OVERVIEW & SCRUTI|NY
18 JANUARY 2021

PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: REGULATION OF INVESTIGATORY POWERS ACT ('RIPA') ANNUAL REVIEW

REPORT OF: LEGAL REGULATORY TEAM MANAGER & DEPUTY MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR ELIZABETH DENNIS-HARBURG

COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES

1. EXECUTIVE SUMMARY

This Report updates on the Council's current use of RIPA and reports on the annual policy review.

2. RECOMMENDATIONS

2.1. That the content of the report be noted by Committee.

3. REASONS FOR RECOMMENDATIONS

3.1. To comply with best practice guidance and the Committee's terms of reference.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1. None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

None.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

7.1. RIPA regulates the use of certain surveillance powers by public authorities, including: −

- Directed Surveillance (covert surveillance conducted as part of a specific investigation likely to result in obtaining private information about an individual), −
- Use of Covert Human Intelligence Sources (CHIS), and
- Access to communications data (e.g. details of subscribers to telephone numbers or email accounts)

7.2. The Council is a very rare user of these powers. However, it is important that it has sufficient oversight of its activities to ensure that any considered use is compliant with the subject's human rights.

7.3. The Council is required to have arrangements and a RIPA Policy in place. The current one was last approved by Cabinet in June 2020 (updated together with the Social Media in Investigations Policy).

7.4. The Social Media in Investigations Policy was slightly updated at the time to reflect the use of open (not covert) enforcement Facebook pages. Only one page being partially implemented for the Community Safety team. The account is not live as yet and will only be live once compliant with data protection requirements

7.5. External Inspections are carried out from time-to-time by the Investigatory Powers Commissioner's Office ('IPCO'), so it is important that all documentation is properly completed and (where relevant) authorised to confirm that it is carried out on a lawful basis. The last inspection was held in April 2020. It will be due for a further review on or around 2023 dependent on the IPCO's inspection scheduling requirements.

7.6. Members should note the Council has not used surveillance powers or accessed communications data for some time, lastly noted in **2011**.

7.7. The Shared Anti-Fraud Service ('SAFs') does, however, utilise such powers and these are regulated through Herts County Council's processes. An officer(s) of Nafn (National Anti-Fraud Network) attend our quarterly corporate enforcement forum meetings and keep our enforcement officers and authorising officers up to date. External training has been provided to officers from ActNow in January 2020, by Nafn to the Corporate Enforcement Forum (the internal enforcement / legal officer group) in August 2020. Internal training was provided to the new Service Director for Customers in February 2021 for said officers. The Service Director for Legal & Community (the Senior Responsible Officer) has undertaken training twice this year through the internal Public Law Partnership and external solicitors and arrangements will be made later in the year for refresher training for enforcement officers (if possible) through Nafn.

7.8. Members will also note that in accordance with good practice guidelines Members receive quarterly updates on the use of any powers via the Member Information Service.

8. RELEVANT CONSIDERATIONS

8.1. There are no ongoing authorisations.

8.2. The Home Office publishes national Codes of Practice on the use of RIPA powers by public authorities. 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. The Council must have

regard to the relevant Code of Practice whenever exercising powers covered by RIPA. The Investigatory Powers Commissioner (IPC) conducts regular inspections of all public authorities to ensure compliance with RIPA, and the Codes of Practice.

8.3. The *Covert Human Intelligence Sources (Criminal Conduct) Act 2021* (CHIS(CC)A) received Royal Assent on 1 March 2021 and went live for the police on 15 September 2021

8.4. CHIS(CC)A amends the Regulation of Investigatory Powers Act 2000 and provides an express power to authorise a CHIS to participate in conduct which would otherwise constitute a criminal offence. This power is known as a Criminal Conduct Authorisation (CCA).

8.5. This power is known as a Criminal Conduct Authorisation (CCA).

8.6. Any CCA for otherwise criminal conduct must be necessary and proportionate and compatible with obligations under the European Convention on Human Rights. In assessing proportionality the relevant authorising body must have regard to whether the conduct to be authorised is part of an effort to prevent more serious criminal conduct and must also consider whether there are no other reasonable or practicable means by which the outcome may be achieved.

8.7. The Act requires the IPC to keep under review public authorities' use of the power and to include limited information on criminal conduct authorisations in their annual report.

8.8. The public authorities able to authorise the use of a CHIS are the intelligence agencies, police, HMRC, HM Forces, the SFO, the Environment Agency, the FCA, the Food Standards Agency, the Gambling Commission, the Home Office, the Ministry of Justice, the Department of Health and Social Care, the National Crime Agency and the Competition and Market Authority. It is important to note that local authorities have not been given these powers.

8.9. Legal oversight of the use of a CHIS to engage in criminal conduct will continue to vest in the Investigatory Powers Tribunal which will have jurisdiction to investigate and determine complaints against public authorities use of the power.

8.10. Legal oversight of the use of a CHIS to engage in criminal conduct will continue to vest in the Investigatory Powers Tribunal which will have jurisdiction to investigate and determine complaints against public authorities use of the power.

9. LEGAL IMPLICATIONS

9.1. The Regulation of Investigatory Powers Act 2000 (“RIPA”) enables local authorities to carry out certain types of surveillance activity, as long as specified procedures are followed. The information obtained as a result of surveillance operations can be relied upon in court proceedings providing RIPA is complied with. The Investigatory Powers Act 2016 (“IPA”) is the main legislation governing the acquisition of communications data. The information obtained as a result of these acquisitions can also be relied upon in court proceedings providing IPA is complied with. Full details of the RIPA requirements and compliance are set out in the Policy, with relevant documents and

guidance document available to relevant officers via the intranet should they consider it necessary to use these powers.

9.2. The Overview and Scrutiny Committee's Terms of Reference in the Council's Constitution at paragraph 6.2.7(r) states that it shall be entitled to consider reports relating to the authority's use of the Regulation of Investigatory Powers Act (2000) (RIPA).

10. FINANCIAL IMPLICATIONS

10.1. There are no financial implications arising from this Report.

11. RISK IMPLICATIONS

11.1. It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively manage its reputational risk whilst also exercising its legitimate evidence gathering powers in connection with enforcement activity.

12. EQUALITIES IMPLICATIONS

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2. The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

13. SOCIAL VALUE IMPLICATIONS

13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

14.1. There are no known Environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

15.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans.

16. APPENDICES

16.1

https://democracy.north-herts.gov.uk/ieListDocuments.aspx?CId=133&MId=2401&Ver=4

Updated Policy with tracked changes – to recommend update to Leader in consultation with the Service Director: Legal & Community

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

18.1 Policy documents referred to above and previous Cabinet report.