

Report to: Audit and Standards Committee

Date: 18 January 2021

Title: Update on Lewes District Council's use of covert surveillance powers

Report of: RIPA Monitoring Officer

Ward(s): All

Purpose of report: To provide an overview of the Council's recent use of covert surveillance powers.

Officer recommendation(s): That the Committee notes the report.

Reasons for recommendations: The Committee is responsible for overseeing the operation of the Council's policy on the use of covert surveillance.

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1 Introduction

- 1.1 This report summaries 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 investigations.

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 the 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 operation terms.

3 Covert Surveillance authorised under RIPA in 2020

3.1 There are no cases to report during this period.

4 Online covert activity

4.1 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.

4.2 Officers engaged in debt recovery relating to housing rent, council tax, business rate 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.

4.3 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, private 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 Financial appraisal

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

6 Legal implications

6.1 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 persons subjected to unlawful privacy interference could bring a civil claim against the Council.

7 Risk management implications

7.1 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.

8 Equality analysis

8.1 There are no equality implications associated with this report.

9 Environmental sustainability implications

9.1 There are no environmental sustainability implications with this report.

10 Background papers

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

- Home Office Code of Practice on Covert Surveillance and Property interference (August 2018) - [CHIS Code \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728243/CHIS_Code_of_Practice_on_Covert_Surveillance_and_Property_interference_August_2018.pdf)
- Lewes District Council policy on covert surveillance - [292573.pdf \(lewes-eastbourne.gov.uk\)](https://www.lewes-eastbourne.gov.uk/media/292573/292573.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>