

EXECUTIVE

16th June 2022

Report Title	Adoption of a Policy in respect of investigatory powers under the Regulation of Investigatory Powers Act 2000 and Investigatory Powers Act 2016
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Lead Member	Cllr Jason Smithers, Leader of the Council

Key Decision	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in by Scrutiny?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there public sector equality duty implications?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information (whether in appendices or not)?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972	

List of Appendices

Appendix A – The Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016 (IPA) Policy

Appendix B – Guidance on the use of RIPA and IPA powers

1. Purpose of Report

- 1.1. To request that Executive adopt the attached policy (**Appendix A**) and guidance (**Appendix B**) covering the use of covert surveillance by the Council, thus replacing the policies carried over from the predecessor authorities.

2. Executive Summary

- 2.1. Upon local government reorganisation, legislation provides that the new authority is entitled to apply the policies previously adopted by the predecessor authorities until such time as one new policy covering the whole new district is adopted. As such, staff were instructed from 1st April 2021 to continue working

under the policies and procedures adopted by their predecessor authorities until instructed otherwise. Over the last year, the Council has been designing and populating management structures and working hard to integrate its services.

- 2.2. Enforcement activity has been identified as a priority for the Council. The corporate enforcement policy was written and adopted, and a corporate enforcement group has been created. The corporate enforcement group agreed that a council wide approach to enforcement should be developed, and officers were reminded of the obligations placed upon the Council by the statutory requirements imposed on it by the Regulation of Investigatory Powers Act 2000 (RIPA) and later legislation.
- 2.3. North Northamptonshire Council has been working on a new RIPA policy and process, and the supporting documentation, with a view to a whole district policy being adopted by the Executive. This has involved reviewing the policies of the predecessor authorities to identify areas of good practice, researching policies adopted by other authorities and seeking the views of those on the Corporate Enforcement Group as to the content of the policy.
- 2.4. The Council is lawfully able to gather information covertly provided it complies with the provisions of the Regulation of Investigatory Powers Act 2000 (RIPA), the Investigatory Powers Act 2016 (IPA) and the relevant Home Office Codes of Practice made thereunder. This legislation regulates public sector information gathering including:
 - directed surveillance;
 - intrusive surveillance;
 - the conduct and use of covert human intelligence sources (CHIS);
 - intercepting communications; and
 - the acquisition and disclosure of communications data.
- 2.5. In carrying out law enforcement functions of the Council officers may need to use the above methods, where it is necessary and proportionate to do so. Authorisations can generally only be granted by a small number of senior officers who are appropriately trained. The Director of Governance and HR is the Senior Responsible Officer with ultimate responsibility for the Council's use of RIPA powers.
- 2.6. RIPA provides an authorisation process for covert surveillance and information gathering. An authorisation can be used as a defence against a claim that the Council has interfered with an individual's right to private life under Article 8 of the European Convention on Human Rights.
- 2.7. Executive is therefore asked to adopt the draft policy as set out at **Appendix A** in relation to exercising the powers granted to the Council by legislation. The policy and guidance provided at **Appendix B** promotes overt information gathering where possible, with covert methods being used only when other reasonable options have been considered and ruled out or tried and proved to be ineffective.

- 2.8. The Council can only authorise the use of covert methods in very limited circumstances and cannot authorise intrusive surveillance. Any authorisation by the Council cannot be put into effect until it has been confirmed by a Magistrate.
- 2.9. If circumstances arise where the Council decides to use covert methods, but it is unable to give a RIPA authorisation, an auditable record is maintained in the form of a Human Rights Audit, and covert methods will only be used where this is necessary and proportionate and is for the purpose of one of the legitimate grounds for interference specified in Article 8.

