



MINUTES OF THE MEETING OF THE CABINET

WEDNESDAY 14 JUNE 2022
VIA DIGITAL MEETING FACILITY

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Committee Members Present:

Councillor S Akhtar
Councillor F Dugdale
Councillor A Forrest
Councillor N Hampshire (Convener)
Councillor C McGinn
Councillor J McMillan

Other Councillors Present:

Councillor R Bennett
Councillor C Cassini
Councillor L Jardine
Councillor C McFarlane
Councillor G McGuire
Councillor L-A Menzies
Councillor B Ritchie

Council Officials Present:

Mrs M Patterson, Chief Executive
Ms L Brown, Executive Director for Education and Children's Services
Ms S Fortune, Executive Director for Council Resources
Mr D Proudfoot, Executive Director for Place
Ms N McDowell, Head of Education
Ms W McGuire, Head of Housing
Mr T Reid, Head of Infrastructure
M S Saunders, Head of Communities
Ms M Sullivan, Head of Development
Ms J Tait, Head of Children's Services
Ms R Crichton, Committees Officer
Mr S Cooper, Team Manager – Communications
Mr C Grilli, Service Manager – Governance
Mr E John, Service Manager – Sport, Countryside and Leisure
Mr S Kennedy, Emergency Planning, Risk and Resilience Officer
Mr I Lennox, Team Manager – Assets and Regulatory
Mr A Stubbs, Service Manager – Roads
Mr P Vestri, Service Manager – Improvement, Policy & Communications

Clerk:

Mrs L Gillingwater

Apologies:

None

Declarations of Interest:

None

1. CORPORATE RISK REGISTER 2022

A report was submitted by the Chief Executive presenting the Corporate Risk Register as at 6 June 2022 to the Cabinet for discussion, comment and approval.

Sharon Saunders, Head of Communities, presented the report, providing a detailed explanation of the Council's approach to identifying and monitoring risk. She advised that the Corporate Risk Register was usually reported to Cabinet and the Audit & Governance Committee annually, but that due to the increased risks associated with COVID-19 and the UK's exit from the European Union, it had also been presented to Council in December 2021 and March 2022. She drew attention to a number of key risks, including COVID-19, the recent avian flu outbreak on the Bass Rock, and staffing issues. She also pointed out that new risks would be added to the Corporate Risk Register as required.

In response to a question from Councillor Akhtar on the Resource Spending Review, Sarah Fortune, Executive Director for Council Resources, advised that it was still unclear as to the impact of this, and that Members would be updated once further information was available.

Councillor McMillan asked for an explanation on the Council's approach to risk, with particular reference to the recent outbreak of avian flu. Ms Saunders informed Members that the Trading Standards team had oversight of animal health and welfare matters, and that once the developing risk had been identified, the risk had been escalated and multi-agency emergency response arrangements had been activated. She noted that Eamon John and Alex Connell were the Council officers leading on this issue.

Douglas Proudfoot, Executive Director for Place, advised that the level of risk for the Council had never been so high, largely due to COVID-19, which required a cohesive and co-ordinated approach to be taken. He indicated that the economic recovery could take some time, and that the rising cost of living also presented a challenge to the Council. His remarks were echoed by Scott Kennedy, Emergency Planning, Risk and Resilience Officer, who commented that the current level of risk was unprecedented. On the risk of water shortages, he advised that Council officers were in regular direct contact with SEPA.

Councillor Dugdale sought an update on staffing issues. Ms Saunders reported that the recruitment market was very challenging at present and that the situation as regards recruitment of staff across services and at all levels was not improving; in fact, in many cases it had not been possible to appoint to posts. She made particular reference to difficulties within Customer Services, where staff were being redeployed to cover key posts. She added that innovative methods of advertising were now being used in an attempt to attract candidates. Mr Proudfoot noted that particular areas of the private sector were experiencing similar problems, such as health and social care, agriculture and hospitality. He advised that East Lothian Works was looking at this, to ensure that opportunities were being created to align with skills shortages. Ian Gorman, Head of Operations (Health and Social Care) mentioned that private sector care providers were experiencing significant recruitment problems, as was the NHS, particularly for lower-paid front-line staff.

Councillor Hampshire expressed concern at the financial challenges facing the Council, particularly during a period of significant growth, and asked how this would be addressed.

Ms Fortune agreed that indicative future financial settlements, combined with rising inflation and cost of living rises, posed significant challenges, and that this was being raised at a national level. She warned that if no additional resources were made available, then the Council would need to make very difficult choices. She assured Members that the situation would be monitored on an ongoing basis, and that the risk rating would be updated accordingly. She also noted that Council Tax amounted to only c.25% of the Council's income and any Council Tax increases would not in itself address the scale of the challenges facing the Council.

Mr Proudfoot stated that East Lothian was one of the fastest-growing areas in Scotland, with affordable housing being a key priority. He warned that if the UK economy went into recession, it would be difficult to achieve economic growth and COVID-19 recovery. However, he did point out that COVID-19 had presented some opportunities, including digital transformation and new ways of working, as well as the vibrancy of East Lothian's town centres. He also made mention of the economic opportunities at the Queen Margaret University Innovation Hub and other aspects of the City Region Deal; he stressed the need to maximise such opportunities. He also highlighted the importance of local government being properly funded in order to deliver community services, as well as addressing the challenges associated with the climate emergency.

Councillor McMillan opened the debate by commending officers on their approach to risk. He also made reference to opportunities, as mentioned by officers, particularly of the work done by partners in the Connected Economies Group, the City Region Deal, and regarding rural issues. He welcomed the information on risks relating to energy, rising costs, water shortages and the capital programme. He also appreciated the challenges facing the Council on the recruitment of staff and the resulting impact on services, but reiterated that the Council was focused on customer service and service delivery.

Councillor McGinn alluded to the effects of global issues on the Council and local communities. He praised officers for their swift action and communication to tackle the recent avian flu outbreak, which demonstrated that the Council was well prepared for such events.

Councillor Dugdale thanked officers for their efforts in mitigating risks. She expressed concern about the current recruitment difficulties and the pressure this placed on existing staff. Councillor Forrest echoed these comments, noting the additional pressure on staff in carrying out repairs to Council houses.

Councillor Akhtar voiced her concern at the Scottish Government's proposal to establish a National Care Service and the risks that this could bring. She believed that care services were better operated at a local level, and that there would be significant risks associated with disbanding the current system; she was also concerned about the funding of this proposed service. She recognised the workforce challenges for the Council, as well as the potential impact of the Scottish Government's spending review, noting that collective action by the Scottish and UK Governments was required to tackle the current issues facing local authorities.

Concluding the debate, the Convener highlighted the importance of properly funded local government in order to support the economy and maintain social security. He also made reference to the impact of higher pay increases on the Council's budget, which could result in cuts to services and jobs. He stated that he would continue to push for additional funding to deliver the growth agenda and economic development in order that the Council could recover from the impacts of COVID-19. However, he was confident that staff would make every effort to mitigate risks and meet the challenges ahead.

The Convener moved to the vote on the recommendations, which was taken by roll call and approved unanimously.

Decision

The Cabinet agreed to approve the Corporate Risk Register and in doing so:

- i. agreed that this live document would be reviewed by the CMT, SMT, individual risk owners and the Corporate Risk Management Group on a regular basis and reported back to Cabinet as and when required;
- ii. agreed that the currently relevant risks had been identified;
- iii. agreed that the significance of each risk was appropriate to the current nature of the risk;
- iv. agreed that the total profile of corporate risk could be borne by the Council at this time in relation to the Council's appetite for risk but in the context of the planned mitigations; and
- v. recognised that, although while corporate risks would require close monitoring and scrutiny over the next year, many are long-term risks for the Council that are likely to be a feature of the risk register over a number of years.

2. THE EAST LoTHIAN COUNCIL (SCOTTISH OPEN, THE RENAISSANCE CLUB) (EXEMPTION) ORDER 2022 AND THE EAST LoTHIAN COUNCIL (WOMEN'S OPEN, MuIRFIELD) (EXEMPTION) ORDER 2022

A report was submitted by the Executive Director for Place seeking approval of the making of two Orders under Section 11 of the Land Reform (Scotland) Act 2003, in order to facilitate the holding of the Genesis Scottish Open 2022 Golf Championship, to be held at The Renaissance Club, Dirleton, East Lothian and the AIG Women's Open 2022 Golf Championship, to be held at Muirfield, Gullane, East Lothian.

Eamon John, Service Manager – Sport, Countryside and Leisure, presented the report, which would temporarily exempt access rights and permit the charging of an entrance fee for the Genesis Scottish Open, and temporarily exempt access rights except for those with tickets for the event for the AIG Women's Open. He noted that a public consultation had taken place and that no concerns had been raised. He added that the Orders were consistent with the provisions of the Land Reform (Scotland) Act 2003.

The Convener asked if there were sufficient staff to support this event. Mr John confirmed that he was working with the relevant services so ensure that the event was successful.

In response to a question from Councillor McGinn as regards transport and parking, Mr John indicated that transportation issues had been a key part of the planning process, and had been considered by the Safety Advisory Group (SAG). Alan Stubbs, Service Manager – Roads, and Ian Lennox, Team Manager – Assets and Regulatory, assured Members that officers were in regular contact with the rail authorities as regards the ongoing industrial action, and that contingency plans were in place. Mr Stubbs added that adequate resources were in place to support the event.

Councillor McMillan welcomed the return of these international golf events to East Lothian, and thanked staff for their input and their engagement with the event organisers. He also made mention of a junior golf tournament – the Tom Watson Cup, and of a charity golf

tournament to mark the 350th anniversary of the Musselburgh Old Course Golf Club, noting that all of these events would benefit local businesses.

Councillor McGinn remarked that these events were a fantastic opportunity to showcase East Lothian, and he spoke of the benefits to local communities. He thanked officers for their work. His comments were supported by the Convener, who highlighted the importance of promoting East Lothian during these events, with a view to attracting investment into the county.

The Convener moved to the vote on the recommendations, which was taken by roll call and approved unanimously.

Decision

The Cabinet agreed:

- i. to approve the making of The East Lothian Council (Scottish Open, The Renaissance Club) (Exemption) Order 2022; and
- ii. to approve the making of The East Lothian Council (Women's Open, Muirfield) (Exemption) Order 2022.

3. VARIOUS ROADS, EAST LOTHIAN: INTRODUCTION AND AMENDMENTS TO TRAFFIC REGULATION ORDERS 2022

A report was submitted by the Executive Director of Place seeking Cabinet approval to start the statutory procedures necessary to introduce and amend various Traffic Regulation Orders to prohibit waiting, loading and unloading, introduce new speed limits and time restricted waiting, make permanent a one-way road and re-determine the use of certain roads whereby access may be restricted or closed.

The Team Manager – Assets and Regulatory, Ian Lennox, presented the report, advising that approval of this report would start the legislative process associated with introducing and amending Traffic Regulation Orders (TROs). He drew Members' attention to the proposed changes.

In response to questions from Members, Mr Lennox provided details of the location of signage in relation to the proposed bus gate in Wallyford (outlined in Appendix D to the report). He also noted that this was an Experimental Order, and that compliance would be monitored for a period of six months, at which point it would be reviewed; a further report would come to Cabinet should there be a proposal to make this a permanent arrangement.

Councillor Forrest welcomed the proposal to restrict parking on Inveresk Road, Musselburgh, which he believed would help traffic flow. He also welcomed the proposed bus gate at Wallyford.

Councillor Akhtar commented that the proposed permanent speed restrictions in Humbie would be welcomed by that community. She also spoke in favour of the proposed parking restrictions at the Community Hospital in Haddington.

With reference to the proposed parking restrictions on Muirpark Road, Tranent, Councillor McGinn remarked that drivers should be more considerate when parking, particularly in areas with lowered kerbs. His comments were shared by Councillor Dugdale, who also welcomed the proposed bus gate at Wallyford and proposed parking restrictions at Wallyford Industrial Estate.

The Convener noted the importance of introducing these measures, particularly for older people and children. He added that, given the growth in East Lothian, it would be pertinent to review measures in town centres and villages to ensure the management of traffic flow and to make communities safer and more pleasant to visit.

The Convener moved to the vote on the recommendations, which was taken by roll call and approved unanimously.

Decision

The Cabinet agreed to approve the initiation of the statutory procedures necessary to introduce and amend Traffic Regulation Orders in accordance with The Local Authorities (Procedures) (Scotland) Regulations 1999 and such introduction and amendments that are in force in respect of locations and proposals listed in Appendices A-F of the report.

DRAFT

Signed

Councillor Norman Hampshire
Council Leader and Convener of Cabinet

REPORT TO: Cabinet
MEETING DATE: 13 September 2022
BY: Executive Director for Council Resources
SUBJECT: Quarter 1 Financial Review 2022/23

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1 PURPOSE

1.1 To provide an update on the in-year financial position at the end of June 2022.

2 RECOMMENDATIONS

2.1 The Council is recommended to:

- Note the financial performance at the end of Quarter 1 in 2022/23 against the approved budgets.
- Note the impact of inflationary pressures, particularly gas and electricity and the uncertainty over the pay settlement.
- Note the additional funding received from the Scottish Government to meet specific policy initiatives.
- Note the range of intervention measures approved by the Council Management Team set out in paragraph 3.20.
- Note that future financial review reports will go to Council for scrutiny until the financial position improves.

3 BACKGROUND

3.1 Council approved the 2022/23 Financial Strategy and associated financial plans on and prior to 1 March 2022. The approved plans included the requirement to use just under £9 million of reserves to balance the 2022/23 General Services budget.

3.2 The 2021/22 draft out-turn was reported to Council on 28 June 2022 and the report noted that £1.489 million was being carried forward to 2022/23

to deliver specific policy commitments directed by the Scottish Government including supporting wider COVID recovery.

- 3.3 A number of substantial pressures are emerging across budgets with the most significant relating to utility inflation, general inflation, availability of labour and materials as well as ongoing negotiations over pay, which is likely to see an agreement significantly in excess of the 2% assumed within the 2022/23 budget.
- 3.4 The Council continues to face a high number of significant financial and other risks, which may materialise over the remainder of this financial year.
- 3.5 Within this context, the Finance Service will continue to work with colleagues across services to manage expenditure commitments in 2022/23 and the future implications going forward.

General Services Revenue Summary – Quarter 1

- 3.6 The approved General Services revenue budget for 2022/23 included the following:
- Planned expenditure commitments of around £275 million to support service delivery.
 - A planned drawdown of £8.690 million from General Reserves.
 - Planned recurring service efficiencies of £393,000, a further £150,000 savings from the ongoing review of Council assets and the continued delivery of £2 million relating to the management of staffing budgets.
- 3.7 At the end of June 2022, the Council is reporting a £869,000 overspend (1.6%) in the General Services revenue financial position. This position reflects current increases in utility costs with electricity increasing by 25% and gas by 160% and includes a number of significant contract prices linked to inflation, which is running in excess of 10% and there is potential for this to increase further by the end of the year. This is likely to mean an additional pressure in excess of approved budgeted increases of over £1 million at the end of the financial year. There remains a growing range of uncertainties and financial risks facing the Council the scale of which may be difficult to manage within existing revenue constraints during 2022/23 and beyond.
- 3.8 The reported financial position at the end of June 2022 includes the following:
- The Council's approved budget reflected an increase of 2% in staffing budgets from 1 April 2022, which remained broadly aligned to the public sector pay policy in Scotland. Current projections reflect this position. Trade Unions have rejected this offer from employers, and national negotiations remain ongoing.
 - Additional Scottish Government funding of £140 million is being made available to Scottish Councils on a recurring basis to support all pay claims, including teachers. This funding would cover a pay award up to 3.5%. National discussions remain challenging, and whilst there is

a desire to increase the pay offer to employees, without additional funding from the Scottish Government each additional 1% of pay award across all employee groups costs an additional £1.6 million. The financial implications of pay negotiations will remain a key area of risk and focus for the Finance team during this year and beyond.

- Additional General Resource Grant Funding of £5.898 million to fund a number of Government priorities including, free school meals for Primaries four and five and across the summer holidays and the share of the additional £200 million for Health & Social Care which has been passed on to the IJB in its entirety in line with national direction.
- 3.9 Further information, including a financial risk rating for each service, is set out in **Appendix 1** with further details of the key challenges set out in the narrative below.
- 3.10 The Quarter 1 overspend in the **Education and Children's Directorate** is £748,000 (2.3%), with an Education overspend of £530,000 (1.8%) and a Children's Services overspend of £218,000 (5.6%).

Children's Services, £218,000 over (5.6%)

- The main pressure remains the demand for Residential and External Fostering placements. Currently, despite a recruitment process, there are no foster carers available, which may lead to further external placements being required.
- Despite this, there remains evidence that targeted interventions are having an impact on controlling demand for external placements with more packages of support to keep young people within East Lothian at significantly lower cost. This remains a volatile area and there is evidence that referrals to Social Work are increasing which will put further pressure on the service. As such, there is a risk that demand for services could increase before the year-end, which would affect the financial position.
- A wider strategic review of services provided to children is ongoing.

