

REPORT TO:	GENERAL PURPOSES AND AUDIT COMMITTEE 25 NOVEMBER 2021
SUBJECT:	USE OF THE POWERS AVAILABLE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND INVESTIGATORY POWERS ACT 2016 - YEAR ENDING 31 DECEMBER 2020
LEAD OFFICER:	RICHARD ENNIS, INTERIM CORPORATE DIRECTOR OF RESOURCES & S151 OFFICER
CABINET MEMBER:	COUNCILLOR MANJU SHAHUL- HAMEED, CABINET MEMBER FOR COMMUNITIES, SAFETY AND BUSINESS RECOVERY
WARDS:	ALL
PUBLIC/EXEMPT:	PUBLIC

SUMMARY OF REPORT:

Monitoring compliance with the Regulation of Investigatory Powers Act and Investigatory Powers Act 2016 to support the Council's approach to corporate governance.

COUNCIL PRIORITIES 2020-2024

Monitoring compliance with the Regulation of Investigatory Powers Act and Investigatory Powers Act 2016 to support the Council's approach to corporate governance.

FINANCIAL IMPACT:

Implementation of the recommendations contained in this report have no financial implications.

RECOMMENDATIONS:

The Committee is asked to note (1) the use of the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 by the Council during 2020 and (2) the outcome of the inspection by the Investigatory Powers Commissioner's Office.

1. BACKGROUND

- 1.1 The purpose of this report is (1) to inform the Committee how the powers available to the Council under Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016 (IPA) have been used over the last calendar year and (2) to provide information regarding the inspection undertaken by the Investigatory Powers Commissioner' Office (IPCO).

2. DETAILS

- 2.1 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. 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 makes lawful what might otherwise be a breach of Article 8 of the ECHR and protects the Council from any civil liability.
- 2.2 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.). Therefore a public authority may only engage in the use of RIPA/IPA when in performance of its “core functions”.
- 2.3 Using RIPA/IPA, but only for the purpose of investigating crime and disorder, the Council 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).
- 2.4 ‘Covert’ in this context means carried out in a manner calculated to ensure that those subject to the surveillance are unaware that it is or may be taking place. It usually involves personal observation, the use of CCTV, or accessing communications data such as mobile phone number subscriber or website details. However, even using these powers, the Council cannot carry out intrusive surveillance, such as putting a hidden camera in a suspect’s home to observe them, or listening to or obtaining the contents of telephone call or emails; such intrusive surveillance can only be carried out by the Police and government security services.
- 2.5 Further, even where the covert investigations are for the purpose of preventing crime and disorder, the Council must also show that the surveillance is necessary and proportionate and can be balanced against an individual’s right to their private and family life.
- 2.6 Covert Human Intelligence Sources (CHIS) are individuals who by the nature of their situation are able to provide information in a covert manner to aid an investigation. The use of CHIS is very tightly controlled under RIPA and historically the Council has not made use of this aspect of RIPA.
- 2.7 Local Authorities require judicial approval from a Court for the use of covert directed surveillance and CHIS.
- 2.8 Access to communications data must now be authorised by a designated Head of Service and obtained via the Council’s ‘Single Point of Contact’ who

are National Anti-Fraud Network (NAFN). However rather than seeking the approval of the Magistrates Court the request is passed by NAFN to the Office for Communications Data Authorisation, who then scrutinise and the application and if they are satisfied approve the request.

- 2.9 Overall supervision of the Council's use of RIPA/IPA lies with the Executive Director of Resources including day to day monitoring of and advice on authorisations, 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.
- 2.10 As a result of recent organisational changes the Officers Authorised to approve requests, has been revised; Authorisations are approved by Head of Insurance, Anti-Fraud & Risk.
- 2.11 Once these organisational changes have been finalised, they will be reflected within a revised Policy Document which will be considered by the Committee at their next meeting.

3. USE OF THE POWERS AVAILABLE

- 3.1 The occasions and outcomes where the use of the powers available under RIPA to aid the following investigations listed below were authorised during 2020.

Directed Surveillance - None; and

Communications Data Requests - Environmental Enforcement; Single request to cover a series of linked fly-tips offences. Enquiries resulted in fixed penalty notices, and likelihood of further investigations by other regulatory bodies.

4. INSPECTION BY INVESTIGATORY POWERS COMMISSIONER'S OFFICE

- 4.1 The Council's use of these powers, its policy and procedures are subject to inspection and audit by the Investigatory Powers Commissioner's Office. During these inspections, individual applications and authorisations are closely examined and Authorising Officers are interviewed by the inspectors.
- 4.2 The Council's use of these powers was inspected by the IPCO on 1 July 2020.
- 4.3 The Inspector commented that *"The information provided has demonstrated a level of compliance that removes, for the present, the requirement for a physical inspection."*; and that *"... the revised Council policy underpinning the use of RIPA is suitably comprehensive, providing the necessary detail to practitioners who may contemplate the use of directed surveillance and CHIS."*

- 4.4 The Inspector also suggested helpful addition information to be included within the Council Policy document and the process regarding the retention of records.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

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

(Approved by: Matt Davis, Interim Director of Finance)

6. LEGAL CONSIDERATIONS

- 6.1 The Head of Litigation & Corporate Law comments on behalf of the Director of Law and Governance that, there are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

Approved by Sandra Herbert, Litigation & Corporate Law on behalf of the Director of Law and Governance & Deputy Monitoring Officer

7. HUMAN RESOURCES IMPACT

- 7.1 There are no immediate human resource considerations arising from this report for LBC staff or employees

Approved by: Gillian Bevan, Acting Head of HR - Resources and Assistant Chief Executives

8. EQUALITIES IMPACT

- 8.1 That whilst undertaking these duties the Council will ensure that they comply with the Section 149 of the Equality Act (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act.

Approved by: D.McCausland - Equality Programme Manager

9. CRIME AND DISORDER REDUCTION IMPACT

- 9.1 The correct use by the Council of its powers under the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 will ensure investigations are conducted in a transparent and legally compliant manner and will contribute to ensuring relevant/associated crime and disorder problems are effectively and successfully dealt with.

Approved by Sandra Herbert, Litigation & Corporate Law on behalf of the
Director of Law and Governance & Deputy Monitoring Officer

10. DATA PROTECTION IMPLICATIONS

- 10.1** Yes, the personal data relates to the identities of those who may be subject to the use of these powers including victims and other third parties who may be referred to within the authorisations and court records.

The processing of the data used is subject to the strict controls arising from RPIA, IPA, and the Judicial Authorisation procedure. Further this is supported by Home Office Guidance and that of the IPCO who are the regulatory body with oversight of the use of the powers available. This processing will be recorded within a DPIA and the revised Policy document.

Approved by Sandra Herbert, Litigation & Corporate Law on behalf of the
Director of Law and Governance & Deputy Monitoring Officer

CONTACT OFFICER: Howard Passman, Legal Services

BACKGROUND DOCUMENTS: Exempt