

10 February 2023



**Report on the Council's use of powers
under the Regulation of Investigatory
Powers Act 2000 - Quarter 3 - 2022/23**

Report of Helen Lynch, Head of Legal and Democratic Services

Purpose of the Report

1. To inform members about the Council's use of powers under the Regulation of Investigatory Powers Act 2000 ('RIPA') during the period 31 October 2022 and 31 January 2023 (quarter 3) to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

Executive summary

2. This report provides an update of the activity for quarter 3 of 2022/23 for Durham County Council in exercising its use of powers under RIPA for Directed Surveillance (DS) and Covert Human Intelligence Surveillance (CHIS).
3. The Council's Senior Responsible Officer is satisfied that the Council's use of its powers under RIPA during quarter 3 is consistent with the Council's policy and that the policy remains fit for purpose.

Recommendation

4. It is recommended that Members:
 - i. Receive the quarterly report on the Council's use of RIPA for the period covering quarter 3 2022/23.
 - ii. Resolve that the powers are being used consistently with the Council's policy and that the policy remains fit for purpose

Background

5. The Regulation of Investigatory Powers Act 2000 (RIPA) enables local authorities to carry out certain types of surveillance activity provided that specified procedures are followed.
6. Directed surveillance is covert surveillance that is not intrusive and is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person (other than by way of an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under the 2000 Act).
7. The Local Authority is able to rely upon the information obtained from those surveillance activities within court proceedings.
8. This report gives details of RIPA applications that have been authorised during the quarter 3.

Quarter 3 Activity

- 9 During quarter 3 there was one application for directed surveillance and no CHIS applications presented to the Court.
- 10 The directed surveillance was part of an operation relating to underage sales of alcohol and tobacco. The surveillance authorisation covered a total of 28 premises, which were inspected during the authorisation period.
- 11 This included four premises which were visited under a previous directed surveillance operation where underage sales had been made. At that time, advice and guidance were given, which appears to have been effective as no underage sales were made during the second visit under the most recent authorisation.
There was one premises (not previously visited) that made an underage sale during this directed surveillance operation. Officers have subsequently visited the premises and provided advice and guidance. A second test purchase was undertaken at the premises and no underage sales were made on that occasion. In relation to the other premises on the schedule, test purchases were attempted but no sales were made.
- 12 For comparison, in quarter 3 in 2021/22, there was one authorisation for directed surveillance and two CHIS authorisations.

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, in particular the provisions of Article 8 of the ECHR securing respect for an individual's (qualified) right to privacy. Quarterly oversight by the board helps secure this objective.

Finance

Not applicable.

Consultation

Not applicable.

Equality and Diversity / Public Sector Equality Duty

Not applicable.

Climate Change

Not applicable.

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

Not applicable.

Accommodation

Not applicable.

Risk

An individual may complain to Investigatory Powers Tribunal that surveillance has been unlawful and if found to be unlawful could result in financial penalties and reputational damage.

Procurement

Not applicable.