Education Services, £530,000 over (1.8%)

- Spend is over budget largely due to the significant increase in the cost of gas and electricity. Despite additional provision reflected within the approved budget to support projected increases in utility costs, current projections indicate that utility cost in schools will be over budget by more than £500,000 at the end of the financial year. With further increases predicted, this remains a significant risk to the Council.
- 1140 hours projections indicate that the cost of delivering the service will be within the available budget in 2022/23.
- There remain teacher costs being funded from the Recovery and Resilience fund and an element of spend in East Lothian Works is

being funded from money received in 2021/22, which, in line with guidance, was earmarked in reserves to be used for this purpose.

3.11 The Quarter 1 overspend in **Council Resources Directorate** is £157,000 (1.9%).

- **Finance, £156,000 over (2.6%)** – this mainly relates to additional spend to support applications from the Scottish Welfare Fund to offset the Cost of Living crisis, which will be funded from Reserves as planned.
- The **Corporate Services** position is in line with budget.

3.12 The Quarter 1 overspend in the **Health & Social Care Directorate** is £79,000 (0.6%).

- As noted earlier, an additional £3.841 million has been received as the share of the national £200 million since the budget was approved in March 2022 and this has been passed on in full to the IJB in line with national direction.
- Work is ongoing with colleagues in Health and Social Care to confirm spend commitments around the additional funding received in 2022/23.
- There remain significant pressures in the budget with a continuing growing demand for commissioned services, particularly residential and care at home. The Scottish Government has again extended Sustainability Payments to providers and there is additional funding for this.
- Labour shortages, in common with other areas of the Council, remain a challenge in ensuring that services are fully delivered.
- The majority of this budget is delegated to the IJB, along with a small number of other budgets within Community Housing, the Housing Revenue Account and Housing Capital. IJB budget management is in accordance with the scheme of integration and wider overall IJB resources.

3.13 The Quarter 1 underspend in the **Place Directorate** is £85,000 (0.8%).

- **Development, £119,000 over (43.1%)** – The overspend relates to the previously allocated Business Recovery Fund with £368,000 carried forward to 2022/23, which will be funded from reserves.
- **Housing, £171,000 under (6.7%)** – The underspend largely relates to timing delays relating to the recharges from Property Maintenance. There remains challenges within the service to manage the demands of the wider national resettlement schemes and local housing issues. This remains under close monitoring.
- **Infrastructure, £60,000 under (1.3%)** – While there is currently an underspend there remain a wide range of pressures to manage across

wider Infrastructure services, including recycling levels, completion of the Roads Capital programme, availability of labour and the pressures that severe winter weather would bring.

- **Communities & Partnerships, £27,000 over (0.8%)** – While the service is slightly over budget the service is likely to operate within budget limits.

3.14 The Quarter 1 underspend in the **Corporate Management Budgets** is £30,000 (0.0%).

- The recent increase in interest rates has had an impact in the interest repayment for the year with costs forecast to be £170,000 higher than budgeted. This potentially will have an impact on the affordability of the capital programme going forward and is an area that will continue to be monitored closely. There remains a significant risk that interest rates will continue to increase due to current wider economic circumstances.
- Current year Council Tax collection has remained high in quarter one with collection levels above target. Eligible households received Scottish Government cost of living payments during quarter one in line with national guidance. While this is a strong position, expectations are that many more households will face considerable financial challenges with the expected increase in the energy price cap and inflations running at over 10%, which could have an impact on collection rates.
- To support this the Financial Inclusion Team is supporting residents to maximise income and to identify any underlying entitlement to welfare benefits or other financial support schemes and grants. The launch of the new leaflet “Helping with the cost of living crisis” is being widely publicised by all Revenues Teams, other council services and multi-media outlets to make sure residents are aware of the help and support available to them. Officers are continuing to work with customers to set up flexible and affordable repayment arrangements where they are struggling to meet payments.
- A social media campaign will run from October 2022 to March 2023 to highlight how the Council can help anyone who is struggling over that period with the cost of living. This will include alerts to encourage customers to contact the Council before they reach crisis and a wider promotion of a benefits calculator.

3.15 The Council approved budget includes the requirement to deliver £393,000 of recurring planned efficiencies. Current projections indicate £254,000 of savings are at an amber status. More detail is set out in **Appendix 2**.

3.16 The current budget assumes the recurring delivery of £2 million of corporate efficiencies relating to management of staffing budgets. Current projections indicate that this saving is likely to be achieved in-year but

there remain risks as to the ability to deliver this level of saving on a recurring basis.

Scottish Government Funding

- 3.17 Since budget approval on 1 March 2022 there has been additional funding from the Scottish Government of £5.898 million with £3.841 million of that total passed directly to the IJB. There has been other funding provided to support specific policy initiatives including the expansion of free school meals and Scottish Child Bridging Payments. More detail setting out the updated funding provided by Scottish Government in 2022-23 is in **Appendix 3.**

General Services Revenue Conclusion

- 3.18 The Council is operating within an extremely challenging and complex financial environment and is continuing to face a wide range of uncertainties and ongoing demand pressures for services. There are significant challenges due to a number of factors including the Ukraine War, the UK leaving the European Union, inflation, particularly utilities, labour shortages, supply chain issues and uncertainty over pay settlements. In addition, there remains significant risks relating to the ongoing, Scottish Government led, Capital Accounting Review that is not due to complete until the end of 2023. Despite assurances that there are no pre-determined outcomes, the potential impact could be significant and in addition to the growing and unprecedented range of challenges being faced by the Council.
- 3.19 In recent years, significant amounts of additional funding has been allocated by the Scottish Government during the financial year to support the costs of the pandemic or new Scottish Government policy and which has provided in-year flexibility. It is unlikely that significant additional funding will materialise during 2022/23.
- 3.20 Given the wide range of uncertainties facing the Council and following discussion at CMT, further work is ongoing with services to identify options for reducing costs and an update on progress will be included in future financial update reports. Management have agreed a number of mitigation options and these will continue to be monitored going forward. These include:
- All Council managers are to ensure they deliver their service commitments within their approved budget levels. Any cost pressures will require to be offset with savings elsewhere within their budget where possible.
 - All Council managers are to avoid new and additional purchasing commitments where possible.

- All Council managers to continue to apply workforce management measures including careful monitoring of vacancies and minimising the use of overtime and agency staff where possible.
 - The CMT will continue to oversee the delivery of planned efficiencies and will continue to receive regular reports on the progress of implementing agreed savings plans. Where existing efficiency plans cannot be delivered, alternative efficiencies will need to be identified.
 - In line with the approved budget development framework, the Chief Executive and Chief Financial Officer will manage the use of the Cost Reduction Fund as a means of reducing the Council's cost base through the delivery of planned efficiency savings and therefore reducing budget overspending.
 - Maximising flexibility on all existing funding streams available within the Council.
 - Ensure Council operational assets are utilised in the most cost effective manner to mitigate the impact of rising utility costs.
- 3.21 In addition, the Council will continue to engage in national discussions with COSLA and through professional networks including Directors of Finance and SOLACE to ensure appropriate and sustainable funding is available to Local Government to support the delivery of essential local services.

General Services Capital Summary – Quarter 1

- 3.22 The approved budget for 2022/23 has been updated to reflect carry forward flexibility of £16 million from the closing position at the end of 2021/22, the outcome of which remains subject to the conclusion of the statutory audit. Collectively, these budgets over the 5-year period currently remain within the approved capital financial limits. The ability to maintain this limit remains subject to on-going review given wider external risks including market uncertainties relating to project cost increases and changes to the timing of income projections.
- 3.23 **Appendix 4** shows the approved and updated 2022/23 budgets and expenditure to 30 June 2022, showing spend of £16.903 million relative to the updated gross expenditure budget of £111.310 million.
- 3.24 Latest projections indicate expenditure of around £106 million by the end of the financial year. This forecast reflects a range of assumptions that are subject to change and may therefore have an impact on the actual position achieved at the end of the financial year. Whilst recognising the significance of the capital programme, there remains a wide range of growing external pressures all of which are placing very significant pressure on wider affordability limits. The capital plan remains under close monitoring and review to assess the cumulative financial impact and to consider potential options for mitigation and more details will be included

in future reports. A summary of the key changes since the budget was approved along with some additional risks are set out below:

- External market conditions remain challenging with wider supply and cost pressures. This wider external focus is placing significant additional financial challenges on the current approved capital programme and borrowing levels. Rising material, labour and fuel costs are affecting tender prices. In addition, contracts already in place remain subject to further risk exposure and this remains challenging. Given these collective risks, the affordability of the Capital Programme will need to be reviewed given the current financial environment.
- The Town Centre Regeneration projection has been increased to reflect the additional funding from the 2022/23 Place Based Programme grant. This budget is being spent on a number of workstreams including the ongoing Preston Tower refurbishment.
- Nature Restoration and Replacement Play Equipment projections have increased to reflect additional grant funding from the Scottish Government. A number of Sports and Recreation projects have been re-profiled from future years, fully funded by developer contributions. Further additional funding has also been secured towards the 3G carpet replacements within this budget heading.
- The Cycling, Walking, Safer Streets projection has been updated as additional Scottish Government specific grant funding has been awarded, noting this allocation must be spent within the financial year.
- A number of projections for Education projects have been amended to reflect progress with projects and timing of construction start, primarily Aberlady, Pinkie St. Peters 1140 and Windygoul 1140 extensions. Extensions at North Berwick and Ross High Schools were almost complete at the end of Quarter 1. Several other Education related property projects are currently projected to complete during this financial year.
- Construction of the new A1/QMU junction is ongoing with an expected completion in 2022/23. The Cockenzie link road will not be completed in 2022/23 and the projection has been amended. Property Renewals projection has been increased to include Scottish Government grant for ventilation works.
- The projection for use of developer contributions, early learning 1140 grant and other funding sources are directly linked to the projections of the projects they support. There continues to be ongoing risks around the timing and realisation of planned developer contributions that may put additional strain on borrowing requirements and this position will continue to be closely monitored. The reduction in projected expenditure has also reduced the in-year borrowing requirement.

- 3.25 Despite relatively low levels of current spend in the year to 30 June, many projects are progressing, as reflected in the spend projections.

Housing Revenue Account Summary – Period 3

- 3.26 At the end of June 2021 the Housing Revenue Account is showing a surplus against current budget of £1.252 million, most of which is due a backlog in the recharging of repairs costs. It is expected that the service will be in a breakeven position when the backlog is cleared. Further information is set out in **Appendix 5**.
- 3.27 There remain some pressures with void properties, which is still recovering from the impact of COVID-19 on productivity levels and work is ongoing to rectify. Rent income is currently in line with the budget but will remain under review as the timing of new build completions may have an impact on this position. Rent arrears are at a lower level than at this stage in 2021/22, though the cost of living challenges may have an impact on this going forward. Enhanced debt recovery work is ongoing to support tenants who are experiencing difficulties in paying rents and as noted earlier in the report, a range of support is available to tenants suffering financial hardship.
- 3.28 In line with the existing financial strategy, the council will maximise any flexibility arising from revenue balances during 2022/23 to minimise the future impact of debt charges.
- 3.29 Details of the Housing Revenue Account capital budgets and expenditure incurred to date are set out in **Appendix 6** of this report. The total capital budget approved for HRA was £42.179 million. At the end of June 2022, actual spend was £6.958 million, considerably higher than the £4.313 million at this stage in 2021/22.
- 3.30 At this stage, the service expects to spend in excess of £40 million across the Housing Capital Programme. There are a number of risks to that being achieved including availability of labour, supplies and materials and the impact should there be an increase in COVID or similar over the Autumn / Winter period.

Conclusion

- 3.31 Given the significant financial challenges facing the Council, the Chief Executive, in conjunction with the Chief Financial Officer, has undertaken consultation across all political group leaders. Taking account of the Council's Scheme of Administration, the Chief Executive has agreed that all financial update reports going forward will go to Council for scrutiny until the financial position improves.

4 POLICY IMPLICATIONS

- 4.1 There are no direct policy implications associated with this report, although, ongoing monitoring and reporting of the Councils financial performance is a key part of the approved Financial Strategy.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report has been considered and given there is no change in policy direction, there is no requirement to undertake any further impact assessment.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – as described above and in the supporting appendices
- 6.2 Personnel - none
- 6.3 Other – none

7 BACKGROUND PAPERS

- 7.1 Council – 16 November 2021 – Item Financial Update Report
- 7.2 Council – 1 March 2022 – Item 1 – Budget Development including setting of Council Tax and Council Rent for 2022/23
- 7.3 Council – 1 March 2022 – Item 2 – Budget Proposals on General Service – Amendment Submitted by the Labour Administration

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Appendix 1
 East Lothian Council
 Budget Monitoring 2022/23 - Period 3

Service	Head of Service	Business Unit	2022/23 Budget	Year to Date			2021/22 Budget Variance to Date	Financial Risk Assessment
				2022/23 Actual to Date	2022/23 Budget to Date	2022/23 Budget Variance to Date		
				£'000	£'000	£'000		
Education & Children's	Children's	Performance & Service Delivery	1,209	278	299	-21	-7.0%	
Education & Children's	Children's	Management	4,570	893	559	334	59.7%	
Education & Children's	Children's	Assessment HUB and Early Interventions	2,538	607	608	-1	-0.2%	
Education & Children's	Children's	Long Term Social Work Supervisory Groups	2,402	540	582	-42	-7.2%	
Education & Children's	Children's	TAC, Disability & Resources	6,423	1,679	1,732	-53	-3.1%	
Education & Children's	Children's	Disability Short Breaks	707	135	134	1	0.7%	
EDUCATION & CHILDREN'S	CHILDREN'S TOTAL		17,849	4,132	3,914	218	5.6%	
Education & Children's	Education	Additional Support for Learning	11,083	6,148	6,179	-31	-0.5%	
Education & Children's	Education	Pre-school Education & Childcare	16,660	7,551	7,735	-184	-2.4%	
Education & Children's	Education	Schools - Primary	48,438	3,616	3,483	133	3.8%	
Education & Children's	Education	Schools - Secondary	49,487	9,529	9,424	105	1.1%	
Education & Children's	Education	Schools - Support Services	5,038	1,713	1,491	222	14.9%	
Education & Children's	Education	East Lothian Works	1,362	1,137	852	285	33.5%	
EDUCATION & CHILDREN'S	EDUCATION TOTAL		132,068	29,694	29,164	530	1.8%	
EDUCATION & CHILDREN'S TOTAL			149,917	33,826	33,078	748	2.3%	
Council Resources	Finance	Financial Services	1,827	748	765	-17	-2.2%	
Council Resources	Finance	Revenues & Benefits	6,600	5,330	5,172	158	3.1%	
Council Resources	Finance	Procurement	349	84	69	15	21.7%	
COUNCIL RESOURCES	FINANCE TOTAL		8,776	6,162	6,006	156	2.6%	
Council Resources	Corporate	IT Services	3,162	642	668	-26	-3.9%	
Council Resources	Corporate	Legal	394	106	118	-12	-10.2%	
Council Resources	Corporate	People & Governance	5,350	1,387	1,347	40	3.0%	
Council Resources	Corporate	Communications	434	127	128	-1	-0.8%	
COUNCIL RESOURCES	CORPORATE TOTAL		9,340	2,262	2,261	1	0.0%	
COUNCIL RESOURCES TOTAL			18,116	8,424	8,267	157	1.9%	
Health & Social Care Partnership	Head of Operations	Adult SW	36,603	7,645	9,109	-1,464	-16.1%	
Health & Social Care Partnership	Head of Operations	Acute & Ongoing Care	8,191	1,903	2,048	-145	-7.1%	
Health & Social Care Partnership	Head of Operations	Rehabilitation	1,697	486	419	67	16.0%	
Health & Social Care Partnership	Head of Operations	Adult Statutory Services	2,587	908	832	76	9.1%	
Health & Social Care Partnership	Head of Operations	Statutory Services	2,296	1,074	669	405	60.5%	
Health & Social Care Partnership	Head of Operations	Head of Operations	11,930	715	-355	1,070	301.4%	
Health & Social Care Partnership	Head of Operations	Business & Performance IJB	2,990	739	747	-8	-1.1%	
HEALTH & SOCIAL CARE PARTNERSHIP	IJB TOTAL		66,294	13,470	13,469	1	0.0%	
Health & Social Care Partnership	Head of Operations	Business & Performance Non-IJB	540	348	270	78	28.9%	
HEALTH & SOCIAL CARE PARTNERSHIP	Non-IJB TOTAL		540	348	270	78	28.9%	
HEALTH & SOCIAL CARE PARTNERSHIP TOTAL			66,834	13,818	13,739	79	0.6%	
Place	Development	Planning	1,263	270	246	24	9.8%	
Place	Development	Economic Development	1,654	125	30	95	316.7%	
PLACE	DEVELOPMENT TOTAL		2,917	395	276	119	43.1%	
Place	Housing	Housing, Strategy & Development	254	172	161	11	6.8%	
Place	Housing	Property Maintenance Trading Account	-863	1,960	2,218	-258	-11.6%	
Place	Housing	Community Housing	2,406	263	187	76	40.6%	
PLACE	HOUSING TOTAL		1,797	2,395	2,566	-171	-6.7%	
Place	Infrastructure	Facility Support Services	3,863	589	657	-68	-10.4%	
Place	Infrastructure	Facility Trading Activity	-276	-2,108	-2,070	-38	1.8%	
Place	Infrastructure	Asset Planning & Engineering - Paul ianetta	3,374	915	913	2	0.2%	
Place	Infrastructure	Asset Planning & Engineering - Eddie Reid	-475	-36	16	-52	-325.0%	
Place	Infrastructure	Landscape & Countryside Management	5,667	1,662	1,651	11	0.7%	
Place	Infrastructure	Roads Network	4,827	650	646	4	0.6%	
Place	Infrastructure	Roads Trading Activity	-562	-10	-72	62	86.1%	
Place	Infrastructure	Transportation	1,584	350	364	-14	-3.8%	
Place	Infrastructure	Waste Services	9,750	1,923	1,923	0	0.0%	
Place	Infrastructure	Active Business Unit	3,729	621	588	33	5.6%	
PLACE	INFRASTRUCTURE TOTAL		31,481	4,556	4,616	-60	-1.3%	
Place	Communities & Partnerships	Corporate Policy & Improvement	1,632	242	168	74	44.0%	
Place	Communities & Partnerships	Connected Communities	6,485	2,099	2,093	6	0.3%	
Place	Communities & Partnerships	Protective Services	1,915	139	154	-15	-9.7%	
Place	Communities & Partnerships	Customer Services Group	3,925	1,142	1,180	-38	-3.2%	
PLACE	COMMUNITIES & PARTNERSHIPS TOTAL		13,957	3,622	3,595	27	0.8%	
PLACE TOTAL			50,152	10,968	11,053	-85	-0.8%	
SERVICE TOTAL			285,019	67,036	66,137	899	1.4%	
CORPORATE MANAGEMENT TOTAL			-285,019	-121,967	-121,937	-30	0.0%	
TOTAL			0	-54,931	-55,800	869	1.6%	

