

## **Report to Cabinet**

**Subject:** Regulation of Investigatory Powers Act 2000 (RIPA) Annual Audit

**Date:** 14 December 2023

**Author:** Principal Legal Officer

### **Wards Affected**

All wards

### **Purpose**

The purpose of this report is to:

Update Members as to the Council's use of powers under RIPA from 1 April 2022 to 31 March 2023 in line with the Council's RIPA Policy.

Update Members on the three yearly inspection conducted by the Investigatory Powers Commissioner's Office in June 2023.

### **Key Decision**

This is not a key decision.

### **Recommendation(s)**

**THAT Cabinet:**

- 1) Notes the content of this report**

## **1 Background**

- 1.1** Under the Council's RIPA policy, Members are required to consider and review the Council's use of RIPA powers and its policy and guidance at least once a year. Cabinet last received a report in December 2022 in relation to RIPA usage for 2021/22. At this time Cabinet were also advised that the Council's RIPA policy remained fit for purpose and required no updating. In line with the policy a further review has been undertaken and other than updating the link to one of the Codes of

Practice, the policy remains fit for purpose and does not require further updating at this time.

There is also a requirement under the policy that internal reporting to members is done throughout the year to update on RIPA usage. The Council's RIPA Co-ordinating officer provides updates when necessary throughout the year to the Portfolio Holder for Public Protection in relation to the Council's RIPA usage.

- 1.2 Under RIPA, local authorities have the power to authorise directed surveillance (usually covert cameras or covert observations by officers) and the use of Covert Human Intelligence Sources (CHIS) (essentially undercover officers conducting surveillance), if the authorisation is necessary for the prevention and detection of crime or preventing disorder and if the surveillance is proportionate to the aims it seeks to achieve. In respect of directed surveillance, save for a small number of licensing and tobacco offences, any crime or disorder being prevented or detected using RIPA must be a criminal offence which attracts a minimum of six months in custody, the so-called "serious crime" threshold. Since 1 November 2012, any RIPA authorisations or renewals must also have judicial approval from a Justice of the Peace. This is done at the Nottingham Magistrates' Court.
- 1.3 The authorisations under RIPA can only be given by 'Authorising Officers' who for the Council are Directors or the Chief Executive. The entire process is now overseen by the Interim Corporate Director as the Senior Responsible Officer (SRO) with assistance from the RIPA Co-ordinating Officer, who is now the Principle Legal Officer for Litigation and Licensing.
- 1.4 The Council's RIPA processes and procedures come under regular scrutiny. Each year, the RIPA co-ordinating officer or SRO, undertakes an audit of RIPA usage. **There have been no authorisations given for directed surveillance or the use of covert human intelligence sources in the year 2022/23.**
- 1.5 In addition to monitoring RIPA usage, the SRO is required, in line with the Council's policy, to ensure refresher training on RIPA is available to officers on an annual basis. On the 21 November 2023 Legal officers attended RIPA training provided by external trainers. An in-person training seminar was delivered by the Council's Principal Legal Officer for Litigation and Licensing to all Council officers who may utilise RIPA powers in September 2022. This training was recorded and is available on the intranet to access at any time. Refresher training is due to be delivered to officers in January 2024. Targeted refresher training was delivered to the Council's Authorising Officers in November 2023 to

refresh their knowledge in respect of the authorisation process and criteria to consider.

