

Regulation of Investigatory Powers

Committee considering report:	Joint Public Protection Committee
Date of Committee:	26 January 2023
Chair of Committee:	Councillor Thomas Marino
Date JMB agreed report:	22 November 2021
Report Author:	Sean Murphy
Forward Plan Ref:	JPPC

1. Purpose of the Report

1.1 To set out the outcome of the recent inspection by the Investigatory Powers Commissioners Office.

2. Recommendations

2.1 Members are asked to **NOTE** the content of this report.

2.2 **RECOMMEND** to both Councils that the IPCO views on wider Member oversight be implemented as each Council feels appropriate.

2.3 **AGREE** that the subject of surveillance forms the basis of a PPP special Member briefing bulletin.

3. Implications and Impact Assessment

Implication	Commentary			
Financial:	None			
Human Resource:	None			
Legal:	The PPP approach is designed to fit into the wider requirements of Council policy and the specific requirements of the Regulation of Investigative Powers Act 2000 (RIPA) and the Protection of Freedoms Act 2011.			
Risk Management:	The PPP operate a range of quality management documents that are designed to minimise the risks associated with conducting surveillance.			
Property:	None			
Policy:	Each partner Council has its own RIPA policy which have now been aligned.			
	Positive	Neutral	Negative	Commentary

Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		x		Each policy, procedure and guidance note is designed to ensure that surveillance is conducted appropriately with regards to equality impact i.e. each case on its own merit and appropriate scrutiny about decisions relating to conducting surveillance.
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		x		
Environmental Impact:		x		
Health Impact:		x		
ICT or Digital Services Impact:		x		
PPP Priorities :		x		Surveillance is a key part of the PPP's overall toolkit to achieve its priorities.
Data Impact:		x		Data retention is an important feature of the surveillance process and there are appropriate controls within each policy, procedure and guidance note.
Consultation and Engagement:	Report will be presented to the Joint Public Protection Committee for information			
Other Options Considered:	None			

4. Introduction

- 4.1 In December 2021 the Committee received a report on the use of overt and covert surveillance within the Public Protection Service.
- 4.2 The report set out how the Service delivers its many enforcement and investigative responsibilities on behalf of all three partner authorities. A number of these may require monitoring or surveillance in some form, including noise monitoring, CCTV for flytipping, body worn cameras and investigations into on-line criminal activity. Very little covert activity takes place.

- 4.3 The Regulation of Investigatory Powers Act 2000 (RIPA) was introduced to ensure that surveillance and other intelligence gathering complies with the European Convention on Human Rights ('The Convention'), importantly Article 8 (the right to a private and family life) and Article 6 (the right to a fair trial). Article 8 is a 'qualified right'. RIPA provides a framework by which covert surveillance can be undertaken lawfully, notwithstanding that it breaches Convention rights such as the right to privacy and family life. Where covert surveillance is proportionate and necessary, and is undertaken with the appropriate authorisation, the surveillance will be lawful.
- 4.4 The use of overt public space CCTV is governed by the Protection of Freedoms Act 2011 which requires this to be conducted in line with CCTV policy of the Council.
- 4.5 Access to communications data such as telephone and e-mail subscribers is governed by Communications is regulated by the Investigatory Powers Act 2016 and an local authorities can only access such data through an approved Single Point of Contact (SPOC) which in our case is the National Anti-Fraud Network. Local authorities cannot intercept communication under any circumstances and therefore steps need to be taken when seizing communication devices to ensure this does not happen.
- 4.6 Where surveillance is undertaken in a lawful manner, the Council will not be liable for damages for interference with an individual's Convention rights. Further the risk of evidence being ruled inadmissible in criminal proceedings is reduced.
- 4.7 The PPP engages in low levels of the types of activity which are covered by this legislation and where it is, there is liaison with the Councils Senior Responsible Officer to ensure appropriate records are kept, in line with each partner's individual policy.
- 4.8 The Investigatory Powers Commissioner's Office (IPCO) provide independent oversight of the use of investigative powers by intelligence agencies, the police and other public authorities. Monitoring takes place via annual returns and inspections, which take place approximately every three years. The PPP has supported each partner's Legal Services in the preparation and response to IPCO inspections which have taken place over the last few years. Oversight of public space CCTV is the responsibility of the Surveillance Camera Commissioner. All data must be handled in accordance with data protection legislation under the jurisdiction of the Information Commissioner.
- 4.9 In 2022 West Berkshire and Bracknell Forest were subject to a joint inspection by IPCO. This was the first joint inspection that reflected the fact that the Public Protection Service was a shared service and was one of the services most likely to deploy overt and covert surveillance. The two authorities had also been moving towards common policies for both RIPA and CCTV and expertise in the Public Protection Service was shared with other Council services.
- 4.10 Both authorities were represented by their respective Senior Responsible Officer appointed for the purpose of the Act and the Public Protection Manager attended as an authorising officer and to provide answers to questions of technical application. A number of items were requested prior to the inspection including the latest policies on RIPA and Social Media. These can be found at Appendix A and B to this report.
- 4.11 Although the inspection was joint one each authority received individual feedback which given the commonality of processes were similar. The RIPA Codes issued under the Regulation of Investigatory Powers Act 2002 require democratic oversight of the