3. Recommendations

3.1. It is recommended that the Executive:

- a) Adopt the policy attached at Appendix A in respect of the use of covert investigation and surveillance techniques, and the accompanying guidance as attached at Appendix B.
- b) Designate the officers occupying the following posts as responsible for authorising the use of covert investigation and surveillance techniques:
 - i. Chief Executive;
 - ii. Executive Director of Place and Economy;
 - iii. Executive Director of Adults, Communities and Wellbeing;
 - iv. Assistant Director, Regulatory Services
- c) Require the Senior Responsible Officer (Director of Governance and HR) to report the use of covert investigation and surveillance techniques to the Audit and Governance committee at least twice in a municipal year, and notify the Executive of any use of powers on a monthly basis.
- d) Confirm that the changes required to the Constitution as a consequence of the above recommendations be implemented by the Director of Governance and HR.

3.2. Reasons for Recommendations:

- The above recommendations fulfil the Council's statutory obligations to adopt a policy on the use of covert surveillance techniques and support that policy through the accompanying guidance.
- The officers identified to approve the use of such techniques have been identified in accordance with guidance issued by the Investigatory Powers Commissioner's Office, who are responsible for overseeing the use of these techniques.

3.3. Alternative Options Considered: In the event that the policy is not adopted, the Council may be unable to fulfil its statutory enforcement obligations and will be subject to adverse comments when inspected by the Investigatory Powers

Commissioner's Office. Failing to adopt a policy and guidance is not therefore considered a viable alternative option.

4. Background

- 4.1. The primary function of central and local government enforcement work is to protect the individual, the environment and a variety of groups such as children, residents, consumers and workers. Carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. The Council is committed to these aims and to maintaining a fair and safe society and has adopted an enforcement policy¹ which sets out its enforcement principles.
- 4.2. The effectiveness of legislation in protecting individuals or sectors of society depends, crucially, on the compliance of those being regulated. It is recognised that most people want to comply with the law, and for the law to be enforced against those who don't comply.
- 4.3. In the course of enforcement work, it may sometimes be necessary to carry out surveillance to fulfil the Council's statutory duties. Legislation such as the Regulation of Investigatory Powers Act 2000 and Investigatory Powers Act 2016 provide safeguards for the public around such activity to ensure that any covert investigation is fair and proportionate to the issue being investigated. One of the safeguards is to require bodies capable of utilising these investigation techniques to have a policy and guidance as to the use of the same, supported by training and appropriate administration of the legislative requirements. Further, RIPA is underpinned by a number of statutory codes of practice. These codes of practice are admissible as evidence in court and may be taken into account by the Investigatory Powers Commissioner when carrying out an inspection.
- 4.4. Elected members, although not involved in the decisions to grant authorisations, are required to approve the policy annually and maintain oversight of RIPA activity.
- 4.5. As set out in the Executive Summary of this report, the Council is lawfully able to gather information covertly provided it complies with the legislative provisions and any statutory guidance or codes of practice. The main techniques available to, and relied upon by, a local authority under RIPA and IPA are:
 - Directed surveillance;
 - Conduct and use of covert human intelligence sources (CHIS);
 - Acquisition and disclosure of communications data.
- 4.6. RIPA introduced a system of authorisation and monitoring of these activities to ensure that the rights of individuals were not unnecessarily compromised in the pursuit of regulatory compliance. An authorisation can be used as a defence against a claim that the Council has interfered with an individual's right to

¹ <https://www.northnorthants.gov.uk/your-council/enforcement-policy>

private life under Article 8 of the European Convention on Human Rights. Authorisations can generally only be granted by a small number of senior officers who are appropriately trained. The IPA enhanced the protections afforded to individuals by requiring councils to seek the approval of a Magistrate before relying on an authorisation granted under RIPA.

