



## AGENDA ITEM:

**AUDIT AND GOVERNANCE:  
COMMITTEE 28<sup>th</sup> July 2020**

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**Report of: Legal and Democratic Services Manager**

**Relevant Portfolio Holder: Councillor I Moran, Leader**

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**SUBJECT: REGULATION OF INVESTIGATORY POWERS ACT**

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**Borough Wide Interest**

### **1.0 PURPOSE OF THE REPORT**

- 1.1 To provide an update on the use of the Regulation of Investigatory Powers Act 2000 (RIPA) powers, to report on the results of a desk-top inspection by the Investigatory Powers Commissioner and to note a minor amendment to the RIPA policy.

### **2.0 RECOMMENDATIONS**

- 2.1 That it be noted that there have been no authorisations for the use of covert surveillance since the last meeting of the Audit and Governance Committee.
- 2.2 That the satisfactory outcome of a desk-top RIPA Inspection, conducted by the Investigatory Powers Commissioner, be noted.
- 2.3 That the minor amendment to the RIPA Policy (appendix 1) by the replacing of references to the "Chief Surveillance Commissioner" with references to the "Investigatory Powers Commissioner" be noted.

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### **3.0 BACKGROUND**

- 3.1 The Council employ a number of investigative techniques which assist its regulatory functions. Relevant areas of activity can potentially include investigation by Internal Audit, Environmental Health, Housing, Licensing, CCTV

Services and the MAPs Team. In very limited cases, this may include surveillance. Some activities must be undertaken in accordance with the Regulation of Investigatory Powers Act 2000 (“RIPA”). RIPA, its subordinate legislation and Codes of Practice prescribe the type of activities permitted and the procedures required to monitor RIPA activity within the Council. As reported previously, this is now supplemented by monitoring through this Committee.

- 3.2 In accordance with the current Scheme of Delegation the Chief Operating Officer and Corporate Directors consider whether or not to grant authorisations for surveillance activity. In the case of the authorisation of communications data, (i.e. relating to material, such as subscriber and billing records obtained from telecommunications service providers, but not the content of the communication) the authorisation must be from the Chief Operating Officer and via the externally approved specially trained officer (SPOC) through the National Anti-Fraud Network (NAFN).
- 3.3 The Council’s approved RIPA Policy is made available on the Council’s Intranet and is a working document to assist investigating and co-ordinating officers within the Council. Paragraph 5 of the Policy stresses that grantors must believe the authorised activity is (1) necessary for preventing and detecting crime and (2) is 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 a byelaw would not in all likelihood be proportionate). If it fails either test, authorisations should not be granted.
- 3.4 The Code requires that Councillors should consider internal reports on the use of RIPA on a regular basis, to ensure that it is being used consistently with the Council’s Policy and that the Policy remains fit for purpose. It continues that Councillors should not, however, be involved in making decisions on specific authorisations. It is stressed that the involvement of elected members is not to extend to operational decision making or stipulate in detail how the Council discharges the procedure. The Government’s position is that there should be no possibility of political interference in law enforcement operations.

#### **4.0 MONITORING OF RIPA ACTIVITY**

- 4.1 In the last quarter no covert surveillance has been authorised.
- 4.2 The Senior Responsible Officer proactively seeks to ensure that the use of covert surveillance in this authority is well regulated. Applications for authorisation to use covert surveillance must be rejected when the Authorising Officer is not satisfied that the surveillance is necessary or proportionate and legal advice should be sought by Authorising Officers in appropriate cases.
- 4.3 A RIPA guidance note is circulated within the Council at regular intervals.
- 4.4 The RIPA inspection carried out by the Investigatory Powers Commissioner in April 2020 demonstrated a level of compliance that removes the requirement for a further physical inspection. The only action required was that references to the Chief Surveillance Commissioner in the RIPA Policy be replaced with references to the Investigatory Powers Commissioner, which is the new name for the Commissioner. This amendment has been made to the Policy (Appendix 1). The

Senior Responsible Officer will continue to monitor processes and activities to seek to ensure that high standards of compliance with the Act and relevant codes of practice are achieved.

- 4.5 The inspection letter received from the Investigatory Powers Commissioner is attached at Appendix 2.

## **5.0 SUSTAINABILITY IMPLICATIONS**

- 5.1 There are no significant sustainability implications arising from this report.

## **6.0 FINANCE AND RESOURCE IMPLICATIONS**

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

## **7.0 RISK ASSESSMENT**

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

## **8.0 HEALTH AND WELL-BEING IMPLICATIONS**

- 8.1 There are no health and wellbeing implications arising from this report.
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## **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**

This will be considered in relation to any particular authorisation.

### **Appendix**

1. RIPA Policy
2. Letter from the Investigatory Powers Commissioner