

RIPA and inspection by the Surveillance Commissioner

Summary

- 1 This report presents statistics about the council's application of the Regulation of Investigatory Powers Act 2000 (RIPA) and describes the council's progress in completing the recommendations made following the most recent inspection by the Office of the Surveillance Commissioner (OSC).

Background

- 2 Covert surveillance by a public authority, or the use of Covert Humans Intelligence Sources (CHIS) (ie agents), to gather information about a citizen will usually be a breach of his or her right to privacy under the Human Rights Act 1998. However it is permissible to do so to prevent or detect crime, if undertaken in accordance with the law. Under the Regulation of Investigatory Powers Act 2000 (RIPA), Codes of practice govern the authorisation of covert surveillance and CHIS. Compliance with RIPA and with the codes is regulated by the Office of the Surveillance Commissioner (OSC).
- 3 Communications data may also be gathered by a public authority if properly authorised. This is governed by different Codes of practice and a different regulator – the Interception of Communications Commissioner's Office (IOCCO).
- 4 Complying with the relevant Codes avoids the risks of:
 - evidence gathered being ruled inadmissible in court, thus risking a failure to successfully prosecute the crime
 - the citizen being able to seek compensation for having his or her privacy breached

- the council being seen to be interfering in citizens' lives, resulting in reputational damage
- 5 The main features of the Codes, as they affect the council's law enforcement activities, are:
- authorisation of intrusions by one of a small number of senior officers specially trained to do so
 - approval of each authorisation by magistrates
 - consideration in each case of why the intrusion is necessary, how it is proportionate to the criminal activity, and how intrusion into other citizens' privacy will be avoided or minimised

Use of surveillance powers

- 6 The council's powers under RIPA are tightly constrained:
- the only permissible reason to breach a citizen's right to privacy is the prevention or detection of crime
 - the crime must be serious – with a maximum sentence of at least six months, or involve underage sales of restricted goods
 - intrusive surveillance – eg the use of bugs, or entry into private property – is **not** permitted
 - only so-called “service use” and “subscriber” communications data may be obtained. “Traffic” data (eg anything identifying the sender or recipient of a message; the address on a letter in transit; or the location of a mobile phone) cannot be obtained
 - access to the actual content of a message or conversation is not permitted
- 7 It follows that covert techniques are used mainly in support of other investigation methods, and are used in order to gather evidence. Nevertheless covert surveillance is a valuable tool; when it is necessary, it is necessary because there is no alternative.

- 8 The numbers of authorisations granted by the Council and reported to the OSC over recent years have been as follows:

	09/10	10/11	11/12	12/13	13/14	14/15
Covert surveillance	15	25	8	5	5	3
CHIS	1	0	0	2	0	0

There have been no authorisations so far in 2015/16.

- 9 Authorisations to gather communications data are reported to the IOCCO by calendar (not financial) year and were as follows:

	2009	2010	2011	2012	2013	2014
Authorisations	0	4	5	66	80	8

The number authorised so far in 2015 is: 3

- 10 The requirement for further approval by magistrates came into effect in November 2012.
- 11 These powers are used mainly by Trading Standards officers, and to a lesser extent in fraud investigations. There were no authorisations in Children's Services during the period above.
- 12 Some Trading Standards investigations uncover large scale frauds, for example in 2012 several defendants were prosecuted for a conspiracy to defraud their customers who had purchased poor quality and misdescribed motor vehicles including insurance write-offs. When customers complained they were subject to verbal abuse and threats of violence. The defendants received a variety of prison sentences of up to 3 ½ years and last year the court awarded a £6.5million confiscation order to recover the cost of their crimes. Information obtained from surveillance can be key in helping to piece together the evidence and trace hidden assets in cases of this nature.

Inspection

- 13 The procedures required by the Codes of Practice provide protection for the public against unwarranted intrusions into

their privacy by council officers. A further layer of protection is provided by the magistrates' scrutiny, and the inspection regime of the Commissioners.

- 14 The council is inspected every three years or so by the OSC. There has been no inspection to date by the IOCCO.
- 15 An inspector from OSC visited the council in April 2015. The Commissioner regulates public authorities' use of RIPA by auditing compliance with the relevant Codes of Practice. The inspector's report did not identify any areas of concern in the council's practices but did identify a small number of improvements, as follows:
 - the need for regular reporting of RIPA matters to members. It is proposed to report annually to this committee;
 - amendments to the procedure. These have already been made and approved by the Director of Customer and Business Support Services;
 - refresher training for authorising officers (and investigators). This training is planned for November 2015.
- 16 The agreed action plan is attached as annex 1. The Inspector's report itself is classified "Official Sensitive" (formerly "Restricted") and is not published as a background paper.

Consultation

- 17 Not relevant for the purpose of the report.

Options

- 18 Not relevant for the purpose of the report.

Analysis

- 19 Not relevant for the purpose of the report.

Council Plan

- 20 The committee supports the council's overall aims and priorities by promoting probity, integrity and honesty and by helping to make the council a more effective organisation.

Implications

- **Crime and Disorder**

- 21 Covert investigations play a small but important role in evidence gathering for the prevention and detection of crime. The activity is governed by Codes of Practice which the council must adhere to.

- 22 There are no implications to this report in relation to:

- **Finance**
- **Human Resources (HR)**
- **Equalities**
- **Legal**
- **Information Technology (IT)**
- **Property**

Risk Management Assessment

- 23 Failure to comply with the relevant Codes of Practice could result in the council being unable to prosecute criminals because evidence gathered by covert means is ruled inadmissible. It could also mean the council suffers financial loss and/or reputation damage as a result of citizens claiming that their human rights have been infringed.

Recommendation

- 24 Members are asked to:
- a) Note the small but important contribution to crime prevention made by covert investigations by council officers, the current levels of activity and the outcomes of the recent inspection.

Reason

To ensure that the council conducts covert surveillance in accordance with relevant legislation and fulfils the public interest in maintaining the privacy of its citizens

Contact Details

Author:	Chief Officer Responsible for the report:
Robert Beane Information Governance Manager Veritau Limited 01904 552940	Andy Docherty Assistant Director Telephone: 01904 551004

**Report
Approved**



Date 9/9/15

Specialist Implications Officers

Not applicable

Wards Affected:

All



For further information please contact the author of the report

Background Papers

CYC RIPA procedure

Annexes

Annex 1 – RIPA action plan

Glossary

CHIS	Covert Humans Intelligence Sources
IOCCO	Interception of Communications Commissioner's Office
OSC	Office of the Surveillance Commissioner
RIPA	Regulation of Investigatory Powers Act