

Report to:	Audit and Governance Committee
Date:	4 March 2020
Title:	Annual report on the use and governance of covert surveillance powers
Report of:	Assistant Director of Legal and Democratic Services
Ward(s):	All
Purpose of report:	To provide an overview of the Council's use of covert surveillance powers in 2019/20; and to report on the recent external inspection of surveillance governance arrangements.
Officer recommendation(s):	<p>That the Committee–</p> <p>(1) Notes the Council's use of covert surveillance powers during 2019/20.</p> <p>(2) Notes the findings of the Investigatory Powers Commissioner's Office inspection conducted in 2019.</p>
Reasons for recommendations:	The Committee is responsible for overseeing the Council's policy on the use of covert surveillance powers.
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1 Introduction

- 1.1 This report summarises the Council's use of covert surveillance powers and online intelligence gathering during 2019/20.
- 1.2 It also highlights the recommendations of the Investigatory Powers Commissioner's Office (IPCO) following their inspection of Lewes and Eastbourne Councils in December 2019.

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 Eastbourne Borough Council, 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 12 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, i.e. 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 punishable, on conviction, by 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 Governance Arrangements

- 3.1 IPCO provides independent oversight of the use of investigatory powers by intelligence agencies, police forces and other public authorities. Its purpose is to oversee how these powers are used, taking account of the public interest and ensuring that investigations are conducted in accordance with the law.
- 3.2 IPCO's oversight includes the inspection of public authorities. Lewes and Eastbourne Councils are inspected once every three years, most recently in December 2019. The key outcomes of this inspection are set out in paragraph 6 below.
- 3.3 Internally, the Council regulates its use of surveillance powers through specially trained managers, consisting of:
 - RIPA Senior Responsible Officer – Catherine Knight
 - RIPA Monitoring Officer – Oliver Dixon
 - RIPA Authorising Officers – Tim Whelan and Peter Finnis
- 3.4 Surveillance arrangements are also subject to periodic internal audit.

4 Use of Covert Surveillance Powers in 2019/20

- 4.1 During 2019/20, the number of directed surveillance operations authorised by the Council was nil.
- 4.2 The absence of directed surveillance in this and previous years drew the following comment from IPCO in its latest inspection report:

Eastbourne Borough Council has opted not to use RIPA powers for some time. Despite this, it is important that there is regular, ongoing internal oversight of the actual or potential use of these powers, which should continue to be overseen

via the Senior Responsible Officer. Council personnel need to maintain their levels of training, particularly when the powers are used sparingly.

- 4.3 The non-use of directed surveillance powers is in part explained by the strict criteria relating to authorisation, as detailed in paragraph 2.5 above. The Council continues to investigate suspected criminal offences (mainly fraud), breach of tenancy agreements and non-payment of fees or taxes but, in the overriding majority of cases, directed surveillance cannot be justified under RIPA and is therefore not used.
- 4.4 By way of example, in 2019 a Neighbourhood First officer sought authorisation to carry out directed surveillance in Eastbourne in connection with a suspected breach of a community protection notice relating to waste. The authorisation had to be declined because the offence in question was below the 'crime threshold' for RIPA, i.e. was incapable of being punished by a custodial sentence of six months or more. Investigation continued but using lawful overt methods.
- 4.5 The Council's Counter Fraud team use a variety of means to investigate suspected fraud and would seek a directed surveillance authorisation only where (i) all other reasonable lines of enquiry had been pursued, and (ii) the offence in question met the crime threshold.
- 4.6 In 2019, the Counter Fraud team did seek and obtain authority to conduct directed surveillance in connection with a suspected Right to Buy fraud in relation to a property, but in the Lewes district. The team have carried out a number of enquiries on Right to Buy applications relating to council houses in Eastbourne, though in these cases the use of directed surveillance was not warranted.

5 Online Intelligence Gathering

- 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 Counter Fraud officers undertake open source intelligence gathering quite regularly, which can include checks on individuals' social media profiles. To date, however, no online investigation has amounted to directed surveillance and, therefore, has not required authorisation under RIPA. Counter fraud officers are trained in the use of online enquiries, and intelligence gathered is held in a secure case management system.
- 5.3 Officers engaged in debt recovery relating to housing rent, council tax, business rates or overpaid housing benefit may need to research a debtor's social media presence, to trace their whereabouts; or to trace the debtor's employer, for a possible attachment of earnings order.
- 5.4 In addition to its policy on internet and social media research (see link at paragraph 12), the Council has issued designated 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.

- 5.5 As the process is relatively new and the Account Management team's current priority is with annual billing, their officers have not yet used online tracing via social media. They plan to do so during the next quarter, however.
- 5.6 Account Management officers would turn to online tracing via social media only as a last resort, once all other standard lines of enquiry had been exhausted.

6 IPCO Inspection

- 6.1 In December 2019, an IPCO inspector carried out a detailed on-site inspection of Lewes and Eastbourne Councils' governance arrangements for conducting covert surveillance. This included a review of RIPA policies and procedures; and interviews with (i) personnel responsible for RIPA management, and (ii) officers who conduct the surveillance itself.
- 6.2 The inspection complimented the Councils' standard of documentation relating to the use of RIPA and its social media guidance document for officers.
- 6.3 IPCO found no significant areas of non-compliance with surveillance legislation or the Home Office code of practice. In addition to IPCO's observation mentioned at paragraph 4.2 above, their principal recommendation concerned the deployment of Covert Human Intelligence Sources ('CHIS').

For information, a CHIS is someone who establishes a personal relationship with a person (the suspect) for the covert purpose of obtaining intelligence or disclosing information relating to the behaviour of the suspect. Local authorities such as Eastbourne Borough Council may use CHIS only for the purpose of preventing or detecting crime or for preventing disorder.

- 6.4 IPCO recommends that Eastbourne's RIPA policy provides guidance on the use of CHIS, including arrangements for the appointment of persons fulfilling the role of 'handler' and 'controller' if and when a CHIS is deployed. IPCO further recommend that the policy explains how the role of a CHIS differs from a person volunteering information to the Council.
- 6.5 The RIPA Monitoring Officer (MO) will draft the required amendments and submit the revised policy to Audit and Governance Committee for approval at its next meeting. The RIPA MO will also update the Committee on the Council's proposed response to all other IPCO recommendations and observations.

7 Financial appraisal

- 7.1 The cost of conducting and managing covert surveillance and online intelligence gathering will be met from existing service budgets.

8 Legal implications

- 8.1 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 under article 8 of the European Convention on Human Rights, namely their right to respect for their 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: 20.02.20

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9 Risk management implications

- 9.1 The Council's arrangements for the management of surveillance, in terms of policies, procedures and designated roles (e.g. RIPA MO 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.

10 Equality analysis

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

11 Appendices

- 11.1 None.

12 Background papers

- 12.1 The background papers used in compiling this report were as follows:
- Eastbourne Borough Council covert surveillance policy statement: https://www.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/257154.pdf
 - Eastbourne Borough Council policy on social media research and investigations: https://www.lewes-eastbourne.gov.uk/_resources/assets/inline/full/0/287120.pdf
 - 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

