



North Tyneside Council

Regulation and Review Committee

7 November 2018

Thursday 15 November 2018 Room 0.02, Council Chamber, Quadrant, The Silverlink North, Cobalt Business Park, North Tyneside **commencing at 6.00pm.**

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1. Apologies for Absence	
To receive apologies for absence from the meeting	
2. Appointment of Substitute Members	
To be notified of the appointment of any Substitute Members.	
3. To Receive any Declarations of Interest and Notification of any Dispensations Granted	
You are invited to declare any registerable and/or non-registerable interests in matters appearing on the agenda, and the nature of that interest.	
Please complete the Declarations of Interests card available at the meeting and return it to the Democratic Services Officer before leaving the meeting.	
You are also invited to disclose any dispensation from the requirement to declare any registerable and/or non-registerable interests that have been granted to you in respect of any matters appearing on the agenda.	

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<p>To confirm the minutes of the Committee meeting held on 20 September 2018 and to note the minutes of the Panel meetings held on 11 October and 23 October 2018.</p>	
5. Annual Review of the Council Policy on Covert Surveillance	13
<p>To consider a report on the results of the annual review of the Council's policy on covert surveillance.</p>	

To All Members of the Regulation and Review Committee

Councillor Jim Allan	Councillor Janice Mole
Councillor Alison Austin	Councillor Tommy Mulvenna
Councillor Karen Bolger	Councillor Kate Osborne
Councillor Debbie Cox	Councillor John O'Shea
Councillor Peter Earley	Councillor Alan Percy
Councillor John Hunter (Deputy Chair)	Councillor Margaret Reynolds
Councillor Gary Madden	Councillor Lesley Spillard
Councillor Maureen Madden	Councillor John Stirling (Chair)
Councillor David McMeekan	Councillor Judith Wallace

Regulation and Review Committee

20 September 2018

Present: Councillor J Stirling (Chair)
Councillors K Bolger, T Brady, D Cox, John Hunter,
M Madden, D McMeekan, T Mulvenna,
J O'Shea, A Percy, M Reynolds and L Spillard.

RQ22/09/18 Apologies

Apologies for absence were submitted on behalf of Councillors J Allan, A Austin, J Mole and K Osborne.

RQ23/09/18 Substitute Members

Pursuant to the Council's Constitution the appointment of the following substitute member was reported:

Councillor T Brady for Councillor J Mole.

RQ24/09/18 Declarations of Interest

Councillor John Hunter declared a non-registerable personal interest in the Request for a Hackney Carriage Fare Review item as a family member was a private hire driver licensed by North Tyneside Council. Councillor Hunter declared that he had an open mind on the matter and would take his decision in the interest of all residents of the borough.

RQ25/09/18 Minutes

Resolved that the minutes of the meeting of the Regulation and Review Committee held on 18 July 2018 be confirmed as a correct record and signed by the Chair and the minutes of the Regulation and Review panel meetings held on 4 July, 30 August and 3 September 2018 be noted.

RQ26/09/18 Request for a Hackney Carriage Fare Review

The Authority may fix or vary a table of fares for Hackney Carriages by virtue of Section 65 of the Local Government (Miscellaneous Provisions) Act 1976. Under the Authority's Officer Delegation Scheme (ODS) the Head of Environment, Housing and Leisure had the delegated authority to set fares for hackney carriages following the appropriate consultation with the Cabinet Member and Regulation and Review Committee (delegation EHL105, ODS June 2017).

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The North Tyneside Hackney Carriage and Private Hire Policy allows for an annual review of the Hackney Carriage Fare Tariff or when requested by the trade. The Committee was informed that the Head of Environment, Housing and Leisure had received a request from the North Tyneside Hackney Carriage Association (NTHCA) to review the fare table and sought the Committee's views on the request.

An agreed formula (last consulted upon in 2006) was used to calculate a 'cost per mile' figure for the operation of a Hackney Carriage. The formula took into account vehicle running costs, including insurance, and driver earnings based on average earnings for the region. Once the request from the NTHCA had been received officers applied this formula to produce a maximum 'cost per mile' figure for the operation of a Hackney Carriage of £2.56.

The Committee was informed that the NTHCA had requested the review because the latest 2018 review had been "based on figures at least eight months out of date. Insurance, vehicle repairs and not least fuel costs [had] all increased dramatically; the cost of V power diesel [was] now £1.40 per litre which most proprietors [used] as it lowered emissions significantly".

The NTHCA request was as follows:

Tariff one

Increase the yardage from 178.9 yards or part there of or 44.5 seconds to 213 yards or part there of or 53 seconds.

Flag fall increased from £1.60 to £1.80

Tariff two

Reduce the yardage from 152.90 yards or part there of or 42.5 seconds to 182 yards or part there of or 51 seconds.

Flag fall increased from £2.40 to £2.60

Officers had calculated the cost of the above request to produce an average cost per mile of £2.94.

The Committee was reminded that on 21 March 2018 it had received a report on the annual Hackney Carriage Fare Review 2018 and resolved to note the annual review of the hackney carriage fares and officers' recommendation that the Hackney Carriage fare table should remain unchanged for the 2018/19 period and made comments regarding the formula (previous minute RQ119/03/18).

In response to questions it was confirmed that the figures in the report were that requested by the NTHCA; that the request equated to a 6% increase; and that the figure for the cost of fuel in the formula was an average of petrol and diesel, which was not the V power diesel referred to by the NTHCA.

The Committee was reminded that it was not the decision maker in this matter and it had been bought before them to provide a consultation response on the request to the Head of Environment, Housing and Leisure.

