

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE 12 FEBRUARY 2020</b>
<b>SUBJECT:</b>	<b>USE OF THE POWERS AVAILABLE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND INVESTIGATORY POWERS ACT 2016 YEAR ENDING 31 DECEMBER 2019</b>
<b>LEAD OFFICER:</b>	<b>JACQUELINE HARRIS BAKER, EXECUTIVE DIRECTOR OF RESOURCES AND MONITORING OFFICER</b>
<b>CABINET MEMBER:</b>	<b>COUNCILLOR HAMIDA ALI  CABINET MEMBER FOR SAFER CROYDON AND COMMUNITIES</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b>	
Monitoring compliance with the Regulation of Investigatory Powers Act and Investigatory Powers Act 2016 to support the Council's approach to corporate governance.	
<b>FINANCIAL IMPACT</b>	
Implementation of the recommendations contained in this report have no financial implications.	
<b>FORWARD PLAN KEY DECISION REFERENCE NO:</b> This is not a key decision.	

## **1. RECOMMENDATION**

The Committee is asked to note the use of the Regulation of Investigatory Powers Act 2000 and the Investigatory Powers Act 2016 by the Council over the past calendar year.

## **2. EXECUTIVE SUMMARY**

- 2.1 The purpose of this report is to inform the Committee how the powers available to the Council under Regulation of Investigatory Powers Act 2000 (RIPA) and Investigatory Powers Act 2016 (IPA) have been used over the last calendar year.

## **3. DETAIL**

- 3.1 RIPA legislates for the use by local authorities of covert methods of surveillance and information gathering to assist the detection and prevention of crime in relation to an authorities core functions. Evidence obtained by any covert surveillance could be subject to challenges under Article 8 of the European Convention on Human Rights

(ECHR) - the right to respect for private and family life. However, properly authorised covert surveillance under RIPA makes lawful what might otherwise be a breach of Article 8 of the ECHR and protects the Council from any civil liability. A public authorities “core functions” are the specific public functions it undertakes when providing services, in contrast to the “ordinary functions” which are those undertaken by all authorities (e.g. employment issues, contractual arrangements etc.). Therefore a public authority may only engage in the use of RIPA/IPA when in performance of its “core functions”.

3.2 Using RIPA/IPA, but only for the purpose of investigating crime and disorder, the Council is able to:

- Carry out covert directed surveillance;
- Use covert human intelligence sources; and/or
- Acquire data relating to communications (e.g. telephone subscriber information).

3.3 ‘Covert’ in this context means carried out in a manner calculated to ensure that those subject to the surveillance are unaware that it is or may be taking place. It usually involves personal observation, the use of CCTV, or accessing communications data such as mobile phone number subscriber or website details. However, even using these powers, the Council cannot carry out intrusive surveillance, such as putting a hidden camera in a suspect’s home to observe them, or listening to or obtaining the contents of telephone call or emails; such intrusive surveillance can only be carried out by the Police and government security services.

3.4 Further, even where the covert investigations are for the purpose of preventing crime and disorder, the Council must also show that the surveillance is necessary and proportionate and can be balanced against an individual’s right to their private and family life.

3.5 Covert Human Intelligence Sources (CHIS) are individuals who by the nature of their situation are able to provide information in a covert manner to aid an investigation. The use of CHIS is very tightly controlled under RIPA and historically the Council has not made use of this aspect of RIPA.

3.6 It should also be noted that in respect of communications data, the Investigatory Powers Act 2016 (IPA) came into force for Local Authorities in May 2019. This legislation is aimed at facilitating public authorities to lawfully obtain Communications data to assist their investigations. The information obtainable under IPA is split into two types:

**Entity Data** - this data is about entities or links between them but does not include information about individual events. Entities could be individuals, groups and objects (such as mobile phones or other communications devices).

Entity data can be obtained for the investigation into any crime, and includes: incoming call data, IP address, IMEI number and Royal Mail re-directions.

**Event Data** - identifies or describes events which consist of one or more entities

engaging in an activity at a specific time or times. Events data can be obtained for the investigation of a **Serious Crime Only** that is:

- An offence that is capable of attracting a prison sentence of 12 months or more;
- An offence by a person who is not an individual (i.e. a corporate body);
- An offence falling within the definition of serious crime in section 263(1) of the IPA (i.e. where the conduct involves the use of violence, results in substantial financial gain or is by a large number of persons in pursuit of a common purpose);
- An offence which involves, as an integral part of it, the sending of a communication; and/or
- An offence which involves, as an integral part of it, a breach of a person's privacy.

3.7 Local Authorities require judicial approval from a Court for the use of covert directed surveillance and CHIS.

3.8 Access to communications data must now be authorised by a designated Head of Service and obtained via the Council's 'Single Point of Contact' who are National Anti-Fraud Network (NAFN). However rather than seeking the approval of the Magistrates Court the request is passed by NAFN to the Office for Communications Data Authorisation, who then scrutinise and the application and if they are satisfied approve the request.

3.9 Overall supervision of the Council's use of RIPA/IPA lies with the Executive Director of Resources including day to day monitoring of and advice on authorisations, to ensure that the issues of necessity and proportionality are fully considered and to ensure that all applications meet the necessarily high standard that is required.

#### 4. USE OF POWERS AVAILABLE UNDER RIPA/IPA

4.1 The occasions and outcomes where the use of the powers available under RIPA to aid the following investigations listed below were authorised during 2019.

- Directed Surveillance - None; and
- Communications Data Requests, as detailed below:

Applicant	Request Details	Outcome
Community Safety	Mobile entity data to support a fly tip investigation.	Investigation ongoing
Corporate Anti-Fraud	Fraud, evasion of business rates - Royal Mail redirect, mobile numbers/subscriber details and information for an email address.	Investigation ongoing
Corporate Anti-Fraud	Fraud in the evasion of business rates - subscriber information for email addresses.	Investigation ongoing
Corporate Anti-Fraud	Royal Mail redirect - Sub-letting investigation.	Investigation ongoing

Corporate Anti-Fraud	Mobile phone entity data - fraud/miss-representation.	Investigation ongoing
Corporate Anti-Fraud	Mobile phone entity data - fraud/miss-representation.	Investigation ongoing
Corporate Anti-Fraud	Mobile phone and email subscriber information - social housing succession investigation.	Investigation ongoing
Corporate Anti-Fraud	Fraud in the evasion of business rates - mobile subscriber and email account information.	Investigation ongoing
Trading Standards	Fraud, money laundering and conspiracy - telephone number.	10 Defendants were convicted at Croydon Crown Court of offences of fraud and money laundering arising from a series of door step frauds against elderly people in South Croydon and across the south east. Sentencing is awaited.

4.2 The Council's use of these powers, its policy and procedures are subject to inspection and audit by the Investigatory Powers Commissioner's Office. During these inspections, individual applications and authorisations are closely examined and Authorising Officers are interviewed by the inspectors.

## 5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 There are no direct financial implications arising from this report.

## 6. LEGAL IMPLICATIONS

6.1 There are no direct legal consequences arising from the contents of this report beyond those set out in the body of the report.

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**BACKGROUND DOCUMENTS:** Exempt