

FOR PUBLICATION

DERBYSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

1 February 2022

Report of the Assistant Director of Finance (Audit)

Regulation of Investigatory Powers Act (RIPA)

1. Purpose

- 1.1 To provide Members with an update on the use of Council's statutory powers provided for under the Regulation of Investigatory Powers Act (RIPA) 2000 as amended by the Investigatory Powers Act (IPA) 2016.

2. Information and Analysis

- 2.1 In discharge of this Committee's responsibilities for on-going monitoring of activity in this area, Audit Services were requested to produce regular monitoring reports on activity for review by Members and to provide an assurance on the effective operation of the Council's Policy relating to the Act.
- 2.2 The Council's Audit Committee last received a RIPA update report from Carl Hardman, the previous Assistant Director of Finance – Audit, in May 2020. This set out the outcome of an inspection of the Council's procedures relating to the use of its powers under the Regulation of Investigatory Powers Act (RIPA) by the Investigatory Powers Commissioner's Office (IPCO). The inspection report noted that the Council has not exercised its RIPA powers since 2012. The next IPCO inspection of the Council will be due in Spring 2023.
- 2.3 This report covers the period from 01 May 2020 to 31 December 2021.

- 2.4 RIPA and the IPA contain powers for various bodies to carry out covert surveillance and other covert activities. Certain covert powers under RIPA are available to local authorities and can be used in appropriate circumstances in accordance with the requirements of the legislation to support the delivery of their functions. The Investigatory Powers Commissioner's Office oversees the use of covert powers under RIPA by local authorities.
- 2.5 The Council can only undertake covert surveillance if the proposed operation is authorised by one of the authorising officers and subsequently approved by a magistrate. A local authority can only use directed surveillance if it is necessary to prevent or detect criminal offences, which attract a custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. The authorising officer must also be satisfied that the proposed directed surveillance is proportionate to what is sought to be achieved.

Access to Communications Data

- 2.6 No applications have been made in this period in respect of access to communications data.

Authorisation of Directed Surveillance

- 2.7 No applications have been received in this period in relation to directed surveillance.

Non- RIPA requests

- 2.8 One non-RIPA Open-Source Intelligence(OSINT) request was authorised in December 2021. This was reviewed in conjunction with the Director of Legal and Democratic Services. Whilst the request did not fall within RIPA, the same considerations were applied. The approval considered that the request was deemed necessary, planned enquiries were proportionate and for a legitimate purpose.

Policy Refresh and Training

- 2.9 Although there have not been any applications for the use of the Council's powers under RIPA since the last members' report, it has been some time since the Authority's RIPA Policy was last approved. Work to refresh the Policy was started in 2020, following the last IPCO inspection, but this update was never brought back to members for further approval.

- 2.10 RIPA legislation is supplemented by the Covert Human Intelligence Source (CHIS) Code of Practice which provides detailed, comprehensive guidance and best practice on the use of RIPA powers. The Home Office is due to publish an updated Code of Practice in early 2022 into use of overt investigatory powers and application of RIPA legislation. The Code is primarily intended to guide those public authorities that exercise powers and perform duties under the Regulation of Investigatory Powers Act 2000. It is expected that the Code will be supported by revised RIPA forms, also due to be issued later this year. This regulatory framework is designed to ensure that the powers are used by public authorities in a lawful way that is compliant with the UK's obligations under the European Convention on Human Rights.
- 2.11 It is intended that a review of the Council's RIPA Policy will be undertaken after publication of revised Home Office guidance. This will be followed by training for appropriate officers, and further awareness work to remind officers about RIPA.

3. Consultation

- 3.1 No consultation is required.

4. Alternative Options Considered

- 4.1 Audit Committee could choose not to consider the report content and recommendations.

5. Implications

- 5.1 Appendix 1 sets out the relevant implications considered in the preparation of the report.

6. Background Papers

- 6.1 File held electronically by the Assistant Director of Finance (Audit).

7. Appendices

- 7.1 Appendix 1 – Implications.

8. Recommendation(s)

That the Audit Committee note that:

- a) in the period 01 May 2020 to 31 December 2021 no applications were made under the Council's powers relating to RIPA
- b) it is intended to review the Council's RIPA Policy following publication of revised Home Office guidance.
- c) training and awareness activity will be programmed following the RIPA Policy refresh.

9. Reasons for Recommendation(s)

- 9.1 It is prudent and responsible practice for the Audit Committee to be kept informed of the powers exercised and actions taken under Council duties arising from RIPA.

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Appendix 1

Implications

Financial

1.1 None

Legal

2.1 The Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 regulate the use of a range of investigative powers by a variety of public authorities. This legislation provides a statutory framework for the authorisation and conduct of certain types of covert surveillance. Its aim is to provide a balance between preserving a person's right to privacy and enabling enforcement agencies to gather evidence for effective enforcement action. Local authorities can only use these powers for the prevention and detection of crime and their use is subject to review by the independent Investigatory Powers Commissioner's Office.

Human Resources

3.1 None

Information Technology

4.1 None

Equalities Impact

5.1 None

Corporate objectives and priorities for change

6.1 The Council is committed to ensuring good governance and compliance with applicable laws and regulations.

Other (for example, Health and Safety, Environmental Sustainability, Property and Asset Management, Risk Management and Safeguarding)

7.1 None