

**Corporate Overview and Scrutiny
Management Board**

28 October 2024



**Regulation of Investigatory Powers Act
2000**

**Annual Review of the Council's use of
powers**

Report of Helen Bradley, Director of Legal and Democratic Services

Electoral division(s) affected:

Countywide

Purpose of the Report

- 1 To inform Corporate Overview and Scrutiny Management Board about the Council's use of its powers under the Regulation of Investigatory Powers Act 2000 ('RIPA') during the period of 1 April 2023 to 31 March 2024.
- 2 To consider the annual review the Council's Corporate RIPA Guidance, and recommend its adoption to Cabinet.

Executive summary

- 3 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.
- 4 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. Directed surveillance must be authorised in accordance with RIPA unless it is undertaken by way of an immediate response to events or circumstances (for example, an Officer on duty observes an offence being committed) such that it is not reasonably practicable to seek authorisation under the 2000 Act.
- 5 Local authorities are permitted to conduct Directed Surveillance in respect of criminal offences, which have a minimum sentence of six months imprisonment or related to underage sales of alcohol and tobacco or nicotine inhaling products.

- 6 A Covert Human Intelligence Source (CHIS) is a person who establishes or maintains a personal or other relationship with another person for the covert purpose of:
 - (a) Using such a relationship to obtain information, or to provide access to information to another person, or
 - (b) Disclosing information obtained by the use of such a relationship or as a consequence of such a relationship.
- 7 The relationship is used covertly if, and only if, it is conducted in a manner calculated to ensure that the person is unaware of its purpose.
- 8 The Local Authority is able to rely upon the information obtained from those surveillance activities within court proceedings.
- 9 The report includes an overview of the Council's use of its powers under RIPA for the period of 1 April 2023 to 31 March 2024, including updates on any training which has been delivered or will be delivered to Officers.
- 10 An annual review of the Corporate RIPA Guidance and the abridged guidance has been undertaken.

Recommendation(s)

- 11 Corporate Overview and Scrutiny Management Board is recommended to:
 - a) Consider and note the Council's use of RIPA during the period 1 April 2023 to 31 March 2024;
 - b) Recommend that Cabinet approves the proposed changes to the Council's Corporate RIPA Guidance;
 - c) Recommend that Cabinet approves the proposed changes to the Council's abridged RIPA policy document.

Background

- 12 The Home Office Code of Practice for Covert Surveillance and Property Interference recommends that elected members should review the Council's use of RIPA and set the Policy at least once a year. As such an annual review of the Council's powers and guidance is undertaken by Officers and a report is presented to Cabinet for consideration and approval.

The Council's use of RIPA between 1 April 2023 to 31 March 2024

- 13 For the period between 1 April 2023 to 31 March 2024, there were two directed surveillance authorisations and three CHIS authorisations. This activity has been reported to Corporate Overview and Scrutiny Management Board on a quarterly basis.
- 14 The operations have all been cancelled in accordance with the legislation with all premises listed on the applications visited. A summary of the operations is set out below.

Operation 12 April 2023

- 15 This operation related to the sale of illicit tobacco products and included both a directed surveillance authorisation and a CHIS authorisation. Both authorisations were granted on 12 April 2023.
- 16 The directed surveillance activity resulted in the identification of off-premises storage locations, which were close to the retail premises and the CHIS was used to record four video test purchases.
- 17 The evidence obtained through the deployment of the CHIS and directed surveillance resulted in a warrant being executed at the premises.
- 18 A vehicle associated to the premises, and which was parked outside of it, was also searched. The following illicit products were found inside it:
- 418 Packets of counterfeit and/or non-compliant Cigarettes
 - 172 Pouches of counterfeit and/or non-compliant HRT
 - 31 non-complaint vapes
- £1,360 cash was also seized from the premises.
- 19 Four people were arrested, and the investigation remains ongoing. A 3-month Closure Order was issued against the premises as a result of the enforcement action.

- 20 Both operations were cancelled in accordance with the legislation on 14 June 2023.

Operation 12 April 2023

- 21 This operation related to the sale of illicit tobacco products. The authorisation was for directed surveillance and was granted on 12 April 2023.
- 22 The operation was connected to a CHIS authorisation which had been granted on 9 February 2023. The CHIS authorisation was reported in the annual review for 2022/2023.
- 23 The directed surveillance was unsuccessful in identifying how the illicit tobacco products were brought into the shop. However, the CHIS authorisation did capture six successful test purchases, which resulted in illicit tobacco and vapes being recovered to the retail value of £11,565.
- 24 The products were found within several concealments located in the premises and a 3-month closure order was issued against the premises as a result of the enforcement action.
- 25 The investigation remains ongoing with several suspects under investigation.
- 26 The CHIS was cancelled in June 2023 and the directed surveillance in July 2023.

Operation 11 November 2023

- 27 This operation related to the sale of counterfeit goods and used a CHIS authorisation which was granted on 13 November 2023.
- 28 The online CHIS captured evidence of suspected counterfeit goods being advertised for sale on social media. By communicating with the individual, the CHIS also acquired the location of where the goods were being stored.
- 29 The real-life CHIS subsequently visited the storage location and purchased a trademarked item that was later confirmed to be counterfeit. The CHIS also acquired details of a bank account being used by the seller.
- 30 As a result of the evidence acquired by the online and real-life CHIS', thousands of trademarked goods were seized from the storage location during a subsequent inspection. This seizure was reported on by the

local news media and the legitimate value of the goods seized is estimated to be close to £200,000.

