gov.uk/ukpga/1998/42/contents>

The Data Retention and Acquisition Regulations 2018

<http://www.legislation.gov.uk/uksi/2018/1123/contents/made>

[Covert Human Intelligence Sources \(Criminal Conduct\) Act 2021
\(legislation.gov.uk\)](http://www.legislation.gov.uk/uksi/2021/1123/contents/made)

Home Office Revised Code of Practice on Covert Surveillance and Property Interference August 2018 [CHIS Code \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748481/CHIS_Code_August_2018.pdf)

Home Office Revised Code of Practice on Covert Human Intelligence Sources August 2018 [CHIS Code \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/748481/CHIS_Code_August_2018.pdf)



Walsall Council

Investigatory Powers Act 2016

Acquisition of Communications Data Policy and Procedure

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Glossary

AO	Approval Officer
CPIA	Criminal Procedure and Investigations Act 1996
IPA	Investigatory Powers Act 2016
IPC	Investigatory Powers Commissioner
IPCO	Investigatory Powers Commissioners Office
IPT	Investigatory Powers Tribunal
NAFN	National Anti-Fraud Network
OCDA	Office for Communications Data Authorisations
RIPA	Regulation of Investigatory Powers Act 2000
SPoC	Single Point of Contact

SRO	Senior Responsible Officer.
-----	-----------------------------

1. Policy Statement

- 1.1 Walsall Council will apply the principles of IPA 2016 and its relevant codes of practice when obtaining communication data. In doing so, the Council will also take into account its duties under other legislation, in particular the Human Rights Act 1998, Data Protection Act 2018 and its common law obligations.
- 1.2 The purpose of this policy is to ensure that:
- an individual's right to privacy is not unlawfully breached;
 - the investigation is necessary and proportionate to the alleged offence;
 - proper authorisations are obtained for obtaining of communications data;
 - the proper procedures are followed

2. Overview of IPA

- 2.1 The Investigatory Powers Act (IPA) 2016 regulates access to communications data. It requires local authorities to follow a specific procedure and obtain independent authorisation before obtaining communications data.
- 2.2 Failure to comply with IPA 2016 may mean that the Council's actions are unlawful and amount to a criminal offence. It may also mean that the evidence obtained would be inadmissible in court proceedings and jeopardise the outcome of such proceedings. Such action could also lead to a successful claim for damages against the Council.
- 2.3 It is in the public interest for criminal investigations to be undertaken efficiently and promptly. Therefore, where proportionate and necessary, the IPA should be used as a tool to advance criminal investigations accordingly.
- 2.4 This policy should be read in conjunction with the latest [Home Office Code of Practice on Communications Data](#). Any queries or concerns in relation to the legalities of an investigation should be raised with Legal Services
- 2.5 This Policy should also be read in conjunction with Walsall Council's Regulation of Investigatory Powers Act 2000 Policy which deals with the use of surveillance and covert human intelligence sources (CHIS) and any relevant Enforcement Policy currently in force for the service undertaking the investigation.
- 2.6 Further information on IPA can be obtained from the Investigatory Powers Commissioner's Office, the body responsible for overseeing the use of investigatory powers.

3. Communications data

- 3.1 Communications data includes the who, when, where and how of a communication but not the content i.e., what was said or written. It includes the way in which, and by what method, a person or thing communicates with another person or thing. It excludes anything within a communication including text, audio and video that reveals the meaning, other than inferred meaning.
- 3.2 Communications data can include the address to which a letter is sent, the time and duration of a communication, the telephone number or email address of the originator and recipient, and the location of the device.
- 3.3 It covers electronic communications including internet access, internet telephony, instant messaging and the use of applications. It also includes postal services.
- 3.4 Communications data is generated, held or obtained in the provision, delivery and maintenance of communications services including telecommunications or postal services.
- 3.5 Communications data is defined as entity data and/or events data.

Entity data is data about a person or thing (such as a device) or information linking them, that can change over time. For example, information about *“which person is the account holder of email account <mailto:example@example.co.uk>?”* and *“who is the subscriber of phone number 01234 567 890?”*

Events data concerns specific communications. For example, information about who sent a particular email or the location of a mobile phone when a call was made. There is a higher threshold to obtain events data than for entity data.

4. Data that cannot be requested under IPA 2016

- 4.1 Walsall Council does not have legal power under IPA 2016 to:
 - Intercept communications data;
 - Access the content of data communications e.g. the content of text messages, emails etc.;
 - Access internet connection records

5. Authorisations

5.1 It is crucial that the obtaining of communications data is properly authorised. No officer may seek to obtain any form of communication data unless they have obtained the proper authorisation to do so and that the authorisation is necessary for the purposes of detecting crime or of preventing disorder.

- An Approval Officer (AO) must be consulted.
- The application must be provided to the Single Point of Contact (SPOC)
- The application must be approved by the Office for Communications Data Authorisations (OCDA).

5.3 The following types of conduct may be authorised:

- conduct to acquire communications data - which may include Walsall Council obtaining communications data themselves or asking any person believed to be in possession of or capable of obtaining the communications data to obtain and disclose it; and/or
- the giving of a notice – requiring a telecommunications operator to obtain and disclose the required data.

5.4 In the case of Walsall Council the obtaining of communications data will be facilitated through our membership of the National Anti-Fraud Network (NAFN), which provides a comprehensive single point of contact (SPoC) service.

5.5 It will be the responsibility of NAFN to ensure all requests to a telecommunications/ postal operator for communications data, pursuant to the granting of an authorisation, comply with the requirements of the Code of Practice.

6. Roles and responsibilities

6.1 Obtaining communications data under the Act involves five roles:

- 1) Applicant;
- 2) Approvals Officer (AO);
- 3) Single Point of Contact (SPoC);
- 4) Authorising Agency (OCDA);
- 5) Senior Responsible Officer in a Public Authority (SRO)

6.2 **Applicant and their responsibilities**

The applicant is a person involved in conducting or assisting an investigation or operation and who makes an application in writing or electronically to obtain communications data. Applicants must submit applications through the central NAFN (SPoC) portal. Applicants will need to be registered with NAFN to access the portal and have valid login and security details. An allocated SPoC officer will then check all applications for legal compliance and, where necessary, provide feedback before submitting for authorisation to OCDA. The applicant will complete an application form setting out for consideration the necessity and proportionality of a specific requirement for acquiring communications data.

6.3 Any member of staff engaged in a relevant role i.e. one which requires carrying out investigations may be an applicant, subject to any internal controls or restrictions put in place within public authorities.

The applicant must

- describe the communications data required, specifying, where relevant, any historic or future date(s) and, where appropriate, time period(s);
- specify the purpose for which the data is required, by reference to a statutory purpose under the Act;
- include a unique reference number;
- include the name and the office, rank or position held by the person making the application;
- describe whether the communications data relates to a victim, a witness, a complainant, a suspect, next of kin, vulnerable person or other person relevant to the investigation or operation;
- include the operation name (if applicable) to which the application relates;
- identify and explain the time scale within which the data is required;
- explain why the acquisition of that data is considered necessary and proportionate to what is sought to be achieved by acquiring it;
- present the case for the authorisation 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;
- consider and, where appropriate, describe any meaningful collateral intrusion – the extent to which the rights of any individual not under investigation may be infringed and why that intrusion is justified in the circumstances;

- consider and, where appropriate, describe any possible unintended consequences of the application; and
- where data is being sought from a telecommunications operator or postal operator, specify whether the telecommunications operator or postal operator may inform the subject(s) of the fact that an application has been made for their data.

6.4 The applicant should record subsequently whether the application was authorised by an authorising individual and when that decision was made. Applications should be retained by the public authority and be accessible to the SPoC.

6.5 **Approval Officer (AO) and their responsibilities**

The Approval Officer is a person who is a manager at service level or above. The AO's role is to have an awareness of the application made by the Applicant and monitor the correct procedures are undertaken including contact with the SPoC.

6.6 The AO does not authorise or approve any element of the application and is not required to be operationally independent.

6.7 **Single point of contact (SPoC) and their responsibilities**

The SPoC is an individual trained to facilitate the lawful obtaining of communications data and effective co-operation between a public authority, the Office for Communications Data Authorisations (OCDA) and telecommunications and postal operators. To become accredited an individual must complete a course of training appropriate for the role of a SPoC and have been issued the relevant SPoC unique identifier.

6.9 Public authorities are expected to provide SPoC coverage for all reasonably expected instances of obtaining communications data. Walsall Council is a member of the National Anti-Fraud Network (NAFN). NAFN is an accredited body for the purpose of providing data and intelligence under the IPA for all public bodies. As part of their portfolio, they offer a comprehensive SPoC service.

6.10 The SPoC will

- assess whether the acquisition of specific communications data from a telecommunications operator or postal operator is reasonably practicable or whether the specific data required is inextricably linked to other data;
- advise applicants on the most appropriate methodology for acquisition of data where the data sought engages a number of telecommunications operators or postal operators;

- engage with applicants to develop and implement effective strategies to obtain communications data in support of operations or investigations;
- advise on and manage the use of the request filter, specifically in relation to progress of requests through the filter and compliance by the filter with the relevant authorisation;
- advise on the interpretation of the Act, particularly whether an authorisation is appropriate;
- provide assurance that authorisations are lawful under the Act and free from errors;
- consider and, where appropriate, provide advice on possible unintended consequences of the application;
- assess any cost and resource implications to both the public authority and the telecommunications operator or postal operator of communications data requirements.

6.11 Authorising Agency (OCDA) and their responsibilities

The Office for Communications Data Authorisations (OCDA) is the independent body responsible for the authorisation and assessment of all Data Communications applications under the Act and undertakes the following roles:

- Independent assessment of all Data Communications applications.
- Authorisation of any appropriate applications.
- Ensuring accountability of Authorities in the process and safeguarding standards.

6.12 Senior Responsible Officer (SRO) and their responsibilities

The Senior Responsible Officer (SRO) within Walsall Council is Simon Neilson the Executive Director Economy, Environment and Communities.

6.13 The SRO is responsible for:

- The integrity of the process in place within the public authority to obtain communications data;
- engagement with authorising officers in the Office for Communications Data Authorisations (where relevant);
- compliance with Part 3 of the Act and with the Code of Practice, including responsibility for novel or contentious cases;

- oversight of the reporting of errors to the IPC and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of errors;
- ensuring the overall quality of applications submitted to OCDA;
- engagement with the IPC's inspectors during inspections; and
- where necessary, oversight of the implementation of post-inspection action plans approved by the IPC.

7. Necessity test

- 7.1 Applications to obtain Communications Data should only be made where it is necessary for an applicable crime purpose.
- 7.2 This allows for applications to be made for entity data where the purpose of obtaining the data is for the prevention and detection of crime or prevention of disorder. This definition permits the obtaining of Entity data for any crime, irrespective of seriousness or for preventing disorder.
- 7.3 Applications for 'events data', previously referred to as service or traffic data, should only be made where the purpose is the prevention and detection of serious crime. Serious crime is defined in Section 86(2A) of IPA 2016, and includes, but is not limited to:
- Any crime that provides the potential for a prison sentence of imprisonment for 12 months or more (Either way or indictable offences);
 - Offences committed by a corporate body;
 - Any offence involving, as an integral part, the sending of a communication OR a breach of a person's privacy.
- 7.4 Necessity must be demonstrated by including in every application a short explanation of:
- The event under investigation, such as a crime.
 - The person whose data is sought, such as a suspect AND description of how they are linked to the event.
 - The communications data sought, such as a telephone number or IP address, and how this data is related to the person and event.

