

**Overview and Scrutiny
11 March 2025**

***PART 1 – PUBLIC DOCUMENT**

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

REPORT OF: LEGAL MANAGER & DEPUTY MONITORING OFFICER

EXECUTIVE MEMBER: THE LEADER OF THE COUNCIL: COUNCILLOR DANIEL ALLEN

COUNCIL PRIORITY: ACCESSIBLE SERVICES

1. EXECUTIVE SUMMARY

This Report provides an update on the Council's current use of RIPA and reports on the annual policy review. The Report also provides an update on the proposed amendments to the Council's RIPA Policies following its annual review.

2. RECOMMENDATIONS

That the Committee:

- 2.1. notes the content of the report; and
- 2.2. recommends to Cabinet the adoption of the amended RIPA Policy (Appendix A).

3. REASONS FOR RECOMMENDATIONS

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

- 5.1. None.

6. FORWARD PLAN

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

7. BACKGROUND

- 7.1. 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.

- 7.2. The Council is required to have arrangements and a RIPA Policy in place. 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.
- 7.3. 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)
- 7.4. The Council is a very rare user of these powers, although the Shared Anti-Fraud Service (‘SAFs’) does so (note below). 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.
- 7.5. 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 Council was last inspected by the IPCO in 2023. They were satisfied with the arrangements as reported through to the Committee in January 2024. The next inspection will not be due until 2026.
- 7.6. The Shared Anti-Fraud Service (‘SAFs’) does, utilise such powers and these are regulated through Herts County Council’s processes and attends our officer Corporate Enforcement meetings. Where relevant an officer(s) of NAFN (National Anti-Fraud Network) attends our quarterly corporate enforcement forum meetings and keep our enforcement officers and authorising officers up to date. Training is also provided via that forum by NAFN.
- 7.7. 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.
- 7.8. In terms of Communications data, the IPA provided an updated framework for lawful acquisition of Communications Data, include the who, where, what, when and how a Local Authority can obtain communications and Communications Data (Entity and Events Data)
- 7.9. All such applications *must be processed through the NAFN* as the Single Point of Contact (SPoC), who will consider the application prior to submitting this for approval to the Office for Communications Data Authorisations (OCDA). All applications must be approved before Communications Data is acquired. The Investigatory Powers Commissioner oversees the use of the powers. All applications submitted to NAFN are completed via their online portal. The form is available for completion within that workflow system and reflects the current Home Office application form. NAFN does not accept application forms outside of the workflow system and any application queries go via the NAFN RIPA SPoC. This means there is an experienced person qualify controls and checks any applications considered / made by North Herts Council.

8. RELEVANT CONSIDERATIONS

Authorisations:

- 8.1. There are no ongoing authorisations for North Herts internal departments. At the time of preparing this report, confirmation of applications sought/ ongoing has been requested from SAFs and an oral update shall be provided at the meeting.

Policy review & amendments proposed:

- 8.2. The amendments proposed are largely administrative and minor (including Senior officer title changes).
- 8.3. Amendments were made to the Policy in 2023 (section 5), following the implementation of the Police, Crime, Sentencing and Courts Act 2022 (PCSCA); some further minor amendments are, however, proposed in relation to Codes, section 5 acquisition of communications data, and social media, section 13, as detailed in Appendix A – shown as tracked changes).
- 8.4. The Policy has been updated to explain when using social media for investigations is allowed and when special permission (RIPA approval) is needed to protect people's privacy.
- 8.5. The update further clarifies the rules so staff can continue to use these powers correctly and avoid mistakes. The updates strengthen how we monitor the use of these powers to maintain trust and meet external inspections.
- 8.6. A copy of the Policy with the proposed amendment is appended at A..

9. LEGAL IMPLICATIONS

- 9.1. 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).
- 9.2. The Overview and Scrutiny Committee are asked to consider this report and make a recommendation to Cabinet in line with its Terms of Reference. It is Cabinet's responsibility to adopt the RIPA Policy. Paragraph 5.6.1 of the Council's Constitution states that Cabinet may, by resolution, prepare and agree to implement policies and strategies other than those reserved to Council.
- 9.3. The Council is required to comply with the Regulation of Investigatory Powers Act 2000 ('RIPA') as amended in carrying out surveillance activities. Having an up-to-date policy ensures compliance with the statutory regime and empowers the Council to actively investigate matters if required to do so.
- 9.4. 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.

- 9.5. Sections 37 to 44 of the PCSCA came into force on 8 November 2022. This provides public authorities with a further power to extract (Communications) Data held on electronic devices.
- 9.6. Before action is taken, there must be a reasonable belief that information stored on the device will be relevant for one of three scenarios and satisfaction that the extraction of the information is necessary and proportionate to achieve the purpose.
- 9.7. To ensure any extraction of stored communications under s37 remains lawful, it is essential that the criteria and procedures set out within the Act and the associated Code of Practice are fulfilled.
- 9.8. A failure to follow these procedures correctly could result in a s.3 IPA offence (unlawful interception) being committed. *However, Members should not the control mechanisms in place as set out in 7.10 above.*
- 9.9. An extraction that has failed to comply with the requirements must be reported to the Investigatory Powers Commissioner's office as a relevant error. ***In stating that, there were no errors during the reporting period and as indicated, the IPCO was satisfied that the Council had appropriate RIPA procedures in place.***

10. FINANCIAL IMPLICATIONS

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

11. RISK IMPLICATIONS

- 11.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.
- 11.2. It is important that the Council continues to operate in accordance with RIPA to ensure that it can 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 Appendix A - RIPA Policy with proposed amendments.

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

- 18.1 [Extraction of Information from electronic devices: code of practice \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)