

<b>CITY OF WOLVERHAMPTON COUNCIL</b>	<b>Cabinet</b> <b>17 November 2021</b>
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<b>Report title</b>	Updated Regulation of Investigatory Powers Act Policy	
<b>Decision designation</b>	AMBER	
<b>Cabinet member with lead responsibility</b>	Councillor Paula Brookfield Governance and Equalities	
<b>Key decision</b>	No	
<b>In forward plan</b>	Yes	
<b>Wards affected</b>	All Wards	
<b>Accountable Director</b>	David Pattison, Chief Operating Officer	
<b>Originating service</b>	Governance	
<b>Accountable employee</b>	Susan White Tel Email	Service Lead 01902 556064 Susan.White@Wolverhampton.gov.uk
<b>Report to be/has been considered by</b>	Cabinet Member Briefing	October 2021

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**Recommendation for decision:**

The Cabinet is recommended to:

1. Approve the updated, corporate RIPA Covert Investigation Policy and corporate RIPA Operating Procedure.

**Recommendation for noting:**

The Cabinet is asked to note:

1. That the contents of this report and the steps taken to address comments made by the most recent inspection of the Council's arrangements in respect to RIPA regulated matters.

## **1.0 Purpose**

- 1.1 To update Cabinet on the Council's current position on compliance with the Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016 (IPA)

## **2.0 Overview**

- 2.1 RIPA and IPA apply to the City of Wolverhampton Council and employees who conduct surveillance activities and/or obtain communications data for use in criminal investigations.
- 2.2 Independent oversight of the legislation and its use in public authorities historically came under the Office of Surveillance Commissioner for Directed Surveillance and Covert Human Intelligence Sources and Inspection of Communication Commissioners Office for Communications Data.
- 2.3 The IPA implemented changes to the oversight regime creating one body, the Investigatory Powers Commissioners Office (IPCO). Their purpose is to oversee how powers are used, taking account of public interest and ensuring investigations are conducted in accordance with the law. The commissioners collect statistics and conduct routine audits of the local authority.
- 2.4 Sir Brian Leveson replaced Sir Adrian Fulford as the Investigatory Powers Commissioner in October 2019. Before taking up this role, Sir Brian was President of the Queen's Bench Division and Head of Criminal Justice for England and Wales.
- 2.5 By conducting robust, evidence-based inspections of the use of investigatory powers, the Inspectorate ensures that those public bodies authorised to use investigatory powers are doing so lawfully and in line with best practice.

## **3.0 Background and context**

### **IPCO inspection:**

- 3.1 The Council was first inspected by IPCO in January 2019, via a desktop-based documentary inspection, the outcome was reported to the Chief Executive on 14/02/2019. The inspector reviewed the Council's previous inspection from 2015 and commented that the recommendation made during the last inspection had been discharged and observation points had also been considered in detail by the Council.
- 3.2 RIPA usage declined after the Protection from Freedoms Act 2012 implemented Judicial oversight and a 'criminal threshold' for undertaking Directed Surveillance. No authorised RIPA activity was undertaken between the inspection in 2015 and the desktop inspection in 2019.
- 3.3 Following the desktop inspection, the commissioner advised there was no need for a physical inspection at that stage, several observations/ recommendations were made:

1. The commissioner acknowledged that RIPA awareness training had been undertaken since the last inspection (2015), but advised there was a need for regular training and awareness to be developed and introduced throughout the Council to ensure those who may engage RIPA powers, remain “match fit”, however remote a possibility it may appear the powers need to be used.
  2. The Council had a scheduled audit of areas where covert activity could take place via social media. Due to the increasing use and accessibility of social media to offer initial investigative leads and assist with enforcement or other responsibilities, the commissioner commented the audit should be a regular occurrence.
  3. An amendment to the RIPA policy was suggested to update the authorisation period for juvenile CHIS, which was incorporated into the updated policy.
- 3.4 The commissioner reinforced the importance of regular, ongoing internal oversight of actual or potential use of RIPA powers, including the duty of the SRO to ensure resources are used in a controlled, auditable, and well understood manner.

#### **4.0 Current review:**

- 4.1 The RIPA policy was first approved by Cabinet in 2013, since the inspection in 2019, the policy and procedures have been fully reviewed and a comprehensive training program and e-learning module have been developed and rolled out to staff.
- 4.2 An annual review of the RIPA policy will be undertaken and presented to Cabinet, and quarterly reports on the Council’s use of RIPA will be presented to the Cabinet Member – Governance and Equalities.
- 4.3 Training has been developed and introduced throughout the Council. Staff were identified to undertake face to face training, which was completed by all staff who had been identified as potential users of RIPA techniques. An e-learning module was also developed and rolled out to a wider staff group to increase the Councils overall understanding of RIPA.

#### **4.4 RIPA use since last inspection:**

##### **2019:**

01 - CHIS authorisation to identify and make initial contact with businesses advertising potentially misdescribed or illegal services on social media. Source used covert social media accounts and telephone with the use of an alias.

02 - CHIS authorisation to have further dialogue with businesses initially contacted in [01] by social media, telephone. To meet face to face and engage the service advertised, use of video surveillance to record transactions and conversations.

**2020:**

01 - DS authorisation of surveillance operative to visit premises and attempt test purchases of illegal products. Including Video footage of any sale made to aid identification of the seller and modus operandi of the sale.

**2021:**

01- DS authorisation of surveillance operative to undertake surveillance of target premises and obtain intelligence/evidence of illegal activity and to make links to other premises suspected to be involved.

**5.0 Reasons for decision(s)**

5.1 To ensure that the Council meets its legal obligations under the RIPA and the IPA.

**6.0 Financial implications**

6.1 There are no financial implications associated with the recommendation in this report.  
[GE/09112021/O]

**7.0 Legal implications**

7.1 The legal position is as set out in the report, it is critical that the Council complies with the legal obligations under the RIPA and the IPA and this report and associated documents ensures that it does do so.  
[DP/09112021/A]

**8.0 Equalities implications**

8.1 Equalities implications have been carefully considered, the subject matter of this report relates to ensuring that the Council meets its legal obligations and these include the Equality Act 2010 and the report and associated documents will ensure that each of these legal obligations are met.

**9.0 All other implications**

9.1 The other implications that apply are those related to Information Governance and again these have been taken into account in the formulation of the documents.

**10.0 Schedule of background papers**

10.1 Previous Cabinet reports including the [original approval in 2013.](#)

**11.0 Appendices**

11.1 Appendix 1: Covert Investigations Policy