

ITEM No ...6.....

REPORT TO: COMMUNITY SAFETY AND PUBLIC PROTECTION COMMITTEE – 12TH JUNE, 2023

REPORT ON: USE OF REGULATION OF INVESTIGATORY POWERS (SCOTLAND) ACT 2000 AND REGULATION OF INVESTIGATORY POWERS ACT 2000

REPORT BY: EXECUTIVE DIRECTOR OF CORPORATE SERVICES

REPORT NO: 82-2023

1. PURPOSE OF REPORT

- 1.1 To advise the Committee of the use made by the Council of the powers under the Regulation of Investigatory Powers (Scotland) Act 2000 and the Regulation of Investigatory Powers Act 2000 from 1st April, 2022 to 30th April, 2023 and to note the Actions arising out of the recent Inspection of the Council by the Investigatory Powers Commissioner's Office have all been completed.

2. RECOMMENDATIONS

- 2.1 The Committee is asked to note the use which the Council has made of powers contained in the Regulation of Investigatory Powers (Scotland) Act 2000 and in related powers contained in the Regulation of Investigatory Powers Act 2000 between 1st April, 2022 to 30th April, 2023 as detailed in Appendix 1.
- 2.2 The Committee is asked to approve the Council's continued proportionate use of the powers, where necessary, in the areas of crime prevention and detection or preventing disorder, in the interests of public safety and for the purpose of protecting public health. In particular, the Council is asked to agree to continue to use the powers to prevent and detect anti-social behaviour.
- 2.3 The Committee is asked to note the Actions arising out of the recent Inspection of the Council by the Investigatory Powers Commissioner's Office noted in paragraph 4.7 have all been completed.

3. FINANCIAL IMPLICATIONS

- 3.1 None.

4. BACKGROUND

- 4.1 Since 2nd October 2000, the Human Rights Act 1998 has made it unlawful for the Council to act in any way which is incompatible with the Convention rights found in the European Convention on Human Rights. One of these rights is the right set out in Article 8(1) of the Convention to "respect for private and family life, home and correspondence".
- 4.2 A number of services within the Council occasionally require to carry out covert surveillance where persons are placed under observation without them being aware of it. These activities occur, in particular in the Council's Anti-Social Behaviour Team. A summary of the Council's directed surveillance activities are appended to this report for information. (Appendix 1)
- 4.3 Surveillance can, by its very nature, impact on the right to privacy of those being observed. In carrying out surveillance, the Council therefore needs to satisfy the tests found in Article 8 under which it is legitimate to interfere with privacy rights. The first test is that the interference must be explicitly authorised by law.
- 4.4 The Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) created a legal framework for the conduct of surveillance and related use of "covert human intelligence sources", that is undercover agents or informants. The Council has, however, never used

covert human intelligence sources and the Council's practice is to use directed surveillance which is a much less intrusive activity.

- 4.5 The Council also has limited powers under similar UK legislation - the Regulation of Investigatory Powers Act 2000 - to access certain telecommunications data. These powers have been very rarely used by the Council and have not been used at all in the past year.
- 4.6 Whenever considering directed surveillance, the Council has to balance whether the action is both necessary and proportionate. The possible interference in someone's private life has to be necessary in order to obtain the benefit of the supply of information. If there are other means of obtaining the information without directed surveillance then it would not be appropriate to carry out directed surveillance. Similarly, the Council has to balance whether the action in terms of the risk of interfering in someone's privacy is proportionate with the benefit that is achieved with obtaining the information through directed surveillance. In every case a senior officer of the Council considers these issues and authorises the directed surveillance.
- 4.7 The Council is inspected on a regular basis by the Investigatory Powers Commissioner's Office and the latest Inspection took place in February 2022. The overall conclusion of the Inspection was that there are suitably strong governance processes within the Council to ensure compliance with the relevant legislation and codes of practice.

The detailed Actions arising out of the Inspection and the Service responsible are noted below. These have all been completed.

Actions	By whom
Authorising Officers in Neighbourhood Services, and any other Services where surveillance equipment is being used, to arrange for a briefing session on the capability of surveillance equipment.	Neighbourhood Services.
Amend RIPSA Guidance Note as necessary to align with relevant codes of practice	Legal Services
Remind all Council Services that internet and social media investigations must be authorised, or where RIPSA does not apply must be audited for Human Rights compliance in a similar manner.	Legal Services
Amend RIPSA Guidance Note as necessary to signpost staff to relevant sections within codes of practice regarding CHIS	Legal Services
Provide RIPSA training to Chief Executive	Legal Services

5. POLICY IMPLICATIONS

- 5.1 This report has been subject to the Pre-IIA Screening Tool and does not make any recommendations for change to strategy, policy, procedures, services or funding and so has not been subject to an Integrated Impact Assessment. An appropriate senior manager has reviewed and agreed with this assessment.

6. CONSULTATIONS

- 6.1 The Council Leadership Team have been consulted in the preparation of this report.

7. BACKGROUND PAPERS

None.

Robert Emmott
Executive Director of Corporate Services

DATE: 24th May, 2023

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APPENDIX 1

AUTHORISATIONS FOR DIRECTED SURVEILLANCE FROM 1ST APRIL, 2022 TO 30TH APRIL, 2023

Alleged Drug Dealing	7
Graffitiing	1
Test Purchase of Tobacco/Nicotine Vapour Products	2
Excessive Noise	1
<i>TOTAL</i>	<i>11</i>