- 31 A primary suspect has been identified and the investigation remains ongoing.
- 32 In accordance with the relevant legislation, the CHIS operation was cancelled on 11 December 2023.

Operation 20 March 2024

- 33 This operation related to the sale of counterfeit goods and used a CHIS authorisation which was granted on 20 March 2023.
- 34 The online CHIS captured evidence of suspected counterfeit goods being advertised for sale on social media. The CHIS also messaged the seller and placed an order for a trademarked item.
- 35 The CHIS subsequently acquired the address of where the goods could be collected from, and the details of a bank account being used by the seller. The real-life CHIS then visited the collection address and collected the trademarked item that was later confirmed to be counterfeit.
- 36 A primary suspect has been identified and the investigation is still ongoing.
- 37 The authorisation for the CHIS currently remains active for investigational purposes.

RIPA Officers Group

- 38 The RIPA officers group meets on a quarterly basis and is chaired by the Director of Legal and Democratic Services as the Council's Senior Responsible Officer (SRO). The group comprises Officers who make surveillance applications, Authorising Officers and representatives from each Council Directorate who may not conduct surveillance but require an awareness of what constitutes surveillance, the requirements of RIPA and the relevant Codes of Practice.

Training

- 39 The Investigatory Powers Commissioners Office (IPCO), which oversees the use of covert surveillance by designated public authorities, places a high value on training. Officers who make RIPA applications, the Council's Authorising Officers and the RIPA Monitoring Officer completed training with an external provider in September and November 2023.

- 40 The Chief Executive will attend training in November 2024 in his capacity as Senior Authorising Officer who may be required to authorise applications for surveillance which is likely to capture confidential information. Confidential information is information which is legally privileged, communications between an MP and another person on constituency matters, confidential personal information such as medical or religious information, or confidential journalistic material.
- 41 In addition to training delivered externally, the RIPA Officers Group receive informal training on a variety of issues covered by the Code of Practice such as data protection and record keeping, safeguards (for evidence) and an overview of the judicial approval process.
- 42 Training sessions providing an overview of RIPA and the requirements in respect of the use of social media for investigations are included within the Council's Corporate Learning and Development Programme for 2024/25. This training which is open to all employees is delivered by the SRO and the Commercial and Corporate Governance team within legal services.

Annual Statistical Return

- 43 IPCO is required by law to gather statistical data from all public authorities on their use of Investigatory Powers available to them under the relevant legislation, including:
- Investigatory Powers Act 2016 (IPA);
 - Regulation of Investigatory Powers Act 2000 (RIPA);
 - Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA); and
 - Police Act 1996 (PA).
- 44 In order to discharge this duty, the IPCO annually requests a statistical return for each authority (the return). Each return covers activity for one calendar year: 1 January to 31 December 2023.
- 45 This and the information gathered in the annual statistical return informs and (with some exceptions) is published in the IPCO annual report. Some data collected as part of the statistical return may also be used to inform an inspection and wider oversight process.
- 46 The annual statistical return for 2023 was submitted on 15 January 2024 in advance of the deadline. The statistics are collated by the Investigatory Powers Commissioners Office (IPCO).

Changes in Legislation and National Practice

- 47 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 Council's Corporate Guidance on RIPA

- 48 In accordance with the Code of Practice, the Corporate RIPA Guidance is reviewed annually.
- 49 The 2024 review of the Corporate Guidance shown at **Appendix 3** resulted in the following proposed amendments:
- a) It is proposed that the job title of 'Head of Legal and Democratic Services' is changed to the 'Director of Legal and Democratic Services' to reflect the change since the last review of the Corporate Guidance.
 - b) It is proposed that minor wording is amended or added within 'Section F, Procedure for the Use of Social Media Investigations'. This wording is amended to reflect legal advice which Officers had obtained in relation to the use of social media in investigations. A table summarising the proposed changes is shown at **Appendix 2**.
 - c) Given the changes to Section F, it is proposed that a new paragraph is added to reflect a new internal procedure which has been implemented. The purpose of this procedure is for Officers to be able to assess whether a Subject has a reasonable expectation of privacy and to assess the information against the factors contained within the Home Office's Code of Practice.
 - d) It is proposed that the following officers be added as Authorising Officers for the purposes of Directed Surveillance and Covert Human Intelligence Sources, following their approval in December 2023:
 - Gary Carr - Strategic Regulation Manager
 - Ian Harrison - Business Compliance Manager
 - Tracey Johnson - Consumer Safety Manager

Durham County Council Public RIPA Policy 2024

- 50 Following the annual review in 2023, an abridged version of the Corporate RIPA Guidance was published on the Council's website.

- 51 The purpose of this document is to provide an overview of and greater transparency in relation to the Council's use of RIPA powers.
- 52 A review of this policy, shown at **Appendix 4**, has also been conducted alongside the Corporate Guidance and Cabinet are therefore asked to consider and approve the following proposed changes to the policy:
- a) It is proposed to amend the wording around 'Drive-by' social media visits to reflect that an access authorisation may be needed as opposed to will be needed.
 - b) It is proposed that the additional named authorising officers in paragraph 16(d) of this report are added into the policy.
- 53 The proposed changes are shown at **Appendix 2**.

Background papers

- None

Other useful documents

- None

Author(s)

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Appendix 1: Implications

Legal Implications

The Councils 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

Within the report it is recognised that there is a need for relevant Officers to undergo training in relation to RIPA.

Accommodation

None

Risk
None.

Procurement
None.

Appendix 2: Table of Changes

Appendix 3: RIPA Corporate Guidance Document 2024

Appendix 4: Durham County Council RIPA Policy 2024