- 4.7. RIPA also created a commissioner with responsibility for inspecting public bodies utilising powers under this legislation, now referred to as the Investigatory Powers Commissioner, as well as creating an Investigatory Powers Tribunal to examine complaints that human rights have been infringed by such activities.
- 4.8. The Council has designated the Director of Governance and HR as its Senior Responsible Officer (SRO) with ultimate responsibility for the Council's use of RIPA powers.
- 4.9. If the legislative requirements of RIPA and the accompanying Codes of Practice are not followed, the Council will be vulnerable to successful claims that it has breached an individual's rights under the Human Rights Act 1998.
- 4.10. Failure to follow RIPA and its Codes of Practice may also adversely affect the admissibility of any evidence obtained using methods covered by the Act. Further, the safety of members of the public supplying information to the Council may also be compromised. Where an authorisation is not in place, it may not be possible to seek exemption from disclosure under the provisions of Public Interest Immunity.

Covert information gathering techniques

- 4.11. Surveillance plays a necessary part in modern life. It is used not just in the targeting of criminals, but also as a means of protecting the public from harm and preventing and detecting crime.
- 4.12. Covert directed surveillance may be undertaken in relation to a specific investigation or operation, where the person or persons subject to the surveillance are unaware that it is or may be taking place. The activity is likely to result in obtaining private information about a person, whether or not it is specifically for the purpose of the investigation.
- 4.13. For example, officers may need to covertly observe individuals and premises (in person or online) to gather information. They may then visit a property / business premises / website as part of their enforcement function to verify the information gathered during surveillance. During this visit it may be necessary to covertly video record a transaction, as it takes place, to secure the best evidence of any offence being committed. These activities can be necessary in a number of Council departments as part of their official duties, including but not limited to:
 - Planning / development control;
 - Housing;
 - Anti-social behaviour;

- Environment / trading standards / environmental health ;
 - Audit and governance;
 - Revenues and benefits;
 - Social care;
 - Licensing;
 - Education; etc.
- 4.14. The second type of information gathering regulated by RIPA is the use of Covert Human Intelligence Sources (CHIS). These may be undercover officers, agents or informants. Such sources may be used by the Council to obtain and pass on information about another person, without their knowledge, as a result of establishing or making use of an existing relationship. This clearly has implications as regards the invasion of a person's privacy and is an activity which the legislation strictly regulates.
- 4.15. The final method of information gathering relates to communications data. While the Council is not able to access the content of communications, it can secure information relating to communications, such as the location from which a call is made, the name of the account holder, internet service provider details etc. The Council secures this information through the National Anti-Fraud Network (NAFN), which provides a secure, single point of contact to access a wide range of information providers using robust legal gateways and processes that meet the highest standard of legislative compliance.

Process

- 4.16. Council will not undertake any activity defined by RIPA without prior authorisation from a trained senior officer who is empowered to grant such consents (the Authorising Officer) and approval of the RIPA application by a Justice of the Peace (Magistrate). The only exception to this process that is permitted by RIPA is when an officer responds to immediate events, or circumstances which could not be foreseen.
- 4.17. Authorisations will not be permitted unless the authorisation can be shown to be necessary to prevent or detect criminal offences which are punishable by a minimum term of at least 6 months imprisonment or are related to the underage sale of alcohol and tobacco.
- 4.18. In addition, the Authorising Officer must be satisfied that the covert activity is proportionate to the anticipated outcome – this assessment will involve the officer considering whether the information can be obtained using less intrusive methods as well as the efforts made to reduce the impact of the activity on other people, particularly those who are not the subject of the operation.
- 4.19. Authorisations will be made in writing and contain the following details:
- a) The action to be authorised
 - b) The identity (if known) of the subject in the operation
 - c) The grounds for the application
 - d) The information being sought