Appendix 2

East Lothian Council

2022/23 Budget Efficiencies - Period 9

Service	2022/23		
	Achieved	Amber	High
	£'000	£'000	£'000
Education	0	0	0
Finance	0	0	0
Corporate Services	10	10	0
H&SCP	0	0	0
Housing	8	0	0
Communities	30	0	0
Infrastructure	91	94	0
Corporate Management	0	150	0
Total	139	254	0
	35.37%	64.63%	0.00%

393

Appendix 3

East Lothian Council

Budget Monitoring 2022/23 - Additional Funding from the Scottish Government

	£million
2022/23 GRG (per Budget Amendment)	195.103
<hr/>	
Additional Funding - GRG	
<hr/>	
Universal Free School Meals (future years TBC)	0.947
Free School Meals School Holiday Support (future years TBC)	0.303
Additional Investment in H&SC (share of £200m)	3.841
Scottish Child Bridging Payments	0.646
Summer Holiday Provision for Primary School Children	0.161
<hr/>	
Total Additional Funding	5.898
<hr/>	
Revised GRG	201.001
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Appendix 4
 East Lothian Council
 General Services Capital Budget Monitoring Summary 2022-23
 as at 30 June 2022

	RAG	Annual (in-Year)							Projected Outturn - Funding					
		Annual (in-Year)							Projected Outturn - Funding					
		Approved Budget 2022/23	Carry Forward 2021/22	Updated Budget 2022/23	Actual 2022/23	Updated Budget-Actual Variance 2022/23	Projected Outturn 2022/23	Updated Budget - Projection Variance 2022/23	Developer Contribution	1140 Grant Income	Town Centre Regeneration Grant	Other Funding Sources	Projected Outturn 2022/23 - Funding	General Capital Grant / Council Borrowing
£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	
Expenditure														
Community Projects														
Community Intervention	G	375		375	(82)	(457)	375	-						(375)
Community Intervention Fund - Pump Tracks	G	125		125	-	(125)	125	-						(125)
Bleachingfield Centre Remodelling Works	G	90		90	-	(90)	90	-				(90)		-
Dunbar Conservation Area Regeneration Scheme (CARS)	G	196	90	286	-	(286)	286	-				(146)		(140)
Support for Business	G	1,544	714	2,258	363	(1,895)	2,258	-						(2,258)
CCTV	G	150	228	378	-	(378)	378	-						(378)
Town Centre Regeneration	G	823	452	1,275	77	(1,198)	1,992	717			(1,992)		(1,992)	-
Total Community Projects		3,303	1,484	4,787	358	(4,429)	5,504	717			(1,992)		(2,228)	(3,275)
ICT														
IT Programme & Digital Opportunities	G	2,100		2,100	359	(1,741)	2,100	-						(2,100)
Total ICT		2,100		2,100	359	(1,741)	2,100							(2,100)
Fleet														
Amenties - Machinery & Equipment - replacement	G	230		230	32	(198)	230	-						(230)
Vehicles	A	5,041	512	5,554	1,832	(3,722)	4,527	(1,027)						(4,527)
Total Fleet		5,271	512	5,784	1,864	(3,919)	4,757	(1,027)						(4,757)
Open Space														
3G Pitch Carpet Replacement Programme	G	500		500	-	(500)	600	100				(211)	(211)	(389)
Cemeteries (Burial Grounds)	A	439	500	939	7	(932)	439	(500)						(439)
River Tyne / Haddington Flood Protection scheme	G	300	15	315	-	(315)	315	-						(315)
Coastal / Flood Protection schemes - Musselburgh	G	1,642	269	1,912	(136)	(2,047)	1,912	-						(1,912)
Coastal Car Park Toilets	G	14	68	81	38	(43)	112	30				(40)	(40)	(72)
Core Path Plan	G	50	9	59	-	(59)	59	-						(59)
Mains Farm Town Park & Pavilion	G	12	26	38	-	(38)	38	-						(38)
Nature Restoration	G	-	43	43	-	(43)	153	110						(153)
Replacement Play Equipment	G	100		100	-	(100)	208	108						(208)
Polson Park	G	160		160	-	(160)	160	-						(160)
Sports and Recreation LDP	G	1,361		1,361	3	(1,359)	1,985	624	(961)		(924)		(1,885)	(100)
Waste - New Bins	G	172		172	18	(154)	172	-						(172)
Waste - Machinery & Equipment - replacement	G	40		40	5	(35)	40	-						(40)
Total Open Space		4,791	930	5,720	(64)	(5,784)	6,193	472	(961)			(1,174)	(2,136)	(4,057)
Roads, Lighting and related assets														
Cycling Walking Safer Streets	G	472	30	502	4	(498)	721	219				(721)	(721)	-
East Linton Rail Stop / Infrastructure	G	1,520	1,518	3,038	-	(3,038)	3,038	-						(3,038)
Parking Improvements	G	110	120	230	46	(184)	230	-						(230)
Roads	G	6,700	293	6,993	468	(6,524)	6,993	-						(6,993)
Roads - externally funded projects	G	1,729		1,729	341	(1,387)	1,729	-	(69)			(1,660)	(1,729)	-
Drem - Gullane Path	G	30		30	-	(30)	30	-				(30)	(30)	-
Total Roads, Lighting and related assets		10,561	1,961	12,522	860	(11,662)	12,741	219	(69)			(2,411)	(2,480)	(10,261)
Property - Education														
Aberlady Primary - extension	A	1,698	716	2,413	1	(2,412)	1,200	(1,213)	(200)	(17)			(217)	(983)
Blindwells Primary - new school	G	3,227	(11)	3,216	-	(3,216)	3,216	-	(1,210)				(1,210)	(2,006)
Craighall Primary - New School	G	4,298	(6)	4,292	-	(4,292)	4,292	-	(3,149)				(3,149)	(1,143)
Dunbar Grammar - extension									(131)				(131)	131
Dunbar Primary - John Muir Campus - Early Learning and 1140	G	-	24	24	8	(15)	24	-		(24)			(24)	(0)
East Linton Primary - extension including Early Learning and 1140	A	324	-	324	-	(324)	300	(24)	(147)				(147)	(153)
Elphinstone Primary - extension	A	77	200	277	-	(277)	77	(200)						(77)
Gullane Primary - extension including Early Learning and 1140	G	-	702	702	-	(702)	702	-	(312)				(312)	(390)
Haddington School (Infants & St. Mary)	G	26	25	51	-	(51)	51	-	(51)				(51)	-
Kingsmeadow Primary	G	26	25	51	-	(51)	51	-	(51)				(51)	-
Law Primary - extension including Early Learning and 1140	A	2,890	524	3,415	601	(2,813)	3,415	-	(427)	(3,119)			(3,546)	131
Letham Primary - New School	G	-	120	120	-	(120)	120	-						(120)
Macmerry Primary - extension	G	157	(1)	156	1	(154)	156	-	(194)				(194)	38
Musselburgh Grammar - upgrades	G	284	128	412	249	(164)	412	-						(412)

East Lothian Council
General Services Capital Budget Monitoring Summary 2022-23
as at 30 June 2022

	RAG	Annual (In-Year)							Projected Outturn - Funding					
		Approved Budget 2022/23	Carry Forward 2021/22	Updated Budget 2022/23	Actual 2022/23	Updated Budget-Actual Variance 2022/23	Projected Outturn 2022/23	Updated Budget - Projection Variance 2022/23	Developer Contribution	1140 Grant Income	Town Centre Regeneration Grant	Other Funding Sources	Projected Outturn 2022/23 - Funding	General Capital Grant / Council Borrowing
Expenditure		£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
North Berwick High School - Extension	A	1,445	1,638	3,083	429	(2,654)	3,083	-	(3,092)				(3,092)	9
Ormiston Primary - extension	A	374	638	1,012	361	(651)	1,012	-	2				2	(1,014)
Pinkie St Peter's Primary - sports hall extension	G	1,454	633	2,087	200	(1,887)	2,087	-	(871)				(871)	(1,216)
Pinkie St Peter's Primary - extension including Early Learning and 1140	A	2,970	625	3,596	488	(3,107)	2,596	(1,000)	(2,596)				(2,596)	-
Preston Lodge High School - extension (phase 1)	G	248		248	-	(248)	248	-	(334)				(334)	86
Prestonpans Primary - upgrades	G	3		3	-	(3)	3	-	(3)				(3)	-
Ross High School - extension	A	1,273	104	1,377	240	(1,136)	1,377	-	(1,271)				(1,271)	(105)
School Kitchens - 1140 Upgrades	G	-		-	5	5	5	5	(5)				(5)	-
St Gabriel's Primary - extension including Early Learning and 1140	G	648	94	742	196	(545)	742	-	(142)	(366)			(508)	(234)
Wallyford Primary - New School	G	-	59	59	-	(59)	59	-					-	(59)
Wallyford Learning Campus	G	18,545	1,256	19,801	6,175	(13,626)	19,801	-	(437)				(437)	(19,364)
West Barns Primary - extension including Early Learning and 1140	G	1,590	204	1,794	468	(1,326)	1,794	-	(422)	(931)			(1,353)	(441)
Whitecraig Primary - new school including Early Learning and 1140	G	185	123	309	24	(284)	309	-	(269)	(40)			(309)	-
Windygoul Primary - Early learning and 1140 extension	G	1,063	(53)	1,010	-	(1,010)	10	(1,000)		(10)			(10)	-
Windygoul Primary - extension	G	900		900	838	(62)	900	-					-	(900)
Total Property - Education		44,035	8,090	52,125	10,285	(41,840)	48,692	(3,433)	(12,711)	(7,106)	-	-	(19,817)	(28,875)
Property - Other														
Accelerating Growth		11,696	3,006	14,702	1,778	(10,924)	12,702	(2,000)				(4,746)	(4,746)	(7,956)
- Cockenzie	A	3,000		3,000	5	(2,995)	1,000	(2,000)				(1,000)	(1,000)	-
- Blindwells	G	91	183	273	(30)	(303)	273	-				(85)	(85)	(188)
- Innovation Hub	G	1,006	324	1,330	67	(1,263)	1,330	-				-	-	(1,330)
- A1/QMU Junction	G	7,599	2,499	10,098	1,736	(8,363)	10,098	-				(3,661)	(3,661)	(6,437)
Brunton Hall - Improved Community Access	G	200		200	-	(200)	200	-					-	(200)
Court Accommodation - incl. SPOC	G	1,749		1,749	-	(1,749)	1,749	-					-	(1,749)
Haddington Corn Exchange - upgrades	G	16		16	-	(16)	-	(16)					-	-
Haddington Town House - Refurbishment and Rewire	G	300	117	417	137	(280)	417	-					-	(417)
Meadowmill - New Depot	G	-	25	25	27	2	25	-					-	(25)
New ways of working Programme	G	1,995		1,995	6	(1,989)	1,995	-					-	(1,995)
Prestonrange Museum	G	2,279	205	2,484	-	(2,484)	2,484	-				(633)	(633)	(1,851)
Property Renewals	G	3,000		3,000	87	(2,913)	3,099	99				(99)	(99)	(3,000)
Replacement Childrens House	G	802		802	-	(802)	802	-					-	(802)
Sports Centres	G	200	172	372	207	(166)	372	-					-	(372)
Tynebank Resource Centre	G	-		-	-	-	13	13				(13)	(13)	-
Water meter size reduction	G	14		14	-	(14)	14	-					-	(14)
Whitecraig Community Centre	G	-	49	49	-	(49)	49	-					-	(49)
Total Property - Other		22,251	3,574	25,825	2,241	(23,585)	23,922	(1,904)	-	-	-	(5,492)	(5,492)	(18,430)
Total Property Spend - Education and Other		66,286	11,664	77,951	12,526	(65,424)	72,614	(5,336)	(12,711)	(7,106)	-	(5,492)	(25,309)	(47,306)
Capital Plan Fees	G	2,447		2,447	-	(2,447)	2,447	-					-	(2,447)
Total Gross Expenditure		94,759	16,551	111,310	15,903	(95,407)	106,355	(4,955)	(13,741)	(7,106)	(1,992)	(9,313)	(32,152)	(74,202)
Income														
Developer Contribution	A	(11,190)	(2,103)	(13,293)			(13,741)	(448)						
1140 Grant Income	G	(8,190)	(308)	(8,498)			(7,106)	1,392						
1140 CFCR from Revenue														
Town Centre Regeneration Grant	G	(823)	(452)	(1,275)			(1,992)	(717)						
Other Funding Sources	A	(9,401)	(1,426)	(10,827)			(9,313)	1,515						
Scottish Government General Capital Grant	G	(9,044)	-	(9,044)			(9,262)	(218)						(9,262)
Total Income		(38,648)	(4,289)	(42,938)			(41,414)	1,524						
Borrowing Requirement	A	56,110	12,262	68,372			64,940	(3,432)						64,940

RAG

RED (trouble) - Project is at risk to miss a scheduled completion date, may be over budget or out of scope. Immediate action required

AMBER (danger) - Project may be at risk if issues are not addressed. Attention required. Notification of change in projection - delays, risks or known increases in costs, gross up for funding awards.

GREEN (all good) - Project is on track to meet scheduled parameters

Funding

The Projected Outturn - Funding column shows the total external funding per budget line excluding General Capital Grant.

Appendix 5
 East Lothian Council
 Budget Monitoring HRA 2022/23 - Period 3

	2022/23 Budget £'000	2022/23 Actual to Date £'000	2022/23 Budget to Date £'000	2022/23 Budget Variance to Date £'000
Total Income	-34,711	-8,670	-8,666	-4
Total Expenditure	33,025	2,534	3,782	-1,248
(Surplus) / Deficit for Year	-1,686	-6,136	-4,884	-1,252

	2022/23 Budget £'000
Management of Balances	
Opening (Surplus) / Deficit	-1,748
CFCR	1,500
(Surplus) / Deficit for Year	-1,686
Closing (Surplus) / Deficit	-1,934

Appendix 6
East Lothian Council
Budget Monitoring HRA Capital 2022/23 - Period 3

	2022/23 Budget	2022/23 Actual to Date	2022/23 Budget to Date	2022/23 Budget Variance to Date
	£'000	£'000	£'000	£'000
Modernisation	14,421	1,275	3,605	-2,330
New Council Housing	26,068	5,683	6,517	-834
Fees	1,410	0	0	0
Mortgage to Rent	280	0	0	0
TOTAL	42,179	6,958	10,122	-3,164

Funded By:

	2022/23 Budget	2022/23 Actual to Date	2022/23 Budget to Date	2022/23 Budget Variance to Date
	£'000	£'000	£'000	£'000
Grants	-6,500	-2,396	-1,625	-771
Grants MTR	-196	0	0	0
CFCR	-1,500	0	0	0
Borrowing	-33,983	0	0	0
TOTAL	-42,179	-2,396	-1,625	-771

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Council Resources

SUBJECT: Freedom of Information (Scotland) Act 2002 and Data Protection Act 2018 (GDPR) – Compliance Statistics in 2021

3

1 PURPOSE

- 1.1 To report on the Council's compliance with the 20 working day timescale laid down by the Freedom of Information (Scotland) Act 2002 for the calendar year 2021 (i.e.: from 1 January 2021 to 31 December 2021).
- 1.2 To report on the Council's compliance with the timescale laid down by the Data Protection Act 2018 (GDPR) for the calendar year 2021 (i.e.: from 1 January 2021 to 31 December 2021).

