

## **Audit & Governance Committee**

---

**Date of Meeting:** 31 May 2018

**Report Title:** Compliance with the Regulation of investigatory Powers Act 2000 (RIPA)

**Portfolio Holder:** Councillor Paul Findlow

**Author:** Sandra Smith – Compliance and Customer Relations Manager

**Senior Officer:** **Daniel Dickinson, Acting Director of Legal Services**

---

### **1. Introduction and Policy Context**

- 1.1. This report provides an update on how the Council has complied with RIPA legislation during 2017/18 and the number of RIPA applications which have been authorised during this period.

### **2. Decision Requested**

- 2.1. That the Committee notes the performance of the Council in respect of compliance with the Regulation of investigatory Powers Act 2000 (RIPA) and notes ongoing and future developments.

### **3. Background**

- 3.1. 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.
- 3.2. The Council's Authorising Officers/Designated Persons are:
- Acting Chief Executive
  - Executive Director – Place
  - Acting Executive Director – People

## Director of Children's Social Care

Any officer making an application or undertaking the role of an Authorising Officer/Designated Person must have completed a training session; these are arranged internally. Officers who have not attended a training session are not permitted to instigate or authorise any application for the use of RIPA powers. 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 RIPA authorised surveillance to the investigation of offences which attract a custodial sentence of six months or more.

- 3.3. The Director of Legal Services assumes responsibility for the integrity of the process to ensure that the Council complies with the legislation.

3.4. 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. Currently 935 Local Authorities use NAFN. The Interception of Communications Commissioner's Office stated "Very good compliance and we continue to encourage all local authorities to use their service".

3.5. Use of Covert Human Intelligence Source (CHIS)

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.

## 4 Briefing Information

### 4.1. Applications Authorised

The table below shows the number of applications authorised during 2017/2018 compared with previous years:

	Directed surveillance	Communications Data	CHIS
2011-12	7	2	
2012-13	16	3	
2013-14	8	3	

2014-15	5	2	
2015-16	5	2	1
2016-17	6	0	0
2017-18	1	0	0

Only one application was authorised during 2017/2018 (in respect of a test purchase).

#### 4.2. Inspections

Formerly, the Office of the Surveillance Commissioners (OSC) was responsible for inspecting the Council's use of and compliance with RIPA, and the Council was last inspected on 23<sup>rd</sup> May 2016. The report was a very positive one, with only one recommendation for further improvement - to update policies and procedures to include a more detailed explanation of the use of social networking sites. The RIPA policy and procedure has been updated and a separate social media policy has been drafted.

Inspections generally take place every three years and so it is anticipated that the Council will be inspected again in Spring 2019.

The Interception of Communications Commissioner's Office (IOCCO) was formerly responsible for inspecting applications to access communications data. Inspections were carried out on NAFN rather than on the Council

On 1<sup>st</sup> September, 2017, the newly established Investigatory Powers Commissioner's Office (IPCO) took over the inspection and oversight functions carried out by the previous Commissioners' Offices.

### 5. **Implications**

#### 5.1 Legal implications

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

#### 5.2. Financial Implications

Failure to comply with the legislation can lead to the Council's ability to conduct directed surveillance being withdrawn 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.

### 5.3. HR Implications

There are no direct Human Resources implications.