



Inspection Report – Derbyshire Dales District Council

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1 Introduction

- 1.1 This inspection has been conducted to assess the level of compliance of this public authority with the Regulation of Investigatory Powers Act 2000 in respect of its use and management of covert surveillance, covert human intelligence sources and communications data. The most recent inspection of Derbyshire Dales District Council was undertaken by HH Brian Barker QC on 16 November 2015.
- 1.2 This inspection took place on 23 July 2019 and was conducted by Mrs Samantha Jones, Inspector.
- 1.3 This report is addressed to the Chief Executive, Paul Wilson, whose address for correspondence is Town Hall, Matlock, Derbyshire, DE4 3NN. His email address is paul.wilson@derbyshiredales.gov.uk
- 1.4 The Senior Responsible Officer and Monitoring Officer is Head of Corporate Services, Ms Sandra Lamb. Her email address is Sandra.lamb@derbyshiredales.gov.uk
- 1.5 Derbyshire Dales District Council Chief Executive is supported by six Departmental Heads covering Regulatory Services, Housing, Regeneration and Policy, Community and Environmental Services, Corporate Services, and Resourcing.
- 1.6 The Council has collaborated with other local authorities in the area (Chesterfield, North East Derbyshire and Bolsover, Amber Valley and Derby City) to form the Derbyshire Building Control Partnership to provide a unified single company to deliver building control services across the County. They have also collaborated to form 'The Derbyshire and Staffordshire Moorlands Home-Options Partnership' which is a partnership of councils and housing associations who work together to advertise available homes and offer advice to people looking for accommodation in the Amber Valley, Derbyshire Dales, Erewash, High Peak and Staffordshire Moorlands areas.

2 Inspection methodology

- 2.1 In the period since the last inspection, Derbyshire Dales District Council has not used the powers afforded to it under the legislation. In the previous inspection period, June 2012 to November 2015, only one authorisation for directed surveillance had been granted.
- 2.2 The persons interviewed during the course of the inspection are captured in Table 1 below.

Persons Interviewed
Paul Wilson – Chief Executive
Sandra Lamb – SRO and Monitoring Officer
Lee Gardner – Legal Services Manager and Deputy Monitoring Officer
Shaun Herritt – CCTV Manager
Forum of Authorising Officer(s) and Applicant(s)

Table 1. Persons interviewed

3 Key findings

3.1 Recommendations

3.1.1 The key recommendations arising from the inspection are listed in Table 2 below.

Number	Reference	In relation to	Recommendation	Recommendation type
R1	5.1.3 5.4.2	On-line activity	Desist in the use of personal profiles and ensure that any on-line activity is in accordance with the relevant Codes of Practice.	Core recommendation - improvements must be made
R2	5.1.6	Notification to Elected Members	Elected Members of a local authority should review the authority's use of the legislation and set policy at least once a year.	Core recommendation - improvements must be made

Table 2. Key recommendations resulting from inspection

3.2 Observations

3.2.1 The key observations arising from the inspection are listed in Table 3 below.

Number	Reference	In relation to	Recommendation	Observation type
O1	5.1.4	Policy	The policy to be further revised to include all references to the 2018 Codes of Practice, Home Office guidance and to remove reference to the obtaining of urgent oral authorisations.	Observation
O2	4.3 5.5.2 5.5.3	Training	That all relevant staff and the newly elected Councillors would benefit from updated RIPA training.	Observation
O3	5.1.5	RIPA Forms	To be amended to ensure that the referred to paragraphs of the Codes of Practice are reflective of the 2018 versions.	Observation

O4	5.3.2	Customer Relationship Management System	To be introduced within the current financial year.	Praise of good practice
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Table 3. Key observations resulting from inspection

4 Actions taken on previous inspection recommendations

4.1 **R1:** *Incorporate the 2014 Home Office Codes of Practice into available documentation.*

Discharged: This was addressed at the time of the last inspection and policy updated. It is noted that in relation to the current policy, whilst it is a comprehensive document, amendments need to be made to ensure the revised 2018 Codes are reflected within it. This is highlighted within observation O1.

