



## **AUDIT AND RISK MANAGEMENT COMMITTEE**

**Monday, 16 November 2020**

<b>REPORT TITLE:</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT 2000(RIPA)</b>
<b>REPORT OF:</b>	<b>DIRECTOR :GOVERNANCE AND ASSURANCE (MONITORING OFFICER)</b>

### **REPORT SUMMARY**

This report informs the Committee of the use by Council officers of the covert surveillance powers of the Council since January 2020

### **RECOMMENDATION/S**

That the Committee note the use made by the Council of covert surveillance since January 2020.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 The Home Office Codes of Practice on covert surveillance require every Council to have regard to its provisions when applying RIPA and drawing up its policies and procedures. The Code recommends councils to review annually their policies and procedures and to report regularly their use of covert surveillance.
- 1.2 It is important to provide guidance to officers as to when covert surveillance is lawful and how and when it can be authorised.

### **2.0 OTHER OPTIONS CONSIDERED**

None; it is necessary to comply with the statutory guidance provided by the Home Office.

### **3.0 BACKGROUND INFORMATION**

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods. The Council may use covert surveillance for the purpose of preventing or detecting crime or preventing disorder.
- 3.2 The origin of RIPA lies in the Human Rights Act 1998 (HRA) which places restrictions on the extent to which public bodies may interfere with a person's right to respect for his or her home and private life and correspondence during the course of an investigation into suspected criminal activities. The provisions of RIPA ensure (in summary) that any such interferences are in accordance with the law and are necessary and proportionate (i.e. the seriousness of the suspected crime or disorder must outweigh any possible interferences with the personal privacy of the persons being investigated and of persons who associate with them).
- 3.3 The Council's Constitution authorises Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA. Since 1 November 2012 such authorisations require the further approval of a magistrate where the legislation applies.
- 3.4 The Investigating Powers Commissioner (IPCO) is responsible for overseeing the operation of RIPA. IPCO inspected the Council on 17 December 2018. The outcome of that inspection was reported to the Committee on 11 March 2019. The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report. Further amendments were approved by the Committee at its meeting on 27 January 2020 to take account of the new Home Office Codes of Practice and guidance offered by the Investigatory Powers Commissioner on the legal framework surrounding visits by officers to social media sites during the course of their duties.
- 3.5 There are regular quarterly meetings of RIPA co-ordinators chaired by a solicitor who gives advice and guidance on this complex area of the law. Social workers from the

Children's Services Department are now invited in order to discuss issues of common concern and particular areas of difficulty in the use of social media to protect children. They were invited to the annual training event held on 7 July 2020 and will be invited to future training events.

- 3.6 In accordance with the Council's Policy and Guidance on RIPA logs are being kept by trained officers of visits to social media sites and submitted to the quarterly meetings. The logs have shown that there has been no repeated or systematic viewing of social media sites by officers as part of covert investigations into the activities of targeted individuals. Consequently applications for authorisation under RIPA were not required for these visits to open sites as under the Guidance they would come within the category of seeking information as part of officers' general observational duties.

#### **4.0 CHANGES IN LEGISLATION**

- 4.1 The Protection of Freedoms Act 2012 came into force on 1 November 2012 and made the following changes to the law:
- A Magistrate's approval is required for a local authority's use of RIPA. It is in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
  - Use of RIPA to authorise directed surveillance is confined to cases where the offence under investigation carries a custodial sentence of six months imprisonment or more except in relation to underage sales of alcohol and tobacco, where this sentencing threshold will not apply.

#### **5.0 ANNUAL TRAINING**

- 5.1 This took place on-line on 7 July 2020 and was conducted by Stephen Morris an acknowledged expert in this field.
- 5.2 It was attended by Officers who are required to undertake refresher training every 2 years.
- 5.3 Mr Morris dealt in detail with the requirements for authorisations of surveillance under RIPA and in particular the use of social media for the purpose of investigations by the Council.

#### **6.0 USE OF RIPA SINCE 31 JANUARY 2020**

- 6.1 On 17 February 2020 officers obtained approval from a Magistrate to an authorisation granted by Mark Camborne (Lead Commissioner: Community Services and Resilience) to enable test purchases to be made by juveniles (under the supervision of Trading Standards Officers) from retailers who were suspected of selling e cigarettes to young persons under the age of 18.
- 6.2 Under age sales have been observed and appropriate enforcement action will be taken against the retailers concerned.

- 6.3 On 20 October 2020 officers obtained approval from a Magistrate to an authorisation granted by Mike Cockburn (Head of Service for Environment and Climate Emergency) to enable covert surveillance to be carried out at a site where there has been unlawful depositing of waste.

## **7.0 FINANCIAL IMPLICATIONS**

None at present but training of officers will need to receive continued funding in order to maintain current high standards and to comply with the Home Office Codes of Practice. Annual costs for on-line training are approximately £2,150 and for face to face training £2350.

## **8.0 LEGAL IMPLICATIONS**

- 8.1 The Protection of Freedoms Act 2012, which requires local authorities (where RIPA applies) to obtain the approval of a magistrate for the use of covert surveillance, came into force on 1 November 2012.
- 8.2 In suitable cases where the RIPA legislation does not apply, covert surveillance could be authorised under the Data Protection Act 2018 and Article 8 of the European Convention on Human Rights (which balance the value of the surveillance against intrusions into people's private lives). This is described in some detail in the Policy and Guidance Document.

## **9.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

None at present.

## **10.0 RELEVANT RISKS**

- 10.1 There is a risk of inadvertent breaches of human rights and data protection legislation by officers unless detailed guidance is given and followed in the Policy and Guidance Documents.
- 10.2 There is a risk that some investigations of anti-social behaviour will not be able to use covert surveillance under RIPA because the suspected criminal behaviour does not carry a custodial sentence of 6 months or more.
- 10.4 Where RIPA does not apply, but covert surveillance would be legitimate, necessary, and proportionate, then it would have to be authorised by the Authorising Officers in accordance with the Data Protection Act 2018 e.g. to supply evidence in disciplinary or care proceedings as explained in paragraph 10 of the amended Policy and Procedures Guidance Document.

## 11.0 ENGAGEMENT/CONSULTATION

None.

## 12.0 EQUALITY IMPLICATIONS

The report has no impact for equality implications at this stage

## 13.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

The content and recommendations contained within this report are expected to have no direct impact on emissions of greenhouse gases but covert surveillance may reduce damage to the environment if it provides the evidence required to prosecute successfully those guilty of environmental offences.

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## BACKGROUND PAPERS

None other than the Home Office Codes of Practice on RIPA. and the use of Communications Data and the Council's Policy and Guidance Document

## SUBJECT HISTORY (last 3 years)

Council Meeting	Date
	Date
Reports to the Audit & Risk Management Committee	25 September 2017 12 February 2018 24 September 2018 11 March 2019 27 January 2020