

Corporate Overview and Scrutiny Management Board

15 September 2017

Regulation of Investigatory Powers Act 2000 – Annual Review of the Council’s use of powers and approval of RIPA Corporate Guidance Document



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 1 April 2016 to 31 March 2017 and to invite members to approve the Council’s Corporate Guidance Document relating to RIPA for the forthcoming year.

The Council’s use of RIPA for the period 1 April 2016 – 31 March 2017

2. The table below provides details of RIPA authorisations that have been granted by the Council during the period 1 April 2016 to 31 March 2017. Authorisations are approved by the Magistrates, who ensure that the correct procedures have been followed and relevant factors have been taken account of.

Type of Investigation	Number of Authorisations during the period 1 April 2016 – 31 March 2017
Illicit tobacco	5 x Directed Surveillance, 4 x CHIS (Covert Human Intelligence Source)
Underage sales of alcohol/tobacco	5 x Directed Surveillance
Counterfeit Goods	1 x Directed Surveillance, 2 x CHIS
Other	1 x Communications data
	Total - 18

3. The Council’s use of its powers under RIPA has decreased in comparison to the previous year with 18 RIPA authorisations granted compared to 31 in 2016-17. Trading Standards continues to receive reliable intelligence on a number of issues. This intelligence is used to prioritise operations and has resulted in a number of significant seizures and enforcement action. However, more complex operations require more resources,

planning and execution so it is not always possible to maintain the same level of action year on year.

4. The service is also utilising alternative enforcement methods such as website “takedowns” which can have an immediate impact, if not necessarily resulting in enforcement action. Many enforcement actions are also being followed by Proceeds of Crime actions, seizures and restraints. This can also have an impact on the volume of activity being undertaken but can be seen as an important tactic which could result in criminal profits being awarded to the Council
5. 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. The Judge suggested to officers that a test purchase could provide that evidence
6. Following this, the Council's Senior Responsible Officer formally reported an error to the Office of Surveillance Commissioners on 16 March 2017. This related to a test purchase on a different operation as it had been directed by a Judge. The Consumer Protection Manager 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 authorisation. 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.
7. 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 2016-17 is consistent with the Council's policy.

Training

8. The Office of Surveillance Commissioners, which oversees the use of covert surveillance by designated public authorities, places a high value on training. RIPA training was last held in March 2016 and the next training session is due to take place on 21 September 2017.

Review of the Council's Corporate Guidance on RIPA

9. The Council's RIPA guidance was last approved by Committee at its meeting held on 10 October 2016.
10. As part of the annual review, the Council's RIPA policy has been reviewed and is attached as Appendix 2. The proposed amendments to the guidance relate to staffing changes. It is not considered that any further

changes are required to the document at this stage. Changes to the legislation regarding communications data are expected to come into force in the next year and the policy will be reviewed again at this stage.

Recommendations and Reasons

11. It is recommended that members:
 - i. Receive the annual report on the Council's use of powers under RIPA.
 - ii. Approve the Council's Corporate Guidance Document on the use of RIPA.

Background Papers

None

Contact: Clare Pattinson

Tel: 03000 269679

Appendix 1: Implications

Finance: None

Staffing: None

Equality and Diversity: None

Accommodation: None

Crime and Disorder: The appropriate use of and oversight of RIPA powers will enable the Council to provide evidence to support appropriate prosecutions and tackle crime.

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. The Council's RIPA Corporate Guidance Document is designed to facilitate compliance with the Human Rights Act.

Consultation: None.

Procurement: None

Disability Discrimination Act: None

Legal Implications: The corporate guidance document and the associated procedures are designed to ensure as far as possible that the legislation is complied with. The guidance document sets out the means of compliance with and use of the RIPA legislation by the Council. It is based on the requirements of the Act and the Home Office's relevant Codes of Practice. 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 the provisions of Article 8 of the ECHR securing respect for an individual's (qualified) right to privacy.