

Audit and Risk Management Committee
Monday, 27 January 2020

REPORT TITLE:	Regulation of Investigatory Powers Act 2000(RIPA)
REPORT OF:	Director Governance and Assurance (Monitoring Officer)

REPORT SUMMARY

- (a) This report informs the Committee of the use by Council officers of the covert surveillance powers of the Council since March 2019.
- (b) It also invites the Committee to review and agree to additions to the Policy and Procedure Guidance on the Council's use of covert surveillance in the light of the recommendations made during the annual training event.

RECOMMENDATIONS

- 1) That the Committee note the use made by the Council of covert surveillance since March 2019.
- 2) That the Committee approve the amendments and additions to the Policy and Procedure Document contained in the Appendix 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. 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

None

3.0 BACKGROUND INFORMATION AND THE COUNCIL'S POLICY AND PROCEDURE DOCUMENT

- 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.
- 3.5 On 14 November 2019 the annual training on the use of RIPA was delivered by "Act Now" to officers who apply for, or authorise the use by the Council of covert surveillance.
- 3.6 During the training it was identified that there was a need for more detailed guidance on the use of internet and social networking sites for investigations. Officers are using information from those sites quite properly to carry out their duties but procedures

needed to be implemented to ensure they were fully aware of the circumstances in which authorisation for directed surveillance was available and required either under RIPA or under the HRA and the Data Protection Act 2018 (DPA).

- 3.7 Attached to this report is the Policy and Guidance which has been further revised to take account of the new Home Office Codes of Practice and the advice of IPCO. Paragraphs 9.3, 10.3 and 11.1 to 11.5 have either been added or expanded in order to give more detailed guidance to officers on the use of RIPA and the DPA in circumstances where the law has been clarified by the Home Office Codes of Practice IPCO and the Council's trainer.
- 3.8 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.
- 3.9 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 14 November 2019 and will be invited to future training events.

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 14 November 2019 and was conducted by Stephen Morris an acknowledged expert in this field.
- 5.2 It was attended by Applying and Authorising 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 MARCH 2019

- 6.1 On 26 November 2019 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.

7.0 FINANCIAL IMPLICATIONS

- 7.1 None at present but training of officers will need to receive continued funding in order to maintain current high standards.

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).

9.0 RESOURCE IMPLICATIONS: ICT,STAFFING AND ASSETS

- 9.1 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 eg 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

- 11.1 None.

12.0 EQUALITY IMPLICATIONS

12.1 None at this stage.

13.0 ENVIRONMENTAL AND CLIMATE IMPLICATIONS

13.1 The content and recommendations contained within this report are expected to have no impact on emissions of CO2.

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APPENDICES

Appendix - Revised Policy and Procedure on the use of Powers under the Regulation of Investigatory Powers Act 2000.

BACKGROUND PAPERS

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	14 March 2017 12 June 2017 25 September 2017 12 February 2018 24 September 2018 11 March 2019