

<b>Report to:</b>	<b>Audit and Standards Committee</b>
<b>Date:</b>	<b>17 March 2020</b>
<b>Title:</b>	<b>Inspection of Surveillance Governance Arrangements</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 summarise the surveillance inspector's findings and the council's proposed response.</b>
<b>Officer recommendation(s):</b>	<b>That the Committee notes the outcome of the Investigatory Powers Commissioner's Office inspection conducted in 2019.</b>
<b>Reasons for recommendations:</b>	<b>The Committee is responsible for overseeing the Council's policy on the use of covert surveillance powers.</b>
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## **1 Introduction**

- 1.1 The Investigatory Powers Commissioner's Office (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, primarily the Regulation of Investigatory Powers Act 2000 (RIPA).
- 1.2 IPCO's oversight includes the inspection of public authorities. Lewes and Eastbourne Councils are inspected once every three years, and this report summarises their findings from the inspection carried out in December 2019. The report also outlines the Councils' proposed response.
- 1.3 The inspection included a review of the Councils' RIPA policies, procedures and management controls; and interviews with (i) personnel responsible for RIPA management, and (ii) officers who conduct the surveillance itself.

## **2 IPCO inspection findings**

- 2.1 IPCO complimented the Councils' standard of documentation relating to the use of RIPA and their social media guidance document for officers.

- 2.2 IPCO found no significant areas of non-compliance with surveillance legislation or the Home Office code of practice. They did, however, identify certain areas for improvement, in particular over the potential deployment of Covert Human Intelligence Sources (CHIS).

For reference, 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 Lewes District Council may use a CHIS only for the purpose of preventing or detecting crime or for preventing disorder.

- 2.3 IPCO recommends that the Councils update their RIPA policy to provide 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.

- 2.4 IPCO's other key areas for improvement require the Councils–

(i) to specify their controls over the use of covert online profiles if surveillance is conducted online;

(ii) to include in their RIPA policy a short paragraph highlighting their stance on the use of communications data for investigative purposes.

- 2.5 The RIPA Monitoring Officer (MO) will draft the required policy amendments and submit the revised document to Audit and Standards Committee for approval at its next meeting.

- 2.6 To give effect to these policy updates, the RIPA Monitoring Officer will identify appropriate training and the relevant officers who should attend.

- 2.7 The MO will also submit the Councils' formal inspection response to IPCO by the end of March 2020.

### **3 Financial implications**

- 3.1 The cost of implementing IPCO's recommendations will be met from existing service budgets.

### **4 Legal implications**

- 4.1 The Council is strongly advised to follow IPCO's recommendations, so as to improve compliance with RIPA and the Home Office codes of practice on covert surveillance and the use of CHIS. Doing so reduces the Council's exposure to risk of evidence from surveillance being ruled inadmissible; and the risk of civil claims from individuals in connection with their right to respect for their private and family life.

## **5 Risk management implications**

- 5.1 The Council's arrangements for the management of covert 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.

## **6 Equality analysis**

- 6.1 There are no equality issues associated with this report.

## **7 Appendices**

- 7.1 None.

## **8 Background papers**

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

- The Regulation of Investigatory Powers Act 2000:  
<http://www.legislation.gov.uk/ukpga/2000/23/contents>
- 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)
- Home Office Code of Practice on Covert Human Intelligence Sources (August 2018):  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/742042/20180802\\_CHIS\\_code\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742042/20180802_CHIS_code_.pdf)