



AGENDA ITEM: 9

**CABINET:
18 JUNE 2013**

**AUDIT & GOVERNANCE
COMMITTEE:
25 JUNE 2013**

Report of: Borough Solicitor

Relevant Managing Director: Managing Director (People and Places)

Relevant Portfolio Holder: Councillor I Grant

**Contact for further information: Mr T P Broderick (Ext 5001)
(E-mail: terry.broderick@westlancs.gov.uk)**

**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT – ANNUAL
SETTING OF POLICY AND REVIEW OF USE OF POWERS**

Borough Wide interest

1.0 PURPOSE OF THE REPORT

1.1 To review and set the Policy on the use of the Regulation of Investigatory Powers Act 2000 (RIPA) and to review the use of covert surveillance and the acquisition of communications data by the Council over the last year.

2.0 RECOMMENDATIONS TO CABINET

2.1 That the RIPA Guide and Guidance on Completing RIPA Authorisation Forms be approved.

2.2 That the Council's RIPA activity be noted.

2.3 That Managing Directors and Heads of Service be authorised to appoint officers to attend the Magistrates' Court to seek orders approving the grant or renewal of authorisations for directed surveillance, covert human intelligence sources and acquisition of communications data.

3.0 RECOMMENDATION TO AUDIT & GOVERNANCE COMMITTEE

3.1 That the Annual update report and review of use of powers, be noted.

4.0 BACKGROUND

- 4.1 The Council employ a number of investigative techniques including surveillance, which assist its regulatory functions. Relevant areas of activity include investigations by Internal Audit, Benefits Fraud Team, Environmental Health, Licensing, CCTV Services and MAPs Team.
- 4.2 In accordance with RIPA, its subordinate legislation and Codes of Practice, the Council regulates its relevant surveillance activities. As well as robust systems for internal control the Council is also subject to external inspections by the Office of Surveillance Commissioners (which monitors the use of directed surveillance and covert human intelligence sources) and the Interception of Communications Commissioner's Office (which monitors the acquisition of communications data). The Council was last inspected by the OSC on 21 July 2010 and the findings from that inspection were reported to the members of cabinet on 14 September 2010. A further inspection has been scheduled and is to take place on Thursday 27 June 2013.
- 4.3 The statistical information on the use of RIPA powers during the last year is set out in paragraph 6.1 below.
- 4.4 As was presaged in last years' report to Cabinet the Protection of Freedoms Act 2012 ("the 2012 Act") came into force within the last year. The 2012 Act and related changes requiring (amongst other things) judicial approval to activate the grant or renewal of an authorisation to obtain communications data, to conduct directed surveillance or to use covert human intelligence sources. Provisions also further regulate CCTV and other surveillance camera systems operated by public authorities, including Councils. Relevant steps have been taken in that regard. The Council can now only grant authorisations for directed surveillance where one or more criminal offences carrying a minimum sentence of 6 months imprisonment are suspected. No urgent oral authority may be obtained by local authorities.
- 4.5 In order to give effect to the requirement to seek approval of authorisations or renewals of authorisations for relevant surveillance activities from the Magistrates' Court, officers will need to be appointed by Heads of Service or Managing Directors for that purpose. This would allow investigating officers the opportunity to attend and explain the circumstances/give evidence when seeking approval.

5.0 POLICY APPROVAL

- 5.1 As a requirement of the RIPA Code of Practice the Council considers its policy in this area on an annual basis, as well as reviewing its use of the powers through quarterly reports to Audit and Governance Committee. The Council's RIPA Guide forms the Council policy in this area and has been commended in earlier inspections. A link to the draft updated Guide and the associated Guidance to Officers is available through the following link http://www.westlancs.gov.uk/council_and_democracy/legal_statements_and_foi/ripa.aspx At paragraph 5 the Guide stresses that grantors must believe the authorised activity is:

(1) necessary for preventing and detecting crime; and

(2) proportionate to what is sought to be achieved in carrying out the surveillance activity (e.g. the 24/7 watching of premises, where private individuals may go about their lawful business, for the possibility of gaining collateral evidence for a very minor technical infraction of an offence would not in all likelihood be proportionate). If it fails either test, authorisations should not be granted.

5.2 The Guide includes provisions regulating the process for Management of CHIS (covert human intelligence sources) by the Borough Solicitor.

5.3 The forms guidance provides a step-by-step guide to officers in the use of the policy for relevant activity. These documents are monitored throughout the year to ensure they are up to date and 'fit for purpose' and may be amended in accordance with delegated arrangements.

5.4 In the current year an amended version was prepared to cater for the changes brought about by the 2012 Act.

6.0 MONITORING OF RIPA ACTIVITY

6.1 Since April 2012 no covert surveillance has been authorised.

7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

7.1 There are no significant sustainability implications arising directly from this report, although properly authorised RIPA activity may assist in delivering safer communities.

8.0 FINANCIAL AND RESOURCE IMPLICATIONS

8.1 There are no additional significant financial and resource implications arising from this report.

9.0 RISK ASSESSMENT

9.1 The Council could be in breach of the relevant legislation if it does not follow the procedures set out in the RIPA and its Codes. This could result in the inadmissibility of evidence and the possibility of breach of the Human Rights Act 1998.

BACKGROUND DOCUMENTS

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this report.

Equality Impact Assessment

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required

Appendices

Appendix 1 – RIPA Guide and Forms Guidance dated available at:

http://www.westlancs.gov.uk/council_and_democracy/legal_statements_and_foi/ripa.aspx