The application must explain the link between these three points to demonstrate it is necessary to obtain communications data.

8. Proportionality test

8.1 Applications should only be made where they are proportionate, and alternative means of obtaining the information are either, exhausted, not available or considered not practical to obtain the same information.

8.2 For example, the following should be considered:

- balancing the size and scope of the proposed activity against the gravity and extent of the perceived crime or offence;
- explaining how and why the methods to be adopted will cause the least possible intrusion on the target and others;
- considering whether the activity is an appropriate use of the legislation and a reasonable way, having considered all reasonable alternatives, of obtaining the necessary result; and
- evidencing, as far as reasonably practicable, what other methods had been considered and why they were not implemented.
- An outline of how obtaining the data will benefit the investigation. The relevance of the data being sought should be explained and anything which might undermine the application.
- The relevance of time period requested
- How the level of intrusion is justified against any benefit the data will give to the investigation. This should include consideration of whether less intrusive investigations could be undertaken.
- A consideration of the rights (particularly to privacy and, in relevant cases, freedom of expression) of the individual and a balancing of these rights against the benefit to the investigation.
- Any details of what collateral intrusion may occur and how the time periods requested impact on the collateral intrusion, if applicable.
- Where no collateral intrusion will occur, such as when applying for entity data, the absence of collateral intrusion should be noted. Any circumstances which give rise to significant collateral intrusion.
- Any possible unintended consequences. This is more likely in more complicated requests for events data or in applications

for the data of those in professions with duties of confidentiality.
E.G journalists/doctors/solicitors.

9. Authorised applications

- 9.1 Where the OCDA authorises the data request, this decision is communicated to the SPoC (NAFN) and actions are taken to request the data from the relevant telecommunications providers and other agencies holding such communications data to provide the necessary data.

10. Refused applications

- 10.1 Where the OCDA rejects an application, the Council has three options:
- Not proceed with the application;
 - Re-submit the application with revised justification and/or revised course of conduct to obtain the communications data; or
 - Re-submit the application without alteration and seek a review of the decision by the OCDA. This may only be done where the SRO (or a person of equivalent grade) has agreed to this course of action. The OCDA will provide guidance on this process.

11. Notices in pursuance of an authorisation

- 11.1 The giving of a notice is appropriate where a telecommunications operator or postal operator can retrieve or obtain specific data, and to disclose that data and the relevant authorisation has been granted. A notice may require a telecommunications operator or postal operator to obtain any communications data, if that data is not already in its possession.
- 11.2 For local authorities the role to issue notices to telecommunications/postal operators sits with the SPoC (NAFN), and it will be the SPoC's role to ensure notices are given in accordance with the Code of Practice.

12. Duration of authorisations

- 12.1 An authorisation becomes valid on the date the authorisation is granted by the OCDA. It remains valid for a maximum of one month. Any conduct authorised or notice served should be commenced/served within that month.
- 12.2 Any notice given under an authorisation remains in force until complied with or until the authorisation under which it was given is cancelled.
- 12.3 All authorisations should relate to a specific date(s) or period(s), including start and end dates, and these should be clearly indicated in the authorisation.

- 12.4 Where the data to be obtained or disclosed is specified as 'current', the relevant date is the date on which the authorisation was granted.
- 12.5 Please note however that where a date or period cannot be specified other than for instance; 'the last transaction' or 'the most recent use of the service', it is still permitted to request the data for that unspecifiable period.
- 12.6 Where the request relates to specific data that will or may be generated in the future, the future period is restricted to no more than one month from the date of authorisation.

13. Renewal of authorisations

- 13.1 A valid authorisation may be renewed for a period of up to one month by the grant of a further authorisation and takes effect upon the expiry of the original authorisation. This may be appropriate where there is a continuing requirement to obtain data that may be generated in the future.
- 13.2 The Applicant will need to consider whether the application for renewal remains 'necessary and proportionate' and should reflect this in any renewal application made. The Authorising body (OCDA) will need to consider this carefully in authorising any renewal.

14. Cancellation of authorisations

- 14.1 Where it comes to the Council's attention after an authorisation has been granted that it is no longer necessary or proportionate, the Council is under a duty to notify the SPoC (NAFN) immediately.
- 14.2 It is the SPoC's (NAFN) responsibility to cease the authorised action and take steps to notify the telecommunications service provider. E.g. Such a scenario may occur where a legitimate application has been made for Entity data to identify and locate a suspect, but subsequently, and before the data has been obtained the Council becomes aware by some other legitimate means of the suspects name and address etc.

15. Offences for non-compliance with IPA 2016

- 15.1 It is an offence for a person in a public authority knowingly or recklessly to obtain communications data from a telecommunications operator or postal operator without lawful authority (section 11 of IPA 2016).
- 15.2 The roles and responsibilities laid down for the SRO and SPoC are designed to prevent the knowing or reckless obtaining of communications by a public authority without lawful authorisation. Adherence to the requirements of the Act and this Code, including procedures detailed in this Policy, will mitigate the risk of any offence being committed.

- 15.3 An offence is not committed if the person obtaining the data can show that they acted in the reasonable belief that they had lawful authority.
- 15.4 It is not an offence to obtain communications data where it is made publicly or commercially available by a telecommunications/postal operator. In such circumstances, the consent of the operator provides the lawful authority. However, public authorities should not require, or invite, any operator to disclose communications data by relying on this exemption.

16. Monitoring and record keeping

- 16.1 Applications, authorisations, copies of notices, and records of the withdrawal and cancellation of authorisations, will be retained in written or electronic form for a minimum of 5 years. A record of the date and, when appropriate, the time each notice or authorisation is granted, renewed or cancelled.
- 16.2 Records kept must be held centrally by the SPoC (NAFN) and be available for inspection by the Investigatory Powers Commissioners Office upon request and retained to allow the Investigatory Powers Tribunal (IPT), to carry out its functions.
- 16.3 A member of staff who acts in the capacity of a personal assistant to the SRO will maintain an internal record on behalf of the SRO, and retain hard and electronic copies of all forms sent to NAFN. The records will be retained and subsequently destroyed in accordance with Walsall Councils records management policy, which complies with relevant data protection legislation.
- 16.4 Walsall Council (see 16.3) will keep a record of the following information:
- the number of applications submitted by an applicant to a SPoC seeking the acquisition of communications data (including orally);
 - the number of applications submitted by an applicant to a SPoC seeking the acquisition of communications data (including orally), which were referred back to the applicant for amendment or declined by the SPoC, including the reason for doing so;
 - the number of applications submitted to an authorising individual for a decision to obtain communications data (including orally), which were approved after due consideration;
 - the number of applications submitted to an authorising individual for a decision to obtain communications data (including orally), which were referred back to the applicant or rejected after due consideration, including the reason for doing so;
 - the number of authorisations of conduct to acquire communications data granted (not including urgent oral applications);

- the number of authorisations to give a notice to acquire communications data granted (not including urgent oral applications);
- the number of notices given pursuant to an authorisation requiring disclosure of communications data (not including urgent oral applications);
- the number of times an urgent application is approved orally;
- the number of times an urgent notice is given orally, or an urgent authorisation granted orally, requiring disclosure of communications data;
- the priority grading of the authorisation for communications data including urgent oral authorisations;
- whether any part of the authorisation relates to a person who is a member of a profession that handles privileged or otherwise confidential information (such as a medical doctor, lawyer, journalist, member of a relevant legislature, or minister of religion) (and if so, which profession)⁷²;
- the number of times an authorisation is granted to obtain communications data in order to confirm or identify a journalist's source; and
- the number of items of communications data sought, for authorisation granted (including orally).

16.5 For each item of communications data (including consequential data) included within a notice or authorisation, Walsall Council will also keep a record of the following:

- the unique reference number (URN) allocated to the application, authorisation and where relevant the notice;
- the statutory purpose for which the item of communications data is being sought, as set out at section 60A(7), 61(7) or 61A(7) of the Act;
- where the item of communications data is being sought for the applicable crime purpose as set out at section 60A(7), 61(7) or 61A(7) of the Act, the crime type being investigated;
- whether the item of communications data is events or entity, as described at section 261(5) of the Act, and Chapter 2 of this code;
- a description of the type of each item of communications data included in the notice or authorisation⁷⁴;
- whether the item of communications data relates to a victim, a witness, a complainant, or a suspect, next of kin, vulnerable person or other person relevant to the investigation or operation;

- the age of the item of communications data. Where the data includes more than one day, the recorded age of data should be the oldest date of the data sought;
- where an item of data is event data retained by the telecommunications operator or postal operator, an indication of the total number of days of data being sought by means of notice or authorisation⁷⁵; and
- the telecommunications operator or postal operator from whom the data is being acquired.

- 16.6 The Investigatory Powers Commissioners Office (IPCO) monitors compliance with RIPA. Walsall's SRO will act as the first point of contact for the Inspectors within the Council, but all service areas that use IPA should expect to be involved in any inquiries from IPCO.
- 16.7 Nothing in the Code or this policy affects similar duties under the Criminal Procedure and Investigations Act 1996 requiring material which is obtained in the course of an investigation and which may be relevant to the investigation to be recorded, retained and revealed to the prosecutor.
- 16.8 This policy and guidance document will be considered by Cabinet on an annual basis and this report will include a review of the use of IPA by the organisation. Where changes are required to the Policy either because of updates to legislation, codes of practice or other guidance; or due to structural changes within the organisation the Policy and details of the use to which it has been put will be considered by Cabinet before progressing for approval and adoption by full Council.

17. Errors

Errors generally

- 17.1 Where any error occurs in the granting of an authorisation or because of any authorised conduct a record should be kept.
- 17.2 Where the error results in communications data being obtained or disclosed incorrectly, a report must be made to the IPC by whoever is responsible for it. E.g., The telecommunications operator must report the error if it resulted from them disclosing data not requested, whereas if the error is because the public authority provided incorrect information, the public authority must report the error. The SRO would be the appropriate person to make the report to the IPC.
- 17.3 Where an error has occurred before data has been obtained or disclosed incorrectly, a record will be maintained by the public authority (recordable error). These records must be available for inspection by the IPC.
- 17.4 The following is a non-exhaustive list of reportable errors.

- an authorisation or notice made for a purpose, or for a type of data, which the relevant public authority cannot call upon, or seek, under the Act;
- human error, such as incorrect transposition of information from an application to an authorisation or notice where communications data is acquired or disclosed;
- disclosure of the wrong data by a telecommunications operator or postal operator when complying with a request under Part 3 of the Act;
- acquisition of the wrong data by a public authority when engaging in conduct specified in an authorisation; and
- the omission of, or incorrect matches in filtered results, or the release of results that exceed specified thresholds.

17.5 The following is a non-exhaustive list of Recordable errors.

- a notice has been given which is impossible for a telecommunications operator or postal operator to comply with and the public authority attempts to impose the requirement;
- failure to review information already held, for example unnecessarily seeking the acquisition or disclosure of data already acquired or obtained for the same investigation or operation⁷⁸;
- failure to cancel a requirement to acquire or obtain data as soon as possible once it is known to be no longer valid;
- failure to serve written notice (or where appropriate an authorisation) upon a telecommunications operator or postal operator within one working day of urgent oral notice being given or an urgent oral authorisation granted;
- where an error has occurred but is identified by the public authority or the telecommunications operator or postal operator without data being acquired or disclosed wrongly; and
- human error, such as incorrect transposition of information from an application to an authorisation or notice where communications data is not acquired or disclosed.

