

Committee: Governance Audit and Performance Committee

Date: Thursday, 29 September

Title: Update regarding the Council's policy and processes for the conduct of investigations under the Regulation of Investigatory Powers Act 2000

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Summary

1. This report is submitted to update Members regarding the steps taken to ensure that should the Council require to exercise powers under the Regulation of Investigatory Powers Act 2000 (RIPA 2000) then it is done so transparently and in accordance with the substantive and procedural requirements laid down by the legislation.

Recommendations

2. That Members do note the contents of this report.

Financial Implications

3. As part of its statutory responsibilities the Council undertakes investigations into criminal offences. Powers under RIPA 2000 may only be utilised in the investigation of offences carrying an immediate custodial sentence of six months or more upon conviction for a first offence and the majority of these are either a) triable upon indictment only, or b) the magistrates decline jurisdiction.
4. It is estimated by West Midlands Police that a RIPA investigation costs £6000 per day so it is not undertaken lightly. [Source: Bond Solon].
5. The majority of the offences for which the Council prosecutes are triable summarily only and are therefore not within scope; however those charged with the investigation of criminal offences, eg Environmental Health, Planning Enforcement, Revenues and Benefits, need to have good awareness of the requirements of the legislation in order to ensure all activity is both open and transparent.
6. Those who may be involved in the process have received external training appropriate to their role and newly appointed staff members will be required to book onto a course if applicable to their job role.

Background Papers

7. The following papers were referred to by the author in the preparation of this report and are available for inspection.
- a. Uttlesford Regulation of Investigatory Powers Act Policy and Procedural Guidance.
 - b. Regulation of Investigatory Powers Act 2000
 - c. Home Office Code of Practice for Covert Surveillance and Property Interference (August 2018 revision)
 - d. Uttlesford District Council CCTV Code of Practice (April 2019)
 - e. Websites of various training providers (Links available on request).
 - f. Letter of 26th May 2021 Investigatory Powers Commissioners' Office (IPCO) Inspection

Impact

8.

Communication/Consultation	None.
Community Safety	The authority has a duty to investigate offences and is obliged to do so in accordance with the law.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	<p>The European Convention of Human Rights sets out 18 Convention rights incorporated into UK law by S1(3) Human Rights Act 1998 and set out in full in Schedule 1 Part I thereof.</p> <p>Article 8 States as follows:-</p> <p>“Right to respect for private and family life</p> <ol style="list-style-type: none"> 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	None.

Situation

9. Historically the position has been that due to resource constraints any relevant investigations have been carried out by other agencies (e.g. the Police or the DWP) with support from the Council. No authorisations have been sought or granted for at least the past six years.
10. Inspections by IPCO on 27th July 2018 and 24th May 2021 led to the making a number of recommendations. Set out below in tabular form is a list of those requirements, the actions taken and whether or not those actions have been completed.

▪ IPCO REQUIREMENT	▪ ACTION REQUIRED	▪ WHETHER COMPLETED
<ul style="list-style-type: none"> ▪ Updating of UDC's policy regarding the use of the powers under Regulation of Investigatory Powers Act 2000 to include the use of Covert Human Intelligent Sources and liaison with the Magistrates Court. 	<ul style="list-style-type: none"> ▪ Updated policy prepared with thanks to Chelmsford City Council for the provision of a template document. 	<ul style="list-style-type: none"> ▪ Yes Background Paper a) which is published on the Councils website.
<ul style="list-style-type: none"> ▪ Training needs analysis at strategic and operational levels to be undertaken and training events organised. 	<ul style="list-style-type: none"> ▪ External training procured and undertaken as follows: Authorising officers, June 2021, RIPA Co-Ordinator 11/11/21, Investigating Officers 4/3/22: all provided by Bond Solon. ▪ SRO (ACT Now Training: 25th April 2022. ▪ Social Media usage PHF Training Company 13th and 21st September 2022 	<ul style="list-style-type: none"> ▪ Yes
<ul style="list-style-type: none"> ▪ Designation and 	<ul style="list-style-type: none"> ▪ All ADs and the 	<ul style="list-style-type: none"> ▪ Yes: new appointments

