

**FORM 1**

**NOTICE OF DELEGATION OF DECISION TO CABINET MEMBER BY STRONG LEADER**

Section 15(4) of the Local Government Act 2000, the senior executive member may discharge any of the functions that are the responsibility of the Cabinet or may arrange for them to be discharged by another member of the Cabinet or Officer. On 1<sup>st</sup> December 2010, the Council adopted the Strong Leader Model for Corporate Governance 2011 as required under Part 3 of The Local Government and Public Involvement in Health Act 2007 (The 2007 Act).

I, Councillor Marcus Hart, as Strong Leader, delegate the decision to approve the Annual RIPA Compliance Report for the year 2022/2023 as a formal record of the Council's use and compliance with RIPA, to the Cabinet Member detailed below:

Cabinet Member: Councillor Ian Hardiman

Dated: 5th June 2023

Signed: ..... *M. J. Hart* .....

Leader of the Council

**FORM 2**

**NOTICE OF DECISION OF CABINET MEMBER**

Pursuant Section 15(4) of the Local Government Act 2000, as amended by section 63 of the Local Government and Public Involvement in Health Act 2007, the senior executive member may discharge any of the functions that are the responsibility of the Cabinet or may arrange for them to be discharged by another member of the Cabinet or Officer. On 1<sup>st</sup> December 2010, the Council adopted the Strong Leader Model for Corporate Governance 2011 as required under Part 3 of The Local Government and Public Involvement in Health Act 2007 (The 2007 Act).

In accordance with the authority delegated to me by the Leader, I have made the following decision:

<b>Subject</b>	<b>Decision</b>	<b>Reason for decision</b>	<b>Date for Decision to be taken</b>
Exercise of RIPA powers in the year 2022/2023: Compliance Report	To approve the report as a formal record of the Council's use and compliance with RIPA	To ensure transparency in respect of the Council's use of its powers under RIPA	5th June 2023

**I confirm that the appropriate statutory officer consultation has taken place with regard to this decision.**

Dated: 5th June 2023

Signed: .....



Councillor: Ian Hardiman, Deputy Leader and Cabinet Member for Housing, Health and Well-being

## WYRE FOREST DISTRICT COUNCIL

### CABINET DECISION FOR STRONG LEADER APPROVAL

5th June 2023

**Report to consider the Annual Compliance Report for the exercise of the Regulation of Investigatory Powers Act 2000 (RIPA) powers in the year 2022/2023**

<b>OPEN</b>	
<b>CABINET MEMBER:</b>	Cllr. Ian Hardiman, Deputy Leader and Cabinet Member for Housing, Health and Well-being.
<b>RESPONSIBLE OFFICER:</b>	Caroline Newlands – Solicitor to the Council. 01562 732715
<b>CONTACT OFFICER:</b>	Caroline Newlands (as above)
<b>APPENDICES:</b>	Appendix 1 – RIPA Policy 2023

#### **1. PURPOSE OF REPORT**

1.1 To consider the exercise of RIPA powers in the year 2022/2023.

#### **2. RECOMMENDATION**

2.1 The Cabinet Member is recommended to consider and note the Annual Compliance Report, which sets out how the Council has used its powers during this reporting period.

2.2 The Cabinet Member is recommended to approve this report as a formal record of the Council's use and compliance with RIPA.

#### **3. BACKGROUND**

3.1 RIPA governs the acquisition and disclosure of communications data and the use of covert surveillance by local authorities. The Council can only use powers under RIPA to support its core functions for the purpose of prevention and detection of crime.

3.2 There are different thresholds that need to be met before any surveillance can be undertaken. In the case of Directed Surveillance or the use of Covert Human Intelligence Sources (CHIS) an offence has to be punishable by a custodial sentence of 6 months or more or the offence is related to the underage sale of alcohol and/or tobacco. In the case of Communications Data an offence has to be punishable by a custodial sentence of 12 months or more (e.g. offences relating to counterfeit goods which carry a maximum penalty of 10 years in prison).

3.3 Powers can also be used by other Council services if their offences meet the serious crime threshold, mentioned in 3.2 above.

3.4 RIPA and Codes of Practice set out the procedures that local authorities must follow when undertaking surveillance. These include approval by Authorised Council

Officers for Directed Surveillance / CHIS applications to show that the proposed use of the powers is “necessary and proportionate”.

