
Summary Sheet

Name of Committee and Date of Committee Meeting

Cabinet – 22 October 2018

Report Title

Amendment to Rotherham Metropolitan Borough Council General Enforcement Policy

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

No

Director Approving Submission of the Report

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Ward(s) Affected

All

Executive Summary

The Council has had an adopted General Enforcement Policy in place for a number of years. The Policy has been reviewed, and amendments made on a number of occasions, most recently in February 2018.

This report requests the approval of an amendment to the Policy clarifying the Council's position with regard to the surveillance of social media sites used by individuals and businesses within Rotherham.

Recommendations

1. That the proposed amendment to the General Enforcement Policy be considered and approval be given to undertake public consultation in respect of the proposed changes to the Policy.
2. That a further report be provided to Cabinet in spring 2019 for consideration following public consultation.

List of Appendices Included

Appendix 1 The proposed amended Rotherham Metropolitan Borough Council General Enforcement Policy (July 2018)

Background Papers

Home Office Code of Practice Covert Surveillance and Property Interference (August 2018).

Rotherham Metropolitan Borough Council RIPA Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

Overview and Scrutiny Management Board – 17 October 2018

Council Approval Required

No

Exempt from the Press and Public

No

Amendment to Rotherham Metropolitan Borough Council General Enforcement Policy

1. Recommendations

- 1.1 That the proposed amendment to the General Enforcement Policy be considered and approval be given to undertake public consultation in respect of the proposed changes to the Policy.
- 1.2 That a further report be provided to Cabinet in spring 2019 for consideration following public consultation.

2. Background

- 2.1 The Department for Business Innovation and Skills: Better Regulation Delivery Office's, Regulator's Code of April 2014 is a statutory guidance document that Councils must have regard to when developing policies and operational procedures that guide some of their regulatory activities. This applies to the Council's current General Enforcement Policy in relation to its regulatory and enforcement functions.
- 2.2 The General Enforcement Policy is underpinned by the statutory principles of good regulation, but also ensures the priority of protecting the public.
- 2.3 The Policy sets out the principles of transparency, consistency and proportionality to which the Council will adhere in its discharge of enforcement and regulatory functions.
- 2.4 The current General Enforcement Policy was reviewed in 2014/15 in accordance with the then new Regulators' Code. Following consultation, the new General Enforcement Policy was approved and adopted by Commissioner Ney on 3rd June 2015.
- 2.5 The policy was amended in September 2016 to include provisions for monetary penalties following on from legislative changes. The Policy was amended again in March 2017 to reflect structural changes within the service, the return of functions to the Council from Commissioners, and procedural changes regarding enforcement practices. At the Cabinet Member and Commissioner's Decision Making Meeting in February 2018 further amendments to the Policy were made in relation to the introduction of further monetary penalties and the Council's Policy in this respect.

3. Key Issues

- 3.1 The use of social media sites by individuals and businesses in Rotherham is now widespread. Over recent months however, it has become apparent that some sites are being used for illegitimate purposes by rogue individuals and traders, in particular in relation to fly-tipping, and illegal and counterfeit goods.
- 3.2 Social media, despite being in the public domain, does not mean that rules around covert surveillance do not apply. Where information is made publicly available on social media platforms, logic would suggest that a reduced expectation of privacy would follow, where information relating to a person or

group of people is made openly available within the public domain. However in some circumstances privacy implications still apply. This is because the intention when making such information available was not for it to be used for a covert purpose such as investigative activity. This is regardless of whether a user of a website or social media platform has sought to protect such information by restricting its access by activating privacy settings.¹