training of Authorising Officers	Directors of Planning and Finance have been trained.	at the appropriate level must undertake the Bond Solon AO training course. DH and JE enrolled for one 9 th November 2022.
<ul style="list-style-type: none"> ▪ Convening of a Practitioners Group. 	<ul style="list-style-type: none"> ▪ The membership has been identified by reference to job role (senior officers from Planning Enforcement, Environmental Health, Licensing, Revenues and Benefits). 	<ul style="list-style-type: none"> ▪ Yes: first meeting to take place 9th September. Being Chaired by the RIPA Co-ordinator (Senior Litigation Lawyer). Meetings to be convened twice yearly.
<ul style="list-style-type: none"> ▪ Secure storage of evidential material. 	<ul style="list-style-type: none"> a) Procedural documentation within Legal Services Case Management System. b) Evidence stored in secure Cloud space in consultation with ICT Services c) Artifacts to be stored in secure cabinet in vault at London Road. d) Document Retention & Destruction Policy updated to include RIPA documentation. 	<ul style="list-style-type: none"> ▪ Yes. <p>Document Retention Policy is also being updated in terms of destruction of CCTV evidence and this and will be published during October 2022.</p>
<ul style="list-style-type: none"> ▪ Member awareness 	<ul style="list-style-type: none"> ▪ Annual update. Training to be provided to members by RIPA Co-Ordinator at next routine training day and thereafter as part of the new member induction process. 	<ul style="list-style-type: none"> ▪ Yes; awaiting date.
<ul style="list-style-type: none"> ▪ CCTV 	<ul style="list-style-type: none"> ▪ All CCTV to include non-covert sources is currently in the process of being logged and If the Council does purchase equipment 	<ul style="list-style-type: none"> ▪ In progress with an estimated date for completion by the year end.

	<p>suitable for covert surveillance, then the equipment will be detailed on a sperate suitable schedule and usage logged in accordance with RIPA principles.</p>	
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11. Investigations carried out pursuant to RIPA 2000 occur only if the offence being investigated will carry a custodial sentence of six months and upwards on a first conviction. Such offences are either triable on indictment only or, if the offence is triable either way the magistrates will almost certainly decline jurisdiction. UDC does not generally investigate such offences for the reasons given earlier in this report and the training given has been directed towards ensuring these techniques are not used inappropriately.
12. UDC has recorded nil authorisations for the past six years and it is believed these powers have never been used by the Council. Local authorities generally do not choose to exercise these powers because of the resource implications and investigate of offences overtly whenever possible and in accordance with transparent practice.

CCTV

13. The Council's Closed-Circuit Television (CCTV) Code of Practice dates back to April 2019. Currently cameras are maintained in the sheltered housing complexes maintained by the Council and a number of buildings owned and operated by us. The number of the latter has been augmented by the addition of new buildings at Little Canfield and Walpole Farm, Stansted. All of these installations are overt and have been installed for the safety and security of those living and/or working in the buildings or their immediate environs and appropriate signage is visible and in place.
14. A recent review of the entirety of the Council's CCTV provision was undertaken by the Community Safety Officer. Following this, it was concluded that since the provision of these cameras is incidental to the Council's role as a property owner that overall responsibility for the oversight of this equipment should rest with the Assistant Director: Commercial & Change Management as being responsible for the maintenance, repair and improvement of the Council's non HRA assets in consultation with the Assistant Director: Housing, Health and Communities and the Assistant Director: Corporate Services as SIRO. Should the Council purchase CCTV equipment for relevant purposes then RIPA principles and governance will be implemented accordingly.

Risk Analysis

- 15.

Risk	Likelihood	Impact	Mitigating actions
1. An investigation might be undertaken without complying with the requirements of the Act and Codes of Practice made thereunder.	1. Staff undertake relevant activities without first considering overt alternatives or a full understanding of what steps must be taken prior to so doing.	4. Breach of the subject's Art 8 rights leading to a) any evidence thereby being rendered inadmissible and b) liability to them in damages under the Act.	Adopting these policies and procedures and implementing the required training packages without delay.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.