

**STROUD DISTRICT COUNCIL**  
**AUDIT AND STANDARDS COMMITTEE**

**AGENDA  
ITEM NO**

**27 APRIL 2021**

**10**

<b>Report Title</b>	<b>COUNTER FRAUD UNIT REPORT AND REGULATION OF INVESTIGATORY POWERS ACT (RIPA) 2000 / INVESTIGATORY POWERS ACT (IPA) 2016 REPORT</b>			
<b>Purpose of Report</b>	To provide the Audit and Standards Committee with assurance over the counter fraud activities of the Council in relation to the work undertaken by the Counter Fraud Unit (CFU). The report is presented to the Audit and Standards Committee detailing progress and results for consideration and comment as the body charged with governance in this area. The report also provides the Audit and Standards Committee with two Policies, for approval and adoption, in relation to the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and the Council's existing Policies and arrangements.			
<b>Decision(s)</b>	<p><b>The Committee RESOLVES to:</b></p> <ul style="list-style-type: none"> <li><b>a) Note the CFU updates;</b></li> <li><b>b) Approve and adopts the revised Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy as attached at Appendix 1;</b></li> <li><b>c) Approve and adopt the new Investigatory Powers Act 2016 Acquisition of Communications Data Policy as attached at Appendix 2, and</b></li> <li><b>d) Authorise the Monitoring Officer to approve future minor amendments to the Policies in consultation with the Counter Fraud Unit Manager.</b></li> </ul>			
<b>Consultation and Feedback</b>	Work provision for 2020/2021 was agreed with the Strategic Director of Resources. The Policies were subject to consultation with the Monitoring Officer and One Legal.			
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<b>Options</b>	None. The CFU is a specialist criminal enforcement service working with the Gloucestershire Local Authorities, West Oxfordshire District Council and a number of other public sector bodies such as social housing providers.			
<b>Background Papers</b>	None			
<b>Appendices</b>	Appendix A - Regulation of Investigatory Powers Act 2000 Surveillance and Covert Human Intelligence Source Policy. Appendix B - Investigatory Powers Act 2016 Acquisition of Communications Data Policy.			
<b>Implications (further details at the end of the report)</b>	Financial	Legal	Equality	Environmental
	Yes	Yes	Yes	No

## **1. INTRODUCTION / BACKGROUND**

- 1.1. The Audit and Standards Committee oversees the Council's counter fraud arrangements and it is therefore appropriate for the Committee to be updated in relation to counter fraud activity.
- 1.2. A summary of the work undertaken during 2020/2021 is presented to the Audit and Standards Committee detailing progress and results for consideration and comment as the body charged with governance in this area. Work plans are agreed with senior management. Currently plans may be subject to change as a consequence of the work streams created by the Covid-19 Pandemic.
- 1.3. The Council is required to proactively tackle fraudulent activity in relation to the abuse of public funds. The Counter Fraud Unit provides assurance in this area. Failure to undertake such activity would accordingly not be compliant and expose the authority to greater risk of fraud and/or corruption. If the Council does not have effective counter fraud and corruption controls it risks both assets and reputation.
- 1.4. The Regulation of Investigatory Powers Act and Investigatory Powers Act Policies set out the legislative framework and principles the Council will abide by to mitigate the risk of legal challenge in Court.
- 1.5. The Policies demonstrate the Council's consideration of necessity, proportionality and public interest when deciding on surveillance activity and requests for communication data. It also demonstrates openness and transparency for its customers.

## **2. MAIN POINTS**

### **2.1. Counter Fraud Unit Update.**

- 2.2. As a dedicated investigatory support service, the CFU undertakes a wide range of enforcement and investigation work according to the requirements of each Council. This includes criminal investigation and prosecution support for enforcement teams, investigations into staff/member fraud and corruption, or tenancy and housing fraud investigation work.
- 2.3. The CFU has been tasked with undertaking the investigation of alleged fraud and abuse in relation to the Council Tax Reduction Scheme (Council Tax Support), working closely with the Department for Work and Pensions in relation to Housing Benefit investigations.
- 2.4. During 2020/2021, the team have received 3 referrals and closed 9 cases. This resulted in the following:
  - 3 successful prosecutions:
    - Case 1 - 2 defendants, both pleaded guilty. The first defendant received a 24 week custodial sentence suspended for 18 months and a 6 month Curfew Order. The second defendant received a 36 week custodial sentence suspended for 18 months and 60 hours Community Service / Unpaid Work Order. The increased Council Tax revenue or fraudulently claimed Council Tax Support totalled £4,142.
    - Case 2 – defendant pleaded guilty and will be sentenced on 17 May 2021. The increased Council Tax revenue or fraudulently claimed Council Tax Support totalled £2,239. Additionally there is also an overpayment of £1,174 in discretionary housing payments to be repaid.

