



**7 September 2017**

**Agenda Item: 7**

**REPORT OF THE SERVICE DIRECTOR SOUTH NOTTINGHAMSHIRE AND  
PUBLIC PROTECTION.**

**UPDATE REPORT ON THE USE OF THE REGULATION OF INVESTIGATORY  
POWERS ACT**

**Purpose of the Report**

1. To report for Member oversight the use of techniques used by the Trading Standards and Community Safety Service, that fall under the framework provided by the Regulation of Investigatory Powers Act.

**Information and Advice**

2. The Regulation of Investigatory Powers Act 2000 (RIPA) gives the Council the power to employ certain investigative techniques, in order to undertake certain criminal investigations.
3. Regular reports regarding the use of RIPA are submitted to the appropriate Committee for the Trading Standards and Community Safety Service in order for oversight of use of the techniques. Most of the authorisations sought to employ these techniques by the County Council relate to Trading Standards investigations.
4. There are three types of activity that can be employed that fall under the requirements of the Act:
  - a. Covert Surveillance;
  - b. Access to certain Communications Data; and
  - c. Covert Human Intelligence Sources
5. **Covert Surveillance** - There is a strict authorisation process for the use of such surveillance; applications are considered by senior officers before being considered by the Magistrate's Court for final approval. Since April 2016, one authorisation for covert surveillance has been submitted to the Magistrate's Court, and received approval. This investigation revealed the supply of illicit and counterfeit cigarettes and tobacco from a retail premise in Mansfield town centre. The case is currently in the Nottingham Crown Court, one defendant has already pleaded guilty, with a further 2 awaiting trial in November 2017.
6. **Communications Data** - Under the legislation, the Council can also gain access to some Communications Data, namely telephone and email account information (but not communications content). Once again, a strict authorisation process has to be followed. Since April 2016, five applications for such data were made to assist investigations. One has resulted in no further action, whilst one is connected to an investigation which is currently in

the Nottingham Crown Court for Fraud Act offences and is listed for trial on the 2<sup>nd</sup> January 2018. The other 3 relate to ongoing investigations.

7. **Covert Human Intelligence Sources (CHIS)** - It is anticipated that in practice CHIS powers will rarely, if ever, be exercised by the County Council. If there ever is such a requirement, Group Leaders will be informed. Additionally, there are existing safeguards in place to ensure appropriate use of CHIS. Legal advice must be sought where use of CHIS is proposed, and the strict authorisation process must be followed.
8. The Office of the Surveillance Commissioner (OSC) is responsible for oversight of covert surveillance by public authorities. The Council is required to report annually on its use of RIPA powers, and is inspected by the OSC approximately every 3 years. The latest inspection was conducted in April 2016.
9. The feedback for the Council was very positive; the Inspector concluded that no formal recommendations for improvement were necessary.
10. The report stated that the Council is well performing with good Senior Responsible Officer and RIPA Co-Ordinating Officers, sound policy and procedures, a good training programme and appropriately trained officers.
11. The report contained some suggestions for improvements, but these were minor, and considered not significant enough to warrant formal recommendations. The OSC inspectors expect that Members receive regular reports regarding the use of RIPA techniques.
12. In relation to government oversight of the access to communications data, all communication requests made by Trading Standards have to be directed through the National Anti-Fraud Network (NAFN), an organisation that operates as the 'Single Point of Contact' (SPOC) for the County Council. This has been the case since 2014.
13. NAFN is inspected biannually by the Interception of Communications Commissioner's Office (IOCCO) to ensure compliance of all the applications it manages as SPOC, rather than each Local Authority being inspected separately. In 2015, NAFN received an 'excellent' inspection report.

### **Other Options Considered**

14. None – the Council's RIPA Policy states that RIPA statistics will be reported quarterly to Community Safety Committee; Communities and Place Committee now has responsibility for this function.

### **Reason/s for Recommendation/s**

15. To update the Communities and Place Committee on the limited use of these investigatory powers across the Trading Standards and Community Safety Service.

### **Statutory and Policy Implications**

16. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

### **Crime and Disorder Implications**

17. Use of surveillance can assist the Council in relation to the reduction of crime in Nottinghamshire.

### **Human Rights Implications**

18. Every authorisation for surveillance requires consideration of human rights including the right to privacy and the right to a fair trial. The rights of people under surveillance need to be balanced against public safety and the prevention of crime. This is why every authorisation has to clearly set out why the surveillance is considered necessary and proportionate in the circumstances.

### **Financial Implications**

19. This report contains no additional financial implications, with activity reported or that proposed being contained within existing service budget.

## **RECOMMENDATION/S**

That Members:

- 1) Agree to receive a further update report on the use of RIPA techniques in the Service in 3 months, and that this be included in the work programme; and
- 2) Endorse the findings of the most recent inspection conducted by the Office of the Surveillance Commissioner.

**PAUL MCKAY**

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### **Constitutional Comments (SLB 10/08/17)**

20. Communities and Place Committee is the appropriate body to consider the content of this report.

### **Financial Comments (CT 11/08/17)**

21. The financial implications are contained within Paragraph 16 of the report.

### **Background Papers and Published Documents**

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- 'None'

### **Electoral Division(s) and Member(s) Affected**

- 'All'