- 3.3 In order to ensure the effective regulation of these individuals and traders, it is considered both necessary and appropriate to undertake proportionate surveillance of their activities on social media sites. In deciding whether online surveillance should be regarded as covert, consideration should be given to the likelihood of the subject knowing that the surveillance is or may be taking place.²
- 3.4 As this surveillance constitutes enforcement activity, it is appropriate for this to be included within the General Enforcement Policy. Indeed, it is paramount that the Council is transparent in its approach to any potential investigation.
- 3.5 It is therefore proposed to amend Section 7 of the General Enforcement Policy to include reference to the Council undertaking surveillance within the powers and obligations available, in order to prevent and detect crime.
- 3.6 Whilst the proposed amendment will ensure that the Council is open about its investigatory methods, it will also provide the public and businesses with reassurance that surveillance of social media will only be undertaken within the appropriate legal frameworks.
- 3.7 There is a general perception that surveillance by regulatory authorities (including local councils) is by its very nature intrusive. Undertaking surveillance is therefore a potentially controversial method of detecting crime, and consequently it is only proper that permission is sought to explore the option.
- 3.8 Given that the proposed introduction of social media surveillance as a regulatory and enforcement tool is a significant Policy change, it is considered appropriate within the terms of the *Regulator's Code* and the General Enforcement Policy, that the public should be consulted and responses considered prior to adoption.
- 3.9 In order to ensure that the Council only undertakes surveillance of social media within the legal framework, an investigatory procedure will be developed in close liaison with Legal Services prior to any surveillance taking place.

4. Options considered and recommended proposal

- 4.1 Option 1 – the Council does not amend the General Enforcement Policy to include reference to social media surveillance.

The Council is not required to conduct surveillance of social media sites and consequently need not decide to consult the public in relation to the proposed

¹ Home Office Code of Practice Covert Surveillance and Property Interference (August 2018), p19

² Home Office Code of Practice Covert Surveillance and Property Interference (August 2018), p19

amendment to the General Enforcement Policy. This is likely to put the Council at a disadvantage given that social media is increasingly used to sell illegal and counterfeit goods, whilst also providing a degree of anonymity to organised fly-tipping. Without the ability for the Council to conduct surveillance of social media, the Council will be unable to robustly undertake enforcement activities on those who use this mechanism to undertake criminal activities.

4.2 Option 2 – the recommended option - the Council amends the General Enforcement Policy to include reference to social media surveillance.

The Council agree to the use of social media investigatory techniques to aid in the prevention and detection of crime, and so seek to consult the public on the matter. This will allow the Council, subject to responses, to adopt an amended Policy which ensures that capability is provided to tackle modern opportunities for crime, often at the expense of the public and business. It would be recommended that Section 7 of the General Enforcement Policy includes the following text:

“Covert Surveillance, Including the Use and Surveillance of Social Media

7.17 One of the enforcement tools available to public bodies such as the Council is the ability in certain circumstances to:

(i) Carry out the directed surveillance - this is surveillance that:

- is covert;*
- conducted for the purposes of a specific investigation or operation;*
- is likely to result in the obtaining of private information about a person; and*
- is conducted otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable to seek a court authorisation.*

(ii) Make use of a covert human intelligence source (CHIS), which is a person who:

- establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of the following;*
- covertly uses such a relationship to obtain information or to provide access to any information to another person; or*
- covertly discloses information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship.*

The use of these powers is covered by the Regulation of Investigatory Powers Act 2000 (RIPA). The Council will only do this when it is necessary and proportionate to do so to prevent and detect serious crime, is in accordance with the Council’s RIPA Policy and is authorised by the Court. The Council’s RIPA Policy can be viewed here:

<http://rmbcintranet/Directorates/FCS/Legal%20and%20Democratic/Our%20Key%20Documents/RIPA%20Policy%202018%20-%20Appendix%20A.doc>

7.18 *The internet and social media provide a range of benefits and opportunities to individuals and businesses, and the vast majority of individuals use such opportunities for legitimate purposes.*

7.19 *However, Rotherham MBC recognises that social media sites in particular can provide the opportunity for rogue businesses and / or individuals to exploit consumers and avoid traditional approaches to regulation (such as premises inspections). Rotherham MBC therefore considers that in undertaking its enforcement duties, in certain circumstances, authorised officers may be required to undertake reconnaissance and/or surveillance of social media sites / profiles and other websites in order to effectively enforce the relevant statutory requirements.*

7.20 *Simple reconnaissance of such sites is unlikely to interfere with a person's reasonably held expectation of privacy and therefore is not likely to require a directed surveillance authorisation under RIPA. However, if it is necessary to systematically collect and record information about a particular person or group, a directed surveillance should be considered.*

7.21 *Investigating officers will seek legal advice where necessary and always act in accordance with the Council's RIPA Policy and appropriate guidance issued by the Home Office and Regulator. Where it is deemed that a directed surveillance authorisation is required, it will be obtained by the investigating officer before the surveillance / monitoring of social media sites takes place, in accordance with written departmental procedures. Such authorisation will ensure as far as possible that authorised officers act lawfully and in a fair and transparent manner."*

