

<b>Report to:</b>	<b>Audit and Standards Committee</b>
<b>Date:</b>	<b>20 January 2020</b>
<b>Title:</b>	<b>Update on Lewes District Council's use of covert surveillance powers</b>
<b>Report of:</b>	<b>Assistant Director of Legal and Democratic Services</b>
<b>Ward(s):</b>	<b>All</b>
<b>Purpose of report:</b>	<b>To provide an overview of the Council's recent use of covert surveillance powers</b>
<b>Officer recommendation(s):</b>	<b>That the Committee notes the report</b>
<b>Reasons for recommendations:</b>	<b>The Committee is responsible for overseeing the operation of the Council's policy on the use of covert surveillance</b>
<b>Contact Officer(s):</b>	<b>Name: Oliver Dixon Post title: Senior Lawyer and RIPA Monitoring Officer E-mail: <a href="mailto:oliver.dixon@lewes-eastbourne.gov.uk">oliver.dixon@lewes-eastbourne.gov.uk</a> Telephone number: (01323) 415881</b>

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## **1 Introduction**

- 1.1 This report summarises the Council's recent use of covert surveillance and online intelligence gathering.
- 1.2 For legal reasons, the report can only provide an overview of surveillance activity. It cannot disclose personal data or details of individual cases that are still the subject of active investigation.

## **2 Legislative and policy background**

- 2.1 Part 2 of the Regulation of Investigatory Powers Act 2000 ('RIPA') provides for the authorisation by certain public bodies, including district councils, of 'directed surveillance'.
- 2.2 'Directed surveillance' is covert surveillance 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, other than by way of an immediate response to events or circumstances.
- 2.3 In conducting directed surveillance, the Council must comply not just with RIPA but with the relevant Home Office code of practice and the Council's own policy – links to which are provided in paragraph 10 below.

- 2.4 In procedural terms, the most important steps under RIPA are for the directed surveillance to be authorised internally by a trained and designated senior manager, and for that authorisation to be approved by a justice of the peace (JP) – either a magistrate or district judge.
- 2.5 At both stages, the authorising officer and JP must be satisfied that the proposed surveillance is necessary for the prevention or detection of a crime attracting, on conviction, a custodial sentence of at least six months; and is proportionate to what is sought to be achieved by carrying it out. This involves balancing the seriousness of the intrusion into the privacy of the subject (or any other person who may be affected) against the need for the activity in investigative and operational terms.

### **3 Recent incidence of covert surveillance authorised under RIPA**

- 3.1 In April 2017 the Council's counter-fraud officers began investigating a suspected fraudulent Right to Buy (RTB) application relating to a property in the Lewes district. The RTB scheme is available, subject to certain qualification criteria, to secure tenants of local authorities, enabling them to buy their home at a price lower than the full market value. For homes outside London, the discount is up to £82,800.
- 3.2 Officers had reason to believe that the property named in the application was not the applicant's only or principal home, meaning she did not meet a significant RTB qualification requirement. This amounted to a suspected offence under sections 1 and 2 of the Fraud Act 2006 – fraud by false representation. On conviction, a person guilty of fraud is liable to imprisonment for a term of up to 12 months if sentenced in the magistrates court; or up to 10 years if sentenced in the crown court.
- 3.3 Despite extensive counter-fraud investigations pointing to the applicant not using the property as her only or principal home, the evidence was thought unlikely to meet the standard of proof required for a criminal conviction, i.e. proof beyond reasonable doubt.
- 3.4 To secure the required level of proof, the investigating officer sought RIPA authorisation to conduct a three-month directed surveillance operation on the exterior of the property in question, by way of covertly mounted vision-only cameras, to ascertain the level of usage by the applicant. The internal authorising officer, the Director of Service Delivery, was satisfied the proposed surveillance was necessary for the detection of a suspected crime, and was proportionate in terms of:
- (i) all other reasonable non-surveillance lines of enquiry having been pursued already;
  - (ii) the minimisation of 'collateral' intrusion, i.e. surveillance of persons not under investigation;
  - (iii) the collection of visual images only, not sound; and
  - (iv) the potential saving to the council of £80,900, if the RTB application were proven to be fraudulent.

