

Decision Maker: PUBLIC PROTECTION AND ENFORCEMENT POLICY
DEVELOPMENT & SCRUTINY COMMITTEE

Date: Tuesday, 12 September 2023 at 7.00 pm

Decision Type: Non-Urgent Non-Executive Non-Key

Title: REGULATION OF INVESTIGATORY POWERS ACT 2000

Contact Officer: Rob Vale – Head of Safer Communities
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Ward: (All Wards);

1. Reason for report

- 1.1 This report informs the Committee of the outcome of an inspection on 14th February 2023 by the Investigatory Powers Commissioner's Office (IPCO).
- 1.2 It also invites the Committee to agree to additions to the Policy and Procedure Guidance on the Council's use of covert surveillance in the light of the IPCO's recommendations.

2. **RECOMMENDATION(S)**

The Committee is asked to:

- 2.1 Note the contents of the report of the Inspector appointed by the Investigatory Powers Commissioner on the use of covert surveillance by the Council and adopts its recommendations.
- 2.2 Note the Policy and Procedure Document contained in Appendix 2 on the use of powers under the Regulation of Investigatory Powers Act 2000 (RIPA).

Impact on Vulnerable Adults and Children

1. Summary of Impact: The local authority is empowered to make use of directed surveillance for the purposes of the prevention and detection of crime. Enforcement techniques to detect the sale of age restricted products to under-age children includes the use of directed surveillance. The detection and prosecution of rogue traders and illegal fly tipping is essential in order to maintain low levels of fear of crime in our communities which impacts all residents.
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Corporate Policy

1. Policy Status: Existing Policy:
 2. MBEB Priority: A safe & protected community
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Financial

1. Cost of proposal: N/A
 2. Ongoing costs: N/A
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: £N/A
 5. Source of funding: N/A
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Personnel

1. Number of staff (current and additional): N/A
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Statutory Requirement:
 2. Call-in: Applicable:
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Procurement

1. Summary of Procurement Implications: N/A
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Not Applicable

2. Summary of Ward Councillors comments: Not Applicable
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3. COMMENTARY

Background

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities.
- 3.2 The Council uses powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more, or is related to the underage sale of alcohol and tobacco. The three powers available to local authorities under RIPA are:
 - (a) the acquisition and disclosure of communications data
 - (b) directed surveillance
 - (c) and covert human intelligence sources (“CHIS”)
- 3.3 The Act sets out the procedures that the Council must follow if it wishes to use directed surveillance techniques or acquire communications data in order to support core function activities (e.g. typically those undertaken by Trading Standards, Environment Enforcement (fly-tipping) and Environmental Health). The information obtained as a result of such operations can later be relied upon in court proceedings providing RIPA is complied with.
- 3.4 The Home Office Code for Covert Surveillance Property Interference recommends that elected members should review the Council’s use of the legislation and provide approval to its policies.
- 3.5 RIPA governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. The Council can only use powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more (e.g. offences relating to counterfeit goods which carry a maximum penalty of 10 years in prison) or the offence is related to the underage sale of alcohol and/or tobacco.
- 3.6 RIPA sets out the procedure that local authorities must follow when applying to use RIPA powers. These include approval by Authorised Officers that the proposed use of the powers is “necessary and proportionate”. All applications must also be approved by the Magistrates Court before RIPA powers can be exercised. Communications data applications are submitted to the National Fraud Network for authorisation and action.
- 3.7 The Council is required to have a Senior Responsible Officer to maintain oversight of the RIPA arrangements, procedures and operations. The Council’s Director of Corporate Services & Governance performs this function and is responsible for managing the requirements under RIPA.

Inspection on 14th February 2023

- 3.8 The Investigatory Powers Commissioner’s Office (IPCO) oversee the use of covert investigatory powers by more than 600 public authorities under the guidance of the Investigatory Powers Commissioner, Sir Brian Leveson. One of the Commissioner’s inspectors (Grainne Athorn) conducted an inspection of the Council’s use of RIPA on 14th February 2023. The outcome of

that inspection is attached at Appendix 1. The Council's Policy and Procedure Document has since been amended to include the recommendations set out in the report and is attached at Appendix 2.

- 3.9 The inspection was conducted remotely, although Ms Athorn was provided with a copy of the LBB RIPA Policy and Procedure document, and example applications in advance of the meeting. Officers present were Tasnim Shawkat -Director of Corporate Services & Governance and Rob Vale, Head of Safer Communities.
- 3.10 Ms Athorn noted that since the last inspection by IPCO in December 2019, one recommendation remained extant since 2015, that being that the RIPA Policy did not reference the requirements for a risk assessment to be completed prior to the engagement of a CHIS.
- 3.11 Two new recommendations in 2019 concerned the need for the Senior Responsible Officer (SRO) to ensure a process is in place to conduct regular reviews of extant directed surveillance authorisations and the need for the Authorisation officer to provide direction as to the management of the product obtained as a result of surveillance activity. The former recommendation has been discharged, the latter required further action in that future cancellations need to reference the location of the related case files and RIPA material.
- 3.12 The 2023 inspection included comments with regards the sample authorisation submitted ahead of the inspection in particular:
1. The need to place an emphasis on minimising collateral intrusion by ensuring that excessive private information is not processed as a result of the surveillance.
 2. The need to comply with guidance set out by the Covert Surveillance and Property Interference Code of Practice 2018 in respect of proportionality statements.
 3. The need for the AO to consider a fuller statement when considering the necessity and proportionality of an application, although it was acknowledged the AO statement was informative and provided an insight into his consideration.
 4. The need for the AO to clearly state what he was authorising.
- 3.13 Ms Athorn recognised that the use of covert surveillance is not a daily activity for our authority and welcomed the planned training which took place in March 2023.
- 3.14 Ms Athorn commented that the RIPA Policy was a helpful guide for personnel to gain a basic understanding of what is required from the surveillance and CHIS authorisation process. A number of amendments were required which are set out in the table in Appendix 3.
- 3.15 The authority responded to the IPC on 7th June 2023 acknowledging the report and the recommendations.

RIPA activity 2022

- 3.16 There were four applications for directed surveillance made in the year 2022. Two were in relation to the test purchase of alcohol and tobacco by underage volunteers; two were in relation to the investigation of fly tipping. In relation to the underage sales, the operation identified two illegal sales which later resulted in the review of alcohol licences held by the business. No evidence was captured with regards the fly tipping operations.
- 3.17 There were no applications with regards the use of Covert Human Intelligence Sources.

3.18 Since 2018 the council has obtained 12 sets of 'communications data' (e.g. Call Data Records, or CDRs) of individuals from mobile telecoms providers, indirectly through another agency. The legal basis for the requests was under the Investigatory Powers Act 2016.

5 POLICY IMPLICATIONS

5.1 The RIPA Policy & Procedure has been amended to include the recommendations set out in the IPCO report and is attached at Appendix 2.

8. LEGAL IMPLICATIONS

8.1 The Protection of Freedoms Act 2012 requires a Magistrate's approval for a local authority's use of RIPA. It is in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors. Use of RIPA to authorise directed surveillance is confined to cases where the offence under investigation carries a custodial sentence of six months imprisonment or more except in relation to underage sales of alcohol and tobacco, where this sentencing threshold will not apply.

Non-Applicable Sections:	PROCUREMENT; FINANCIAL; PERSONNEL
Background Documents: (Access via Contact Officer)	RIPA codes - GOV.UK (www.gov.uk)