- The application of 5 Civil Penalties and 1 Criminal Penalty totalling £817, and increased Council Tax revenue of £2,106 being raised.
  - The team have processed 3 enquiries for DWP.
- 2.5. All Local Authorities participate in the Cabinet Office's National Fraud Initiative, which is a data matching exercise to help prevent and detect fraud nationwide. The use of data by the Cabinet Office in a data matching exercise is carried out with statutory authority under Part 6 of the Local Audit and Accountability Act 2014. It does not require the consent of the individuals concerned under Data Protection Legislation.
  - 2.6. The CFU are assisting the Revenues and Benefits Department with the review of National Fraud Initiative (NFI) matches. Work will commence in April on matches relating to Council Tax Single Person Discount anomalies, results will be reported accordingly.
  - 2.7. The CFU continues to support the Council in tackling tenancy fraud. The overall remit of the CFU is to prevent, detect and deter abuse of public funds and social housing. Housing and tenancy fraud remains as one of the top four areas of fraud and abuse within the public sector. This takes many forms but the two most significant areas are Right to Buy and Illegal Subletting. The CFU will continue to work with the Council to tackle this effectively.
  - 2.8. The Counter Fraud Officers are authorised under the Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014. This means they are authorised to obtain information relating to an individual from organisations such as financial institutions (banks, credit card companies), utility companies, communications providers and so on. The Act also created new offences in relation to housing fraud that can be prosecuted by Local Authorities acting on behalf of Social Landlords.
  - 2.9. During 2020/2021, the team have received 3 new cases and closed 9 cases. There are 10 active investigations and the team are working with officers in the Housing Team to progress matters. Outcomes will be reported accordingly.
  - 2.10. **Regulation of Investigatory Powers Act (RIPA) 2000 and Investigatory Powers Act (IPA) 2016.**
  - 2.11. The Council's Policies are based on the legislative requirements of the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and the Codes of Practice relating to directed surveillance, the use of covert human intelligence sources and the acquisition of communications data. Attached at Appendix 1 and at Appendix 2 are revised and newly drafted Policies. These Policies have been reviewed by the Investigatory Powers Commissioner's Office Inspector during the course of recent partner Council inspections and the suggested minor amendments have been incorporated.
  - 2.12. The Investigatory Powers Act 2016 now governs communication data requests. Communication data can include the address to which a letter is sent, the time and duration of a communication, the telephone number or email address of the originator and recipient, and the location of the device from which the communication was made. It covers electronic communications including internet access, internet telephony, instant messaging and the use of applications. It also includes postal services. It does not include the content of any communication. It is not lawfully possible for Council employees under any circumstances to obtain the content of communications.

- 2.13. The legislation widened the scope of information Local Authorities may obtain for investigations, introduced the necessity for a serious crime threshold and removed the requirement for judicial approval.
- 2.14. All applications for communications data are made online via the National Anti-Fraud Network (NAFN) which acts as the single point of contact for Local Authorities. NAFN send requests to the Office for Communication Data Authorisations (OCDA) which ratifies all applications from public authorities for approval and if granted, NAFN will then obtain the requested data for the applicant.
- 2.15. There is a requirement for the Local Authority to nominate a Designated Senior Officer who will confirm to NAFN that the Local Authority is aware of any request and approve its submission. This role will be undertaken by the Information Governance Officer with assistance from the Counter Fraud Unit Manager.
- 2.16. Surveillance and the use of a Covert Human Intelligence Source (CHIS) is still governed by the Regulation of Investigatory Powers Act 2000 and any 'RIPA' applications are subject to the same application processes as outlined in the previous Policy – the offence must meet the serious crime threshold and the Local Authority must obtain judicial approval.
- 2.17. The refreshed Policy introduces a mandatory requirement for staff to complete a Non-RIPA Application Form where surveillance is being undertaken but the offence does not meet the serious crime criteria.
- 2.18. The Local Authority must have a Senior Responsible Officer and Authorising Officers to approve the application before the Court is approached. The Senior Responsible Officer is the Chief Executive and the Authorising Officers are the Monitoring Officer and the Head of Environmental Health.
- 2.19. The role of RIPA Coordinator will be undertaken by the Information Governance Officer, with assistance from the Counter Fraud Unit Manager, who will be responsible for the management of Policies, annual updates to Members, the return of statistics to the Investigatory Powers Commissioners Office, coordination of any inspections by the Investigatory Powers Commissioners Office and the management and recording of all applications by Officers of the Local Authority.
- 2.20. The Council takes responsibility for ensuring its procedures relating to surveillance and the acquisition of communications data are continuously improved and all activity is recorded.
- 2.21. There have been no RIPA applications and no applications for communications data. The Council has not held data relating to Non-RIPA activity to date.

### **3. CONCLUSION**

- 3.1 The Council were fully supportive of the original Counter Fraud Unit project and funding bid and the CFU is now delivering financial results in this area.

### **4. IMPLICATIONS**

#### **4.1 Financial Implications**

- 4.1.1 The report details financial savings generated by the Counter Fraud Unit.

- 4.1.2 The adoption and approval of these Policies will support the Council's objectives in reducing crime and financial loss to the Local Authority.

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## **4.2 Legal Implications**

- 4.2.1 In general terms, the existence and application of an effective fraud risk management regime assists the Council in effective financial governance which is less susceptible to legal challenge.
- 4.2.2 The Council is required to ensure that it complies with the Regulation of Investigatory Powers Act 2000, the Investigatory Powers Act 2016 and any other relevant/statutory legislation regarding investigations. It should also consider government guidance in this area.
- 4.2.3 The Council has a statutory obligation for enforcing a wide range of legislation, where it is necessary and proportionate to do so. Human rights implications are a consideration of this type of activity and this is included within the Policy.
- 4.2.4 Any requests for directed/covert surveillance or the acquisition of communications data to be undertaken should be necessary and proportionate, and authorised by the appropriate Officer. Both Policies provide information and advice to those seeking authorisation and those officers granting authorisation. Both policies confirm the process to be used and matters to be considered.

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## **4.3 Equality Implications**

- 4.3.1 The promotion of effective counter fraud controls and a zero tolerance approach to internal misconduct promotes a positive work environment.
- 4.3.2 The application of these Policies, to govern surveillance and the obtaining of personal communications data, ensures that there is less risk that an individual's human rights will be breached. Furthermore it protects the Council from allegations of the same.

## **4.4 Environmental Implications**

- 4.4.1 There are no significant implications within this category.