

Committee Name and Date of Committee Meeting

Cabinet – 16 September 2019

Report Title

Amendment to the General Enforcement Policy

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

Yes

Strategic Director Approving Submission of the Report

Paul Woodcock, Strategic Director of Regeneration and Environment

Report Author(s)

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Ward(s) Affected

Borough-Wide

Report Summary

The report details the outcome of the public consultation carried out to seek views on an amendment to the Council's General Enforcement Policy to include surveillance of social media in particular in relation to fly-tippers and rogue traders, as an investigatory tool.

A significant majority of respondents agreed that the Council should use such tools to tackle fly-tippers and rogue traders who utilise social media to commit offences.

The Council's General Enforcement Policy has been amended to reflect this outcome and is presented with this report for consideration.

Recommendations

1. That the outcome of the consultation be noted and the revised General Enforcement Policy be adopted.

List of Appendices Included

- Appendix 1 General Enforcement Policy
- Appendix 2 Comments Received
- Appendix 3 Equalities Screening Assessment

Background Papers

Department for Business Innovation and Skills: Better Regulation Delivery Office's, Regulator's Code of April 2014

Consideration by any other Council Committee, Scrutiny or Advisory Panel

No

Council Approval Required

No

Exempt from the Press and Public

No

Amendment to Rotherham Metropolitan Borough Council General Enforcement Policy

1. Background

- 1.1 On 22nd October 2018, Cabinet approved the recommendation that consultation should be undertaken in respect of amendments to the Council's General Enforcement Policy, including the use of surveillance of social media as an investigatory tool, in particular in relation to fly-tipping and rogue traders.
- 1.2 The General Enforcement Policy details the principles of transparency, consistency and proportionality to which the Council will adhere in its discharge of enforcement and regulatory functions. This follows the statutory guidance contained within the Regulator's Code.¹

2. Key Issues

- 2.1 Business and individual use of social media is now ubiquitous, however, these platforms also present an easily accessible and often anonymous means of promoting illicit activity. In particular, investigations carried out by the Council have identified that, on many occasions, rogue traders and waste collectors who fly-tip, have used social media to advertise and trade. Such unscrupulous activities affect peoples' lives directly and put legitimate businesses at a disadvantage.
- 2.2 Despite being in the public domain, rules around covert surveillance still apply to information published on social media. 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.
- 2.3 In order to examine social media as part of an investigation, the Council is therefore required to follow legal surveillance rules as privacy implications arise.²
- 2.4 In addition, it is necessary to consider the likelihood of the individual under surveillance knowing that they are under surveillance or may be taking place when deciding whether surveillance is covert.³

¹ Department for Business Innovation and Skills: Better Regulation Delivery Office's, Regulator's Code of April 2014

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

³ Home Office Code of Practice Covert Surveillance and Property Interference (August 2018), p19

- 2.5 If the Council is to carry out surveillance of social media, then legal and information governance views will be sought on a case by case basis. It is likely those cases will primarily be related to offences investigated by officers who discharge the Council's Environmental Health and Trading Standards functions.
- 2.6 By announcing its intention to utilise surveillance tools in respect of social media, the Council is being open about its investigatory methods whilst also providing reassurance that surveillance of social media will only be undertaken within the appropriate legal frameworks.

3. Options considered and recommended proposal

- 3.1 Option 1 – the Council is not required to amend the General Enforcement Policy to include social media surveillance, and might decide that such investigatory tools should not be used. This option would likely limit the extent with which the Council could investigate key offences which affect the public and business.
- 3.2 Option 2 –the Council might decide to adopt the amended General Enforcement Policy to include reference to social media surveillance. If adopted, the ability to scrutinise social media for information relating to offences, will strengthen the tools available to tackle offences.
- 3.3 The preferred option is Option 2, and the attached General Enforcement Policy at Appendix 1, includes text at 7.17 to 7.21 to reflect the approach to social media surveillance

4. Consultation on proposal

- 4.1 Consultation began on 3rd June 2019 and closed on 28th July 2019.
- 4.2 A total of 28 responses were received to the consultation, with a significant majority supporting the surveillance of social media by the Council for fly-tipping offences and rogue traders. The table below provides the full detail of the consultation responses.

Questions	Answers	Nº	%
Q1. The Council should use powers to investigate rogue traders who use social media to exploit consumers	Strongly agree	19	67.86%
	Agree	6	21.43%
	Neither agree or disagree	0	0.00%
	Disagree	0	0.00%
	Strongly disagree	3	10.71%
	no response	0	0.00%
	Total	28	100.00%
Q2. The Council should use powers to investigate individuals and businesses that use social media to offer waste disposal services to customers and then fly-tip the waste	Strongly agree	22	78.57%
	Agree	3	10.71%
	Neither agree or disagree	0	0.00%
	Disagree	0	0.00%
	Strongly disagree	3	10.71%
	no response	0	0.00%
	Total	28	100.00%

Q3. The Council should undertake legal surveillance of social media sites to tackle rogue trader and others who exploit customers	Strongly agree	17	60.71%
	Agree	6	21.43%
	Neither agree or disagree	1	3.57%
	Disagree	1	3.57%
	Strongly disagree	3	10.71%
	no response	0	0.00%
	Total	28	100.00%

4.3 88.29% of respondents agreed or strongly agreed that the Council should use tools and powers to investigate rogue traders and fly-tippers, whilst 82.14% agreed or strongly agreed that surveillance of social media should be one of the tools used.

4.4 Twelve respondents also made comments in respect of the consultation, which are attached at Appendix 2 in their complete form.

5. **Timetable and Accountability for Implementing this Decision**

5.1 If adopted, the revised General Enforcement Policy will become effective immediately.

6. **Financial and Procurement Advice and Implications**

6.1 There are no financial or procurement implications directly associated with this report. The use of the investigatory tools will be contained within existing budgets.

7. **Legal Advice and Implications**

7.1 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.

7.2 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

8. Human Resources Advice and Implications

- 8.1 There are no HR implications arising from this report

9. Implications for Children and Young People and Vulnerable Adults

- 9.1 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.

10. Equalities and Human Rights Advice and Implications

- 10.1 There are no implications for equalities or human rights as the proposed amendment will be within existing legal frameworks
- 10.2 An Equalities Screening Assessment is attached at Appendix 3

11. Implications for Partners

- 11.1 There is a likely demand on Legal Services in respect of considering the merits of individual cases and the suitability of carrying out social media surveillance

12. Risks and Mitigation

- 12.1. 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
- 12.2 Failure to discharge its regulatory function may compromise public safety
- 12.3 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
- 12.4 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

13. Accountable Officers

Tom Smith, Assistant Director, Community Safety and Street Scene
Paul Woodcock, Strategic Director, Regeneration and Environment

Approvals obtained on behalf of Statutory Officers:-

	Named Officer	Date
Chief Executive	Sharon Kemp	02/09/19
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	27/08/19
Head of Legal Services (Monitoring Officer)	Bal Nahal	23/08/19

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