



Report for:	Audit Committee
Date of meeting:	17th September 2020
Part:	1
If Part II, reason:	

Title of report:	
Contact:	Portfolio Holder for Corporate and Contracted Services Mark Brookes, Assistant Director, Corporate and Contracted Services Usman Mohammed – Litigation Barrister
Purpose of report:	<ol style="list-style-type: none"> 1. To inform the Audit Committee regarding the Council's use of Directed Surveillance and Covert Human Intelligence Sources. 2. Report on the results of the inspection by the Investigatory Powers Commissioner's Office.
Recommendations	<p>That the Audit Committee:</p> <ol style="list-style-type: none"> 1. Notes the outcome of the inspection by the Investigatory Powers Commissioner's Office. 2. Agrees the recommendations set out in paragraph 3.5 of this report in response to the Chief Inspector's observations. 3. Agrees the suggested amendments to the Council's RIPA procedural guidance to ensure it remains fit for purpose.
Period for post policy/project review	This report will be produced annually to ensure that members are kept up to date with the Council's use of its surveillance powers.
Corporate	The use of surveillance powers supports all of the Council's corporate objectives.

objectives:	
Implications:	<u>Financial</u> There are no direct financial implications arising from this report.
'Value for money' implications	<u>Value for money</u> There are no direct value for money implications from this report, however, the use of surveillance can prevent criminal activity such as fly-tipping which can incur clean-up costs if the activity is not prevented.
Risk implications	A failure to follow correct procedures and authorisations when carrying out surveillance activity could lead to evidence acquired becoming inadmissible in court.
Community Impact Assessment	The impact of surveillance on the community is assessed as part of each individual authorisation.
Health and safety Implications	There are no direct health and safety implications arising from this report.
Background papers:	None
Glossary of acronyms and any other abbreviations used in this report:	RIPA – Regulation of Investigatory Powers Act 2000 CHIS – Covert Human Intelligence Sources The Code - Property Interference Code 2018 IPCO – Investigatory Powers Commissioner's Office

Executive Summary:

The Regulation of Investigatory Powers Act (RIPA) came into force in 2000. The Act allowed:

- Councils to carry out covert surveillance of alleged offenders and to instruct individuals to form relationships with the intention of obtaining information for the prevention and detection of crime.
- Compliance with RIPA ensures that the surveillance actions taken by the Council are acceptable interference of qualified rights within the Human Rights Act 1998, in particular the right to privacy and the right to a fair trial, when gathering evidence in preparing cases for Court.

1. Introduction

- 1.2.1 When undertaking its functions the Council must comply with the Human Rights Act 1998. Article 8 establishes a qualified right to respect for private and family life. In certain circumstances that right may be interfered with.
- 1.2 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a statutory framework under which the Council may seek authorisation to interfere with this right.

2 Background

2.1 Authorisation can only be granted where interference is:

- (a) In accordance with the law
- (b) Necessary
- (c) Proportionate.

2.2 Under RIPA, the Council may seek authorisation to permit directed surveillance, the use of Covert Human Intelligence Sources (CHIS).

2.3 The Council's use of RIPA is tightly controlled. All authorisations are subject to approval by the Magistrates' Court and the use of directed surveillance and acquisition of communication data should only be permitted for :

- (a) The prevention or detection of criminal offences (at least one of which must be punishable by a maximum of at least 6 months imprisonment) or
- (b) Prescribed offences relating to the underage sale of alcohol or tobacco.

2.4 By law, elected members are not permitted to be involved in any individual application/authorisation, however paragraph 3.35 of the Covert Surveillance and Property Interference Code 2018 ('the Code') states that:

"Elected member's of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on the use of the 2000 Act on a regular basis to ensure it is being used consistently with the local authority's policy and the policy remains fit for purpose."

3. Oversight of RIPA activities

- 3.1 RIPA and associated statutory Codes of Practice prescribe the information to be included in an application to carry out surveillance activities and the thresholds to be met before applications can be approved.
- 3.2 The IPCO carries out scheduled audits of the use of RIPA by Local Authorities to monitor quality of applications and compliance with the Codes.
- 3.3 In addition all authorisations for surveillance activities carried out by the Council under RIPA must be independently reviewed and approved by a Magistrates' Court.
- 3.4 IPCO carried last carried out a review of the Council in relation to surveillance activities on 22nd June 2018. A copy of the Inspector's inspection report and the Investigatory Powers Commissioner's letter dated 26th July 2018 may be found at Annex A. The outcome of the inspection was favourable and noted that "that there is in place a coherent process for the management of surveillance and CHIS, supported by a comprehensive corporate policy document".
- 3.5 The inspector did however make some recommendations to improve the Council's RIPA policies and procedures which are set out below:

	Observation by the Inspector	Officer recommendations to address observations
1	Within the section applying to CHIS it makes reference to 'appropriate arrangements for the management and oversight of a CHIS' needing to address the health and safety of the source. This must include the requirement to complete a risk assessment (to be signed off by the Authorising Officer) detailing any factors that may impact upon the welfare of the source	Additional wording has been added to section 9 (b) page 20 shown by tracked changes in the annexed RIPA Policy
2	RIPA Section 29(5) states there must be persons responsible for the oversight and management of a source, roles known as Handler and Controller. The policy should be altered to require the applicant to detail who these people will be in relation to the source.	Additional wording has been added to section 9 (b) page 20 requiring the 'handler' and 'controller' to be named in the application - shown by tracked changes in the annexed RIPA Policy

3	Reference to urgent oral authorisation remains within section H12 and must be removed.	Reference to urgent oral authorisation in section H12, page 20 have been removed.
4	Training – regular refresher training should be provided for key staff.	Training for Investigating Officers and Authorising Officers was provided in May 2018 by an external provider. It is recommended that this will be carried out every 2 years and will therefore be repeated in 20/21
5	Reports to Members	Due to the low level of authorisations it is recommended an annual report is brought to the Audit Committee to keep Members informed on the Council's use of directed surveillance.

4. Annual Review of the use of RIPA – 1st April 2019 to 31st March 2020

- 4.1 During this period there were no applications to use covert human intelligence sources (CHIS), including applications relating to juvenile CHIS.
- 4.2 During this period there were 3 applications submitted for Directed Surveillance authorisation, all of which were authorised and all of which were granted judicial approval.
- 4.3 All of these Directed Surveillance operations were concluded during this period.

Activity Authorised	Nature of offence under investigation	Outcome
Directed Surveillance	Flytipping, Markyate (Sept 19)	One offender prosecuted and convicted – Fine £640 plus costs £848
Directed Surveillance	Flytipping, Markyate, (January 20)	4 incidents recorded, currently under investigation (delayed due to Covid-19)
Directed Surveillance	Flytipping, Barnes Lane, Kings Langley, January	3 cameras stolen from the location with no

	20)	recordings shown. Remaining camera's removed to prevent further losses.
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5. Conclusions

- 5.1 The IPCO inspection provides the Council with an external review of the way the Council is operating its powers under RIPA. It provides assurance that the Council is undertaking such powers in a robust manner and confirms the Council is legally compliant.
- 5.2 Officers propose to proceed with the recommended actions in response to the Inspector's observations and Members are asked to confirm their support.
- 5.3 Officers will provide a further annual report to the Audit Committee in April/May 2021 updating on the progress regarding the recommendations and informing them on the Council's use of RIPA for the Committee's further consideration.