

**Agenda Item No:** 7 **Report No:** 14/17  
**Report Title:** Oversight of the Council's Surveillance Policy  
**Report To:** Audit & Standards Committee **Date:** 16 January 2017  
**Cabinet Member:** Councillor Andy Smith  
**Ward(s) Affected:** All  
**Report By:** Catherine Knight, Assistant Director of Legal & Democratic Services  
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#### **Purpose of Report:**

To inform Audit & Standards Committee of its role in overseeing the Council's policy on the use of surveillance and related powers conferred by the Regulation of Investigatory Powers Act 2000.

#### **Officers Recommendation(s):**

- 1 To note the Council's updated policy on the use of powers under Part 2 of the Regulation of Investigatory Powers Act 2000, set out at Appendix 1
  - 2 To note the role of Audit & Standards Committee in overseeing this policy.
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#### **Reasons for Recommendations**

- 1 Cabinet has recently agreed an updated policy on the Council's use of powers under Part 2 of the Regulation of Investigatory Powers Act 2000. Responsibility for overseeing this policy and its proper implementation now lies with Audit & Standards Committee. It is therefore important for the Committee to be aware of the policy and understand their role in connection with it.

#### **Information**

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- 2.1 On 4 January 2017, Cabinet agreed the updated policy, reproduced in full at Appendix 1, on the Council's use of statutory powers to conduct covert surveillance and deploy undercover operatives (known formally as 'covert human intelligence sources' – CHIS for short).

- 2.2** An update was necessary to reflect changes to the legislation from which the Council's covert surveillance and certain other intelligence-based powers are derived, namely Part 2 of the Regulation of Investigatory Powers Act 2000 ('RIPA') and associated secondary legislation.
- 2.3** The following legislative amendments are given effect in the updated policy:
- (i) only Council officers of specified seniority may authorise the use of covert surveillance or the deployment of CHIS; and
  - (ii) following authorisation by a designated Council officer, proposed covert surveillance or use of a CHIS must be approved by a magistrate before either of those activities may commence.
- 2.4** The new policy also reflects Home Office guidance on the circumstances in which intelligence gathering via social media sites may amount to "directed surveillance" and which may therefore require prior authorisation in accordance with RIPA.
- 2.5** Cabinet considered that Audit & Standards Committee was the appropriate body to oversee the Council's implementation of, and adherence to, the updated policy. This is reflected in paragraph 12 of the policy (see Appendix 1). See also 2.10 (ii) below.
- 2.6** The Council makes little, if any, use of RIPA powers. Since 2008 it has not authorised any covert surveillance or CHIS. The policy makes clear that due to the strict controls imposed by the legislation and codes of practice, it is envisaged that the Council would make use of its powers under RIPA in exceptional circumstances only. Authorisation must be proportionate and a measure of last resort, where all other investigative options were deemed insufficient. This approach is reflected at paragraph 8 of the policy.
- 2.7** Despite the Council making no use of RIPA powers in recent years, the Office of Surveillance Commissioners (the national body responsible for overseeing the use of covert surveillance by designated public bodies) expects local authorities to maintain a state of readiness in case a situation arises when covert surveillance is necessary and proportionate. To this end, the Council is investing in refresher training for authorising officers and an on-line toolkit of procedures and processes.
- 2.8** It should be noted that the Council has power under Part 1 of RIPA, and only if strict conditions are met, to acquire communications data. This would include time, location and device details, but not the content. This power will in future be provided for under Part 3 of the Investigatory Powers Act 2016, when that Part comes into force, and will be broadly equivalent in scope. A minor difference is that Parliament has taken the opportunity under the 2016 Act to redefine the classes of communications data, to reflect current technology.

**2.9** The Council has never needed to exercise its communications data acquisition powers, and it is not envisaged that it will become necessary to do so in the foreseeable future. In the unlikely event that use of these powers were necessary, their exercise would be subject to the same Member oversight as is proposed for the use of powers enabling covert surveillance and/or CHIS.

**2.10** The updated policy includes two forms of internal checks on its operation:

- (i) periodic internal audits, based on an assessment of risk, to ensure that officers are complying with statutory requirements and codes of practice;
- (ii) Member oversight comprising officer reports to Audit & Standards Committee every 12 months on policy implementation, relevant legislative updates (if any), and the number of authorisations granted over the past year in exercise of RIPA powers.

Audit & Standards Committee are entitled to reports at more frequent intervals if they consider it necessary.

Thus, Members will have, through this Committee, an opportunity to raise concerns or queries over policy implementation, and to offer assurance to the Council and the local community that proper procedures and processes are being followed.

**2.11** The Office of Surveillance Commissioners ('OSC') carry out a 3-yearly inspection of every local authority to check their arrangements for complying with RIPA. For authorities who have made little or no use of statutory powers since the previous inspection, OSC now begin with a paper exercise before deciding whether a personal visit is required. The Council's next OSC inspection is due in 2017/18.

## **Financial Appraisal**

**3** There are no financial implications arising from Audit & Standards Committee's proposed role regarding their oversight of surveillance arrangements.

## **Legal Implications**

**4** Oversight of the Council's use of RIPA powers are, following agreement by Cabinet on 4 January 2017, a proper function of Audit & Standards Committee.

The statutory framework governing covert surveillance and the conduct/use of CHIS is detailed in the body of the report.

The amendment referred to in paragraph 2.3(i) above derives from the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010; and the amendment referred to in

paragraph 2.3(ii) derives from the Protection of Freedoms Act 2012. Both of these provisions resulted in amendments to Part 2 of RIPA.

### **Risk Management Implications**

- 5** The Office of Surveillance Commissioners expects local authorities to put in place effective Member oversight of RIPA processes, so that officers who seek and authorise RIPA powers remain fully accountable. In the absence of Audit & Standard's oversight role, this level of accountability could be compromised.

### **Equality Screening**

- 6** I have completed the initial Equality Impact Assessment screening exercise and no potential negative impacts were identified as a result of these recommendations; therefore a full Equality Impact Assessment is not required.

### **Background Papers**

- 7** Report to Cabinet of 4 January 2017 on updated policy for use of powers under Part 2 of RIPA

Covert Surveillance and Property Interference Code of Practice (December 2014), issued by the Home Office

Covert Human Intelligence Sources Code of Practice (December 2014), issued by the Home Office

Procedures and Guidance: oversight arrangements for covert surveillance conducted by public authorities and to the activities of relevant sources (December 2014), issued by the Office of Surveillance Commissioners

### **Appendices**

- 8** Appendix 1: Updated Policy on Use of Powers under Part 2 of RIPA