

## Wiltshire Council

### Individual Cabinet Member Decision

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**Subject:** Report on proposed amendments to: -

1. **Wiltshire Council's Corporate Policy and Procedures Document on Covert Human Intelligence Sources.**
2. **Wiltshire Council's Corporate Policy and Procedures Document on Directed Surveillance.**

And introduction of

3. **Guidance on the use of Social Media and Social Networking Sites for Children's Services ("RIPA Like" Process)**

**Cabinet Member: Councillor Ashley O'Neill**  
**Cabinet Member for Governance, IT, Broadband, Digital, Licensing, Staffing, Communities and Area Boards**

**Key Decision: No**

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#### **Executive Summary**

The Regulation of Investigatory Powers Act 2000 (RIPA), which came into force on 25 September 2000, was enacted in order to regulate the use of a range of investigative powers by a variety of public authorities. It gives a statutory framework for the authorisation and conduct of certain types of covert surveillance operation. Its aim is to provide a balance between preserving people's right to privacy and enabling enforcement agencies to gather evidence for effective enforcement action.

It is consistent with the Human Rights Act 1998 and creates a system of safeguards, reflecting the requirements of Article 8 of the European Convention on Human Rights (right to respect for a person's private and family life, home and correspondence). Compliance with RIPA means that any conduct authorised under it is "lawful for all purposes". This important protection derives from section 27(1) of RIPA, which gives the authorised person an entitlement to engage in the conduct which has been authorised.

Compliance with RIPA will assist the Council in any challenges to the way in which evidence has been gathered for regulatory purposes and will enable the Council to demonstrate within any enforcement proceedings, that the Council has acted lawfully.

The material obtained through use or conduct of a Covert Human Intelligence Source (CHIS) or by Directed Surveillance is subject to procedures and safeguards to ensure it is correctly handled, disseminated and stored, and is destroyed when it is no longer needed for its authorised purpose. The Council's policies have been amended to incorporate the Home Office's 2022 Code of

Practice for Covert Human Intelligence Sources and the Home Office's 2018 Code of Practice for Covert Surveillance and Property Inference.

The Council's policies in relation to CHIS and Directed Surveillance have been updated to:

- include guidance to help officers identify whether information obtained is "necessary" for its authorised purpose and highlighting the need to comply with relevant safeguards;
- include additional corporate oversight, by introducing a requirement for the Applicant to confirm the date of destruction of materials obtained, to the Senior Responsible Officer for RIPA. This will be recorded in the Central Record, and entries will be questioned upon review where such date has not been provided; and
- include details of the nominated Authorising Officers, whose role is to consider applications and whether any surveillance activity is necessary for the detection or prevention of crime or for prevention of disorder, and whether covert surveillance is a proportionate way for the Council to obtain the desired information.

As referred to above, applications can only be authorised where the surveillance activity is necessary for the statutory purpose, which is for the detection or prevention of crime, or for preventing disorder. As such, protection under RIPA would not be available to social workers where surveillance/investigation is undertaken for child protection purposes.

The 'Guidance on the use of Social Media and Social Networking Sites for Children's Services' is a "RIPA Like" process which has been created to help social workers demonstrate necessity and proportionality in respect of any surveillance/investigation undertaken.

It is consistent with the general guidance on use of social media for regulatory purposes which has already been adopted by the Council on 3 September 2019.

This guidance identifies circumstances where it would be prudent for social workers to follow the "RIPA Like" process, which requires the individual to obtain authorisation from their Team Manager prior to undertaking any covert surveillance/investigation on social media.

The process requires both the social worker and the Team Manager to give similar consideration as to whether authorisation is required, is necessary, is proportionate and whether it is likely there will be any collateral intrusion in the same way that an Applicant and Authorising Officer would consider such elements under the Council's CHIS and Directed Surveillance policies.

Appendix 1 of the guidance provides a request form for the social worker to complete, which will be reviewed and signed by the Team Manager. This will provide a written record of whether or not authorisation was granted and the reasoning for this.

