

CHESHIRE EAST COUNCIL

CABINET

Date of meeting: 24 March 2009
Report of: Head of Safer & Stronger Communities
Title: Harmonised Policies & Procedures for Activities under Regulation of Investigatory Powers Act 2000 (RIPA)

1.0 Purpose of Report

- 1.1 To present the following policies and procedures for approval:

Cheshire East Policy and Procedure for Surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA), and

Cheshire East Policy and Procedure for the Acquisition and Disclosure of Communications Data under the Regulation of Investigatory Powers Act 2000

2.0 Decision Required

- 2.1 That the policies and procedures identified in section 1 above are adopted by Cheshire East Council from 1 April 2009.

3.0 Financial Implications for Transition Costs

- 3.1 Prior to vesting day an allocation of £1,000 will be required to meet printing requirements.

4.0 Financial Implications 2009/10 and beyond

- 4.1 The policies and procedures and the associated independent inspection regimes require the highest standards of professional competence from the Council's enforcement staff as well as from managers who are authorised to approve activities under the policies. Services will therefore need to ensure that arrangements are in place to satisfy ongoing training and professional development requirements.

5.0 Legal Implications

- 5.1 It is essential that the Council has robust policies and procedures in place to enable officers to conduct investigations and obtain evidence and intelligence lawfully.
- 5.2 Legal advice has been received, that, given the highly prescriptive

nature of the legal framework governing covert surveillance and the acquisition of communications data, consultation with external stakeholders is neither necessary nor relevant.

6.0 Risk Assessment

- 6.1 Without clear and robust policies and procedures in place, there would be a risk that officers would fail to comply with the relevant legislation and associated codes of practice. Consequently, complaints may be made against the authority by aggrieved persons, which may proceed to investigation by the independent Tribunals set up by RIPA. The Tribunals have the power to cancel authorisations, order the destruction of any records obtained in exercise of the powers conferred by RIPA and award compensation as they see fit.

7.0 Background and Options

- 7.1 The draft policies and procedures were subject to extensive consultation with officers of the existing authorities and were subsequently amended, as necessary.
- 7.2 The use of covert surveillance by local authorities has been the subject of intense media scrutiny and controversy in recent months. The press has cited examples of councils allegedly using the powers to investigate 'low grade' offences, such as dog fouling or the misuse of disabled driver badges, instead of limiting its use to the investigation of serious offences, such as those perpetrated by loan sharks or rogue traders. Most recently, however, the alleged inappropriate use of the powers by local authorities has been disputed by the Chief Surveillance Commissioner, Sir Christopher Rose.
- 7.3 One of the purposes of the draft policies/procedures is to reinforce the requirement that the powers are to be used only in circumstances in which the required evidence or intelligence cannot be obtained by other means:
- “Any officer intending to undertake covert surveillance or use a ‘covert human intelligence source’ will only do so if the evidence or intelligence sought cannot be obtained by other means”. (Covert Surveillance Policy, P3.5), and
- “Any officer intending to acquire communications data will only do so if the evidence or intelligence sought cannot be obtained by other means”. (Communications Data Policy, P3.4)
- 7.4 In addition, the procedures include a provision for Member scrutiny in the form of an annual report to be submitted to Scrutiny Committee. The report will include details of the number and type of surveillance authorisations that have been granted, and the outcome (where known). In addition, the report will provide details of the outcome of the most recent independent inspection.

8.0 Overview of Day One, Year One and Term One Issues

- 8.1 The adoption of the policies and procedures will mean that this authority has an appropriate framework in place to ensure that it is in a position to fulfil its legal obligations and meet the highest standards of professional practice. The policies and procedures are subject to annual review.
- 8.2 This authority must ensure that an appropriate competence framework and associated training and development programmes are in place to meet the requisite professional standards.

9.0 Reasons for Recommendation

- 9.1 To ensure that the new authority has clear and robust policies and procedures in place to guide officers in carrying out their investigatory functions.

For further information:

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Legislation

The Regulation of Investigatory Powers Act 2000

The statute and statutory instruments are available at:

<http://security.homeoffice.gov.uk/ripa/legislation/>

Codes of Practice

Covert Surveillance Code of Practice

Covert Human Intelligence Code of Practice

Acquisition and Disclosure of Communications Data Code of Practice

The Codes of Practice are available at:

<http://security.homeoffice.gov.uk/ripa/publication-search/ripa-cop/>