- e) The potential for intrusion into the activities of others
 - f) The period of time for which the authorisation lasts
- 4.20. When undertaking any covert investigation, officers will have regard to the health and safety of persons affected by the activity. This may include themselves, colleagues and members of the public. A suitable and sufficient risk assessment of the investigation technique being proposed will be undertaken, having regard to the Council's health and safety policy and any supplemental guidance issued by individual directorates. The assessment will be communicated to all those at risk.
- 4.21. The Council will, wherever possible, be open and transparent in the way that it works and delivers its services. It has adopted a complaints policy which is available on the website and in council buildings. Information on making a complaint to the Investigatory Powers Tribunal can be provided on request.
- 4.22. The monitoring of Internet and e-mail within the Council use is regulated by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000. The Council's ICT service has software in place to monitor the use of the internet and email. If concerns are identified, these will be investigated.
- 4.23. All of the Council's activities falling within the remit of RIPA is recorded on a central record which is administered by Legal and Democratic Services.
- 4.24. If circumstances arise where the Council decides to use covert methods, but it is unable to give a RIPA authorisation, an auditable record will be maintained in the form of a Human Rights Audit, and covert methods will only be used where this is necessary and proportionate and is for the purpose of one of the legitimate grounds for interference specified in Article 8.

Accountability

- 4.25. The Investigatory Powers Commissioner and Judicial Commissioners are responsible for providing independent oversight of the use of investigatory powers by intelligence agencies, police forces, local authorities and other public authorities. Local authorities are required to submit statistics to the Investigatory Powers Commissioner's Office (IPCO) annually on their use of directed surveillance and covert human intelligence sources. The Council submitted a nil return in January 2022 as it has pursued a policy of overt enforcement, which does not require authorisation.
- 4.26. Inspections of local authorities are typically undertaken every 3 years. The IPCO has notified the Council that it wishes to inspect the Council imminently.
- 4.27. Having regard to the size of the Council, and the services it is responsible for, it is recommended that the following officers are trained and authorised to authorise RIPA activity:
- a) Chief Executive;
 - b) Executive Director of Place and Economy;

- c) Executive Director of Adults, Communities and Wellbeing;
- d) Assistant Director, Regulatory Services

4.28. These officers are proposed as authorising officers for the following reasons:

- The Chief Executive is statutorily the only individual permitted to authorise activity which is likely to result in confidential information being acquired about staff, or approve the use of juvenile or vulnerable covert human intelligence sources;
- The Executive Director of Place and Economy has responsibility for the majority of regulatory services, including trading standards functions which is where most of the authorised enforcement activities are undertaken;
- The Executive Director of Adults, Communities and Wellbeing is responsible for the operation of CCTV and other forms of electronic surveillance;
- The Assistant Director, Regulatory Services, is responsible for the majority of teams that are likely to seek authority to undertake covert information gathering activities.

5. Issues and Choices

- 5.1. The requirement to have a policy in respect of RIPA activity is statutory in nature. The draft policy as set out at **Appendix A** in relation to exercising the powers granted to the Council has been prepared with regard to the legislative provision and the policies of the predecessor councils. The proposed policy, and the draft guidance provided at **Appendix B**, promote overt information gathering where possible, with covert methods being used only when other reasonable options have been considered and ruled out, or tried and proved to be ineffective. There is a statutory requirement that the Council adopt a policy in respect of RIPA activity, and it is not considered either appropriate or sustainable for the Council to maintain five RIPA policies, as adopted by the predecessor authorities.
- 5.2. The Council has discretion as to the officers it nominates to be responsible for authorising RIPA activity. The suggested officers are set out in the body of the report. The number and identity of authorising officers reflects usual practice – the IPCO and its predecessor, the Office for the Surveillance Commissioners, have consistently counselled against having excessive numbers of authorising officers given the need to ensure that officers are trained and familiar with exercising their judgement in relation to RIPA authorisations. It is not considered appropriate for any other posts within the Council to be designated as Authorising Officers.
- 5.3. As a further safeguard to potential intrusion on the private lives of individuals, the Corporate Enforcement Group has determined that only officers who have received appropriate training should be able to submit an application for authorisation to an Authorising Officer.

- 5.4. The Senior Responsible Officer will regularly review applications for RIPA authorisations, including applications for grant, cancellation or extension, and ensure that the administration of the central record of RIPA activity is maintained.

