

# **APPENDIX F**

## **WAVERLEY BOROUGH COUNCIL**

### **EXECUTIVE – 03/06/2014**

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#### **Title:**

#### **RIPA POLICY - 2014 UPDATE**

**[Portfolio Holder: Cllr Carole King]**

**[Wards Affected: All]**

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#### **Summary and purpose:**

To provide Members with an update on the Council's use of its covert surveillance powers under the Regulation of Investigatory Powers Act 2000 ("RIPA"), and to present an amended Covert Surveillance Policy for the approval of the Executive and adoption by the Council.

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#### **How this report relates to the Council's Corporate Priorities:**

The effective investigation into, and prosecution of, criminal activity within the Borough is a vital element in support of all of the Council's services, and therefore all of the Council's Corporate Priorities.

#### **Financial Implications:**

The impact of RIPA on budgetary resources is neutral, with the cost of using RIPA powers within any criminal investigation being covered within the existing staffing resources for that investigation. There is no additional financial burden for the Council in applying the Magistrates' Court to use covert surveillance powers.

#### **Legal Implications:**

The investigative procedures of the Council accord fully with the provisions of RIPA and supporting secondary legislation, and records of compliance support probity and provide evidence in the event of challenge in a particular case.

Amendments to the law and supporting codes of practice mean that the Council should revise its Policy in order ensure continuing legal compliance.

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#### **Introduction**

1. The Regulation of Investigatory Powers Act 2000 ("RIPA") came into force on 25 September 2000 and introduced a regulatory framework within which public authorities, including the Council, use covert investigatory techniques.

2. The introduction of the Human Rights Act 1998 meant that public authorities were obliged by law to justify any interference with the Article 8 right to a private and family life of the subjects of any investigation. There was at that time no regulatory system in place to govern the use of covert investigatory techniques, and so RIPA was introduced in order to address this gap in the law.
3. RIPA sets out a regulatory framework under which public authorities must justify their interference with the Article 8 right, and RIPA also dictates which covert techniques each public authority is able to use, and the purposes for which those techniques can be used. In the Council's case, the only ground on which it may authorise the use of covert techniques and intrude on private and family life is the "legitimate aim", as defined by the 1998 Act, of the "prevention and detection of crime or the prevention of disorder."
4. RIPA dictates that the Council can use the following three covert techniques:

**Directed Surveillance:** Covert surveillance that is not intrusive but is carried out in relation to a specific investigation or operation in such a manner as is likely to result in the obtaining of private information about any person, and which is undertaken otherwise than as an immediate response to events or circumstances such that it is not reasonably practicable to seek authorisation under RIPA. Examples include observation of movements, photographing or filming, tracking vehicles in person and recording of noise escape from premises.

**Acquisition of Communications Data:** Information about a communication, such as telephone numbers involved and the time and place a call was made, but not the content of the communication. The same applies in respect of an email. Local authorities are currently permitted to intercept service use data and subscriber data.

**Covert Human Intelligence Sources:** A person authorised by a local authority to establish or maintain a relationship in order covertly to obtain information and disclose it to that local authority. The person acting as a 'CHIS' can be an undercover officer or a tasked informant (e.g. a member of the public).

5. It is important to note that if the Council wishes to use any of the above investigatory techniques, it must be sure that it is necessary and proportionate to do so in the circumstances of each individual case.

### **The Council's Use of RIPA**

6. Since June 2010 when it last updated its Covert Surveillance Policy, the Council has authorised the use of covert surveillance powers on one occasion, in November 2011, in relation to allegations of criminal anti-social behaviour affecting a number of Council tenants.

7. While the Council is permitted under RIPA to authorise both the interception of communications data and the use of CHIS, it has not done so since RIPA came into force.
8. In short, the Council continues to use covert investigation techniques sparingly, and only when considered absolutely necessary and proportionate in the circumstances of each individual case.

