

Corporate Issues Overview and Scrutiny Committee

21 April 2017

Report on the Council's use of powers under the Regulation of Investigatory Powers Act 2000 – Quarters 3 and 4 - 2016/17



Report of Clare Pattinson, Interim 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 1 October 2016 until 31 March 2017 (Quarters 3 and 4) to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

Background

2. As members are aware, 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. The Local Authority is able to rely upon the information obtained from those surveillance activities within court proceedings.
3. This report gives details of RIPA applications that have been authorised during the period 1 October 2016 until 31 March 2017 and the outcomes following surveillance.

Quarter 3 Activity

4. During Quarter 3 there was 1 new RIPA Directed Surveillance authorisation which related to an operation conducted by Trading Standards regarding test purchases at a number of premises where complaints were received by the Council about underage sales of alcohol and tobacco.

5. The authorisation was approved by the Magistrate and there were no difficulties or issues raised by the Magistrate in approving the application.
6. 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.

Outcomes following surveillance – Quarter 3

7. In relation to the test purchase operation, non-compliance has been dealt with by way of fixed penalty notices. Those who failed test purchases will be subject to further visits.

Quarter 4 Activity

8. During Quarter 4 there were 4 new RIPA Directed Surveillance authorisations, which related to operations conducted by Trading Standards regarding sales of counterfeit tobacco from residential premises and test purchases at a number of premises where complaints were received by the Council about underage sales of alcohol.
9. There were 2 new Covert Human Intelligence Source (CHIS) authorisations which related to the operations conducted by Trading Standards regarding sales of counterfeit tobacco from residential premises and where Directed Surveillance authorisations were also in force.
10. All authorisations except for one were approved by the Magistrates and there were no difficulties or issues raised by the Magistrate in approving those applications.
11. One authorisation was refused by a District Judge on the basis that there was insufficient evidence to justify the surveillance because the operation stemmed from an anonymous letter and the suspects were not known to the police.
12. The Council's Senior Responsible Officer formally reported an error to the Office of Surveillance Commissioners on 16 March 2017 after identifying that officers carried out a test purchase at a premises and purchased cigarettes without judicial approval. The Consumer Protection Manager has confirmed that officers took the step of carrying out the test purchase without judicial approval to secure further evidence to present to the Magistrates' when applying for judicial approval. This action was taken because of the comments made by the District Judge who refused an earlier unrelated RIPA application for directed surveillance. When refusing the application, the District Judge suggested that the Council should try to obtain further evidence before presenting an application to

the Court, including a test purchase. The Consumer Protection Manager has reminded his officers that if surveillance is necessary and proportionate, they must complete the RIPA application for directed surveillance and/or a CHIS for consideration and approval by the Authorising Officer and then obtain judicial approval.

13. Notwithstanding the error reported to the OSC, the Council's Senior Responsible Officer is satisfied that the Council's use of its powers under RIPA during Quarter 4 is consistent with the Council's policy and that the policy remains fit for purpose.

Outcomes following surveillance – Quarter 4

14. In relation to one test purchase operation, non-compliance has been dealt with by way of fixed penalty notices. Surveillance remains ongoing in the operation regarding sales of counterfeit tobacco from residential premises.

Recommendations and Reasons

15. It is recommended that members receive the quarterly report on the Council's use of RIPA for the period 1 October 2016 until 31 March 2017 and resolve that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

Background Papers

None

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Appendix 1: Implications

Finance: None

Staffing: None

Equality and Diversity: None

Accommodation: None

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.

Human Rights: None

Consultation: None

Procurement: None

Disability Discrimination Act: None

Legal Implications: None