



EXECUTIVE BOARD DECISION

REPORT OF:	Executive Member for Digital and Customer Services
LEAD OFFICERS:	Director of Digital and Business Change
DATE:	12 March 2020

PORTFOLIO/S AFFECTED:	Digital and Customer Services
WARD/S AFFECTED:	All
KEY DECISION:	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

SUBJECT:

UPDATE ON RIPA ACTIVITY, PROCEDURAL GUIDE AND DESKTOP RIPA INSPECTION

1. EXECUTIVE SUMMARY

This report updates elected members on:

- RIPA activity/applications
- RIPA training delivered to officers
- The outcome of a recent desktop inspection undertaken by the Investigatory Powers Commissioner's Office ['IPCO']
- Current plans to amend / update our RIPA procedural guide

2. RECOMMENDATIONS

That the Executive Board:

To note that:

- 2.1 There have been no RIPA applications since the last full inspection in June 2016.
- 2.2 The training delivered to officers as detailed in the body of this report.
- 2.3 The outcome of the IPCO desktop inspection.

To recommend:

- 2.4 That the actions required from the observations within the inspection outcome letter should be implemented.
- 2.5 That when completed, the draft updated RIPA Procedural Guide should be reported to the Policy and Corporate Resources Overview and Scrutiny Committee for comments prior to Executive Board approval.

3. BACKGROUND

Following an inspection of the Council's use of covert surveillance undertaken by the Office of the Surveillance Commissioner ['OSC'] on 20th June 2016 the Council reviewed and updated

its Procedural Guide for the use of covert surveillance and covert human intelligence sources ('CHIS').

The Policy and Corporate Resources Overview and Scrutiny Committee was presented with a report providing an overview of the inspection and report. Following this an amended Regulation of Investigatory Powers Act 2000('RIPA') Procedural Guide was scrutinised by the said Committee before being formally approved by the Executive Member for Resources in March 2018.

Since the last full RIPA inspection, the Council has continued to regularly, review and monitor any RIPA related activity undertaken by the authority. This has included training and review of our Procedural Guide for updates as required.

4. KEY ISSUES & RISKS

4.1 RIPA Activity

There have been no RIPA applications since the inspection in June 2016.

4.2 Training Update

The following training has been delivered by external training companies:

- 26th March 2018- RIPA Training and Social Media. This was a 1 day course targeted at Advanced Social Care Practitioners but was also attended by a number of relevant lawyers from Legal Services.
- 22nd January 2019 RIPA Refresher Training was delivered to a number of relevant Council officers over various departments, including our Senior Responsible Officer and RIPA Monitoring Officer. This was prompted by new RIPA guidance to update all practitioners with the latest developments and new guidance.
- 9th October 2019-a full day of CHIS training took place [organised by Public Protection] which mainly focused on enforcement related officers and was also attended by our RIPA Monitoring Officer.
- 29th November 2019-a half day training session was delivered focussing on RIPA CHIS authorisation and management of it. This session specifically focused on social care practitioners but also included other appropriate staff such as our Senior Responsible Officer and RIPA Monitoring Officer.

The latter 2 courses had not taken place when the desktop inspection questionnaire was returned however, the Council's response explained that both courses were already booked and a copy of the subject matter to be included in the session on the 29th November was attached to the response.

4.3 The Desktop Inspection Process.

On the 12th September 2019 BWDC received a letter from IPCO [formerly known as the 'OSC'] informing us our authority was due for its next programmed inspection of the use of covert surveillance in accordance with the provisions of the Regulation of Investigatory Powers Act 2000.

The letter explained that it had become apparent in recent years that for a variety of reasons, which included reduced resources, greater access to data-matching and overt rather than covert law enforcement, authorities like our own have granted far fewer RIPA authorisations. Some have actually granted none during these last few years.

Accordingly, IPCO are currently adopting a more flexible approach to the arrangements for inspections of local authorities. The correspondence further stated that where appropriate, our next

inspection would be based on a remote assessment and examination of the relevant documentation, thereby obviating the need for a visit by a Surveillance Inspector.

To demonstrate our current level of compliance with the legislation, the Council was asked to complete a pre-assessment questionnaire and return it, along with the additional materials identified in the form. The circumstances of our authority were then to be assessed and a decision made about the appropriate form of inspection.