4.2 **R2:** *Amend the RIPA Policy and Procedures document as appropriate.*

Discharged: See recommendation R1 above.

4.3 **R3:** *Increase the RIPA information flow to both Councillors and Authority Staff.*

Discharged: Training has been given to staff and Councillors since the last inspection. However, as Ms Lamb has highlighted during the Inspection process, there are fourteen new Councillors, resulting from the recent elections, all of whom require training on RIPA. This is reflected within O2.

4.4 **R4:** *Ensure sufficient focus on the potential pitfalls of any social media research in future training so as to ensure that any result is RIPA compliant and can survive criticism.*

Discharged: Training on the use of social media has been given and is now included within the policy document (part of Observation O1 is to also include paragraphs 3.10 -3.17 and 4.11 – 4.17 of the Surveillance and CHIS Codes of Practice respectively, within current policy).

5 Inspection findings

5.1 Policy and Procedures

5.1.1 In addition to the Chief Executive who is the authorising officer in respect of enhanced levels of authorisations, and the SRO who provides oversight, there are five authorising officers (Heads of Department). The majority of the staff undertaking the role of the applicant have been selected from the Regulatory Services Department.

5.1.2 The current policy document, which was updated and presented to the Elected Members on 15 March 2019, is published on the Council intranet and available to all staff. This is a comprehensive document and provides clear guidance covering the use of RIPA including explanations of relevant legislation and a useful appendix setting out a flow chart of circumstances where RIPA may need to be considered.

5.1.3 It could however benefit from amendment to the Social Networking and Internet Sites section to include, or by way of reference to, the relevant paragraphs in the revised Codes of Practice.

5.1.4 Other minor amendments needing to be included are: the procedures surrounding LPP; what is required to be included in the centrally retrievable records; and the deletion of any references to the obtaining of urgent verbal authorisation, which is no longer permissible. Due in part to the lack of authorisations being granted since before the Protection of Freedoms Act 2012 was introduced, there also appears to be no set procedure when seeking magistrates' approval. Inclusion of the relevant section, or by way of reference to the Home Office guidance to local authorities on the judicial approval process for RIPA, should suffice.

5.1.5 It was also highlighted that the current RIPA forms are ones that were issued by the Home Office in 2007, therefore all references to the Codes of Practice are outdated and should be reviewed and amended.

5.1.6 It has been noted that the Council has neglected to inform its Elected Members of the use of RIPA at least once a year in compliance with the Surveillance Code of Practice Paragraph 4.47. This is a requirement regardless of whether the powers have been utilised in the preceding period.

5.2 Surveillance

5.2.1 The Council has not made any use of directed surveillance but would not rule out the need to do so if circumstances dictate otherwise. It is in possession of cameras that could, if necessary, be used covertly. The staff are knowledgeable as to what would constitute surveillance and an example was given as to when it was considered recently in respect of fly tipping, but was ultimately resolved without the need for a camera to be deployed.

5.2.2 There have been no instances of unregulated surveillance occurring.

CCTV

- 5.2.3 The Council has direct control its own CCTV system, with the Derbyshire Constabulary having relinquished the running of it back to the Council in late 2017. Having spoken to the CCTV Manager, there have been no requests from the police to view any CCTV as part of a directed surveillance authorisation. Whilst the Manager is knowledgeable in this regard and would forward any request to the Legal Services department in the first instance, it is advisable to have a written protocol with a local Force if the CCTV system is to be used for directed surveillance. The protocol should include a requirement that the local authority should see the authorisation (redacted if necessary to prevent the disclosure of sensitive information) and only allow its equipment to be used in accordance with it (OSC (now IPCO) procedures and guidance 2016 note 272).
- 5.2.4 There is one body worn camera in existence, utilised by the anti-social behaviour officer. This is used in an overt manner with warnings given when recording takes place. Product is retained for 30 days prior to being destroyed. Any product that is retained for evidential purposes is kept in line with the obligations set out under CPIA.