Serious errors

17.5 There may be rare occasions when communications data is wrongly obtained or disclosed and this amounts to a 'serious error'. A serious error is anything that **'caused significant prejudice or harm to the person concerned'**. It is insufficient that there has been a breach of a person's human rights.

- 17.6 In these cases, the public authority which made the error, or established that the error had been made, must report the error to the Council's Senior Responsible Officer and the IPC.
- 17.7 When an error is reported to the IPC, the IPC may inform the affected individual subject of the data disclosure, who may make a complaint to the Investigatory Powers Tribunal. The IPC must be satisfied that the error is a serious error AND it is in the public interest for the individual concerned to be informed of the error.
- 17.8 Before deciding if the error is serious or not the IPC will accept submissions from the Public Authority regarding whether it is in the public interest to disclose. For instance, it may not be in the public interest to disclose if to do so would be prejudicial to the 'prevention and detection of crime'.

18. Investigations resulting in criminal proceedings

- 18.1 When communications data has been obtained during a criminal investigation that comes to trial an individual may be made aware data has been obtained.
- 18.2 If communications data is used to support the prosecution case it will appear in the 'served' material as evidence and a copy provided to the defendant.
- 18.3 Where communication data is not served but retained in unused material it is subject of the rules governing disclosure under the Criminal Procedure and Investigations Act 1996 (CPIA). The prosecution may reveal the existence of communications data to a defendant on a schedule of non-sensitive unused material, only if that data is relevant, and copies of the material may be provided to the defendant if it might reasonably be considered capable of undermining the prosecution case and/or assisting the defence.
- 18.4 Where communications data is obtained but not directly relied on to prove offences, the material may alternatively be listed in the 'Sensitive' unused material and not disclosed to the defendant. The CPIA sets out exemptions to the disclosure obligation. Under section 3(6) of that Act, data must not be disclosed if it is material, which, on application by the prosecutor, the Court concludes it is not in the public interest to disclose.

Any communications data, which comes within the scope of this exemption, cannot be disclosed e.g., Material that reveals a 'method of investigation' is usually not disclosable.

- 18.5 If through any of the above notification processes, an individual suspects that their communications data has been wrongly obtained, the IPT

provides a right of redress. An individual may make a complaint to the IPT without the individual knowing, or having to demonstrate, that any investigatory powers have been used against it.

19. Contacts

- 19.1 The Home Office is responsible for policy and legislation regarding communications data acquisition and disclosure.

Communications Data Policy Team
Home Office
2 Marsham Street
London
SW1P 4DF

19.2 Complaints - Data security, integrity and destruction

- 19.3 The Information Commissioner is responsible for the oversight of the security, integrity and destruction of data retained in accordance with the Act. Failure to comply with this code's provisions in these areas may also engage concerns about compliance with data protection and related legislation. Any concerns about compliance with data protection and related legislation should be passed to the Information Commissioner's Office (ICO) at the following address:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

www.ico.org.uk

- 19.4 The Investigatory Powers Tribunal (IPT) has jurisdiction to consider and determine complaints regarding public authority use of investigatory powers. Any complaints about the use of powers as described in this code should be directed to the IPT

The Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ

[The Investigatory Powers Tribunal - Home Page \(ipt-uk.com\)](http://ipt-uk.com)

DRAFT

Equality Impact Assessment (EqIA) for Policies, Procedures and Services

Proposal name	Regulation Of Investigatory Powers Act 2000 & Investigatory Powers Act 2016 Policies		
Directorate	E&E		
Service	Regulatory Services		
Responsible Officer	David Elrington & Lorraine Boothman		
Proposal planning start	1 February 2020	Proposal start date (due or actual date)	20 May 2020

1	What is the purpose of the proposal?	Yes / No	New / revision
	Show which category the proposal is and whether it is new or a revision.		
	Policy	Yes	Revision
	Procedure	No	
	Guidance	No	
	Is this a service to customers/staff/public?	No	
	If yes, is it contracted or commissioned?	No	
	Other - give details	It is to comply with Legislation	
2	What is the business case for this proposal? Please provide the main purpose of the service, intended outcomes and reasons for change?		
	The policies are required to ensure that the Authority complies with the requirements set out in the Regulation Of Investigatory Powers Act 2000 & Investigatory Powers Act 2016. They are an update of a previous policy to implement changes in the legislation and incorporate feedback from the Commissioner's inspections.		
3	Who is the proposal likely to affect?		
	People in Walsall	Yes / No	Detail
	All	Y	
	Specific group/s		
	Council employees	Y	
	Other (identify)		
4	Please provide service data relating to this proposal on your customer's protected characteristics.		
	The policy places requirements officers of the Council and the way in which it conducts surveillance and the acquisition of communications data. It ensures that such conduct is necessary and proportionate. It does not affect any particular groups.		
	Walsall's population has risen by 6.2% from 253,401 in 2001 to 269,323 according to the 2011 census. The minority ethnic group population (everyone who is not White; English, Welsh, Scottish, Northern Irish or British) has shown an increase from 37,547 (14.81%) in 2001 to 62,085 (23.05%) in 2011.		

Compared with the rest of the West Midlands (33.98%), Walsall (23.05%) has a lower percentage of minority ethnic group people and is the fifth lowest, compared with the other West Midlands areas. However, it is clear that, with new communities emerging, this figure is likely see higher percentages in the 2021 census.

Walsall population by broad group 2001 to 2011

Group	2001	2011
White British	85.2%	76.9%
All other White	1.2%	1.9%
Mixed	1.4%	2.7%
Asian	10.4%	15.2%
Black	1.4%	2.3%
Other	0.4%	0.8%

The largest increase is in people of Asian background, with a rise from 10.4% of all ethnic minority people in 2001 to 15.2% in 2011. Within this group, those of Pakistani background have increased the most to 5.3% of all residents (although Asian Indian remains the largest minority ethnic group at 6.1%).

Nine out of ten Walsall residents (90.1%) were born in the UK. There does not appear to be a high volume of residents from Eastern European countries living in the borough, with only 1.0% of residents, 2,681 people, born in EU Accession countries. This is in contrast with 2.0% in England and with neighbouring authorities of Wolverhampton (2.1%) and Sandwell (2.6%).

The Council is committed to meeting the needs and expectations of people who use its services. This means ensuring that services are delivered in a fair and legal way, ensuring that the residents and businesses of Walsall are treated with dignity and respect. All groups of customers will positively benefit from this regime. The people who will be subject to the use of these powers are those suspected of committing offences. The legislative regime ensures that due consideration is given to the risks of collateral intrusion.

5	Please provide details of all engagement and consultation undertaken for this proposal. (Please use a separate box for each engagement/consultation).			
	<p>Consultation has taken place with internal services - Finance, Human Resources, Legal Services, Public Health, Communications, Equalities team and the Councils Consultation Officer in order to reassure decision makers that the content of the report and the policies are correct and meet the requirements of Council Policy making. As these are statutory policies setting out controls and requirements on how officers conduct their investigations and use powers available to them and not the provision of a service and as the public cannot influence the contents of the policy, public consultation is not necessary.</p>			
	Officers	Consulted - Who	Date(s) consulted	Comments of consultees
	(a) Legal services	Paul Green		No comments on final report. Consulted previously in drafting of policy
	(b) Finance			
	(c) Procurement – for all procurement and contract related reports			
	(d) Property services			
	(e) Public health			
	(f) Human resources			
	(g) Heads of other relevant service(s)			
(h) Communications communications@walsall.gov.uk				
(I) Trade Unions	Not required			

6	Consultation Activity Internal Consultation as per the cabinet report process, in particular with legal services.			
	Concise overview of all evidence, engagement and consultation			
	Legal services involved in drafting the policy. No other feedback received.			
	7 How may the proposal affect each protected characteristic or group? The effect may be positive, negative, neutral or not known. Give reasons and if action is needed.			
	Characteristic	Affect	Reason	Action needed Yes / No
	Age	None - The legislation stipulates that any conduct covered by the policies is necessary and proportionate. There are no impacts on protected characteristics other than the policy has been updated to provide additional safeguards for juvenile and vulnerable persons who may act as a CHIS (See RIPA policy). All impacts on the subject of surveillance and any potential collateral intrusion are outlined on each application.		
	Disability	None other than in so far as note above applies.		
	Gender reassignment	None		
	Marriage and civil partnership	None		
	Pregnancy and maternity	None		
	Race	None		
	Religion or belief	None		
	Sex	None		

	Sexual orientation	None		
	Other (give detail)			
	Further information			
8	Does your proposal link with other proposals to have a cumulative effect on particular equality groups? If yes, give details.	(Delete one) No		
9	Which justifiable action does the evidence, engagement and consultation feedback suggest you take?			
	A	No major change required		
Action and monitoring plan				
Action Date	Action	Responsibility	Outcome Date	Outcome
7/09/2022	Policies are considered at Cabinet	D Elrington, L Boothman, Paul Gordon, Simon Neilson.	7/09/2022	Policies will be approved to proceed to Council or not.
19/09/2022	Policies are considered at Council	Simon Neilson, Cllr Perry	To be confirmed	Policies will be approved or not. Delegation will be granted or not

Update to EqIA	
Date	Detail
Use this section for updates following the commencement of your proposal.	

Contact us

Community, Equality and Cohesion
Resources and Transformation

Telephone 01922 655797

Textphone 01922 654000

Email equality@walsall.gov.uk

Inside Walsall: http://int.walsall.gov.uk/Service_information/Equality_and_diversity

Council meeting 3rd October 2022 – Leader's report

I am proud to present my Leaders report to the first ordinary meeting of Walsall Council in 2022.

Following on from our success at the election in May and as we begin a new municipal year, I am pleased to report three substantial areas to Council tonight.

1. What this administration has delivered against its previous manifesto pledges and priorities within my portfolio. [This portfolio includes the overall responsibility for Council strategy; the Council Plan; Proud transformation and change; communications, marketing and brand; emergency planning; government relations and liaison with local MPs and West Midlands leaders, the West Midlands Combined Authority, Association of Black Country Authorities and Black Country Joint Committee; Transformation and digital (including Information Governance) . Finance including payroll and pensions, insurance, risk management, financial reporting, policy led budgeting and financial strategy, Financial Regulations, Audit, Counter Fraud and Corruption, Treasury Management, financial systems, external funding, programme delivery ; Legal and Democratic Services; Performance; Member Development and governance]
2. How this council will deliver its vision and our pledges to the residents of the Borough, during the coming year in the context of the economic and financial challenges that we face.
3. The key areas of focus, pledges and priorities for the medium term. These activities cover a broad range of improved outcomes for the residents of Walsall and a stronger link between finance, outcomes and activity.

1a. This administration has delivered its pledges from last year

We have strengthened the communities of Walsall through our pandemic recovery plan. The vaccination programme has been a great success and we continue to work together with our NHS partners to deliver vaccinations to all of our eligible residents including booster vaccinations and vaccinations for children.