The Committee made the following comments in relation to the request for a review of the Hackney Carriage fares:

- A 6% increase in the current economic climate was quite steep.
- The table should remain unchanged for this calendar year.
- The overall increase on a fare was not that great in value and was not unreasonable.
- Drivers are only paid when they have a passenger so can often be sat without work and a review was not an unreasonable request.
- The people have the choice between a hackney carriage and a private hire vehicle and choose to pay the higher fares.
- The cost of a hackney carriage ride was not too much.
- The increase in costs was a reality and people don't have to use taxis if they don't want to.

To provide the Head of Environment, Housing and Leisure with a single response from the Committee, the matter was put to a vote.

Resolved that a review of the Hackney Carriage Fare Table at this time was appropriate and that the Head of Environment, Housing and Leisure be notified of the Committee's view to inform his decision on the matter.

Regulation and Review Committee Panel

11 October 2018

Present: Councillor J Stirling (Chair)
Councillor M Madden, D McMeekan, J Mole and K Osborne

RQ27/10/18 Apologies for Absence

There were no apologies for absence reported.

RQ28/10/18 Declarations of Interest and Dispensations

There were no declarations of interest or dispensations reported.

RQ29/10/18 Exclusion Resolution

Resolved that under Section 100A (4) of the Local Government Act 1972 (as amended) and having applied a public interest test in accordance with Part 2 of Schedule 12A the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act.

RQ30/10/18 Combined Hackney Carriage/ Private Hire Drivers Licence Appeal – Mr K

The Committee received a report by the Senior Manager, Technical Services which outlined the background to an appeal by Mr K against the decision by the Authority to refuse to grant him a Private Hire Driver's Licence on the grounds that it was not satisfied that he was a fit and proper person to hold such a licence.

Mr K attended the meeting and was accompanied by a colleague.

A Licensing Officer presented the report to the Committee which included information on Mr K's application, his criminal record and the reasons for the refusal. The appeal form and letters of support submitted by Mr K were also included.

Mr K was given the opportunity to ask questions of the Licensing Officer.

Members asked questions of the Licensing Officer.

Mr K then addressed the Committee and answered questions from Members. Mr K's colleague also made a statement to the Committee.

Following a summing up from the Licensing Officer and Mr K, all parties left the meeting to enable consideration of the matter to be undertaken in private.

11 October 2018

The options available to the Committee were to:

- a) Uphold the appeal and agree to renew the licence; or
- b) Dismiss the appeal and refuse to renew the licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and its main concern was the need to maintain high standards amongst licensed drivers and to ensure the protection of the travelling public.

In determining its response the Committee had regard to Section 51 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular Chapter 7 which made reference to convictions, cautions, conduct and medical fitness.

Resolved that the appeal be upheld and Mr K's private hire driver's licence be issued. The Committee considered the circumstances warranted a departure from the Policy and was satisfied that Mr K was a fit and proper person to hold a licence from this Authority.

RQ31/10/18 Combined Hackney Carriage/Private Hire Drivers Licence Disciplinary Referral – Mr M

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to a referral relating to the holder of a Combined Hackney Carriage/Private Hire Vehicle Licence, Mr M.

The Committee was requested to determine whether any disciplinary action was required and to assess Mr M's continued suitability to carry out the duties of a licensed driver.

A Licensing Officer and Mr M attended the meeting.

The Licensing Officer presented the report to the Committee which included information on the reason for the referral and Mr M's criminal and licensing record. The Licensing Officer then answered questions from Members of the Committee.

Mr M was given the opportunity to ask questions of the Licensing Officer.

Mr M then addressed the Committee.

Members of the Committee asked questions of Mr M and sought clarification on a number of matters.

Following a summing up from the Licensing Officer and Mr M, all parties left the meeting room to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- take no action;
- issue a warning as to the driver's future conduct;
- suspend the driver's licence; or
- revoke the driver's licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and seriously considered all the options available to it.

In determining its response the Committee took into account all that had been presented and contained within the papers submitted to the meeting and had regard to Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular chapter 7 which makes reference to convictions, cautions, conduct and medical fitness.

Resolved that Mr M's combined hackney carriage/private hire driver's licence be revoked as the Committee was no longer satisfied that he was a fit and proper person to hold a licence from this Authority.

RQ32/10/18 Private Hire Drivers Licence Disciplinary Referral – Mr T

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to a referral relating to the holder of a Private Hire Vehicle Licence, Mr T.

The Committee was requested to determine whether any disciplinary action was required and to assess Mr T's continued suitability to carry out the duties of a licensed driver.

A Licensing Officer and Mr T accompanied by a representative, Mr W, attended the meeting.

The Licensing Officer presented the report and answered questions from Members of the Committee.

Mr T and his representative were given the opportunity to ask questions of the Licensing Officer.

Mr T's representative then addressed the Committee.

Members of the Committee asked questions of Mr T and his representative and sought clarification on a number of matters.

Following a summing up from the Licensing Officer and Mr T's representative, all parties left the meeting room to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- take no action;
- issue a warning as to the driver's future conduct;
- suspend the driver's licence; or
- revoke the driver's licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and seriously considered all the options available to it.

In determining its response the Committee took into account all that had been presented and contained within the papers submitted to the meeting and had regard to Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney

Carriage and Private Hire Licensing Policy, in particular chapter 7 which makes reference to convictions, cautions, conduct and medical fitness.

Resolved that Mr T's private hire driver's licence be revoked as the Committee was no longer satisfied that he was a fit and proper person to hold a licence from this Authority.

RQ33/10/18 Private Hire Drivers Licence Disciplinary Referral – Mr B

The Committee considered a report by the Senior Client Manager, Technical and Regulatory Services which outlined the background to a referral relating to the holder of a Private Hire Vehicle Licence, Mr B.

The Committee was requested to determine whether any disciplinary action was required and to assess Mr B's continued suitability to carry out the duties of a licensed driver.

