

# North Lanarkshire Council Report

## Policy & Strategy Committee

approval  noting

Ref AA/PC/ER

Date 01/10/20

## Investigatory Powers Commissioner's Office Inspection – June 2020

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### Executive Summary

The purpose of this report is to inform Committee of the findings of an inspection carried out in June 2020 by the Investigatory Powers Commissioner's Office ("IPCO"). The IPCO is the body responsible for regulating the use by public bodies of powers of directed surveillance and covert human intelligence sources ("CHIS") under the Regulation of Investigatory Powers (Scotland) Act 2000 ("RIPSA"). The Council was previously inspected in December 2016 by the Office of Surveillance Commissioners ("OSC") that role now having been assumed by the IPCO. This report confirms the recommendations made by the OSC as a result of the inspection in 2016, the findings of the IPCO in the most recent inspection, particularly in relation to those recommendations, and further observations by the IPCO arising out of the most recent inspection.

### Recommendations

Committee is asked –

1. To note the contents of the Report.
2. To note the decision of the Head of Legal and Democratic Solutions amending the updated 'Policy and Procedure on Directed Surveillance, Use of Covert Human Intelligence Sources and Obtaining Communications Data' in line with the delegated authority to maintain the policy that was agreed by the Policy & Resources Committee on 8 March 2012.
3. To note that further reports will be provided on a quarterly basis for member oversight and for any approvals as may be necessary.

### The Plan for North Lanarkshire

Priority Improve North Lanarkshire's resource base

Ambition statement (25) Ensure intelligent use of data and information to support fully evidence based decision making and future planning

## **1. Background**

- 1.1 The purpose of the IPCO inspection in June 2020 was to examine policies, procedures, operations and administrative processes in relation to directed surveillance and CHIS in terms of RIPSAs and statutory Codes of Practice.

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## **2. Report**

- 2.1 RIPSAs govern the use of covert surveillance by local authorities so that compliance with its provisions will ensure there is no breach of individuals' rights to privacy provided by Article 8 of the European Convention on Human Rights. In order to comply with RIPSAs any covert surveillance activities undertaken by a local authority must be necessary and proportionate.

### **The Inspection**

- 2.2 Due to the Coronavirus pandemic the inspection was carried out remotely by provision of materials to the IPCO Inspector for his consideration. These included copies of the Council's Policy and Procedure on Directed Surveillance, use of Covert Human Intelligence Sources and Obtaining Communications Data ("surveillance policy document"), the Central Register of Authorisations and a sample of directed surveillance applications and authorisations. A meeting was held by video conference on 12 June 2020 to facilitate discussion and conclude the inspection process. The meeting was attended by the IPCO Inspector, the Senior Responsible Officer (Head of Legal and Democratic Solutions), RIPSAs Co-Ordinator (Legal Manager (Regulation and Governance)), officers from Legal and Democratic Solutions and the Business Manager (Protective Services). A letter confirming the findings of the inspection was subsequently provided on 6 July 2020 by the Investigatory Powers Commissioner.

### **Summary of Findings**

- 2.3 The Council was previously inspected in December 2016. Three recommendations were made following that inspection.
- 2.3.1 The first recommendation was that the Council should revise its Central Record of Authorisations to ensure it provides for relevant requirements set out in the Covert Surveillance Code of Practice and provides a safeguard to avoid the risk of missed reviews or the late cancellation of authorisations of directed surveillance.
- 2.3.2 The second recommendation was that the Council should conduct an assessment across all departments in the organisation to determine its current and future requirements to use the Internet for investigative and research purposes. Once complete, the Council should implement appropriate training and guidance to ensure staff undertaking such activity do so in accordance with its surveillance policy.
- 2.3.4. The third recommendation was that the Council must ensure that when granting an authorisation for CHIS, the Authorising Officer has confirmed that arrangements are in place for the management and oversight of the use made of that CHIS, noting that it is best practice to include the names of individuals charged with those responsibilities in

the authorisation and that appropriate risk assessments as required by the Code of Practice are completed.

## **2.4 Findings in relation to recommendations**

2.4.1 In relation to the first recommendation, the Inspector found that the Register has been appropriately amended and is fully compliant with the Scottish Government Code of Practice on Covert Surveillance and Property Interference (December 2017).

2.4.2 In relation to the second recommendation it was found that the surveillance policy was recently updated and approved by the Senior Responsible Officer (“SRO”) and that it provides more guidance on the use of the internet and online covert activity. The Inspection identified evidence of good guidance and operational examples around the use of social media for investigative purposes.

2.4.3 In relation to the third recommendation it was found that, whilst the Council has not made any use of covert human intelligence sources (CHIS) since the last inspection, the policy has been updated to include the observations made in respect of this recommendation and appropriate guidance has been provided to ensure that applicants and Authorising Officers comply.

