

| Report of: | Meeting | Date |
|--|-----------------|-------------------|
| Mary Grimshaw, Legal Services Manager | Audit Committee | 27 September 2022 |

| |
|---|
| Compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) |
|---|

1. Purpose of report

- 1.1** To provide an update following a recent inspection on RIPA by the Investigatory Powers Commissioner's Office (IPCO).
- 1.2** To approve a revised RIPA Policy.

2. Outcomes

- 2.1** Evidence that the council has complied with IPCO's recommendation following the inspection.
- 2.2** Demonstrates that the Council's policies and procedures are compliant with RIPA legislation.

3. Recommendations

- 3.1** To note the findings of the IPCO inspection report.
- 3.2.** To approve a revised RIPA policy statement incorporating the recommendations made by the inspector and an external RIPA trainer.

4. Background

- 4.1** Local authorities can undertake surveillance and access communications data under the framework of RIPA. These rules set high standards for all public authorities that use these powers to undertake a range of enforcement functions to ensure that they can keep the public safe and bring criminals to justice, whilst protecting individuals' rights to privacy.
- 4.2** The Protection of Freedoms Act 2012 introduced a more restrictive

approach to the use of RIPA by local authorities by limiting the use of direct authorisations to serious crimes, i.e. those crimes punishable by a maximum custodial sentence of six months or more or those constituting an offence of selling alcohol or tobacco to children. The application must also have judicial approval by a magistrate before an authorisation takes effect and the magistrate needs to be satisfied that there are reasonable grounds for believing that the requirements of RIPA are met. The council has not used RIPA surveillance powers since 2012.

- 4.3** The council is required to have a RIPA policy. The current policy was last approved in November 2021 in compliance with the RIPA code of practice, which requires an annual review of the policy.
- 4.4** IPCO has taken over the inspection and oversight functions on RIPA, which was previously carried out by the Surveillance Commissioner's Office. The IPCO have confirmed that they will continue to ensure RIPA compliance by conducting a programme of inspections of Local Authorities. As a generality, they aim to inspect each council in England, Wales and Scotland once every three years but have introduced remote desktop inspections when a Local Authority has significantly reduced or stopped using their powers under RIPA and when there are no apparent significant compliance concerns. The council's previous inspection was in 2019.

5. Key Issues and proposals

- 5.1** An IPCO inspector carried out a remote desktop review on 13 January 2022. Following the inspection a report was issued which can be summarised as follows:
- The inspector was satisfied with the RIPA arrangements in place and was satisfied that the council had demonstrated a level of compliance that removes, for the present, the requirement for an onsite inspection.
 - The inspector commented that the RIPA Policy is comprehensive and well written. However the chapter on communications data required updating to reflect recent legislative changes. The committee should note that the council has not made any communications data authorisations.
 - The inspector commented that it is pleasing to note that RIPA training continues to be delivered to relevant officers deployed in enforcement or regulatory services who are most likely to engage the powers. The most recent training was carried out on 6 January 2022.
 - The inspector noted the helpful guidance in the RIPA Policy regarding the use of the internet and accessing social media. He also noted the action taken by council officers following the recent

training to capture the extent and scope of online activity.

- The inspector was satisfied that in accordance with paragraph 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice, the annual reporting requirements to the Audit Committee were sufficient to determine that the council's policy remains fit for purpose.
- The inspector explained that IPCO are undertaking a programme of work regarding how material acquired under RIPA is retained and they shared the data assurance letter with the council. As part of this process, the inspector examined the council's Data Protection Policy and Retention Schedules and found that they were in good order.

5.2 Following the recent training session which highlighted the use of social media in surveillance activities, the Head of Governance and Business Support has recently approached departmental heads to capture the extent and scope of online activity. Once this exercise is completed, all activity should be recorded and supervised, which will enable the Senior Responsible Officer to have confidence that such resources are being used in a controlled, auditable and well understood manner.

5.3 In light of the inspector's report, chapter 5 on communications data has been updated to reflect the legislative changes made by the Investigatory Powers Act 2016. Local authorities can now obtain details of in and out call data and cell site location for "applicable crimes". All Communications Data applications must now be processed through National Anti Fraud Network and will be considered for approval by the Independent Office of Communication Data Authorisation. There have also been other minor changes to the policy as suggested by the RIPA trainer. These changes can be seen as track changes in Appendix 1.

| Financial and legal implications | |
|---|---|
| Finance | There are no direct financial implications associated with the changes. Training for staff, to ensure that they are kept up to date with good enforcement practices and revisions to RIPA, will be met from existing budgets. |
| Legal | The approval of the recommendations demonstrates that the council's policies and procedures are compliant with RIPA. |

Other risks/implications: checklist

If there are significant implications arising from this report on any issues marked with a ✓ below, the report author will have consulted with the appropriate specialist officers on those implications and addressed them in the body of the report. There

are no significant implications arising directly from this report for those issues marked with an **X**.

| risks/implications | ✓ / x |
|------------------------|-------|
| community safety | x |
| equality and diversity | x |
| sustainability | x |
| health and safety | x |

| risks/implications | ✓ / x |
|--------------------|-------|
| asset management | x |
| climate change | x |
| ICT | x |
| data protection | x |

Processing Personal Data

In addition to considering data protection along with the other risks/ implications, the report author will need to decide if a 'privacy impact assessment (PIA)' is also required. If the decision(s) recommended in this report will result in the collection and processing of personal data for the first time (i.e. purchase of a new system, a new working arrangement with a 3rd party) a PIA will need to have been completed and signed off by Data Protection Officer before the decision is taken in compliance with the Data Protection Act 2018.

| report author | telephone no. | email | date |
|---------------|---------------|---------------------------|------------|
| Mary Grimshaw | 01253 887214 | Mary.Grimshaw@wyre.gov.uk | 15/09/2022 |

| List of background papers: | | |
|----------------------------|------|--------------------------------|
| name of document | date | where available for inspection |
| None | | |

List of appendices

Appendix 1 - RIPA Policy Statement (with tracked changes)