A Licensing Officer attended the meeting. Mr B was not present.

The Committee considered whether to proceed in Mr B's absence or defer consideration to a future meeting and give him another opportunity to attend. Mr B had been informed of his referral on 6 September 2018 and the date of the meeting on 21 September 2018 by letter. Both of these letters had been returned to the Authority as 'not known at this address'. Telephone calls had been unanswered and unreturned. The Licensing Officer produced a certificate of service which showed that a copy of the committee report and a letter inviting him to attend the meeting had been hand delivered to his last known address on 4 October 2018 at 10.55am. It was a condition of Mr B's licence that the Licensing Office be informed of a change of address within 7 days of the change. The envelope containing the report had not been returned to the Council. The Committee also noted that Mr B had not responded to attempts from Officers to speak to him regarding the matter when taking their decision to refer him to this Committee.

The Committee decided to proceed in Mr B's absence as it was satisfied that all reasonable and appropriate steps had been undertaken to inform him of the meeting and there were no grounds to suppose that he intended to attend any meeting as he had not engaged with officers throughout the referral process.

The Licensing Officer presented the report to the Committee which included information on the incident in question and Mr B's criminal and licensing record and answered questions from Members of the Committee.

Following a summing up from the Licensing Officer he left the meeting room to enable consideration of the matter to be undertaken in private.

The options available to the Committee were to:

- take no action;
- issue a warning as to the driver's future conduct;
- suspend the driver's licence; or
- revoke the driver's licence.

The Committee considered that it was an established principle that a licence was a privilege and not a right and seriously considered all the options available to it.

In determining its response the Committee took into account all that had been presented and contained within the papers submitted to the meeting and had regard to Section 61 of the Local Government (Miscellaneous Provisions) Act 1976 and the Council's Hackney Carriage and Private Hire Licensing Policy, in particular chapter 7 which makes reference to convictions, cautions, conduct and medical fitness.

Resolved that Mr B's private hire driver's licence be revoked as the Committee was no longer satisfied that he was a fit and proper person to hold a licence from this Authority.

Regulation and Review Committee Panel

23 October 2018

Present: Councillor J Stirling (Chair)
Councillors J Mole, J O'Shea and K Osborne

RQ34/10/18 Apologies for Absence

There were no apologies recorded.

RQ3510/18 Declarations of Interest and Dispensations

There were no declarations of interest or dispensations reported.

RQ36/10/18 Exclusion Resolution

Resolved that under Section 100A(4) of the Local Government Act 1972 (as amended) and having applied a public interest test in accordance with Part 2 of Schedule 12A the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Paragraph 1 of Part 1 of Schedule 12A to the Act.

RQ37/10/18 Appeal Against Dismissal

The Committee considered an appeal lodged by Mrs Mc against the decision of the Final Formal Improvement meeting that took place on 28 August 2018.

Mrs Mc did not attend the hearing to present her case, the Committee deemed it reasonable to suspend proceedings for 15 minutes in case Mrs Mc was experiencing any delays to attend at the agreed start time. Following the delayed start the Committee agreed to proceed with the hearing in Mrs Mc's absence.

The Chair of the Final Formal Improvement meeting set out the background to the case and the reasons for the decision to terminate Mrs Mc's contract of employment with the Council. The Officer was accompanied by a Human Resources Advisor.

Members of the Committee were then given an opportunity to ask questions of the Chair of the Final Formal Improvement meeting.

The Committee considered the mitigating information that Mrs Mc's submitted as part of her appeal.

The Members of the Committee took the opportunity at this point to clarify any actions that were undertaken in relation to the points raised by Mrs Mc's submission with the Chair of the Final Formal Improvement meeting and Human Resources Advisor.

23 October 2018

The Chair of the Final Formal Improvement meeting was given the opportunity to sum up the case and then withdrew from the meeting to allow the Committee to consider and make a decision.

The Democratic Services Officer, Legal Advisor and Human Resources Advisor (to the Panel) stayed to provide guidance and advice.

RESOLVED: that the appeal against the decision of the Chair of the Final Formal Improvement meeting on the 28 August 2018 to terminate Mrs Mc's employment with the Council be dismissed.

North Tyneside Council Report to Regulation and Review Committee Date: 15 November 2018

ITEM 5

Title: Annual Review of
Council Policy on Covert
Surveillance

Report from Service
Area:

Law and Governance

Responsible Officer:

Louise Watson, Senior Manager
Legal Services and Information Governance

(Tel: 0191 643
5325)

Wards affected:

All

PART 1

1.1 Executive Summary:

The Cabinet at its meeting on 26 November 2018 will consider an updated Covert Surveillance Policy. In accordance with the Codes of Practice applying to the Regulation of Investigatory Powers Act 2000 (RIPA) the Authority's Policy is subject to annual review. A copy of the updated draft Policy (with tracked changes) is attached at Appendix 1. Regulation and Review Committee are requested to consider the revised draft policy and to recommend the Policy to Cabinet for their consideration at their meeting on 26 November 2018.

1.2 Recommendation(s):

It is recommended that the Committee:

1. note the Authority's draft Policy on Covert Surveillance (attached at Appendix 1); and
2. recommend the proposed Policy to Cabinet for adoption at its meeting on 26 November 2018.

1.3 Information:

1.3.1 Introduction

The Authority's current Surveillance Policy was approved by Cabinet in December 2017 and is subject to annual review. The Policy has been subject to a review and the revised draft policy is attached at Appendix 1. No amendments are proposed (save for minor typographical changes) to the draft Policy as the previously adopted Policy remains fit for purpose.

The aims of the Authority's Policy are to:

- Set out the Authority's arrangements for complying with RIPA; the relevant Codes of Practice and guidance issued by the Home Office; and guidance from the Investigatory Powers Commissioner's Office (IPCO);

- Give effect to the rights of citizens to respect for their private and family lives (pursuant to the Human Rights Act 1998); and
- Protect the Authority from legal challenge when undertaking surveillance.

1.3.2 The RIPA Shield

The Regulation of Investigatory Powers Act 2000 (RIPA) puts covert surveillance on a statutory basis. RIPA enables certain public authorities, including this Authority, to carry out surveillance operations with statutory protection from legal challenge. It is often referred to as the “RIPA shield”.

Three covert investigatory techniques are available to local authorities under RIPA:

- i. the acquisition and disclosure of communications data such as telephone billing information or subscriber details e.g. to tackle rogue traders;
- ii. directed surveillance - covert surveillance of individuals in public places e.g. to tackle criminal activity arising from anti social behaviour; and
- iii. covert human intelligence sources (CHIS) such as the deployment of undercover officers.

The RIPA provisions may only be used to authorise surveillance activities in order to detect and prevent serious crime and any authorisation is subject to a requirement to seek authorisation from an ‘Authorising Officer’ and to obtaining judicial approval from the Magistrates’ Court before any surveillance is undertaken. The Authorising Officers within the Authority are:

Paul Hanson – Acting Chief Executive; and
Colin MacDonald – Senior Manager, Technical and Regulatory Services

Officers from Law and Governance accompanied by the relevant Authorising Officer will present any authorisation to the Magistrates’ Court for judicial approval. All authorisations will be subject to an internal scrutiny process prior to being submitted for such approval.

Local authorities may undertake surveillance for other purposes but such surveillance will not benefit from the RIPA shield and will leave a local authority vulnerable to challenge. For this reason all surveillance activity undertaken by the Authority, whether within the RIPA regime or not, must be appropriately authorised by one of the Authorising Officers and is subject to central monitoring and challenge.

1.3.3 Central Register

The Authority has a Central Register of all RIPA and non-RIPA surveillance activity. The Central Register is maintained and monitored by Law and Governance.

1.3.4 Inspection

Organisations using RIPA are subject to regular inspection by Investigatory Powers Commissioner’s Office (IPCO). On 1 September 2017, the Office of Surveillance Commissioners (OSC) and the Interception of Communications Commissioner’s Office (IOCCO) were abolished by the Investigatory Powers Act 2016. The IPCO is now responsible for the judicial oversight of the use of covert surveillance by public authorities throughout the United Kingdom.

The Authority received an inspection visit from the OSC in June 2017 prior to its abolition. The purpose of the OSC inspection was to examine the policies, procedures, operations and administration the Authority has in place in relation to directed surveillance and covert human intelligence sources.

The outcome of the inspection was very supportive of the Authority's actions to manage its responsibilities under RIPA.

The Committee are requested to review the draft Policy and recommend to Cabinet that the Policy be adopted.

1.3.5 Summary of Use of Surveillance, Acquisition of Communications Data and CHIS

It should be noted that following the changes to the RIPA regime from 1 November 2012 reported to the Committee in October 2012, there have been no authorisations of any kind granted. The ground most commonly used for authorising covert surveillance addressing anti-social behaviour was removed on 31 October 2012. Authorisations may now only be sought on the grounds that it relates to the prevention and detection of serious crime. Serious crime is defined as crime punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months of imprisonment, or would constitute an offence under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933. The latter are all offences involving sale of tobacco and alcohol to underage children.

Law and Governance keeps the Central Record of authorisations under review and advises Authorising Officers/Designated Persons of changes in approach or procedure.

1.3.6 Corporate Responsibilities

The Codes of Practice advise that a Senior Responsible Officer (SRO) should be identified to ensure the Authority has appropriate policies and processes that accord with RIPA and the related Codes of Practice.

The Officer Delegation Scheme places the Senior Responsible Officer role with the Head of Law and Governance, this role is currently being undertaken in the absence of a Head of Law and Governance by the Senior Manager – Legal Services and Information Governance.

Each Head of Service is responsible for ensuring effective and legally compliant systems and procedures are in place for surveillance work within their Service Areas.

All employees connected with surveillance and handling of evidence are responsible for ensuring that they act only in accordance with their level of responsibility and training and in accordance with the Policy and associated documents. To assist in this an 'Employee Handbook: Use of Covert Surveillance, Covert Human Intelligence Sources and Communications Data', has been prepared. The Handbook provides key information for Officers and directs them towards key sources of detailed guidance. It is kept under review and revised as necessary to ensure it reflects current procedures and best practice.

If Officers wish to undertake surveillance that falls outside of the RIPA regime they must take legal advice and seek appropriate authorisation. Information regarding surveillance (whether under RIPA or not) must be held centrally by the Senior Responsible Officer to

enable the Authority to have an overview of all surveillance activities being undertaken by the Authority.

Use of Social Media for the collection personal information

The application of the requirements of RIPA to the use of informants via, in particular, social media is a developing area of surveillance law. Social Media provides the opportunity for the Authority to monitor for example individual rogue traders who trade on-line in the context of trading standards investigations. The continued monitoring of the activities of an individual or the development of a relationship with a trader with the purpose eliciting information from the trader may fall within the RIPA regime.

As stated above this is an area which is continuing to be monitored as it develops and Officers from Law and Governance and Trading Standards are considering how such activities should actually be undertaken and whether those activities go as far as requiring a RIPA authorisation.

The most recent Office of Surveillance Commissioners' Guidance did provide some limited guidance on this matter and refers to the implications of interference through such activities with an individual's rights to a private and family life under Article 8 of the Human Rights Act 1998.

