

## **AUDIT & GOVERNANCE COMMITTEE – 15 SEPTEMBER 2021**

### **REPORT ON THE AUTHORITY'S POLICY FOR COMPLIANCE WITH THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND USE OF ACTIVITIES WITHIN THE SCOPE OF THIS ACT**

**Report by the Director of Law and Governance and Monitoring Officer**

## **RECOMMENDATION**

- 1. The Committee is RECOMMENDED to:**
  - a) Consider and note the use of activities within the scope of the Regulation of Investigatory Powers Act by the Council, and**
  - b) Note the Policy document at Annex 1 and to comment on any changes to the Policy for Compliance with the Regulation of Investigatory Powers Act 2000 that the committee would wish the Monitoring Officer to consider when revising the Policy.**

## **Executive Summary**

2. The introduction of the Regulation of Investigatory Powers Act 2000 ('the Act') created a framework within which public bodies can lawfully carry out covert information gathering activities. Codes of Practice under the Act require that elected members review the Authority's use of activities within the scope of the Act periodically and review the Authority's Policy annually. This report provides a summary of the covert activities undertaken by the council between April 2020 and March 2021 for review by the committee. The report also provides the committee with an opportunity to review and comment on the council's Regulation of Investigatory Powers Act Policy.
3. In September 2020, the council was the subject of a telephone inspection by the Investigatory Powers Commissioner's Office. This report summarises the feedback received by the council from that inspection.

## **Introduction**

4. The Act regulates the use of covert investigatory activities by Local Authorities. It creates the statutory framework by which covert surveillance activities may be lawfully undertaken. Special authorisation arrangements need to be put in place whenever a Local Authority considers commencing covert surveillance or seeks to obtain information by the use of informants or officers acting in an undercover capacity.

5. Under the Act local authorities may only carry out covert surveillance where it is necessary for the prevention or detection of crime. In addition, local authorities can only authorise surveillance activities within the framework created by the Act if it meets one of the following tests – criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco (the ‘seriousness’ threshold). Covert surveillance for other matters, such as for the investigation of minor criminal offences not meeting the ‘seriousness’ threshold cannot be authorised under the Act.
6. Codes of Practice under the Act require that elected members review the Authority’s use of activities within the scope of the Act periodically and review the Authority’s policy annually. This paper provides a summary of the activities undertaken by Oxfordshire County Council that fall within the scope of this Act for the period from April 2020 to August 2021. The Authority’s Policy for Compliance with the Regulation of Investigatory Powers Act 2000 is attached in annex 1 for consideration.
7. As part of the legislative regime, the Investigatory Powers Commissioner’s Office (IPCO) carry out inspections from time to time to examine an authority’s policies, procedures, operations and administration. Our last full inspection was in May 2017. A partial, telephone based inspection was carried out in September 2020 since the IPCO did not carry out physical inspection during the pandemic.

### **Use of the Act by Oxfordshire County Council**

8. Within the council covert surveillance is mainly carried out by the Trading Standards Service as part of investigations into suspected contraventions of consumer protection legislation. The COVID-19 pandemic impacted on the investigatory activities undertaken by that service due to need to redirect resources to support the response to the pandemic and as a result of limitations on activities that could be carried out safely. Between April 2020 and March 2021 the Council authorised covert surveillance on 3 occasions. For comparison, authorisation for surveillance activities within the scope of the Act were granted on 7 occasions between April 2019 and March 2019.
9. Of the authorisations for surveillance granted in the last year 2 related to investigations concerning the sale of illegal tobacco. Illegal tobacco refers to cigarettes, hand-rolling tobacco or other smoking products that have been smuggled into the UK without tax being paid on them, or which are counterfeit. They can be attractive to children and young people as they are often sold at “pocket money prices” by unscrupulous sellers. The importation, distribution and supply of illegal tobacco is often linked with other forms of criminality.
10. The County Council’s Trading Standards team is working with retailers and partner organisations to raise awareness of the problem of illegal tobacco and carries out enforcement action when required. Investigations of suspected supplies of illegal tobacco normally involve a covert test purchase. The purpose of the test purchase is to obtain a sample of the product being sold in order to

ascertain whether it is legal to sell in this country and to identify the persons involved in the sale. Covert test purchases also assist in identifying where stocks of the product are being stored since illegal tobacco is frequently hidden in or around the premises from which it is sold. Covert test purchases are undertaken only where there are grounds to suspect the person or business concerned is involved in the supply of illegal tobacco products.