### **Office of Surveillance Commissioners Inspection**

9. In May 2013 the Office of Surveillance Commissioners (“OSC”) conducted an inspection of the Council’s use of RIPA powers and its compliance with the legislation and RIPA Codes of Practice. This followed the OSC’s previous inspection in 2010.
10. The OSC inspection covered a number of areas, including the Council’s policy documentation, its authorisation process, the use of surveillance equipment, and corporate oversight of the use of RIPA. A number of Officers were interviewed as part of that inspection, including the Executive Director and the Borough Solicitor.
11. The OSC concluded that:

“[The] Council uses [RIPA] powers sparingly, largely due to its proactive engagement with local residents and housing tenants, working in very close partnership with other services to prevent criminality and wider social ills. The single use of the powers was undertaken in a proportionate manner, with very compliant documentation and considerations, and cancelled timeously.”
12. The OSC recommended that the Council updates its Policy, and a revised Covert Surveillance Policy is attached at Annexe 1. The Policy has been amended to:
  - reflect changes to the legislation which mean that the Council can now only grant an authorisation under RIPA where the Council is investigating criminal offences that attract a maximum custodial sentence of six months or more;
  - reflect changes to the legislation which mean that authorisations under RIPA can only be given effect once an order approving the authorisation has been granted by a Magistrate;
  - remove the ‘urgency provisions’, as emergency authorisations will now be dealt with by the Magistrates’ Court;
  - update the list of Authorising Officers who are able to authorise the use of RIPA powers;
  - ensure that the Policy continues to maintain the appropriate use of covert surveillance techniques.
13. Amendments will also be made by the Borough Solicitor to the internal RIPA working procedures that support Officers to ensure that their use of RIPA powers continues to be compliant with the legislation and Codes of Practice.

14. The OSC also recommended that the Council should arrange further RIPA training to encompass all services which might have an investigative or enforcement role. That training should cover the recent changes to the legislation and any other developments in the law and procedures.

### **Senior Responsible Officer**

15. It is good practice for the Council to appoint a Senior Responsible Officer (“SRO”), who should be responsible for:
  - the integrity of the process in place within the local authority to authorise directed surveillance and interference with property;
  - compliance with RIPA and the Codes of Practice;
  - engagement with the OSC and its inspectors when they conduct inspections; and
  - where necessary, overseeing the implementation of any post-inspection action plans recommended or approved by a Commissioner.

The SRO should be a person holding the position of an Authorising Officer within the Council, and the RIPA Codes of Practice state that within local authorities the SRO should be a member of the corporate leadership team and should be responsible for ensuring that all Authorising Officers are of an appropriate standard in light of any recommendations made by the OSC.

16. Following the senior management restructure, it is proposed that the Executive Director is appointed as the Council’s SRO on a permanent basis, with the Director of Operations and Director of Finance and Resources acting as Deputy SROs. These changes are reflected in the revised Policy at Annexe 1.
17. Refresher training will also be provided for both Authorising Officers and operational staff who may make use of the RIPA powers within their investigations.

### **Conclusion**

18. The Council continues to use its covert surveillance powers under RIPA sparingly, and only in exceptional circumstances. This approach is reflected in the single use of those powers since June 2010 – a use that was reviewed positively by the Office of Surveillance Commissioners in 2013.
19. The Council’s Covert Surveillance Policy should be updated so that it continues to support the probity of the Council’s criminal investigations, and to reflect recent changes in the Council’s senior management structure.

### **Recommendation**

It is recommended that the Executive:

1. notes the Council’s ongoing use of its covert surveillance powers;

2. notes the positive outcome of the Office of Surveillance Commissioner's inspection and accepts the OSC's recommendations set out at paragraphs 12 and 14 of the report;
3. approves and recommends the revised Covert Surveillance Policy at Annexe 1 to the Council for adoption; and
4. recommends to the Council that the Executive Director be appointed as the Council's Senior Responsible Officer, with the Director of Operations and the Director of Finance and Resources acting as Deputy Senior Responsible Officers.

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### Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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