**Proposal(s)**

1. Adoption of the updated Corporate Policy and Procedures Document on Covert Human Intelligence Sources.
2. Adoption of the updated Corporate Policy and Procedures Document on Directed Surveillance.
3. Adoption of Guidance on the use of Social Media and Social Networking Sites for Children's Services.

**Reason for Proposal(s)**

Adoption of the updated CHIS and Directed Surveillance policies is necessary to comply with the recommendation of the Investigatory Powers Commissioner, following the Surveillance Commissioner's Remote Inspection and resulting report dated 20 April 2022, that the Council's policies should be reviewed to incorporate the Data Safeguards contained within the then 2018 Codes of Practice for Covert Human Intelligence Sources and Covert Surveillance and Property Inference.

Frank Cain  
Consultant (Barrister Employed)

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**Cabinet Member for Governance, IT, Broadband, Digital, Licensing, Staffing, Communities and Area Boards**

**Key Decision:** No

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#### **Purpose of Report**

1. To seek amendment of:

- Wiltshire Council's Corporate Policy and Procedures Document on Covert Human Intelligence Sources; **(Appendix A)**
- Wiltshire Council's Corporate Policy and Procedures Document on Directed Surveillance; **(Appendix B)**

And adoption of:

- Guidance on the use of Social Media and Social Networking Sites for Children's Services **(Appendix C)**.

#### **Relevance to the Council's Business Plan**

2. Enforcement is one of the methods available to local authorities to ensure that regulatory requirements necessary in any community are maintained.
3. The RIPA procedure adopted by the Council and the proposed guidance on use of social media for Children's Services ensures that an appropriate balance is reached between preserving people's right to privacy and enabling enforcement teams to gather evidence for effective enforcement action, or social workers to gather evidence for child protection purposes.

#### **Background**

4. The Regulation of Investigatory Powers Act 2000 (RIPA) was enacted in order to regulate the use of a range of investigative powers by a variety of public authorities. It

gives a statutory framework for the authorisation and conduct of certain types of covert surveillance operation within regulatory investigations. Its aim is to provide a balance between preserving people's right to privacy and enabling enforcement agencies to gather evidence for effective enforcement action.

5. The Council has three adopted RIPA policies; a policy that relates to use of Covert Human Intelligence Sources, a policy which relates to Directed surveillance and a policy relating to Accessing Communications Data. This report relates to amendments to only the first two policies and is directed to ensuring that they remain fit for purpose.
6. The Policy relating to Accessing Communications Data is not included for amendment at this time because it remains fit for purpose in its current form.
7. Due to the Increasing use of social media as an investigative aid and on the recommendation of the Surveillance Commissioners during their Inspection in 2019 the Council on 3 September 2019 adopted general guidance for use of social media for investigative purposes in support of the adopted RIPA policies.
8. In consultation with the Children's Services Team specific guidance on the use of social media and social networking sites for Children's Services has been developed and adoption of this guidance will help provide a similar balance between preserving people's right to privacy and enabling social workers to obtain evidence for child protection purposes. This specific guidance for Children's services is consistent with the overarching general social media guidance already adopted by the Council.

### **Main Considerations for the Council**

9. Whilst use of covert investigative means of gathering evidence will always be a last resort and therefore in any given year there will be limited applications for authorisation, it is important that the Council has appropriate and up to date policies and guidance that are regularly reviewed.
10. The Investigatory Powers Commissioner's Office, in an inspection of the Council's RIPA processes in April 2022, noted that the Council were about to embark on a review of its policies and recommended the Council's policies should incorporate the Data Safeguards contained within the 2018 Covert Surveillance and CHIS Codes of Practice.
11. The existing policies did have data safeguards but were mainly based on retention of information in accordance with limitation Act requirements and the new data safeguarding requirements are focussed on retention only for as long as needed for the investigative purposes. These amendments are not considered a significant amendment to the Policies as they are merely bringing the Council's Policies in line with revised Home Office RIPA Code of Practices and Information Commissioner guidance on data safeguarding.
12. Additionally, a provision for corporate oversight in respect of the destruction of materials has been introduced by requiring the Council's Central Register to record the date on which such destruction has taken place. This will require the Manager of the Officer responsible for carrying the investigative work to advise the Council's RIPA senior Responsible Officer of that destruction date and for regular checks to be carried out to ensure that information gathered under a RIPA authorisation is being destroyed.