2 RECOMMENDATIONS

- 2.1 Cabinet is asked to note the report and for Members to provide feedback on the compliance statistics.

3 BACKGROUND

- 3.1 **Freedom of Information (Scotland) Act 2002** - During 2021, East Lothian Council operated in accordance with the statutory requirements, particularly:

Requests for information – to be answered within 20 working days

Requests for review – to be answered within 20 working days by a Chief Officer or an officer nominated by them.

If requesters remained dissatisfied after completing this process, then they had a legal right to appeal to the Scottish Information Commissioner.

3.2 Freedom of Information (FOI) statistics are recorded by Governance (previously People and Governance). Guidance on how to handle information requests, and requests for review, is published on the Council’s intranet, accessible to all employees.

3.3 The total number of FOI requests in 2021 was 1,119. By way of comparison, 1,178 requests were received during the previous calendar year, 2020. A decrease of 59 which is attributed to the ongoing Covid-19 pandemic. Overall, numbers of FOI requests have been increasing steadily and becoming more complex since the Freedom of Information (Scotland) Act 2002 came into force.

This figure includes information requests processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR requests is provided at 3.5 of this report.

3.4 The total number of requests for review received in 2021 was 46. By way of comparison, 36 review requests were received during the previous calendar year, 2020. An increase of 10.

This figure includes reviews processed under the Environmental Information (Scotland) Regulations 2004 (EIR). A split of the FOI and EIR reviews is provided at 3.6 of this report.

3.5 Since January 2013, the recording system used has distinguished between FOI requests and requests falling within the Environmental Information (Scotland) Regulations 2004 (EIR). The table below provides a breakdown of the response timescales for both FOI and EIR requests in 2021:

	FOI				EIR			
	2021		2020 (for comparison)		2021		2020 (for comparison)	
On time	785	99%	842	99%	167	99.5%	278	98.5%
Late	6	1%	6	1%	1	0.5%	4	1.5%
Cancelled/Withdrawn	6		8		11		12	
Suspended	16		0		98		1	
Invalid	21		25		8		2	
Ongoing			0					
TOTAL ACTIONED	834		881		285		297	

3.6 The table below provides a breakdown of the response timescales for FOI and EIR requests for review in 2021:

	FOI				EIR			
	2021		2020 (for comparison)		2021		2020 (for comparison)	
On time: Within 20 Working Days	15	79%	15	100%	25	92.6%	20	100%
Late	4	21%	0		2	7.4%	0	
Upheld or partially upheld	14		12		22		13	
Overtaken	5		3		5		7	
Decision reached for the first time (previously we failed to respond).	0		0		0		0	
Additional Info Provided	0		0		0		0	
Invalid	0		0		0		0	
Still Outstanding			0				0	
Total Actioned	19		16*		27		20	

*One internal review was subsequently cancelled by the applicant.

3.7 The top three categories of enquirer in 2021 were:

- 1) General Public (50%)
- 2) Commercial Organisations (25%)
- 3) Media (12.5%)

3.8 **Data Protection Act 2018 (GDPR)** – with effect from 25 May 2018, East Lothian Council operates in accordance with the statutory requirements, particularly:

Requests for personal information (“Subject Access Requests”) – to be answered within one month although this may be extended by a further two months for complex requests.

3.9 Data Protection (DP) statistics are recorded by Governance (previously People and Governance). Guidance on how to handle requests for personal information (“Subject Access Requests”) is published on the Council’s intranet, accessible to all employees.

3.10 The total number of DP “Subject Access Requests” received in 2021 was 120. By way of comparison, 97 requests were received during the previous calendar year, 2020.

	2021		2020 (for comparison)	
Completed on time (within one month or extended time)	79	95%	77	95%
Late	4	5%	4	5%
Suspended	32		13	
Withdrawn	5		3	
Ongoing	1		0	
Total Actioned	119		97	

4 POLICY IMPLICATIONS

4.1 None.

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial - None

6.2 Personnel - None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 None

AUTHOR'S NAME	Carlo Grilli
DESIGNATION	Service Manager – Governance
CONTACT INFO	Ext: 7770 Email: cgrilli@eastlothian.gov.uk
DATE	5 August 2022

REPORT TO: Cabinet
MEETING DATE: 13 September 2022
BY: Service Manager – Internal Audit
SUBJECT: Refreshed Whistleblowing Policy

4

1 PURPOSE

- 1.1 To inform Cabinet of the revisions to the East Lothian Council Whistleblowing Policy, following consultation with Council management and Trade Unions, and request that the refreshed Policy is approved for adoption across the Council.

2 RECOMMENDATION

- 2.1 That the Cabinet approve the refreshed Whistleblowing Policy for implementation across the Council.

3 BACKGROUND

- 3.1 The Council Whistleblowing Policy has been in place since 2004 in its current format. Regular revisions to the Policy have taken place in 2009, 2012, 2014, 2017 and 2018. Revisions are due to take place at least every 3 years, however on review in 2021 it was considered that a broader refresh of the format of the Policy should be undertaken.
- 3.2 The Whistleblowing Policy has been upgraded to a more standard Council HR policy format and updated to take account of some minor legislative wording changes.
- 3.3 The draft Policy has been reviewed and agreed with the Council's Head of Corporate Support and consultations with Trade Unions have taken place, with all suggested wording provided by the Trade Unions following this consultation being included in the Policy presented for approval.
- 3.4 All policy wording amendments are highlighted in red in the attached policy for ease of review, the key amendments are as follows:
- Revised wording, in section 3.1, clarifying the protections provided for employees under the Whistleblowing Policy in line with wording provided by the Trade Unions.

- Clarity over coverage to all Council ‘workers’ and the people therefore protected under this Policy, contained in sections 1.4 and 3.1.
- Inclusion in Section 4 of clarity of reporting to Internal Audit for all suspected Fraud, Corruption, Bribery and Theft, in line with other Council policies.
- Inclusion of the details of the free independent helpline from the whistleblowing charity Protect in section 7.2.
- Updating of the Council, Trade Union and external organisation contact details in appendices 1 to 4.

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report had an Integrated Impact Assessment completed in December 2021.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other – None

7 BACKGROUND PAPERS

7.1 Whistleblowing Integrated Impact assessment December 2021, published on the East Lothian Council Website

Appendix - Council Whistleblowing Policy (attached)

AUTHOR’S NAME	Duncan Stainbank
DESIGNATION	Service Manager – Internal Audit
CONTACT INFO	dstainbank@eastlothian.gov.uk
DATE	26 August 2022

Whistleblowing Policy

This policy outlines how to make a whistleblowing complaint, to who, and the support and protection available.

Date Approved: 13 September 2022

This is an East Lothian Council Policy which has been subject to consultation with the Joint Trades Unions. Any review or amendment by the council will be following consultation with the Trades Unions.

Policy Title	Whistleblowing Policy
Policy Section	Corporate Policy
Prepared By /Policy Author	Internal Audit
Version Number	V 6.0
Equality Impact Assessment	Complete December 2021
Links to other Council Policies/ processes	Code of Conduct for Employees Policy Data Protection Policy Equal Opportunities Policy Flexible Working Hours Policy IT Acceptable Use Policy Information Security Policy Information and Records Management Policy Social Media Acceptable Use Policy The East Lothian Way Worksmart Policy
Corporate Strategy	East Lothian Council Plan 2017-2022 The Workforce Plan 2018 - 2022 Climate Change Strategy 2020 - 2025 Council Asset Strategy and Management Plan 2018-2023
Approved By	Duncan Stainbank
Date Approved	13 September 2022
Date of next Review	13 September 2025
Policy Lead	Service Manager – Internal Audit

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1. Introduction

- 1.1 This Policy is designed to provide guidance to employees on reporting incidents of malpractice or wrongdoing, which occur at work. It gives clear instructions on how matters can be dealt with thoroughly, discreetly and in a confidential way.
- 1.2 At one time or another you may have had concerns about certain incidents, which have occurred at work. Usually these concerns can be easily resolved. However, when they relate to unlawful conduct, financial malpractice, health and safety issues or dangers to the environment, or the covering up of any of these issues it can be difficult to know what to do.
- 1.3 The Council, with the support of the **Joint** Trade Unions, has introduced this Policy to enable you to raise your concerns as soon as you have a suspicion of any malpractice or wrongdoing. The disclosure should be made in the public interest, which includes a risk to the wider public, customers, staff or the organisation itself.
- 1.4 This policy applies to all employees of the Council and to all workers engaged in the business of the Council **e.g. Agency Workers, Supply Teachers.**
- 1.5 This Policy does not deal with individual employee grievances; a separate Procedure exists for this purpose.

2. Scope of Policy

- 2.1 This Policy covers the following categories of malpractice or potential malpractice:
- A criminal offence;
 - A failure to comply with any legal obligation;
 - A miscarriage of justice;
 - A danger to the health and safety of any individual;
 - **A risk of or actual** damage to the environment; or
 - The deliberate concealment of information indicating any of the above matters.
- 2.2 Examples of malpractice or wrongdoing which should be reported might include:
- Theft of Council property;
 - Misappropriation of Council funds;
 - Release of illegal substances into the water system;
 - Delivery of services when not registered to do so;
 - Breach of Health and Safety Regulations; or
 - Concealment of fraudulent conduct.

3. Principles and Aims

3.1 East Lothian Council is committed to good practice and high standards and wants to be supportive of employees who raise a genuine concern. The Council recognise that the decision to raise a concern can be a difficult one to make and will protect an employee who raises a genuine concern. The following information outlines the new legislative protection offered to employees.

Whistleblowers are protected if they:

- Reasonably believe the information disclosed tends to show that one of the following has happened, is happening, or is likely to happen:
 - A criminal offence;
 - A failure to comply with any legal obligation;
 - A miscarriage of justice;
 - A danger to the health and safety of any individual;
 - A risk of or actual damage to the environment; or
 - The deliberate concealment of information indicating any of the above matters.
- Make the disclosure in the public interest.
- Reasonably believe the information is true.
- Believe the whistleblowing allegation is being made to the right person.

Whistleblowers' rights: An employee cannot be dismissed because of whistleblowing. An employee cannot miss out on opportunities for promotion, transfer, training or any other benefits because of whistleblowing.

The following people are protected:

- Our employees;
- Agency workers;
- Supply Teachers;
- People who are training, but not employed;
- Self-employed workers; and
- Home workers.

3.2 The Council will not tolerate harassment or victimisation and will take appropriate action to protect an employee who raises a concern in the public interest. The Council will consider it a disciplinary matter if any employee causes detriment to a Whistleblowing colleague.

3.3 We recognise that you may want to raise a concern in confidence under this Policy. All concerns raised in accordance with this Policy will be treated with the utmost sensitivity and will be kept confidential unless there is an overriding reason why the identity of the employee(s) raising the concern should be disclosed (for instance if the evidence is needed in court or at a disciplinary hearing). In such circumstances, we may be unable to resolve the concern without revealing your identity. If it

becomes necessary to reveal your identity, the reasons for doing so will be fully discussed with you in advance.

- 3.4 To assist in the effective investigation of concerns this Policy strongly encourages individuals to reveal their identity when reporting a concern. Protection can only be given under this policy to someone who discloses their identity to the Contact Officer when reporting their concern. However, where an anonymous report is received about an alleged malpractice or wrongdoing this also will be acted upon **to the extent it is possible to do so without knowing the identity of the person reporting the concern.**

4. Preventing Fraud, Corruption & Bribery

- 4.1 A number of rules and procedures have been approved and guidance produced to make sure the Council's business is properly controlled. It is important that all elected members and employees are aware of these and act in accordance with their terms. Our guidance documents include the following:

- The Councillors' Code of Conduct;
- Code of Conduct for Employees;
- Financial Regulations;
- Standing Orders and Scheme of Delegation;
- Procurement Manual; and
- Employees' Conditions of Service.

- 4.2 Our employees must read, understand and act in accordance with these rules and procedures. If employees don't follow these procedures and rules, they might after a full investigation of the facts be disciplined which may result in dismissal. All cases of actual or suspected fraud, corruption, bribery and theft must be reported immediately to the Service Manager – Internal Audit as required by the Council Strategy for the Prevention and Detection of Fraud & Corruption. Council Executive Directors and Heads of Service must make sure their employees are aware that this is a requirement of their employment with the Council.

5. Raising a Whistleblowing Concern

- 5.1 There are a number of routes available to raise any concern you may have (either in person, in writing or by telephone), **independent legal advice can be sought from your Trade Union or the charity Protect (see section 7 below):**

Route 1: If you have a concern about malpractice, we hope you will feel able to raise it first with your line manager or team leader. This may be done verbally or in writing.

Route 2: You can call the Council's dedicated Whistleblowing hotline on **01620 827878** or email whistleblowing@eastlothian.gov.uk

Route 3: You can raise your concern with any of the nominated Whistleblowing contact officers from within your service area. Contact details are attached as Appendix 1.

Route 4: If you prefer not to raise your concern within your own service area, you can raise your concern with any of the nominated Whistleblowing contact officers in other service areas or with any of the Council-wide contacts officers. Details of Council-wide contact officers are attached as Appendix 2.

Route 5: If you are unable to make a disclosure using routes 1, 2, 3 or 4 and prefer not to raise your concern internally, you can raise it with an appropriate External Agency such as the Health & Safety Executive, the Scottish Environmental Protection Agency or Audit Scotland. A list of useful contact details is attached as Appendix 3.

(Please note: The statutory provisions providing protection to individuals reporting a concern to external agencies are effective only if certain conditions are satisfied. Translation services and communication support can be made available if required to assist in raising a whistleblowing concern)

6. Responsibilities of the Person you raise your Concern with

6.1 Whichever route you choose, the person you raise your concern with has the responsibility to:

- Consider if your disclosure is being made in the public interest.
- Consider the details of your concern and confirm whether it falls within the scope of this Policy.
- Formally record your concern (a [Record Form](#) is attached as Appendix 5 and can be found on the Intranet).
- Review the details of your concern and determine how to progress it.
- Tell you how your concern will be dealt with and keep you up to date with progress.

7. Independent Advice

7.1 If you are a member of a Trade Union, you may contact your Trade Union representative. Contact details for local Trade Unions are attached as Appendix 4.

7.2 The charity Protect also offers a free, independent helpline on 020 3117 2520.

7.3 Free independent advice is also available from the ACAS helpline on 0300 123 1100.

8. Communications

- 8.1 Once you have informed a Contact Officer of your concern, the Officer (or external agency) will assess what action should be taken. This may involve an internal investigation. You will be told who is handling the matter, how you can contact them and whether you may be needed to give any further assistance. If you wish, we will write to you summarising your concern and setting out how we propose to handle it.
- 8.2 When you raise your concern, you may be asked how you think the matter might best be resolved. If you have any personal interest in the matter, you must tell us at the outset.
- 8.3 A summary of the procedure to be followed in handling your concern is attached as Appendix 6.

9. Outcome of your Concern

- 9.1 You will be given feedback on the outcome of any investigation. If you wish, we will provide this feedback in writing. However we may not be able to tell you the precise action taken where this would infringe data protection requirements or might compromise the taking of further action, including legal action or prosecution.
- 9.2 If following investigation, it is established that an employee raising a concern, did not do so in good faith, but instead knowingly made a false and malicious allegation, then this will be regarded as potential misconduct, which may warrant disciplinary action.

10. Monitoring of this Policy

- 10.1 A summary of concerns raised under this Policy and the outcomes arising from these concerns will be reported on an annual basis. No individuals will be named in this report.
- 10.2 The Head of Corporate Support, Service Manager – Internal Audit and Service Manager – Governance will review the operation of this Policy. To assist in this review, anyone raising a concern under the scope of this Policy may contact any of these three Officers to give feedback of their experiences of using the Policy, including suggestions for improvements.