Tragically, families lost loved ones during the pandemic and others have struggled with mental ill health This Council has invested an additional one million pounds over the next three years to support mental wellbeing in the community. We have agreed to create a Garden of Reflection, a memorial to remember those who have lost their lives during the pandemic and to honour all of this Borough's front line workers.

We have focused on making our communities safer. We will tackle crime hotspots with additional CCTV cameras and have agreed an action plan at Cabinet for resilient communities and Safer Streets

We have delivered a Transit Site, which will make it easier for us to evict unauthorised traveller camps from our parks and our open spaces.

I am sure that all councillors will agree with me that we want to continue to keep this borough clean and tidy. We have encouraged more litter picking and supported enforcement against fly tipping. We have kept our 'Three for a Tenner' bulky waste collections and we continue to collect brown bins fortnightly, free until at least December.

We have recently secured £21.3 million pounds from the Government for Walsall town centre and for Bloxwich. Plans for this are in development and enabling activity is in progress. We are committed to delivering new railway stations in Willenhall, Darlaston and Aldridge. We continue to tackle derelict sites - like Ravenscourt in Brownhills and pledged to build back better to create vibrant towns and communities. We have made policy proposals on building new homes on brownfield land first to save our Green Belt from development and are consulting on this via the Black Country Plan.

We have promoted Walsall regionally and nationally and with our partners we have recently launched the “We Are Walsall 2040” campaign to plan for the long term future of the Borough. We have agreed a procurement strategy that promotes purchasing locally and securing social value.

Through our Green Spaces Strategy, we have agreed to provide more outdoor fitness equipment at additional sites across the Borough and to upgrade our children’s playgrounds.

Protecting our environment and green spaces remains a priority for this administration. We will plant more trees and we will install electric vehicle charging points with free parking wherever possible. These proposals will be built into the Council’s climate change action plan, street scene strategy and budget as necessary.

We have successfully paid 14,771 grants worth £81.9m to Walsall businesses during the pandemic.

1b This administration has delivered against my portfolio priorities

Digital and Technology

Technology and digital services are fundamental to the success of our transformation at Walsall Council. Through ongoing investment in technology, staff have the best tools, software and systems to be able to carry out their job effectively ultimately helping to serve our residents and businesses. This includes ensuring that staff can work effectively from different locations and supporting them to collaborate and communicate. Our Digital and Technology services and the technology this team supports has been instrumental in ensuring council services were delivered during the pandemic.

Work continues to ensure the council’s systems are protected and are resilient, greater customer reliance on self-service access means that the systems we provide must be available and functioning 24x7 . We have invested in a new Digital and Technology service with increased capability in cyber security, technical skills, and business collaborating and contract management. We have increased resilience of the IT infrastructure and network through further transition of business systems to cloud based technologies and promoted the use of Bring Your Own Devices to minimise costs to the council

By exploiting the benefits of the technology we have already acquired, we are improving how we share information and manage our documents. We have started a council wide data cleanse of paper records for the Digital Records Management (DRM) project

We have acknowledged the successful delivery of the council's previous 4-year ICT Strategy, and have now developed this into a Digital Strategy for 2022-25. The digital strategy supports the priorities and outcomes of the Council Plan to address areas of digital equality and easier access to online services.

We have delivered Enabling Technology capability through new technology features supporting improved customer service delivery i.e., the introduction of MS Teams Telephony, developing a new Customer Platform including Customer Experience Centre Telephony system, Web Site content management refresh, CRM and systems integration capability to connect self-service with back office systems to enable book, apply, pay, report functions automatically.

Transformation

As stewards of public funds, it is our responsibility and commitment to transform Walsall into a place where employees are Proud to work, where residents are Proud to live and where businesses are Proud to operate.

Walsall's Proud transformation continues to change the council's ways of thinking, and the ways of working to achieve a better customer experience, increased employee satisfaction and engagement, and improved service efficiency and performance. Using digital and technology opportunities, the council is streamlining processes and improving service delivery to make it easier for customers to engage and access services quickly and effectively.

To support the transformation journey, over the last two years we have made changes to our leadership and worked closely with a strategic partner to enable our Proud transformation. The core strategic partnership main contract ended in March and we are now using and developing our own capability to drive and enable transformation.

Our Proud transformation activity continues and is split across several workstreams of activity that focus on specific areas of improvement across the council as well as enabling changes in culture and improving communication.

The Customer Access Management workstream is reducing demand, changing and automating our processes to deliver efficiencies, modernising and improving the way our customers can access council services to make information, reporting and access to service delivery readily available both online and through our Walsall Connected approach. The Walsall Connected project has been developed to ensure that residents that feel digitally excluded or have a disability that makes it harder for them to access online services independently, can get support to access first line council advice or information in a venue near to them and to also be supported to gain essential digital skills.

The support will be available across the borough and will be provided by trained staff and volunteers based at Libraries and Community Associations. Supporting residents with gaining digital skills will enable them to have access to support and services more flexibly as well as helping build valuable skills for the future.

Back office support services such as HR, Finance, Corporate Landlord, Legal and ICT are also transforming and adapting their services to better meet the business needs of their internal customers as well as the needs of our residents. The transformation activity continues to focus on how the council spends its budgets and generates income, the Third Party Spend workstream is reviewing existing, and future supplier contracts to ensure appropriateness and value for money with the Income Generation workstream seeking to

identify opportunities to deliver savings for the council and deliver new services that generate income.

We have established an effective corporate Programme Management Office and recruited skilled project and change management staff - delivering programme, project and change management expertise to support the planning and successful delivery of key benefits outlined in these workstreams. There is a coherent and consistent communications plan for Proud, through improvement of the information posted regularly on the intranet site, regular messages from the Chief Executive, the Story of Proud and case studies of good practice

Transformation and Change has contributed to the improvement of the key measures against the Proud Promises through project planning and resource management. There was a full proud update to cabinet in March, which included some key outcome improvements.

- Customer satisfaction has increased by 6% from April 2019
- Employee satisfaction has increased by 4% from 57% in 2017
- Efficiencies from 2019/20 include £57.4m of savings that have been defined of which £54.7m have been included in the council's medium term financial plan. These savings have been identified through – design and delivery of efficiencies from new proud ways of working, capitalising on income generating activities, managing monitoring and reducing third party spend.

Communications Marketing and Brand

The Council has shaped a new team that will focus on Communications Marketing & Brand. The team which sits within the new corporate Hub is bringing together expertise to proactively tell the story of the Council and the story of Walsall.

The staff and members intranet site Inside Walsall has been updated to make it clearer for users and to help increase engagement. The Council's social media channels are coordinated to reinforce messages and to reach new audiences and a trusted relationship with the local and regional media is being established.

Working with partners from across the Borough we have encouraged residents back into our town centres as restrictions have lifted. We are now asking them to have their say about the future of Walsall and to get involved in the We Are Walsall 2040 campaign.

A "Meet the Team" approach has been developed to enable Members to have access to key teams and to better inform members about which officers to contact.

Council Policy, Strategy and Business Insights

The 2022/25 Council Plan was agreed in February 2022. The plan presents the councils continued focus on five (5) priorities - Economic growth, People, Internal focus, Children, and Communities. To ensure we are transparent and accountable on performance, 10 outcomes and 20 Markers of Success underpin these priorities. Performance against the previous plan has been reported quarterly to Cabinet tracking the level of progress throughout the year.

To build in our ability to put Walsall at the forefront regionally, we are developing new Policy and Strategy and Business Insights teams. These will be central teams within the new corporate hub that will develop corporate strategy whilst supporting consistent policy development, ensuring there is a golden thread throughout the Council that supports our ambition to meet the outcomes for our residents.

This will give us the capability and capacity to more efficiently drive our aspirations for improved outcomes for residents built on better understanding about what is important to our residents. We are keen to learn from others; where best practice can be applied to how we do things and learn from colleagues elsewhere where they have significantly improved at pace. We also have good practice to share that highlights Walsall as a Borough of choice and these teams will provide the opportunity for us to have a wider voice in the region.

Together these two new services will enable us to plan and prioritise more effectively and assure ourselves that all service areas are working towards a shared outcome and reflect the values of the organisation, as we continue on our transformation journey.

Finance, Corporate Landlord and Assurance

We have again set a balanced budget for the new financial year and delivered a balanced outturn for 21/22 despite significant financial pressures – delivering efficiencies and new ways of working rather than cuts in services.

We have agreed new strategies for counter fraud, anti-money laundering, Treasury Management and Capital, as well as a new Performance Management framework. Our accounts remain unqualified and were one of the first in the country to be settled with an excellent Value for Money report by our external auditors

We have agreed a new Strategic Asset Plan and implemented the Corporate Landlord model, developing a more strategic approach to capital investment.

We have continued to successfully deliver the Single Accountable Body Functions for the Black Country Local Enterprise Partnership, including EZ, Growth Deal, LPIF and core funding, estimated at almost £400 million over its lifetime. We are working on the Towns Fund bid Submission and subsequent Accountable Body; Governance, Contracting and Funding Arrangements post award having secured the connected gateway scheme. The External Funding team are supporting / leading on the drafting of bids for the authority and have in the past year secured £11m in external Funding. They have also supported the development of key strategies (e.g. Heritage / Climate Change / Crowd Funding) that support corporate priorities.

Legal and Democratic Services

The team ran a lawful and safe election, reviewed and refreshed the Elected Member Code of Conduct and members' training needs, ensured that the council acts lawfully in continuing to facilitate lawful meetings during the Covid 19 pandemic; including delivering school appeals in a virtual setting. The team secured successful Walsall positions in a number of high profile court cases and legal matters eg Court of Appeal case in relation to injunctions against unnamed persons, successful applications for ASB closure orders, successful litigation in relation to housing benefit payments; implementation of enforcement notices.

2. This Council is focused on the delivery of the Councils Vision so that we are proud of our past, our present and for the future.

Our aim is to ensure that we reduce inequalities and maximise all potential. We are committed to developing a healthier, cleaner and safer Walsall and creating an environment that provides opportunities for all residents, communities and businesses to fulfil their potential and thrive including the five areas of focus as set out in the Council Plan:

- Economic - Enabling greater local opportunities for all people, communities and businesses
- People - Encouraging our residents to lead more active, fulfilling and independent lives to maintain or improve their health and wellbeing
- Internal focus - Council services are customer focused effective, efficient and equitable
- Children - Have the best possible start and are safe from harm, happy, healthy and learning well
- Communities - Empowering our communities so that they feel they are connected and belong in Walsall, creating safe and healthy places whilst building a strong sense of community.

This administration will task Council officers to work with partners to make sure that these priorities are delivered effectively and on time.

I expect my officers and members to operate to the Councils Values in that they are - Professional, show Leadership, Accountability, Transparent, and Ethical

Economic Context

Walsall Council, as with all local authorities, continues to experience significant financial challenges and I present this report against a backdrop of continuing economic uncertainty, at local and national level.

As we head towards the winter we have this month launched a new scheme to help our residents to find the help and advice that they need. Our Cost of Living Support scheme brings together support and advice that we are providing, that the government is providing and points to the support and advice that our local and regional partners are providing. Our Cost of Living Support scheme offers the practical help that will be needed by many of our residents this winter. It is available online on our website and offline through our new Walsall Connected service.

We face continued economic pressures due to increasing inflation and the ongoing effects of Covid on our residents and our businesses. Covid has significantly affected the retail sector in particular, on top of the pre-Covid shifting patterns to more of an 'online' presence, and is changing the traditional shopping experience, with the closure of a number of retail outlets in the town centre affecting business viability and resident experience.

