

Regulation of Investigatory Powers Act (RIPA) 2000: Use within the Council 2019/20

To inform Members about issues relevant to the use of investigatory powers (under the Regulation of Investigatory Powers Act (RIPA) 2000 and Investigatory Powers Act (IPA) 2016.

Member Introduction

- RIPA provides a statutory framework for public authorities to use covert investigatory techniques, such as surveillance, where necessary and proportionate, for the purpose of preventing or detecting crime
- The Council has recently been the subject of its periodic inspection by the Investigatory Powers Commissioners Office (IPCO) who were satisfied that the Council uses the powers afforded to it under the RIPA legislation appropriately
- Changes brought in by the IPA provide a new framework for dealing with communications data; previously RIPA covered communications data. The Council's policy covering RIPA use has been updated to include the IPA changes and following A&GC review was adopted by Full Council at its meeting of 15 January 2020.
- The RIPA codes of practice state that members should review the Council's use of investigatory powers at least annually (this is via A&GC). Although the powers under RIPA have been used rarely by the Council in recent years (last used in 2010), it is important for members to be aware of the extent of usage
- The most recent IPCO annual report acknowledges that there has been a general decline in the use of covert powers by local authorities. They identified several causes for this decline including, but not limited to, benefit fraud now being investigated centrally by the Department for Work and Pensions (DWP), and councils favouring overt investigations and/or working with local police forces to investigate criminality.

Background information

RIPA

- The Regulation of Investigatory Powers Act (RIPA) 2000 was brought into force in England and Wales in 2000. The purpose of the Act was to ensure that investigatory powers are used in accordance with human rights
- RIPA enables local authorities to use certain investigatory powers for the purpose of preventing and detecting crime, as long as specified procedures are followed. The information obtained as a result of the use of investigatory powers can be relied upon in court proceedings, provided RIPA is complied with. The Home Office issues codes of practice for the use of these investigatory powers, which offer further guidance
- RIPA local authority investigatory powers comprise:
 - Covert surveillance including: monitoring, observing, or listening to persons, their movements, their conversations or other activities.

- Recording anything monitored, observed or listened to in the course of surveillance. Surveillance by, or with the assistance of, a surveillance device
- The use of Covert Human Intelligence Sources (CHIS)
 - Before a local authority can use these investigatory powers, officers must obtain:
 - Internal authorisation from an Authorising Officer (the CEO and two Directors)
 - Independent, external authorisation from a Justice of the Peace at a Magistrates' Court
 - Local authority use of RIPA is also restricted to the investigation of criminal offences:
 - Carrying a minimum sentence of imprisonment for six months or more
 - Relating to the underage sale of alcohol, tobacco and nicotine inhaling products
 - The Home Office published revised codes of practice for covert surveillance and covert human intelligence sources in August 2018 and these are reflected in the Council's current Policy.

IPA

- The Investigatory Powers Act (IPA) 2016 provides a new legal framework for the acquisition of communication data. Communication data was previously dealt with under RIPA 2000
- Under IPA, local authorities can access certain communications data. Communications data is defined as the 'who', 'when', 'where' and 'how' of communication, but not the content of it. For example, information regarding the timing, sender and recipient of a message but not the actual content of the message
- The Council's powers remain broadly the same under IPA as under RIPA. It is still the case that the Council can only obtain communications data for preventing or detecting criminal offences or preventing disorder, and independent, external authorisation must be given before such data can be obtained
- However, there are five key changes from the previous treatment of communications data under RIPA:
 - 1) The external, independent authorisation must now be given by the Investigatory Powers Commission (IPC) via its staff in the Office for Communications Data Acquisition (OCDA). Previously, authorisation was given by a Justice of the Peace in a Magistrates' Court
 - 2) When seeking authorisation, the Council must now use the services of the National Anti-Fraud Network (NAFN), who will submit the application to OCDA on the Council's behalf. The NAFN will scrutinise applications independently and provide advice to ensure the Council acts in an informed and lawful manner
 - 3) Communications data is now defined as falling into two categories: entity data and events data

- 4) Entity data is information about a person or a thing (such as a device) or information linking them. For example, information about which person is the account holder of email account example@example.co.uk. Entity data can now be obtained when seeking to prevent or detect any crime (irrespective of its seriousness) or to prevent disorder
- 5) Events data concerns specific communications. For example, information about who sent a particular email or the location of a mobile phone when a call was made. Events data has a higher threshold than entity data. Events data can now only be obtained when seeking to prevent or detect *serious* crime. This includes criminal offences carrying a maximum sentence of at least 12 months' imprisonment, offences committed by corporate bodies and offences involving (as an integral part) the sending of a communication or breach of a person's privacy
- The majority of the IPA 2016 powers do not apply to the Council. For example, the Council cannot intercept communications, obtain internet connection records or obtain bulk data.

Oversight

The use and application of RIPA and IPA legislation are monitored by the Investigatory Powers Commissioner's Office (IPCO). Visits are made to local authorities to monitor compliance with RIPA and IPA legislation by IPCO and they require annual returns to be made and performance information to be provided.

Operational Procedures in Arun

- The Home Office codes of practice recommend that a member of the organisation's corporate leadership team should be the Senior Responsible Officer for oversight of RIPA. Within Arun, the Senior Responsible Officer (SRO) is the Group Head of Council Advice & Monitoring Officer, who has been provided with guidance on the SRO role and its responsibilities
- The officers listed in Appendix E – RIPA Policy December 2019, may provide internal approval of RIPA forms prior to seeking judicial approval. The 'approved rank' officers listed in the appendix may provide internal approval of IPA forms prior to them being submitted to NAFN for them to seek independent authorisation. Some of these officers have been trained in the use and application of RIPA and IPA, but it has been recognised (and reported by the IPCO) that this training needs to be brought up to date and refresher training should be provided on a regular basis to ensure all officers are kept up to date with their roles and responsibilities (this is planned for 2020 – initially this was scheduled for June, but due to the Covid-19 crisis this will have to be rearranged for later in the year)
- Arun has produced its own local procedure notes for RIPA and IPA, which are in accordance with the Home Office's requirements (as confirmed as part of the IPCO inspection); and these are published on the Council's intranet site, together with links to current Home Office codes of practice and IPCO Guidance
- The Council also has published a Guidance on the Use of Social Media in Investigations document which has recently been reviewed by IPCO and advised to management / staff

- Arun makes very limited use of RIPA and has always complied fully with the legislative requirements
- The Council was last subject to an inspection visit from the Office of the Surveillance Commissioner during December 2019 and the Council reported nil usage of its powers during 2018/19 to the Investigatory Powers Commissioner's Office.