

## **Audit & Governance Committee**

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<b>Date of Meeting:</b>	09 March 2023
<b>Report Title:</b>	Inspection by Investigatory Powers Commissioner's Office
<b>Report of:</b>	David Brown, Director of Governance & Compliance
<b>Report Reference No:</b>	AG/06/22-23
<b>Ward(s) Affected:</b>	All

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### **1. Purpose of Report**

- 1.1. To provide Audit and Governance Committee with details of the outcome of a remote inspection by the Investigatory Powers Commissioner's Office (IPCO) in relation to the Council's use of its powers under Part II of the Regulation of Investigatory Powers Act 2000 (RIPA).

### **2. Executive Summary**

- 2.1 Cheshire East Council was inspected in November 2022 by the Investigatory Powers Commissioner's Office (IPCO). The previous inspection was during October 2019 which resulted in several actions, all of which have been discharged. This was the subject of a previous report to Committee in December 2019.
- 2.2 This report provides a summary of the findings and suggested improvements from the inspection in November 2022, together with an action plan to put the improvements into effect.
- 2.3 The inspection outcome shows a much-improved position for the Council and makes some very positive comments on the staff involved in the process. The improvements relate to some of the wording of the RIPA Policy and Procedure and the Online Investigations Policy to align with the guidance contained in the Covert Surveillance and Property Interference Code of Practice (2018).

- 2.4 The inspector also suggests reviewing retention periods for investigation files and the central register to ensure a single comprehensive review and destruction of surveillance records.
- 2.5 Another action involves the updating of the list of Authoring Officers in line with staff changes and training accordingly.
- 2.6 Appendix 1 is the letter from the IPCO dated 5 December 2022 setting out the findings from the inspection and suggested improvements.
- 2.7 Appendix 2 details the suggested improvements identified by the inspection and the actions required to address them.

### **3. Recommendations**

- 3.1. To note the outcome of the IPCO's inspection.
- 3.2. To agree the action plan to address the suggested improvements arising from the inspection and that the changes to policies and procedures will be undertaken.
- 3.3. To receive a report at a future Committee regarding amendments to relevant policies and procedures arising from the inspection when finalised policies will be made available.

### **4. Reasons for Recommendations**

- 4.1. The Audit & Governance Committee has a key role in overseeing the Council's risk management, control and corporate governance arrangements. This report seeks to ensure that the Committee is informed of the IPCO's inspection and to provide assurance that the Council is complying with the requirements of the RIPA legislation and any recommendations made by the inspector.
- 4.2. To provide the Committee with assurance of the actions in place to address the recommended improvements to RIPA policies and procedures.

### **5. Other Options Considered**

- 5.1. This report is for information and no other options are considered necessary to implement the recommended improvements.

### **6. Background**

- 6.1. 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.
- 6.2. Cheshire East Council was inspected remotely in November 2022. The last inspection was during October 2019 and was also a remote desktop

inspection which resulted in several actions, all of which have been discharged. This was the subject of a previous report to Committee in December 2019.

- 6.3.** The remote inspection is intended to be a lighter touch approach, given the low volume of RIPA authorisations approved by most local authorities. Since the changes in the legislation brought about by the Protection of Freedoms Act 2012, Councils are 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, carrying a custodial sentence of six months or more. The volume of authorisations has also reduced since the Department for Work and Pensions took over responsibility for the identification of Benefit fraud.
- 6.4.** Since the last inspection, the COVID pandemic affected the Council's enforcement activity and subsequently further reduced the use of RIPA. Only one RIPA application was authorised in the period since the last inspection. This concerned a test purchase operation relating to the underage sale of prohibited goods.
- 6.5.** The Council uses directed surveillance and obtains communications data 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 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.
- 6.6.** With the increase in the use of social media, the Council introduced an Online Investigations Policy. Online research and investigation have 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).
- 6.7.** 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.
- 6.8.** Once authorised, all applications need the approval of a Justice of the Peace/Magistrate, as required by the Protection of Freedoms Act 2012. The Director of Governance & Compliance is the Council's Senior Responsible

Officer (“SRO”) for the purposes of RIPA in accordance with the Home Office Codes of Practice. They have responsibility for the integrity of the process to ensure that 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.

- 6.9.** The Council’s Authorising Officers/Designated Persons under RIPA have been nominated at Director level from each directorate by the Chief Executive. Current trained Authorising Officers are:

**Place**

Director of Growth & Enterprise

**Corporate**

Director of Finance & Customer Services

**Children’s**

Director of Children’s Services

**Adults**

Director of Adult Social Care Operations  
Director of Commissioning

Following the departure of two Directors in Place, additional authorising officers are to be nominated and trained.

- 6.10.** 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.

## **7. Implications**

### **7.1. Legal**

- 7.1.1.** 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.

### **7.2. Finance**

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

### **7.3. Policy**

**7.3.1.** The inspection made suggested improvements to the RIPA Policy and Procedure as well as the Online Investigations Policy. These policies will be amended to reflect the changes suggested and will be brought to a future Audit & Governance Committee.

### **7.4. Equality**

**7.4.1.** There are no equality issues arising directly from the content of this report.

### **7.5. Human Resources**

**7.5.1.** There are no direct implications for human resources arising from this report.

### **7.6. Risk Management**

**7.6.1.** 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.

### **7.7. Rural Communities**

**7.7.1.** There are no direct implications for rural communities arising from this report.

### **7.8. Children and Young People/Cared for Children**

**7.8.1.** There are no direct implications for children and young people arising from this report.

### **7.9. Public Health**

**7.9.1.** There are no direct implications for public health arising from this report.

### **7.10. Climate Change**

**7.10.1.** There are no direct implications for climate change arising from this report.

**Access to Information**

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Appendices:	Appendix 1 - Letter from the IPCO dated 5 December 2022 setting out the findings from the inspection and suggested improvements.  Appendix 2 – Action plan to address the improvements identified by the inspection.
Background Papers:	None