use of powers. RIPA is delegated to the Committee under the Inter-Authority Agreement and this report along with the previous one fulfil that obligation.

5. Outcomes of the Inspection

5.1 RIPA Policy

The recently updated policy is common to both Bracknell and West Berkshire. The policy was regarded as fit for purpose although it was agreed that the Policy should have a specific section on 'retention, review and destruction' of material. A copy of the Policy as submitted for review is at Appendix A to this report.

5.2 Social Media Policy

As identified in the Strategic Assessment eCrime is a cross-cutting service priority. Monitoring of any social media activity is a matter that is sometimes necessary for crime detection purposes but has to be handled carefully and in accordance with the law and IPCO guidance. The fact that an individual has 'open' or public settings on a social media account does not mean that they consent to any public authority accessing their data. Investigating officers discuss these risks with their manager and/or the Senior Investigating Officer to evaluate the risks and decide whether they are likely to need to conduct surveillance covered by RIPA.

Officers are aware that they must remain cognoscente of the impacts that their actions can have upon the rights and freedoms of third parties when using social media. Many steps have been taken to train relevant staff and to raise awareness of this issue in order to ensure that if officers access Social Media for work related purposes do so in an appropriate manner. Any specific operations are conducted by specially trained staff. Examples of situations where a social media account may be monitored include illegal sales of waste services, sales of counterfeit or smuggled goods, illegal sales of pets or fraud and unfair trading.

The policy deployed by the Councils was described as 'accurate and aligning with latest guidance contained in codes of practice'. The inspector also noted that records were kept of activity and it was agreed that further management oversight of records would be desirable to ensure the policy was being consistently applied.

5.3 Democratic Oversight

The Inspector was given a copy of the previous report to this Committee which he indicated satisfied the requirements of paragraph 4.47 of the Home Office Covert Surveillance and Property Interference Code of Practice. It was felt that more should be done to put the oversight and control of these powers before a wider Member audience and it was suggested that the relevant 'governance committee' could be one such forum.

5.4 Training of Staff, Authorising Officers and SRO

All staff involved in enforcement are trained to understand the basic requirements around overt and covert surveillance to ensure that they don't find themselves in a situation where they are conducting unlawful surveillance. The service also engages specialist external advice in relation to policies and training.

The Inspector noted that all relevant authorising officers and each SRO had received updated training with the specified period of three years. West Berkshire Officers were trained in 2021 and Bracknell Officers had refresher training as recently as November 2022.

Finally the Inspector noted the attempts to raise staff awareness beyond the Public Protection Service and in particular that over 100 staff at Bracknell had received awareness training on the surveillance risks associated with social media describing it as an 'impressive figure' which would significantly reduce risk. It is proposed to now conduct similar training.

It is worth noting that Bracknell Members have also received briefings on overt and covert surveillance and CCTV.

5.5 Authorisations

Finally two authorisations were reviewed in full by the Inspector. Advice was given on areas where applications could be strengthened.

The use of non RIPA surveillance considerations was also explained to the Inspector to ensure that surveillance wasn't deployed by officers without authorisation where it would be necessary and that regardless principles of necessity and proportionality remained at the heart of activity.

6. Appendices

Appendix A – RIPA Policy submitted to IPCO

Appendix B – Social Media Policy submitted to IPCO

Subject to Call-In:

Yes:

Wards affected: All Wards

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