

**NOT FOR PUBLICATION**

**EXEMPT INFORMATION – Paragraph 2 – Information which is likely to reveal the identity of an individual (applies to Appendix A only).**

AGENDA  
ITEM

**7**

**WEST DEVON BOROUGH COUNCIL**

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<b>NAME OF COMMITTEE</b>	<b>Resources Committee</b>
<b>DATE</b>	<b>28 January 2014</b>
<b>REPORT TITLE</b>	<b>Authorisation for RIPA applications to Magistrates Court</b>
<b>Report of</b>	<b>Head of Customer Services and ICT</b>
<b>WARDS AFFECTED</b>	<b>All</b>

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**Summary of report:**

The purpose of the report is to advise members of the mandatory change in procedure in authorising covert investigation techniques in pursuance of potential investigations.

**Financial implications:**

There are no financial implications to this report.

**RECOMMENDATIONS:**

That the Resources Committee recommends to Council that the nominated officers listed in (exempt) Appendix A are authorised to represent the Council in applying for judicial approval to use covert techniques in the pursuance of a potential investigation

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**1. BACKGROUND**

1.1 In the course of enforcement work, it is sometimes necessary for West Devon Borough Council to carry out surveillance to fulfill our statutory duties. Some examples of when covert surveillance is used are as follows:

- Observe individual(s) who are suspected of benefit fraud
- For illegal fly-tipping investigations which may also require the covert use of CCTV
- Enforcement action relating to Planning restrictions.

- 1.2 Under the Regulation of Investigatory Powers Act 2000 (RIPA) Local Authorities were empowered to authorise their own covert operations provided the authorising officer was of a sufficiently senior level and had undergone the necessary training to understand what was being proposed, and why it was necessary and proportional to the investigation.
- 1.3 On 01/11/2012 changes to this procedure were introduced by sections 37 and 38 of the Protection of Freedoms Act 2012.
- 1.4 The new procedure from 01/11/2012 is that, for covert operations to be appropriate, the offence under investigation has to be potentially punishable by a 6 month or more term in prison and the authorisation of the covert operations has to have judicial approval prior to their use. The only exception to this is offences relating to the underage sale of alcohol and tobacco.
- 1.5 Guidance from the Home Office has stated that it is good practise that the nominated officer attending court to apply for judicial approval is the same officer who will be pursuing the investigation and using the covert techniques. The reason for this is that the officer will have a good understanding of the case and the reasoning behind the need to use covert investigation techniques.
- 1.6 Local Authority investigators do not automatically have the right to appear in court on behalf of the council and so need to have member approval under section 223 of the Local Government Act 1972 in order to represent the LA in court.

## **2. ISSUES FOR CONSIDERATION**

- 2.1 In the interim period since the change in procedure came into effect on 1<sup>st</sup> November 2012 the council's solicitor has represented the Council in court however it is considered this may present a conflict of interest should this practise continue in the long term. It is considered that the RIPA application is part of the investigation process and therefore should be distinct from the legal evaluation and final decision making process in determining whether the case should proceed to prosecution.
- 2.2 Over the past 12 months the Council has made 1 application to the Magistrates Court for benefit fraud purposes.

## **3. LEGAL IMPLICATIONS**

- 3.1 The requirement for members to approve nominating designated officers to attend magistrates court to apply for judicial approval to use covert investigation techniques in pursuance of potential fraudulent investigations is governed by the Regulation of Investigatory Powers Act 2000 and the Protection of Freedom Act 2012.

## **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications related to these changes apart from a more efficient use of the Corporate Solicitors time.

## **6. OTHER CONSIDERATIONS**

<b>Corporate priorities engaged:</b>	All
<b>Considerations of equality and human rights:</b>	These are considered on a case by case basis in considering whether covert surveillance is necessary and appropriate
<b>Biodiversity considerations:</b>	None
<b>Sustainability considerations:</b>	None
<b>Crime and disorder implications:</b>	These are considered on a case by case basis in considering whether covert surveillance is necessary and appropriate
<b>Background papers:</b>	Protection of Freedoms Act 2012 – changes to provisions under the Regulation of Investigatory Powers Act 2000 (RIPA)
<b>Appendices attached:</b>	(Exempt) Appendix A – List of Officers to be authorised

## STRATEGIC RISKS TEMPLATE

No	Risk Title	Risk/Opportunity Description	Inherent risk status				Mitigating & Management actions	Ownership
			Impact of negative outcome	Chance of negative outcome	Risk score and direction of travel			
1	Adherence to Legislation	Breach of Mandatory Regulations. Any evidence collected through covert surveillance would be inadmissible as evidence	4	2	8	↑	Appropriate officers nominated and authorised to represent the Council at court to request permission to implement covert operations to investigate potential fraudulent behaviour	Head of ICT & Customer Services

Direction of travel symbols ↓ ↑ ⇄