5.3 Covert Human Intelligence Sources (CHIS)

- 5.3.1 As with surveillance, the Council has not made any use of CHIS. There are policies in place to liaise with Legal Services should circumstances lend themselves to a CHIS authorisation being considered. A discussion with the Chief Executive and the Legal Services Manager highlighted that it would be relatively easy for a department to identify if a member of the public was repeatedly providing information to the Council, but not if that reporting was spread across different departments.

5.3.2 The introduction of the new customer relationship management system, which logs all calls from the public across the spectrum, should address any possibility of status drift into CHIS territory.

- 5.3.3 Any test purchase operations undertaken by the Council are run in conjunction with the Derbyshire Constabulary and/or Trading Standards, acting under any authorisations obtained by them where appropriate.

5.4 Online Activity

- 5.4.1 With the ever-increasing use of the internet for investigative purposes, there is always the potential for investigators to conduct surveillance or low level undercover work. Although the Council is not ready to undertake such activity, there was a good understanding as to what activity would require a directed surveillance or CHIS authorisation.

5.4.2 Yet, the Council does not have a firewall that prevents access to social media sites such as Facebook, and no IT system in place to audit any open source research to provide the necessary reassurance that the Council is RIPA compliant. In fact, alarmingly, employees are not given access to create an overt Council profile, but instead are allowed to use their personal profiles to visit sites linked to Council investigations. This practice should be discontinued, and procedures adopted to ensure the welfare and safety of personnel at risk of such practice. Any future investigations conducted with the use of on-line activity should be completed in line with the requirements set out in paragraphs 4.11-4.17 and 3.10-3.17 of the CHIS and Surveillance Codes of Practice respectively.

5.5 Training

5.5.1 External RIPA training had been provided to the preceding Legal Services Manager every two years, the latest occurring in January 2019. PowerPoint presentation slides were then circulated to relevant personnel. The incumbent Legal Services Manager has also undertaken this training in January 2019 with their previous employer.

5.5.2 A number of authorising officers and applicants undertook external training back in 2017, but due to the changes in legislation since that time it would be fitting for further training to be considered.

5.5.3 A forum was held with the Chief Executive, together with four authorising officers and three applicants. All were knowledgeable on when and how authorisation should be sought and felt sufficiently confident to approach Legal Services prior to any being granted if they felt they were unsure. It was agreed that refresher training on a more regular basis would be of benefit.

5.5.4 A RIPA awareness training package is available to all staff on the Council intranet page which, whilst brief, covered the pertinent areas. Although it is not mandatory to complete, an audit by the IT department should allow for the identification of those who have not completed the package. It was pleasing to note that the SRO undertook a yearly audit of staff to ensure that training had been undertaken for their role as applicant and/or authorising officer and if not, were not allowed to undertake any such activity until refresher training had been undertaken.

5.6 Communications Data

5.6.1 Derbyshire Dales District Council is not currently registered with the National Anti-Fraud Network (NAFN) and therefore has not submitted any CD applications during the reporting period. (It is due to be re-registered in relation to a national licencing initiative.) However, the Legal Services Manager was not aware of the expansion of the Council's powers under the Investigatory Powers Act 2016 which includes 'events data' and relinquishes the necessity to obtain endorsement by a magistrate prior to acquiring CD. It has been recognised that this is a significant opportunity to conduct more effective investigations which should be further explored.

6 Conclusion

- 6.1 While the powers afforded to Derbyshire Dales District Council have not been used for many years, the potential benefits to an investigation, particularly in the digital age, has been highlighted. To ensure compliance, the Council must undertake a review of its social media policy and procedures as required by the first of two recommendations emanating from this inspection. The second recommendation is to highlight the lapse in informing the Elected Members in a timely manner of any activity undertaken, or not, as the case may be. A number of further observations have been made, each of which is easily remedied.
- 6.2 To be commended is the awaited introduction of the Customer Relationship Management system which, whilst not introduced for this purpose, will in fact guard against any potential status drift into the use of members of the public as Covert Human Intelligence Sources.
- 6.3 Particular thanks should be given to Lee Gardener, who made all the arrangements for the inspection and provided comprehensive reading material in advance.

Samantha Jones

IPCO Inspector