6. Next Steps

- 6.1. Executive is asked to adopt the RIPA policy and guidance and confirm the identity of the officers authorised to approve applications for authority to undertake RIPA activity.
- 6.2. Independent training has been sourced for applying and authorising officers to ensure that they are fully conversant with their obligations under the RIPA regime – this will be undertaken by June 2022.
- 6.3. The Council's constitution will need to be updated to reflect the expansion in the number of authorising officers, and to reflect the arrangements for reporting RIPA activity to members.

7. Implications (including financial implications)

7.1. Resources and Financial

- 7.1.1 There will be a small cost attached to provision of training for the authorising officers and the applying officers. Officers will require periodic refresher training as recommended by the IPCO. Costs will be met from within existing operational budgets.

7.2. Legal and Governance

- 7.2.1 The Regulation of Investigatory Powers Act 2000 requires the Council to have processes for authorising, recording and reviewing any covert surveillance that it carries out that it is regulated by the Act. The processes must comply with the Act, Regulations and any statutory codes of practice; the latter being admissible as evidence in court and may be taken into account by the Investigatory Powers Commissioner when carrying out an inspection. In accordance with the statutory code of practice a local authority must have a policy covering its use of covert surveillance approved by elected members.
- 7.2.2 Further, the Council must report its RIPA activity to the Investigatory Powers Commissioners Office on an annual basis and provide an update on its activity to members.

7.3 Relevant Policies and Plans

- 7.3.1 Enforcement activity supports the Council's corporate aims and statutory obligations. It also supports the Enforcement Policy.

7.4 Risk

- 7.4.1 Failure to comply with the policy and procedural guidance could result in evidence being inadmissible in court proceedings and potential claims that an individual's right to privacy has been breached. However, each of the current councils have RIPA policies and procedures in place which are similar in content and officers have received the necessary training to ensure compliance. Information on the policy and procedures will be disseminated to relevant officers to ensure that they understand the legal requirements and training provided as necessary.

7.5 Consultation

- 7.5.1 Statutory consultation is not required in relation to RIPA policy.

7.6 Consideration by Executive Advisory Panel

- 7.6.1 Given the statutory nature of the RIPA policy, guidance and related steps, this matter has not been referred to the Executive Advisory Panel.

7.7 Consideration by Scrutiny

- 7.7.1 This issue has not yet been subject to any scrutiny. Scrutiny may wish to consider this matter in conjunction with any work it undertakes in relation to enforcement activity.

7.8 Equality Implications

- 7.8.1 The Council is committed to treating people fairly. The policy and procedure documents provide guidance on use of the statutory powers linked to the investigation of criminal offences. It accords with statutory guidance issued by the Home Office and Investigatory Powers Commissioner. It includes specific provisions for dealing with covert surveillance and use of covert human intelligence sources in relation to young or vulnerable adults. In these cases, authorisations must be approved by the Chief Executive.

7.9 Climate Impact

- 7.9.1 The Council, having declared a climate change emergency in June 2021, is committed to reducing its climate impact both within its own Council buildings and in working with businesses and the wider community to achieve net zero energy emissions. This report does not identify any adverse impacts on the Council's stated aim to reducing its climate impact.

7.10 Community Impact

7.10.1 The policy and guidance provide safeguards to protect individuals and businesses from unfair or inappropriate surveillance, thus minimising as far as possible adverse impact on the community. Proportionate enforcement activity will also have a positive impact upon local communities.

7.11 Crime and Disorder Impact

7.11.1 Under Section 17 of the Crime and Disorder Act 1998, the Council has equal statutory responsibility with the Police to exercise its various functions with 'due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area'.

7.11.2 This report supports the Council's enforcement activities and ensures that it is able to undertake proportionate and thorough investigations by securing the best evidence of any offences being committed in the area. Undertaking such investigations and bringing offenders to justice ensures that the Council meets its statutory obligations in respect of preventing crime and disorder.

8 Background Papers

8.1 North Northamptonshire Council Enforcement Policy - <https://www.northnorthants.gov.uk/your-council/enforcement-policy>