**Service Manager – Internal Audit
September 2022**

Service Contact Officers

Council Resources

Kenny Christie

Service Manager – Revenues and Welfare Support

kchristie@eastlothian.gov.uk

01620 827431

Alan Cruickshank

Service Manager – IT

acruickshank@eastlothian.gov.uk

01620 827220

Education and Children’s Services

Richard Parker

Service Manager – Education (Strategy and Operations)

rparker@eastlothian.gov.uk

01620 827494

Judith Tait

Head of Children’s Services

jtait@eastlothian.gov.uk

01620 827633

Place

Sharon Saunders

Head of Communities & Partnerships

ssaunders@eastlothian.gov.uk

01620 827632

Tom Reid

Head of Infrastructure

treid@eastlothian.gov.uk

01620 827541

James Coutts

Service Manager – Community Housing & Homelessness

jcoutts@eastlothian.gov.uk

01620 827483

Health and Social Care

Iain Gorman

Head of Operations

Iain.gorman@nhslothian.scot.nhs.uk

01620 827246

Council-wide Contact Officers

Morag Ferguson

Head of Corporate Support
mferguson@eastlothian.gov.uk
01620 827487

Carlo Grilli

Service Manager – Governance
cgrilli@eastlothian.gov.uk
01620 827770

Duncan Stainbank

Service Manager – Internal Audit
dstainbank@eastlothian.gov.uk
01620 827353

External Contacts

Health and Safety Executive (HSE)

Belford House
59 Belford Road
Edinburgh
EH4 3UE

Information line: **0300 790 6787**

Website: www.hse.gov.uk

Scottish Environment Protection Agency (SEPA)

Clearwater House
31 Heriot-Watt Research Park
Avenue North
Riccarton
Edinburgh
EH14 4AP

Website: www.sepa.org.uk

Audit Scotland

4th Floor
102 West Port
Edinburgh
EH3 9DN

Tel: **0131 625 1500**

Email: info@audit-scotland.gov.uk

Website: www.audit-scotland.gov.uk

Trade Union Contact Details

UNISON

Mike Dunlop
UNISON Full-time Officer
John Muir House
Haddington
EH41 3HA
Tel: 01620 827345
Email: mdunlop.unison@eastlothian.gov.uk

Educational Institute of Scotland (EIS)

Gael Gillan
EIS East Lothian Secretary
John Muir House
Haddington
EH41 3HA
Tel: 01620 829010
Email: ggillan.eis@eastlothian.gov.uk

Scottish Secondary Teachers' Association (SSTA)

Monique Dreon-Gould
District Secretary
West End House
14 West End Place
Edinburgh
EH11 2ED
Tel: 0131 313 7300
Email: info@ssta.org.uk

GMB

Benny Rankin
16/1 Timber Bush
Edinburgh
EH6 6QH
Tel: 0131 322 9270
Email: scotland@gmb.org.uk

UNITE

Scott Foley
UNITE Regional Officer
22 York Place
Edinburgh
EH1 3EP
Tel: 0131 556 9676
Email: scott.foley@unitetheunion.org

Whistleblowing Record Form

Appendix 5

<u>Section 1: To be completed by the Contact Officer on receipt of the Concern</u>			
Initial Contact:			
Contact Officer Name:		Contact Officer Tel No:	
Date of first contact:			
Concern Raised By:			
Name:		Tel No:	
Post:		Department:	
Method of Contact:			
Brief Details of Concern:			
Course of Action:			

<u>Section 2: To be completed by the Contact Officer and the Concerned Individual</u>			
Confidential Discussion Meeting			
Present:		Date:	
Summary of Concern Raised:			
Individuals Suggestion for handling Concern:			
Course of Action:			
In Confidence (Permission to Disclose):	YES/NO		
Signed Concerned Individual		Date:	
Signed Contact Officer		Date:	

Section 3: To be completed by the Contact Officer

Steps to be taken to investigate Concerns:

Section 4: To be completed by the Contact Officer

Outcome of Concerns raised:

Section 5: To be completed by the Contact Officer

Record of Feedback to Concerned Individual:

Signed:

Contacts Officer's Name:

Date:

SUMMARY

Appendix 6

Procedure for Handling Your Concern

You:	Identify your concern and gather together any evidence you may have uncovered.
You:	Obtain a copy of the Whistleblowing policy (available on the Council's Intranet, from your line manager, your Trade Union or Human Resources).
You:	May take independent advice on how to handle your concern.
You:	Raise your concern: 1 st contact with Internal/External Contact Officer.
Contact Officer:	Listens to your concern, identifies that it falls within the Scope of the Policy, makes a written record of your first contact, agrees a time to meet with you privately and in confidence to discuss in greater depth.
Contact Officer and You:	Meet and discuss in detail the substance of your concern. You provide any evidence you may have uncovered. Agree if there is any requirement to give further evidence. Jointly, complete the record Form. Contact Officer provides you with details of how to make further contact.
Contact Officer:	Considers the details you have provided. Identifies how best to investigate your concern. Identifies whom to pass details for investigation. Advises you of this step and of any role you may play in the investigation.
Investigation Officer:	Investigates the concerns raised, considers any evidence provided, conduct the investigation to the standard adapted in internal disciplinary processes e.g. signed statements, etc.
Contact Officer:	Receives details of the outcome of the investigation. Considers these and provides you with feedback on the outcome of the investigation. Potential Outcomes may include: <ul style="list-style-type: none">• Changes to Policy and Practice• Improved Management Practices• Disciplinary Processes• Audit Investigation• Police Enquiry, etc.

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Council Resources

SUBJECT: Annual Pensions Report 2021/22 – Amendments to Pension Discretions Policy

5

1 PURPOSE

- 1.1 To summarise the early retirement activity within the financial year 2021/22, in accordance with External Audit requirements and Council Policy.
- 1.2 To seek approval for an amendment to the Council's Pension Discretion Policy in relation to Shared Cost AVCs

2 RECOMMENDATIONS

- 2.1 That Cabinet note the content of the report with regard to the pension activity in respect of early retirements in the financial year 2021/22.
- 2.2 The Cabinet approve the amendment to the Council's Pension Discretion Policy to allow for Shared Cost AVCs.

3 BACKGROUND

3.1 Council's Retirement Activity in Financial Year 2021/22

There are currently three types of pensionable early retirements available to the Council, for all employees other than teaching employees (see paragraph 3.2). These are:

- **Due to Efficiency or Redundancy, at the discretion of the Council.**

This allows the individual, aged over 55 years (50 if in the Scheme before 5 April 2006), at the discretion of the Council, to retire early, drawing their pension without any actuarial reduction being applied. In this case the strain costs relating to the early release of the pension are borne by the Council.

- **Ill-Health retirement**

This occurs where an employee is confirmed by Occupational Health as being permanently incapable of efficiently discharging their duties because of ill-health or infirmity of mind or body. The employee is permitted early access to an enhanced pension in accordance with the

superannuation regulations and requires no exercise of Council discretion. The costs are fully borne by the pension fund.

- **Flexible Retirement**

This is a discretionary element of the pension regulations which allows employees who meet certain criteria to draw their pension and continue working on the basis of reduced hours. To qualify, the employee must be over 55 years old, have a minimum of 2 years pensionable service and must reduce their working hours by a minimum of 40%. Generally there are no costs to the Council as the employee would have their pension actuarially reduced. However, in some circumstances, if the employee meets the Rule of 85, there can be costs. In these cases, the Council's agreement must be obtained for the early release of the individual's pension. If agreed, the employee then continues working on reduced hours and will automatically be re-enrolled into the pension fund while drawing the pension benefits they have already accrued (if they did not wish to join the scheme then they would need to opt out).

3.2 A summary of the pension activity in the financial year 2021/22 is as follows:

Department	Health & Social Care	Education & Children's Services	Place	Council Resources	Totals
Compulsory Severance (pensionable)	-	-	1	1	2
Voluntary Severance (pensionable)	-	-	-	-	-
Medical Retirement (Lothian Pension Fund)	1	1	7	-	9
Medical Retirement (Teachers Scheme)		1			1
Flexible Retirements	4	4	3	2	13

- 3.3 Details of the Council's financial commitments relating to pensions are included in the unaudited 2021/22 Financial Statements. As a result of ongoing pension costs arising from decisions taken in earlier years, in addition to the up-front strain costs now due in the year they accrue, during 2021/22 the Council spent £0.712 million (£0.733 million in 2020/21) on early retirements for Local Government Workers and £0.465 million (£0.488 million in 2020/21) for teachers.
- 3.4 The Council has a liability to pay pension costs in the future. At 31 March 2022 this liability has reduced and was actuarially assessed at £98.794 million (and at 31 March 2021 at £196.054 million). This liability is reviewed through an actuarial valuation which takes place every three years. The most recent valuation date was 31 March 2020. The contribution stability mechanism remains in place with the Lothian Pension Fund based on the current valuation results, which takes into consideration the Lothian Pension Fund performance and assessed liabilities. Contribution rates from 1 April 2021 are frozen for 3 years and then increase or decrease by a maximum of 0.5% per annum.
- 3.5 In addition to the above figures, the Council also makes 'ex gratia' pension payments to 84 former employees who worked less than 16 hours per week, were aged under 50 at 31 December 1993 and were unable to join the LGSS pension scheme under the statutory rules at the time. The value of these payments during 2021/2022 was £50,793 (and in 2020/21 it was £55,136). The Council took the decision to remove this discretion at Cabinet on 9 June 2009. No new ex gratia pension payments will arise and the existing estimated value of future liabilities based on the actuarial mortality estimate is £0.260m and will therefore reduce over time.

PENSION DISCRETIONS POLICY

- 3.2 The Council is required under Regulation 58 of the Local Government Pensions Scheme (Scotland) Regulations 2014 to formulate, publish and keep under review its policy in relation to certain discretions contained within the regulations.
- 3.3 In exercising its discretionary powers the Council is mindful of the need to maintain public confidence therefore the areas where discretion is to be applied has been limited with a view to minimising the potential impact upon the public purse.
- 3.4 The Council will shortly be introducing a Shared Cost AVC for employees of the Council who are members of the Lothian Pension Fund. The introduction of this scheme allows employees to make tax and national insurance savings on their contributions while saving for retirement. In addition the Council makes savings through reduced national insurance contributions on the amount of salary sacrificed.
- 3.5 The introduction of this scheme requires an amendment to the policy and a copy of the updated policy statement with the amendment to 3.8.2 is attached.

- 3.6 Any application to the Council to exercise discretionary powers will be considered in line with the approved policy, taking account of the financial impact on both the Council and the pension scheme.

4 POLICY IMPLICATIONS

- 4.1 The Council is required to report its pension activity annually to elected members in accordance with the Audit Scotland requirements.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial

- 6.1.1 Early retirement decisions taken in earlier years have created a significant liability for current and future Council Tax payers. There are no immediate budgetary implications associated with this report.

6.2 Human Resources

- 6.2.1 Finance and Human Resources continue to ensure that any retirements are in accordance with Council Policy and within the Standing Orders and the supporting Scheme of Delegation and also that managers are aware that any pensionable retirement must meet the strict efficiency or redundancy requirements and will generate the necessary savings.

6.3 Other - none

7 BACKGROUND PAPERS

- 7.1 Policy on Enhanced Compensation for early Retirement on Grounds of Redundancy and Efficiency– December 2010
- 7.2 Lothian Pension Fund Website: www/lpf.org.uk
- 7.3 Local Government Pensions Scheme (Scotland) Regulations 2014
- 7.4 Policy Statement on Application of Regulatory Discretions approved at Cabinet on 19 January 2021.
- 7.5 Flexible Retirement Policy – December 2013

AUTHOR'S NAME	Paul Ritchie
DESIGNATION	Service Manager People & Council Support
CONTACT INFO	01620 827767 pritchie@eastlothian.gov.uk
DATE	12 July 2022

This policy applies to all employees except Teachers

Section

- 1 Introduction
- 2 Key Principles
- 3 Discretions
- 4 Policy Review

Policy Statement on Application of Regulatory
Pensions Discretions Local Government Pension
Scheme (Scotland) Regulations 2018

This policy details the discretions the Council apply with regard to the pension's regulation and replaces the previous Policy agreed at Cabinet on in January 2021.

**August
2022**

1 Introduction

- 1.1 Regulation 58 of the Local Government Pension Scheme (Scotland) Regulations 2018 states that each employer participating in the Scheme is required to formulate a policy, concerning the exercise of certain discretions contained within the regulations.
- 1.2 East Lothian Council after careful consideration and having regard to the extent to which the exercise of the functions could lead to a serious loss of confidence in the public service, has decided to exercise the discretions as set out in this policy statement.
- 1.3 The policy is applicable to all East Lothian Council employees who are eligible members of the Local Government Pension Scheme. The Policy excludes teachers who are covered by the Scottish Public Pensions Agency (Teachers Superannuation Scheme).
- 1.4 This Policy replaces the previous Policy Statement on Application of Regulatory Pensions Discretions agreed at Cabinet on 13 September 2016.

2 Key Principles

- 2.1 East Lothian Council does not have a general early release policy, but will consider individual applications on their merits and in relation to the efficient operation of the services of the Council.
- 2.2 This Policy describes the range of discretions available to the Council. All decisions in relation to the use of these discretions will take account of the short, medium and long-term financial implications to the Council.
- 2.3 In applying its discretions, the Council will always seek to ensure consistent and equitable application.
- 2.4 The Council will ensure this Policy is reviewed and updated to comply with any future amendments to the statutory redundancy provisions and Pension Regulations.

3 Discretions

3.1 Regulation 16 (2)(e) & 16(4)(d) of the Local Government Pension Scheme (Scotland) Regulations 2018: (Additional Pension Contributions)

- 3.1.1 This regulation allows the Council to voluntarily enter into an Additional Pension Contributions (APC) contract with a scheme member who is contributing to the main section of the scheme in order to purchase additional pension to a level not exceeding the additional pension limit.

The Council may choose to fund in whole, or in part, any arrangement entered into by an active scheme member to pay additional pension contributions by way of regular contributions in accordance with Regulation 16(2)(e), or by way of a lump sum in accordance with regulation 16(4)(d).

3.1.2 The Council will not exercise this discretion.

3.3 Regulation 29(7) - of the Local Government Pension Scheme (Scotland) Regulations 2018 – (Flexible Retirement)

3.3.1 This regulation, subject to certain conditions allows members to draw some or all of their scheme benefits while still in employment.

3.3.2 The Council will not have a general policy of agreeing to requests for flexible retirement (i.e. early payment of retirement benefits to a member who has attained age 55 and who, with the Council's consent, reduces his/her hours and/or grade). However, such requests will be considered where it can be demonstrated to be to the Council's advantage or in its operational interests.

3.3.3 Should the Council agree to early payment of benefits under this regulation, it will not exercise the discretion of waiving any reduction, which would normally be applied to the benefits.

3.3.4 Further detail of the Council's application can be found in the Application of the Council's Policy on Flexible Retirement available on Elnet.

3.4 Regulation 29(9) of the Local Government Pension Scheme (Scotland) Regulations 2018: (Waiving Actuarial Reduction on Early retirement between 55 and 60)

3.4.2 Any active scheme member who has not attained normal pension age, but has attained age 55 may elect to receive immediate payment of their benefits, providing they have left employment, but these benefits may be reduced for early payment.

3.4.3 The Council will not have a general policy of agreeing to waive any reduction which would normally be applied to the members benefits.

3.5 Schedule 2 – paragraphs 2&3 of The Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014

3.5.2 This section deals with the transitional provisions of the Rule of 85 and the discretionary element for the Council to turn on the Rule of 85 protections.

3.5.3 The Council will not have a general policy of agreeing requests to apply the rule of 85 from a member who has attained age 55 and has elected for early payment. However, where the Council considers it can be demonstrated as being to their advantage or in their operational interests, it will consider such requests.

3.5.4 The Council will not have a general policy of applying Rule of 85.

3.6 Regulation 30 of The Local Government Pension Scheme(Scotland) Regulations 2018 – Award of Additional Pension

3.6.1 The Council may award a member additional pension which would become payable from the same date as the member's normal pension. The maximum extra pension which can be awarded is £5,000. Such awards can be made to

active members, or within 6 months of leaving to members whose employment was terminated on the grounds of redundancy or the interest of efficiency. The Council would be required to make an appropriate payment into the fund within one month of making a resolution.

3.6.2 The Council will not exercise this discretion.

3.7 Regulation 30 of the Local Government Pension Scheme (Benefits, Membership and Contributions) (Scotland) Regulations 2008 – (Voluntary Early Retirement between the ages of 50 and 60)

3.7.2 Any former scheme member who left prior to 1 April 2015 and is aged 55 or over, providing they are no longer in local government employment, may request unreduced payment of their deferred benefits on compassionate grounds.

3.7.3 The Council will only exercise its discretion to waive the actuarial reduction in exceptional cases of hardship.

3.8 Regulation 17(1) of the Local Government Pension Scheme (Scotland) Regulations 2018: Shared Cost AVC's

3.8.1 This regulation allows the Council to set up an additional voluntary contributions (AVC) scheme requiring a contribution from the Council. Scheme members already have access to AVC arrangements which accept member-only contributions.

3.8.2 The Council will exercise the discretion to establish a shared cost AVC scheme.

3.9 Regulation 86 of the Local Government Pension Scheme (Scotland) Regulations 2014: Forfeiture of pension rights after conviction for employment-related offences

3.9.1 Under this regulation, the Council may apply to the Scottish Ministers to forfeit all or part of a scheme member's pension benefits. This would apply in a case of conviction for a serious offence which were either 'gravely injurious to the State or 'liable to lead to a serious loss of confidence in the public service'.

3.9.2 In the interests of maintaining confidence in the public service, the Council reserves the right to exercise this discretion should the need arise.

3.10 Regulation 87 of the Local Government Pension Scheme ((Scotland) Regulations 2018: Recovery or retention where former member has misconduct obligation

3.10.1 Under this regulation, the Council may recover from his pension benefits any loss arising from a criminal, negligent or fraudulent act by a former employee. Providing that all other efforts to recover monetary obligations have been exhausted.

3.10.2 In the interest of maintaining confidence in the public service, the Council reserves the right to exercise this discretion should the need arise.

3.11 Regulation 95 of the Local Government Pension Scheme (Scotland) Regulations 2018: Inward Transfer of Pension Rights

3.11.1 The Scheme Regulations allow members to transfer previous pension rights into the Local Government Pension Scheme. The Regulations state that transfers must be requested within 12 months of the member joining the Scheme. However the Council and administering authority have discretion to allow transfer to proceed after this time limit has expired.

