

SCRUTINY COMMITTEE

14 FEBRUARY 2022

ANNUAL REVIEW: REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA) POLICY

Cabinet Member(s): Cllr D Knowles, Cabinet Member (Community Wellbeing)
Responsible Officer: Karen Trickey, District Solicitor and Monitoring Officer
Reason for Report: An annual review of the Council's Policy on the Use of Covert Investigation Techniques¹ (otherwise known as "the RIPA Policy")

RECOMMENDATION: The report be noted

Financial Implications: None directly arising from this report

Legal Implications: None beyond those set out in the RIPA policy and this report

Risk Assessment: There are no risks directly arising from this report

Equality Impact Assessment: Not directly applicable

Relationship to Corporate Plan: No direct relationship

Impact on Climate Change: None

1.0 Background

1.1 Members may recall from previous annual reports that RIPA sets out the statutory requirements regarding the use of certain covert surveillance powers available to the Council. For example, in the case of offences which attract sentences of six months or more, there is a need to obtain magistrates' approval to undertake covert surveillance. In practice, local authorities have limited need to undertake covert surveillance, sufficient mechanisms being available to conduct the vast majority of its enforcement work effectively using open surveillance. In this regard, the Council is no exception, having not had cause to invoke RIPA requirements since 2014.

2.0 IPCO Inspection

2.1 All authorities which are governed by RIPA are subject to periodic inspections by the national Investigatory Powers Commissioner's Office (IPCO). The purpose of such inspections is to ensure that relevant authorities remain familiar with the requirements regarding covert surveillance and are acting appropriately when conducting surveillance. Importantly, the IPCO also provides practical support and guidance on policy changes.

2.2 In October 2021 the IPCO conducted its routine three yearly inspection of the Council. The inspection was positive. The Council was informed that it had relevant structures and processes in place to manage any activity should the need arise for covert activity.

2.3 As many RIPA errors occur because of a lack of knowledge / understanding of the law, in the course of the inspection it was noted that as previous Council training had been targeted at senior officers, it would be appropriate

¹ <https://democracy.middevon.gov.uk/documents/s21548/RIPA%20Policy%202021.pdf>

to ensure that front line officers undertook relevant training. Given that arrangements for such training were being put in place immediately prior to the inspection particularly regarding the Council's use of social media and the internet for surveillance, the advised training has since been completed.

2.4 In the interests of accuracy and to reflect good practice, the inspection helpfully identified some, albeit relatively minor, amendments needed to the Council's RIPA policy which have been considered by the Community Policy Development Group. These are addressed below.

3.0 **Proposed Changes to the Council's RIPA Policy**

3.1 The current policy does not accurately reflect the requirements regarding covert surveillance using communications data. Paragraph 4.2 should be updated to cover the authorised procedure for use of covert communications data via application to the National Anti-Fraud Network of which the Council is an established member. Following consideration of the changes which would be appropriate to this paragraph, the Community PDG is recommending to Cabinet that the policy is amended as follows (additions being shown in italics and deletions shown as marked):

"4.2 This policy document relates to the use of directed surveillance and covert human intelligence sources (CHIS). It does not cover the acquisition and disclosure of Communications Data (CD) as this engages an entirely separate procedure ~~involving Judicial Commissioners at the Investigatory Powers Commissioner's Office (IPCO) under The Investigatory Powers Act 2016 which governs how law enforcement agencies use the investigatory powers available to them in relation to the lawful acquisition of CD. Independent authorisation for the acquisition of CD is through the Office for Communications Data Authorisations (OCDA). All applications for CD must be made via an Accredited Officer known as a Single Point of Contact (SPoC) who has passed a Home Office approved course. For the Council this is the National Anti-Fraud Network (NAFN). Consequently, any Council applications to access CD will need to be made through NAFN via their online application service. The introduction of OCDA means the acquisition of CD by Council officers does not require separate judicial approval.~~ Guidance must be sought from Legal Services before any decision is taken to seek authority for the acquisition of CD."

3.2 Similarly the current policy is not up to date regarding the use of juvenile covert human surveillance. Para 8.10 of the policy has also been recommended to Cabinet by the Community PDG for update as follows:

*"A written authorisation, unless renewed, will cease to have effect at the end of a period of twelve months beginning with the day on which it took effect except in the case of a juvenile CHIS which has a duration of *four months* ~~one month~~. Oral authorisations will, unless renewed, last 72 hours."*

Contact for more Information:

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List of Background Papers: IPCO letter 11 October 2022