

## **CABINET**

**18 OCTOBER 2022**

### **COVERT SURVEILLANCE POLICY**

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from / author: Bhupinder Gill, Assistant Director Legal and Governance

#### **Summary**

In 2021 the Council updated its Covert Surveillance Policy as part of a cyclical process following changes in internal structures. Shortly afterwards, the Council were notified of an inspection to be conducted by the regulator, the Investigatory Powers Commissioner's Office (IPCO). The IPCO has recommended some changes to the policy and this report seeks approval of a revised policy.

#### **1. Budget and policy framework**

- 1.1. Approval of the Covert Surveillance Policy and Guidance is a matter for Cabinet whilst it is within the ambit of the Audit Committee to take on a reviewing role of the use of covert surveillance by the Council.

#### **2. Background**

- 2.1. The Council has a number of options available to it when investigating and prosecuting offences, the vast majority of investigation techniques are overt. There may be times however when it is necessary to undertake covert investigations. The use of such techniques is governed by the Regulation of Investigatory Powers Act (RIPA) 2000 as amended by the Protection of Freedoms Act 2012.
- 2.2. The current policy was last revised in late 2021 to take into account organisation changes.
- 2.3. The Council is inspected periodically by the Investigatory Powers Commissioner's Office ('IPCO'), and shortly after the last revision of the policy we were informed of such an inspection. Following an inspection the IPCO recommended some changes to the policy. Taking into consideration the recommendations made and that no substantive review of the policy had taken place for a significant period of time, it was considered opportune to undertake a thorough review of the policy and adopt a process of going back to basics and starting with a clean sheet.

- 2.4. The IPCO has been very supportive of our approach and has assisted us with our review, checking the redrafted policy and proposed documentation, confirming that they are content with the proposed draft. We have also taken the opportunity to review our procedures relating to the authorisation of investigations, documents, training and document retention.
- 2.5. Subject to approval of the policy by Cabinet, a programme of training for relevant officers, (those applying for, authorising and reviewing), will be conducted by officers followed by annual refresher training. The provision of such will be met from existing budgets.

### 3. Options

- 3.1. Cabinet is being asked to approve the revised policy. Members could choose not to update the policy but doing so creates risks that evidence obtained using covert surveillance could be inadmissible in court and the Council could be the subject of complaints made to the Investigatory Powers Tribunal and enforcement action by the IPCO.
- 3.2. Option 1 Cabinet agree to update the policy.
- 3.3. Option 2 Do nothing.

### 4. Advice and analysis

- 4.1. Option 1 is recommended. This helps ensure that investigations can be successfully prosecuted and mitigates the risk of complaints being made regarding the Council’s use of surveillance to the tribunal.
- 4.2. Option 2 is not recommended by officers as it is likely that this would lead to significant criticism in the next IPCO inspection as the update reflects recommendations contained within the Inspectors report from 2018.

### 5. Risk management

Risk	Description	Action to avoid or mitigate risk	Risk rating
Failure to update the policy	Leaving the policy as is means that it hasn’t addressed the concerns raised in the IPCO inspection – it is likely to impact the Council’s investigations and my lead to prosecutions being unsuccessful.	Update the policy	C3

## 6. Financial implications

- 6.1. If the policy is not updated there is a risk that the Council will be liable for compensation following a successful complaint to the tribunal.

## 7. Legal implications

- 7.1. In order to carry out surveillance activities the Council must comply with the Regulation of Investigatory Powers Act 2000 ('RIPA') as amended. Having an up to date policy ensures compliance with these statutory regimes and empowers the Council to actively investigate matters such as illegal tobacco sales.
- 7.2. The compliance with those statutes is monitored by the IPCO as regulator via an inspection regime and the updates to the policy follow recommendations arising from the last inspection.

## 8. Recommendation

- 8.1. It is recommended that the Cabinet approves the updated Covert Surveillance Policy, attached at Appendix 1 to the report.

## 9. Suggested reasons for decision

- 9.1. The updates to the policy address the ever increasing popularity of the use of social media and reflect updates to job titles for authorising officers.

### Lead officer contact

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### Appendices

Appendix 1 – Revised Policy.

### Background papers

None