3.11.2 The Council will not have a general policy of allowing a late transfer to proceed. Instead it will consider individual requests on their merits and may, in agreement with Lothian pension Fund exercise the discretion to allow a late transfer to proceed where there is no financial impact on the Council and Lothian Pension Fund.

3.12 Regulation 9(4) of the Local Government Pension Scheme (Scotland) Regulations 2018: Member Contributions

3.12.1 Under this regulation, the Council may adjust a member's pension contribution rate should a change in pay move them into a different band during the financial year.

3.12.2 The Council reserves the right to exercise this discretion should the need arise.

3.13 Regulation 16(16) of the Local Government Pension Scheme (Scotland) Regulations 2018: Additional Pension Contributions

3.13.1 Under this regulation, where a member enters into an additional pension contract to which employer contributions may be made (Shared Cost Additional Pension Contract), an application to enter into the contract must be made within 30 days of returning to work.

3.13.2 The Council will not exercise this discretion

3.14 The Local Government (Discretionary Payments and Injury Benefits) (Scotland) Regulations 1998 and the Local Government (Discretionary Payments and Injury Benefits) (Scotland) Amendment Regulations 2008

3.14.1 The Council's policy in terms of the discretion it applies in relation to the above regulations is detailed in its Policy on Enhanced Compensation for Early retirement on the Grounds of Redundancy and Efficiency approved at Cabinet on 7 December 2010.

4 Policy Review

4.3.2 In developing this policy, East Lothian Council has referred to both the relevant statutory provisions and also advice from the City of Edinburgh Council as the Pension Scheme Administering Authority.

4.3.3 This policy will be kept under review and will be revised as and when necessary to reflect any changes in relevant regulations or policy. Any changes to this policy will be advised to both the administering pension authority and scheme members.

S Fortune
Executive Director Corporate Resources

August 2022

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Council Resources

SUBJECT: Amendment to Home Working Policy – Home Working Allowance

6

1 PURPOSE

1.1 To amend the Home Working Policy to increase the level of Home Working Allowance.

2 RECOMMENDATIONS

2.1 That Cabinet agree the amendment to the Home Working Policy to increase the level of the Home Working Allowance from £156 per annum to £312 per annum, being the maximum tax free allowance set by HMRC.

3 BACKGROUND

3.1 When the Council approved the introduction of the Home Working policy in June 2021, the policy provided that an annual allowance would be paid to homeworkers to offset the additional costs of working from home, such as heating, lighting, home insurance and any new broadband connection.

3.2 The Council determined to pay the sum of £156 per year (pro rata for part time employees), which is 50% of the HMRC maximum allowance for homemaker. Payments in excess of that maximum sum can be made to employees but they will then fall to be assessed for tax purposes as a potential taxable benefit, requiring the Council to issue all contractual Home Workers with a P11D and to account for any additional tax to HMRC through the self-assessment scheme.

CURRENT POSITION

3.3 The cost of living crisis and the impending rise in utility bills means that the sum set out in the Home Working Policy will not now be sufficient to cover the expenses involved in homeworking and the level at which it is set may be a disincentive to employees coming forward to become homeworkers. There are currently 236 contractual homeworkers. It is estimated that there may be up to 800 posts in scope

for potential homeworking although not all would be suitable for approval. A more realistic estimate would be around 400 posts

3.4 It is anticipated that an increase in the homeworking allowance to the HMRC maximum tax free level of £312 per annum would encourage more people to come forward and formalise their working arrangements under the contractual home working

3.5 The table below shows the financial impact of increasing the homeworking allowance from the current level to the HMRC maximum tax free level, modelled for different levels of uptake. These figures reflect numbers of FTE whereas, in reality, many of our employees are part-time workers who are paid the allowance on a pro rata basis. The figures in the table are, therefore, an overestimate of the true cost of this to the Council.

		Number of Home Worker Applicants			
		236	300	400	
	£	£	£	£	
Proposed Allowance - Full HMRC rate	312	73,632	93,600	124,800	
Existing cost - 236 Employees	156	36,816	36,816	36,816	
Additional Cost		36,816	56,784	87,984	

3.6 It is proposed that the increased allowance will be paid to contractual Home Workers with effect from 1st October 2022.

4 POLICY IMPLICATIONS

4.1 Contractual Homeworking remains one of our primary tools to drive new ways of working, efficient use of our estate and measures to address the Climate Emergency.

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 **Financial** - It is anticipated that the costs identified as a result of increase of the annual homeworkers allowance will be offset by a reduction in office workstations for homeworkers and will be recovered from further savings within the ongoing asset review.

6.2 **Human Resources** - none

6.3 **Other** - none

7 BACKGROUND PAPERS

7.1 Home Working Policy

AUTHOR'S NAME	Morag Ferguson
DESIGNATION	Head of Corporate Support
CONTACT INFO	mferguson@eastlothian.gov.uk
DATE	30 August 2022

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Council Resources

SUBJECT: Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) Policy

7

1 PURPOSE

- 1.1 Following an overall positive routine inspection and associated recommendations by the Investigatory Powers Commissioner, the Council's corporate Policy regarding compliance with the Regulation of Investigatory Powers (Scotland) Act 2000 ('RIPSA') has been reviewed and updated.

2 RECOMMENDATIONS

- 2.1 To approve the Council's updated RIPSA Policy.

3 BACKGROUND

- 3.1 In the course of their duties, it may be necessary on occasion for Council officers to make observations of an individual (or individuals) without that person's knowledge. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights ('ECHR') and the Human Rights Act 1998 ('HRA'), i.e. 'the right to respect for private and family life'. RIPSA was enacted to provide a clear statutory framework for the operation of covert surveillance investigative techniques, to provide for compliance with the HRA.
- 3.2 East Lothian Council is committed to respecting and maintaining citizens' privacy and is fully committed to complying with the HRA. The aim of this Policy is to provide the framework for the Council's process for authorising and managing covert surveillance operations under RIPSA, and to set the parameters for expected good practice.
- 3.3 On 23 February 2022, the Council underwent a desktop inspection by the Investigatory Powers' Commissioner's Office ('IPCO'), the national

regulator for compliance with the RIPSAs framework (RIPA in England and Wales). The inspection was in line with the routine 3-yearly inspection schedule for relevant authorities, and consisted of a video conference interview involving the Inspector, the Council's Senior Responsible Officer (Head of Corporate Support), the RIPSAs Gatekeeper (Team Manager-Information Governance) and the Service Manager-Governance. The Inspector provided comments on the Council's RIPSAs documentation and asked the Council officers a series of questions, noting that the level of compliance shown by the Council removed the need for a physical inspection.

- 3.4 The Council received the Commissioner's report on 08 March 2022. The report was positive on the whole, noting a number of points of good practice, including the introduction of a quality assurance process for RIPSAs applications and the development of a training programme for relevant Council officers. The Commissioner supported the Council's commitment to reviewing its RIPSAs Policy and re-establishing a reporting schedule to elected members regarding compliance with the Policy, and he provided recommendations for revisions to be addressed in the new version of the Policy.
- 3.5 The Council's existing Policy was approved in 2013 and is due for review to reflect current surveillance practices and updated guidance from the Investigatory Powers Commissioner. The Council also has a separate, but linked, Surveillance through Social Media Policy approved around the same time to govern the use of online information and social media to conduct covert surveillance.
- 3.6 The new Policy combines the existing RIPSAs and Surveillance through Social Media Policies into a single document. The main changes include:
- Roles and responsibilities have been expanded;
 - Covert Human Intelligence Sources (CHIS) operations have been addressed in greater detail;
 - Distinctions have been clarified between RIPSAs-related and non-RIPSAs-related forms of surveillance;
 - Detailed requirements regarding the capture of information have been removed, with pointers to legal provisions, the Codes of Practice and Council templates to sit within the Council's compliance framework.
 - Provisions regarding Records Management have been expanded;
 - Provisions for online/social media surveillance have been included and updated in line with recent guidance from the IPCO;
 - Forms and other appendices have been removed to be managed separately via the compliance framework.

4 POLICY IMPLICATIONS

- 4.1 This report requests the approval of the updated RIPSAs Policy, which is applicable to all Council staff.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – there are no direct financial implications to this report.
6.2 Personnel – there are no new personnel implications to this report.

7 BACKGROUND PAPERS

- 7.1 None.

Appendix - RIPSAs Policy 2022-2025

AUTHOR'S NAME	Zarya Rathé
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DATE	23/08/2022

EAST LoTHIAN COUNCIL

Regulation of Investigatory Powers (Scotland) Policy



East Lothian Council
Regulation of Investigatory Powers (Scotland) Policy

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Document Control			
Version	Date	Description	Reviewed by
1.0	05/08/2003	CHIS policy ELC Covert Surveillance Policy	
2.0	23/04/2013	Regulation of Investigatory Powers (Scotland) Policy Surveillance through Social Media Policy	Renate Gertz
3.0	13/09/2022	Regulation of Investigatory Powers (Scotland) Policy 2022-2025. Significant updates include: <ul style="list-style-type: none"> Expanded roles and responsibilities; CHIS addressed in greater detail; Distinctions clarified regarding RIPSAs-related and non-RIPSA-related forms of surveillance; Detailed requirements regarding the capture of information removed, with pointers to legal provisions, the Codes of Practice and Council templates to sit within the Council's compliance framework. Expanded section on Records Management; Inclusion of provision for online/social media surveillance in line with recent guidance from the IPCO. This will now supersede the Council's Surveillance through Social Media Policy. Forms and other appendices removed to be managed separately via the compliance framework. 	Zarya Rathé

East Lothian Council
Regulation of Investigatory Powers (Scotland) Policy

1. INTRODUCTION

- 1.1. This document sets out East Lothian Council's Policy regarding its use of powers under the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA).
- 1.2. In the course of their duties, it may be necessary on occasion for East Lothian Council employees to make observations of a person or persons in a covert manner, i.e. without that person's knowledge. By their nature, actions of this sort may constitute an interference with that person's right to privacy and may give rise to legal challenge as a potential breach of Article 8 of the European Convention on Human Rights¹ and the Human Rights Act 1998 ('the right to respect for private and family life'). RIPSA was enacted to provide a clear statutory framework for the operation of certain intrusive (in the ordinary sense) investigative techniques, to provide for compliance with the Human Rights Act 1998 (HRA).

2. STATEMENT OF INTENT

- 2.1. The aim of this policy is to provide the framework for the Council's process for authorising and managing covert Directed Surveillance and CHIS operations under RIPSA, and to set the parameters for expected good practice.
- 2.2. East Lothian Council is committed to respecting and maintaining citizens' privacy and is fully committed to complying with the HRA. Both RIPSA and HRA impact on the way the Council conducts its business. Amongst other things, HRA entitles citizens to expect that their privacy will be respected in relation to their private life, family life, their home and correspondence. It also entitles them to peaceful enjoyment of their possessions. RIPSA recognises that these rights may, nevertheless, be lawfully infringed in some circumstances provided the method used is lawful, has a legitimate aim, is necessary and is proportional to what it would achieve.

3. OBJECTIVE

- 3.1. The objective of this Policy is to ensure that all covert surveillance by East Lothian Council employees is carried out effectively, while remaining in accordance with the law. It should be read in conjunction with the relevant legislation, the Scottish Government's

¹ As of 2022 and the time of this Policy review, the United Kingdom remains committed to respecting the framework of the European Convention on Human Rights following the UK's exit from the European Union ('Brexit'). Any changes to this position in future shall be reflected in this Policy as necessary.

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Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources ('the Codes of Practice') and any guidance which the Investigatory Powers Commissioner's Office (IPCO) may issue from time to time.

- 3.2. This Policy is intended to govern a compliance framework consisting of more detailed measures, templates, forms and guidance that support the Council in achieving this objective.

4. STATUTORY FRAMEWORK

- 4.1. While this Policy directly addresses the Council's activities under RIPSA, it is recognised that such activities may also be subject to other legal and regulatory regimes, for example the Data Protection Act 2018 / UK GDPR and the Public Records (Scotland) Act 2011. In carrying out covert surveillance, Council employees must have due regard for the requirements of all applicable laws, regulations and codes of practice, and must familiarise themselves with all relevant Council policies and procedures, including (but not limited to) the Data Protection Policy, the Information and Records Management Policy and the IT Acceptable Use Policy.

5. DEFINITIONS

- 5.1. In this Policy:

'CHIS' and 'Source' mean Covert Human Intelligence Source;

'Codes of Practice' means the Scottish Government's Covert Surveillance & Property Interference Code of Practice (2017) and the Covert Human Intelligence Sources Code of Practice (2017) or any relevant successor Codes of Practice issued by the Scottish Government;

'IPC' and 'IPCO' mean the Investigatory Powers Commissioner and the Investigatory Powers Commissioner's Office, respectively;

'RIPSA' means the Regulation of Investigatory Powers (Scotland) Act 2000;

'2010 Order' means the Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Order 2010;

'2014 Order' means The Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014.

6. ROLES AND RESPONSIBILITIES

6.1. All Staff

All Council staff must familiarise themselves with the definitions of covert surveillance, Directed Surveillance, CHIS, and Intrusive Surveillance. They must also ensure that they understand when authorisation under RIPSAs is required.

Responsibilities include:

- Completing role-relevant training via e-learning or face-to-face, as guided by their line manager;
- Asking for further guidance from their line manager and/or the RIPSAs Gatekeeper / Coordinating Officer regarding how to maintain compliance with RIPSAs and the statutory framework.

6.2. Investigating Officers (IO)

Investigating Officers are the Council officers undertaking covert surveillance operations under RIPSAs. In addition to the responsibilities held by all staff, IOs are responsible for:

- Completing and submitting applications for RIPSAs authorisation to the Authorising Officer in line with the relevant policies and both statutory and internal guidance;
- Completing and submitting Review, Renewal and Cancellation forms to the Authorising Officer for comment and approval as needed;
- Carrying out the relevant operation/investigation;
- Feeding back to the Authorising Officer regarding any significant changes or developments to the operation;
- Consulting with the Coordinating Officer/Gatekeeper as needed and producing documentation for central registration and storage;
- Ensuring that any product (i.e. information gathered as part of an operation) is managed in line with the Authorising Officer's instructions and with reference to the Council's RIPSAs and Information/Records Management policies and procedures.

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6.3. Authorising Officers (AO)

Authorising Officers hold a prescribed office, and are responsible for authorising and reviewing applications submitted by Investigating Officers. In addition to the responsibilities held by all staff, they oversee and mitigate surveillance actions by:

- Checking the standard of information provided;
- Stating explicitly what is being authorised;
- Ensuring that risks have been considered appropriately and effective mitigations put in place;
- Providing an independent statement of why they believe a proposed operation is both necessary and proportionate;
- Setting and conducting meaningful Reviews;
- Cancelling authorisations when they are no longer necessary;
- Keeping notes regarding authorisations;
- Retaining a personal copy of the OSC Procedures and Guidance and/or relevant successor Guidance issued by the IPCO;
- Ensuring correct procedures are followed regarding Authorisations, Reviews, Renewals and Cancellations.
- Providing instructions regarding the management of any product to ensure it is managed appropriately with reference to the Council's RIPSAs and Information/Records Management policies and procedures.
- Referring authorisation for the acquisition of confidential information or engagement of a vulnerable or juvenile CHIS to the Chief Executive (see Sections 8.11.3-8.12 below for further information.)

6.4. Senior Responsible Officer (SRO)

The Senior Responsible Officer is a nominated individual who is responsible for the Council's overall RIPSAs compliance. In addition to the responsibilities held by all staff, the SRO must:

- Be a member of the Council's senior corporate team;

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- Ensure Authorising Officers are competent to carry out their duties;
- Ensure high-level policies are fit for purpose;
- Ensure appropriate processes are in place;
- Pro-actively audit, and where necessary report errors;
- Engage with members and the regulator, the Investigatory Powers Commissioner's Office (IPCO);
- Implement action plans following IPCO inspections.

6.5. RIPSA Gatekeeper / Coordinating Officer

The Coordinating Officer (also known as 'Gatekeeper') is the central contact for advice and guidance regarding the Council's RIPSA compliance. In addition to the obligations held by all staff, the Coordinating Officer is responsible for:

- Ensuring a central store and register of RIPSA documentation is maintained;
- Ensuring relevant policies and procedures are in place and up-to-date;
- Performing first-line enquiry handling relating to RIPSA;
- Undertaking internal monitoring of compliance;
- Providing relevant training to staff.

6.6 Chief Executive

Certain surveillance activities are considered to carry a higher level of risk and require additional safeguards. Covert surveillance operations must be referred to the Chief Executive for authorisation when:

- Knowledge of confidential information is likely to be acquired. Confidential information is defined in the RIPSA context as:
 - Communications subject to legal privilege;
 - Communications between MPs and constituents relating to constituency matters;
 - Matters of medical and journalistic confidentiality.

- A vulnerable individual or juvenile (i.e. under the age of 18) is to be used as a Covert Human Intelligence Source (CHIS).

7. TYPES OF SURVEILLANCE

7.1. Overt Surveillance

Most of the surveillance carried out by East Lothian Council officers will be done overtly - there will be nothing secretive or hidden about it. One way of making surveillance overt is by telling the subject that it will happen.

