

Name of meeting: Council

Date: 21 March 2018

Title of report: Constitution – Proposed Changes to Terms of Reference of CGAC

Purpose of report

To set out proposed changes to the Council’s constitution as described in paragraph 2 and as set out in more detail in the attached Appendix, which show the proposed amendments.

To seek approval in relation to these proposed changes.

Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?	No
Key Decision - Is it in the Council's Forward Plan (key decisions and private reports)?	No
The Decision - Is it eligible for “call in” by Scrutiny?	no
Date signed off by Director & name	Yes Rachel Spencer - Henshall 13/03/18
Is it also signed off by the Service Director for Finance, IT and Transactional Services?	Yes Eamonn Croston 13/03/18
Is it also signed off by the Service Director - Legal Governance and Commissioning?	Yes Julie Muscroft 13/03/18
Cabinet member portfolio	Graham Turner and Musarrat Khan - Corporate

Electoral wards affected: All
Ward councillors consulted: None

Public or private: Public

1. Summary

1.1 It is the role of Cabinet to provide strategic oversight and to keep the Council’s use of surveillance under review. The relevant legislation which regulates use of surveillance is the Regulation of Investigatory Powers Act 2000 (RIPA). It receives a report on its use by the Council annually. At its meeting on 19th December 2017 Cabinet reviewed its use of RIPA and agreed to update the policy. It also proposed that CGAC receive regular updates on RIPA compliance throughout the year

2. Information required to take a decision

2.1 The Council is subject to the requirements of RIPA which sets out how and when a local authority such as Kirklees Council, can use covert surveillance. The three types of surveillance regulated by RIPA are

directed surveillance, the use of covert human intelligence sources (informants) and the obtaining of communications data (which does not include obtaining the content of any electronic communication). The Cabinet adopted the current RIPA Policy on 19th December 2017

- 2.2 Surveillance can only be authorised via RIPA where it is both necessary and proportionate to the aims to be achieved and the intrusion into other people's privacy which may result. Accordingly covert surveillance will only be appropriate where other options are not available. The Council cannot authorise "intrusive surveillance" which is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle and it is most unlikely that the Council would wish to use a covert human intelligence source as part of any investigation unless a request was made by West Yorkshire Trading Standards Service.
- 2.3 The Council is regularly inspected by the Office of the Surveillance Commissioners in relation to its use of directed surveillance and of covert human intelligence sources. The Inspector and the Code of Practice advises that councillors are updated regularly on the use of the 2000 Act to ensure that it is being used consistently with the Council's policy and that the policy remains fit for purpose and has suggested that ideally this be more than once a year.
- 2.4 In accordance with this Cabinet propose that update reports are to be brought to Corporate Governance and Audit Committee so that it may monitor the use through regular reports during the year. Accordingly, the terms of reference of CGAC require amending to reflect this and the proposed amended terms of reference are attached at Appendix 1.
- 2.5 Cabinet will continue to retain a strategic oversight, be updated annually, and will set the policy once a year.

3. Implications for the Council

3.1 Early Intervention and Prevention (EIP)

N/A

3.2 Economic Resilience (ER)

N/A

3.3 Improving Outcomes for Children

N/A

3.4 Reducing demand of services

N/A

3.5 Legal/Financial Implications

It is important that the Council's use of covert surveillance is in accordance with the RIPA regime. Failure to do so could lead to legal challenge and/or evidence gathered via unlawful surveillance being ruled inadmissible in legal proceedings.

4. Consultees and their opinions

- 4.1 The following have been consulted on the contents of this report and have approved them:

- 4.1.1 The Service Director – Legal, Governance and Commissioning, as the Senior Responsible Officer.
- 4.1.2 The Head of Legal Services.

The changes have also been considered by Corporate Governance and Audit Committee on 30th January 2018 and they have recommended the changes set out in this report in the Officer Recommendation section. .

5. Next steps

If approved by Council the necessary changes will be made to the Constitution to reflect the new process.

6. Officer recommendations and reasons

That:

- 6.1 Members approve the amended terms of reference providing authority to Corporate Governance and Audit Committee to receive regular updates and to monitor the Council's use of RIPA during the year.
- 6.2 Delegate authority to the Service Director – Legal, Governance and Commissioning to make the amendments to the constitution to reflect the changes set out above

7. Cabinet portfolio holder recommendation

N/A

8. Contact officers

Samantha Lawton samantha.lawton@kirklees.gov.uk
Senior Legal Officer 01484 221 000

9. Background Papers and History of Decisions

Cabinet Report dated 19 December 2017 - Proposals to Update the Council's RIPA Policy

Report to Corporate Governance and Audit Committee on 30th January 2018 titled - Constitution – Proposed Changes to Terms of Reference of CGAC

10. Service Director responsible

Julie Muscroft
Service Director – Legal, Governance and Commissioning
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11. Appendices

Appendix 1 – Amended Terms of Reference for Corporate, Governance and Audit committee