

# Corporate Overview and Scrutiny Management Board

17 December 2020

## Regulation of Investigatory Powers Act 2000 – Annual Review of the Council's use of powers 2019/2020



### 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 2019 to 31 March 2020.
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 2019 to 31 March 2020 and the outcome of the operations that these authorisations relate to.
4. The report details the updates to the Council's Corporate Guidance on RIPA as part of the annual review as well as details of the training which has been delivered.

#### Recommendation

5. 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 any changes to current legislation and best practice.

## The Council's use of RIPA between 1 April 2019 to 31 March 2020

7. The table below provides details of RIPA authorisations that have been granted by the Council during the period of 1 April 2019 to 31 March 2020.

Type of Investigation	Number of authorisations during the period of 1 April 2019 and 31 March 2020	
	Directed Surveillance	CHIS
Alcohol Test Purchasing	3	0
Counterfeit Goods	0	1
Supply of Motor Vehicles	0	2
<b>Total</b>	<b>3</b>	<b>3</b>

8. 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.
9. The Council's use of its powers under RIPA have slightly decreased from the previous year, with 6 RIPA authorisations granted in 2019-2020 compared with 7 in 2018-2019. The reduction in the number of applications is attributed in part to the use of alternative investigative techniques not requiring RIPA authorisation.

### Summary of outcomes

10. The outcomes of the six operations detailed below demonstrate that the use of surveillance powers remains proportionate and necessary. It also provides examples of the investigations and enforcement action taking place in respect of criminal activity within the County.
11. In quarter 2 there was an authorisation for directed surveillance which related to test purchases for the underage sales of alcohol from licenced premises within County Durham. During the operation ten premises were visited. Of those, seven premises made underage sales. On retesting five of the seven premises failed the test purchase by making underage sales. The five premises which failed on retesting were referred for a review of the license which resulted in variations to the licensing conditions. In addition to this fixed penalty notices were issued by the police to the sellers.
12. In quarter 3 there were two authorisations for directed surveillance relating to test purchases for the underage sale of alcohol from licenced premises. These operations highlighted that a member of staff at each premise was failing to check the age or ID of the volunteer. A fixed penalty notice was issued by the police and the business owners were issued with advice to prevent underage sales.

13. In quarter 3 authorisation was granted for a CHIS which involved the monitoring of a Facebook profile relating to the sale and supply of counterfeit goods. As part of the operation, the officer arranged the purchase of Nike trainers which were later confirmed to be counterfeit. The officer as part of the operation acquired a collection postcode and a mobile number used by the seller. This information was then used to obtain a warrant for the residential address of the seller. The warrant was executed in December 2019 and a quantity of the counterfeit goods were seized at the property. On 20 October 2020 two Defendants pleaded guilty to supplying counterfeit items. Defendant 1 was ordered to pay £402.00 and Defendant 2 was ordered to pay £731.85.
14. In quarter 3 there was an authorisation for a CHIS which related to the sale of faulty vehicles. This authorisation was cancelled without any surveillance as the partner agency could not support the Council to fulfil the surveillance.

### **RIPA officer group**

15. The RIPA officer group continued to meet in 2019/2020 with a defined work programme and schedule including the review of the Corporate Guidance, in house practices and training to officers undertaking this work. There was disruption to the meeting schedule of the group in quarter 4 in 2019/2020 due to covid restrictions on meetings. The group has since been reinstated with meetings planned for 2020/2021.

### **Training**

16. The Investigatory Powers Commissioner's Office, which oversees the use of covert surveillance by designated public authorities, places a high value on training.
17. External RIPA training was held on 6 March 2020. The session was attended by 16 officers including the Senior Responsible Officer, two Authorising Officers and the RIPA monitoring officer. Additional training was planned for September 2020 however this has been delayed to later in 2020/2021 following restrictions on the delivery of face to face training.
18. In house training and awareness sessions have been delivered by the RIPA monitoring officer to the following teams:
  - Planning and Development Team on 22 January 2020.
  - Children's Social Services Management Team on 19 February 2020.
  - Awards and Assessment Team Leaders on 2 March 2020.

### **Changes in Legislation and National Practice**

19. In 2019/2020 there have been no reported changes in legislation or updates to the Codes of Practice.

## **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 updates will take effect following the meeting.
21. In 2018/2019 there were a large number of changes to update the Corporate Guidance to reflect changes in legislation and procedure for authorisation relating to communication data. There was also a section incorporated into the guidance in relation to social media.
22. In view of the comprehensive update which took place last year and there being no significant changes to legislation or guidance issued by the Government, the 2020/2021 review has been a smaller exercise with a summary of the changes set out below:
  - Update to the retention period throughout the document to ensure consistency. This has been set at three years from the date of cancellation of the authorisation for the documentation to be held on the central register.
  - The guidance has been updated to include links to policies and legislation. There has also been an update to show a flow chart illustrating the process for authorisation.
  - The guidance has been updated to be in an accessible format in accordance with the Accessibility Regulations.
  - To reflect the changes in working arrangements, the practice has been reviewed and amended to allow for electronic submissions of authorisations which are held on the electronic central register by the Senior Responsible Officer.
  - The procedure for the approval of authorisation has been clarified to confirm that the investigating officer/applicant presents the application for authorisation to the RIPA monitoring officer who then allocates the application to one of the authorising officers within the Council.
23. The Corporate Guidance will continue to be reviewed on an annual basis to reflect changes in practices, policies and legislation.

## **Background Papers**

- None

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## **Appendix 1: Implications**

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### **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**

There has been consultation with the RIPA Monitoring Officer, the Authorising Officers, the Chief Executive and the RIPA officers membership on the revisions/update to the Policy.

### **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 which will form part of a corporate induction programme.

### **Accommodation**

None.

**Risk**

None.

**Procurement**

None.