Since 2010/11, the council has had to reduce its spending and increase its income by £249m per year up to and including 2022/23. This includes plans in place to deliver £18.86m of savings in 2022/23. The agreed budget in February included the need to

identify further savings of at least c£5m, c£10m and c£10m for 2023/24, 2024/25 and 2025/26 respectively. Given the inflationary pressures on pay and prices and funding uncertainty, these gaps will almost certainly increase during the year as we review the Medium Term Financial Strategy.

The future financial environment continues to be challenging. We are uncertain on the direct funding implications for the years beyond 2022/23, so assumptions have had to be made in our medium term financial outlook around predicted changes to Government spending and Local Authority grant levels. The promised Local Government Fair Funding review has been delayed again and financial uncertainty remains a key concern. The uncertainty around income is compounded by the increase in uncertainty around costs of living and increases in inflation and the expected pay award.

The Bank of England is forecasting inflation rates of up to 10% this year. They explain that in 21/22 this is largely due to the economy recovering from the Covid crisis - economies around the world, including in the UK, opened up after Covid restrictions eased; then people naturally wanted to start buying things again- but businesses selling some of those things couldn't get enough of them to their customers in the UK. This caused prices to rise - especially for goods coming from abroad. More recently, Russia's invasion of Ukraine has led to more large increases in the price of things like energy and food. The lockdowns in China (due to Covid) are also making it harder to import some goods to the UK. Therefore, that is also pushing up prices. At home, unemployment is low and the labour market strong, which has led to a general increase in wages – a major element of the costs of service-sector businesses and so the price of services in the UK has gone up too. And there are further forecast increases in energy costs from October when the energy price cap is removed.

The Bank of England does not expect these factors to last, so whilst inflation is high this year in the medium term, they expect inflation to reduce and be back closer to 2% in around two years - so potentially a short-term problem. However, they also say that the prices of some things may stay at a high level compared with the past. This will affect our residents and businesses ability to pay their council tax and business rates bills as well as increasing our own costs e.g. energy costs, wage increases, loss of staff supplier contract costs, build costs and debt financing costs of capital investment. Financial pressures on the council over the coming years are significant and increasing - without funding to match. Examples include increases in demand for services, the impact of increasing poverty, increasing pay and prices the impact of legislative reform, and integration with health.

We do not have capacity in our mainstream budgets to fund significant inflationary costs. For every 1% on our pay bill it will cost us £1.4 million each and every year on top of increasing costs from our staff heavy suppliers. In all we are facing a more difficult and complex economic environment. In the absence of any increases in funding then these costs will need to be met through further savings and increases in income above and beyond those already planned. This will require some focused scenario planning and difficult decisions as we set the strategy for the medium term.

3. So what are we doing about this? Future priorities and Areas of Focus.

I plan to continue my programme of delivery and am setting out in this report the priorities for my portfolio and for my administration over the next period.

My administration is aiming to secure a balanced three-year budget and financial strategy in February 2023. We will continue to deliver proud transformation that improves on

customer experience and staff satisfaction whilst delivering efficiencies in how we deliver those services. Where we do need to reduce services in the future because of our funding position, then we will link all our services to the council Plan outcomes in the first instance and proactively determine where we need to spend our money and explain why we are doing so.

Future prospects for our residents and local businesses are being improved by the delivery of a set of employment, skills and business support programmes, which are vital to strengthen our workforce and business base to meet the ongoing challenges, driving success in our local economy.

My administration is taking forward the Walsall Town Centre Masterplan, Future High Streets Connected Gateway Programme and the Town Deal Programmes for Walsall and Bloxwich. These will secure a brighter and more prosperous future for our town and Borough as a whole. Work also continues to bring forward important employment sites such as Phoenix 10, further setting the pace for recovery.

We continue to work closely with the region including the Black Country and the West Midlands combined Authority. The Association of Black Country Authorities (ABCA) continues to provide the forum for Council Leaders and Chief Executives to co-ordinate political and managerial activity of common interest. Walsall Council accepted the role of Single Accountable Body for the Black Country LEP back in October 2018; so far, we have successfully administered £282m across the Black Country, with £104m directly benefitting the borough of Walsall.

There is around £4m of LEP funds still to be invested across the Black Country with a further £54m Enterprise Zone surplus' forecast, we will continue to develop projects that can compete for these resources. Examples of Walsall projects currently live include Junction 10 of the M6 being completely updated to improve current traffic flow and accommodate future demands, the nearby Walsall / Darlaston Enterprise Zone, with many sites, including Phoenix 10 now coming to life, with the capacity to create almost 160,000m² of new industrial floor space, and up to 2400 new jobs over the years to come.

We will continue to utilise our Accountable Body skills and our project delivery strengths for the Black Country LEP and locally for Walsall. This will ensure the successful administration of key Walsall programmes now being directly funded by government. These include the Bloxwich and Walsall Town Fund applications which, together with our accelerated programme, have successfully levered in over £44m to deliver a range of exciting projects, that together with the £11m secured from the Future High Street fund for Walsall, will help to ensure their viability for years to come. We will help to ensure a successful transition of the LEP and accountable body functions to the WMCA.

I will be bringing key reports to cabinet on new policies and priorities in line with my manifesto pledges and our key areas of focus including:

- Securing a sustainable financial position and balanced medium term financial position that delivers our priorities and outcomes for resident whilst continuing to deliver the 3 Proud Promises:- improving outcomes and customer experience for our residents; improving staff satisfaction and engagement; and improving service efficiency and performance.

- Developing **We Are Walsall 2040** with partners and residents. This is a unique opportunity to engage in dialogue with residents, community groups, businesses, investors, and partners to understand their views on what matters most in the borough now and for the future. This conversation will lead into development of a strategic borough 'plan', which sets out the long-term ambitions for Walsall to be achieved by 2040.
- Review of our leisure provision a full options appraisal of the future of our role in leisure and the outcomes we are securing through a physical activity framework. This will consider the number and location of active living centres; financial cost / subsidy of our leisure service; further commercialisation opportunities; and alternative delivery models to secure agreed outcomes in a more efficient and effective way.
- Development of the Town Centre Masterplan A relentless drive to deliver the aspirations of the agreed Walsall Town Centre masterplan A programme of sequenced delivery will be drawn up after member engagement on 16/3, including any adjustments to the 2019 masterplan to consider the post-covid landscape and changed land ownership. The focus on delivery will require substantial capital funding to secure external investment, and will link to the levelling up agenda
- Whole borough environment plan to include a whole borough approach to environmental management and sustainability – more ambitious than the current plan for the council to achieve carbon neutrality by 2050. The new plan should fit the ambition and timeframe of regional and national strategies such as the WMCA net-zero plan (2041) and the government's waste and resources strategy. The overarching plan will include a number of discrete projects (some of which are already in development) including: climate change action plan (extended scope to whole borough net-zero by 2041 rather than council only by 2050); waste management strategy (minimising waste and increasing the recycling rate from 42% to 65% by 2035, saving circa £4m per annum at current prices); biodiversity action plan; street scene strategy; local transport plan and an urban forestry strategy. This includes street trees, grass verges and road safety.

The plan will rely on hub coordination together with place & environment – how to encourage / nudge / change behaviours and strong communications campaigning.

- Embedding Walsall's approach to building and enabling community resilience across all areas of the council's work. For example, how can we best secure community solutions which reduce expensive acute demand; secure stronger prevention and early intervention; smarter targeting of outcomes through use of procurement and social value; strengthen further our voluntary and community sector engagement and partnership; together with strong resident and community engagement through and after Our Walsall Story. Invest in youth services to help tackle youth unemployment and ASB issues in our neighbourhoods
- Develop new joined up housing and care models to meet the medium to longer term needs of people with a range of needs around Disability: Mental Health: Autism: Physical Disabilities and Leaving care. Through strong partnership with building developers, Council and wider Partners, we could create effective use of

the existing building at Goscote to develop a Hub and spoke model of care and support; focus on crisis intervention, avoidance and enablement for younger people into adulthood and established adults into old age.

- Future education provision for the Borough and special school review Ensuring sufficiency of high quality school placements for all children including those with special educational needs across the Walsall School system. Driving up educational outcomes and ensuring all Children and Young People achieve their full potential wherever they receive their education. This clearly links with the Walsall story – today's children will be adults in 2040.

I remain as ever committed to open and transparent governance and so during the course of the municipal year, regular reports will be made by cabinet members on the key issues outlined in this report.

Councillor Statham
Portfolio Holder - Education and Skills

The Children's Directorate has three service areas, Children's Social Care and Safeguarding, Early Help & Commissioning and Access & Inclusion. As Portfolio Holder for Education and Skills, my report details those activities within Access and Inclusion we are most proud of, the challenges we face and the areas upon which we are focussing attention to ensure better educational outcomes for all children and young people in the Borough. It also identifies the activities of Skills and Employability that sits within my portfolio and is part of Regeneration and Economy Directorate.

Due to the impact of the COVID-19 pandemic, primary school assessments did not take place in the 2019/20, or 2020/21 academic years and at secondary schools, exams did not take place and instead interim arrangements were put in place for the awarding of end of KS4 GCSE exams. The DfE has updated the accountability guidance which can be accessed here [School and college accountability approach: 2020 to 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/school-college-accountability-approach-2020-to-2022).

As before the pandemic, 2022 performance data, will be used by schools, academy trusts, local authorities and others for improvement purposes and by Ofsted to inform inspections. At the time of this report provisional KS2 outcomes for 2022 were published in July. The latest data release for KS4 is currently for 2021. This report refers to these latest attainment outcomes and the associated benchmarking data currently available.

1. What do we know?

There are 130 educational settings in Walsall.

7 Special Schools	8 Nursery Schools	85 Primary Schools	18 Secondary Schools
1 All through School	3 Pupil Referral Units	1 College	7 Independent Schools

As of August 2022, 85.7% (102) of Walsall schools have an Ofsted published grade of good or better compared to 87.6% nationally.

91.4% of LA maintained schools, 84.2% of academy converters and 63.2% of academy sponsor led schools are graded good or better

Just to mention, Ofsted's return to inspection in 2021 happened in phases, with no graded inspections for education or social care providers planned before the summer term. For maintained schools and academies, from January, they resumed monitoring inspections of schools judged inadequate at their previous inspection and some schools graded as requires improvement. Emergency inspections of schools continued as they had done throughout the pandemic, in response to any serious concerns raised with Ofsted, we had no emergency inspections in Walsall. Routine inspections, which resulted in a school being awarded a new grade or being confirmed in its current grade, resumed in the summer term. Full inspections then continued from September 2021.

Walsall's school children have more economic, language and health challenges than regional, national and statistical neighbours:

- 33.1% of Primary School children and 30.2% of Secondary School pupils are in receipt of Free School Meals an increase from the previous year.
- 25.6% of Primary School pupils and 20.5% of Secondary school pupils have English as an additional language.
- 27.2% of Reception aged pupils and 44.5% of year 6 pupils are overweight.

