

# CHESHIRE EAST COUNCIL

## REPORT TO: AUDIT & GOVERNANCE COMMITTEE

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**Date of Meeting:** 16<sup>th</sup> March 2017  
**Report of:** Compliance and Customer Relations Manager  
**Title:** Compliance with the Regulation of Investigatory Powers Act (2000) (RIPA)  
**Portfolio Holder:** Councillor Paul Findlow

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### **1.0 Report Summary**

1.1 This report provides an update on how the Council has complied with RIPA legislation during 2016/17 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 Office of Surveillance Commissioners 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
  - Executive Director of People and Deputy Chief Executive
  - Chief Operating Officer
  - Director of Children's Social Care

Training is currently being arranged for the Executive Director (Place) and the Strategic Director of Adult Social Care and Health. The recently appointed Director of Public Health will be trained as soon as possible after joining Cheshire East Council.

- 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 <sup>1</sup>	3	
2013-14	8	3	
2014-15	5	2	1
2015-16	5	2	0
2016-17	5	0	0

- 13.1 Of the 5 applications in 2016-17, 4 were test purchases of age restricted goods and 1 was in relation to fly-tipping. (In 2015-16, 3 were test purchases, 2 related to benefit

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

fraud and two were applications for communications data in respect of the sale of counterfeit goods on social media.)

- 13.2 The Housing Benefit Fraud Investigation Team moved to the Department of Work and Pensions on 1<sup>st</sup> December 2015. Numbers of applications for directed surveillance have reduced 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 23<sup>rd</sup> May 2016. The report was a very positive one, with only one recommendation for further improvement. The recommendation to update the policy and procedure to include more detailed explanation of the use of social networking sites is being addressed.
- 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 Access to information**

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

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