

REPORT: Executive Board

DATE: 14 September 2023

REPORTING OFFICER: Operational Director – Legal and Democratic Services

PORTFOLIO: Leader

SUBJECT: Regulation of Investigatory Powers Act 2000 (“RIPA”) & Investigatory Powers Act 2016 (“IPA”) updated Policy and Use

WARDS: Borough-wide

1 PURPOSE OF REPORT

- 1.1 To seek the Executive Board’s approval of the updated RIPA and IPA Policies and accompanying Employee Guides which cover the use of covert surveillance and the acquisition of communications data.
- 1.2 To update members on the Council’s written response to the Investigatory Powers Commissioner’s Office (“IPCO”) updating them on the Council’s use and compliance with RIPA and IPA.

2 RECOMMENDATION

It is recommended that the Executive Board:-

- 1. approve the revised RIPA policy and accompanying Employee Guide;**
- 2. approve the revised IPA Policy and accompanying Employee Guide; and**
- 3. note the recent response to the IPCO.**

3 SUPPORTING INFORMATION

What is RIPA?

- 3.1 RIPA regulates the use of covert surveillance by public bodies, including local authorities. It sets out an authorisation framework and a number of controls on local authority use to ensure that such surveillance is used in a manner that is compliant with human rights. The covert surveillance of citizens will always engage the right to privacy and family life under Article 8 of the European Convention of Human Rights since private information is likely to be obtained without a person’s knowledge or consent. This is a qualified right which means that it can be interfered with provided such interference is justified and

in accordance with the law. Article 6 – the right to a fair trial – may also be engaged where information obtained by covert surveillance is subsequently used in criminal proceedings against that person, especially when carried out without authorisation.

3.2 An authorisation under RIPA gives lawful authority to carry out covert surveillance and protects the Council and its officers against:-

- claims for breaches of the Human Rights Act 1998;
- evidence being ruled inadmissible in criminal proceedings;
- complaints to the Ombudsman or the Investigatory Powers Tribunal, who oversees compliance with RIPA and has the power to award compensation; and
- reputational damage.

3.3 This is often referred to as the “RIPA shield”.

3.4 The Council uses covert surveillance to support its law enforcement functions. It is rarely employed given that most information can be obtained by overt investigatory techniques. However, there are circumstances where covert surveillance is necessary and the offence is serious enough to warrant such an intrusion into a person’s private life. Trading Standards are the main department that are likely to use covert surveillance. This will either be by directed surveillance (surveillance of an individual for a specific purpose without their knowledge) or the deployment of a covert human intelligence source (informants and undercover test purchasers) or CHIS for short.

3.5 Importantly, RIPA provides that the Council can only use these covert techniques for the purposes of preventing or detecting crime or disorder and where it is proportionate to do so. Furthermore, directed surveillance may only be used where the matter involves a criminal offence punishable by a maximum custodial sentence of six months or more or relates to the underage sale of alcohol or tobacco. This is known as the Crime Threshold and does not apply to the use of a CHIS.

3.6 RIPA provides that covert surveillance must be authorised internally by “authorised officers” and by the Magistrates Court before a RIPA authorisation will be valid. The authorising officers are set out in the Council’s constitution and include the Chief Executive and the Group Solicitors in Legal Services. Once obtained, investigations must be carried out in accordance with an authorisation to maintain the RIPA shield.

What IPA?

3.7 IPA supplements RIPA in that it regulates the acquisition of communications data, such as telephone billing and subscriber data. Communications technology has evolved rapidly over the last twenty years and this evolution has brought with it huge challenges for

criminal and fraud investigations. Acquiring communications data assists in proving or disproving an individual's involvement in criminal investigations since it shows **when** a communication happened, **where** and **who** it came from, where it was going and **how** it was communicated. It does not, however, show what was said or written.

