

Report of: Corporate Director of Resources

| Meeting of: | Date | Agenda item | Ward(s) |
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| Audit Committee | 24 July 2018 | | All |

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

1. Synopsis

- 1.1 The report updates the Committee on the Council’s use of covert surveillance under the Regulation of Investigatory Powers Act 2000 (“RIPA”).

2. Recommendations

- 2.1 To note the level and nature of covert surveillance undertaken by the Council.
- 2.2 To note current arrangements for ensuring compliance with RIPA and the Home Office Codes of Practice.

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 2 authorising officers:
- Service Director Public Protection
 - Audit Manager (Investigations)

4. Codes of Practice

- 4.1 In December 2014, the Home Office issued codes of practice - Covert Surveillance and Property Interference Code of Practice ("the Code of Practice") and Covert Human Intelligence Sources Code of Practice. The Code of Practice 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 currently the Interim Corporate Director of Resources has been nominated to this role.
- 4.2 On 16 November 2017 the Home Office launched a public consultation on revised codes of practice and in June 2018 they published their response to the consultation. The codes of practice will be laid before Parliament and will only come into force once they have been approved by both Houses of Parliament. When the draft codes of practice are formally issued, the council's RIPA policy will be updated.
- 4.3 The draft Code of Practice includes an expanded section dealing with online covert activity. The extent of the information now available online, presents opportunities for the Council to view or gather information which may assist in preventing or detecting crime. Much of this information can be accessed without the need for RIPA authorisation but the revised Code of Practice will provide council officers with updated guidance when considering whether a directed surveillance authorisation for online activity should be sought. Also in the section on local authorities the draft Code of Practice maintains that the SRO should be a member of the corporate leadership team.

5. Inspection of the Council's arrangements for compliance with RIPA

- 5.1 The Office of Surveillance Commissioners ("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"). 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".

- 5.2 The Assistant Surveillance Commissioner recommended that the Council should look at ways of creating more awareness by the elected members of the scope and availability of RIPA procedures. To achieve this an annual report has continued to be brought to Audit Committee regarding the council's use of surveillance under RIPA. In addition, an annual report is also now being brought to Executive, six months after the Audit Committee report, regarding the council's use of surveillance under RIPA; the first annual report was brought to Executive on 23 November 2017.
- 5.3 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.

6. Use of RIPA

- 6.1 During this financial year since 1 April 2018, the Council has authorised directed surveillance on 1 occasion for a case of unlawful subletting investigated by Housing Investigations. This authorisation has been given judicial approval by a magistrate.
- 6.2 For the previous financial year (1 April 2017 to 31 March 2018) the Council authorised directed surveillance on 1 occasion for a case of unlawful subletting and benefit fraud investigated by Housing Investigations. This authorisation was given judicial approval by a magistrate.
- 6.3 The council has not authorised the use of a covert human intelligence source since October 2010.
- 6.4 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
 - 2016/17 - 2

7. Implications

7.1 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.

7.2 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.

7.3 Environmental Implications:

Nil

7.4 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 Committee.

8. Conclusion and reasons for recommendations

- 8.1 The Council has implemented the recommendations of the Assistant Surveillance Commissioner and is managing its covert activities in accordance with RIPA and the Home Office codes of practice.
- 8.2 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: None

Background papers: None

Final report clearance:

Signed by:

Corporate Director of Resources

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