



Cabinet report

Committee	CABINET
Date	13 JANUARY 2022
Title	AMENDMENTS TO THE COVERT SURVEILLANCE POLICY
Report of	CABINET MEMBER FOR STRATEGIC FINANCE, CORPORATE RESOURCES AND TRANSFORMATIONAL CHANGE

EXECUTIVE SUMMARY

1. This paper seeks to advise the cabinet on the outcome of an inspection carried out by the regulatory body for covert surveillance and to recommend approval of amendments to the Council's Policy on Covert Surveillance.

RECOMMENDATION

2.

Cabinet notes the recent IPCO inspection findings, at Appendix 1, and notes the council's use of the powers available in the last 3 years and agrees the proposed amendments to the policy as attached at Appendix 2.

BACKGROUND

3. The Regulation of Investigatory Powers Act 2000 (RIPA) created a regulatory framework to govern the way in which public authorities use surveillance and covert human intelligent sources in their investigation. Failure to comply with RIPA may lead to any evidence obtained from surveillance breaching RIPA being deemed inadmissible and potentially lead to legal proceedings being brought against the Council for a breach of the Human Rights Act 1998. RIPA applies to all covert surveillance the Isle of Wight Council undertakes when performing its criminal investigation functions (core functions) and includes certain usage of CCTV systems that the Council operates.
4. RIPA aims to ensure that the investigatory powers available to the Council are only exercised in accordance with the law and only where it is necessary and proportionate to do so. Any surveillance that is undertaken overtly and not in the manner designed to conceal the fact that surveillance is being undertaken will not be governed by RIPA.
5. In order to undertake covert surveillance, the council must follow the statutory authorisation process. The Council has a formal procedure in place to ensure

that authorisations are obtained prior to any directed surveillance being undertaken.

6. Since the introduction of the additional judicial approval process in 2012 the council's use of covert surveillance has been low. The reduction in the frequency the authority uses the power is also because the council has utilised other avenues of intelligence gathering when investigating criminal activity. In the last 36 months the council has used the powers once which was for purpose of investigating fraudulent payments. The surveillance sought to establish if payments claimed for carers allowance were genuinely made or if, as suspected, payments were being claimed for fictitious or non-attended carer visits.
7. The regulatory body that supervises authority's compliance with RIPA is the Investigatory Powers Commissioners Office (IPCO). The council is liable to statutory inspection by IPCO, normally every three years. The council was most recently inspected by the Investigatory Powers Commissioners Office (IPCO) chief inspector in October 2020. A copy of the report is attached at appendix 1. The inspection found that the current RIPA Policy was very clear and comprehensive document but required an update however in relation to communications data; referencing certain paragraphs from the Home Office code of practice; and the addition of how the council approach those cases for which an authorisation under RIPA is not available (such as where the criminality in question does not meet the crime threshold set by The Protection of Freedoms Act 2012). It also recommended a change to the central register of authorisations.
8. The reference to the adoption of an authorisation for non RIPA purposes is to cover primarily the use of social media and to ensure that any investigations carried out for non-criminal purposes, or those where the criminal activity would not be subject to at least a six months imprisonment sentence, is undertaken only when it is proportionate and necessary to do so to ensure that it does not offend article 8 Human Rights Act 1998. The proposed amendments to the policy addresses this issue by the insertion of a new authorisation process for Non RIPA activities. However it is not considered that this process will be routinely used. The amendments to the policy relating to communication data have also been made in the attached draft and the central record has also been amended.
9. In addition to a review of the policy, IPCO also reviewed the authorities use of the powers. In the last three years the authority has only granted one authorisation. IPCO reviewed the application and authorisation, the magistrate's approval and subsequent cancellation records. The chief inspector found that these were in exemplary order and would make a very good example for internal training, suitably redacted. IPCO found that both the applicant and authorising officer had provided comprehensive and meaningful considerations in relation to the key issues of necessity, collateral intrusion and proportionality.

STRATEGIC CONTEXT

10. The reporting of the IPCO findings and the use of covert surveillance by the authority supports the delivery of the Corporate Plan by protecting the Council against fraudulent claims for payment. In doing this it is also in line with the 4 key values of the Corporate Plan: -
 - Being community focused
 - Working together
 - Being effective and efficient
 - Being fair and transparent

CONSULTATION

11. No external consultation has been undertaken or is necessary. Internal consultation with departments that may be affected by the amendments has been undertaken.

FINANCIAL / BUDGET IMPLICATIONS

12. The proposed amendments do not have a financial or budgetary implication.

IMPACT ON YOUNG PEOPLE AND FUTURE GENERATIONS

13. The decisions the Council makes now not only affect current residents, but may have long term impacts, both positive and negative, on young people and future generations. These impacts may not immediately be apparent or may not emerge for a number of years or decades. Impacts will be interrelated across the various domains of young people's lives from housing, employment or training, health and the environment.
14. The United Nations Conventions on the Rights of the Child (UNCRC) in 1989, in particular article 12, places a duty for children and young people to have an active voice in decision making on matters that affect them. We value the views of our young people. Incorporating coproduction and consultation with young people into our decision-making process is a robust way of ensuring young people's views are taken into consideration. Participation workers experienced in coproduction can support engagement with the Youth Council, our Island children and wider groups of young people to ensure the voice of young people is sought, heard and acted upon on important matters that will affect them.
15. The recommendations in this report has an impact on protecting young people and future generations. One of the proposed changes does relate to the monitoring of social media and the need to document the reasons and justification for doing so. Whilst this type of monitoring by a local authority in child or adult protection work is unlikely to meet the criminal threshold for obtaining an authorisation under RIPA, it may be necessary when professionals have concerns as to child or adult protection issues that warrant such monitoring. However is important to only undertake such monitoring when it is

proportional and necessary as such an activity can infringe the right to respect for a person's private life. For this reason, the changes recommend that such monitoring is documented so the reasons for doing so are clear.

CLIMATE, ENVIRONMENT & UNESCO BIOSPHERE IMPACT

16. Greenhouse gas emissions result from energy use in buildings, street lighting, fleet vehicles, business travel, water use, waste disposal, air conditioning, and contractor's services.
17. Whilst no direct implications arise from the adoption of the revised policy, individual surveillance operations will be encouraged to consider the potential impacts relating to Climate Change, Environment and Enhancing the Biosphere: Waste when the operational activity is planned, including reducing emissions when travelling to surveillance sites.

LEGAL IMPLICATIONS

18. The Council is required to have regard to the recommendations of the statutory inspection in order to ensure it remains compliant with the Regulation of Investigatory Powers Act 2000 and home office code of practice.

OPTIONS

19. The options available to the Cabinet are: -
 1. To note the recent IPCO inspection findings, at appendix 1, and to note the councils use of the powers available in the last 3 years and to agree the proposed amendments to the policy as attached at appendix 2.
 2. To not agree the proposed amendments to the covert surveillance policy

RISK MANAGEMENT

20. The adoption of the proposed amendments to the policy will ensure the council remains compliant with the legislative requirements as well as the home office code of practice.
21. Failure to amend the policy in line with the recommendations may mean that the council is not compliant with the current home office guidance and IPCO recommendations.

EVALUATION

22. The councils use of the available powers to covert survey remains relatively low. It is an important tool that should remain available where it is proportionate and necessary to do so. Cabinet is asked to note the use of the powers.
23. The adoption of the amendments recommended by IPCO is recommended.

APPENDICES

Appendix 1 – IPCO inspection report October 2020

Appendix 2 – Draft Covert Surveillance Policy

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