

AUDIT AND GOVERNANCE COMMITTEE



Report subject	BCP Council Regulation of Investigatory Powers Act (RIPA) Policy approval
Meeting date	22 April 2021
Status	Public Report
Executive summary	<p>The policy ensures compliance with the regulatory framework for the use of covert surveillance by BCP Council as set out in the Regulation of Investigatory Powers Act 2000 (RIPA) and RIPA (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 (and as amended 2012).</p> <p>BCP Council expects this policy to be rarely used; the Council will seek to minimise use of covert surveillance and will use overt methods of obtaining required information wherever possible.</p> <p>A very limited number of trained Council officers are able to approve applications to a magistrates' court to authorise a RIPA operation.</p>
Recommendations	<p>It is RECOMMENDED that Audit & Governance Committee:</p> <ul style="list-style-type: none"> approve the Council's Regulation of Investigatory Powers Act (RIPA) Policy
Reason for recommendations	To ensure appropriate Council policies are in place and are in line with best practice and legislation.
Portfolio Holder(s):	Cllr Drew Mellor, Leader of the Council
Corporate Director	Graham Farrant, Chief Executive
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Wards	Council-wide
Classification	For Recommendation Decision

Background

1. The Regulation of Investigatory Powers Act (RIPA) was enacted in 2000 to regulate the manner in which certain public bodies may conduct covert surveillance to ensure that the relevant investigatory powers are used in accordance with human rights.
2. Local Authorities are not permitted to carry out all the provisions of the Act as some are limited to law enforcement and national security services.
3. Local Authorities are required to provide the Investigatory Powers Commissioner's Office (IPCO) with an annual return showing any RIPA provision use.
4. BCP Council has not used RIPA provisions since it came into being on 1st April 2019. BCP Council would have had to rely on one or other legacy Council procedure, had it needed, to use RIPA provisions. A BCP RIPA Policy now provides a more appropriate and reassuring governance framework going forward.

The BCP RIPA Policy

5. The BCP RIPA Policy clearly explains the type of surveillance the Council can and cannot undertake and also explains those limited circumstances where covert surveillance may be appropriate.
6. The Policy ensures compliance with the regulatory framework for the use of covert investigatory techniques by BCP Council as set out in the Regulation of Investigatory Powers Act 2000 (RIPA) and RIPA (Directed Surveillance and Covert Human Intelligence Sources CHIS)) Order 2010 (and as amended 2012).
7. BCP Council expects this Policy to be rarely used and will seek to minimise use of covert surveillance wherever possible using overt methods of obtaining required information where that alternative is possible.
8. A deliberately very small number of trained Council officers will be empowered by the Policy to approve applications to a magistrates' court to approve any RIPA operation. Under the Policy these officers will be known as RIPA Authorising Officers.
9. In BCP Council RIPA Authorising Officers will be the Regulatory Services Manager, the Service Director for Communities, Corporate Directors and the Chief Executive. This means in total there will currently be seven RIPA Authorising Officers in BCP Council.
10. In cases where it is necessary to do so, no covert surveillance operation will begin without a magistrates' court approval being in place. It should be noted that in a limited number of cases the Council may conduct covert surveillance (if it is not directed surveillance or using a CHIS) without the need for a magistrates' court approval although principles within RIPA still apply.
11. The Director of Law and Governance (Monitoring Officer) will be the RIPA Senior Responsible Officer (SRO) and will ensure the integrity of the process in place within the Council for directed surveillance and CHIS, as well as having overall responsibility for the management and oversight of requests and authorisations under RIPA.
12. The Head of Audit & Management Assurance will be the RIPA Administrator and be responsible for ensuring a comprehensive single corporate record exists which will enable full annual reporting to the Information Commissioner's Office and the BCP Council Audit & Governance Committee.
13. As a matter of good practice formal deputies have also been identified for the two roles at 11 and 12.
14. The Investigatory Powers Act 2016 (IPA), which came into force for local authorities 11 June 2019, is the main legislation governing the acquisition of Communications

Data and therefore needs equal billing with RIPA. IPA brings together relevant new powers but does not fully replace pre-existing RIPA legislation. In simple terms RIPA relates to Directed Surveillance and to CHIS and IPA relates to Communications Data acquisition.

15. BCP Council is in the process of drafting an IPA Policy for communications data acquisition and this will be presented to Audit & Governance Committee for approval in due course. Similar to the statement made at 4, BCP Council has not used IPA provisions since it has come into being.
16. Should the need arise (to acquire communications data) before a BCP IPA Policy is approved, Appendix E to the RIPA Policy outlines the flowchart procedure that BCP officers will follow to ensure full compliance with legislation. It should be noted that external agency officers are required in this process.
17. Similar to the statement made at 7, BCP Council expects the need to acquire communications data (utilising any powers in the IPA) to be an extremely rare occurrence.

Options Appraisal

18. An options appraisal is not applicable for this report.

Summary of financial implications

19. There are no direct financial implications from this report.

Summary of legal implications

20. The Council must follow Regulation of Investigatory Powers Act (RIPA) requirements should it wish to enact covert directed surveillance or use CHIS.

Summary of human resources implications

21. There are no direct human resource implications from this report.

Summary of sustainability impact

22. There are no direct sustainability impact implications from this report.

Summary of public health implications

23. There are no direct public health implications from this report.

Summary of equality implications.

24. There are no direct equalities implications from this report.

Summary of risk assessment

25. There are no direct risk implications from this report.

Background papers

None

Appendices

Appendix A BCP Regulation of Investigatory Powers Act (RIPA) Policy