

SLOUGH BOROUGH COUNCIL

REPORT TO: Cabinet **DATE:** 6th February 2017

CONTACT OFFICER: Linda Walker, Monitoring Officer
Ginny de Haan, Head of Consumer Protection & Business
Compliance
(For all enquiries) (01753) 477912

WARD(S): All

PORTFOLIO: Cllr Paul S. Sohal
Commissioner for Regulation & Consumer Protection

PART I **NON-KEY DECISION**

REGULATION OF INVESTIGATIVE POWERS ACT (RIPA) REVISED POLICY AND ACTIVITY REPORT

1 Purpose of Report

The purpose of this report is to:

- seek approval of the revised RIPA policy and guidance which covers covert surveillance and the acquisition and disclosure of communications data
- update members on RIPA activity during 2016

2 Recommendation(s)/Proposed Action

The Cabinet is requested to resolve that the revised policy and guidance be approved and to note RIPA activity during 2016.

3. The Slough Joint Wellbeing Strategy, the JSNA and the Five Year Plan

The considered and properly authorised use of the RIPA powers fully supports the Wellbeing Strategy, JSNA and Five Year Plan

The use of covert surveillance is rare and the use of an agent, informant or officer working undercover is very rare but sometime essential to ensure that the council is able to fully carry out its investigative and enforcement statutory powers and duties to protect residents and local businesses from the detrimental impacts of crime. Similarly, the use of communications data to gather intelligence is rare but can be vital to identify and pursue persons involved in criminal activity, such as fraud, which can cause very significant financial harm and distress.

4 Other Implications

(a) Financial

There are no financial implications of proposed action

(b) Risk Management

Risk	Mitigating action	Opportunities
Legal	The policy sets out the procedures to be followed to enable the council to carry out its legal duties of investigation and enforcement in an accountable and regulated manor	Use of RIPA enhances the councils ability to effectively investigate crime and protect residents and businesses
Property		
Human Rights	The policy provides the safeguards to any interference with the principles of the Human Rights Act and European Convention of Human Rights Act	The policy demonstrates the council's commitment to its responsibilities under the Human Rights legislation.
Health and Safety	Risk assessments are completed as part of investigative operations	
Employment Issues	Training is provided to officers	
Equalities Issues	None	
Community Support	N/A	
Communications	N/A	
Community Safety	The policy will support detection and prevention of crime	The policy will support the priorities of Safer Slough Partnership
Financial	None	Fraud investigations may qualify for 'Proceeds of Crime' (POCA) applications
Timetable for delivery	Ongoing	
Project Capacity	Within existing arrangements	
Other	None	

(c) Human Rights Act and Other Legal Implications

The Council must ensure that it is fully compliant with the legal requirements set out in RIPA otherwise its use of RIPA may be in breach of the European Convention on Human Rights and the Human Rights Act 1998 and therefore at risk of challenge. This may open up the Council to both financial and reputational risk. The proposed revised policy will ensure the Council is continues to manage these risks. RIPA provides a legal framework for the Council to use covert methods of surveillance and information gathering to assist in the detection and prevention of crime in relation to an authority's core functions. The legislation ensures that any investigatory activity conducted by the Council is legal, proportionate and necessary.

The legislative changes introduced by the Protection of Freedoms Act 2012 provide further protection to individuals by ensuring that the Council can only exercise the powers available to it if they are both judicially approved and are required to detect or prevent serious crime.

The proposed revised Policy helps safeguard the Council in its use of RIPA and when followed will ensure the Council complies with the law.

The Council's use of RIPA is subject to inspection by the Office of the Surveillance Commissioner ('OSC'). During these inspections authorisations and procedures are closely scrutinised and relevant Council officers are interviewed by the Inspector.

(d) Equalities Impact Assessment

The policy and national guidance is based upon government legislation that has already been assessed for equalities impact

5 Supporting Information

- 5.1 The Regulation of Investigatory Powers Act 2000 (RIPA) came into force in 2000. Both the legislation and Home Office Codes of Practice that support the Act strictly prescribe the situations and conditions under which councils can use their RIPA powers. All authorities are required to have a RIPA policy and procedure that they adhere to in using their RIPA powers. Before the 2010 General Election both partners in the coalition which was formed promised to overhaul RIPA on the basis that surveillance carried out under it was often used to investigate minor offences and in a disproportionate manner. This review resulted in the Protection of Freedoms Act 2012. From 1 November 2012 local authorities are required to obtain judicial approval prior to using covert techniques or obtaining communications data. Local authority authorisations and notices under RIPA are only given effect once an order has been granted by a Justice of the Peace. In addition since 2012, a local authority use of the three investigatory powers available to under RIPA has been limited to the investigation of crimes which attract a six month or more custodial sentence, with the exception of offences relating to the underage sale of alcohol and tobacco.
- 5.2 The revised policy and the associated procedures are intended to ensure that investigations undertaken by the Council are conducted in accordance with the requirements of Act and the amendments to guidance. RIPA ensures that when the Council needs to use covert investigation techniques, which by their very nature may otherwise be in breach of the Human Rights Act (HRA) and European Convention of Human Rights (ECHR), they are placed on a legitimate footing and that appropriate controls are put in place to ensure that the activities are properly controlled and monitored. It should be noted that these powers are only available in more serious cases and where other investigative methods are not appropriate or have been unsuccessful.
- 5.3 RIPA allows Local Authorities to carry out Directed Surveillance (surveillance of an individual/s for a specific purpose without their knowledge), use a Covert Human Intelligence Source (use of informants or undercover officers) and access communications data (obtaining subscriber information of a telephone number or internet user etc.) provided the investigatory activity is lawful, necessary, proportionate and non-discriminatory.
- 5.4 The requirements of the ECHR, HRA and RIPA impact on all officers of the

Council who undertake investigatory or enforcement activities. All officers undertaking investigative activities only do so in accordance with the requirements of the Council's Policy, the Regulation of Investigatory Powers Act 2000 and the associated guidance. All relevant Officers have received training on the use of RIPA.

- 5.5 In accordance with the revised RIPA Codes of Practice which require local authorities to involve elected members in strategic oversight of RIPA including setting the relevant Policy and considering reports on its use by the Council the approval of the Executive is sought to the revised RIPA Policy which is attached as an appendix to this report.
- 5.6 During 2016 the Council did not use RIPA powers for any directed surveillance, or covert human intelligence source purposes. The council did access communications data one occasion during 2016 specifically in relation to Trading Standards investigations.
- 5.7 The Council's use of its RIPA powers is subject to annual reporting to and triennial inspection by the Office of Surveillance Commissioners (OSC). The Council received its most recent inspection by the OSC during March 2014; it is likely that the OSC will inspect the council again in March 2017

6 **Comments of Other Committees**

This report and the revised policy and guidance have not been considered by any other Committees.

7 **Conclusion**

It is essential that the Council utilises its RIPA powers correctly and in line with national guidance in order to ensure;

- Accountable and proportionate use of the powers and protection of personal freedoms
- robust investigations can take place into serious criminal activity

Cabinet is requested to consider and approve the revised Policy and Procedures.

8 **Appendices Attached**

A SBC RIPA Policy and Procedures

9 **Background Papers**

1 RIPA Guidance from the Home Office can be found at:

<https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa>