

Agenda item 5

Report title: Regulation of Investigatory Powers Act 2000	AGS/25/18
Report to: Audit, Governance and Standards Committee	
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Date: 11 December 2018	For: Discussion
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County Divisions affected: All Essex	

1. Introduction

- 1.1 The Council has limited powers to authorise the use of ‘covert surveillance’ activity and to use ‘covert human intelligence sources’ (CHIS). These powers are quite limited (see later in the report).
- 1.2 The Council very seldom uses these powers but the fact that we have these powers means that we must have a policy about their use.
- 1.3 There have been recent changes to the law and to the statutory Code of Practice which means we must update the policy.
- 1.4 This report also updates the Committee on the recent use (or non use) of the powers.

2. Recommendations

- 2.1 That the updated policy at Appendix 1 be approved.
- 2.2 That the Director, Legal and Assurance continues to have delegated authority to make minor amendments amend the policy.
- 2.3 That the Committee notes that no applications for directed surveillance or the use of a CHIS have been made by anyone at ECC since the last report in March 2018.

3. Background

Regulation of Investigatory Powers Act 2000

- 3.1 The Council operates many statutory services which have an element of enforcement. Most such activities are undertaken within the trading standards service, but the need for investigations may arise within the highways service and, at least in theory, within social services. All these matters may involve serious fraud or other wrongdoing.

- 3.2 As part of an investigation the Council may occasionally want to undertake surveillance or use an informant. The Regulation of Investigatory Powers Act 2000 states that these activities are always lawful if they are authorised in accordance with the Act. These activities did not previously have a statutory basis and, although there was no law against these activities, there was an argument that the lack of a statutory basis mean that there was a risk of infringing the 'right to respect for private and family life' – a right which is enshrined in the European Convention on Human Rights and Fundamental Freedoms.
- 3.3 The Act provides for local authorities to undertake these activities if properly authorised, and if it is necessary and proportionate to prevent or detect serious crime. Serious crime means offences which carry a maximum penalty of six months imprisonment (or underage sale of alcohol or tobacco to minors). Since 2012 the council has been required to obtain approval from a magistrate before an authorisation takes effect.
- 3.4 The Council is subject to regular inspections by the Investigatory Powers Commissioner to ensure that the Council is properly authorising activities and also to ensure that staff are aware of which activities need to be authorised and that the Council is in a state of readiness to use the powers.

Policy Update

- 3.5 The Home Secretary issues statutory codes of practice on surveillance and the use of a CHIS. The codes of practice are subject to Parliamentary approval and were updated in August 2018. The Council's Policy and Procedures on Covert Surveillance and Covert Human Intelligence Sources has been revised and updated in line with the amended Codes. The revised draft is at appendix 1.
- 3.6 The main revisions to the policy include:
- Authorisation periods for juvenile sources increased from one month to four months – to reflect a change in the law;
 - The Councils use of investigatory powers is now regulated by the Investigatory Powers Commissioner's Office (IPCO) and not the Office of Surveillance of Commissioners (OSC);
 - Senior Responsible Officer's duties updated to include the oversight and reporting of errors to the IPCO;
 - Paragraph inserted regarding the use of agents by public authorities;
 - Updated section on surveillance etc by monitoring social media postings;
 - Updated section on authorisations and central register logging requirements;
 - Additional paragraphs on errors since there is now a greater emphasis on noting and reporting errors to IPCO.

The Council's Surveillance Activity/use of CHIS

- 3.7 The Council does not generally undertake surveillance or use CHISs which needs to be authorised under the Act. The last written report to the committee was made in March 2018, when a report that no authorisations had been sought or granted during the previous year. Similarly, between March 2018 and 30 November 2018 no authorisations have been sought or granted by ECC.
- 3.8 The Council has worked with the police on joint operations. In these cases the Police would be the lead organisation and would normally obtain the authorisation. In these cases Council officers satisfy themselves that they are covered by an authorisation issued by the Police.
- 3.9 The Council takes the view that the 'test purchasing' activities it undertakes by sending a minor to shops to purchase alcohol or tobacco do not need to be authorised under RIPA. This is because the activities take place in a public place and are undertaken overtly. This view has not been tested in court and some authorities take a more cautious approach.
- 3.10 The Council provides regular training to staff who may need to undertake enforcement activities to ensure that they are aware what needs to be authorised.

4. Financial Implications

- 4.1 Use of RIPA has no financial implications

5 Legal Implications

- 5.1 The legal implications of RIPA are set out in section 3 of this report. The Council may have to pay damages if interferes with someone's right to respect for their family and private life without such interference being authorised under RIPA. However, the risk of this is very low if we

6 Equality and Diversity Implications

- 6.1 Section 149 of the Equality Act 2010 creates the public sector equality duty which requires that when ECC makes decisions it must have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not

- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, gender and sexual orientation. Equality and diversity matters have been considered in the production of this report.

7 List of Appendices

Appendix 1 – Updated Policy on the Use of the Regulation of Investigatory Powers Act 2000 on the undertaking of Directed Surveillance and the use of Covert Human Intelligence Sources (CHIS).

8 List of Background Papers

Covert surveillance and property interference Code of Practice, dated August 2018

Covert human intelligence sources Code of Practice, dated August 2018