

## Strategy & Resources Committee Tuesday, 22 September 2020

### Annual RIPA report

Report of:	Lidia Harrison, Head of Legal and Monitoring Officer <a href="mailto:lharrison@tandridge.gov.uk">lharrison@tandridge.gov.uk</a>
ELT Lead	Elaine Jackson, Acting Chief Executive <a href="mailto:EJackson@tandridge.gov.uk">EJackson@tandridge.gov.uk</a>
Publication status:	Unrestricted
Wards Affected:	All Wards
Recommendations:	That it be recommended that the Committee:  A. Notes the content of this Report; and B. Approves the Council's updated RIPA Policy.
Appendices:	Appendix 'A' - RIPA Policy (updated)  Appendix 'B' - RIPA Officer Guidance
Background papers defined by the Local Government (Access to Information) Act 1985	None

#### 1. Executive Summary

- 1.1 This report provides an annual update and proposed amendments to the Council's current RIPA Policy.
- 1.2 As the Council received a visit from a member of the Investigatory Powers Commissioner's Office (**IPCO**) in early 2020, this report will also provide a summary of their recommendations and what action the Council is taking as a consequence.

#### 2. Background

- 2.1 The Regulation of Investigatory Powers Act 2000 (**RIPA**) sets out the ways in which the Council can lawfully carry out investigations where it wants to employ surveillance techniques, ensuring that the right balance is achieved between public interest and individual human rights. RIPA requires the Council to have in place procedures to ensure that when required, surveillance is seen as necessary, proportionate and is properly authorised.

- 2.2 The Council is required to have a RIPA Policy and the current one was last approved by the Strategy & Resources Committee on 21<sup>st</sup> March 2019. The RIPA Policy must be reviewed annually.
- 2.3 This report provides (i) an annual update, and (ii) a revised RIPA Policy, for consideration and approval by the Committee.
- 2.4 At the start of 2020, an inspector from the IPCO visited the Council. The IPCO is the regulator in relation to RIPA and provides independent oversight and authorisation of the use of investigatory powers by intelligence agencies, police forces and other public authorities. The visit made to the Council was routine in nature and was not precipitated by any action/inaction by the Council. As the recommendations made by the inspector have fed into amendments made to the policy, and other actions taken by the Council, this report will deal with the IPCO findings in the first instance.

### 3. IPCO Findings

- 3.1 Firstly, it should be noted that the visit made by the inspector was of an informal nature. They noted that a full inspection by the IPCO is overdue, however, suggested conducting an informal review of the policies and procedures in place at the Council, to provide the Council time and opportunity to make any necessary changes to its existing practices. Following this, it is intended that when a full inspection is carried out, at a later date, the Council shall be fully compliant with all requirements.
- 3.2 Further, it is important to note that the inspector was, broadly speaking, satisfied with the Council's policies and practices in relation to RIPA. They did, however, have some recommendations to bring the Council in line with best practice. These are set out below.
- 3.3 The current policy refers to a number of "Authorising Officers". All of the named individuals have since left the Council. The inspector recommended that new officer details should be inserted. The new policy includes the following individuals/posts as "Authorising Officers":
- Elaine Jackson - Acting Chief Executive;
  - Charlotte Parker - Chief Planning Officer; and
  - Alison Boote - Executive Head of Communities.
- 3.4 In addition to updating the list of "Authorising Officers", the current policy has also been updated to include (i) an Impact Risk Assessment Form, (ii) details of the new Data Protection Officer, and (iii) some clarification in relation to social media and directed surveillance.
- 3.5 The inspector also recommended that, in addition to the RIPA policy, there should be some guidance notes for officers, to provide more practical guidance than is usually found in a formal policy document. They suggested that the guidance document could include a flowchart and information in relation to the

potential for social media monitoring to engage RIPA. The Council has addressed these points by drafting “Guidance Notes for Officers”, which can be found at Appendix B to this report. As this is not a formal policy document, it does not require ratification by the Committee but is included for information purposes only.

- 3.6 Lastly, the inspector strongly recommended that the Council commission an external provider to assist with appropriate training for staff, to include not just those mentioned within the RIPA policy but also officers who deal with enforcement, and revenue and benefits, for example. Home Office guidance also requires that officers are trained in RIPA in the future event that the Policy needs to be applied and authorisations granted.

#### 4 Training

- 4.1 Although the inspector was not permitted to suggest a particular training consultant, s/he offered to review those short-listed by the Council to confirm whether their course content covered what was likely to be required for the Council’s purposes.

- 4.2 Research was carried out on relevant RIPA training providers, and the one selected has been verified by the inspector as meeting the necessary requirements. The training was originally intended to be undertaken at the start of the financial year, however, this was postponed due to the Covid-19 pandemic. The training took place on 10<sup>th</sup> September 2020, at the Council’s offices (in the Chamber, to observe social distancing restrictions), with several delegates attending remotely. The training lasted one full day and those who attended will receive a certificate. In total, 16 delegates attended the course. They work in the following areas:

- Legal;
- Chief Executive;
- Chief Planning Officer;
- Head of Communities, Asset and Property Management;
- s.151 Officer;
- Revenues and Benefits;
- Localities;
- Planning enforcement; and
- Tree Preservation Orders.