The outcome options may have been:

- No visit by an inspector was necessary on this occasion
- Further information or documentation would be required before a final decision about a visit would be made, or
- A visit would be undertaken.

An inspector would always visit if a request was made by an individual authority and these new arrangements will not alter the jurisdiction of IPCO to send an inspector whenever they consider necessary.

A response was requested by 7th October 2019.

The questionnaire requested details covering a number of areas including:

- RIPA oversight activity conducted by the Senior Responsible Officer
- a description of the actions taken since the last Inspection to secure compliance with all recommendations made
- all currently designated Authorising Officers
- any covert surveillance equipment retained by our organisation and details of the person responsible for the storage, administration and use of this equipment etc.
- arrangements for the management of Covert Human Intelligence Sources (CHIS)
- ownership or management of a CCTV system including town/city centre systems and for example, adherence to the Surveillance Camera Commissioner's Guidance.
- the organisation's approach to the monitoring of internet and/or social media sites as part of investigations or enforcement activity in compliance with the Code of Practice.

The Council was also required to provide details of RIPA related training provided to our officers as well as a copy of our Procedural Guide.

4.4 Desktop Inspection Outcome

On the 15th October 2019 IPCO wrote to our Chief Executive with details of the Inspector's findings.

The Investigatory Powers Commissioner ['The Commissioner'] thanked the Council for facilitating the inspection through their Solicitor, Sian Roxborough *'who provided an extremely comprehensive reply to the initial request, all the relevant material and documentation and was very helpful throughout the process.'*

It was noted there had been no use of the available covert powers since the last inspection in 2016 and that the recommendations of the previous inspection had been fully addressed, with the learning from those recommendations circulated to relevant staff.

The Commissioner was pleased to further note that RIPA refresher training had been undertaken in 2018 and 2019 with the use of both internal and external providers and processes. However, the Commissioner suggested *'it would be a useful exercise to consider 'real life' RIPA scenarios, possibly by way of a 'table top' exercise, in order to assess not only the knowledge of your staff but also their operational suitability and capability to manage and deal with matters should the Act be engaged with.'*

The Commissioner was encouraged to note that our authority had undertaken training regarding the use of the internet as an investigative tool. He pointed out that this is a developing area and the revised Code of Practice for Covert Surveillance and Property Interference 2018, paragraphs 3.10 to 3.17, contains some useful advice and examples of online covert activity which may be helpful to our staff.

Whilst no covert activity had been undertaken by our Council, there were some observations made by the Inspector, which are detailed below.

Whilst the Commissioner decided there was no need for a physical inspection at this stage, the observations of his Inspector were as follows:

- '1. Documentation submitted by your Council for review and as an indication of the policies referred to when considering the use of covert activity, are draft copies of the relevant Codes of Practice dated 2017. The revised Codes of Practice for both the covert disciplines of surveillance and CHIS were issued in August 2018. These Codes only should be referred to by your staff.*
- 2. Specimen directed surveillance authorisations, used by your Council, were reviewed by my Inspector and found to contain a section for use when utilising the urgency provisions. This section of the form should be removed, to avoid any confusion, as the use of the urgency provisions is no longer applicable to your Council following The Protection of Freedoms Act 2012.*
- 3. No CHIS authorisations have been formed by your Council since the last inspection. Nevertheless, the use and management of information passed to your staff by members of the public, has been the subject of debate and review by your Council. It is refreshing to note that this matter has been considered and processes are being put in place to educate and advise staff on this matter. The revised Code of Practice for Covert Human Intelligence Sources 2018, paragraphs 2.18 to 2.26, contains advice on the management of information from public volunteers. Specifically, paragraphs 2.25 to 2.26, advise what Public Authorities should avoid doing when engaging with a member of the public, and when a Public Authority should consider a CHIS authorisation. These paragraphs are essential reading for those staff who engage with members of the public on a regular basis and can only but assist with their education in this regard, in addition to the processes being proactively undertaken already by your Council.'*

We were reminded of the importance of regular, ongoing internal oversight of the actual or potential use of these powers, which should be managed by our Senior Responsible Officer.

