

<b>Report title:</b> Regulation of Investigatory Powers Act 2000: Review of Activity March 2022	
<b>Report to:</b> Audit, Governance and Standards Committee	
<b>Report author:</b> Paul Turner - Director, Legal and Assurance	
<b>Date:</b> 21 March 2022	<b>For:</b> Noting
<b>Enquiries to:</b> Paul Turner – Director, Legal and Assurance <a href="mailto:paul.turner@essex.gov.uk">paul.turner@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

## 1. Everyone's Essex

- 1.1. The Audit Governance and Standards Committee has a role to maintain oversight and to monitor the effectiveness of internal controls, governance and risk management arrangements as well as the work of the Counter Fraud team and other areas of the Council that undertake directed surveillance in accordance with the Regulatory and Investigatory Powers Act 2000.
- 1.2. This report informs the Committee that **no applications** for authorisation to undertake Directed Surveillance or use a CHIS have been made since the last written report to the Committee in March 2021.

## 2. Recommendations

- 2.1. 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 2021.

## 3. Regulation of Investigatory Powers Act

- 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 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 originally 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 6 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 Surveillance Inspectors appointed by the Chief Surveillance Commissioner to ensure that the Council is properly authorising activities and also ensuring that frontline staff are aware of which activities need to be authorised.

#### **4. The Council's Surveillance Activity**

- 4.1. The Council does not generally undertake surveillance or use CHISs in a way which needs to be authorised under the Act. The last written report to the committee was made in March 2021, when a report that no authorisations had been sought or granted. Similarly, between March 2021 and February 2022 no authorisations have been sought or granted. The Council has worked with the police on joint operations. In these cases the Police normally are the lead authority and would be expected to obtain the authorisation as their processes are more streamlined and do not require approval from a magistrate. In these cases Council officers satisfy themselves that they are covered by an authorisation issued by the Police.
- 4.2. 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.
- 4.3. 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. Links to our Strategic Ambitions**

- 4.1 Surveillance activity may sometimes be required to ensure that the public purse is protected and ensure that available resources reach those most in need. This report links to the following aims in the Essex Vision.
  - Enjoy life into old age
  - Provide an equal foundation for every child
  - Strengthen communities through participation
  - Develop our County sustainably
  - Connect us to each other and the world

- Share prosperity with everyone

4.2 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':

- A strong, inclusive and sustainable economy
- A high quality environment
- Health wellbeing and independence for all ages
- A good place for children and families to grow

## **5. Financial implications**

5.1 Appropriate and compliant use of RIPA has no direct financial implications

## **6. Legal implications**

6.1 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.

## **7. Equality and Diversity Considerations**

7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:

- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
- (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.

7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

7.3 As we have not undertaken any Directed Surveillance or use of a CHIS there are unlikely to be an equality impacts.

## **8 List of Appendices**

None

## **9 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