- 1.6 In addition to the internal annual audit, annual policy review and reports to Cabinet, the Council is also subject to external inspection by the Investigatory Powers Commissioner's Office (IPCO). These inspections are undertaken roughly every 3 years. The last inspection reported to Cabinet was conducted in 2020 which involved a remote inspection as opposed to the Inspector physically visiting the Council. The inspection was positive and the Council were commended for their compliance.
- 1.7 Following a review of how the IPCO conducts its oversight of local authorities taking into account the drop in RIPA authorisations by local authorities generally since 2012, following the introduction of the serious crime threshold, the inspection regime now adopted by IPCO is more of a desk top exercise, with physical inspections only occurring where concerns about compliance with RIPA are found. The Council was subject to a written inspection by IPCO during June 2023. This entailed answering a number of questions set by to IPCO covering our RIPA usage, governance, procedures, policy and training, in order to assure the IPCO that the Council is maintain good levels of compliance.
- 1.8 No formal recommendations were made as a result of the inspection. The Inspector was assured by the Council's ongoing compliance with RIPA. Although there has been no use of RIPA powers by the Council since 2015, the inspection shows the importance of maintaining the necessary internal governance and oversight of the Council's obligations under RIPA.
- 1.9 The Council will be due it's next inspection in 2026 and it is expected that this will again involve a paper-based exercise, where details of the Council's RIPA usage, governance, procedures, policy, and training will be considered.
- 1.10 The Council is also a member of the Nottinghamshire and Derbyshire District RIPA working group which provides the opportunity to share best practice in relation to RIPA usage and share training opportunities and knowledge. Although in the past this has been a stand-alone group, over the past couple of years it has joined with the Nottinghamshire Information Officers Group as the majority of the members were the same. This group meets at least every three months and is another mechanism by which the Council ensures that compliance with RIPA is maintained and knowledge is kept up to date. Meetings continue to be held remotely and whilst this Council historically chaired the meeting, the chair now rotates between member authorities. There is also a share point website that has been created by the group to share agendas,

minutes and useful precedent documents such as draft policies in respect of RIPA.

- 1.11 It is still essential, whatever the level of RIPA usage, that the Council keeps RIPA processes and procedures under close scrutiny. The Council will continue to be subject to inspection in relation to its use of the powers by the IPCO and as such the Council's policy, processes, training and review of RIPA usage must continue, to ensure our processes remain fit for purpose.
- 1.12 It is important that information about RIPA and covert surveillance is disseminated to staff to maintain awareness between training sessions, and the RIPA co-ordinating officer will continue to update officers and Members with any key developments in this area.

## **2 Proposal**

- 2.1 It is proposed that Members note the detail in this report in relation to the Council's use of RIPA and the outcome of the Council's most recent inspection by the IPCO.

## **3 Alternative Options**

- 3.1 Members could determine not to receive annual updates in relation to RIPA, however this would be contrary to the Council's policy position. The Inspection in June 2023 highlights that even though authorities may not be utilising RIPA powers, appropriate arrangements must be in place to monitor usage and awareness of RIPA must be maintained.

## **4 Financial Implications**

- 4.1 There are no additional financial implications arising from this report. The cost of training and other related RIPA activity are expected to be met from existing budgets.

## **5 Legal Implications**

- 5.1 Where the Council wishes to carry out covert surveillance in relation to an investigation, compliance with RIPA ensures that any such surveillance is properly authorised and full consideration is given to its necessity and proportionality. Where covert surveillance is conducted under a RIPA authorisation, this provides a potential defence to any claim that the surveillance amounted to a breach of the individual's right to privacy under the Human Rights Act 1998. Whilst RIPA authorisations are limited to specific circumstances for local authorities, local authorities must still maintain appropriate processes and procedures to

demonstrate compliance with RIPA, this includes ensuring that an appropriate policy document is maintained.

## **6 Equalities Implications**

6.1 There are no equalities implications arising directly out of this report.

## **7 Carbon Reduction/Environmental Sustainability Implications**

7.1 There are no carbon reduction/sustainability implications arising out of this report.

## **8 Appendices**

8.1 None

## **9 Background Papers**

9.1 None

## **10 Reasons for Recommendations**

10.1 To update Members in line with the Councils RIPA policy

### **Statutory Officer approval**

**Approved by:**

**Date:**

**On behalf of the Chief Financial Officer**

**Approved by:**

**Date:**

**On behalf of the Monitoring Officer**