Due to the cancellation of the KS2 2020 and 2021 assessments, 2022 data is compared to 2019. Based on the July 2022 provisional dataset, KS2 outcomes for children at the end of Primary School show a decline in Writing and maths in line with National trends, although Reading has improved slightly:

- Based on provisional data for Walsall LA, 56% of pupils met the expected standard in reading, writing and maths, down from 61% in 2019. (-5%). Nationally 59% of pupils met the expected standard in all of reading, writing and maths, down from 65% in 2019. (-6%)
- The attainment gap between Walsall and the national result has narrowed from four percentage points in 2019 to three percentage points in 2022.
- The percentage of pupils achieving the expected standard in Reading is 72%, up two percentage points from 70% in 2019 compared to national which has increased by one percentage point from 73% to 74%.
- Provisional data shows that attainment at the expected standard in Writing has fallen by eleven percentage points from 77% in 2019 to 66% in 2022, compared to national which has also declined from 78% in 2019 to 69% in 2022.
- The percentage of pupils achieving the expected standard in Maths has declined by nine percentage points from 77% in 2019 to 68% in 2022, compared to national which has declined by eight percentage points from 79% to 71%

The summer exam series was cancelled in both 2020 and 2021, and alternative processes set up to award grades. As the method to award grades was different in 2020 and 2021, any comparisons for both years should be made with caution as any increase in statistics likely reflects the changed method for awarding grades rather than demonstrating an improvement in standards.

Improvements across headline measures in key stage 4 and key stage 5:

Provisional 2022 Key Stage 4 Results:

Due to the pandemic, for the past two years pupils have been awarded their key stage 4 results by their teachers. During these years we have seen an increase in key stage 4 attainment outcomes.

In 2022, pupils returned to exams. In the interest of fairness, Ofqual decided to make 2022 a transition year as the 2022 key stage 4 pupils still had disruptions to their education following a period of pandemic recovery. Therefore, in 2022, grading has been moved to a point midway between 2021 and 2019 (the last time pupils sat formal exams).

Based on the provisional results received directly from schools on results day (25th August 2022), the 2022 headline results for Walsall are as follows. Please note, these figures are highly provisional and likely to change:

- Attainment in English and maths (grades 5 or above) – 45% achieved a grade 5 or above in English and maths, 9.1% higher than in 2019 (35.9%).
- Attainment 8 – The average Attainment 8 score is 46.3, 2.3 points higher than in 2019 (44.0).
- The English Baccalaureate (EBacc) Achievement – 16% achieved the English Baccalaureate (based on a grade 5 or above in English and maths), 2.4% higher than in 2019 (13.6%).
- EBacc Average Point Score (APS) - The average EBacc point score is 3.95, 0.26 points higher than in 2019 (3.69).

KS4 national data is currently unavailable.

Provisional 2022 Key Stage 5 Results:

As announced by Ofqual in September 2021, overall A Level and AS Level results will be lower this year than in 2021 when grades were awarded by teacher assessment. Grades will be higher than in 2019, when students last sat summer exams, in recognition of the disruption caused by the pandemic.

Of the 19 secondary schools in Walsall, two schools have no Year 13 cohort (Brownhills Ormiston Academy and Willenhall E-ACT Academy).

Based on the indicative results submitted to Walsall directly from schools on results day (18th August 2022), the headline results in Walsall are listed below. Please note, these results do not include the college and the overall results for Walsall may change significantly when these are available.

Of the 17 schools who have provided their results, the main headlines are:

- 31.2% of A Level & equivalent qualifications achieved an A*-A grade, compared to the national average of 36.4%. (-5.2% gap to national)
- 97.4% of A Level & equivalent qualifications achieved in Walsall were an A*-E grade, compared to the national average of 98.4%. (-1% gap to national)
- 10.2% of entries received an A* in Walsall, compared to 14.6% nationally. (-4.4% gap to national)
- The average points per entry for the A Level cohort is 35.82, 6.07 points higher than the 2019 average of 29.75. National data is currently unavailable.
- The average points per entry for the Academic cohort is 35.55. National data is currently unavailable.
- The average points per entry for the Tech cohort is 34.91, 4.82 points higher than the 2019 average of 30.09. National data is currently unavailable.
- The average points per entry for the Applied General cohort is 31.87, 2.64 points higher than the 2019 average of 29.23. National data is currently unavailable.

The proportion of children who are identified as having special educational needs is broadly in line with national averages. Outcomes at the end of Primary school have fallen in line with NCER emerging national figures:

- In 2022, 3.5% of pupils have a special educational need (EHCP) compared with 4% nationally and 12.6% of pupils have SEN Support which equals the National average.
- Based on provisional data, 15.1% of children with SEN Support achieved the expected standard at KS2 in reading, writing and maths compared with 21.1% nationally. Although a decline of 2.9% from 2019, the gap to national has narrowed from 7% in 2019 to a 6% gap in 2022.
- 4.6% of children with an EHCP achieved the expected standard at KS2 in reading, writing and maths in 2022. This shows a decline of 5.4% when compared to 2019 and is lower than the emerging national average of 7.2%.

At KS4, outcomes for children with special educational needs are lower than national and regional averages.

- In 2021, for children with SEN Support, the attainment 8 score was 31.0, compared to 36.7 nationally and is lower than the statistical neighbours average score of 32.9
- For children with an EHCP, the attainment 8 score in 2021 was 13.5, in line with statistical neighbours but lower than the national score of 15.7

Poorer and disadvantaged pupils perform worse than their counterparts elsewhere do but the attainment gap compared to their peers is closing:

- 42% of pupils eligible for Free School Meals (FSM) achieved the expected standard at KS2 in reading Writing and Maths in 2022 which equals the emerging national figure. The FSM/Non FSM percentage gap for Walsall LA has narrowed from 23% in 2019 to a 21.8% gap in 2022.
- 44% of disadvantaged pupils achieved the expected standard in Reading, Writing and Maths in 2022 compared to 43% nationally. Compared with non-disadvantaged pupils in Walsall the gap remains at 21%.
- At KS4, the average Attainment 8 score for those pupils eligible for Free School Meals is 37.7 in 2021 with a gap of 13.4 compared with those who are not eligible for free school meals.
- The average Attainment 8 score for disadvantaged pupils in Walsall for 2021 is 40.3 which equals the national average, with a gap of 13 compared to non-disadvantaged pupils. This is better than the national gap of 14.4.

2. Introduction

Our ambition is to create a culture where there is effective, high quality learning provision, combined with meaningful and purposeful school partnerships, focused on the direct pursuit of improved outcomes for all Walsall's young people.

Our **Walsall Right for Children** vision sets out our ambition of the broad view of the role of Schools in their immediate community, in Walsall as a whole and beyond and with the aim to meet the needs of the whole child. That is:



In the Children's Services Directorate, the Access and Inclusion service will deliver the Walsall Right for Children vision through two distinct strategies:

- The Access Strategy- this outlines how we ensure we have sufficient school places to match the needs of our children and how children will access them.
- The Inclusion Strategy- this outlines how we ensure the quality of provision that our children and young people receive, and how and when we will support, challenge and intervene when necessary.

We continue to embed our Walsall Right 4 Children strategy in partnership with schools and colleges and the wider partnership. At the heart of our strategy is the basic premise of the voice of the child being heard and that through partnership our services ensure the support is in place so children can have the best start and are safe from harm, happy, healthy and learning well.

Our direction of travel in respect of the Walsall Learning Alliance, Walsall Families of Schools, and a Specialist Provision Review puts us in a strong position to respond pro-actively to the potential changes that are set to occur over the coming 12 months.

3. National changes and direction of travel School Improvement Grant

The School Improvement Grant for local authorities funds LA statutory duties in regard to school improvement (as set out in Part 4 of the Education and Inspections Act 2006 and Schools Causing Concern guidance). This includes the issuing of warning notices to setting of cause of concern; funding the ability for us to intervene such as making requirements on Governing Boards or ultimately imposing an Interim Executive Board and our joint work with the Regional School Commissioners office to raise standards locally.

Since 2017, the Grant has been provided to support councils to fulfil their core improvement activities, with the amount received by each council proportionate to the number of maintained schools in their area.

A national consultation on the changes to the grant concluded before Christmas 2021, with the outcome published in early January.

The proposal consulted on was for a 50% reduction in the School Improvement Grant from April 2022 and 100% de-delegation from April 2023. Rather than the funding being given to local authorities it would instead be a choice for Schools Forums to de-delegate from school core funding should they so choose. It was made clear that the funding currently given to the LA would not be pass ported to core school budgets. The grant would be removed and the funding had instead been nominally incorporated into the school funding announced as part of the autumn 2021 Spending Review.

The consultation recognised the force of opinion in terms of concerns over the removal of the grant. These included the ability for local authorities to be able to absorb further funding pressures; what would happen if schools forums did not agree to de-delegation for core school improvement activity; and the desire for further clarity on what is considered core school improvement.

Whilst recognising these concerns the government has approved the changes hence the grant will be reduced by 50% in 2022-23 and completely by 2023-24.

The core responsibilities for the LA remain unchanged but the direct funding will cease which will be an

added pressure to our services.

National SEND Review

The SEND Review was originally scheduled for publication in 2019 as an evaluation of the changes brought about by the Children and Families Act 2014. This included the introduction of the SEND code of practice, which sets out legal duties for education providers, local authorities and health bodies to provide for young people with special educational needs (SEN).

Nationally there are now nearly twice as many pupils on education, health and care plans (EHCPs) as there were on Statements in 2014. This growth is set to continue with increasing pressures placed on schools, local authorities and health services to support those children and young people with a diagnosis. The SEND review is expected to outline greater support and intervention for children and young people in mainstream settings, reducing the requirements and additional costs of specialist provision.

The growth rate of identified SEN in Walsall is much higher than comparators. Between 2016 and 2021, SEN support has increased by over 24% compared with less than 10% regionally and nationally and the number of children with an EHCP has increased by over 50% compared with 26% regionally and 36% nationally. Requests for EHCPs are increasing. In 2021 there were 647 requests for assessment – an increase of 32% on 2018 *compared with an 18% growth rate regionally and a 29% growth rate nationally*. Maintained EHCPs have increased by 48%. Historically this has been lower than comparators suggesting that SEND in Walsall may have gone unrecognised for some children. However the gap has narrowed as increases in the proportion of children with recognised SEND needs have been more rapid in recent years, demonstrating an improvement in the local areas recognition of children's needs.

How are we responding to the change? Children and young people being identified earlier in terms of special educational needs or disability is a good thing in that early intervention and support benefits the child and their family/ carers. Nationally however there is ever growing demand that is expensive and unsustainable. We have rolled out our Inclusion Strategy to support early identification and support for children. We have also reviewed and changed our High Needs Funding model and bands to be needs led for the child, regardless of setting. We have also reviewed and rolled out the Graduated Response toolkit and documentation.

The Walsall Specialist Provision Review is being led in conjunction with the sector with a Head teachers Reference Group developing long-term sustainable solutions around provision within Walsall. On the basis of every child has the right to a mainstream school place, some with additional support, the review is exploring how to most effectively support children and young people in mainstream settings, provide hub support for more challenging support needs and only then ensure a specialist place is available to meet a child's needs where necessary. The review may lead to the re-designation of some specialist provision places.

In tandem, we are remodelling our Specialist Inclusion Services to be commissioned to provide support to schools and families to enable children and young people to thrive in the setting that best meets their needs. This will encompass support around behaviour, mental health support, and, children at risk of poor/ non-school attendance or exclusion.