In addition the Authority may undertake such surveillance for activities that could not benefit from the protection of the RIPA shield i.e. the activity being investigated would not meet the serious crime test for example in child protection. Such surveillance may simple be the monitoring of entries on social media (e.g. Facebook) such as calling beach parties or where concerns about breaches of the social media policy may arise. In these circumstances whilst the surveillance is not unlawful it leaves a local authority more vulnerable to challenge as it still entails the collection information about an individual. For this reason the Authority requires that all surveillance activity undertaken by the Authority outside of the RIPA regime must be appropriately authorised by one of the Authorising Officers and is subject to central monitoring.

Further information have been provided to Heads of Service to raise awareness of RIPA, the circumstances when a RIPA authorisation is necessary and those circumstances where surveillance activity outside of the RIPA regime must still be appropriately authorised

1.3.7 Compliance and Oversight

The Codes of Practice indicate that elected members of a local authority should review its use of RIPA and set the general surveillance policy at least annually. A local authority should also consider internal reports on the use of RIPA at least quarterly to ensure that it is being used consistently in compliance with the Authority's Policy and that the Policy remains fit for purpose. It has not been possible to give quarterly reports on the use RIPA since 1 November 2012 as no authorisations have been granted. It was agreed by the Committee in 2015 that the use of RIPA should be reported to the Committee on an exception basis. Therefore when an authorisation is granted it will be reported the next available meeting of the Committee to ensure the requirements for member oversight of the use of the Authority's RIPA powers are discharged.

To meet these requirements the Policy Statement provides that:

- Cabinet receives an annual report covering the Authority's use of RIPA powers, and

review of the Policy for the following year;

- Reports are presented to the Regulation and Review Committee on the Authority's use of RIPA powers. The Committee's role is to look at compliance, oversight and use of RIPA. The Committee will also consider whether the Policy remains fit for purpose and recommend changes to the Policy as appropriate for Cabinet's consideration; and
- The Elected Mayor who has responsibility for RIPA related activities receives regular updates from the Senior Responsible Officer regarding the use of the Authority's powers.

1.3.8 Closed Circuit Television (CCTV) Systems

North Tyneside Council's CCTV control room operates cameras throughout the Borough. Overt surveillance as conducted through the use of CCTV is covered by the Data Protection Act 1998 and not by RIPA. Signage is in place informing the public when they enter zones covered by CCTV equipment. The Council's CCTV control room is registered with the Surveillance Camera on Commissioner under the Data Protection Act 1988.

If the CCTV cameras are used for covert surveillance (whether by the Authority or the Police), a RIPA authorisation is required. The Police may make formal written requests for surveillance of a target for which they have a RIPA authorisation. The CCTV Control Room Co-ordinator will seek written confirmation of this authorisation.

1.4 **Appendices:**

Appendix 1: Policy on Covert Surveillance (draft)

1.5 **Contact officers:**

Stephen Ballantyne, Legal Manager – Governance and Employment (0191 643 5329)

1.6 **Background information:**

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

- Regulation of Investigatory Powers Act 2000 and relevant Orders
- Home Office Code of Practice

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The provisions of the Policy can be implemented within the Service's existing resources.

2.2 Legal

The Policy has been prepared with reference to the relevant law and Codes of Practice. A number of Statutory Instruments and Codes of Practice published by the Home Office that govern the operation of RIPA.

The Authority may only authorise directed surveillance where it is both necessary and

proportionate to the investigation or operation being undertaken and to what is being sought to achieve in terms of evidence gathering. Senior Officers are appointed as Authorising Officers and have a key role in carefully scrutinising all applications for the use of RIPA powers under a specific authorisation. Judicial approval is required from the Magistrates' Court in relation to all authorisations prior to any surveillance being undertaken.

Authorising Officers must ensure that authorisations are granted only in appropriate cases and that the extent of all authorisations are clearly set out.

The Authority cannot authorise intrusive surveillance under RIPA. Intrusive surveillance would involve placing an investigator on residential premises or in a private vehicle or allowing the use of an external surveillance device outside of the premises or vehicle that gives the same quality of information as if it was on the premises or in the vehicle.

The Policy, together with the Employee Handbook covers the procedures to be followed in seeking authorisations, maintaining appropriate oversight of the Policy and the central record of decisions.

2.3 Consultation/community engagement

The Policy is aimed at ensuring adherence to the best practice contained within the Codes of Practice as well as the law.

Internal consultation has taken place with officers with responsibility for the management and supervision of surveillance activity as well as with the Elected Mayor.

2.4 Human rights

Human rights implications are addressed within the report and the Policy. RIPA provides a framework under which surveillance activity can be authorised and conducted in a way that is compatible with the rights of individuals.

The Authority must also ensure that activity that falls outside of the RIPA regime is subject to careful scrutiny and authorisation to ensure that human rights are respected and the activity is lawfully undertaken.

2.5 Equalities and diversity

There are no equalities and diversity implications directly arising from the report.

2.6 Risk management

The Authority's Policy and the procedures contained in the Employee Handbook are designed to ensure the Authority complies with the law and Codes of Practice and thereby reduce the risks associated with surveillance activity.

2.7 Crime and disorder

RIPA may only be utilised by the Authority for the purposes of detecting and preventing crime.

2.8 Environment and sustainability

There are no environment and sustainability implications directly arising from this report.

(December 20187)



North Tyneside Council

Covert Surveillance Policy

(Regulation of Investigatory Powers Act 2000) (RIPA)

1. INTRODUCTION

This is North Tyneside Council's Covert Surveillance Policy document. It sets out the adopted approach of the Authority to ensure that any surveillance activity undertaken by the Authority is conducted in a way that is compatible with the human rights of individuals, in particular the right to respect for private and family life (in accordance with Article 8 of the European Convention on Human Rights).