Examples of this could be where the alleged perpetrator of a noise nuisance is warned (preferably in writing) that noise will be recorded if the noise continues, or where an entertainment licence is issued subject to conditions and the licensee is told that officers may visit without notice and/or without identifying themselves to the owner/proprietor to check that the conditions are being met.

Overt surveillance does not require authorisation under RIPSAs.

7.2. Covert Surveillance

In order to be considered under RIPSAs, surveillance must be covert, i.e. the target is unaware that it is taking place, and it must be 'necessary'. The surveillance may be considered necessary if it is for the 'specified grounds' of:

- a) Preventing or detecting crime or preventing disorder;
- b) The interests of public safety; or
- c) Protecting public health.

There are different forms that covert surveillance can take:

7.2.1. Directed Surveillance

Directed Surveillance operations require RIPSAs authorisation. Directed Surveillance is covert, but not intrusive, and is undertaken:

- For the purposes of a specific investigation or a specific operation;

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- In such a manner as is likely to result in the obtaining of private information about a person (whether or not one is specifically identified for the purposes of the investigation or operation);
- Otherwise than by way of an immediate response to events.

7.2.2. Covert Human Intelligence Sources (CHIS)

CHIS operations require RIPSAs authorisation. A person is a CHIS if:

- a) he or she establishes or maintains a personal or other relationship with a person for the **covert purpose** of facilitating the doing of anything falling within paragraph b) or c);
- b) he or she **covertly uses** such a relationship to obtain information or to provide access to any information to another person; or
- c) he or she **covertly discloses** information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.

A relationship is established or maintained for a **covert purpose** if and only if it is conducted in a manner that is calculated to ensure that one or more of the parties to the relationship is unaware of the purpose.

A relationship is **used covertly**, and information obtained is **disclosed covertly**, if and only if the relationship is used or the information is disclosed in a manner that is calculated to ensure that one of the parties to the relationship is unaware of the use or disclosure in question.

A local authority may use a CHIS in two main ways:

- Council officers may themselves act as Sources by failing to disclose their true identity in order to obtain information;
- Council officers may cultivate a member of the public or employee of a business under investigation to provide them with information on a regular basis.

In both cases the person or persons being investigated are unaware that this is taking place. CHIS authorisation does not

East Lothian Council
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apply in circumstances where members of the public volunteer information as part of their normal civic duties or contact numbers specifically set up to receive anonymous information, such as crimestoppers; nor do they become a CHIS if they are asked if they can provide additional information, e.g. details of the suspect's vehicle or the time that they leave for work. However, someone might become a CHIS as a result of a relationship with East Lothian Council that began in this way and authorisation must then be sought.

7.2.3. Intrusive Surveillance

Intrusive surveillance is not open to local authorities. East Lothian Council officers must not undertake intrusive surveillance.

Covert surveillance is intrusive if it is:

- Carried out in relation to anything taking place on residential premises, or
- In any private vehicle, **and**
- Involves the presence of an individual on the premises or in the vehicle, or
- Is carried out by means of a surveillance device.

The definition of intrusive surveillance is determined by the location of the surveillance, not the nature of the information obtained.

7.2.4. Non-RIPSA covert surveillance

Some surveillance activities are conducted covertly, but do not meet the criteria for Directed Surveillance, CHIS, or Intrusive Surveillance, and so RIPSA does not apply. This includes the collection of non-private information which is publicly or commercially available, although care must be taken when gathering information that is made available online or via social media (for more information on online/social media surveillance, refer to Section 9 below).

RIPSA also does not apply in relation to the Council's 'ordinary functions.' Ordinary functions are those which are undertaken by all authorities, such as employment and contractual arrangements, as opposed to 'core functions' which are specific public functions. The disciplining of an employee is considered an ordinary function, which is not within the scope of RIPSA.

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7.2.5. Examples of different types of surveillance

Examples	Type of Surveillance
<ul style="list-style-type: none"> • Dog Warden on patrol; • Signposted CCTV. 	Overt
<ul style="list-style-type: none"> • CCTV cameras providing general traffic information; • Noise monitoring that only records decibel levels; • Disciplinary investigation; • Officers conducting a single preliminary visit to identify a site of interest; • Regulatory or professional disclosures that are required by law. 	Covert, non-RIPSA
<ul style="list-style-type: none"> • Officers follow an individual over a period of time to establish whether s/he is working while claiming benefits; • Officers use online information as part of a specific investigation to acquire private information about the movements and associations of a former offender; • Covert cameras are erected near (not within) a residence to identify the source of vandalism. 	Directed Surveillance (RIPSA)
<ul style="list-style-type: none"> • Establishing and maintaining a relationship over Facebook using a false profile; • Test purchases where the officer or another individual will be establishing a relationship for a covert operation. 	CHIS (RIPSA)
<ul style="list-style-type: none"> • Planting a listening device in a person's home or vehicle. 	Intrusive (not permitted)

8. AUTHORISATION FOR DIRECTED SURVEILLANCE / CHIS

8.1. A correct and proper authorisation will provide officers with the legal authority to carry out covert surveillance, enable the collection of evidence, and reduce the possibility of a legal challenge on both the action and the admissibility of the evidence.

8.2. **When is RIPSAs authorisation needed?**

In identifying circumstances where RIPSAs authorisation is needed, Council officers must consider whether the proposed surveillance activities meet the tests for authorisation listed below. **These tests do not in themselves determine whether Applications for authorisation should be approved by the Authorising Officer** – they are simply set out here as an aid in determining whether RIPSAs authorisation is likely to be required in relation to surveillance activities carried out by Council officers. Authorising Officers must also consider the fuller picture of proposed activities as set out in the Application in relation to the legislation and the Council's compliance framework before granting approval.

Activities which only partially meet the tests below for either Directed Surveillance or CHIS are unlikely to require authorisation, however when in doubt officers should consult with the Coordinating Officer / Gatekeeper.

8.2.1. 'Statutory' or 'specified grounds'

Where covert surveillance activities are **necessary** to the 'statutory grounds' listed in Section 7.2 above, this test for authorisation in relation to both Directed Surveillance and CHIS is met.²

8.2.2. Directed Surveillance - specific investigation

In relation to Directed Surveillance, where officers are conducting a **specific** investigation or operation, i.e. pre-planned surveillance of a specific person or group of people, this test for authorisation is met.

8.2.3. Directed Surveillance – private information

In relation to Directed Surveillance, where the surveillance activities are likely to obtain 'private information', this test for authorisation is met.

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

² While the statutory grounds for Directed Surveillance and CHIS are set out in different sections of RIPSAs (Sections 6.3 and 7.3, respectively), they are framed in identical terms.

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reasonable expectation of privacy, a directed surveillance authorisation is appropriate.

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.

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.

8.2.4. Directed Surveillance – advance planning

In relation to Directed Surveillance, where officers are acting otherwise than in an immediate response to events, this test for authorisation is met.

8.2.5. CHIS – forming and/or maintaining a relationship

In relation to CHIS, where officers will be establishing or maintaining a covert relationship to gain information, this test for authorisation is met.

8.3. Authorisation to carry out Directed Surveillance and/or CHIS operations may only be given by the designated Authorising Officers, or by the Chief Executive in relation to the acquisition of confidential information or the engagement of juveniles or vulnerable individuals as sources (see Sections 8.11.3-8.12 below).

8.4. Authorising Officers must have appropriate seniority within the Council, as defined in Schedule 1 of the 2010 Order (as updated and amended from time to time). At the time of implementation of this version of the Policy, the relevant Council roles held by Authorising Officers shall be at the Service Manager level or above.

8.5. Applications, Reviews, Renewals and Cancellations must be in writing using the Council's standard Forms and templates for both Directed Surveillance and CHIS operations. These templates will form part

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of the compliance framework and will capture all required information as set out within the Codes of Practice.

- 8.6. Investigating Officers are encouraged to consult with the Coordinating Officer / Gatekeeper prior to submitting an Application for authorisation.
- 8.7. Nominated Officers (as set out in Sections 6.2-6.6 above) shall operate at all times in a manner consistent with the Codes of Practice, any and all Guidance issued by the IPCO and internal guidance issued in support of this Policy.
- 8.8. In particular, when preparing, authorising and monitoring applications, conducting operations under RIPSAs, and managing information obtained via such operations, the nominated Officers will have due regard for the following considerations:

8.8.1. Necessity

Directed surveillance / CHIS operations must be necessary on one or more statutory grounds (see Section 7.2 above).

8.8.2. Proportionality

If the surveillance / CHIS activities are deemed necessary on one or more statutory grounds, the person granting the authorisation must also believe that they are proportionate to what is sought to be achieved by carrying them out. This applies both to the authorisation of Directed Surveillance and the authorisation of the use and/or conduct of a CHIS. The consideration of proportionality involves balancing the seriousness of the intrusion into the privacy of the subject of the operation (or any other person who may be affected) against the need for the activity in investigative and operational terms.

The authorisation will not be proportionate if it is excessive in the overall circumstances of the case. Each action authorised should bring an expected benefit to the investigation or operation and should not be disproportionate or arbitrary. No activity should be considered proportionate if the information which is sought could reasonably be obtained by other less intrusive means (in the ordinary sense).

The following elements of proportionality should therefore be considered:

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- 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 subject and others;
- considering whether the activity is an appropriate use of the legislation and having considered all reasonable alternatives, a reasonable way of obtaining the necessary result;
- evidencing, as far as is reasonably practicable, what other methods have been considered and why they were not implemented.

It is important therefore that all those involved in undertaking Directed Surveillance / CHIS activities or interference with property under RIPSAs are fully aware of the extent and limits of the authorisation in question.

8.8.3. Collateral Intrusion

An application for authorisation should include an assessment of the risk of any collateral intrusion, i.e. the extent to which the surveillance will interfere with the privacy of persons other than the subject of the surveillance. Measures should be put in place to minimise unnecessary intrusion into privacy, which should be proportionate to the aim of the investigation. In relation to CHIS operations, the Authorising Officer should take this into account when considering the proportionality of the use and conduct of a source.

8.9. **CHIS authorisations: additional considerations**

8.9.1. An authorisation may be obtained under RIPSAs for the **use** or **conduct** of a CHIS:

- The **use** of a CHIS involves any action on behalf of a public authority to induce, ask or assist a person to engage in the conduct of a CHIS. In general, therefore, an authorisation for use of a CHIS will be necessary to authorise steps taken by the Council in relation to a CHIS.
- The **conduct** of a CHIS is any conduct of a CHIS which falls within section 7.2.2(a) to (c) above or is incidental to anything falling within that section. In other words, an authorisation for conduct will authorise steps taken by the CHIS on behalf, or at the request, of the Council.

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- 8.9.2. Care must be taken to ensure that the CHIS is clear on what is/is not authorised at any given time and that all the CHIS's activities are properly risk assessed. Care should also be taken to ensure that relevant Applications, Reviews, Renewals and Cancellations are correctly performed and recorded in line with the Codes of Practice. A CHIS may in certain circumstances be the subject of different use or conduct authorisations obtained by one or more public authorities. Such authorisations should not conflict.
- 8.9.3. Nominated Officers as listed in Sections 6.2-6.6 above must ensure that all **use** or **conduct** is:
- necessary and proportionate to the intelligence dividend that it seeks to achieve; and
 - in compliance with relevant Articles of the European Convention on Human Rights (ECHR), particularly Articles 6 (right to a fair trial) and 8 (right to respect for private and family life).
- 8.9.4. Authorisation is required where a relationship exists between the subject and the CHIS, even if specific information is not being sought by the Council. Unlike Directed Surveillance (which relates specifically to private information), authorisations for the use or conduct of a CHIS do not relate specifically to private information, but to the covert forming and/or maintaining of a relationship to gain any information.
- 8.9.5. The Council's nominated Officers listed in Sections 6.2-6.6 above will ensure that arrangements are in place for the proper oversight and management of CHIS, including appointing individual officers as defined in Section 7(6)(a) of RIPSAs for each CHIS. The person referred to in Section 7(6)(a) of the 2000 Act, the "handler", will have day to day responsibility for:
- dealing with the CHIS on behalf of the authority concerned;
 - directing the day to day activities of the CHIS;
 - recording the information supplied by the CHIS; and
 - monitoring the CHIS's security and welfare.

The handler of a CHIS will usually be of rank or position below that of the Authorising Officer.

- 8.9.6. The Council templates for Authorisation, Review, Renewal, and Cancellation of operations, as well as records in relation to individual Sources, shall capture all relevant information as

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required by RIPSAs legislation (as updated and amended from time to time) and as recommended in the Codes of Practice.

- 8.9.7. In deploying a Source, the Authorising Officer must take into account the safety and welfare of that source when carrying out actions in relation to an authorisation or tasking, and to foreseeable consequences to others of that tasking. Before authorising the use or conduct of a source, the Authorising Officer should ensure that a **risk assessment** is carried out to determine the risk to the source of any tasking and the likely consequences should the role of the Source become known. The ongoing security and welfare of the Source, after the cancellation of the authorisation, should also be considered at the outset.
- 8.9.8. The same provisions for the Review, Renewal and Cancellation of CHIS authorisations apply as for Directed Surveillance (noting the differences regarding duration as set out in Section 8.11 below). Additionally, the ongoing safety and welfare of the Source should continue to be taken into account, even after the authorisation has been cancelled.

8.10. **Urgent authorisations**

- 8.10.1. Urgent authorisations should not normally be necessary. In exceptional circumstances, however, urgent authorisations may be given orally if the time that would elapse before a written authorisation can be granted would either be likely to (1) endanger life or (2) jeopardise the investigation or operation for which the authorisation was being given. Urgent authorisations will normally only be given following consultation with the SRO or the Chief Executive.
- 8.10.2. An application will never be urgent where the need for authorisation has been neglected or is of the Applicant's own making.
- 8.10.3. Where authorisations are granted orally under urgency procedures, a record detailing the actions authorised and the reasons why the urgency procedures were used should be recorded by the Applicant and Authorising Officer as a priority.

8.11. **Duration of authorisations**

Authorisations must be granted in line with the following timescales, and not for shorter initial durations than those listed below. They must be formally cancelled at the end of the authorisation period

using the relevant template. **Authorisations must not be allowed to expire.**

8.11.1. Directed Surveillance

A written authorisation for Directed Surveillance will cease to have effect (unless renewed or cancelled) at the end of a period of **three months** beginning with the day when the authorisation granted has taken effect.

Urgent oral authorisations or written authorisations granted by a person who is entitled to act only in urgent cases will, unless renewed, cease to have effect after **72 hours**, beginning with the time when the authorisation granted had taken effect.

8.11.2. CHIS

A written authorisation will, unless renewed or cancelled, cease to have effect at the end of a period of **12 months** beginning with the day on which it took effect, except in the case of juvenile CHIS or in the case of matters pertaining to the 2014 Order.

Urgent oral authorisations or authorisations granted or renewed by a person who is entitled to act only in urgent cases will, unless renewed, cease to have effect after **72 hours**, beginning with the time when the authorisation was granted.

Authorisations may be renewed for a further period of **12 months**.

8.11.3. CHIS – Vulnerable / Juvenile Sources

Authorisations for vulnerable or juvenile Sources should be granted **only by the Chief Executive**. The duration of such an authorisation is **one month** from the time of grant or renewal (instead of 12 months). For these purposes, the age test is applied at the time of the grant or renewal of the authorisation.

8.12. **Special considerations: confidential information, juveniles and vulnerable individuals**

Any Directed Surveillance operations that capture confidential information or involve the engagement of a vulnerable individual or juvenile as a CHIS **must be authorised by the Chief Executive**, or in their absence a nominated Executive Director deputising on their behalf.

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8.12.1. 'Confidential information' includes:

- Communications subject to legal privilege;
- Communications between MPs and constituents relating to constituency matters;
- Matters of medical and journalistic confidentiality.

8.12.2. A 'juvenile source' is a person under the age of 18. On no occasion should the use or conduct of a CHIS under 16 years of age be authorised to give information against their parents or any person who has parental responsibility for them. In other cases, authorisations should not be granted unless the special provisions contained within The Regulation of Investigatory Powers (Juveniles) (Scotland) Order 2002; SSI No. 206 are satisfied.

8.12.3. A 'vulnerable individual' is a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of him/herself, or unable to protect him/herself against significant harm or exploitation. Any individual of this description should only be authorised to act as a CHIS in the most exceptional circumstances.

9. ONLINE AND SOCIAL MEDIA SURVEILLANCE

9.1. Council Officers may be called upon in the course of their duties to undertake surveillance by accessing websites or social media content. The above provisions apply equally to such activities as to offline / in person operations. It is therefore important for officers to understand when online or social media activities call for RIPSAs authorisation.

9.2. Surveillance activities needing authorisation might include:

- Visiting a third-party website or accessing social media posts, profiles or groups only once;
- Visiting/viewing websites, posts, profiles and/or groups regularly over a period of time;
- Entering into a personal relationship with a third party or parties via online or social media platforms.

9.3. Where online research or investigation is conducted covertly for the purpose of a specific investigation or operation and is likely to result in the obtaining of private information about a person or group, an authorisation for Directed Surveillance should be considered. Where

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a person acting on behalf of a public authority is intending to engage with others online without disclosing his or her identity, a CHIS authorisation may be needed.