- 3.8 IPA follows a similar authorisation process to that set out in RIPA. An authorisation is lawful authority for acquiring communications data and therefore interfering with a person's Article 8 rights.
- 3.9 However, there are some important differences. The process starts by the applicant (i.e. the relevant enforcement officer) generating an on-line application via NAFN (the National Anti fraud network). An approved rank officer within the Council (the Group Solicitors) is "made aware" of the application who then submits it to NAFN for processing and checking its compliance with the law. The application is then approved by the Investigatory Powers Commissioner via the Office for Communications Data Authorisations rather than by the judiciary.

The Council's RIPA/ IPA Policies

- 3.10 RIPA and IPA are supplemented by Codes of Practice issued by the Home Office which must be followed by the Council. The Covert Surveillance and Property Interference Revised Code of Practice 2022 provides that elected members should review the Council's use of RIPA and set the policy at least once a year.
- 3.11 RIPA has not been used by the Council for some time, with the last authorisation being granted in 2018.
- 3.12 The Council's RIPA policy and accompanying Employee Guide is attached at **Appendix A**. This has been in place for some time but has recently been updated to reflect amendments to the above Code of Practice, particularly on the procedure for deleting material obtained by covert surveillance.
- 3.13 The IPA Policy and its accompanying Employee Guide is also attached at **Appendix B**.
- 3.14 In a nutshell, these policies and the accompanying employee guides set out in detail the requirements of RIPA, IPA and the Codes of Practice and explain how and when an authorisation can be obtained, with reference to the Council's internal procedures. They also detail how material obtained is to be safeguarded and retained. All officers undertaking investigatory activities are required to only do so in accordance with these policies and employee guides.

Who oversees compliance with RIPA/IPA?

- 3.15 The Investigatory Powers Commissioner's Officer ("the IPCO") oversees compliance with RIPA and IPA and the Codes of Practice. Significantly, the IPCO conducts three-yearly inspections of the Council's use and procedures. The last inspection was undertaken in February 2020 and was satisfactory.
- 3.16 On 5 July 2023, the Council received correspondence from the IPCO advising that they will no longer undertake routinely an inspection and instead ask local authorities for a written update of their compliance. A copy of the IPCO's letter is attached at **Appendix C**. This also requests the Council to answer several questions which the Council has done, with the response being sent on 10 August 2023. For completeness, this is attached at **Appendix D**. As Members will note, refresher training on RIPA was delivered, in-house, by Legal Services to enforcement officers and managers earlier this year. This also focused on the Council's own RIPA policy, the Codes and Practice and the use of social media as part of investigations, including avoiding inadvertent, unauthorised use.
- 3.17 Members are requested to note the contents of the letter to the IPCO and approve the updated RIPA and IPA policies and accompanying Employee Guides.

4. POLICY IMPLICATIONS

- 4.1 The Council's current policies on RIPA and IPA have been updated to reflect updates to the Codes of Practice issued by the Home Office and to which the Council must adhere.

5. FINANCIAL IMPLICATIONS

- 5.1 There are no financial implications as this is a policy update.

6. IMPLICATIONS FOR THE COUNCIL'S PRIORITIES

6.1 Children and Young People in Halton

N/A

6.2 Employment Learning and Skills in Halton

N/A

6.3 A Healthy Halton

N/A

6.4 A Safer Halton

N/A

6.5 Halton's Urban Renewal

N/A

7. RISK ANALYSIS

7.1 The Covert Surveillance and Property Interference Revised Code of Practice 2022 issued by the Home Office pursuant to section 71 of the Regulation of Investigatory Powers Act 2000 provides guidance to local authorities. The guidance states Members should review the Council's use of RIPA and set the Council's policy at least once a year.

7.2 These policies and the training that was carried out earlier this year will mitigate the risk of staff breaching codes of practice and/ the law.

8. EQUALITY AND DIVERSITY ISSUES

8.1 There are no equality issues arising from this report.

9. CLIMATE CHANGE IMPLICATIONS

9.1 There are no climate change implications.

10. LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

None under the meaning of the Act.