



Report of: **Executive Member for Finance, Performance and Community Safety**

Meeting of:	Date	Ward(s)
Executive	23 November 2017	All

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THE APPENDICES TO THIS REPORT ARE EXEMPT FROM PUBLICATION

SUBJECT: THE COUNCIL'S USE OF SURVEILLANCE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

1. Synopsis

- 1.1 The report provides feedback on the inspection from the Office of Surveillance Commissioners (OSC) on 1 December 2016.
- 1.2 The report also updates the Executive on the council's use of covert surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA).

2. Recommendations

- 2.1 To note the inspection report of the OSC and the actions drawn up to address the recommendations.
- 2.2 To note the level and nature of covert surveillance undertaken by the council.

3. Background

- 3.1 RIPA provides a statutory framework regulating the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities. The Act requires public authorities, including local authorities, to use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights.
- 3.2 Directed surveillance is covert surveillance conducted for the purposes of a specific investigation or operation and it is likely to result in the obtaining of private information about a person. Private information includes any aspect of a person's private or personal relationship

with others, including family and professional or business relationships. 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.

- 3.3 The use of covert surveillance techniques by local authorities was previously the subject of some controversy. The Government introduced significant changes under the Protection of Freedoms Act 2012, which came into effect on 1 November 2012. The changes mean that a local authority can now only grant authorisations under RIPA for the use of directed surveillance where it is for the purposes of investigating criminal offences that attract a custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. A magistrate's approval is also required before the RIPA authorisation can take effect.
- 3.4 All RIPA authorisations must be signed by an authorising officer. Authorising officers must be trained before issuing any authorisations and they should attend regular refresher training. The council currently has 3 authorising officers:
- Corporate Director Housing & Adult Social Services
 - Service Director Public Protection
 - Audit Manager (Investigations)
- 3.5 In December 2014, the Home Office issued revised codes of practice - Covert Surveillance and Property Interference Code of Practice ("the Code of Practice") and Covert Human Intelligence Sources Code of Practice – replacing the previous codes of practice issued in 2010. Public authorities may be required to justify, with regard to the codes of practice, the use or granting of authorisations in general, or the failure to use or grant authorisations where appropriate.
- 3.6 The Code of Practice sets out that elected members of a local authority should review the authority's use of RIPA and set the policy at least once a year. The Code of Practice also provides that members should consider internal reports on use of RIPA on a regular basis to ensure that it is being used consistently with the council's policy and that the policy remains fit for purpose.
- 3.7 The Code of Practice also sets out that it is good practice for public authorities to appoint a Senior Responsible Officer (SRO) to be responsible for the authority's compliance with RIPA. The SRO will engage with inspectors during inspections and where necessary oversee the implementation of post-inspection action plans. Within local authorities, the SRO should be a member of the corporate leadership team and the Corporate Director Resources has been nominated to this role for the council.

4. OSC inspection

- 4.1 The OSC has carried out inspections of the council's management of covert activities every 2 to 3 years. The most recent inspection was on 1 December 2016 and was carried out by Assistant Surveillance Commissioner, His Honour Brian Barker CBE, QC ("the Assistant Surveillance Commissioner").
- 4.2 The report identifies areas of good practice and concludes, "careful attention had been given to the recommendations arising from the last inspection, and appropriate steps in the form of a completed action plan, had been taken."
- 4.3 The council holds a central register of authorisations which, in accordance with the recommendation of the OSC Inspector in 2013, is maintained by Legal Services. Legal

Services also issues the unique reference numbers (URNs) for investigations and provides officers with RIPA training. Following the recent inspection the Assistant Surveillance Commissioner found that “the overall picture is positive, and there is now central control such that systems are in place to ensure both understanding and compliance with the Act, and efficient gathering and presentation of evidence when directed surveillance is deployed”.

