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Audit and Procurement Committee

25 March 2019

Cabinet Member for Policing and Equalities

July 2019

**Name of Cabinet Member:**

Cabinet Member for Policing and Equalities – Councillor A S Khan

**Director Approving Submission of the report:**

Deputy Chief Executive (Place)

**Ward(s) affected:**

None

**Title:**

Annual Compliance Report - Regulatory & Investigatory Powers Act (RIPA) 2018

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**Is this a key decision?**

No

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**Executive Summary:**

The Regulation of Investigatory Powers Act 2000 (RIPA) governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities.

The Council uses powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more, or are related to the underage sale of alcohol and tobacco. The three powers available to local authorities under RIPA: the acquisition and disclosure of communications data; directed surveillance; and covert human intelligence sources (“CHIS”).

The Act sets out the procedures that Coventry City Council must follow if it wishes to use directed surveillance techniques or acquire communications data in order to support core function activities (e.g. typically those undertaken by Trading Standards and Environmental Health). The information obtained as a result of such operations can later be relied upon in court proceedings providing RIPA is complied with.

The Home Office Code for Covert Surveillance Property Interference recommends that elected members, whilst not involved in making decisions or specific authorisations for the local authority to use its powers under Part II of the Act, should review the Council’s use of the legislation and provide approval to its policies. The Council adopted this approach for oversight of the authority’s use of Parts I and II of the Act.

**Recommendations:**

The Audit and Procurement Committee are requested to:

1. Consider and note the Council's use and compliance with RIPA.
2. Forward any comments and/or recommendations to the Cabinet Member for Policing and Equalities.

The Cabinet Member for Policing and Equalities is requested to:

1. Consider any comments and recommendations provided by the Audit & Procurement Committee.
2. Approve the report as a formal record of the Council's use and compliance with RIPA.

**List of Appendices included:**

None

**Other useful background papers:**

None

**Other useful background information:**

None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

Yes – Audit and Procurement Committee – 25 March 2019

**Will this report go to Council?**

No

Report title: **Annual Compliance Report - Regulatory & Investigatory Powers Act (RIPA) 2018**

**1. Context (or background)**

- 1.1 RIPA governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. The Council can only use powers under RIPA to support its core functions for the purpose of prevention and detection of crime where an offence may be punishable by a custodial sentence of 6 months or more (e.g. offences relating to counterfeit goods which carry a maximum penalty of 10 years in prison) or the offence is related to the underage sale of alcohol and/or tobacco.
- 1.2 Where the above criteria are met, Local Authorities can make an application for the acquisition and disclosure of communications data (such as telephone billing information or subscriber details) or directed surveillance (covert surveillance of individuals in public places); and the use of covert human intelligence sources ("CHIS") (such as the deployment of undercover officers). The powers are most commonly used by Trading Standards. However, powers can also be used by other Council services if their offences meet the serious crime threshold, mentioned in 1.1 above.
- 1.3 RIPA sets out the procedure that local authorities must follow when applying to use RIPA powers. These include approval by Authorised Officers that the proposed use of the powers is "necessary and proportionate". All applications must also be approved by the Magistrates Court before RIPA powers can be exercised.
- 1.4 The Council is required to have a Senior Responsible Officer to maintain oversight of the RIPA arrangements, procedures and operations. The Council's Monitoring Officer performs this function and is responsible for the integrity of the Council's process for managing the requirements under RIPA.
- 1.5 On the 1st September 2017, The Office of Surveillance Commissioners (OSC) and The Interception of Communications Commissioner's Office (ICCO) were abolished by the Investigatory Powers Act 2016. The Investigatory Powers Commissioner's Office (IPCO) is now responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.
- 1.6 From the 1st of November 2018, there is a new requirement to meet a serious crime threshold for the acquisition of service or traffic data for Communications data. This typically means that the offences under investigation could result in imprisonment for more than 12 months.
- 1.7 The acquisition of communications data is undertaken through the National Antifraud Network (NAFN). They act as the single point of contact for many local authorities and ensure the application is RIPA compliant. It is NAFN that are audited by the commissioners.

