

WAVERLEY BOROUGH COUNCIL

AUDIT COMMITTEE

28 NOVEMBER 2022

Title:

Use of Regulation of Investigatory Powers Act (RIPA) annual report 2021/22

Portfolio Holder: Cllr P Follows, Leader of the Council, Portfolio Holder for Policy and Governance, Communications and Emergency Response

Head of Service: Stephen Rix, Executive Head of Legal & Democratic Services (interim)

Key decision: No

Access: Public

1. Purpose and summary

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WBC's RIPA Policy was introduced in 2014 and updated in October 2022 (annexe 1). RIPA training has been provided to assist with compliance with legislation and WBC RIPA Policy.

An inspection by the Investigatory Powers Commissioner's Officer (IPCO) on the use of investigatory powers has been carried out in January 2020 and the outcome is set out within this report.

The Council has not made use of RIPA powers during the 2021/22 financial year.

2. Recommendation

It is recommended that:

- 1. Note the amendments made to the RIPA policy.**
- 2. Note that the Council has not made use of powers under the Regulation of Investigatory Powers Act during the 2021/22 financial year.**

3. Reason for the recommendation

To ensure transparency in respect of the Council's use of its powers under the Regulation of Investigatory Powers Act.

4. Background

- 4.1 The Regulation of Investigatory Powers Act (RIPA) was enacted in 2000 to regulate the manner in which certain public bodies may conduct surveillance and access a person's electronic communications and to ensure that the relevant investigatory powers are used in accordance with human rights. The provisions of the Act include:
- the interception of communications;
 - the acquisition of communications data (e.g., billing data);
 - intrusive surveillance (on residential premises/in private vehicles);
 - covert surveillance in the course of specific operations;
 - the use of covert human intelligence sources (agents, informants, undercover officers); and
 - access to encrypted data.

From 1 November 2012, all local authority surveillance authorised under the Regulation of Investigatory Powers Act 2000 (RIPA) has been subject to approval by a Magistrate. Approval can only be given if the Magistrate is satisfied that:

- (i) there were reasonable grounds for the authorising officer approving the application to believe that the directed surveillance or deployment of covert human intelligence source was necessary and proportionate and that there remain reasonable grounds for believing so
- (ii) the authorising officer was of the correct seniority within the organisation
- (iii) the granting of the authorisation was for the prescribed purpose, which is preventing or detecting crime or disorder and in the case of directed surveillance is confined to cases where the offence under investigation carries a custodial sentence of six months or more.

- 4.2 There are various codes of practice, updated periodically, which broadly cover the specific bullet points above. These help public authorities assess and understand whether, and in what circumstances, it is appropriate to use covert techniques. The codes also provide guidance on what procedures need to be followed in each case and identifies as a matter of best practice that elected members of an authority should review the authority's use of RIPA at least once a year. The purpose of this annual report is to set out the level and nature of WBC Council's use of covert surveillance under RIPA.

WBC RIPA Policy

- 4.3 The RIPA policy was approved by Council in 2014 and communicated since then to officers at various officer meetings and via corporate communications. The most recent update to reflect minor changes to job titles and SRO was undertaken in October 2022 and approved under delegated authority by the Executive Head of Legal and Democratic Services in consultation with the Leader as relevant portfolio holder. A procedure guide and guidance note on social media in the context of RIPA operates in conjunction with this and which is also available to officers on the intranet.
- 4.4 The RIPA Policy and procedure guides clearly explains the type of surveillance the Council can and cannot undertake and also explains those

limited circumstances where covert surveillance, requiring external authorisation, may be appropriate.

- 4.5 The Policy ensures compliance with the regulatory framework for the use of covert investigatory techniques by WBC Council as set out in the Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016.
- 4.6 RIPA training was provided to a number of officers in January 2020 to assist with compliance with legislation and our Policy including understanding when RIPA authorisation is required. This had been paused due to the covid-19 pandemic and the Council's reprioritisation of services. In addition, an online learning / refresher module is made available across the Council.
- 4.7 The Executive Head of Legal & Democratic Services is responsible for ensuring a corporate record exists to enable a full annual reporting to the Information Powers Commissioner's Office and to the Audit Committee.

IPCO Inspection

- 4.8 The Investigatory Powers Commissioner's Office (IPCO) conducts audits and inspections of the use of investigatory powers to ensure that public bodies that are authorised to use investigatory powers are doing so lawfully and in line with best practice.
- 4.9 An inspection visit of WBC Council was carried out in January 2020 and annual paper reporting since then. The outcome from the inspection was that the Investigatory Powers Commissioner, Sir Brian Leveson wrote to the Chief Executive on 18 February 2020 to confirm that the two recommendations from the previous desktop inspection by HH Brian Barker in August 2016 had been addressed and discharged and commenting that the 2020 Inspector was 'complimentary about the commitment [the Chief Executive] has shown to maintaining RIPA awareness'. The letter also contained one new recommendation, relating to the Council communicating its stance on the use of internet during overt and covert investigations. In addition, two observations highlighting minor compliance matters, all of which have been addressed.

Use of RIPA by the Council

- 4.10 The Policy states that overall responsibility for the use of RIPA lies with the Senior Responsible Officer (SRO) who is the Executive Head of Legal & Democratic Services and who is responsible for maintaining a central register of authorisations.
- 4.11 The Joint Chief Executive, Joint Strategic Directors, Joint Executive Head of Finance, Joint Executive Head of Environmental Services, Joint Executive Head of Regulatory Services and Joint Executive Head of Planning Development are the Council's Authorising Officers in respect of RIPA applications.

- 4.12 The use of covert surveillance techniques can assist councils in delivering objectives in areas such as crime, anti-social behaviour and licensing. As a result of complying with RIPA, the Council only invokes these powers as a last resort where overt surveillance is not possible.
- 4.13 During the 2021/22 financial year, the Council has not made use of powers under RIPA and the Council's RIPA Authorising Officers have not approved the use of covert surveillance techniques in any cases.

5. Relationship to the Corporate Strategy and Service Plan

5.1 The report and arrangements meet WBC's vision of the promotion of open, democratic and participative governance and the strategic priorities of local, open and participative government.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

There are no direct financial implications from this report.

6.2 Risk management

There are no direct risk implications from this report.

6.3 Legal

The Council must follow Regulation of Investigatory Powers Act 2000 (RIPA) requirements should it wish to enact covert surveillance.

6.4 Equality, diversity and inclusion

There are no direct equality, diversity or inclusion implications in this report.

6.5 Climate emergency declaration

There are no direct sustainability / climate change impact implications from this report.

7. Consultation and engagement

7.1 *The RIPA policy is based on legal requirements and the guidance contained in the Home office codes of practice and there has been no external consultation on this.*

8. Other options considered

8.1 *Not applicable*

9. Governance journey

9.1 *This matter is being reported to Council.*

Annexes:

Annexe 1 – *RIPA policy (updated October 2022)*

Background Papers

There are / are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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Agreed and signed off by:

Legal Services: date

Head of Finance: date

Strategic Director: date

Portfolio Holder: date