Schools Bill

On 12 May 2022, the government introduced its new Schools Bill. If the bill is passed by parliament as expected, it will bring significant changes to the sector. The provisions set out are consistent with the government's policy direction and principles announced in the Schools White paper:

<https://www.gov.uk/government/publications/opportunity-for-all-strong-schools-with-great-teachers-for-your-child>

The provisions are not law yet; the bill's progress through parliament has taken several months so far. Key elements of the bill include:

Academy trusts

The bill reflects the government's aim of all schools being part of a multi academy trust (MAT) – or in the process of joining one – by 2030. It focuses on the regulatory framework around MATs, setting out new

expected standards and strengthening powers to intervene in 'failing' MATs. The government has provided a 'factsheet' for the proposed increased intervention powers:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077814/Academy_Trust_Intervention_Powers_-_Schools_Bill_Factsheet.pdf

Specific provisions of the bill include:

A new legal underpinning for enforceable academy trust standards, replacing the inconsistencies caused by different funding agreements and articles. The government have published a factsheet which covers the new provision:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082158/Academy_Trust_Standards_-_Schools_Bill_Factsheet_.pdf

Setting standards in relation to governance structures and procedures. This may include new powers to set expectations for the composition of trust boards and their responsibilities as well as the responsibilities of members. The Department for Education (DfE) has stated that this will mostly replicate existing rules.

A new power for local authorities (LAs) to apply for an academy order so that one or more of their schools must join a MAT. This means the power to request an academy order no longer rests solely with the governing body. While the governing body must be consulted by the LA (further detail on consultation is likely in forthcoming guidance), the board ultimately has a legal duty to facilitate conversion after the academy order is received. The DfE has published a factsheet setting out their objectives:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074508/Local_authority_academisation_power_-_Schools_Bill.pdf

A clearer set of protections for grammar and faith schools to ensure they can maintain their status on joining a trust. This moves the protection for a faith school's religious status, and a grammar school's selective status, from contract (the funding agreement) to law.

New provisions governing the transfer of land by local authorities, intended to make the academisation process smoother. The government have published a factsheet which covers the new provision:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074509/Transfer_of_land_by_local_authorities_-_Schools_Bill.pdf

A new system of central intervention in trusts and academies judged to be failing.

The starting point for this is the existing "notice to improve" mechanism. Notices are issued by the Education and Skills Funding Agency (ESFA) on behalf of the Secretary of State where trusts are considered to have breached any of their legal and contractual duties (including in meeting the newly defined academy standards) or are displaying "significant weaknesses" in the trust board's governance procedures or management of the trust. If a trust is judged to have failed to comply with a notice to improve, various sanctions are possible, some of which are new.

Funding

The bill acts as a restatement of the government's commitment to implement the National Funding Formula (NFF) – first announced in 2016 – in full. It facilitates new regulations which will gradually reduce the scope of LAs to alter funding, as has previously been announced, so that schools are funded directly in line with the NFF. Further consultation is expected in the near future on transition to a direct NFF.

The government have published a factsheet on the national funding formula reforms:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077817/National_Funding_Formula_reforms_-_Schools_Bill_Factsheet.pdf

Attendance

The bill reflects the government's commitment to improve attendance in schools, with a new obligation for schools and trusts to have an attendance policy in place. This reflects newly published guidance, which comes into force from September:

<https://www.gov.uk/government/publications/working-together-to-improve-school-attendance>

Safeguarding

The bill also takes steps to better protect young people, especially those in illegal schools, or those not in school at all. New provisions include:

- New powers for Ofsted to act against illegal schools, and new powers for inspectors when investigating them.
- Clarified rules on when settings need to register as schools, forcing more settings to do so, and so fall under the regulatory framework around schools.
- An expanded remit of the Teaching Regulation Agency, to make it easier to ban unsuitable teachers from the profession.
- A new requirement for LAs to maintain a register of children not in school, alongside a duty on LAs to provide support to home-educating families. This reflects the increase in home education and the number of children whose educational provision is not certain following the COVID-19 pandemic.

The White Paper

In the meantime, the Government has indicated its continued commitment to its ambition for 2030 and the following [document](#), 'Implementing school system reform in 2022/23 Next steps following the Schools White Paper May 2022', remains in place:

<https://www.gov.uk/government/publications/implementing-school-system-reform-in-2022-to-2023>

The Schools White Paper sets out a long term vision for a school system that helps every child to fulfil their potential, founded on achieving world class literacy and numeracy. It has targets that, by 2030, 90% of primary school children are meeting the expected standard in reading, writing and maths; and that the average GCSE grades in both English language and maths are raised to 5. It aims to achieve these ambitions by ensuring an excellent teacher for every child; high standards of curriculum, attendance and behavior; targeted support for every child who needs it; and a stronger and fairer school system that works for every child.

The White Paper outlines how a strong school system will be delivered by schools, trusts, local authorities (LAs), faith bodies and the Department for Education (the Department) working together – setting an ambition for all schools to be in a strong multi-academy trust (MAT), or with plans to join or form one, by 2030.

This implementation framework outlines immediate next steps towards this ambition. It focuses primarily on academic year 2022/23 and is designed to help schools, trusts, LAs and faith bodies, mainly dioceses, think about what they should do next. It contains guidance and information to help planning for the short term and signposts further work the Department will be taking as it moves towards its 2030 ambition.

In this first phase, the priorities are:

Education Investment Areas (EIAs), including **Priority EIAs**, where they will introduce an area based approach to commissioning trusts. These are also the areas where we will focus new powers of statutory intervention in underperforming schools, subject to the outcome of consultation and parliamentary approval.

Area based commissioning will see the DfE working closely with local partners to establish a coherent local organisation of schools based on strong trusts, per our guidance on building strong academy trusts, and addressing problems of sustained underperformance.

EIAs

Levelling up the United Kingdom announced 55 EIAs – LAs with the lowest rates of combined KS2 and KS4 attainment in 2018/9, existing Opportunity Areas, or areas identified for additional school improvement support. The DfE will focus early attention and financial support on EIAs and will agree an area wide set of priorities developed with partners locally, including school and trust leaders, LAs and faith bodies, mainly dioceses.

EIAs will also benefit from other support, including the Levelling Up Premium for eligible teachers in priority subjects.

The Schools White Paper sets out that, within the 55 EIAs, a subset of 24 areas will become Priority EIAs where we build on this support by offering additional benefits, such as a local needs funding pot of around £40m, a MAT Leadership development programme for aspiring trust leaders and an extension of the Connect

the Classroom offer to all schools.

Walsall has been identified as an EIA and a Priority EIA and officers are currently in discussion with the DfE on the structure and timeline on how the EIA will be taken forward.

Schools in EIAs consistently rated as less than Good

Schools that are judged inadequate, be they maintained or academies, are already eligible for intervention. Subject to consultation and parliamentary approval for the necessary regulations, from September 2022 maintained schools and academies that are currently judged as Requires Improvement (RI) by Ofsted, and were also judged below Good in their previous full inspection, may also be in scope.

An area based approach to commissioning trusts

Building a strong trust system which includes all schools means that the DfE must work in a joined up way with local partners, starting in those areas most in need. It means working together to consider the needs of an area, and designing and shaping trust formations and the pattern of provision, so that schools in trusts work together well and are linked into communities. To achieve this, the DfE will adopt an area based approach to commissioning in EIAs. This will focus on quality first, identifying those which are best placed to take on underperforming schools in these areas.

Converting remaining schools and moving to a fully trust led system in a local area

The pattern of school structure and organisation across the country is mixed. The White Paper announced that, subject to parliamentary approval, the DfE will introduce new powers enabling the Secretary of State to bring an LA's maintained schools into the academy system where requested by an LA. In these areas, there is an opportunity to move more quickly to a fully trust led system.

Through our Walsall Right 4 Children vision we have a well-established sector led, commissioning approach to responding to the needs of children and young people across the Borough. This puts us in a strong position to respond to both the challenges and opportunities presented during the coming 12 months and beyond. Some of these key initiatives include:

Walsall Learning Alliance is the sector led strategic partnership forum that is driving the debate around how we collectively address the future challenges and opportunities facing the sector and children and young people across the Borough. Independently Chaired and with representation from all phases of schools, local universities, governors and the Council the Alliance is leading on evidence based research to build best practice across the sector. This includes in areas such as teacher recruitment, SEND, raising standards and transition.

Walsall Families of Schools is the vision for how, as a partnership, we will sustain and enhance high quality education provision across the Borough for the next 10 years and beyond to the benefit of the children, young people and communities of Walsall. In its simplest terms, Walsall Families of Schools is based on the principle that: Collaboration, federation or acadamisation are the most effective means of securing the long-term future of high quality education provision in Walsall. It is for school leaders and Governing Boards to lead the way with the approach that best meets the needs of their school communities, with the Council supporting and facilitating this. In the medium term no school should be an island unto itself.

It's a building block for the conversation with Head teachers and governors about how we secure the leadership and governance capacity for our schools in the future. It also prompts leaders to take the fate of their future governance in their own hands rather than risk it being decided upon either by Ofsted (and an inadequate judgement forcing academisation) or through government policy.

4. Achievements and challenges

SEND

We focused at during the year on implementing our SEND and Accessibility Strategy linked to our Inclusion Strategy. This sets out the vision, priorities and aims to ensure a step change in improved outcomes for all children and young people with SEND.

This was important as one of the emerging concerns which has arisen from the pandemic is the higher rate

and prevalence of recognised anxiety and social, emotional health concerns amongst our children and young people.

We also focused on the delivery of the actions and improvements identified in the Written Statement of Action (WSOA) following the Local Area Inspection in 2019.

It is pleasing to report that following a re-inspection by Ofsted and CQC (Care Quality Commission), progress and improvements have been identified with Walsall's Special Education Needs support offer.

The Local Area SEND (Special Educational Needs and Disabilities) services inspection, that took place in February 2019, identified nine areas of concern in the way that SEND services were being delivered in Walsall. The Local Area, which is a partnership across a number of organisations, was instructed to develop and deliver a Written Statement of Action (WSOA) outlining how it intended to improve services for children with SEND and address the issues identified.

A re-inspection took place from 20 to 22 June to assess whether the Local Area had achieved sufficient progress in delivering the improvements set out in the WSoA.

The inspection team held a number of focus groups across the two days with key people who have been involved in the delivery of the WSoA and also met with schools, parents and carers and children and young people to capture their feedback, including feedback from Walsall's impartial advice and support service SENDIASS and the parent/carer forum, FACE Walsall.

Well done to the teams involved in this process in what was an important re-inspection for us as a partnership. Seven out of the nine identified areas showed progress and improvement which is a great achievement although we recognise that there is still work to be done.

The inspectors acknowledged the way in which Local Area leaders have worked with FACE Walsall to improve communication with parents and carers regarding SEND issues across the local area. FACE Walsall also now sit on the Local Area Improvement Board, ensuring that families' voices are clearly heard and understood.

The report also highlighted that the local area has collaborated well to develop Walsall's SENDIASS and this has been universally well received with parents and carers welcoming and appreciating the help and guidance this service provides, as well as the guidance with navigating the local area's systems and processes.

Other areas of progress identified by inspectors include the development of groups to gain the views of children and young people in order to shape support going forward and improved support for Autism, including post-diagnosis support for parents and children and specialist training for professionals.

