

CHESHIRE EAST COUNCIL

REPORT TO: AUDIT & GOVERNANCE COMMITTEE

Date of Meeting: 17th March 2016
Report of: Compliance and Customer Relations Manager
Title: Compliance with the Regulation of Investigatory Powers Act (2000) (RIPA)
Portfolio Holder: Councillor Paul Findlow

1.0 Report Summary

1.1 This report provides an update on how the Council has complied with RIPA legislation during 2015/16 and the number of RIPA applications which have been authorised to date.

2.0 Recommendation

2.1 That the Committee notes the contents of the report in respect of the numbers of applications and the current arrangements in place to ensure the Council complies with the legislation.

3.0 Reasons for Recommendation

3.1 The Audit & Governance Committee has a key role in assessing the adequacy and effectiveness of these arrangements.

4.0 Wards Affected

4.1 All wards.

5.0 Local Ward Members

5.1 Not applicable.

6.0 Policy Implications

6.1 Using RIPA powers can conflict with an individual's human rights and so it is imperative that, when investigating alleged wrongdoing, certain conditions are met in each case in order that successful prosecutions can be made. By following the authorisation procedures set out in RIPA legislation, officers can demonstrate that any surveillance is necessary for a purpose permitted by the Human Rights Act 1998 and that it is a proportionate measure to take, given all the circumstances.

7.0 Financial Implications

7.1 Failure to comply with the legislation can lead to the Officer of the Surveillance Commissioner withdrawing the Council's ability to conduct directed surveillance for a period of time. This would have a detrimental impact on the Council's ability to conduct investigations. Fines may also be imposed if the Council were found to be breaching Human Rights legislation.

8.0 Legal Implications

8.1 The Regulation of Investigatory Powers Act 2000 was enacted to consolidate and update a range of law enforcement investigative powers to ensure these powers were fit for purpose, as well as being compliant with the UK's obligations under the European Convention on Human Rights. A number of codes of practice have also been issued under this Act.

8.2 The Protection of Freedoms Act 2012 introduced additional safeguards in respect of certain surveillance undertaken by local authorities.

8.3 Given the possible infringement of people's human rights when using these powers, it is important that the Council complies fully with the law and its own policy and that it reflects on its use of these powers to ensure it is proportionate at all times.

9.0 Risk Management

9.1 The impact on the Council of not complying with the legislation would be significant, as identified above in 7.1.

10.0 Background

10.1 The Council occasionally needs to use directed surveillance in order to carry out its enforcement functions effectively, e.g. planning enforcement, licensing enforcement, trading standards, environmental health and community safety investigations. RIPA provides a regulatory framework to enable public authorities to obtain information through the use of certain covert investigatory techniques. It is imperative that, when investigating alleged wrongdoing, certain conditions are met in each case in order that successful prosecutions can be made. In particular, it is essential that covert surveillance is only used when it is necessary and proportionate to do so. Therefore, this must be properly authorised and recorded, the tests of necessity and proportionality must be satisfied, and the potential for collateral intrusion must be considered and minimised.

10.2 The Council's Authorising Officers are:

Chief Executive
Chief Operating Officer
Director of Public Health
Director of Children's Social Care
Director of Adults' Social Care

- 10.3 Once authorised, all applications need the approval of a Justice of the Peace/Magistrate, as required by the Protection of Freedoms Act 2012. The Act also restricts the use of surveillance to the investigation of offences which attract a custodial sentence of six months or more.
- 10.4 The Director of Legal Services assumes responsibility for the integrity of the process to ensure that the Council complies with the legislation.

11.0 Access to Communications Data – use of National Anti Fraud Network (NAFN)

The Regulation of Investigatory Powers (Communications Data) Order 2010 sets out which organisations can access communications data and for what purposes. The Council is limited to accessing only service user and subscriber data, i.e. the ‘who’, ‘when’ and ‘where’ of a communication, but not the actual content. The Council is required to nominate a Single Point of Contact (SPOC), who needs to be an accredited person, to ensure that data is obtained lawfully and to facilitate access to the data with the communications service providers. The SPOC may be an employee of the council or an externally appointed person. The Council has been using the SPOC service provided by the National Anti-Fraud Network (NAFN) since October 2012 and this process has run smoothly.

12.0 Use of Covert Human Intelligence Source (CHIS)

- 12.1 Covert human intelligence sources may only be authorised if there are certain additional arrangements in place, including an employee of the Council being responsible for the source’s security and welfare and a Senior Officer with general oversight of the use made of the source. Use of a CHIS must be authorised by the Chief Executive before it is approved by a Justice of the Peace/Magistrate.

13.0 Applications authorised

	Directed surveillance	Communications Data	CHIS
2011-12	7	2	
2012-13	16 ¹	3	
2013-14	8	3	
2014-15	5	2	
2015-16 to date	4	2	1

- 13.1 The Housing Benefit Fraud Investigation Team moved to the Department of Work and Pensions on 1st December 2015. Numbers of applications for directed surveillance are expected to reduce considerably as a result of this move.

14.0 Inspections.

- 14.1 The Office of the Surveillance Commissioners (OSC) is responsible for inspecting the Council’s use of and compliance with RIPA, and the Council was last inspected on 2nd May 2013. The latest report was a positive one, with some recommendations for

¹ The apparent rise in applications in 2012/13 includes five renewals of existing investigations, which were recorded in the central register as new applications.

further improvement. These recommendations have been implemented. The Council has received notification that the next inspection will take place on 23rd May 2016.

14.2 The Interception of Communications Commissioner's Office (IOCCO) is responsible for inspecting applications to access communications data. Inspections are carried out on NAFN rather than on the Council. The most recent report from the IOCCO stated that their inspection of NAFN showed 'very good compliance'.

15.0 OSC Updates to procedures and guidance

15.1 In December 2014, the OSC updated RIPA procedures and guidance. These changes have been incorporated into the Council's own policy and procedures, together with recommendations following the last RIPA inspection. Training materials have been updated accordingly and a new programme of training implemented.

16.0 Access to information

The background papers relating to this report can be inspected by contacting the report writer:

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