- 4.2 All Officers who may be involved in the application, authorisation and management of covert activity will receive training. Legal Services will keep a record of those receiving training and will work with Human Resources to ensure that training is carried out as appropriate to account for staff turnover, legislative changes etc.

- 4.3 In terms of cost, the price for the course was £1,800 (excluding VAT, travelling costs and officer time). Quotations from three companies were obtained. The company selected, Bond Solon, agreed to reduce their usual costs on request

by the Council. As the cost is under £5,000 no formal procurement process is required, nor a Procurement Activity Request. However, a Request for Quote Award Recommendation (below £5,000) has been completed and signed. The price secured represents good value to the Council as Bond Solon is one of the UK's leading legal and investigative training company and has been delivering training for over 20 years. They are specialists in providing RIPA and intelligence training to police forces and local and central government authorities. They deliver thousands of courses each year and these courses are designed specifically for local authorities to ensure that those attending have the knowledge, skills and confidence to competently make critical decisions affecting sensitive operational activity and are able to effectively gather and secure intelligence and evidence.

4.4 In terms of structure and content, the Council arranged for a bespoke training day, which was divided into two halves; the first half dealt with the work carried out by a RIPA Applicant, and the second half covered the work to be carried out by an Authorising Officer. Those attending were asked to stay for the whole course to obtain a better overall understanding of the process.

## 5. Other options considered

5.1 An alternative option is that Committee do not consider the feedback in respect of the RIPA inspection. This would go against the Council's RIPA Policy which requires annual review of the Council's Policy and procedure by Members.

5.2 Members could choose not to approve the amendments to the RIPA Policy or suggest alternative amendments. The Policy, if unamended, would remain in its current format and would not reflect recommendations from the IPCO nor be up to date and fit for purpose. The amendments proposed align with recommendations from the IPCO, any alternative recommendations may not be in line with IPCO requirements.

5.3 In terms of other options in relation to training providers, two other training providers were considered and short-listed, however, the course content and quality of training offered by Bond Solon was considered to be far superior to any other training consultant that had been shortlisted. The option of not providing a training consultant was not considered. The option of using an online training course was quickly discounted, as RIPA is a highly specialised area and requires robust and preferably, in-person, and tailored training for RIPA Applicants and Authorising Officers. Online training, where individuals carry out a brief multiple-choice test at the end, is not sufficient to meet the Council's requirements in relation to RIPA training.

## 6. Climate Change implications

6.1 RIPA training is of a specialist nature, and commands granular legal oversight considering its sensitivity and importance with regard to complying with the Council's statutory role in this arena. The training consultant company stated a preference for in-person training as in-person group participation yields better

learning outcomes in this specialist area. Making virtual attendance compulsory would therefore not be appropriate in this case. However, the RIPA training held on Thursday 10th September 2020 was hybrid in nature, encompassing both onsite and remote delegates. It is worth noting that most of the onsite delegates would be coming into the office anyway on that date. The RIPA training involved focussed sessions for e.g. the Authorising Officers, and RIPA Applicants. If the Council decides to roll out more generalist RIPA training, on an organisation-wide basis to all staff, it is intended that this would be delivered by way of an e-learning module, with a decreased carbon footprint. The training that was held on 10th September 2020 was delivered to those members of staff whose roles have a significant nexus with RIPA (e.g. RIPA Applicants and Authorising Officers) – in which case specific and in-depth training is required. In relation to staff whose roles do not have a close nexus with RIPA, but may in certain circumstances trigger the application of RIPA, an e-learning course will be appropriate.

## 7. Equality implications

- 7.1 In line with the Public-Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 7.2 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

## 8. Any other corporate implications where applicable

- 8.1 Not applicable.

## 9. Comments of the Chief Finance Officer

- 9.1 The Costs incurred for the RIPA training are £1,800 plus staff time. There is sufficient funding available to fund the training from the corporate training budget.

## 10. Comments of the Head of Legal Services

- 10.1 As the Council has recently been inspected by the IPCO, the attached policy has been drafted to reflect their recommendations. The Guidance Note for Officers also addresses further recommendations from the IPCO. This, together with the training provided, should ensure the Council is fully compliant with all its obligations in relation to RIPA, and should also provide Officers with the practical knowledge and confidence to be able to utilise RIPA, where relevant.

10.2 The key risks to the Council are that without clear and robust policies and procedures in place, there would be a risk that Officers/Members would fail to comply with the relevant legislation and associated codes of practice. Consequently, complaints may be made against the Council by aggrieved persons, which may proceed to investigation by the independent tribunals set up by the Office of the Surveillance Commissioner. The Tribunals have the power to cancel authorisations, order the destruction of any records obtained in exercise of the powers conferred by RIPA and award compensation as they see fit. The IPCO would also severely criticise such failure and the adverse publicity arising therefrom could damage the Council's reputation and not serve in its best interests.

## 11. Conclusion

11.1 Following the recommendations of the IPCO inspector in early 2020, the Council has (i) revised its policy in relation to the use of covert surveillance to ensure compliance with the provisions of RIPA, (ii) published Officer Guidance, and (iii) arranged for in-house training for relevant members of staff. Members are asked to note this compliance.

----- end of report -----