



Committee and Date

Cabinet
29 July 2015
12.30 pm

Item

16

Public

Regulation of Investigatory Powers Policy

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1. Summary

- 1.1** The Council's current Regulation of Investigatory Powers Policy (adopted in August 2013) has been reviewed. It requires updating to reflect changes brought into effect through the Regulation of Investigatory Powers legislative framework and to take account of changes to Council personnel that have occurred over the previous two years. The opportunity has also been taken to improve the clarity of the policy where it has been appropriate to do so.
- 1.2** This report sets out the proposed policy.

2. Recommendation

- 2.1** That Cabinet agrees, with any necessary amendments, the proposed Regulation of Investigatory Powers Policy as detailed in **Appendix A**, and recommends to the Council that the policy is adopted with effect from 1 October 2015.

REPORT

3. Risk Assessment and Opportunities Appraisal

- 3.1** The preparation and publishing of a policy is not in itself a legal requirement. However, it is considered best working practice to have such a policy in place.
- 3.2** If the Council fails to prepare and publish a policy the Council will be open to criticism by the Office of the Surveillance Commissioners (OSC) and the Interception of Communications Commissioner's Office (IOCCO). It will not have in place duly authorised/designated officers to undertake the roles required by the relevant legislation. It will be more difficult to respond to challenges about the way the Council has used investigatory techniques; this may lead to service complaints

to the Local Government Ombudsman, judicial review, evidence being held inadmissible in criminal legal proceedings that have been instituted by the Council and civil action being taken against the Council for acting in a way that is incompatible with a person's human rights. The reputation and professionalism of the Council would clearly be at risk.

- 3.3** Conversely, by preparing and publishing a policy, the Council will demonstrate that it takes the regulation of investigatory powers seriously, provides a defined framework within which the Council will exercise its responsibilities, makes it clear to all stakeholders the manner in which the Council intends to operate, ensures that the Council has sufficient appropriately authorised/designated officers and provides the basis for a robust defence to any challenges that may be made to the way in which investigatory techniques are used by the Council.
- 3.4** An Equalities Impact Needs Assessment has not been undertaken as the report does not concern the implementation of a new policy. The proposed policy is a refresh of the policy that was adopted by the Council in 2013 and is fundamentally based on the principles behind European human rights legislation and prescriptive UK legislative requirements. The proposed revised policy follows relevant guidance issued by the Home Office, the OSC and the IOCCO.
- 3.5** There is no anticipated environmental impact associated with the recommendations in this report.
- 3.6** The policy to which the recommendation relates is specifically aimed at ensuring that the Council's actions are not at variance with the Human Rights Act 1998 and consequently is unlikely to result in any adverse Human Rights Act implications. The recommendation is in line with relevant legislation and guidance issued by the Home Office, the OSC and the IOCCO.
- 3.7** Consultation was undertaken to support the development of the current Policy. Officers are satisfied that the proposed amendments to the current Policy are consequential rather than altering the fundamental principles upon which the policy is based; consequently, officers have concluded that further consultation would serve no practical purpose.

4. Financial Implications

- 4.1** There are no financial implications associated with the recommendation.

5. Background

- 5.1** The Regulation of Investigatory Powers Act 2000 (RIPA) is the law governing the use of covert techniques by public authorities and this includes local authorities. When public authorities use covert techniques they must do so in a way that is necessary, proportionate, and avoids (or where this is not possible minimises) the impact of the covert techniques on other people who are not the subject of the operation or investigation (collateral intrusion); thus ensuring that the covert techniques used are compatible with human rights. RIPA sets out authorisation procedures to help ensure that this compatibility is achieved.

