

Summary Sheet

Council Report

Audit Committee – 27th April, 2016

Title

Update on the Use and Operation of Surveillance and Acquisition of Communications Data Powers

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Judith Badger, Strategic Director of Resources and Customer Services

Report Author(s)

Neil Concannon, Service Manager (Litigation& Social Care), Legal Services.

Ward(s) Affected

All

Executive Summary

The Council currently has a policy governing the use of covert surveillance and covert human intelligence sources (CHIS) carried out by Council officers under the Regulation of Investigatory Powers Act 2000 (RIPA). The Council has a separate policy also under RIPA governing the acquisition and disclosure of communications data by Council officers. Those policies make provision for the Audit Committee to have oversight of the policies and the Council's use of RIPA powers, to ensure that the powers are being used consistently with the Authority's policies and that the policies remain fit for purpose. The first of those reports was received by the Audit Committee in September 2015 and this report provides the next planned update.

Recommendations

That the Audit Committee:

1. Notes the annual figures for the use of RIPA and Communications Data authorisations.
2. Notes the corporate training that has taken place with regard to the use of RIPA and Communications
3. Agrees to accept a further update report in 6 months' time.

List of Appendices Included

None

Background Papers

1. Current RIPA and Acquisition and Disclosure of Communication Data Policies
2. The Regulation of Investigatory Powers Act 2000 and associated Orders and Codes of Practice made thereunder.

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Title (Main Report)

Update on the Use and Operation of Surveillance and Acquisition of Communications Data Powers

1. Recommendations

That the Audit Committee:

- 1 Notes the annual figures for the use of RIPA and Communications Data authorisations.
- 2 Notes the corporate training that has taken place with regard to the use of RIPA and Communications
- 3 Agrees to accept a further update report in 6 months' time.

2. Background

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) provides a mechanism to make it lawful for public bodies such as local authorities, to use directed (i.e. covert) surveillance and covert human intelligence sources e.g. undercover officers and public informants (CHIS) for the purposes of the detection and prevention of crime. Any use of those powers has to be proportionate and necessary both in use and scope. In addition, any surveillance/CHIS undertaken by a local authority must relate to a serious crime (one punishable by six months' imprisonment or certain offences involving the underage sale of alcohol and tobacco) and receive prior approval from the Magistrates' Court.
- 2.2 RIPA also provides a mechanism for public bodies such as local authorities to acquire communications data where it is proportionate and necessary to do so for the purposes of the detection and prevention of crime. The Council has a separate Acquisition and Disclosure of Communication Data Policy to cover this activity. Typically this activity might include acquiring mobile phone subscriber details and details of itemised calls. As with other RIPA powers, the serious crime test must be passed and prior approval from the Magistrates' Court must be sought, before the data is acquired. All Councils must also make a request for any communication data through a single point of contact at the National Anti-Fraud Network (NAFN), who will independently scrutinise applications and advise the Council's authorising officers.
- 2.3 In September 2015, Commissioner Manzie approved the adoption of new corporate RIPA and Acquisition of Communications Data Policies, which reflect

the requirements of new codes of practice issued by the Home Office and an updated Procedure and Guidance Document on the use of covert surveillance by public authorities, issued by the Office of Surveillance Commissioners (OSC). The codes of practice require elected members to consider internal reports on the use of RIPA powers on a regular basis to ensure that they are being used consistently with the Council's policy and that the policies remain fit for purpose. The corporate policies make provision for the Audit Committee to perform those functions by receiving reports on a 6 monthly basis. An initial report was submitted to the Audit Committee in September 2015 and this is the second report for the Audit Committee.

3. Key Issues

- 3.1 The Council is required to notify the OSC of the number of directed surveillance/CHIS authorisations granted in each financial year. The annual return for 2015/2016 has now been submitted to the OSC which confirms there have been 2 authorisations granted for directed surveillance (both in relation to fly-tipping offences under the Environmental Protection Act 1990) and no authorisations for CHIS. The use of directed surveillance on those occasions did not yield any evidence to allow enforcement action to be taken.

- 3.2 The Council is also required to notify the Interception of Communications Commissioner's Office (IOCCO) of the number of authorisations for the acquisition and disclosure of communications data granted each calendar year. In January 2016 NAFN submitted the annual return on behalf of the Council for 2015 which confirms there was 1 application (for a fly-tipping offence under the Environmental Protection Act 1990). Thus far the acquisition of that data has not led to evidence being obtained to allow enforcement action to be taken. In 2016 to date, there have been no authorisations for the acquisition and disclosure of communications data.

- 3.3 The Council is required by the relevant codes of practice and the policy documents to ensure that all officers who could potentially be involved in the use and authorisation of RIPA powers, are appropriately trained. To that end, in December 2015, a successful corporate training course was arranged through a highly regarded trainer in the field, for 24 officers from various services across the Council. In addition, the Council's newly appointed Chief Executive and Assistance Director of Legal Services will undertake relevant e-learning packages on the use of RIPA powers. This is important as only the Chief Executive can authorise the use of a young or vulnerable person as a CHIS, or to undertake directed surveillance that may lead to the acquisition of confidential information (e.g. communications subject to legal privilege, communications between a member of parliament and another person on constituency matters,

confidential personal information, or confidential journalistic material). In addition, the Assistant Director of Legal Services is the Council's Senior Responsible Officer for RIPA.

4. Other considerations and recommended proposal

- 4.1 The recommendations are to note the activity around the use of RIPA powers since the previous update report in September 2016 and to receive a further report in six months' time.

5. Consultation

- 5.1 There are no consultation requirements for the purposes of this report.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Further update reports will be submitted to the Audit Committee on a six monthly basis in line with the Council's policies.

7. Financial and Procurement Implications

- 7.1 The issues covered within this report are met from within existing budgets.

8. Legal Implications

- 8.1 Legal Implications are considered in the main body of this report.

9. Human Resources Implications

- 9.1 There are no human resources implications.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There are no direct implications for children and young people and vulnerable adults.

11. Equalities and Human Rights Implications

- 11.1 Adherence to the Council's policies and the statutory guidance in relation to the use of RIPA and the Acquisition of Communication powers should ensure that the any actions taken are human rights compliant.

12. Implications for Partners and Other Directorates

- 12.1 There are no direct implications for partners or other directorates.

13. Risks and Mitigation

- 13.1 The statutory Codes of Practice issued by the Home Office requires elected members to have oversight of the RIPA powers to ensure that they are being used consistently with policies and that the policies are fit for purpose. A failure to have such member oversight would give rise to greater legal risk and adverse reports following inspections undertaken by the OSC or IOCCO.

14. Accountable Officer(s)

Dermot Pearson, Assistant Director of Legal Services.

Approvals Obtained from:

Strategic Director of Finance and Corporate Services:

Named Officer: Peter Hudson

Human Resources

Named Officer: Simon Cooper

Director of Legal Services:

Named Officer: Neil Concannon.

Procurement

Named Officer: Helen Chambers.

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