

**For General Release**

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>6 September 2017</b>
<b>AGENDA ITEM NO:</b>	<b>6</b>
<b>AGENDA ITEM:</b>	<b>APRIL 2017 INSPECTION OF THE COUNCIL BY THE OFFICE OF SURVEILLANCE COMMISSIONERS</b>
<b>SUBJECT:</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT 2000</b>
<b>LEAD OFFICER:</b>	<b>JACQUELINE HARRIS-BAKER, DIRECTOR OF LAW AND MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CABINET MEMBER:</b>	<b>Councillor Hamida Ali - Communities, Safety and Justice</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> Monitoring compliance with the Regulation of Investigatory Powers Act supports the Council's approach to corporate governance.	
<b>FINANCIAL IMPACT</b> The recommendation contained in this report has no financial implications	
<b>KEY DECISION REFERENCE NO:</b> This is not a key decision.	

**1. RECOMMENDATION**

- 1.1 The Committee is asked to note the findings of the recent Office of the Surveillance Commissioner (OSC) Inspection, which documents the Council's use of the powers available under Regulation of Investigatory Powers Act 2000 (RIPA) since the last inspection.

**2. EXECUTIVE SUMMARY**

- 2.1 The OSC undertook an inspection of the Council's use of RIPA on 5 April 2017 and provided the report of the inspection to the authority on received 10 May 2017. The report concluded that there was a clear commitment on the part of those officers involved in both operational and supervisory roles, to maintain proper standards.
- 2.2 The OSC is responsible for the inspection of the Council's use of directed surveillance powers, and the inspection examined the arrangements made by the Council to secure compliance with the statutory provisions which govern the use of covert surveillance.
- 2.3 As has been previously reported to the Committee, RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities "core functions".

- 2.4 In the context of RIPA, a public authorities' "core functions" are the specific public functions it undertakes when providing services, in contrast to the "ordinary functions" which are those undertaken by all authorities (e.g. employment issues, contractual arrangements etc). The Council may only utilise RIPA for the purpose of investigating criminal offences. When the Council does so, it is able to carry out covert directed surveillance; use covert human intelligence sources and/or acquire data relating to communications (e.g. telephone subscriber information).
- 2.5 Evidence obtained by any covert surveillance could be subject to challenges under Article 8 of the European Convention on Human Rights (ECHR) - the right to respect for private and family life. However, properly authorised covert surveillance under RIPA, which is undertaken in accordance with such authorisation, makes lawful what might otherwise be a breach of Article 8 of the ECHR and will offer a measure of protection to the Council from civil liability in relation to an Article 8 breach.
- 2.6 As a general trend, the Inspector noted there has been a move towards the preference of overt methods and that a more limited use of RIPA by the Council as is evident in many other authorities. The Inspector did not however, observe a decrease in willingness by Council officers to recognise and use the relevant powers available, where appropriate to do so.

### **3. KEY FINDINGS**

- 3.1 The OSC examined the training documentation, including the training file and the register of attendees who attended the most recent training event for Council officers, which was facilitated by 'Act Now Training'. The Inspector raised participation in a refresher courses prior to officers undertaking their responsibilities under RIPA. The Council is aware that, under the code of practice that governs the use of RIPA and its own internal requirements, officers whose day-to-day work may require them to be aware of the issues surrounding the use of RIPA are required to be trained.
- 3.2 As part of the inspection, the Inspector considered and commented on the Council's RIPA Policy document. It was noted that the Council's current Policy document does not include the use of social media and the Inspector has recommended that it is revised to include this.
- 3.3 The Inspector further commented that Corporate Policy and Procedure is of *'high quality', 'rated as "admirable"'* by the previous OSC inspector, and *'is balanced and easy to follow'*. Members may wish to note that in addition to the Council's RIPA Policy document, an Aide-memoir had been issued to the Council officers who undertake RIPA activities, which includes the use of Social Media in investigations in addition to specific pieces of advice provided separately in respect of individual investigations. As part of the proposed amendments, this advice will be expanded upon and included within the revised policy document.

- 3.4 The Inspector examined authorisation documentation since the previous inspection in March 2014. The authorisation process is designed to ensure that the issues of necessity and proportionality are fully considered and to ensure that all applications meet the necessarily high standard that is required. The application is then made to the Magistrates by an authorised officer in the Corporate Legal Team. In accordance with statutory requirements, this team also maintains the Council's Central Register of covert surveillance applications.
- 3.5 The Inspector commented positively on the fact that *'the observations in the previous report had been acted upon and the underlying paperwork was sound.'* The Inspector has recommended that the Council should use download and populate a standard electronic record, to record authorisations. The Council does currently record authorisations in that manner, but not in the layout expressed by the Inspector to be his preference. As part of the revision of the policy documentation, this preferred layout will be adopted.
- 3.5 The Inspector met with and interviewed officers from the Corporate Anti-Fraud Team and Trading Standards, as well as officers from Legal Services. Additionally this year the Inspection included a visit to the Council's CCTV Control Room. The Council's use of CCTV is for overt surveillance, however there are occasions when other organisations such as the Police, Department of Work and Pensions and Her Majesty's Revenue and Customs use the Council's CCTV (under the Council's supervision) for covert surveillance. The Inspector commented that the CCTV Control Room is operating to a good and efficient standard with the operators having considerable experience and local knowledge. It was noted that the incident report record book is in good order, with records of the authorisations requested.
- 3.6 In conclusion, the Inspector commented *"The RIPA team, both supervisory and operative, have accumulated considerable experience between them and their inter communications and wish to operate at a high standard was evident..." "I found a clear commitment to maintain proper standards of awareness and training so as to be ready when the occasion demands."*

#### **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

- 4.1 There are no direct financial implications arising from this report.

#### **5. LEGAL IMPLICATIONS**

- 5.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

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and Monitoring Officer (Ext. 62328)

**BACKGROUND PAPERS:**

Exempt