- 5.2** To provide independent oversight in respect of the way in which investigatory techniques are utilised, RIPA has also put in place the OSC, the IOCCO and the Investigatory Powers Tribunal (IPT).
- 5.3** RIPA is supported by a number of Codes of Practice (the Codes) issued by the Secretary of State pursuant to Section 71 of RIPA. Local authorities must have regard to the provisions of the Codes but non-compliance does not of itself render any person, including the Council, liable to criminal or civil proceedings. The Codes are admissible as evidence in criminal and civil proceedings. If any provisions of the Codes appear relevant to any court or tribunal considering such proceedings, or to the IPT, the OSC or the IOCCO, they must be taken into account. Local authorities may also be required to justify, with regard to the Codes, the use or granting of authorisations in general or the failure to use or grant authorisations where appropriate.
- 5.4** RIPA applies to a number of covert techniques; however, the techniques that may be authorised by a local authority are restricted to:-
- conducting covert surveillance in public places (directed surveillance), such as watching, following or listening to people
 - the use of covert human intelligence sources (CHIS), such as obtaining information about people through informants or undercover officers
 - acquiring communications data: the 'who, when and where' of communications, such as a telephone billing and subscriber details
- 5.5** RIPA applies to a wide-range of investigations. For local authorities, it applies to investigations undertaken for the purposes of the prevention and detection of crime and the prevention of disorder.
- 5.6** Although RIPA provides for the authorisation of the covert techniques listed at paragraph 5.4 above, it is not unlawful not to seek an authorisation and there is no duty on a local authority to comply with the RIPA provisions; it is permissive law. However, the Codes make it clear that there is an expectation that local authorities will comply with the requirements of RIPA.
- 5.7** A public authority may only engage RIPA when performing its 'core functions'. The core functions (referred to by the IPT) are the specific public functions undertaken by a particular authority insofar as they relate to the grounds specified under RIPA; for local authorities these grounds are limited to preventing or detecting crime or preventing disorder, and is further restricted with respect to directed surveillance. This is in contrast to the 'ordinary functions' which are those undertaken by all authorities, e.g. those involving employment issues, contractual arrangements, etc. Covert techniques in relation to ordinary functions, or for any other general purposes, are conducted under other legislation and authorisations under RIPA would not be appropriate.
- 5.8** For the reasons set out in paragraph 5.7, where investigations are carried out for any purpose that falls outside the RIPA regime, e.g. for the purposes of investigating internal Council disciplinary matters or where the 'crime threshold'

(refer to paragraph 2.4 of the policy) is not met, the Council may still use the covert techniques described in RIPA. To ensure that the covert techniques used for these other purposes are still used in a manner that is compatible with human rights, the Council ought to have due regard to the principles of RIPA, the Codes published by the Home Office, and any relevant RIPA guidance and, in practice, apply these as if the purposes for which the techniques are being used do fall within the RIPA regime. For this purpose, these matters are also covered in the policy.

5.9 The relevant Codes issued by the Secretary of State pursuant to Section 71 of RIPA have been revised and reissued during the period since the current Policy was adopted by the Council in 2013. The revised Policy takes account of the changes contained within the Codes as well as updating officer details and/or responsibilities relating to:

- Senior Responsible Officer
- RIPA Co-ordinator
- Officers with delegated powers to grant authorisations under Sections 22, 28 and 29 of RIPA
- Officers with delegated powers to present RIPA cases to JPs under Section 223 of the Local Government Act 1972

6. Additional Information

6.1 It is considered best working practice that the policy is set annually by the Council's elected members and that they review the use of RIPA on a regular basis to ensure that it is being used consistently with the policy and that the policy remains fit for purpose. The mechanism to ensure this is undertaken is set out in the proposed policy.

<p>List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information) Shropshire Council's Regulation of Investigatory Powers Policy adopted on 1 August 2013 (http://shropshire.gov.uk/media/892168/RIPA-policy-Aug-2013.pdf)</p>
<p>Cabinet Member (Portfolio Holder) Cllr Malcolm Price</p>
<p>Local Member Not applicable</p>
<p>Appendices Appendix A – Proposed Regulation of Investigatory Powers Policy</p>