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| Report to: | AUDIT COMMITTEE |
| Relevant Officer: | Mark Towers , Director of Governance and Partnerships |
| Date of Meeting | 27 November 2019 |

COVERT SURVEILLANCE POLICY

1.0 Purpose of the report:

1.1 The Audit Committee is asked to consider the revised Covert Surveillance Policy (formally known as the RIPA Policy).

2.0 Recommendation(s):

2.1 To approve the revised Covert Surveillance Policy.

3.0 Reasons for recommendation(s):

3.1 To bring the policy up to date to reflect current good practice and to recognise that some covert surveillance activity undertaken by the Council falls outside of the Regulation of Investigatory Powers Act (2000).

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

Staying with the original version of the document or drafting a different version. However, this updated document it is considered reflects good practice and is more illustrative of the Council's approach to surveillance.

4.0 Council Priority:

4.1 The use of covert surveillance in relevant circumstances, in accordance with the policy supports the achievement of all Council priorities.

5.0 Background Information

5.1 The Regulation of Investigatory Powers Act 2000 regulates covert investigations by various bodies, including local authorities. It was introduced to ensure that individuals' rights are protected whilst ensuring that law enforcement and security

agencies have the powers they need to do their job effectively. The Act provides a framework within which activities, which it covers, can be carried out in a manner consistent with the individual's Human Rights. It also provides statutory protection for the authority concerned if its provisions are adhered to.

- 5.2 The Council has an agreed policy in place and this was last approved by the Audit Committee on 14 September 2017. The purpose of the policy is to:
- Explain the scope of the 2000 Act and where it applies.
 - Provide guidance on the internal authorisation procedures to be followed.
 - Provide guidance on applications for judicial approval.
- 5.3 The 2000 Act requires that when the Council undertakes 'directed surveillance' or uses a 'covert human intelligence source' these activities must only be authorised by an officer with delegated powers when the relevant statutory criteria are satisfied.
- 5.4 Authorisation and judicial approval under the 2000 Act gives lawful authority to carry out surveillance and the use of a human intelligence source. Obtaining authorisation and judicial approval protects the Council and its officers from complaints of interference with the rights protected by Article 8 (1) of the European Convention on Human Rights enshrined in English law through the Human Rights Act 1998. Provided activities undertaken are also "reasonable and proportionate", they will not be in contravention of Human Rights legislation.
- 5.5 The Council has a Corporate RIPA Group which meets two or three times per year to maintain an overview of surveillance activities across the Council. The Group is chaired by the Director of Governance and Partnerships and includes those responsible for governance, policy, authorisation and monitoring of covert surveillance activities across the Council.
- 5.6 The Group has oversight of the policy and identified a number of changes which needed to be made to help ensure that the policy continues to keep the Council legally compliant whilst also reflecting working practices which have been developed such as the use of social media and the non-RIPA authorisation process.
- 5.7 The review of the policy to ensure that it remains up to date was supported in a recent internal audit report of covert surveillance dated 9 September 2019. The report recognised the good quality of the current policy and associated procedures, which will be further strengthened by this revision.

- 5.8 The Council is externally inspected on its use of covert surveillance approximately every three years. The last inspection visit was on 16 August 2016 and therefore an inspection is likely imminent.

Does the information submitted include any exempt information?

No

List of Appendices:

Appendix 6(a) - Covert Surveillance Policy (the appendices to this policy are not included but are predominantly the forms supporting the policy).

6.0 Legal considerations:

- 6.1 Non-adherence to the Policy could result in the Council contravening the Human Rights Act 1998 and may prevent the successful prosecution of those identified as committing criminal activities.

7.0 Human Resources considerations:

- 7.1 Staff involved in the process are offered the opportunity to attend training on the procedures which need to be followed when planning to undertake covert surveillance.

8.0 Equalities considerations:

- 8.1 The Covert Surveillance policy does not discriminate or adversely impact protected groups in any way. More detailed reflection on how specific covert surveillance could affect people differently because of shared protected characteristics as defined in the Equality Act will be considered on a case by case basis.

9.0 Financial considerations:

- 9.1 The covert surveillance process is already embedded into the Council's investigatory activities and therefore will not result in an additional cost.

10.0 Risk management considerations:

- 10.1 There is a risk that the Council is subject to legal action due to non-compliance with the RIPA legislation due to a breach of the Human Rights Act. However, having a detailed formally agreed policy which is followed by officers working to this policy will mitigate such risk.

11.0 Ethical considerations:

11.1 All applications submitted are assessed to determine whether they are proportionate to the activity taking place and controls implemented to reduce the impact of collateral damage.

12.0 Internal/ External Consultation undertaken:

12.1 The Covert Surveillance policy has been prepared by the Deputy Head of Legal Services based on good practice. Consultation on the policy has been undertaken as follows:

- 28 August 2019 – Review of draft policy with Deputy Head of Legal Services, Director of Governance and Partnerships and Head of Audit and Risk.
- 15 October 2019 – Review of the draft policy by the Corporate RIPA Group.
- 4 November 2019 – Review of the draft policy by the Corporate Leadership Team.

13.0 Background papers:

13.1 None