- 3.5 The Council is required to have a Senior Responsible Officer to maintain oversight of the RIPA arrangements, procedures, and operations. The Council’s Monitoring Officer performs this function and is responsible for the integrity of the Council’s process for managing the requirements under RIPA.
- 3.6 Since 1 September 2017, the Investigatory Powers Commissioner's Office (IPCO) has been responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.
- 3.7 2019 saw the implementation of Part 3 of the Investigatory Powers Act 2016 (IPA). The introduction of this legislation has seen the most significant change to the acquisition of communications data in recent years. The IPA consolidates all existing powers available to law enforcement and other agencies. It radically overhauls the way these powers are authorised and overseen. The legislation also ensures that the powers conveyed are fit for the fast-moving digital age that we live in. The IPA has introduced the Office for Communications Data Authorisation (OCDA) which is now responsible for independently authorising all applications for communications data. This has removed the requirement for local authorities to seek judicial approval for communications data. In addition, the legislation has broadened the range of communications data available including access to location data.
- 3.8 The acquisition of communications data is undertaken through the National Antifraud Network (NAFN). They act as the single point of contact for many local authorities and ensure the application is RIPA/ IPA compliant. It is NAFN that are audited by the commissioners.
- 3.9 Details of the applications that the Council has made are set out below:  
  
Use of Directed Surveillance or Covert Human Intelligence Sources for the Period 1 January 2022 – 31 December 2022.  
  
The number of applications made for a Directed Surveillance authorisation 0  
  
The number of Directed Surveillance authorisations successfully granted 0  
  
The number of Directed Surveillance authorisations that were cancelled 0  
  
The number of Directed Surveillance authorisations extant at the end of the year 0
- 3.9.1 There were no reported instances of the Council having misused its powers under the Act.
- 3.9.2 Use of Acquisition & Disclosure of Communications Data No applications for the disclosure of communications data were made during the reporting period 1 April 2022 – 1 April 2023.
- 3.10 Statistical Data - The IPCO require annual statistical data each year.

- 3.11 RIPA Training - It is recommended good practice to provide RIPA training to all relevant Officers periodically. We have a specific i-learn module to ensure staff and new starters have 24/7 access to appropriate training. We also commission specialist training if any surveillance is under consideration.

#### **4. KEY ISSUES**

##### 4.1 Elected Member Involvement:-

The SRO will report annually to the relevant Cabinet portfolio holder with the following information:

- the current Policy and Guidance being used by the Council
- statistics and overview of the use of directed surveillance and CHIS by the Council during the previous year.
- following an OSC inspection, detailing any recommendations made and the action(s) taken in response to those recommendations.

Any significant issues arising shall also be shared, where appropriate, with Cabinet Members.

#### **5. FINANCIAL IMPLICATIONS**

- 5.1 Financial implications The Council has budget provision to cover the cost of any external training, which would be delivered by an external trainer who specialises in RIPA legislation. The I learn module costs are covered by our annual subscription. There are no other direct financial implications arising from this report.

#### **6. LEGAL AND POLICY IMPLICATIONS**

- 6.1 The powers of local authorities have remained largely unchanged following the introduction of the Investigatory Powers Act 2016. However, Officers will continue to monitor the operation of RIPA and ensure that any amendments are incorporated into the Council's policy and procedures as appropriate. Consideration and endorsement by Members, ensures that appropriate scrutiny is in place. Consideration of RIPA activity as recommended by the OSC guidance ensures that such activity is subject to appropriate scrutiny and control.

#### **7. EQUALITY IMPACT NEEDS ASSESSMENT**

- 7.1 This report raises no equality issues.

#### **8. RISK MANAGEMENT**

- 8.1 The requirement for the Council to seek judicial / OCDA approval for any proposed use of its powers under the Regulation of Investigatory Powers Act 2000, as amended by the Protection of Freedoms Act 2012 and IPA, reduces the risk of the Council using such powers inappropriately or unlawfully. This will help ensure any evidence gained from such use will be admissible in a court of law.

**9. CONCLUSION**

9.1 The report will be a formal record of the Council's use of RIPA in 2022-23.

**10. CONSULTEES**

10.1 Corporate Leadership Team.

**11. BACKGROUND PAPERS**

# **Regulation of Investigatory Powers Act (RIPA) 2000**

APPROVED AND ADOPTED BY CABINET 2023

## **1. District Council Policy Statement**

- 1.1** The District Council takes its statutory responsibilities seriously and will at all times act in accordance with the law and take necessary and proportionate action in these types of matters.
- 1.2** The Officers authorised to authorise, renew and cancel directed surveillance in accordance with section 28 of RIPA are
- (a) Head of Resources
  - (b) Financial Services Manager (Accountancy and Revenues)
  - (c) Head of Revenues, Benefits and Customer Services
  - (d) Audit Manager
- (“Authorised Officers”)
- 1.3** If any of the above posts are subject to minor amendments in title or their functions are transferred to a different post, the new postholder will have delegated authority in respect of directed surveillance in place of the officer specified in paragraph 1.2 above.
- 1.4** If any of the legislation in this policy is subject to amendment/statutory update or new procedural requirements are introduced or functions are transferred to a different external organisation, this policy shall be read in accordance with the revised requirement