1.8 Details of the applications that the Council has made under RIPA are set out below:

1.8.1 Use of Directed Surveillance or Covert Human Intelligence Sources

For the Period 1 January 2018 – 31 December 2018

No. of Directed Surveillance Applications Rejected	0
No. of Directed Surveillance Applications Granted	2
No. of Authorisations Presented to Magistrates	2
No. of Authorisations Granted by Magistrates	2
No. of Authorisations Rejected by Magistrates	0
No. of Directed Surveillance Operations Remaining Extant	0

- All of the requests covered core functions permitted by the Act and were for the purpose of preventing and detecting crime.
- There were no reported instances of the Council having misused its powers under the Act.

1.9.2 Use of Acquisition & Disclosure of Communications Data

No applications for the disclosure of communications data were made during the period 1 January 2018 – 31 December 2018.

1.10 RIPA Training

It is recommended good practice to provide RIPA training to all relevant officers periodically. Accordingly, one day's training session was delivered on 18 January 2017. Elected members, and Council Officers from core function departments, Legal and those who play a key role in implementing and/or managing CCTV systems attended.

**2. Options considered and recommended proposal**

- 2.1 The Audit and Procurement Committee is recommended to consider and note the Annual Compliance Report, which sets out how the Council has used its powers during the reporting periods of the individual Commissioners. In addition, the Committee is recommended to forward any comments or recommendations to the Cabinet Member for Policing and Equalities.
- 2.2 The Cabinet Member for Policing and Equalities is recommended to consider any comments or recommendations from the Audit and Procurement Committee, and approve the report as a formal record of the Council's use and compliance with RIPA.

### **3. Results of consultation undertaken**

3.1 Not applicable

### **4. Timetable for implementing this decision**

4.1 Upon approval of the report, statistical information relating to the authority's use of RIPA will be published to the Council's Internet page in order to support its commitment to the openness and transparency agenda.

### **5. Comments from Director of Finance and Corporate Services**

5.1 **Financial implications** – The Council has budget provision to cover the cost of the training, which was delivered by an external trainer who specialises in RIPA legislation. There are no other direct financial implications arising from this report.

5.2 **Legal implications** – The powers of local authorities have remained largely unchanged following the introduction of the Investigatory Powers Act 2016. However, Officers will continue to monitor the operation of RIPA and ensure that any amendments are incorporated into the Council's policy and procedures as appropriate.

Consideration and endorsement by Members ensures that appropriate scrutiny is in place. Consideration of RIPA activity as recommended by the OSC guidance ensures that such activity is subject to appropriate scrutiny and control.

### **6. Other implications**

Whilst the requirement to obtain judicial approval introduced an additional step into the process, given the Council's low use of its powers under RIPA, it has not resulted in any significant delays for planned operations. Routine patrols, ad-hoc observations at trouble 'hot spots', immediate response to events and overt use of CCTV do not require RIPA authorisation.

#### **6.1 How will this contribute to achievement of the Council's Plan?**

As and when judicial approval is sought to use these powers, it will help support the Council's core aims by preventing and detecting crime associated with enforcement activities such as: investigations relating to counterfeiting and fraudulent trading activity, or underage sales of alcohol or tobacco.

#### **6.2 How is risk being managed?**

The requirement for the Council to seek judicial approval for any proposed use of its powers under the Regulation of Investigatory Powers Act 2000, as amended by the Protection of Freedoms Act 2012, reduces the risk of the Council using such powers inappropriately or unlawfully. This will help ensure any evidence gained from such use will be admissible in a court of law.

### 6.3 What is the impact on the organisation?

There is no additional impact on the Council.

### 6.4 Equalities / EIA

When submitting a request for authorisation to use RIPA, consideration is given to any impact on equalities.

### 6.5 Implications for (or impact on) the environment?

There are no implications on the environment.

### 6.6 Implications for partner organisations?

There are no implications on partner organisations.

#### Report author(s):

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