

WELWYN HATFIELD BOROUGH COUNCIL
STANDARDS COMMITTEE 16 SEPTEMBER 2020
REPORT OF THE CORPORATE DIRECTOR (PUBLIC PROTECTION, PLANNING
AND GOVERNANCE)

SURVEILLANCE UPDATE 2020

1 Executive Summary

- 1.1 This report provides members with an update on the council's use of surveillance powers. It is a requirement of the surveillance code of practice that an update is periodically made to members on surveillance activity, so Members are therefore asked to consider and note the content of this report.

2 Recommendation(s)

- 2.1 For committee to note the use of surveillance powers, and the work undertaken in making sure the council can comply with its surveillance responsibilities.

3 Explanation

- 3.1 The council has powers to investigate a range of criminal offences and like all local authorities is able to utilise powers to undertake surveillance to assist with those investigations in certain prescribed circumstances.
- 3.2 The Regulation of Investigatory Powers Act (as amended) sets out the strict framework under which the council may use surveillance powers.
- 3.3 The use of these powers is governed by the requirements of law and the council's own policy. Powers cannot be used without the agreement of a designated "Authorising Officer" and the judicial approval of a magistrate. In all cases the powers can only be used to investigate a specified offence and must be shown to be necessary and proportionate to the circumstances.
- 3.4 The Council Constitution designates the Senior Responsible Officer and Authorising Officers who are responsible for ensuring arrangements are in place to ensure any surveillance undertaken is properly authorised and the council has a policy in place governing surveillance which can be viewed on the council website at <https://www.welhat.gov.uk/RIPA>
- 3.5 The council is subject to audit from the Investigatory Powers Commissioner (IPCO) (previously the Office of Surveillance Commissioners) and was last audited in February 2019. In advance of this audit the council was asked to submit certain information and, on that basis, IPCO conducted a remote audit. It is therefore anticipated that a physical on-site audit will be conducted in 2021.
- 3.6 The audit raised one technical recommendation which has been actioned by bringing it to the attention of the Authorising Officers and was extremely positive regarding the council's controls and approach to surveillance.
- 3.7 Whilst the council remains an infrequent user of surveillance powers, a key important task is that a staff training programme is in place. This needs to cover Authorising Officers and officers who may wish to seek authority for surveillance

activities. RIPA also applies to the “online space” and the council’s Authorising Officers have prepared and delivered a number of training sessions focussing on the application of RIPA to the online space.

- 3.8 The senior responsible officer and one of the Authorising Officers have attended externally delivered training on “RIPA, Social media monitoring and CHIS”; the other two Authorising Officers were also scheduled to attend this training, but their course was unfortunately cancelled.
- 3.9 Authorising Officers continue to provide training to specific staff in the various teams who may potentially seek to use surveillance powers, and since the audit, over 30 such staff have been trained.
- 3.10 More significantly, an ambitious programme of RIPA awareness training has commenced, with the aim of ensuring all staff who have access to a council computer/internet enabled device and the online space are RIPA aware. Designed in-house and delivered by the council’s Authorising Officers this “power in a hour session” has been well received and is well underway, however its full roll out has been curtailed by the covid19 pandemic. To date 4 sessions have been held and 276 staff have been trained.
- 3.11 Additionally, the council’s induction course, which all new starters attend, has been updated to include information about RIPA and the online space so that when colleagues commence employment with the council they are made RIPA aware.
- 3.12 Since the audit, no authorisations for surveillance have been sought and consequently none have been put forward for judicial approval.
- 3.13 Authorising Officers have provided surveillance advice to the planning, housing and hackney carriage teams
- 3.14 At the time of writing, one “complaint” has been received regarding surveillance activity and this is being investigated in accordance with the relevant procedures.

4 Legal Implication(s)

- 4.1 The Regulation of Investigatory Powers Act (RIPA), as amended by the Protection of Freedoms Act and the Investigatory Powers Act 2016 sets out the regulatory regime by which the council may use certain surveillance powers to investigate certain specified offences. Failure to comply with the legislation could result in legal challenge, investigation by the Investigatory Powers Tribunal or challenge on the admissibility of evidence in Court.

5 Financial Implication(s)

- 5.1 None, budgets are in place for the provision of training for relevant officers through the allocated training budgets.

6 Risk Management Implications

- 6.1 The risks related to this proposal relate to legal challenge and reputation for example a court case collapsing owing to evidence collected through surveillance being ruled inadmissible. The council has a policy in place and a staff training programme. Heads of Service are asked to ensure relevant staff attend the training programme. RIPA is included as part of the management assurance statements which help comprise the annual governance statement and the

council is periodically audited by the IPCO. An assessment of risk is therefore considered as impact: high, probability: low

7 Security & Terrorism Implication(s)

- 7.1 The RIPA regime is used by the council to assist with the investigation of certain criminal offences. In addition the council will work as required with the police and other partners to facilitate the prevention, detection and investigation of crime.

8 Procurement Implication(s)

- 8.1 None

9 Climate Change Implication(s)

- 9.1 None

10 Health and wellbeing implications

None directly arising from the report

11 Communications and engagement

The nature of any covert surveillance undertaken by the council is by definition covert and not in the public domain. However for public confidence and transparency it is important that the council shares its adopted RIPA policy which is available at <https://www.welhat.gov.uk/RIPA> Additionally the council is required to periodically provide updates on surveillance activity to elected members, and this is done through regular reports to the Standards Committee.

12 Link to Corporate Priorities

- 12.1 The subject of this report is linked to the Council's Corporate Priorities "our community", "our environment", "our housing" and "our council" and the statutory provisions under the Regulation of Investigatory Powers Act (RIPA), as amended

13 Equality and Diversity

- 13.1 An Equality Impact screening assessment has not been carried out in connection with the proposals that are set out in this report as RIPA is an enforcement tool and an EQIA was carried out in connection the corporate enforcement policy.

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