## **2. Authorised Officer Responsibilities**

- 2.1** Only the approved forms available on the Home Office website will be acceptable.
- 2.2** It is the responsibility of Authorised Officers who have been certified to ensure the relevant members of staff are also suitably trained as applicants so as to avoid common mistakes appearing on forms for RIPA authorisation. Authorised Officers will also ensure that staff follow the policy and do not undertake or carry out any form of surveillance without first obtaining the relevant authorisations in compliance with this document.
- 2.3** Authorised Officers must also pay particular attention to health and safety issues that may be raised by any proposed surveillance activity. Under no circumstances should an Authorised Officer approve any RIPA form unless and until they are satisfied that health and safety of Council employees and agents are suitably addressed and all the risks minimised, so far as possible and

proportionate to the surveillance being processed. If any Authorised Officer is in any doubt he should obtain prior guidance from his or her Chief Officer, the District Council's Health and Safety Officer and/or the Solicitor to the Council.

### **3. Purposes of the Act**

**3.1** RIPA provides a statutory basis for local authorities to seek authorisation from a Magistrate to use directed surveillance and covert human intelligence sources and accessing communications data.

**3.2** The Human Rights Act 1998 requires that all actions which may potentially breach an individual's human rights are:

Proportionate

Necessary

Non-discriminatory

Lawful

**3.3** RIPA provides lawful authority to carry out certain types of surveillance, the carrying out of which could potentially breach an individual's human rights, provided that specified procedures are followed.

**3.4** Directly employed Council staff and external agencies working for the Council are covered by the Act for the time they are working for the Council. All external agencies must therefore comply with RIPA and the work carried out by the agencies on the Council's behalf must be properly authorised by one of the Council's designated Authorised Officers.

**3.5** If the correct procedures are not followed evidence may be disallowed by the Courts a complaint of maladministration could be made to the Ombudsman and/or the Council could be ordered to pay compensation. Obviously such action would not promote the good reputation of the Council and would be subject to adverse press and media interest.

**3.6** It is therefore essential that all involved with RIPA comply with the document and any further guidance issued by Solicitor to the Council.

**3.7** Since September 2014, Local Authorities can only access communications data via the National Anti-Fraud Network (NAFN): 'NAFN is a not-for-profit, non-incorporated body formed by its members to provide services which support their work in the protection of the public purse. Established in 1997, NAFN was created as a centre of excellence to provide data and intelligence to its members. This includes assisting members in the provision of effective corporate and financial governance. NAFN works with its members and other stakeholders to enhance and expand its range of services. It maintains all data in a secure and confidential environment conforming to Government legislation and national best practice'

## **4. What RIPA does and does not do**

### **4.1 RIPA does:-**

require prior internal authorisation of directed surveillance followed by external authorisation by a magistrate

prohibit the council from carrying out intrusive surveillance

### **4.2 RIPA does not:-**

make unlawful conduct which is otherwise lawful

prejudice or dis-apply any existing powers available to the council to obtain information by means not involving conduct that may be authorised under this Act

### **4.3 The Protection of Freedoms Act 2012 restrict the use of RIPA to :**

Conduct that would constitute a criminal offence which is punishable by a maximum custodial sentence of six months or more

The sale of alcohol or tobacco to children

## **5. Types of Surveillance**

### **5.1 Surveillance includes:**

Monitoring observing listening to persons watching or following their movements listening to their conversations and other such activities or communications;

Recording anything mentioned above in the course of authorised surveillance;

Surveillance by or with the assistance of appropriate surveillance devices.

### **5.2 Surveillance can be overt or covert**

## **6. Overt Surveillance**

**6.1** Surveillance carried out by the council can be done covertly. There is nothing secretive or hidden about it. Surveillance will be overt if the subject has been told it will happen, or is carried out overtly.

## **7. Covert Surveillance**

**7.1** Covert Surveillance is carried out in a manner calculated to ensure that the person subject to this surveillance is unaware of it taking place.

