

To: Finance, Resources & Customer Services Policy Board

On: 2 September 2020

Report by: Director of Finance and Resources

Heading: Inspection by the Investigatory Powers Commissioner's Office

1. Summary

The purpose of this report is to advise members of the outcome of the recent inspection by the Investigatory Powers Commissioner's Office ("IPCO"), (formerly Office of Surveillance Commissioners ("OSC")), of the Council's covert surveillance activities and procedures under the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIPSA").

2. Recommendations

It is recommended that the Board note the positive outcome of the IPCO inspection.

3. Background

- 3.1 Following the implementation of the Human Rights Act 1998 ("HRA") in October 2000, "RIPSA" was enacted to create a legal framework, within which public authorities could continue to carry out covert investigations, when absolutely necessary, without breaching an individual's human rights.

As a result of HRA, the Council must afford everyone the right to respect for private and family life, including home and correspondence, in accordance with Article 8 of the European Convention on Human Rights (“ECHR”). RIPSA created a system of authorisations for various types of covert surveillance in recognition that, in certain limited circumstances, it may be necessary for the Council to carry out covert surveillance. If RIPSA is complied with, any interference with the right to privacy will be lawful. Providing the action taken is also necessary and proportionate, there will be no breach of HRA.

- 3.2 The system of authorisations under the 2000 Act was reported to the Policy and Resources Committee in November 2000 and the Council’s Surveillance Policy was first approved by the General Management Policy Board on 19th December 2001, revised by the General Management and Finance Policy Board in January 2008, January 2011 and further revised by Finance and Resources Policy Board in 2014 and 2016 and most recently by the Finance, Resources and Customer Services Policy Board in 2019.
- 3.3 The Head of Corporate Governance maintains a central register of any RIPSA authorisations, which is open to inspection by the IPCO, who have powers of inspection under RIPSA. Inspections by the former OSC were generally every three years. The Council was previously inspected in 2002, 2007, 2010, 2013, 2016 and most recently in March 2020. Previous inspections have always consisted of a one day visit by an Assistant Surveillance Commissioner or an Inspector, who meets with the Chief Executive, the Head of Corporate Governance, the Managing Solicitor (DPO), the Chief Auditor and officers from Services who have been, or could potentially become involved in covert investigations. Since the work of the former OSC has been assumed by the IPCO there has, however, been some scope for desktop inspections if the IPCO do not consider an on-site inspection to be necessary.
- 3.4 On this occasion, a preliminary telephone discussion was scheduled between the Inspector and the Managing Solicitor (DPO). The discussion was structured around a detailed questionnaire about the Council’s policies, procedures and guidance, which would subsequently inform the focus of the on-site inspection. The Inspector was fully aware of the positive outcome of the previous inspection in 2016, when there was no requirement for any formal recommendations. Further to the telephone interview and the provision of supporting documentation, the IPCO confirmed that the remote desktop inspection would suffice and no on-site inspection was necessary.

3.5 The report on the inspection was issued to the Chief Executive by the Rt. Honourable Sir Brian Leveson, the Investigatory Powers Commissioner. This confirmed that the level of compliance demonstrated removes the need for a physical inspection, on this occasion. Various positive aspects of the Council's procedures were highlighted, including:-

- A laudable process of continuous improvement developed by the Managing Solicitor (DPO) to ensure best practice despite no formal recommendations arising from the previous inspection;
- Further recognition of the exemplary training programme in place;
- Strong governance and clear oversight by the Head of Corporate Governance and Managing Solicitor (DPO) regardless of low usage by the Council of RIPSAs powers (only one authorisation has been granted in the last three year period), which was considered to be a positive and pro-active approach to compliance and
- A comprehensive Surveillance Policy and associated guidance of a particularly high standard.

3.6 The relevant officers have been advised of the contents and will continue to work with the Managing Solicitor (DPO) to ensure continued good practice.

Implications of the Report

1. **Financial** – none.
2. **HR & Organisational Development** – none.
3. **Community Planning** – none.
4. **Legal** – The Council complies with the Regulation of Investigatory Powers (Scotland) Act 2000 and should continue to only ever carry out covert surveillance activities in accordance with the Council' Surveillance Policy and Guidelines.
5. **Property/Assets** – none.
6. **Information Technology** – none.

7. **Equality & Human Rights** - The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because it is for noting only. If anything, the report impacts positively on human rights, as continued compliance with the RIPSAs procedures under inspection will ensure that there is no breach of the Human Rights Act 1998.
8. **Health & Safety** – none.
9. **Procurement** – none.
10. **Risk** – this Policy supports the management of risk by ensuring human rights compliance.
11. **Privacy Impact** – the Policy, procedures and guidance under inspection are designed to ensure compliance with the Art 8 right to privacy in the European Convention of Human Rights.
12. **Cosla Policy Position** - None

List of Background Papers

N/A

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