11. Covert test purchases are an essential operational tactic in the efforts to tackle the sale of illegal tobacco. These test purchases must be authorised under the Act and require the careful consideration of whether the intrusion is necessary for the purpose of prevention and detection of crime and proportionate to the outcome being sought.
12. In the last 4 years the Trading Standards Service has achieved the following outcomes as a result of its investigations of illegal tobacco supply in the county- Seized:
  - 94,480 illegal cigarettes
  - 16,750 grams of illegal hand-rolling tobacco
  - 115,220 grams of illegal shisha tobacco.Brought 16 successful prosecutions (with further matters pending), resulting in:
  - custodial sentences totalling 66 months (26 months of which was suspended)
  - over £21,000 in prosecution costs awarded
  - £95,000 in confiscation orders under the Proceeds of Crime Act.
13. Between April 2020 and March 2021 two authorisations were granted under the Act for illegal tobacco sale investigations but both these authorisations related to the same investigation. The first authorisation related to surveillance on the premises suspected of being involved in the supply of illegal tobacco and the second related to a test purchase of products supplied by that business. The test purchase did not proceed due to legal restrictions on business activity introduced as part of the pandemic response.
14. The other authorisation under the Act provided between April 2020 and March 2021 related to the legal controls on the sale of alcohol. Trading Standards advises businesses on procedures to limit the sale of age restricted products such as knives, alcohol and tobacco to persons under the legal minimum age of purchase. Trading Standards also carries out test purchases in order to ascertain whether a person under 18 years of age could obtain these products from shops in Oxfordshire. Prior to any test purchase the business concerned will receive advice from trading standards. The test purchase involves covert observations in business premises and therefore requires authorisation under the Act.
15. A test purchase operation was planned for 2020/21 but was cancelled after a rise in COVID-19 infections in the county. The authorisation under RIPA was subsequently cancelled without any surveillance taking place.

## **RIPA Policy**

16. The Council's RIPA Policy is included in Annex 1 of this report. This policy was updated in 2020 to apply to both the county council and Cherwell District Council. It will shortly be reviewed and further revised to improve its clarity and provide more guidance to council staff.
17. The Committee is asked to note the Policy and comment to the Monitoring Officer on any matters that they would like the Monitoring Officer to consider in the forthcoming review of the Policy.

## **Magistrate's Oversight**

18. From October 2012 the Protection of Freedoms Act 2012 required Judicial oversight of authorisations of covert surveillance activities. All authorisations for covert surveillance activities falling within the scope of the Act granted by local authorities now need Magistrate's approval before they take effect. All applications made to Magistrates between April 2020 and March 2021 were approved.

## **Investigatory Powers Commissioner's Office Inspection**

19. In September 2020 an inspector from the IPCO carried out a telephone inspection of the council. This inspection involved a review of documentary material (applications, policy, procedures and guidance) and an interview with the Chief Executive. A letter received earlier in the year from the IPCO advised local authorities of the IPCO's intention to place more emphasis on information management in their inspections, in particular the secure storage and disposal of information obtained during surveillance activities. The IPCO inspector's report noted that the council was a limited user of its surveillance powers. In addition, the inspector-
  - Provided feedback to consider in the next review of the RIPA Policy.
  - Suggested limiting the number of authorising officers across the two councils and that the role of RIPA coordinator (currently carried out by the Assistant Director of Regulatory Services and Community Safety) may be better fulfilled by someone who has less involvement in authorising applications.
  - Suggested providing refresher training to authorising officers after reviewing the authorising officers structure.
  - Provided clear guidance on the management of the product of surveillance within the new RIPA policy.These recommendations will be taken into consideration when revising the RIPA policy.

## **Conclusion**

20. Use of activities that fail within the scope of the Act remains infrequent by this Council. However, trading standards operational activity requires the use of

surveillance periodically. The outcomes of the surveillance and subsequent investigations into illegal activities show that the continued use of covert surveillance is necessary for the effective discharge of the council's statutory responsibilities and the delivery of operation plans to achieve priorities.

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