13. In addition, with the increased use of social media by the public there has been recognition by Children's Services and the Senior Responsible Officer for RIPA that there is likely to be an increasing need for social workers to use social media to gather information/evidence needed for child protection purposes.

14. Therefore, Legal Services has worked with Children's Services to develop a guidance document that Children's Services can use to ensure, as far as possible, that the public's right to privacy is only interfered with when it is necessary and proportionate and there is appropriate written evidence of these considerations.

### **Overview and Scrutiny**

15. As the amendments are merely reflecting changes in the codes of practice or guidance provided by overseeing responsible central government body or merely providing a focussed guidance for Children's Services based on a guidance already adopted by the Council it was not considered necessary on this occasion to engage with Overview and Scrutiny

### **Safeguarding Implications**

16. Having appropriate processes in place to ensure that any evidence/information gathering is conducted in a legally compliant way will ensure that within any safeguarding investigation, evidence/information is appropriately obtained.

### **Public Health Implications**

17. There are no direct public health implications.

### **Procurement Implications**

18. There are no procurement implications.

### **Equalities Impact of the Proposal**

19. There are no direct equality implications.

### **Environmental and Climate Change Considerations**

20. There are no direct Environmental and Climate Change implications.

### **Workforce Implications**

21. There are no direct workforce implications.

### **Risks that may arise if the proposed decision and related work is not taken**

22. The Council's RIPA policies will not be compliant with Home Office Codes of Practice and the Council will not be complying with the Surveillance Commissioner's recommendations.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

23. No identifiable risks.

### **Financial Implications**

24. No financial implications.

### **Legal Implications**

25. These are set out in the body of the report.

### **Options Considered**

26. There are no alternative options, adoption of the updated CHIS and Directed Surveillance policies is necessary to ensure that the policies remain fit for purpose and in accordance with revised Home Office Codes of Practice.

### **Conclusions/Proposal**

27. The Council's policies have been amended to ensure compliance with the Data Safeguards contained within the Home Office's 2022 Code of Practice for Covert Human Intelligence Sources and the Home Office's 2018 Code of Practice for Covert Surveillance and Property Interference.

28. The guidance for use of social media for investigative purposes (already adopted by the Council) is a supporting document in respect of the Council's Policies on RIPA and was introduced at the recommendation of the Surveillance Commissioner at an earlier inspection.

29. The Guidance for use of social media for Children's Services is specific guidance consistent with the general policy but developed for the specific requirements of Children's Services and the likely increased need for social workers to use social media for investigative purposes for child protection.

30. Under the Council's Policies power to make such amendments has been delegated to the Cabinet Member for Governance and staffing as the successor to the Cabinet Member for Resources.

### **Lead Director Perry Holmes**

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Report Author: Frank Cain, Consultant (Barrister, employed)

Email: [frank.cain@wiltshire.gov.uk](mailto:frank.cain@wiltshire.gov.uk) Tel: 01225 713032

Date of report 13 March 2023

### **Appendices –**

- A. Amended Wiltshire Council's Corporate Policy and Procedures Document on Covert Human Intelligence Sources.
- B. Amended Wiltshire Council's Corporate Policy and Procedures Document on Directed Surveillance.
- C. Guidance on the use of Social Media and Social Networking Sites for Children's Services.

## **Background Papers**

1. Home Office Covert Human Intelligence Sources Revised Code of Practice – August 2022
2. Home Office Covert Surveillance and Property Interference Revised Code of Practice – August 2018