The Commissioner commented that generally, he was *'concerned at the reduction in the use of investigatory powers across England, Scotland, Wales and Northern Ireland and there may be greater scope for considering the use of authorised investigative activity'*. However he acknowledged these were *'operational decisions that are entirely for your Council, but IPCO is a resource to assist in the lawful use of these powers.'*

4.5 BWDC's Inspection Response

On the 18th December 2019 the Council wrote back to IPCO to update the Commissioner on the recent activity undertaken to address issues raised in the desktop inspection.

We explained that the following actions had been taken:

- the inspection feedback letter was immediately circulated to our Senior Responsible Officer
- it was also sent to all members of our RIPA Monitoring Group and the content discussed at a recent meeting. As a result, it was agreed as one of our actions was that our Public Protection Team would arrange a ‘table top’ exercise as suggested, to assess staff knowledge and operational effectiveness should we engage with the Act. (It should be noted that this has subsequently been booked to take place on the 24th March 2020.)
- the Chair and Vice Chair of Policy and Corporate Resources Overview and Scrutiny Committee had also received a copy of the inspection outcome letter and that our RIPA Monitoring Officer was due to meet with them on the 19th December to discuss the contents. Thereafter a report would be submitted to the said committee on the inspection outcome, also incorporating a general RIPA activity update.
- we confirmed observations 1 and 2 would be addressed in our ongoing RIPA procedural guide update
- as regards observation 3, a full day of CHIS training took place on 9th October and a half day on 29th November [this session specifically focused on social care practitioners]. Both activities were delivered by an external training company and the latter focused on RIPA CHIS authorisation and management.

We thanked IPCO for their constructive suggestions and comments and confirmed Blackburn with Darwen Council’s commitment to ensuring we take our responsibilities relating to investigatory powers very seriously under the oversight of our Senior Responsible Officer.

A report was submitted to our Policy and Corporate Resources Overview and Scrutiny Committee on the 21st January 2020 updating elected members on the above activity and the said Committee recommended that a report should be submitted to Executive Board explaining the outcome of the IPCO desktop inspection, recommending that any actions required from the observations within the inspection outcome letter should be implemented.

4.6 Update to Procedural Guide

Our Procedural Guide was last updated to accord with the last Inspector’s report of 2016 and was in the process of being reviewed when we received the Desktop Inspection Questionnaire. We explained in our inspection response that ‘A number of months ago we instructed an external provider to update our RIPA policy to cover issues including reflecting the fact that IPCO took over the responsibility for oversight of investigatory powers from the Interception of Communications Commissioner’s Office (IOCCO) and the Office of Surveillance Commissioners (OSC) in September 2017. Accordingly, our RIPA Policy will need to reflect this. We are mindful the OSC Procedures and Guidance 2016 is still current.

There are also new RIPA Draft Codes of Practice. One of the biggest changes is that there are now four pages in the COP on Internet Research which we need to reflect in our documentation. Furthermore, we have a new SRO [who has been trained as set out in response to question 6] as our previous one is now our Chief Executive.

The amendments have been drafted but are due to be finally agreed at a meeting on the 8th October 2019. Thereafter they will need to be approved via our formal process of scrutiny and our relevant executive member.'

At the meeting on the 8th October 2019 it became apparent that it would be more pragmatic to completely redraft our procedural guide. Whilst the contents are on the whole sound [except for amendments required as identified above], it would be expedient to revise the lay out etc. for ease of reference.

It is anticipated this piece of work will be completed and reported back to Policy and Corporate Resources Overview and Scrutiny Committee on the 23rd March 2020, with a view to then being reported to Executive Board for approval.

5. POLICY IMPLICATIONS

It is imperative that the Council has a procedural guide to cover RIPA applications to ensure officers are aware of our legal obligations and permitted parameters of surveillance.

6. FINANCIAL IMPLICATIONS

None.

7. LEGAL IMPLICATIONS

Some of the Council's activities necessarily require covert surveillance as part of its enforcement functions. The Council's use of RIPA is restricted to undertaking covert surveillance in limited circumstances. There are very strict guidelines which must be evidenced in detail before authorisation is given to undertake such covert surveillance.

The legal aspects relating to this activity are set out in the body of this report and our procedural guide.

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

Not applicable.

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
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CONTACT OFFICER:	Sian Roxborough, Head of Legal Services
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DATE:	18 th February 2020
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BACKGROUND PAPER:	
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