

Council Policy in Relation to the Regulation of Regulatory Powers Act 2000 (RIPA)

Summary: The purpose of this report is to provide the Cabinet with an opportunity to review and approve the Council's revised Regulation of Investigatory Powers Act 2000 Policy and Procedures, to be assured that it is up to date and fit for purpose and to report on the use of the powers over the preceding months.

Options considered: The Policy is required to ensure proper application of the Act, so there is not an alternative option.

Recommendations: That the changes to the revised Regulation of Investigatory Powers Act 2000 Policy and Procedures, set out at Appendix A, be approved.

That Members note the activity undertaken under RIPA and the update in relation to the recent IPCO inspection.

Reasons for Recommendations: The Policy has been revised following an audit of the Council's activities by the Investigatory Powers Commissioners Office (IPCO) conducted in 2021. Members are required to be aware of the RIPA activity undertaken by the Council.

LIST OF BACKGROUND PAPERS AS REQUIRED BY LAW

(Papers relied on to write the report, which do not contain exempt information and which are not published elsewhere)

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Cabinet Member(s) Nigel Lloyd	Ward(s) affected All
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1. Introduction

- 1.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs public authorities' use of 'directed covert surveillance' and of 'covert human intelligence sources' (CHIS).
- 1.2 The legislation was introduced to ensure that an individual's human rights are protected whilst also ensuring that law enforcement and security agencies have the powers they need to do their job effectively.
- 1.3 RIPA requires that when a Council undertakes covert directed surveillance or uses a CHIS, these activities must be authorised in advance by an officer who must then seek, as from November 2012, the approval by a Magistrate/Justice of the Peace.
- 1.4 The Home Office's guidance reaffirms the recommendation that, to attain best practice: "...elected members of a local authority should review the authority's use of the 2000 Act and set out the policy at least once a year. They should also consider internal reports on use of the 2000 Act on a regular basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose."

2. Background

- 2.1 Councils, in common with all other Local Authorities, have powers granted to them by way of RIPA 2000 to carry out covert surveillance by way of direct surveillance and use of covert human intelligence source (CHIS).
- 2.2 To ensure the Council applies its powers lawfully and in accordance with RIPA and relevant Home Office guidance, the Policy has been revised to ensure it is up to date and reflects best practice across the Alliance.
- 2.3 The only purpose for which local authorities are able to rely on RIPA is where the authorisation is necessary "for the purpose of preventing and detecting crime and disorder". Additionally, authorisation for directed covert surveillance is also subject to a 'crime threshold test' under which the crime is punishable by a maximum term of at least 6 months imprisonment. No Covert surveillance can be undertaken without the formal authority of a Magistrate.
- 2.4 This Authority will only ever be required to deal with matters relating to directed surveillance and covert human intelligence sources (CHIS). This Authority is not authorised to nor will it undertake any other forms of surveillance. Public bodies are required to formally establish arrangements and responsibilities for approving directed surveillance under RIPA and these arrangements are described in the Policy and Procedure.

3. Use of RIPA Powers by the Council

- 3.1 The Council has not authorised any directed covert surveillance or covert human intelligence source (CHIS) activity in the last 2 months. Investigations have been progressed using other means of gathering information and evidence which is consistent with the approach set out in the Policy and Procedures.

4. Investigatory Powers Commissioners Office (IPCO) Inspection and Recommendations

4.1 All public authorities are subject to periodic inspection by the Investigatory Powers Commissioners Office (IPCO) who independently oversee the use of investigatory powers, ensuring they are used in accordance with the law and in the public interest. The Council was subject to a remote inspection by an IPCO Inspector on the 17 February 2021.

4.2 The Inspector was satisfied that the information provided to him discharged the need for a physical inspection and that the majority of recommendations made at the previous inspection had been largely discharged. Those that remained outstanding were either in hand and delayed or had been superseded by further changes.

4.3 The Inspector made a number of recommendations to strengthen further the Council's position in relation to RIPA.

4.4 Ensuring that the Regulation of Investigatory Powers Act 2000 Policy and Procedures was updated to

- reflect recent changes in the Codes of Practice
- strengthen the safeguarding measures regarding material acquired under RIPA; essentially how this is retained, reviewed and destroyed
- expand the procedure in place for ensuring that all online activity in connection with enforcement or investigative functions is recorded and periodically scrutinised for oversight purposes
- update the names and role information to reflect changes following the recent management restructure

These changes have been updated in the revised Policy and Procedures appended to this report.

4.5 The inspector stressed the importance for maintaining regular training for those performing the Authorising Officers roles, but accepted that this had been booked for delivery in 2020 but had been delayed due to Covid19 restrictions. The training was delivered in June 2021 and all relevant officers have received appropriate training.

5. RIPA Policy and Procedures

5.1 The Policy and Procedures document has been updated to cover all of the points raised during the recent IPCO inspection. It has also been reviewed by the training provider, delivering the Authorised Officer training, who suggested some further minor changes to wording to reflect accepted good practice contained in the government guidance and relevant Codes of Practice.

5.2 This is an Operational Policy outside the Policy Framework so a recommendation for Council to approve it is not required.

6. Corporate Plan Objectives

6.1 This item does not directly relate to delivery of the Corporate Plan objectives but is a statutory requirement.

7. Medium Term Financial Strategy

7.1 There is no direct impact on the Medium Term Financial Strategy.

8. Financial and resource implications

8.1 There are no financial or resource implications associated directly with the implementation of the Policy.

8.2 Non-compliance with the legislation associated with covert surveillance leaves the Authority open to challenge and formal claims for compensation from individuals or corporate bodies should it be found that appropriate guidelines and procedures have not been followed. IPCO may also audit our compliance with RIPA and impose penalties where the authority is found to be in non-conformance. Evidence obtained from surveillance conducted under an outdated or non-compliant RIPA Policy and Procedures would be inadmissible or liable to fail challenge in any legal proceedings which could result in the award of costs against the Council.

9. Legal implications

9.1 There are reputational and legal risk implications if the RIPA policy is out of date and/or out of step with legal obligations under the act or relevant Home Office Guidance.

9.2 If surveillance is conducted which does not comply with the Act, Home Office guidance and/or best practice the Council is open to challenge under the Human Rights Act or may face sanctions being imposed by the Investigatory Powers Commissioners Office.

9.3 Any evidence obtained from surveillance conducted outside of the RIPA Policy would be inadmissible or liable to fail challenge in any legal proceedings.

10. Sustainability

10.1 There are no sustainability issues arising from this report.

11. Equality and Diversity

11.1 There are no equality and diversity issues arising directly from this report, as these are considered automatically, when making decisions regarding the use of RIPA powers.

12. Section 17 Crime and Disorder considerations

12.1 The RIPA Policy and Procedure provides a framework against which the Council can investigate cases where other more conventional forms of investigation would not succeed but within tightly controlled and defined parameters.

13. Recommendations

- 13.1 That the changes to the revised Regulation of Investigatory Powers Act 2000 Policy and Procedures, set out at Appendix A, be approved.
- 13.2 That Members note the activity undertaken under RIPA and the update in relation to the recent IPCO inspection.