The aim of the Policy is to:

- Explain the Authority's arrangements for authorising surveillance activity;
- Direct Officers to the key sources of guidance to ensure compliance with the Policy;
- Give effect to the rights of citizens to respect for their private and family lives (pursuant to the Human Rights Act 1998);
- Protect the Authority from legal challenge when undertaking surveillance; and
- Assist the Authority in complying with the Codes of Practice, Regulations and Orders issued under the Regulation of Investigatory Powers Act 2000 (RIPA) and to meet the requirements of the Inspectors from the Investigatory Powers Commissioner's Office (IPCO).

2. POLICY STATEMENT

The Authority agrees that as a matter of policy:

- The Authority is committed to complying with: (a) the Regulation of Investigatory Powers Act 2000 (RIPA) and the Codes of Practice issued under RIPA by the Home Office; and (b) guidance supplied by the Investigatory Powers Commissioner's Office (IPCO) ;
- Surveillance that falls outside of the RIPA regime will be subject to the Non-RIPA authorisation procedure and central monitoring to ensure: (a) the Authority has an overview of all surveillance activity it undertakes; and (b) such activity is appropriately scrutinised; and (c) the rights of individuals are appropriately safeguarded.
- Relevant Officers shall receive sufficient training and guidance so as to reasonably ensure such compliance;
- Any Officer shall, if in any doubt about whether the legislation applies in a particular case or how to comply with it, seek guidance from an Authorising Officer and/or the Head of Law and Governance.

3. REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

The Regulation of Investigatory Powers Act 2000 (RIPA) provides a framework under which covert surveillance activity can be authorised and conducted in a way that is compatible with the rights of individuals. Where RIPA is complied with it provides statutory protection from legal challenge to the local authority and for this reason it is often referred to as the "RIPA shield".

Three covert investigatory techniques are available to local authorities under RIPA:

- i. directed surveillance – covert surveillance of individuals in public places e.g. to tackle criminal activity;
- ii. covert human intelligence sources (CHIS) such as the deployment of undercover officers; and
- iii. the acquisition and disclosure of communications data such as telephone billing information or subscriber details e.g. to tackle rogue traders.

The Authority will use RIPA authorised surveillance where appropriate in order to detect and prevent crime. Authorisation will only be given where the proposed surveillance is both necessary and proportionate.

The Protection of Freedoms Act 2012 requires local authorities to obtain the prior approval of a Justice of the Peace before the use of any one of the three covert investigatory techniques available as detailed above. An approval is also required if an authorisation to use such techniques is being renewed.

In each case, the role of the Justice of the Peace is to ensure that the correct procedures have been followed and the relevant factors have been taken into account. Approval can only be given if the Justice of the Peace is satisfied that:

- a) There were reasonable grounds for the Authority's Authorising Officer approving the application to believe that the Directed Surveillance or deployment of a CHIS was necessary and proportionate and that there remain reasonable grounds for believing so;
- b) The Authorising Officer was of the correct seniority within the organisation i.e. a Head of Service, Service Manager or equivalent in accordance with the relevant Regulations;
- c) The granting of the authorisation was for the prescribed purpose of preventing or detecting crime and satisfies the Serious Offence Test for Directed Surveillance (see below); and
- d) Any other conditions set out in any order under Part 2 of RIPA are satisfied (there are none at present).

In addition to the above, where the authorisation is for the deployment of a CHIS, the Justice of the Peace must be satisfied that:

- a) the local authority can ensure that there are officers in place to carry out roles relating to the handling and management of the CHIS as well as the keeping of records;
- b) Where the CHIS is under 16 or 18 years of age, the necessary requirements in relation parental consent, meetings, risk assessments and the duration of the authorisation have been satisfied. Note that the authorisation of such persons to act as a CHIS must come from the Head of Paid Service.
- c) Where the application is for the renewal of a CHIS authorisation, a review has been carried out by the local authority and the Justice of the Peace has considered the results of the review.

The provisions in relation to judicial approval make it clear that the Authorising Officer is not required to apply in person and there is no need to give notice to either the subject of the authorisation or their legal representatives. This reflects the covert nature of the exercise of the investigatory powers under RIPA. The Authority would be represented in any application to a Justice of the Peace by the Authority's Legal Service and the Authorising Officer.

There is no requirement for a Justice of the Peace to consider either cancellations or internal reviews of authorisations.

At all times the risk of obtaining private information about persons who are not subjects of the surveillance must be considered (collateral intrusion) and steps must be taken to avoid or minimise it.

Examples of investigations where it is envisaged that covert techniques may be utilised to enable local authorities to gather evidence and offer evidence in legal proceedings include:

- Trading Standards e.g. action against loan sharks and rogue traders, car fraud, consumer scams, deceptive advertising, counterfeit goods, unsafe toys and electrical goods; and
- Environmental protection e.g. action to stop large scale waste dumping, the sale of unfit food etc.

Serious Offence Test

Local authorities may only use the RIPA provisions to authorise surveillance activities in order to detect and prevent crime as defined by the Regulations. In particular the crime which is sought to be prevented or detected by the surveillance activity must be punishable, whether on summary conviction or on indictment, by a maximum term of at least 6 months of imprisonment, or would constitute an offence under sections 146, 147 or 147A of the Licensing Act 2003 or section 7 of the Children and Young Persons Act 1933. The latter are all offences involving sale of tobacco and alcohol to underage children.

4. NECESSARY AND PROPORTIONATE

The Authority may only authorise directed surveillance, CHIS or the acquisition of communications data where it is both necessary and proportionate to what it seeks to achieve. Senior Offices are appointed as Authorising Officers (or Designated Persons for communications data purposes) and have a key role to play in carefully scrutinising all applications. Authorising Officers/Designated Persons must ensure that authorisations are granted only in appropriate cases and that the extent of all authorisations are clearly set out.

