

Audit & Governance Committee

Date of Meeting: 05 December 2019

Report Title: Inspection by the Investigatory Powers Commissioners' Office (IPCO)

Senior Officer: Jan Bakewell – Director of Governance and Compliance

1. Report Summary

The Council was recently subject to a remote desktop inspection by the Investigatory Powers Commissioners' Office ("IPCO") regarding its use of powers under RIPA (Regulation of Investigatory Powers Act). This report provides a summary of the findings and recommendations from the inspection, together with an action plan to put the recommendations into effect. The Council is required to provide a response to the IPCO in relation to the inspection report within three months of the report being issued (by 15th January 2020).

2. Decision Requested

2.1 That the Committee notes:

- i. the Investigatory Powers Commissioner's Office inspection report in relation to the Council's use of directed surveillance and covert human intelligence sources; and
- ii. the action plan to address the recommendations arising from the inspection.

3. Background

3.1 The IPCO provides independent oversight and authorisation of the use of investigatory powers by intelligence agencies, police forces and other public authorities. Its purpose is to oversee how these powers are used, taking account of the public interest and ensuring that investigations are conducted in accordance with the law. In 2017, the IPCO took over the roles of the Intelligence Service Commissioner, the Interception of Communications

Commissioner and the Office of Surveillance Commissioners. The new remote inspection is intended to be a lighter touch approach, given the low volume of RIPA authorisations approved by most Councils, since the changes in the legislation in 2012. The Council is now only able to authorise surveillance under RIPA if it is for the purpose of preventing or detecting crime or preventing disorder subject to the 'serious offence' test. The volume has also reduced since the Department for Work and Pensions took over responsibility for the identification of Benefit fraud.

- 3.2 The Council occasionally needs to use directed surveillance and obtain communications data in order to carry out its enforcement functions effectively, e.g. planning enforcement, licensing enforcement, trading standards, environmental health and community enforcement. 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.
- 3.3 With the increase in the use of social media, the Council has introduced an Online Investigations Policy. Online research and investigation has become a useful tool for officers and investigators to prevent, detect and investigate suspected criminal activity, harm to residents and businesses and to carry out internal investigations (non-criminal).
- 3.4 Access to communications data is now obtained under the Investigatory Powers Act 2016. The Council is required to nominate a Single Point of Contact (SPOC), to ensure that data is obtained lawfully and to facilitate access to the data with the communication service providers. The Council uses NAFN (National Anti Fraud Network) to perform this role. Accordingly, any inspection of the Council's use of the powers to access communications data is carried out via NAFN rather than directly with the Council.
- 3.5 The Council's Authorising Officers/Designated Persons under RIPA include all Chief Officers listed in the Constitution, namely:

Chief Executive

Executive Director – Place

Executive Director – People

Executive Director – Corporate Services

Section 151 Officer

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. The Director of Governance and Compliance Services is the Council’s Senior Responsible Officer (“SRO”) for the purposes of RIPA in accordance with the Home Office Codes of Practice. She has responsibility for the integrity of the process to ensure that the Council complies with the legislation and Codes of Practice. The Council’s Senior Compliance and Customer Relations Officer is the RIPA Co-Ordinator with day to day responsibility for advice and guidance to departments on the process.

Since joining the Council in September 2019 and receipt of the recent inspection report, the SRO is undertaking a review of the Council’s systems and processes to ensure the Council has a robust RIPA structure and procedures in place, along with oversight of the quality of applications, authorisations and records maintained.

3.6 Use of a 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.

3.7 Applications authorised

The table below shows the number of applications authorised during the past three years:

	Directed surveillance	Communications Data	CHIS
2018/19	1	1	0
2017/18	1	0	0
2016/17	6	0	0

3.8 Inspection Findings and Recommendations

Appendix 1 is the letter from IPCO dated 15 October 2019 setting out the findings and the recommendations from the inspection.

Appendix 2 is the action plan setting out the actions already taken or being put in place to address the recommendations. The inspection report has been shared with the authorising officers and relevant officers in Regulatory Services who make the most use of RIPA powers. Learning points identified by the inspection will be addressed via the action plan.

4. **Recommendations**

That the Committee notes the findings and recommendations arising from the inspection and the actions taken or planned to address these.

5. **Implications of the Recommendations**

5.1 Legal Implications

The Council's use of its RIPA powers in respect of covert surveillance is subject to annual reporting and triennial inspection by IPCO to ensure the lawful use of powers.

5.2 Finance Implications

The content of this report will have no impact on the Council's Medium Term Financial Strategy.

5.3 Equality Implications

There are no equality implications flowing directly from the content of this report.

5.4 Human Resources Implications

There are no HR implications flowing directly from the content of this report.

5.5 Rural Communities Implications

There are no direct implications for rural communities.

5.6 Implications for Children and Young People/Cared for Children

There are no direct implications for children, young people or cared for children.

5.6 Public Health Implications

There are no direct implications for Public Health

5.7 Climate Change Implications

There are no direct implications to climate change.

6.0 **Ward Members Affected**

There are no direct implications for Ward Members.

7.0 **Access to Information**

7.1 Please see Appendices 1 & 2

8.0 **Contact Information**

8.1 Any questions relating to this report should be directed to the following officer:

Helen Sweeney

Senior Compliance and Customer Relations Officer

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Appendix 1 – Letter to the Council’s Acting Chief Executive from IPCO dated 15 October 2019.

Appendix 2 – Action Plan to address recommendations.