



EXECUTIVE BOARD DECISION

REPORT OF:	Executive Member for Digital and Customer Services
LEAD OFFICERS:	Strategic Director of Resources (SIRO)
DATE:	Thursday, 14 July 2022

PORTFOLIO/S AFFECTED:	Digital and Customer Services
WARD/S AFFECTED:	(All Wards);
KEY DECISION:	Y

SUBJECT: EB Regulation of Investigatory Powers Act 2000 Procedure and Guidance

1. EXECUTIVE SUMMARY

This is a report to the Executive Board

- to request approval of the newly drafted corporate RIPA Procedure and Guidance which is compliant with the latest Home Office Statutory Codes of Practice and
- to inform the Board that once that is approved the recommendations made by the Inspector from the Investigatory Powers Commissioners Office in 2019 will have been followed.

2. RECOMMENDATIONS

That the Executive Board:

- Agrees to adopt the new Procedure and Guidance see Appendix 1, and
- Note that the recommendations of the last inspection including ensuring that the Procedure and Guidance complies with the new Codes of Practice and undertaking the required training have been followed.

3. BACKGROUND

3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) was introduced to provide a legal framework within which law enforcement agencies could undertake covert methods of investigation, namely, covert surveillance and the use of what are called 'covert human intelligence sources' (CHIS) lawfully. The main purpose of RIPA was to ensure that public authorities only interfered with an individual's human right to respect for their private and family life where it was necessary for the purposes of detection and prevention of crime and proportionate to their aims. This is a human right that is enshrined in the Human Rights Act 1998 and the European Convention on Human Rights. Examples of the types of offences that this Council investigates mainly for the purposes of public protection are trading standards

offences (tobacco regulations, illegal puppy farming and trademarks infringements or underage sales), food safety and fly-tipping.

3.2 This legal framework consists of an internal system of authorisation. An investigating officer will complete an application form which is then submitted to the Authorising Officer appointed by the Council who will decide whether or not to approve it. In the form the officer will set out why the proposed operation is lawful, necessary and proportionate. The law, definitions and guidance to enable this to be done, including the necessary forms to complete are set out in the Procedure and Guidance.

3.3 This whole process is overseen by the Senior Responsible Officer (SRO) who is the Strategic Director of Resources and responsible for ensuring that corporate processes are being followed. Alongside this the RIPA Co-ordinator, who is the Deputy Director Legal & Governance (Council Solicitor) is responsible for ensuring compliance by ensuring the integrity of the processes. Their duties also include, organising training, overseeing the use of the powers internally and recording that use, error reporting and engagement with the IPCO for inspections.

3.4 There are meetings held every 6 months convened by the SRO, of a group of officers who submit information as to whether any covert investigations have taken place or are likely to, and who assist to develop procedures and guidance in this area. The draft Procedure and Guidance was developed and worked up into this final form by the Group under the auspices of the SRO and the RIPA Co-ordinator.

3.5 Only when an application to undertake the covert investigation has been properly authorised, can it then be submitted to a magistrates' court for judicial approval.

3.6 On 22 June 2022 the Policy and Corporate Resources Overview and Scrutiny Committee (the Committee) was provided with an update on RIPA (Regulation of Investigatory Powers Act). The purpose of the report was to inform Members of any RIPA activity/applications, RIPA training delivered to officers, the compliance with recommendations of the Investigatory Powers Commissioner's Office (IPCO) and to approve the new Procedure and Guidance to ensure the compliance with the current RIPA Codes of Practice issued by the Home office.

3.7 The IPCO Inspection in 2019 recommended some amendments to the existing Procedure and Guidance so as to accord with the most recent Codes of practice and recommended that some 'desktop' training sessions be held for the enforcement officers which contained actual scenarios.

3.8 The Council's enforcement officers have not carried out any covert methods of investigation since 2016. They would normally try to undertake all investigations in an open manner using more overt methods such as taking statements from witnesses and undertaking formal interviews of suspects under the Police and Criminal Evidence Act 1984. Cameras that are deployed are 'overt' in that there are signs in prominent places warning the public that there are cameras, thus taking these outside the RIPA regime (but these are regulated by other legislation.) However, the powers are there in case there should be a case when it is considered to be appropriate.

3.9 IPCO does recognise that the decision as to whether or not to use covert methods using the RIPA processes is an operational decision that is entirely for the Council to make in each

case, but stated that it is resource that assists in the lawful use of these powers. The IPCO himself reported that only a handful of local authorities inspected in 2019 used covert methods. Despite this Council's own preference not to use the powers, the IPCO still has a legal duty to inspect Councils every three years. There should be an inspection in September/October of this year. The inspections are mainly to ensure that Councils and their officers are aware of the law so that they carry out covert investigative methods lawfully.

3.10 At the next inspection the IPCO will look at the Council's Procedure and Guidance document and ensure that it accords with the RIPA Codes of Practice and will examine the Council's training of officers.

Procedure and Guidance

3.11 The Procedure and Guidance is necessarily detailed and extensive as it has to cover all the parts of RIPA and Home Office Codes relating to directed (covert) surveillance and the use of CHIS. There is a shorter executive summary of the Procedure and Guidance attached at Appendix 2. It sets out the legal definitions of directed surveillance and CHIS, necessity, proportionality and other relevant provisions of the Regulation of Investigatory Powers Act 2000, identifies the officers with responsibility including the SRO and the RIPA Co-ordinator and explains where to find the requisite forms. It ensures that officers will only undertake covert investigative methods where it is necessary and proportionate and will allow the Council, with appropriate record keeping, to demonstrate the reasoning for their decisions to do so.

Training

3.12 The desk-top exercises took place on 15 December 2021 and 27 January 2022 run by the Council's Service Lead Public Protection and Principal Solicitor - Litigation. They were interactive sessions, despite taking place online on Microsoft Teams. Their content consisted of a brief recap of the law and discussions using a number scenarios across different types of Council investigations with discussions around whether to employ directed surveillance and use of CHIS.

3.13 Training run by outside training providers has also taken place in previous years most recently being on 9th of October 2019 – full day and 29 November 2019 ½ day and both were focused on CHIS.

3.14 Training Sessions will take place to introduce all investigating officers to the new Procedure and Guidance.

4. KEY ISSUES & RISKS

This Procedure and Guidance will assist to increase awareness amongst Council officers and ensure compliance with the Human Rights Act 1998. The Council is obliged to adopt the new RIPA Procedure and Guidance to ensure it is compliant with current Home Office Codes of Practice and to enable it to produce it to the IPCO at the next inspection which is likely to be this year.

5. POLICY IMPLICATIONS

This Procedure and Guidance will update and replace the last one. It is not a change of policy.

6. FINANCIAL IMPLICATIONS

None

7. LEGAL IMPLICATIONS

Adoption of the new Procedure and Guidance is essential in order to show compliance with the latest Home Office Codes of Practice.

8. RESOURCE IMPLICATIONS

None

9. EQUALITY AND HEALTH IMPLICATIONS

Please select one of the options below. Where appropriate please include the hyperlink to the EIA.

Option 1 Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2 In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. (*insert EIA link here*)

Option 3 In determining this matter the Executive Board Members need to consider the EIA associated with this item in advance of making the decision. (*insert EIA attachment*)

10. CONSULTATIONS

None required

11. STATEMENT OF COMPLIANCE

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. DECLARATION OF INTEREST

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

VERSION: 1

CONTACT OFFICER:	Shelagh Lyth
DATE:	23/06/2022
BACKGROUND PAPER:	