

Audit and Governance Committee
30 May 2019

<u>KEY DECISION</u> <i>No</i>
<u>DATE FIRST PUBLISHED</u> <i>N/A</i>

REGULATION OF INVESTIGATORY POWERS (RIPA) REVISED POLICY GUIDELINES

WARDS AFFECTED

All

EXEMPT/CONFIDENTIAL ITEM

No

1. PROPOSED DECISION

1.1 To approve the revised RIPA Policy Guidelines for the 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.

4. INVESTIGATORY POWERS COMMISSIONERS OFFICE ("IPCO")

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. The Council was recently inspected on 10 October 2018 by an Inspector from the IPCO. The detailed findings of the Inspection were reported to the last meeting of this Committee. It is to be noted that the inspection recognised that the Council continues to have a robust RIPA structure with good procedures.

4.2 The Deputy Director - Legal & Governance is the Responsible Officer for the purposes of RIPA in accordance with the Home Office Covert Surveillance etc. Code 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 the Code of Practice;
- engagement with the Commissioners and Inspectors when they conduct their inspections; and
- where necessary, overseeing the implementation of any post-inspection action plans recommended by the 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.

5. REVISED RIPA POLICY GUIDELINES

5.1 The Council last updated its RIPA Policy Guidelines in September 2015. The recent inspection noted that the Home Office has recently issued revised codes of practice on both Covert Surveillance and Property Interference as well as CHIS. The inspection advised that the Council will need to consider reviewing its Policy Guidelines in light of the new codes of practice.

- 5.2 An initial review of The Policy Guidelines has taken place in order to ensure that they remain compliant with current legislation, relevant codes of practice and continue to meet the Responsibilities of the Council. The changes proposed include (i) ensuring that all links are updated to the new codes of practice, etc. (ii) placing additional responsibilities on the responsible officer (iii) the introduction of a new requirement relating to the reporting of errors. In addition, the number of designated authorising officers has been reduced at the suggestion of the inspector.
- 5.3 Members will be aware that only one recommendation was formally made and set out in the inspection report, this related to the cancellation of authorisations. Here the inspector's recommendation has now been specifically set out in the Policy Guidance at paragraph 3.12.
- 5.4 A copy of the revised Policy Guidelines is attached at Appendix 1. The proposed amendments are highlighted in track changes.
6. RISKS ASSOCIATED WITH THE PROPOSED DECISION
- 6.1 None.
7. OTHER IMPLICATIONS
- 7.1 None.
8. PREVIOUS APPROVAL/CONSULTATION
- 8.1 None.
9. ALTERNATIVE OPTIONS AND IMPLICATIONS THEREOF
- 9.1 None.

Appendix 1: RIPA Policy Guidelines

JAN BAKEWELL

Deputy Director, Legal & Governance

The contact officer for this report is Mark Fisher Legal Services Manager, Town Hall
Tel. (01744) 673256