

Report to Cabinet

6 December 2023

Subject:	Council's Use of Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016
Cabinet Member:	Leader of the Council Councillor Carmichael
Director:	Director of Law and Governance and Monitoring Officer Surjit Tour
Key Decision:	No
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1 Recommendations

- 1.1 That the information regarding the Council's use of powers under the Regulation of Investigatory Powers Act 2000 and Investigation of Powers Act 2016 from July 2017 to October 2023 be received and noted.
- 1.2 That the following policies be approved:
 - i) Corporate Policy: Directed Surveillance and Covert Human Intelligence Sources;
 - ii) Corporate Policy: Acquisitions of Communications Data
- 1.3 That the Director of Law and Governance be authorised to make administrative amendments to policies referred in 1.2 above as required.



2 Reasons for Recommendations

2.1 The Investigatory Powers Commissioners Office (“IPCO”) has responsibility for reviewing the use of investigatory powers by public authorities, such as intelligence agencies, police and local authorities. They undertake regular reviews of the Council’s compliance with Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016.

2.2 In October 2020 the IPCO conducted a review and made certain recommendations, including that:

- Training be continued. To this end training by Legal Services was provided to 48 staff in September 2021 from the Trading Standards, Environmental Health, Planning, Licensing and Adults/Social Services disciplines. Further training has been provided by an external provider, Aquila Training on 14th September and 18th October 2023.
- A report on the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 be placed before members (this being it).
- That the intranet staff instruction manual/policy document be updated and amended. The guidance available to staff on the intranet pages dealing with Directed Surveillance and Covert Human Intelligence Sources and Access to Communications Data have been duly updated to reflect new legislation, codes of practice and new Council Structure and new Scheme of Delegation.
- In addition, it has been noted that there is no (and has never been) policy on these matters for the benefit of the wider public and other stakeholders on the internet. Accordingly, draft policies have been proposed for publication and are set out in this report for consideration and approval.
- It is also proposed that the Councils Information retention policy be amended to retain RIPA and IPA authorisations for 3 years unless it becomes prosecution file evidence or unused material in which case it be retained for 7 years after closure of the prosecution file.

2.3 The IPCO has conducted a desktop review this year. The Council has complied with the recommendations and IPCO is satisfied with the



Council's compliance with RIPA 2000 and the Investigatory Powers Act 2016. As such, the Council will not require further inspection this year.

3. How does this deliver objectives of the Corporate Plan?

The powers have not been used at all since 2018 but if needed they assist with law enforcement to promote strong and resilient communities.

It is also best practice to have a public policy in relation to the powers and the Council's use of them to ensure transparency.

	The Best Start in Life for Children and Young People
	People Live Well and Age Well
	Strong Resilient Communities *
	Quality Homes in Thriving Neighbourhoods
	A Strong and Inclusive Economy
	A Connected and Accessible Sandwell



4. Context and Key Issues

- 4.1 The Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 specify the circumstances in which a Local Authority may carry out covert surveillance and access communications data which may otherwise constitute a breach of the Human Rights Act 1998.
- 4.2 The Powers can only be used to seek to detect crime punishable by at least a 6 month prison sentence as regards covert surveillance, or a crime involving underage sales of alcohol or tobacco. These powers are regulated by the Regulation of Investigatory Powers Act 2000.
- 4.3 As regards the accessing of communications data these powers are regulated by the Investigatory Powers Act 2016. The offence being investigated must be punishable by at least a 12 month prison sentence if the Council seeks to access “events data” and crime and disorder if accessing “entity data”.
- 4.4 The powers have not been used at all since 2018. The last time they were used were to -
- i. Conduct covert surveillance on suspected suppliers of illicit tobacco in summer 2017. Whilst the surveillance material was not used in evidence at trial a defendant was ultimately sentenced to a lengthy term of imprisonment.
 - ii. Obtain limited access to communications data in January 2018 to establish the presence of a post redirect service with the Post Office whilst investigating an applicant for a Council property suspected of already owning a house privately. The suspect was ultimately charged with more serious immigration offences by the police and imprisoned.
 - iii. Conduct covert surveillance on a suspected seller of counterfeit goods (sports clothing) in summer 2018. The matter was concluded without prosecution action. Since then the powers have not been used at all. This is a common trend nationwide in local government. The powers are used extensively by the Police, the National Crime Agency and MI5 to give examples.



- 4.5 Use of the powers are authorised by senior internal officers authorising investigating officers. However after that is done use of the powers is not lawful until the application has been presented to a Magistrates Court and judicially approved. This happened with the last 3 above applications.
- 4.6 As referred to above, training for staff awareness remains ongoing. In September 2021 internal training was provided by legal services to 48 staff from Trading Standards, Environmental Heath, Planning, Licensing and Adults/Social Services. Training with an external provider has been delivered on 14th September 2023 and 18th October 2023 an included staff from Trading Standards, Environmental Heath, Planning, Licensing, Private Sector Housing, Fraud Team and Legal Services.
- 4.7 Whilst the Council has always had internal guidance available to officers via its intranet page, it is good practice to have a Policy document available to the public.

5 Alternative Options

- 5.1 None as compliance with the legislation is a legal requirement.
- 5.2 The Council could decide not to have a public policy, but this would not be transparent and would not meet with good practice expectations.

6 Implications

Resources:	The external training of 41 staff cost £2,255.00 (plus vat) (£55 per person). Each service agreed to meet the costs of attendance of their own officers.
Legal and Governance:	The Powers have not been used for 5 years. Prior to that they were used on 3 occasions (above) in the previous 3-5 years so the implications are not thought to be great as of now. It is still necessary for transparency purposes to have a policy that is available to members of the public.



Risk:	Use of the powers is currently non-existent and that use is broadly not expected to change. Ongoing training is however needed to ensure unlawful enforcement related surveillance and communications access activity does not take place. Advice is sought from the Solicitor internally on such issues. Light or non-existent usage is not currently untypical of local government generally.
Equality:	No specific implications
Health and Wellbeing:	This legislation seeks to provide powers to assist in the prevention of Crime
Social Value:	None
Climate Change:	None
Corporate Parenting:	There are no implications in relation to corporate parenting.



7. Appendices

Appendix 1 – Proposed Corporate Policy – Directed Surveillance and Covert Human Intelligence Sources

Appendix 2 – Proposed Corporate Policy for Acquisition of communications Data

Background Papers

1. [Code of Practice-2018-Covert Surveillance and Property Interference Code of Practice](#)
2. [Code of Practice 2022-Covert Human Intelligence Source Code of Practice](#)
3. [Code of Practice -2018-Communications Data Code of Practice](#)