5. COLLATERAL INTRUSION

Collateral intrusion is obtaining private information about persons who are not subjects of the surveillance. The risk of collateral intrusion must be considered and measures should be taken to avoid or minimise it.

6. NON-RIPA SURVEILLANCE

Surveillance activity which falls outside of RIPA, for example, monitoring of employees, does not benefit from the RIPA shield. When operating outside of the RIPA regime there is a greater risk of breaching an individual's rights or being successfully challenged.

The Authority via its Senior Responsible Officer retains a central register of Non-RIPA surveillance activity. Officers are required to take great care to appropriately record, authorise, monitor and scrutinise such activity.

The principles of proportionality and necessity and the requirement to avoid or minimise collateral intrusion also apply to Non-RIPA surveillance.

7. CLOSED CIRCUIT TELEVISION (CCTV) SYSTEMS

Overt surveillance via CCTV is covered by the Data Protection Act ~~2018~~1998 and not by RIPA. CCTV is subject to the Surveillance Camera Code of Practice under the Data Protection Act, which is overseen by the Surveillance Camera Commissioner.

Signage must be in place to inform the public when they enter zones covered by CCTV equipment.

A central record of all CCTV in buildings operated by the Authority is held by the Senior Responsible Officer.

If CCTV cameras are used for covert surveillance (whether by the Authority or the Police), a RIPA authorisation is required.

North Tyneside Council's CCTV control room operates cameras throughout the North Tyneside area. The Police may make formal written requests for surveillance of a target for which they have a RIPA authorisation. Confirmation by sight of this authorisation will be sought and a copy will be retained (redacted as appropriate) by the CCTV Control Room Co-Ordinator.

Employees using CCTV covertly must be aware of the possibility of collateral intrusion (invading the privacy of people other than the target) and take steps to avoid or minimise it.

The Protection of Freedoms Act 2012 makes provision for the further regulation of surveillance camera systems. These are defined as Closed Circuit Television (CCTV), Automatic Number Plate Recognition (ANPR) and other surveillance camera technology.

The Surveillance Camera Code of Practice also includes guidance in relation to the development or use of such systems, and the use and processing of information derived from them. The Code of Practice includes provisions about:

- considerations as to whether to use surveillance camera systems;
- types of systems or apparatus
- technical standards for systems or apparatus
- locations for systems or apparatus
- the publication of information about systems or apparatus
- standards applicable to persons using or maintaining systems or apparatus
- standards applicable to persons using or processing information obtained by virtue of systems
- access to, or disclosure of, information so obtained
- procedures for complaints or consultation

The Authority must have regard to the Code if they operate or intend to operate any surveillance camera systems covered by the Code.

Failure to adhere to the Code will not in itself render an organisation liable to legal proceedings, but the Code is admissible in civil or criminal proceedings. The Code could also be enforced by way of judicial review in the High Court.

The CCTV provisions in the Protection of Freedoms Act 2012 add a completely new layer of control over the use of CCTV by local authorities.

8. CORPORATE RESPONSIBILITIES

The Authority's Senior Responsible Officer (currently the Head of Law and Governance) has overall responsibility for RIPA.

The Senior Responsible Officer appoints Authorising Officers and Designated Persons. A list of Authorising Officers/Designated Persons is held with the Central Record. This list may change as required. Only Authorised Officers named in the list may authorise covert surveillance activities under RIPA. Only Designated Persons named in the list may authorise the acquisition of communications data. The Senior Responsible Officer may remove an Officer from the list where they consider it is appropriate to do so.

In particular, the Senior Responsible Officer ensures that:

- Only Officers who have received appropriate training on RIPA are permitted to become Authorising Officers/Designated Persons.
- Refresher training is provided as required and training records are maintained.
- Monitoring arrangements are in place in each Service to ensure that the Authority is meeting its obligations under RIPA, the Codes of Practice, and this Policy.
- Reviews of authorisation documentation take place to ensure that they are completed in accordance with the requirements of RIPA, the Codes of Practice and Authority guidance. Appropriate feedback is given to officers to ensure high standards are encouraged and maintained.
- The Central Record is maintained in accordance with the requirements of the Codes of Practice and Authority guidance.
- An up-to-date copy of this Policy and associated guidance is available to all relevant employees.
- An annual review of this Policy is undertaken and presented to Cabinet for approval, in addition to provision of monitoring information.

The RIPA Co-ordinating Officer (currently the [Legal Manager Lawyer Specialist](#) – Governance and Employment) supports the Senior Responsible Officer in relation to the discharge of that role. The RIPA Co-ordinating Officer also monitors all authorisations and provides robust challenge to authorisations to ensure they meet the requirements of the law and this Policy.

Each Head of Service is responsible for ensuring effective and legally compliant systems and procedures are in place for surveillance work within their Service Areas in respect of any surveillance activity whether undertaken within or outside of the RIPA provisions.

The Senior Responsible Officer is also responsible for ensuring that:

- Relevant officers receive appropriate training on RIPA before undertaking investigations that include (or may include) Directed Surveillance, the use of a CHIS or the acquisition or disclosure of communications data.
- Refresher training is provided as required and training records are maintained and supplied to the Senior Responsible Officer.
- Authorisations are approved, reviewed, renewed, and cancelled by the Authorising Officer/Designated Person as necessary, and such actions are reported to the Senior Responsible Officer.
- Records and evidence obtained as a result of surveillance/investigation are kept and destroyed in accordance with Authority Policy.

All employees connected with surveillance and handling evidence are responsible for ensuring that they act only in accordance with their level of responsibility and training and in accordance with this Policy and associated documents.

