

INVESTIGATORY POWERS COMMISSIONER'S OFFICE INSPECTION REPORT

WARDS AFFECTED

All

EXEMPT/CONFIDENTIAL ITEM

No

1. PROPOSED DECISION

- 1.1 To note the Investigatory Powers Commissioner's Office inspection report in relation to the Council's use of directed surveillance and covert human intelligence sources.

2. JUSTIFICATION FOR THE DECISION

- 2.1 The Terms of Reference for the Audit and Governance Committee require it to:

- consider the reports of external audit and inspection agencies and monitor management action in response to the issues raised.

3. RIPA AUTHORISATIONS/JUDICIAL APPROVALS

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected while also ensuring that law enforcement agencies have the powers they need to conduct investigations effectively. Members will be aware from previous reports in respect of the Council's use of RIPA powers, that it must have in place a system of authorising, recording and reviewing any surveillance that it carries out that is covered by the Act.
- 3.2 The Council is included within the RIPA framework with regard to the authorisation of both directed surveillance and of the use of covert human intelligence sources (CHIS). The Council is only able to authorise surveillance under RIPA if it is for the purpose of preventing or detecting crime or preventing disorder subject to the "serious offence test". These are criminal offences punishable by a term of at least six months imprisonment or criminal offences relating to the under-age sale of alcohol or tobacco.
- 3.3 The Protection of Freedoms Act 2012 made a number of changes, amongst other things, to the RIPA process. Since 1 November 2012, local authorities have been required to obtain judicial approval from the Magistrates Court before they can use their existing RIPA powers. This applies to all local authority RIPA usage, including communications data, directed surveillance and covert human intelligence sources (CHIS). A judicial approval will also be required if authorisations are being renewed.
- 3.4 The Council is required to maintain a central record of internal authorisations signed by authorised officers. However, the authorisation will not take effect until judicial approval has been granted. Approval can only be given if the Magistrate is satisfied that:

- (a) there were reasonable grounds for the authorising officer approving the application to believe that the surveillance/CHIS was necessary and proportionate and that those grounds remain;
- (b) the authorising officer was of the correct seniority within the Council, i.e. a Director, Head of Service or Service Manager, as per the 2010 Order;
- (c) the granting of the authorisation was for the prescribed purpose, i.e. preventing or detecting crime and it satisfies the Serious Offence test for directed surveillance.

3.5 The Deputy Director, Legal & Governance is the Council's Senior Responsible Officer ("SRO") for the purposes of RIPA in accordance with the Home Office Codes of Practice. It is considered good practice that a senior responsible officer should be responsible for:

- the integrity of the process in place within the Council to authorize directed surveillance;
- compliance with the legislation and Codes of Practice;
- engagement with the Commissioner and inspectors when they conduct their inspections; and
- where necessary, overseeing the implementation of any post-inspection action plans recommended by IPCO.

The Council's Legal Services Manager is the RIPA Coordinator with day to day responsibility for advice and guidance to client departments on the process.

4. INVESTIGATORY POWERS COMMISSIONER'S OFFICE ("IPCO") INSPECTION FINDINGS

- 4.1 The Council's use of its RIPA powers in respect of covert surveillance is subject to annual reporting and triennial inspection by the IPCO (formerly known as the Office of Surveillance Commissioners). The Council was inspected on 10 October 2018 by an Inspector from IPCO. During the inspection, authorisations and procedures were closely scrutinised and a wide group of Council officers from relevant Sections met with the Inspector.
- 4.2 The inspection report was received by the Chief Executive in November 2018. The inspection noted that the Council continues to have a robust RIPA structure with good procedures. The findings in the report have been shared with relevant officers
- 4.3 There is one recommendation in the inspection report that relates to the submission of cancellations in the context of directed surveillance and CHIS. The recommendation states authorisations for directed surveillance and CHIS should be submitted expediently after the covert activity is no longer necessary or proportionate. The cancellation should detail the use made of the covert activity, the handling of any surveillance material and be suitably endorsed by the authorizing officer.
- 4.4 This recommendation has been shared with the authorising officers in Regulatory

Services (Trading Standards) who make the most use of RIPA powers. Changes have been made to the recording and timescales for cancellations in order to improve the oversight of authorised covert activity.

- 4.5 The inspection report notes that the three recommendations from the Council's previous inspection in 2015 have been adequately addressed and are now discharged.
- 4.6 Other learning points were identified by the Inspector which have been considered and addressed since receipt of the report. The report comments on the Council's use of non-RIPA activity where the criteria for authorisation as directed surveillance or CHIS is not met. There is now oversight in place of the records maintained in relation to the Council's use of non-RIPA activity to monitor the level and type of cases. A quarterly update is provided by Internal Audit to the Council's SRO and RIPA Co-ordinator to consider any potential RIPA implications. An Authorisation for Monitoring/Impact Assessment Form used by Internal Audit and HR has been revised to take account of the issues raised in paragraph 8.13 of the report. Whilst there is very limited use of this type of activity, the authorisation form ensures the process is managed appropriately in accordance with the Employment Practices Data Protection Code issued by the Information Commissioner's Office.
- 4.7 A similar non-RIPA authorisation form has recently been issued to Team Managers in the People's Services Department as good practice in respect of the use of social networking sites (SNS) and internet research by social workers in case work. This is in conjunction with the guidance in the Council's Social Media Investigations Procedure.
- 4.8 The Council's RIPA Policy Guidelines on the use of directed surveillance and CHIS will be reviewed and reported to the next meeting of this Committee for approval.

5. RISKS ASSOCIATED WITH THE PROPOSED DECISION

- 5.1 None.

6. OTHER IMPLICATIONS

- 6.1 None.

7. PREVIOUS APPROVAL/CONSULTATION

- 7.1 None.

8. ALTERNATIVE OPTIONS AND IMPLICATIONS THEREOF

- 8.1 None.

Appendix 1: Letter to the Chief Executive from IPCO dated 5 November 2018

Appendix 2: IPCO Inspection Report received November 2018

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