- 9.4. In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject(s) knowing that the surveillance is or may be taking place. Use of the internet itself may be considered as adopting a surveillance technique calculated to ensure that the subject is unaware of it, even if no further steps are taken to conceal the activity. Conversely, if reasonable steps have been taken to inform the public or particular individuals that the surveillance is or may be taking place this can be regarded as overt and a directed surveillance authorisation will not normally be available.
- 9.5. While individuals may have a reduced expectation of privacy in relation to information that is made generally and publicly available by the individual online or on social media, information posted on personal social networking sites which are normally accessed by a smaller circle of personal contacts is likely to include private information to which an expectation of privacy would apply and fall within the scope of a person's private life. Whether the Council interferes with a person's private life includes a consideration of the nature of the Council's activity in relation to that information. This is regardless of whether or not the account holder has applied any privacy settings to the account.
- 9.6. Factors that should be considered in establishing whether a Directed Surveillance authorisation is required include whether:
- the investigation or research is directed towards an individual or group of people;
 - it is likely to result in obtaining private information about a person or group of people;
 - it is likely to involve building up an intelligence picture or profile;
 - the information obtained will be recorded and stored;
 - the information is likely to provide an observer with a pattern of lifestyle;
 - the information is being combined with other sources of information or intelligence, which amounts to information relating to a person's private life;

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- the investigation or research is part of an ongoing piece of work involving repeated viewing of the subject(s);
 - it is likely to involve identifying and recording information about third parties such as friends and family members of the subject of interest, or information posted by third parties such as friends or family members, which may include private information and therefore constitute collateral intrusion.
- 9.7. Regarding CHIS, where a website or social media account requires a minimal level of interaction (such as sending or receiving a friend request before access is permitted) this may not in itself amount to establishing a relationship. Equally, the use of electronic gestures such as “like” or “follow” in order to react to information posted by others online would not in itself constitute forming a relationship. However, it should be borne in mind that entering a website or responding on these gestures may lead to further interaction with other users. A CHIS authorisation should be obtained if it is intended to engage in such interaction to obtain, provide access to or disclose information.
- 9.8. In relation to online and social media surveillance, Council officers should refer to the above guidance regarding Directed Surveillance and CHIS activities and refer any questions to the Council’s Coordinating Officer / Gatekeeper. If authorisation is required, all relevant procedural steps for the type of surveillance should be followed, with reference to the Council’s supporting compliance framework.
- 9.9. Provisions for surveillance using online platforms/social media:
- 9.9.1. Council officers must not use their own private accounts to view the accounts/profiles of other individuals for an investigation under any circumstances. If, in their personal time, officers using their private accounts encounter information based on personal connections, they cannot use this information for the purposes of an investigation. Rather, an official investigation will have to be initiated and, where necessary, the proper authorisations under RIPSAs must be obtained.
- 9.9.2. Officers using a specially created departmental identity in order to ‘friend’ individuals with closed, privacy-protected profiles on social networks will require a CHIS authorisation granted and approved by an Authorising Officer.

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- 9.9.3. Officers instructing a third party using their own private identity to conduct an investigation on a person they are connected with through social media will require a CHIS authorisation granted and approved by an Authorising Officer.

10. RECORDS MANAGEMENT

- 10.1. A central record of all Authorisations, Reviews, Renewals, Cancellations and Rejections will be maintained and monitored by the Coordinating Officer / Gatekeeper. Each Form will have a unique reference number (URN). The cross-referencing of each URN takes place within the Forms for audit purposes. Rejected Forms will also have URNs.
- 10.2. In addition to the central record, the Coordinating Officer / Gatekeeper will manage and maintain the following records in relation to each Authorisation:
- Copies of the Application, Review, Renewal and Cancellation Forms (as relevant) together with any supplementary documentation;
 - Copies of any Risk Assessments carried out prior to authorisation;
 - Notification of the approval given by the Authorising Officer;
 - A record of the period over which the operation has taken place;
 - The frequency of reviews prescribed by the Authorising Officer;
 - A record of the result of each review of the Authorisation;
 - The date(s) and time(s) of any instructions issued by the Authorising Officer.

It is likely that the Coordinating Officer / Gatekeeper will not have routine access to the records listed above in the course of the activities of the operation. The Investigating Officer and Authorising Officer must therefore ensure that all relevant records are passed to the Coordinating Officer / Gatekeeper for central management and storage.

- 10.3. The record copy held by the Coordinating Officer / Gatekeeper is considered the 'golden copy', i.e. the official and most complete version of the record. A robust audit trail must be maintained regarding the creation, management and disposition of this record in line with the Council's Information and Records Management Policy, and all other copies should be destroyed as soon as they are no longer required for immediate business. No copy should be retained for a longer period than the golden copy.

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- 10.4. All RIPSAs-related Forms and documentation, including risk assessments, will be securely stored in digital format, and should be made available to the IPC or his/her Inspector upon request.
- 10.5. Record retention
- 10.5.1. Records must be retained to allow the Investigatory Powers Tribunal (IPT) to carry out its functions. The IPT will consider complaints made up to one year after the conduct to which the complaint relates and, where it is equitable to do so, may consider complaints made more than one year after the conduct to which the complaint relates (see section 67(5) of RIPA), particularly where continuing conduct is alleged.
- 10.5.2. The standard retention period for RIPSAs Forms and associated records shall therefore be **5 years**, unless other requirements imposed by criminal or civil proceedings, other legal and/or regulatory regimes, or other matters of pressing concern take exceptional precedence.
- 10.5.3. Any decision to modify this retention period in relation to individual records shall be documented and authorised by the Senior Responsible Officer with reference to the Council's Records Management policies and procedures. Provision for RIPSAs Forms and RIPSAs-related records shall be included in the Council's corporate Retention Schedule.
- 10.6. All RIPSAs-related records must be maintained in line with the Council's Information and Records Management Policy, Records Management Plan, Data Protection Policy and IT Acceptable Use Policy.
- 10.7. RIPSAs-related records should never be stored or sent outwith the Council environment, including the Council's digital network controls, unless the records are being securely transferred for a legitimate purpose, e.g. the provision of records to the IPC or his/her Inspector. In relation to the sharing of records, the Council's most up-to-date Information Security recommendations and the provisions of any relevant Data Sharing Agreements must be followed.
- 10.8. Management of product (covert material)
- 10.8.1. The management of product, i.e. information acquired as a result of RIPSAs operations, is the responsibility of the Investigating Officer (**not** the Coordinating Officer / Gatekeeper). The Investigating Officer must ensure that product is managed in line

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with the Authorising Officer's instructions and with reference to this Policy and the Council's information/records management policies and procedures. With the exception of this point regarding responsibility for its management, the same Records Management provisions apply to product as to other RIPSAs-related documentation.

- 10.8.2. Product (i.e. records) can appear in many different formats, including audio/video recording, paper documentation, email, and more. The same records management provisions apply to these formats and materials as to other Council records and information.
- 10.8.3. 'Data pathways' should be identified for all covert material acquired via RIPSAs operations, e.g. via the Council's Information Asset Register. Every effort should be made to reduce duplication as much as possible.
- 10.8.4. When covert material is formally handed over from one team to another, clear instructions should be given to the recipient so they understand expectations for handling such material and who holds responsibility for its onward management.
- 10.8.5. The use of removable media should be avoided. If it cannot be avoided, advice should be sought from the Council's Information Security specialists regarding the use of sufficiently secure methods of transferring and/or transporting the information.
- 10.8.6. The product held by the Investigating Officer is the 'golden copy' record, and all associated provisions apply (see Section 10.3 above). The Investigating Officer should ensure that s/he holds and maintains the most complete and authoritative version of the material.
- 10.8.7. Product must be retained within an agreed File Plan using consistent file naming conventions, with reference to the Council's corporate File Planning and File Naming guidance.
- 10.8.8. Covert material (product) should be retained no longer than is necessary, with a robust audit trail maintained for the creation, storage, sharing, destruction or other permanent transfer of the material.
- 10.8.9. Any questions or uncertainties regarding the management of product or other records should be referred to the Council's Coordinating Officer / Gatekeeper and Team Manager-Information

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Governance (or other relevant officer tasked with monitoring and facilitating information and records management compliance).

11. TRAINING

- 11.1. All Authorising and Investigating Officers are required to undergo regularly refreshed training provided by the Coordinating Officer / Gatekeeper to ensure compliance with the requirements of the law.
- 11.2. All staff shall undertake role-relevant training regarding the content of this Policy, the compliance framework, and the requirements of the law.

12. INVESTIGATORY POWERS COMMISSIONER

- 12.1. The office of the Investigatory Powers Commissioner (IPCO) has responsibility for overseeing the procedures employed by all authorities engaged in covert surveillance. Part of its role is to periodically examine and audit the records and procedures of authorities, and the Council's Authorisation Officers must be prepared to justify their actions when called upon to do so.

13. COMPLAINTS

- 13.1. Any person who reasonably believes that they have been adversely affected by any activities carried out pursuant to this Policy by or on behalf of the Council may complain to the Senior Responsible Officer who will investigate the complaint. Such a person may also complain to the Investigatory Powers Tribunal:

By post: Investigatory Powers Tribunal
PO Box 33220
London
SW1H 9ZQ

By email: info@ipt-uk.com

14. REVIEW AND OVERSIGHT

Elected members shall review the Council's use of RIPSAs and compliance with the Policy once a year.

In circumstances where it is justified by the volume of applications authorised and/or rejected, internal reports on the use of RIPSAs shall be made to elected members on a quarterly basis to ensure that its authorisations are being used consistently with this Policy and that the Policy remains fit for purpose.

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Reporting to elected members shall be for the purposes of overall accountability and oversight of RIPSAs activities in relation to this Policy. Elected members shall not, however, be involved in making decisions on specific authorisations.

The Policy shall be formally reviewed and re-submitted to Elected Members for approval every three years.

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Council Resources

SUBJECT: New Licensing Fee Structure for Licensing of Short Term Lets

8

1 PURPOSE

1.1 To provide Cabinet with details of the proposed licence fee structure for a licence for Short Term Lets under the new licensing regime for such activities which comes into force from 1 October 2022.

2 RECOMMENDATIONS

2.1 That Cabinet agree to fix the licence fee for licences to be issued under the Order (as defined at paragraph 3.1 below) at the levels proposed at paragraph 3.3. below.

3 BACKGROUND

3.1 It is noted that the Scottish Government looked to address the issues around Short Term Lets in three ways, Licensing, Planning, and Tax Treatment.

3.2 The review of the tax treatment of short-term lets is being taken forward separately by the Scottish Government.

3.3 The Planning Service are currently considering the issue of Short Term Lets and intend on bringing forward a report on this to a future meeting of Cabinet. This will focus on whether or not there is a need to designate any Short Term Let Control Areas within East Lothian.

3.4 This paper seeks to address Licensing matters.

3.5 A new licensing regime in respect of activities involving Short-term Lets is being introduced by The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 (hereinafter referred to as "The Order"). This new licensing regime takes effect from 1 October 2022.

- 3.6 There is a need for Cabinet to agree an appropriate fee level for the Council to administer this new regime. The regime should operate on a cost neutral/cost recovery basis. Accordingly, the fee levels being proposed are based on a methodology and chargeable officer Hourly Rates. These are shown below.

Hours	Hourly Rate	Number of applications	Total	Comment
10	£23.09 (Grade 6)	300	£69,270	Processing application
1	£34.72 (Grade 9)	300	£10,416	Review of application
6	£34.72	60 (20%)	£17,739.00	Inspection of premises by EHO
7	£23.09	60 (20%)	£9697.80	To be heard by LSC
4	£26.42 (Grade 7)	60 (20%)	£6412.80	Committees Clerk
1	£23.09	150 (50%)	£3463.50	General enquiries (phone / email)
			£116,999 / 300 = £390.00	

- 3.7 It is proposed that the initial fee for a three year licence be set at a flat rate of **£390**. This fee will be reviewed once the new licensing regime has had a chance to become established and the numbers and consequent administrative burden becomes clearer. It is estimated that this fee, covering a three year period, amounts in effect to a fraction of the rental charge based on current average rental rates in the short term market.

4 POLICY IMPLICATIONS

- 4.1 Licensing of Short-term Lets will soon become a statutory obligation for East Lothian Council. This report is based upon Legislation and Scottish Government guidance for licensing Short-terms Lets.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – This relates to a new licensing regime in respect of short term lets and creates additional work along with a new income stream with

regard to the fee as agreed in respect of the new licensing activities outlined above.

6.2 Personnel - None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022

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DATE	25 August 2022

REPORT TO: Cabinet

MEETING DATE: 13 September 2022

BY: Executive Director for Place

SUBJECT: Various Roads East Lothian, Introduction and Amendments to Traffic Regulation Orders 2022

9

1 PURPOSE

To seek Cabinet approval to start the statutory procedures necessary to introduce and amend various Traffic Regulation Orders to prohibit waiting, loading and unloading, and promote a new one way street.

2 RECOMMENDATIONS

- 2.1 That Cabinet approve the initiation of the statutory procedure necessary to introduce and amend Traffic Regulation Orders in accordance with 'The Local Authorities (Procedures) (Scotland) Regulations 1999 and such introduction and amendments that are in force in respect of locations and proposals listed in Appendices A & B.

3 BACKGROUND

- 3.1 East Lothian Council as Local Traffic Authority is responsible for the making or amending of Traffic Regulation Orders as necessary; to avert danger to road users; to aid free unrestricted movement on the road; to prevent inappropriate use of the road and/or adjoining property and to improve the amenity of the area.
- 3.2 Following the successful introduction of decriminalised parking enforcement and the consolidation of Traffic Regulation Orders an ongoing review of restrictions has highlighted several areas that require amendment / introduction. Details are provided in **Appendix A**
- 3.3 In association with a new housing development adjacent to Beveridge Row, Belhaven and creation of a distributor road named Bayview Circus it is proposed to make Beveridge Row one way southbound from the A1087 Edinburgh Road. **Appendix B**

4 POLICY IMPLICATIONS

4.1 None

5 INTEGRATED IMPACT ASSESSMENT

5.1 The subject of this report does not affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

6.1 Financial – All costs involved in connection with consultation, advertising, design and implementation associated with the making of these Orders can be accommodated within the Roads revenue budget.

6.2 Personnel - None

6.3 Other – None

7 BACKGROUND PAPERS

7.1 None

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Appendix A		
The Amendments of the Prohibition and Restriction waiting, loading and unloading at Various Streets, Traffic Regulation Orders		
No.	Location	Description
1	Millhill at Millhill Stables, Musselburgh	Extend existing waiting restrictions around bend to control indiscriminate parking
2	Pinkie Road Service Road jcn Edenhall Road, Musselburgh	Remove no waiting restriction and replace with No Waiting / Loading and Unloading restriction
3	Market Street at Farmer Autocare, Musselburgh	Introduce no waiting restrictions at access
4	Inveresk Village Road at St. Michaels Church, Musselburgh	Introduce two new disabled parking bays for use by blue badge holders only
5	Bush Street, Musselburgh	Introduce no waiting restrictions along the west side to improve the free flow of traffic.
6	Industrial Estate Access Road, Wallyford	Introduce no waiting restrictions at intervals to form passing places
7	Whitecraig Crescent at rear access to primary school and recreation ground, Whitecraig	Introduce no waiting restrictions at access road
8	Blawearie Road at Loch Centre Service Access road, Tranent	Introduce no waiting restrictions at access road
9	Fa'side Avenue jcn Fa'side Road, Tranent	Introduce no waiting restrictions at end of parking bays to keep access road clear
10	Bridge Street at Domino's Pizza, Tranent	Remove single yellow line restriction that is only enforceable between the hours of 8.30am to 5.30pm and replace with 24 hour no waiting restrictions
11	John Crescent, Tranent	Extend existing no waiting, loading and unloading restrictions further east.

12	103 (Farmfoods) High Street, Tranent	Move Bus Stop markings further east and move single yellow line to other side of re-located bus stop markings to allow public service vehicles to fully access bus box
13	Long Craigs, Port Seton	Introduce no waiting restrictions at junctions in interests of road safety
14	Hopetoun View, Gullane	Extend existing no waiting restriction on west side further north to keep junction with Main Street clear
15	St Baldreds Road jcn St Baldreds Crescent, North Berwick	Introduce no waiting restrictions at junction in interests of road safety
16	A6093 / Bothwell Ave, Haddington	Introduce no waiting restrictions at junction in interests of road safety
17	Countess Rd / Lammermuir Cres Junction & School frontage, Dunbar	Extend no waiting restrictions at junction and new footpath in interests of road safety
18	Brighton Terrace, Gullane	Introduce loading bay / drop off in front of church
29	Cross Loan, Ormiston	Introduce no waiting restrictions in the interests of maintaining access.
20	Eskview Road, Musselburgh	Extend existing no waiting restrictions at junction with Eskview Terrace to stop indiscriminate parking blocking footway

Appendix B		
One Way		
No.	location	Description
1	Beveridge Row, Belhaven	One way southbound from the A1087 Edinburgh Road to junction with Bayview Circus