**7.2** RIPA regulates two types of covert surveillance directed and intrusive. This policy does not cover intrusive surveillance as the council is not permitted to carry out intrusive surveillance. Intrusive Surveillance is: covert; relates to residential premises and vehicles; and involves the presence of a person in the premises or in the vehicle or is carried out by a surveillance device in the premises or vehicles. Surveillance equipment mounted outside the premises will not be intrusive unless the device consistently records information of the same quality and detail as might be expected if they were in the premises or vehicle.

## **8. Directed Surveillance**

**8.1** Directed surveillance is surveillance which:

is covert; and

is not intrusive surveillance.

**8.2** It is not carried out in an immediate response to events which may otherwise make seeking authorisation under the act unreasonable for example spotting something suspicious and continuing to observe it.

**8.3** It is undertaken for the purpose of a specific investigation or operation in a manner likely to obtain private information about an individual.

**8.4** Private information in relation to a person includes any information relating to his private and family life his home and his correspondence. Prolonged surveillance targeted on this single person will undoubtedly result in the obtaining of private information about him or her.

**8.5** CCTV cameras do not normally require authorisation but if the camera is tasked for a specific purpose which involved prolonged surveillance on a particular person authorisation will be required. The way a person runs his or her business may also be information about his or her private life and the private lives of others.

**8.6** For the avoidance of doubt only those Officers designated and certified to be Authorised Officers for the purpose of RIPA can authorise directed surveillance if and only if the RIPA authorisation procedures detailed in this document are followed and external authorisation is provided by the magistrates' court.

## **9. Covert Human Intelligence Source (CHIS)**

**9.1** This is someone who establishes or maintains a personal or other relationship for the covert purpose of obtaining information.

**9.2** RIPA does not apply in circumstances where members of the public volunteer information to the District Council as part of their normal civic duties, or to contact numbers set up to receive information.

- 9.3** The conduct or use of a CHIS would be a separate issue from all of the above and would require the prior authorisation of the Chief Executive or the Solicitor to the Council followed by the external authorisation of the magistrates. However, such authorisation would be granted only in exceptional circumstances as the District Council has decided that it will not generally conduct or use a CHIS.
- 9.4** Carrying out test purchases will not require the purchaser to establish a relationship with the supplier with the covert purpose of obtaining information and, therefore, the purchase will not normally be a CHIS. For example, prior CHIS authorisation would not normally be required for activities carried out in the ordinary course of business (e.g. walking into a shop and purchasing a product over the counter). By contrast, developing a relationship with a person in a shop to obtain information about the seller's suppliers of an illegal product (e.g. an illegally imported product) would require authorisation as a CHIS. Similarly, using mobile, hidden recording devices or CCTV cameras to record what was going on in a shop would require authorisation as directed surveillance.
- 9.5** Persons who complain about anti-social behaviour, and are asked to keep a diary, will not normally be a CHIS as they are not required to establish or maintain a relationship for a covert purpose. Recording the level of noise (e.g. the decibel level) will not normally capture private information and, therefore, does not require authorisation. Recording sound (with a Blue SOLO system or equivalent) on private premises could constitute intrusive surveillance unless it is done overtly. It is, therefore, important to inform the noise maker that sound-recording will occur if the level of noise continues. Placing a stationary or mobile video camera outside a building to record anti-social behaviour on residential estates will require authorisation.

Any covert surveillance operation involving directed surveillance and covert human intelligence sources must be authorised either in writing or exceptionally in urgent cases, orally. Following internal authorisation an application must also be externally authorised by a magistrate. No investigation can commence until both internal and external authorisations have been given.

## **10. Authorised Officer**

- 10.1** Authorisations under RIPA are for specific investigations only and must be renewed or cancelled once specific surveillance is complete or about to expire.
- 10.2** Only the approved RIPA forms available on the Home Office website must be used. Any other forms will be rejected by the Authorised Officer.
- 10.3** Directed surveillance can only be authorised by the Council on one of the following grounds:

For the prevention or detection of crime where the conduct would be punishable by a maximum custodial sentence of 6 months or more; or;

The sale of alcohol to children (section 146 of the Licensing Act 2003), allowing the sale of alcohol to children (section 147 of the Licensing Act 2003) and/ or persistently selling alcohol to children (section 147A of the Licensing Act 2003).

## **11. Assessing the Application Form**

**11.1** Before an Authorised Officer signs a form he or she must:

(a) Be mindful of this Policy and any other guidance issued from time to time by the Solicitor to the Council.