- 4.4 The Assistant Surveillance Commissioner made 2 recommendations in his report:
- (i) To make minor amendments to the RIPA policy document
 - (ii) To consider ways of creating more awareness by the elected members of the scope and availability of RIPA procedures
- 4.5 The minor amendments proposed by the Assistant Surveillance Commissioner to the RIPA policy document have been implemented.
- 4.6 The Assistant Surveillance Commissioner acknowledged that there is a line of communication between members and the SRO and the intranet has a dedicated RIPA page with nutshell guidance and pointers to Legal Services that is available to officers and members. However, the following actions will promote and strengthen members’ awareness of the scope and availability of RIPA procedures:
- (i) Officers will prepare a briefing on RIPA for new members elected in 2018 as part of the information provided about combatting fraud/detecting criminal activity
 - (ii) An annual report will continue to be brought to Audit Committee regarding the council’s use of surveillance under RIPA
 - (iii) An annual report will be brought to Executive, six months after the Audit Committee report, regarding the council’s use of surveillance under RIPA
 - (iv) The Policy and Performance Scrutiny Committee to be provided with information about the use of RIPA in the Annual Crime Report (as discussed by the Audit Committee and Audit Committee(Advisory) on 14 June 2017)
- 4.7 On 1 September 2017, the Investigatory Powers Commissioner’s Office (ICPO) took over responsibility for oversight of investigatory powers from the Interception of Communications Commissioner’s Office, the OSC and the Intelligence Services Commissioner. Future inspections of the council’s use of RIPA will be undertaken by the ICPO.

5. Use of RIPA

- 5.1 During this financial year since 1 April 2017, the council has authorised directed surveillance on 1 occasion for a case of unlawful subletting and benefit fraud investigated by Housing Investigations. This authorisation has been given judicial approval by a magistrate.
- 5.2 For the previous financial year (1 April 2016 to 31 March 2017) the council authorised directed surveillance on 2 occasions for:
- 1 case of unlawful subletting investigated by Housing Investigations
 - 1 case of fraudulent trading investigated by Trading Standards

Both authorisations were given judicial approval by a magistrate.

- 5.3 The council has not authorised the use of a covert human intelligence source since October 2010.
- 5.4 The trend in the number of RIPA authorisations has been downwards. By comparison the council has granted the following number of directed surveillance authorisations in previous

years:

- 2010/11 – 23
- 2011/12 – 15
- 2012/13 – 17
- 2013/14 - 6
- 2014/15 – 4
- 2015/16 - 1

6. Implications

6.1 Financial implications:

There are no financial implications arising directly from this report. Robust anti-fraud activity is an integral part of the council's strategy for safeguarding its assets and maximising its use of resources. The use of investigatory surveillance is one of the tools the council uses to achieve these aims.

6.2 Legal Implications:

RIPA was introduced to ensure that covert surveillance undertaken by public authorities is undertaken in accordance with the European Convention on Human Rights and the Human Rights Act 1998.

The council can only undertake covert surveillance if the proposed operation is authorised by one of the council's authorising officers and subsequently approved by a magistrate. A local authority can only use directed surveillance if it is necessary to prevent or detect criminal offences, which attract a custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. The authorising officer must also be satisfied that the proposed directed surveillance is proportionate to what is sought to be achieved.

There has been a reduction in the number of directed surveillance authorisations granted by the council since 1 November 2012, when the Protection of Freedoms Act 2012 introduced significant changes to local authorities' use of RIPA. However, the council could still face a legal challenge to the way in which covert surveillance is conducted; this could lead to the evidence obtained being ruled as inadmissible and/or a complaint to the Investigatory Powers Tribunal.

6.3 Environmental Implications:

Nil

6.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A resident impact assessment has not been conducted, as this report only provides monitoring information and a legal update for the Executive.

7. Conclusion and reasons for recommendations

- 7.1 The OSC only made 2 recommendations in the report completed by the Assistant Surveillance Commissioner after the inspection on 1 December 2016. These recommendations, are described by the OSC as “readily achieved” and actions have already been drawn up to address both recommendations.
- 7.2 The Protection of Freedoms Act 2012 has introduced additional safeguards to the use of RIPA and the impact of covert surveillance on the privacy of those under investigation. This has seen a reduction in the use of directed surveillance by the council.

Appendices:

Appendix 1 (exempt) – OSC Inspection Report dated 23.12.16

Appendix 2 (exempt) – Completed action plan following OSC inspection report dated 15.11.13

Background papers: None

Final report clearance:

Signed by:



7 November 2017

Executive Member for Finance, Performance
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