5. Consultation

- 5.1 Section 2.1 of the *Regulator's Code* states that, before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.
- 5.2 This will be achieved by way of consultation with local business representatives (for example the Chamber of Commerce), those that are governed by the policy requirements, and the general public.
- 5.3 The consultation period will commence following agreement of the approach by Cabinet on 22nd October 2018, and will be for a period of 8 weeks. All appropriate consultation methods will be used in order to ensure that the consultation is both effective and meaningful, this will include direct contact with business representative groups (such as the Chamber of Commerce), regulators affected by the policy and members of the public.

6. Timetable and Accountability for Implementing this Decision

- 6.1 Public consultation will commence during November 2018, with a view to seeking final approval of the policy, subject to consultation responses, early 2019.

7. Financial and Procurement Implications

- 7.1 There are no financial or procurement implications directly associated with this report. The Council already has statutory powers to regulate business activity. However, this amendment to the policy will enable the Council to use social media surveillance as an investigative tool.
- 7.2 The cost of consultation will be met by the service.

8. Legal Implications

- 8.1 The Council has an established policy covering the use of the surveillance powers available to the Council under the Regulation of Investigatory Powers Act 2000 (RIPA). The Home Office Code of Practice for Covert Surveillance and Property Interference (August 2018) makes it clear that the growth of the internet, and the extent of the information that is now available online, presents new opportunities for public authorities to view or gather information, which may assist them in preventing or detecting crime. It confirms it is important that public authorities are able to make full and lawful use of this information for their statutory purposes.
- 8.2 The Code of Practice states that much online material can be accessed by public authorities without the need to seek an authorisation for directed surveillance under RIPA, e.g. a preliminary examination with a view to establishing whether a site or its contents are of interest. However, where the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded and may engage privacy considerations, an authorisation may be required under RIPA and officers should seek advice on individual investigations from Legal Services. The proposed amendments to the General Enforcement Policy ensure that the Policy is consistent with the requirements of RIPA and the Code of Practice.

9. Human Resources Implication

- 9.1 There are no HR implications arising from this report.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There are no additional implications for Children, Young People or Vulnerable Adults. Children, Young People and Vulnerable Adults are at risk from rogue traders utilising social media and it is anticipated that undertaking surveillance of social media may contribute to bringing offenders to account.

11. Equalities and Human Rights Implications

- 11.1 There are no implications for equalities or human rights as the proposed amendment will be within existing legal frameworks.

12. Implications for Partners and Other Directorates

- 12.1 The proposed amendments to the General Enforcement Policy will have relevance to the regulatory and enforcement functions with the Regeneration and Environment Directorate. In particular those functions relating to Environmental Health, Trading Standards, Animal Health and Welfare, Licensing, Dog Control, Parking and Highways, enforcement and regulatory functions.
- 12.2 All of these services will be provided with the opportunity to comment on the proposed policy before its adoption as part of the general consultation process.
- 12.3 There are no implications anticipated for partners or other Directorates.

13. Risks and Mitigation

- 13.1 The Regulator's Code, implemented locally by the General Enforcement Policy, is a statutory guidance document, and failure to comply with its requirements presents the risk of the Council being in contravention of its statutory duties.
- 13.2 Failure to discharge its regulatory function may compromise public safety.
- 13.3 Compliance with the General Enforcement Policy gives confidence to business and individuals of the transparency and fairness of the Council's approach to enforcement, without which the Council's reputation and growth agenda might be at risk.
- 13.4 The Policy does not cover the regulatory and enforcement functions delivered by Planning and Building Control Services; this is because their regulatory statutory powers are not scheduled with Part 3 of the 2007 Order. The extant list of regulations covered by the Regulators' Code is found within the schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007.

14. Accountable Officer(s)

Tom Smith, Assistant Director, Community Safety and Street Scene
Damien Wilson, Strategic Director of Regeneration and Environment

Approvals obtained from:-

	Named Officer	Date
Strategic Director of Finance and Customer Services	Julie Copley	24.09.2018
Assistant Director of Legal Services	Neil Concannon	24.09.2018
Head of Procurement (if appropriate)	Karen Middlebrook	16.07.2018
Head of Human Resources (if appropriate)	John Crutchley	16.07.2018

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