2.5 The Commissioner confirmed that he found there to be suitably strong governance processes in place within the Council to ensure compliance with the legislation and codes of practice and that good practice has been identified.

## **2.6 Further Actions Identified**

2.6.1 Whilst no formal recommendations were made by the Inspector, he did make some observations which will be used as the basis for further action to be taken by the SRO to increase awareness of the Council’s responsibilities under RIPSAs and ensure continued compliance in its covert surveillance activities. Those observations and the further actions identified are summarised below:-

### **2.6.2 Authorisations**

2.6.2.1 Applicants should ensure that they always provide an appropriate intelligence case and, in cases where multiple subjects are listed, be specific to enable bespoke considerations around necessity, proportionality and collateral intrusion.

2.6.2.2 Authorising Officers should detail explicitly the surveillance activity they are authorising. It is not sufficient to state ‘hereby authorise directed surveillance’ as detailed above.

2.6.2.3 Good practice in online directed surveillance applications includes, where possible, that applicants list the URLs to be targeted.

2.6.2.4 Cancellations of directed surveillance authorisations should detail the type and extent of the product and material obtained and how it is to be managed. Suitable direction or instruction should be provided by the Authorising Officer, as described in Chapter 8 of the Code of Practice.

2.6.2.5 It was identified that there are currently ten designated Authorising Officers across Council Services. This is to be reviewed, with the intention of identifying four or five Council officers, which would create a smaller, more operationally competent team.

### 2.6.3 Online Investigations

2.6.3.1 In relation to the use of internet and social media sites it was recommended that practitioners within Services are signposted to relevant sections within the policy to ensure staff remain compliant in this type of activity. The Commissioner confirmed it was important that employees are reminded of the obligations public authorities have in relation to the Article 8 Rights of Individuals and of the need to demonstrate legitimate and proportionate reasons for carrying out online research. The findings noted that a documented record and audit trail would reduce the risk of there being a disproportionate use of social media in these circumstances and would help to ensure that legitimate aims are being pursued.

2.6.3.2 As a result of these observations, it is intended that further work and engagement with services is undertaken by the SRO to:-

- Increase awareness of the surveillance policy and in particular the need to consider the guidance within when considering carrying out any online investigations;
- Assess the use of the internet within services for investigatory purposes and thereafter consider, and if appropriate, implement a procedure for documenting the use of social media and other online resources to reduce the risk of it being used disproportionately and ensuring legitimate aims are being pursued;
- highlight to staff the dangers of using personal social media accounts for business purposes, especially those of a covert nature, and that they are aware of their own personal online security and of the vulnerabilities of using any insecure or personal online platform.

## 2.7 Policy and Procedure

2.7.1 Parts 1 and 2 of the surveillance policy have been updated to reflect the most recent Scottish Government codes of practice. The updated policy document is available at the following link - <http://connect/CHttpHandler.ashx?id=36005&p=0> The changes were approved by the Head of Legal and Democratic Solutions, as permitted by his delegated authority to maintain the policy that was agreed by the Policy & Resources Committee on 8 March 2012.

However, the codes of practice now recommend that elected members should review the Council's use of RIPSAs and set the policy at least once a year. It is further recommended within the codes of practice that elected members consider internal reports on the use of RIPSAs on at least a quarterly basis to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose.

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## 3. Equality and Diversity

### 3.1 Fairer Scotland Duty

Not applicable.

### 3.2 Equality Impact Assessment

Not applicable.

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## 4. Implications

### 4.1 Financial Impact

None.

### 4.2 HR/Policy/Legislative Impact

This report forms part of the duties of the Senior Responsible Officer to ensure compliance with the requirements of RIPSA and statutory codes of practice.

### 4.3 Environmental Impact

None.

### 4.4 Risk Impact

This report contains information about steps identified to ensure the Council remains compliant with the requirements of RIPSA. This will help to reduce the likelihood of human rights challenges in relation to individuals' Article 8 privacy rights, any associated impact on the Council's reputation and potential financial loss resulting from such claims. Continued compliance will also serve to reduce the likelihood of any evidence recovered through covert surveillance activities undertaken by the Council being deemed inadmissible in any subsequent criminal proceedings.

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## 5. Measures of success

- 5.1 The Commissioner confirmed that he found there to be suitably strong governance processes in place within the Council to ensure compliance with the legislation and codes of practice and that good practice has been identified.

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## 6. Supporting documents

- 6.1 Updated Policy and Procedure on Directed Surveillance, Use of Covert Human Intelligence Sources and Obtaining Communications Data.



**Head of Legal and Democratic Solutions**