

AUDIT AND RISK MANAGEMENT COMMITTEE**11 MARCH 2019**

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

REPORT SUMMARY

- (a) This report informs the Committee of the outcome of an inspection on 17 December 2018 by the Investigatory Powers Commissioner.
- (b) It also invites the Committee to agree to additions to the Policy and Procedure Guidance on the Council's use of covert surveillance in the light of the revised Home Office Codes of Practice and the Inspector's report.

RECOMMENDATIONS

- 1) That the Committee note the contents of the report of the Inspector appointed by the Investigatory Powers Commissioner on the use of covert surveillance by the Council and adopts its recommendations.
- 2) That the Committee approve the amendments and additions to the Policy and Procedure Document contained in Appendix 3 on the use of powers under the Regulation of Investigatory Powers Act 2000 (RIPA).

SUPPORTING INFORMATION

1.0 REASONS FOR THE RECOMMENDATIONS.

- 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.
- 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

None

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 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 Office of Surveillance Commissioners (OSC) was responsible for overseeing the operation of RIPA. The OSC inspected the Council on 13 May 2015. The outcome of that inspection was reported to the Committee on 22 September 2015 (Appendix 2). The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report and subsequently on 22 November 2016.

4.0 INSPECTION ON 17 DECEMBER 2018

- 4.1 The functions of the OSC have now been transferred to the Investigatory Powers Commissioner who appointed an inspector (Graham Wright) to conduct an inspection of the Council's use of RIPA on 17 December 2018. His report is attached at Appendix 1 as is the response of the Chief Executive.
- 4.2 The report of the previous inspection on 13 May 2015 is attached at Appendix 2. Mr Wright was satisfied that the Council had carried out the recommendations made in that report.

- 4.3 Mr Wright was satisfied with the arrangements made for the annual training of authorising officers and applying officers. He considered the training was relevant, comprehensive and gave accurate and useful advice to attendees.
- 4.4 Mr Wright examined a sample of authorisations and of the central record of authorisations and found them to be of a very high standard. No criticisms were made of their contents. This was the result of the high quality of annual training that officers received.
- 4.5 Mr Wright was satisfied that this Committee received regular reports on the use of RIPA and was responsible for approving any policy changes.
- 4.6 Mr Wright considered that the Council Policy and Procedure on the use of Powers under the Regulation of Investigatory Powers Act was “in many ways a very good document”. It did however need to include additional guidance in order to comply with the new provisions of the Home Office Codes of Practice on Covert Surveillance and Covert Human Intelligence Sources published in August 2018.
- 4.7 In particular there was a need for more detailed guidance on the use of internet and social networking sites for those departments “outside of the usual RIPA audience” viz Children’s Services. Social workers were using information from those sites quite properly to protect children but needed to be made more aware of those circumstances where authorisation for directed surveillance was available and required.
- 4.8 Attached to this report at Appendix 3 is the Policy and Guidance which has been revised to take account of the new Home Office Codes of Practice and Mr Wright’s report. Paragraphs 3.6, 3.11, 4.6.3, 9.2, 9.5 and 10.2 have either been added or expanded in order to give more detailed guidance to officers on the use of RIPA in circumstances where the law has been clarified by the Home Office Codes of Practice.
- 4.9 Section 5 on Communications Data has also been revised to take account of changes in the law that came into effect on 5th February 2019 although in recent years the council has not made use of these powers
- 4.10 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. They were invited to the annual training event held on 19 October 2018 and will be invited to future training events.

5.0 CHANGES IN LEGISLATION

- 5.1 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.

6.0 ANNUAL TRAINING

- 6.1 This took place on 19 October 2018 and was conducted by Stephen Morris an acknowledged expert in this field.
- 6.2 It was attended by Applying and Authorising Officers who are required to undertake refresher training every 2 years.
- 6.3 Mr Morris dealt in detail with the requirements for authorisations of surveillance under RIPA and the quality of his training was commended by Mr Wright.

7.0 ADDITIONS TO THE POLICY AND PROCEDURE GUIDANCE DOCUMENT

- 7.1 This document is attached as an Appendix 3 to the report. It updates the guidance in light of the Home Office Codes of Practice published in August and November 2018 and the report of Mr Wright.

8.0 FINANCIAL IMPLICATIONS

- 8.1 None at present but annual training will need to receive continued funding in order to maintain current high standards.

9.0 LEGAL IMPLICATIONS

- 9.1 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.
- 9.2 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).

10.0 RESOURCE IMPLICATIONS: ICT,STAFFING AND ASSETS

- 10.1. Staff experienced in the use of RIPA. left the Council's employment in 2018 .Their replacements and social workers in the Childrens department will require training and advice and guidance on the law and the various techniques of covert surveillance.

11.0 RELEVANT RISKS

- 11.1 These have been discussed in previous reports.
- 11.2 There is a risk that some investigations of anti-social behaviour will not be able to use covert surveillance because the suspected criminal behaviour does not carry a custodial sentence of 6 months or more.

11.3 The Anti-Social Behaviour Team are however intent on applying to the Court for approval of covert surveillance in suitable cases of suspected harassment of individuals which would amount to an offence under the Protection from Harassment Act 1997 (which can attract a sentence of 6 months or more imprisonment).

11.4 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 eg to supply evidence in disciplinary or care proceedings as explained in paragraph 10 of the amended Policy and Procedures Guidance Document.

12.0 ENGAGEMENT/CONSULTATION

12.1 None.

13.0 EQUALITY IMPLICATIONS

13.1 None.

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APPENDICES

- Appendix 1 - Report of the Inspector on 17 December 2018 and the Chief Executive's response
- Appendix 2 - Report of the Inspector on 13 May 2015.
- Appendix 3 - Revised Policy and Procedure on the use of Powers under the Regulation of Investigatory Powers Act 2000.

REFERENCE MATERIAL

None other than the Home Office Codes of Practice on RIPA. and the use of Communications Data

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	17 February 2016 13 June 2016 22 November 2016 14 March 2017 12 June 2017 25 September 2017 12 February 2018 24 September 2018