9. GUIDANCE

The Authority's intranet has a surveillance page containing the key guidance documents, including this Policy, the Employee Handbook, the relevant Codes of Practice, a guide to completing RIPA forms and a link to the Home Office RIPA forms.

The Authority has prepared the 'Employee Handbook: Use of Covert Surveillance & Covert Human Intelligence Sources & Communications Data (Regulation of Investigatory Powers Act 2000 (RIPA))' to provide guidance to Authority Officers regarding the use of RIPA and the procedures that must be followed.

The Employee Handbook may be revised by the Senior Responsible Officer during the year to reflect changes in procedures or best practice.

All Authority Officers who may authorise or undertake surveillance work must read the Handbook and follow the procedures within it.

Authority Officers are encouraged to seek guidance on the procedures from the Authorising Officers/Designated Persons and the Senior Responsible Officer.

If Officers wish to undertake surveillance which falls outside of the RIPA regime they must seek appropriate authorisation. This is covered in the Employee Handbook. Information regarding surveillance (whether under RIPA or not) must be held centrally by the Senior Responsible Officer to enable the Authority to have an overview of all surveillance activities being undertaken.

10. COMPLIANCE AND OVERSIGHT

The Senior Responsible Officer will assess compliance with this policy and associated guidance. The Senior Responsible Officer may seek support from Internal Audit as appropriate.

A random sample of authorisations will be checked monthly by the Senior Responsible Officer and on receipt by the RIPA Co-Ordinating Officer and any incorrect or incomplete authorisations will be reported to the relevant Authorising Officer and Head of Service. In addition to the sample checks the Senior Responsible Officer will provide feedback and guidance to Officers as needed throughout the year.

Elected Members have a key role in setting policy and overseeing the use of RIPA within the Authority. Members do not make investigatory/enforcement casework decisions in relation to specific authorisations.

The Elected Mayor is designated to champion compliance with RIPA within the Authority processes. The Elected Mayor receives regular updates from the Senior Responsible Officer regarding the use of the Authority's powers.

The Senior Responsible Officer presents reports to Regulation & Review Committee at least annually on the Authority's use of the powers but will also usually report the use of RIPA to the next available committee meeting. The Committee looks at compliance, oversight and use of

RIPA. The Committee considers whether the policy remains fit for purpose and will recommend changes where appropriate for Cabinet's consideration.

Cabinet will receive an annual report upon the Authority's use of the powers and will set the policy for the following year.

The Authority has designated a Cabinet Member (currently the Elected Mayor) and a Senior Responsible Officer (currently the Head of Law and Governance) to champion and oversee compliance with this Policy and associated procedures. Each Head of Service is responsible for ensuring compliance with RIPA in their service area.

Cabinet will review the RIPA policy and the Authority's use of RIPA on an annual basis.

11. REVIEW OF THIS POLICY

The Senior Responsible Officer will review this policy and associated controls as follows:

- Annually.
- Following legislative changes.
- Following any recommendations received as a result of inspections and reviews undertaken by the Investigatory Powers Commissioner's Office.
- Following any major breach in compliance.

12. RECORD KEEPING

Authorising Officers must send the originals of all applications, reviews, renewals and cancellations to the Senior Responsible Officer for filing with the Central Record. In light of the confidential nature of the data original documents should be hand delivered and must be stored securely. Documentation must not be altered in any way following its completion. If any clarification is needed regarding the content of a document this must be done via a separate document which must be signed and dated.

All documentation received as a result of an authorisation must be handled and stored securely and in line with data protection principles.

13. DESTRUCTION OF MATERIAL

Any material obtained during covert surveillance that is wholly unrelated to the operation and where there is no reason to believe that it will be relevant to future civil or criminal proceedings will be destroyed immediately.

In North Tyneside Council the retention period for the central record and associated material is six years from the end of each authorisation or the conclusion of connected court proceedings (whichever date is last).

Where the retention period has expired, the authorisation and any other material obtained or created during the course of the covert surveillance under the unique reference number will be destroyed.

The Authorising Officer/Designated Person will be responsible for ensuring that all material held in the department relating to the unique reference number is destroyed.

The Authorising Officer/Designated Person will notify the Senior Responsible Officer that the retention period has expired, giving the unique reference number and authorise destruction of the material held in the Central Record of Authorisations.

All material to be destroyed will be treated as confidential waste.

Officers should also refer to the Authority's Record Retention Guidelines before destroying any document or evidence obtained under RIPA.

Further guidance on record keeping is available in the Codes of Practice.

14. TRAINING

The Senior Responsible Officer will train the senior managers responsible for overseeing and monitoring RIPA activities, all other employees involved in RIPA activities, and ensure that they understand this Policy.

The Senior Responsible Officer will keep a record of the training undertaken by employees.

15. CODES OF PRACTICE & RELATED AUTHORITY DOCUMENTS

The following Codes of Practice have been issued by the Home Office:

1. Code of Practice - Covert Surveillance and Property Interference
2. Code of Practice - Covert Human Intelligence Sources
3. Code of Practice - Acquisition and Disclosure of Communications Data

All employees involved in surveillance activities must have regard to and act in accordance with:

- the Codes of Practice;
- the Employee Handbook: Use of Covert Surveillance & Covert Human Intelligence Sources & Communications Data (Regulation of Investigatory Powers Act 2000) (RIPA); and
- instruction and guidance from Authorising Officers/Designated Persons and the Senior Responsible Officer.

The Employee Handbook includes appendices providing detailed guidance to assist in the completion of RIPA forms.

16. MISCONDUCT

All employees involved in RIPA activities will comply with this Policy. Failure to comply with this Policy may be dealt with as misconduct or gross misconduct under the disciplinary procedures depending upon all of the circumstances of the case.

17. COMPLAINTS

Any complaint made to the Authority will be dealt with in accordance with the corporate complaints procedure.