

3 December 2021



**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

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 2020 to 31 March 2021.
2. To inform members of the changes to the legislation and policy and developments in respect of the Council’s use of its powers under RIPA.

Executive Summary

3. The report sets out an overview of the Council’s use of its powers under RIPA for the period of 1 April 2020 to 31 March 2021. During the period reported there were no authorisations.
4. The report details the activities which have been undertaken by the Council in respect of RIPA for the period which includes updates on training and the outcome of the desktop inspection conducted by the Commissioner.

Recommendation

5. It is recommended that members:
 - i) Receive the annual report on the Council’s use of powers under RIPA.

The Council's use of RIPA between 1 April 2020 to 31 March 2021

6. Members will note from previous years that the annual report has included a table showing the authorisations granted for both directed surveillance and Covert Human Intelligence Sources (CHIS) for the relevant periods. The report would also detail the activity and the outcomes.
7. For the period reported, 1 April 2020 to 31 March 2021, this was an unprecedented year due to the impact of the Covid 19 pandemic, with many businesses closed and restrictions placed on the movement of people in their day to day activity. This resulted in there being no authorisations for directed surveillance and CHIS during the period.
8. The activity of the enforcement teams continued during the time however this was discharged by other means not requiring authorisations such as visiting premises, engagement with businesses and where necessary serving notices.
9. The comparison for the activity from 2019/20, there were three directed surveillance and three CHIS authorisations.

Inspection

10. In December 2020, the Council were informed of an inspection to be conducted on behalf of the Investigatory Powers Commissioner. Due to the restrictions in place at the time the investigation was proposed to be conducted remotely.
11. On 16 December 2021, a written response was presented to the Council confirming that a desktop-based inspection had been undertaken by Mr Graham McCrory MBE. The inspection had been facilitated through the Senior Responsible Officer (SRO), the Head of Legal and Democratic Services, who was interviewed via video conferencing facilities.
12. The Inspector was satisfied from the information provided that the Council demonstrated a level of compliance that removed the requirement for a physical inspection at the time.
13. The Inspector recorded that the last inspection undertaken by Inspector Mr Paul Graton in February 2018 had two recommendations shown in italics with the update from the desktop inspection shown below.
 1. *Authorising Officers should articulate clearly in authorisations their considerations in relation to Proportionality and Collateral Intrusion.*

The key points to consider are outlined clearly at Paragraphs 3.6 and 3.8 in the Codes of Practice 2017 (Covert Surveillance and Property Interference).

It was noted by the Inspector that this recommendation had been discharged, recording that since the previous inspection a significant amount of training and education seminars have been undertaken by the SRO to ensure that authorising officers are aware of the considerations required to be documented regarding proportionality and collateral intrusion.

2. The SRO should satisfy herself that any CHIS application is accompanied by an appropriate risk assessment. The assessment should allow the Authorising Officer to assess the risk in relation to deploying that particular individual as a CHIS.

The inspector recorded the recommendation as discharged at the desktop inspect. Risk assessments had been included within the documentation inspected and considered the welfare and management of CHIS during periods of authorised activity. Some minor improvements were highlighted by the Inspector to further enhance this area.

14. As part of the inspection a selection of CHIS and directed surveillance authorisations were supplied for review. In general, applications, authorisations and reviews had been well constructed with significant and relevant intelligence cases included.
15. The Inspector recorded that training has been a constant feature since the last inspection with various sessions, both formal and informal, undertaken.
16. The Inspector noted the specific focus on retention and destruction of data gathered whilst utilising the covert powers recording that the SRO has implemented procedures to have the RMO periodically review and destroy material no longer required to be held. The Inspector considered this a good progression which should be strengthened further by consideration of guidance issued by the Inspector on this topic.
17. In conclusion, the Inspector noted that the SRO has been instrumental in developing a strong ethos of compliance within the Council. It is commendable that this has included regular training, the tactical oversight provided by the RMO, and the updating of policies and procedures.

RIPA Officers Group

18. The RIPA officer group have continued 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. The future work programme includes a review of the feedback following the inspection.

Training

19. 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 March 2020.
20. In addition to training delivered externally, the RIPA monitoring officer also delivered training to a number of teams within the Council, including the newly formed fly tipping team as well as providing guidance and support to officers and teams in respect of RIPA.

Changes in Legislation and National Practice

21. There have been no changes to legislation or national practice during the period reported. The Senior Responsible Officer and RIPA Monitoring Officer continue to monitor any changes in legislation and guidance and where necessary will implement changes in the practice to reflect those changes.

Review of the Councils Corporate Guidance on RIPA

22. The established practice has been to review the Corporate Guidance on RIPA annually. This was undertaken with only minor amendments to reflect organisational changes to the Council and changes of officers. Following the recommendations from the inspection these will inform any changes to the guidance which will be made in consultation with members of the RIPA officer group.
23. The Corporate Guidance will continue to be reviewed on an annual basis to reflect changes in practices, policies and legalisation.

Background Papers

- None

Appendix 1: Implications

Legal Implications

The Council's objective is to make lawful and appropriate use of surveillance technique 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.