You can read our full Ofsted re-inspection report on the SEND Local Offer link below.

https://go.walsall.gov.uk/children_and_young_people/special_educational_needs_and_disabilities_send_local_offer/joint_local_area_inspection_of_send

It is encouraging that the report highlights our progress in co-production work with parents and carers, increased usage of the Early Help Children's Hub, our Holiday Activity and Food Programme offer and the improvements in communication that have been made by the service.

We recognise that there is still room for improvement and we will continue to work collaboratively with our partners and families to ensure that an excellent offer is delivered for families impacted by SEND. The focus now will be on further improvement of the Local Offer and the quality of Education, Health and Care (EHC) plans. Both of these areas are delivered in partnership and plans are already underway to make headway

Admissions

Primary Admissions

3440 reception applications were received on time and every applicant received an offer of a school place for September 2022. Of those, 3182 (92.5%) received their first preference, 152 (4.4%) their second preference and 44 (1.3%) their third preference.

Reception Offers	September 2022	September 2021
Total Walsall on-time applications	3440	3541
Offered 1st preference	3182 (92.5%)	3235 (91.4%)
Offered 2nd preference	152 (4.4%)	161 (4.5%)
Offered 3rd preference	44 (1.3%)	51 (1.4%)
Offered one of their top three preferences	3378 (98.2%)	3447 (97.3%)
Not offered any preferred school and allocated an alternative	62 (1.8%)	94 (2.7%)

Note : Of the 62 children in Walsall not offered one of their preferred schools, 48 of these applicants had expressed a preference for only one school - rather than using all of the three preferences that every applicant is entitled to. We advise applicants to utilise all three preferences. Offers are NOT made on a first come, first served basis but applications received on time are processed before those received after the deadline date.

Secondary Admissions

3,836 applications were received on time. This is an increase of 129 applications from last year's figure. Of those, 3055 applicants (79.6%) received their first preference, 400 (10.4%) their second preference and 122 (3.2%) their third preference.

Every applicant who applied on time has been offered a place at a school for September 2022. Parents and carers can express preferences for up to five schools and 94.6% of children received an offer of a place at one of their preferred schools.

There were 208 (5.4%) families who were allocated a place at an alternative school rather than at one of their preferred schools. Of these 83 children had only included one preference on their application form.

Extended role of Virtual Head teacher

Since September 2021, the role of the Virtual School Head was extended to promote the education of all children aged 0-18 with a social worker and those who have had a social worker within the last 6 years (Ever 6), meaning there will be a local champion for children with a social worker in every local authority in England. This is to ensure more focus is placed on targeting support earlier on in these young people's lives and helping improve how they engage with education.

To support the new duties we have developed a Vulnerable Learners Hub and appointed three members of staff to work with social workers, schools and LA officers to help make visible the disadvantages children with a social worker can experience and promote practice that supports their engagement in education.

We have also created a full-time permanent SEN Casework Officer to sit with the SEN Assessment Team to work directly with looked after children and young people who have an EHCP or are undergoing a SEN needs assessment. A further post has been developed to support the work of the Vulnerable Learners hub to ensure that all children with a social worker who have an EHCP or who are undergoing a SEN assessment are prioritised.

The Virtual 'School Specialist Support Team, comprising of 3 Education Psychologists, 2 Speech and Language Therapists and a CAMHS Practitioner work closely with schools and social workers to ensure the needs of looked after and vulnerable children with special educational needs are prioritised.

In June 2022 the DfE announced a further 1 year extension to the duties. The focus of the VLH is to ensure all children with a social worker have a school place, have good school attendance, are not being excluded and have the right support and interventions to enable them to succeed.

Since the development of the VLH in September 2021, we have:

- Developed a Vulnerability Matrix to help identify those children and young people most at risk of underachievement. Vulnerability factors, such as children missing education, suspensions, below

50% attendance, Youth Justice Involvement, reduced time tables, elective home education etc. are all scored to enable the team to identify and implement appropriate support and challenge where needed.

- Extended the work of our SEN Casework Officer to oversee EHCP requests for all children with a social worker
- Attended social work team meetings to inform social workers on how they can access support from the VLH
- Delivered training to Designated Safeguarding leads and designated teachers to highlight the disadvantages children with a social worker may have experienced
- Implemented and led a regional working group with staff from other local authorities carrying out the role of supporting children with a social worker
- Visited over 30 schools to discuss individual and cohorts of children

During the 2021/22 academic year the team have dealt with 348 referrals from social workers, schools and other professionals

	Total	%
Number of YP referred to the vulnerable hub (overall)	348	100%
Number of YP referred to the vulnerable hub with SEN support	73	21%
Number of YP referred to the vulnerable hub with an EHCP	87	25%
Number of YP referred to the vulnerable hub with an EHCP in progress	2	1%

- 90 issues related to school attendance
- 44 issues related to children missing education
- 40 issues related to exclusions
- 68 issues related to school admissions/awaiting a school placement
- 34 issues related to special educational needs
- Other issues were around reduced timetables, managed moves, support for NEET etc

Reducing the exclusions of children with an Education Health and Care Plan:-

In addition to the work carried out to improve educational outcomes for children with a social worker, the staff in the VLH are also challenging schools where children with an EHCP are at risk of exclusion. The table below shows the number of referrals into the hub for young people at risk of exclusion.

Perm Ex referrals	Total
Number of YP referred at risk of suspension/PEX	33
Number of YP without an identified SEN who were at risk of PEX	11
Number of YP without an identified SEN who went on to be PEX	3
Number of YP on SEN support were at risk of suspension/PEX	12
Number of YP on SEN Support who went on to be PEX	2
Number of YP with an EHCP were at risk of suspension/PEX	10
Number of YP that went on to be PEX	0
Total number of YP at risk of perm ex	33
Total number of exclusions avoided by the VLH	28

Employment and Skills

The service focuses on reducing the number of young people who are not in education employment or training

(NEET) currently at 3.6% (July 2022). At this time of year, the NEETs figures are generally higher than normal but this should drop as we track and support young people into provision for the new academic year. The number of 18-24 years old who are in receipt of a Universal Credit benefit is currently 1850 claimants which has dropped significantly since the start of pandemic which saw 3355 young claimants.

Our service supports key targets group through a number of initiatives and programmes **Walsall Works** supports residents of all ages to improve their skills levels through pre-employment training, basic skills provision and vocational learning courses. The main focus is to improve employability and to support people, especially those who are young, into work placements, apprenticeships and training. Since its inception the programme has achieved:

- 1073 People accessing funded and non-funded Apprenticeships (973 aged 16-24)
- 687 Young People supported into a pre-apprenticeship or traineeships
- 1015 People supported into full or part time training or education
- 2598 People supported into employment (of which 1348 aged 16-24)
- 283 Young people accessing a Kickstart or other work placements

Over the past year, we have maintained face to face engagement through a range of hubs, partner venues and community settings. We have delivered a calendar of jobs and skills roadshow in key neighbourhood wards, two large Walsall Works Expo events and a number of Kickstart job matching sessions with employers and young people. We have refreshed content on our website www.walsallworks.com and continue to cascade opportunities through our social media platforms and our weekly bulletin. These have focussed on jobs in response to urgent recruitment needs in construction, logistics, social care and hospitality.

Black Country Impact which has been delivering since July 2016 (funded by European Social Fund / Youth Employment Initiative) and is now entering its final year of delivery. The project targets 16-29 year olds who are NEET or unemployed with removing to participating in into education, employment, apprenticeships and vocational training.

The programme provides a person centred approach and is embedded into or signposting from key services or organisations which support young people who are known to be unemployed, inactive and at risk of social inclusion. Referrals have been received from practitioners in Further Education, Training Providers, Schools, Early Help, Voluntary Sector, Police, Housing, Probation, Youth Justice, Teenage Parents Team, Transitional Leaving Care, and Supported Housing and through direct referrals from parents and young people.

All Impact Advisors are co-located in the Impact Hub at the Crossings at St Pauls Walsall, which is a drop-in facility which has become a focal point for young people to seek support. During the pandemic we have maintained our NEETs but the levels of young claimants peaked in the borough during the pandemic. The Hub is a vital resource for the community to seek support and is open daily Monday to Friday. The Impact performance to date:

Participant Volumes	Enrolments	Interventions	Outcomes
16-29 year olds	4596	2893	1584

Alongside a number of national gateway organisations, Walsall Council pledged to bring forward good quality 6 month **Kickstart** work placements for young people aged 16-24 who were claiming a Universal Credit benefit. As an approved gateway, we offered support to local employers who wished to take advantage of the scheme and provide job placements to young people. To date our gateway has achieved:

- 130 young people placed into a job placement
- 40 young people were retained by their host employer
- 28 young people secured employment elsewhere
- 23 completed placement but were unemployed post placement
- 17 dropped out the placement due to issues with their employment
- 10 young people secured apprenticeships
- 2 returned to full time education
- 2 current on Kick-start placements (and due to end September 2022)

Through the year we have secured **Careers Enterprise Company** funding to create an Information Advice and Guidance position to work closely with disengaged, vulnerable and hard to reach young people pre-16 and post 16 who are identified as at risk of becoming long term NEET. These would be young people identified as missing education or dropping out of provision and therefore have missed out on vital education and careers guidance.

The projects focussed on year 11-13 age group during the summer to ensure a smooth transition back into post 16 provision or working with two schools who identified a cohort of young people who had missed education. The additional capacity enabled us to work with practitioners, parents and young people who are missing school, in elective home education settings and those not registered with education in Walsall.

We offer a traded income **Careers Information Advice Guidance** service in 1 secondary School, 5 Special Schools and the Virtual School in Walsall. During the coming year we are planning on developing further income from bespoke curriculum activity and more contracts.

5. Next Steps

Within Access and Inclusion we have identified the following priorities for the year ahead:-

- Review the Specialist Provision across the whole Borough to ensure that there are the right pupils in the right provision and at the right time in line with our Walsall Right for Children vision.
- Ensure all schools provide a graduated approach to SEND in accordance with the SEN Code of Practice (2014), to ensure timely and needs led support with a focus on promoting independence and inclusion.
- Accelerated Action Plan to be developed and implemented in response to the Revisit of the Local Area
- Improve access and achievement of the vulnerable and disadvantaged learners.
- Attendance and behaviour within our schools continues to be a key priority area.
- Further development of the Vulnerable Learners Hub. From September 2022 the staff in the VLH will be responsible for working alongside schools and other professionals to help reduce the number of all children and young people who are permanently excluded from school. The team will challenge any exclusion where a graduated response to exclusion has not been followed. There is an expectation that Head teachers only use their powers to exclude where all other options to avoid an exclusion have been explored. Where we have a concern about schools not following the graduated response, a schools causing concern referral will be made

6. Conclusion

Our ambition is to create a culture where there is effective, inclusive, high quality learning provision, combined with meaningful and purposeful school partnerships, focused on the direct pursuit of improved outcomes for all Walsall's young people.

Realising our collective ambition for children relies on us all, whoever we are, and in whatever role we fulfil - Elected Members, Schools, Health colleagues, Employees, Parents, Carer or Community Members, acting as Champions for all children.

This report has set out the achievements we are proud of, some of the challenges faced by the Directorates and where attention is being focussed to improve outcomes for children, young people and families going forward. Undoubtedly, the circumstances in which the Directorates are operating will continue to be challenging and there is more to do. There is an absolute determination across all Services and this Administration to improve outcomes for all children and young people and to make a difference to the lives of those children who need it most.

Councillor Mark Statham
Cabinet Member Education and Skills
October 2022