

Corporate Overview and Scrutiny

Management Board

22 October 2019



Regulation of Investigatory Powers Act 2000 – Annual Review of the Council's use of powers

**Report of Helen Lynch
Head of Legal and Democratic Services**

Electoral division(s) affected:

None

Purpose of the Report

1. To inform Members about the Council's use of its powers under the Regulation of Investigatory Powers Act 2000 ('RIPA') during the period of 1 April 2018 to 31 March 2019.
2. To inform Members of the changes to the legislation and policy.

Executive Summary

3. The report sets out an overview of the Council's use of its powers under RIPA. This includes details of RIPA authorisations that have been granted during the period of 1 April 2018 to 31 March 2019 and the outcome of the operations that these authorisations relate to. Additionally, the report details the recent changes in the law regarding investigatory powers and the steps taken to incorporate these changes in to the Council's policies and procedures. These steps include, re-constituted the RIPA Officers Group, training for Officers and a review of the Council's corporate guidance on RIPA.

Recommendation

4. It is recommended that Members:
 - a. Receive the annual report on the Council's use of powers under RIPA; and
 - b. Note that RIPA Corporate Guidance has been updated to reflect current legislation and best practice.

The Council's use of RIPA between 1 April 2018 to 31 March 2019

6. The table below provides details of RIPA authorisations that have been granted by the Council during the period of 1 April 2018 to 31 March 2019.
7. Authorisations must be approved by Magistrates, who ensure that the correct procedures have been followed and that the relevant factors have been taken into account.

Type of Investigation	Number of authorisations during the period of 1 April 2018 and 31 March 2019	
	Directed Surveillance	CHIS
Illicit tobacco products	2	1
Alcohol Test Purchasing	2	NIL
Counterfeit Goods	NIL	1
Benefit Fraud	1	NIL
Total	5	2

The Council's use of its powers under RIPA have decreased from the previous year with 7 RIPA authorisations granted in 2018-2019 compared with 14 in 2017-2018. The reduction in the number of applications is attributed in part to the use of alternative investigative techniques not requiring RIPA authorisation.

8. A direct surveillance relating to possible offences contrary to the Trade Marks Act 1994, Tobacco and Related Products Regulations 2016 and Standardised Packaging of Tobacco Products Regulations 2015 resulted in prosecution. 140 cigarettes and 0.15kg of hand rolling tobacco was seized as part of this operation and during the test purchase 640 cigarettes were supplied. The Defendant pleaded guilty and was subject to a fine of £120.00, costs totalling £400.00 and a £30.00 victim surcharge.
9. A further operation with a linked direct surveillance for the tobacco products resulted in a prosecution for offences contrary to the Trade Marks Act 1994, Tobacco and Related Products Regulations 2016 and Standardised Packaging of Tobacco Products Regulations 2015. A total of 8,800 cigarettes and 9.35kg of hand rolling tobacco was seized. The Defendant pleaded guilty and was sentenced to a 12-month community order, 250-hour unpaid work requirement, costs totalling £500 and a £85 victim surcharge.
10. The investigation into the sale of counterfeit goods, where a CHIS was used to contact via the internet resulted in the offender being issued with a caution for the offence detected.
11. A test purchase operation for the underage sale of alcohol resulted in the premises being required to appear before the Licensing Committee where more stringent conditions were imposed on the licence.
12. These successful outcomes help demonstrate that the use of surveillance powers is proportionate and necessary.

RIPA Officers Group

13. The terms of reference and membership of the RIPA officers group have been reviewed and re-constituted to ensure that it remains fit for purpose and all relevant Council services are represented. The group continue to meet on a quarterly basis with a defined work programme and schedule including the review of the Corporate Guidance, in house practices and training to officers undertaking this work.

Training

14. The Investigatory Powers Commissioners Office, which oversees the use of covert surveillance by designated public authorities, places a high value on training. RIPA training was last held in 2017 and the next round of training for Officers specialising in this area of work is to take place in 2019/2020.

15. There is a planned programme for new training options for all staff, this will consider raising awareness of staff around the use of social media within their work role and new methods of training delivery such as E-learning.

Changes in Legislation and National Practice

16. The Regulation of Investigatory Powers Act 2000 (RIPA) only regulates Directed Surveillance and Covert Human Intelligence Sources. The Investigatory Powers Act 2016 (IPA) regulates the acquisition and disclosure of communications data from communication service providers by a number of bodies, including local authorities.

17. RIPA and IPA were introduced to ensure that 'individuals' rights are protected, while also ensuring that law enforcement and security agencies have the powers that they need to do their job effectively.

18. The Investigatory Powers Act 2016 brought in changes in the process to obtain Communication data which were introduced in June 2019. The change has resulted in the authorisation process to rest with the National Anti-Fraud Network (NAFN). The applications are made online by designated officers within the Council. The application is then submitted to NAFN who seek authorisation from the authorisation officer within the Council. Once authorisation has been ascertained, the application is processed by NAFN. This has reduced the administrative burden and paper trail for the Council officers. It is recognised that the existing arrangements have one authorising officer however this will be increased to three to reflect the current authorisation officers to ensure internal resilience.

19. A new Communications Data Code of Practice has produced and the updated codes have been incorporated into the Corporate Guidance. This includes the changes in the categorisation of communications data is re-categorised as Entity and Events data.

Review of the Councils Corporate Guidance on RIPA

20. The established practice has been to review the Corporate Guidance on RIPA simultaneously with producing this report. The Guidance has been reviewed and updated.
21. The updates to the Corporate Guidance reflect changes in legislation as well as a updates to reflect organisational changes such as the change in post holder titles and service directorates.
22. The updates to the Corporate Guidance also include a revision of the communications data process following changes in the legislation which places the overall oversight with the National Anti-Fraud Network (NAFN).
23. A section has been included on social media within the Corporate Guidance. This section sets out the use of social media accounts for investigative purposes such as steps to set up the accounts and the use of such accounts for investigation purposes. It also links the use of social media to the to the ICT policies which apply to all staff.
24. The Corporate Guidance will continue to be reviewed on an annual basis to reflect changes in practices, policies and legalisation.

Background Papers

- None

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Appendix 1: Implications

Legal Implications

The Council's objective is to make lawful and appropriate use of surveillance techniques where required whilst complying with the provisions of the Human Rights Act 1998 and in particular of Article 8 of the ECHR securing respect for an individual's (qualified right) to privacy.

Finance

None.

Consultation

None.

Equality and Diversity / Public Sector Equality Duty

None.

Climate Change

None.

Human Rights

Use of investigatory powers potentially engages the Human Rights Act 1998 and in particular the qualified right to private and family life under article 8 of the European Convention. This right may only be interfered with in circumstances where it is necessary and proportionate to do so in pursuit of the public interest. Oversight by the Board of the Council's RIPA operations is designed to facilitate compliance with the Human Rights Act.

Crime and Disorder

The appropriate use of an oversight of RIPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.

Staffing

With the report it is recognised that there is a need for an education programme for the workforce.

Accommodation

None.

Risk

None.

Procurement

None.