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## **BRIEFING REPORT**

**Audit & Governance Committee**

**27 July 2023**

**RIPA Policy and Inspection Plan Update**

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**Report of: David Brown, Director of Governance & Compliance**

**Report Reference No: AG/12/23-24**

### **Purpose of Report**

- 1 This report provides an update to Audit & Governance Committee on the action plan following an inspection by the Investigatory Powers Commissioner's Office (IPCO). Details of the inspection and action plan were considered by the Committee on 9 March 2023. It was recommended that an update on the action plan and the amended policies and procedures be brought to a future Committee.

### **Executive Summary**

- 2 The IPCO carried out a remote inspection of the Council's use of its powers under Part II of the Regulation of Investigatory Powers Act 2000 (RIPA) in November 2022. The inspector made some suggestions for improvements to policies and procedures to ensure they align with the guidance contained within the Covert Surveillance and Property Interference Code of Practice (2018).
- 3 The RIPA Policy and Procedures provide guidance to investigating officers considering covert surveillance under RIPA, the Protection of Freedoms Act 2012, and the Investigatory Powers Act 2016 (IPA). The Online Investigations Policy provides guidance to officers regarding the use of information available online, particularly on social network and social media platforms, to ensure the activity does not cross the boundary of surveillance when an authorised RIPA application may be required.

- 4 An action plan was drawn up to address the suggested improvements, and details of the actions taken are attached at Appendix 1.
- 5 A summary of the changes made to both policies is also attached at Appendix 2. General grammatical changes to wording have been made throughout and reference to Compliance & Customer Relations has been changed to Information Rights Team in line with a change to the name of the team responsible for RIPA. Versions of both policies with full tracked changes have been retained for reference.
- 6 A review of approved Authorising Officers has been undertaken following changes in senior management. RIPA applications can only be authorised by a Director listed in Schedule 1 of the RIPA Policy & Procedure in accordance with the authorisation signed by the Chief Executive on 17 May 2023.
- 7 The retention period of RIPA applications and investigation records has been aligned to six years for both sets of records. Previously, applications were retained by the Information Rights Team for three years and the investigation records retained by the relevant service for six years. An annual review and destruction of all records will take place to perform a single comprehensive review of case material.
- 8 The updated RIPA Policy and Procedure is attached at Appendix 3 and the updated Online Investigations Policy is attached at Appendix 4.

## **Background**

- 9 The IPCO provides independent oversight 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.
- 10 Since the introduction of the Protection of Freedoms Act 2012, Councils are 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, carrying a custodial sentence of six months or more.
- 11 The Council uses directed surveillance to carry out some of its enforcement functions effectively, particularly trading standards, licensing enforcement, environmental protection, and community safety. RIPA provides a regulatory framework to enable public authorities to obtain information using certain covert investigatory techniques. It is imperative that certain conditions are met in each to ensure successful prosecutions can be made. 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.

- 12 Once authorised, all applications must have the approval of a Justice of the Peace/Magistrate, as required by the Protection of Freedoms Act 2012. The Director of Governance & Compliance/Monitoring Officer is the Council's Senior Responsible officer for the purposes of RIPA and has responsibility for the integrity of the process to ensure the Council complies with the legislation and Codes of Practice. The Council's Information Rights Manager and Data Protection Officer is the RIPA co-ordinator with responsibility for maintaining the central record of authorisations and compliance with the process.
- 13 The volume of authorisations conducted by the Council has reduced since the Department for Work and Pensions took over responsibility for the identification of Benefit fraud. The COVID pandemic also affected the Council's enforcement activity and subsequently reduced the use of RIPA. Only one RIPA application has been authorised since 2019. This concerned a test purchase operation relating to the underage sale of prohibited goods.

### **Briefing Information**

- 14 As reported to the Committee on 9 March 2023, it was recommended that updated policies and procedures would be brought to a future Committee meeting.
- 15 All actions identified in the action plan have been completed, including:
  - (a) Insertion of version control page to policy and procedure.
  - (b) Amend wording of policy and procedure to reflect legal requirement for elected members to undertake formal scrutiny rather than just good practice.
  - (c) Review of retention period to align RIPA applications and investigation case material to ensure single comprehensive review and destruction of records.
  - (d) Review wording of online investigations policy to ensure consistency with Covert Surveillance and Property Interference Code of Practice (2018) and removal of references to Office of Surveillance Commissioners guidance.
  - (e) Include guidance regarding use of non-RIPA surveillance in the RIPA policy and procedure.

- (f) Review and update list of authorising officers and arrange relevant training.

## **Implications**

### *Monitoring Officer/Legal*

- 16 The Council's use of its powers under Part II of RIPA in respect of directed surveillance is subject to annual reporting by the Monitoring Officer to provide assurance to Audit & Governance Committee. Inspection by IPCO is carried out every three years to ensure the lawful use of the Council's powers and that effective policies and procedures are in place.

### *Section 151 Officer/Finance*

- 17 There are no financial implications arising directly from this report.

### *Policy*

- 18 The IPCO made suggested improvements to the RIPA Policy and Procedure as well as the Online Investigations Policy. These policies have been amended to reflect the changes suggested.
- 19 Compliance with RIPA and ensuring effective policies and procedures are in place supports the Council's "Open" aim in the Corporate Plan 2021-2025; support and develop our workforce to be confident, motivated, innovative, resilient and empowered.

#### **An open and enabling organisation**

- Support and develop our workforce to be confident, motivated, innovative, resilient and empowered

### *Equality, Diversity and Inclusion*

- 20 There are no equality, diversity and inclusion implications arising directly from this report.

### *Human Resources*

- 21 There are no human resources implications arising directly from this report; however, officers are required to be fully aware of their obligations when conducting surveillance or investigations using online material. Training is provided by the Trading Standards and Community Protection Manager for investigating officers and authorising officers.

### *Risk Management*

- 22 The Monitoring Officer provides assurance that the Council has arrangements in place to ensure lawful use of RIPA powers and manage the risks of non-compliance. The Monitoring Officer has regular oversight of RIPA applications and signs off the central register of authorisations on a quarterly basis.

#### *Rural Communities*

- 23 There are no implications for rural communities arising directly from this report.

#### *Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

- 24 There are no implications for children and young people arising directly from this report.

#### *Public Health*

- 25 There are no implications for public health arising directly from this report.

#### *Climate Change*

- 26 There are no implications for climate change arising directly from this report.

| <b>Access to Information</b> |  |
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| Appendices:                  | Appendix 1 – Updated action plan<br><br>Appendix 2 – Summary of changes to RIPA Policy and Procedure and Online Investigations Policy<br><br>Appendix 3 – Updated RIPA Policy and Procedure<br><br>Appendix 4 – Updated Online Investigations Policy |
| Background Papers:           | Inspection by Investigatory Powers Commissioner's Office - Report to Audit & Governance Committee 9 March 2023.  |