Accordingly, the Director authorised the operation.

- 3.5 In August 2018, officers applied for and were granted judicial authority by a district judge to commence the surveillance activity.
- 3.6 Once a local authority has obtained all necessary permissions for directed surveillance, it may lawfully conduct the activity for up to three months, if the circumstances justifying the activity remain. With this particular case, the authorising officer reviewed the activity after one and two months from commencement, and concluded it was necessary to continue the surveillance for the full duration in order to be certain that the applicant was not using the property as her only or principal home.
- 3.7 The surveillance operation ceased three months after it was approved by the district judge.

#### **4 Key findings and outcome of the surveillance**

- 4.1 During the three-month surveillance period, the applicant was captured on camera visiting the property only twice, and for a total duration of less than one and half hours. On the first occasion she was seen to carry two full bags away from the property.
- 4.2 In December 2018, counter-fraud officers interviewed the applicant under caution and charged her with fraud by misrepresentation under sections 1 and 2 of the Fraud Act 2006. She initially pleaded not-guilty but subsequently changed her plea to guilty. Sentencing is due at crown court on 10 January 2020.
- 4.3 An incidental benefit of establishing the tenant's non-use of the property was the Council's ability to recover possession, on the basis of breach of tenancy. The Council applied for and was granted a warrant of eviction by the county court, and by the time the bailiff and Council officers entered the property, the previous occupiers had removed all their belongings. The house was let to a new tenant in December 2019.

#### **5 Online covert activity**

- 5.1 The growth of the internet, and the extent of the information that is now available online, presents opportunities for Council officers to view or gather online information which may assist them in preventing or detecting crime or carrying out other statutory functions.
- 5.2 Officers engaged in debt recovery relating to housing rent, council tax, business rates or overpaid housing benefit may need to carry out online research to identify the whereabouts of the debtor; or the existence of that person's employer, for a possible attachment of earnings order.
- 5.3 In addition to its policy on internet and social media research (see link at paragraph 10), the Council has issued its debt recovery officers with guidance on the procedure to follow when their research is likely to obtain private information, if the study of an individual's online presence becomes persistent, or where material obtained from any check is to be extracted and recorded. Whilst debt recovery is a civil matter and therefore outside the RIPA regime,

privacy issues must still be considered and, where necessary, the research must be authorised on the basis of necessity and proportionality. There is a process in place to ensure the Account Management team follows this protocol.

## **6 Financial appraisal**

- 6.1 The cost of conducting and managing covert surveillance and online research is met from existing service budgets.

## **7 Legal implications**

- 7.1 As detailed above, the statutory framework for the authorisation of directed surveillance is part 2 of RIPA, supplemented by the relevant Home Office code of practice. Directed surveillance authorised and conducted in accordance with RIPA provides for lawful interference with a person's right to a private and family life. Failure to comply with statutory requirements may render any directed surveillance unlawful and therefore inadmissible in evidence. As a further consequence, any person subjected to unlawful privacy interference could bring a civil claim against the Council.

*Lawyer consulted: 31.12.19*

*Legal ref: 005383-JOINT-OD*

## **8 Risk management implications**

- 8.1 The Council's arrangements for the management of surveillance, in terms of policies, procedures and designated roles (e.g. RIPA Monitoring officer and RIPA authorising officers) should ensure that activity is fully compliant with RIPA and human rights legislation. Further, the Council will have regard to the recommendations of RIPA inspections conducted by the Investigatory Powers Commissioner's Office, and any internal audits.

## **9 Equality analysis**

- 9.1 There are no equality implications associated with this report.

## **10 Background papers**

The background papers used in compiling this report were as follows:

- Home Office Code of Practice on Covert Surveillance and Property Interference (August 2018) – [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/742041/201800802\\_CSPI\\_code.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742041/201800802_CSPI_code.pdf)
- Lewes District Council policy on covert surveillance – [https://www.lewes-eastbourne.gov.uk/\\_resources/assets/inline/full/0/261044.pdf](https://www.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/261044.pdf)
- Lewes District Council policy on conducting internet and social media research – [https://www.lewes-eastbourne.gov.uk/\\_resources/assets/inline/full/0/277395.pdf](https://www.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/277395.pdf)