

<b>Report to:</b>	<b>Audit and Governance Committee</b>
<b>Date:</b>	<b>28 November 2023</b>
<b>Title:</b>	<b>Annual report on Covert Surveillance Management</b>
<b>Report of:</b>	<b>RIPA Monitoring Officer</b>
<b>Ward(s):</b>	<b>All</b>
<b>Purpose of report:</b>	<b>To provide an overview of the Council's use of covert surveillance powers in 22/23</b>
<b>Officer recommendation(s):</b>	<b>To note the covert surveillance summary for September 2022 to September 2023</b>
<b>Reasons for recommendations:</b>	<b>Best practice requires an annual update to the Committee on Covert Surveillance Policy adherence</b>
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## **1 Introduction**

1.1 On 23 November 2022, the Audit and Governance Committee approved:

(i) the Council's updated policy on the use of covert surveillance and covert human intelligence sources; and

(ii) the Council's new policy on the acquisition of communications data.

Both policies were drafted to comply with the recommendations stemming from IPCO's (Investigatory Powers Commissioner's Office) 2022 inspection of the Council's surveillance arrangements.

1.2 Officers are required to report annually to the Committee on action taken under these policies. Accordingly, the information set out in the report below covers the period since September 2022.

## **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 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 June 2022. Details of the recommendations from the inspection can be found in paragraph 6.1.
- 3.3 Internally, the Council regulates its use of surveillance powers through specially trained managers, consisting of:
- RIPA Senior Responsible Officer – Oliver Dixon
  - RIPA Monitoring Officer – Lee Ewan
  - RIPA Authorising Officers – Tim Whelan and Linda Farley
- 3.4 To ensure continuing capability over the past 12 months, Oliver Dixon attended a RIPA Senior Responsible Officer refresher course and Tim Whelan attended a RIPA Authorising Officer refresher course, both in November 2022. An additional RIPA Authorising Officer refresher course has been organised for Linda Farley in February 2024.
- 3.5 Surveillance arrangements are also subject to periodic internal audit.

## **4 Use of Covert Surveillance Powers between September 2022 and September 2023**

- 4.1 Over the period September 2022 – September 2023, no council officer sought authorisation to conduct directed surveillance, to use a covert human intelligence source (CHIS) or to acquire communications data. Accordingly, no authorisations for these activities were granted during this time.
- 4.2 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 criteria and is therefore not used.
- 4.3 The Council's Neighbourhood First officers wear highly visible uniforms which helps deter criminal activity in the community. Any surveillance they undertake to deter fly tipping is done using cameras mounted on lamp posts but with highly visible signage intended to make potential offenders aware. Such activity amounts to overt surveillance which falls outside of the scope of this report, as it is not regulated by RIPA 2000 or the Investigatory Powers Act 2016.

## **5 Online Surveillance**

- 5.1 Certain council teams may from time to time use open-source material available on the internet to confirm the identity and circumstances of persons who (a) are in significant debt to the Council and need to be traced or (b) may be the subject of, or associated with, a counter-fraud investigation
- 5.2 Controls are in place to minimise the risk that use of open source material to confirm an online presence (which, because it is in the public domain, does not intrude on the person's right to a private and family life) does not develop into 'directed surveillance' and therefore require express authorisation to render it a lawful interference with their right to privacy.
- 5.3 Typically, online research may amount to directed surveillance if it becomes highly targeted through focused and systematic monitoring of an individual over a period of time, resulting in a profile or record of that person's activities being created and used, with a view to potential legal proceedings. Such surveillance may lawfully proceed only if it (a) meets the crime threshold – see paragraph 2.5; and (b) is authorised in accordance with RIPA procedures.
- 5.4 Controls are also in place to ensure that creating a covert profile to establish an online connection with a person whose social media profile is not open to the public may not proceed without the necessary authorisation.
- 5.5 The RIPA Monitoring Officer is meeting with the relevant Council teams to review the control arrangements and reinforce compliance.

5.6 Historically, the directed surveillance operations conducted by the Council have all related to fraud within the ambit of the Fraud Act 2006 and therefore liable to a penalty that would meet the crime threshold specified in paragraph 2.5 above.

## **6 IPCO Recommendations**

6.1 IPCO made one recommendation following their inspection of the Council's surveillance management systems in June 2022 which has now been implemented. The recommendation centred on amendments to the Council's RIPA policies to incorporate the retention, review and destruction (RRD) of data gathered utilising the covert powers available. IPCO's report adds that the policies should carry clear instructions on the need to undertake RRD of covertly gathered material and to comply with the safeguarding chapters found within the Home Office Codes of Practice.

## **7 Financial appraisal**

7.1 There are no financial issues associated with this report.

## **8 Legal implications**

8.1 For the Council's directed surveillance, use of a CHIS or acquisition of communications data to comply with human rights legislation (specifically the right to respect for family and private life, and the right to a fair trial), it must comply with the controls and procedures set down by the Regulation of Investigatory Powers Act 2000 or the Investigatory Powers Act 2016 (as applicable). The Council must also have regard to the relevant Home Office codes of practice which set out the practical steps local authorities should follow in applying these regulatory controls.

## **9 Risk management implications**

9.1 Failure to implement IPCO's recommendations brings with it the risk of (1) non-compliance with surveillance legislation and codes of practice; and (2) censure by IPCO at their next inspection, causing reputational harm to the Council.

## **10 Equality analysis**

10.1 There are no equality issues associated with this report.

## **11 Environmental sustainability implications**

11.1 There are no environmental issues with this report

## **12 Background Papers**

- [Home Office Code of Practice on Covert Surveillance and Property Interference \(August 2018\)](#)

- [Home Office Code of Practice on Communications Data \(November 2018\)](#)
- [LEC's policy on use of covert surveillance and/or covert human intelligence sources](#)
- [LEC's policy on the acquisition of communications data](#)