

## Internal Scrutiny Committee

Meeting to be held on Friday, 10 September 2021

Electoral Division affected: All
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### Regulatory of Investigatory Powers Act 2000 - Annual Report

Appendix A - Corporate Policy and Guidance on the Regulation of Investigatory Powers Act

Appendix B - Shadow RIPA Surveillance Corporate Policy

Appendix C - Covert Social Networking Checks and Surveillance Policy

Contact for further information:

Chris Wilkinson, Trading Standards Manager, (01772 531407),

christopher.wilkinson@lancashire.gov.uk

#### Executive Summary

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework for local authorities, to use covert surveillance techniques for the purposes of undertaking statutory functions in connection with the prevention or detection of crime.

Local authorities are subject to regular inspections from the Investigatory Powers Commissioners Office - IPCO. The next inspection is expected to take place in 2023.

Members are required to review the use of RIPA and set the policy at least once a year.

#### Recommendation

The Committee is asked to:

1. Approve, with immediate effect, the updated corporate policies on:
  - RIPA Surveillance
  - Non-RIPA surveillance
  - The use of Social Media and the Internet in investigations

#### Background and Advice

RIPA includes the activities of directed surveillance, for example the use of recording devices, to record persons suspected of being engaged in criminal activity, where there is a possibility of gaining of private information, and the use of a Covert Human Intelligence Source (CHIS), for example an informant, where the surveillance involves developing a relationship in order to obtain information.

Adopting policies and procedures that comply with RIPA and the associated Codes of Practice and Guidance issued by the Investigatory Powers Commissioners Office (IPCO) and the Home Office provides the local authority with a defence if an individual brings a claim against the local authority alleging that the surveillance breaches their human rights, specifically Article 8, the right to respect for private and family life, home and correspondence.

Established processes ensure that applications to conduct covert surveillance activities are authorised by Senior Managers within the Trading Standards Service. The authorisation process considers the necessity of the surveillance and its proportionality. If authorised, the application must then be put before a magistrate for approval before the activity can take place

Within the County Council, covert surveillance is used very infrequently and only in connection with Trading Standards activities, typically against rogue traders, counterfeiters or individuals engaged in selling tobacco or alcohol products to children. It is used in cases where it is important to obtain information to support potential criminal proceedings, and only where that information cannot be obtained by any other means.

Members are expected to oversee the use of RIPA and set the policy at least annually. A copy of the Corporate Policy and Guidance on the Regulation of Investigatory Powers Act is attached as Appendix 'A'

Only minor amendments are made relating to the duration of which a juvenile CHIS authorisation can be granted. Increasing the time 1 month to 4 months bringing the policy inline with the associated code of practice.

### **RIPA Activity**

Since the last scrutiny committee report in June 2020 there have been no applications for the use of CHIS or for Directed Surveillance.

### **Non RIPA Surveillance**

The authority may also be involved in surveillance activity for other purposes, for which authorisation is not permitted to be sought under the RIPA.

Such surveillance could nevertheless leave the authority open to a claim of infringement of the right to privacy and family life, and therefore in such cases the approach of the authority has been to utilise what are called "shadow authorisations", to be put before the Trading Standards Service RIPA authorisers for approval.

Such activity may include surveillance in relation to child protection work, and use of social media to obtain information, or serious allegations of employee misconduct.

Shadow authorisations are rare. A corporate policy on their use has previously been adopted to promote consistency of application and ensure the principles of necessity and proportionality are considered.

A copy of the Shadow RIPA Surveillance Corporate Policy is attached as Appendix B. There are no significant changes to this policy since the last review.

### **Shadow RIPA Activity**

No shadow authorisations have been granted since the last scrutiny report in June 2020.

### **Social Media and Covert Surveillance Policy**

In response to guidance issued by the Home Office and by the IPCO LCC implemented a 'Social Media and Covert Surveillance Policy'.

Increasingly the use of social media means that a wide range of personal information posted by individuals is available online. Where the authority intends to search for information and

use it in connection with our investigations, we must ensure that the relevant provisions of RIPA are considered and that appropriate authorisations are obtained where necessary.

This applies to investigations concerning the prevention or detection of crime, or for the purpose of other investigations connected with employee misconduct or child protection matters for example.

This policy is also reviewed annually. There are no significant changes to this policy since the last review. A copy of this is attached as Appendix C.

### **IPCO Inspection**

IPCO inspect local authorities every 3 years and examine a sample of authorisations which have been granted in the period since the last inspection. The last inspection was completed virtually in March 2020. A recommendation was made that training should be refreshed for relevant Officers. It is expected that this training will be completed in the current financial year and initial enquiries have been made with training providers.

### **Consultations**

N/A

### **Implications:**

This item has the following implications, as indicated:

### **Risk management**

The use of RIPA, where permitted, provides a defence to a local authority where an individual alleges that their human rights have been contravened.

Non RIPA surveillance is subject to a similar process within LCC, which will enable the authority to show that it has appropriately considered necessity and proportionality in any case where there is an allegation that human rights have been breached in a situation not involving the prevention and detection of crime.

Guidance on the use of social media in investigations will ensure that an individual's human rights are considered in the context of the use of information published by the individual online.

### **Financial**

There are no financial implications arising from the recommendations in this report. However, without appropriate safeguards and if challenged, the Council could be liable to pay a financial penalty in respect of actions held to be an infringement of an individual's right to a private and family life, home and correspondence.

### **Legal**

The Council is obliged to have regard to the Covert Human Intelligence Sources Revised Code of Practice (August 2018) and the Covert Surveillance and Property Interference Code of Practice (August 2018) when seeking to undertake covert surveillance, this includes surveillance by the use of social media.

There is a possibility of legal action against the authority if covert surveillance is held to have breached an individual's human rights. Noncompliance with the legislation may result in challenges by IPCO or challenges to evidence in court.

In relation to the Investigatory Powers Act 2016, the Investigatory Powers Tribunal has jurisdiction to investigate and determine complaints against public authority use of investigatory powers.

### **Equality and Cohesion**

The use of RIPA principles requires consideration of the necessity and proportionality of surveillance and as part of this, equality and cohesion issues would be considered.

### **Human Rights**

The use of RIPA and associated principles is recommended in the context of consideration of the impact of surveillance activities on the right to privacy, a family life, home and correspondence.

### **Crime and Disorder**

LCC Trading Standards Service has a statutory duty to investigate criminal offences committed under a wide range of public protection legislation. In a small minority of cases the use of covert surveillance may be the only means of progressing the investigation.

### **Personnel**

Activities are risk assessed to ensure the health and safety of individuals is considered and any mitigating measures are implemented.

### **Local Government (Access to Information) Act 1985 List of Background Papers**

Paper	Date	Contact/Tel
N/A		

### **Reason for inclusion in Part II, if appropriate**

N/A