(b) Satisfy him or herself that the RIPA authorisation is:

(i) in accordance with the law;

(ii) necessary in the circumstances of the particular case on one of the grounds as mentioned above; and

(iii) proportionate to what it seeks to achieve.

(c) In assessing whether or not the proposed surveillance is proportionate, consider other appropriate means of gathering the information. The least intrusive method will be considered proportionate by the courts.

(d) Take into account the risk of intrusion into the privacy of persons other than the specified subject of the surveillance. Measures must be taken wherever practicable to avoid or minimise so far as possible collateral intrusion and the matter may be an aspect of determining proportionality.

(e) Set a date for review of the authorisation and review on only that date.

(f) Allocate a Unique Reference Number for the application as follows:

Year/Department/Number of Application

(g) Ensure that any RIPA Department Register is duly completed and that a copy of the RIPA Forms and any review or cancellation of the same is forwarded to the Solicitor to the Council within one week of the relevant authorisation, review, renewal, cancellation or rejection.

## **12. Urgent Authorisations**

Unused

## **13. Applications to the Magistrates Court**

**13.1** Sections 37 and 38 of the Protection of Freedoms Act 2012 introduced the requirement that a local authority that wishes to authorise the use of directed surveillance, acquisition of Communications Data or use of a CHIS under RIPA will need to obtain an order approving the grant or renewal of an authorisation

from a Justice of the Peace (a District Judge or lay magistrate) before it can take effect. The Justice of the Peace needs to be satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate.

**13.2** Case Officers requesting the authorisation are referred to the Home Office guidance 'Protection of Freedoms Act 2012 – changes to provisions under the Regulation of Investigatory Powers Act 2000 (October 2012) for further guidance regarding application to a Justice of the Peace.

**13.3** The Council may authorise case officers to attend the Magistrates Court under section 223 of the Local Government Act 1972, if such authorisation is not in place the case officer shall instruct Legal Services to make the application.

#### **14. Duration**

**14.1** The Form must be reviewed in the time stated and cancelled once it is no longer needed. The authorisation to carry out the surveillance lasts for a maximum of 3 months from authorisation for Directed Surveillance. The Forms do not expire when the conditions are no longer met and have to be reviewed and/or cancelled once they are no longer required.

**14.2** Authorisations can be renewed in writing when the maximum period has expired. The Authorising Officer must consider matters afresh including taking into account the benefit of the surveillance to date and any collateral intrusion that has occurred. Further application to the Magistrates Court is required for any renewal.

**14.3** If at any point during the surveillance it becomes clear that the conduct does not amount to a serious criminal offence (punishable by at least six months custodial sentence or involving the sale of alcohol or tobacco to children) the use of directed surveillance must cease and any authorisation cancelled.

#### **15. Working with/through Other Agencies**

**15.1** When another agency has been instructed on behalf of the Council to undertake any action under RIPA this Policy and the Forms in it must be used as normal procedure and the agency advised or kept informed as necessary of the various requirements.

**15.2** When some other agency for example the Police, Customs and Excise, Inland Revenue etc.

(a) wish to use the Council's resources (e.g. CCTV surveillance systems), that agency must use its own RIPA procedures and before any Officer agrees to allow the Council's resources to be used for the other agency's purposes he or she must obtain a copy of that agency's RIPA Form for the record a copy of which must be passed to the Solicitor to the Council.

(b) wish to use the Council's premises for their own RIPA action, the Officer should normally co-operate unless there are security or other good operational or managerial reasons as to why the Council's premises should not be used for the agency's activities. Suitable insurance or other appropriate indemnities may be sought if necessary from the other agency. The District Council's own RIPA form should not be used as the Council are only assisting.

**15.3** If the Police or other agency wish to use the Council's resources for general surveillance an appropriate letter requesting the proposed use extent of remit duration who will be undertaking the general surveillance and the purpose of it must be obtained from the Police or other agency before any of the Council's resources are made available for the proposed use.

## **16. Record Management**

**16.1** District Council must keep a detailed record of all authorisations renewals cancellations and rejections in Departments and a Central Register of all Authorisation Forms will be maintained and monitored by Solicitor to the Council.

## **17. Document Retention**

**17.1** The following documents must be retained by the relevant Chief Officer:

A copy of the Forms together with any supplementary documentation and notification of the approval given by the Authorising Officer and the Justice of the Peace;

A record of the period over which the surveillance has taken place;

The frequency of reviews prescribed by the Authorised Officer;

A record of the result of each review of the authorisation;

A copy of any renewal of an authorisation together with the supporting documentation submitted when the renewal was requested;

The Unique Reference Number for the authorisation