



**REPORT OF THE ASSISTANT CHIEF
EXECUTIVE, LEGAL AND
GOVERNANCE TO THE AUDIT
COMMITTEE ON 27 MARCH 2013**

REGULATION OF INVESTIGATORY POWERS ACT 2000

PURPOSE OF THIS REPORT

- 1.1 This report is brought for the attention of the Audit Committee pursuant to the Resolution of Cabinet dated 5 March 2009 that the Committee should receive an annual report of surveillance activity undertaken by the Council.
- 1.2 Local authorities are inspected biennially by Inspectors appointed by the office of the Surveillance Commissioners and the Council has most recently been inspected by His Honour Norman Jones QC, Assistant Commissioner, on 17 October 2012. It is a requirement that the report of the inspection is brought to the attention of the Committee so that it can consider the Inspector's recommendations and the proposals in response thereto.
- 1.3 The report also brings to the attention of the Committee some recent changes in the RIPA regime which make additional requirements for the authorisation of covert surveillance and the purposes for which it may properly be deployed.

RECOMMENDATION

- 2.1 **That the Audit Committee give consideration to this report.**

BACKGROUND

- 3.1 The Regulation of Investigatory Powers Act 2000 (RIPA) underpins a complex scheme of legislation which is concerned with the regulation of forms of surveillance. Its scope is not limited to local authorities but regulates the use of surveillance by all public agencies, including the Police, HM Revenues and Customs and the Security Service. The different organisations are permitted different scope for surveillance, but the same rigorous procedures are required to be applied, irrespective of the public agency in question or the subject matter of the investigation.

- 3.2 The Local Authority may undertake covert surveillance by means of either directed surveillance, or the use of a Covert Human Intelligence Source (CHIS) or the acquisition of communications data. This latter form of covert surveillance is separately inspected and regulated by the Interception of Communications Commissioner's Office (IOCCO) and was last subject to a report to this Committee on 25 July 2012. Acquisition of communications data is not the subject of this report.
- 3.3 Directed surveillance is covert surveillance which is undertaken for a specific investigation in such a manner that is likely to result in the obtaining of private information about a person and is carried out in such a manner calculated to ensure that the surveillance subject is unaware of it taking place.
- 3.4 Covert Human Intelligence Source (CHIS) is where a person establishes or maintains a personal or other relationship with another person (the surveillance subject) for the purpose of covertly using the relationship to obtain information or to provide access to information to another person or for the purpose of covertly disclosing information obtained in the relationship.
- 3.5 There are certain types of covert surveillance that the Local Authority is not entitled to use. These include intrusive surveillance, which involves intrusion onto or the placing of a surveillance device in residential premises or a private vehicle and property interference; that is the entitlement to enter onto or interfere with property clandestinely.
- 3.6 The safeguards regarding the use of surveillance are both substantive and procedural. Some of the substantive safeguards, ie what types of covert surveillance local authorities can and cannot undertake are indicated above. A new substantive safeguard was introduced from 1 November 2010 by the Protection of Freedoms Act 2012. This prescribes that a local authority's use of directed surveillance is restricted to the prevention or detection of crime only and only in respect of:
- a criminal offence that carries a minimum term of six months' imprisonment, or
 - offences involving the sale of tobacco and alcohol to underage children.
- 3.7 A critical underpinning principle of the RIPA regime is that any covert surveillance that is authorised must be necessary and proportionate. Essentially, this requirement means that:

- there is no other satisfactory lower level means of investigation; and
- the interference with the privacy of the surveillance subject (or those inadvertently caught up in the surveillance – known as collateral intrusion) is outweighed by the importance of the investigation.

Authorisations for covert surveillance will only remain active for a maximum period of three months in the case of directed surveillance and 12 months for a CHIS.

- 3.8 The main procedural safeguards are that the surveillance must be authorised by a senior officer, as defined by the Regulations, on a formal written application; that these must be subject to review and early cancellation once the investigation is complete or if no longer required; that the information is recorded on Home Office standardised forms, and that the Local Authority keep a central register of all authorisations.
- 3.9 The Protection of Freedoms Act 2012 has added an additional procedural safeguard which requires that all local authority authorisations must receive approval by a Magistrate before becoming effective and outlining the procedure for obtaining such approval.
- 3.10 The ultimate purpose of the regime is intended to ensure that the citizen's right to respect for his private life under Article 8 of the European Convention on Human Rights (as applied domestically by the Human Rights Act 1998) is not infringed other than on grounds allowed by the Convention and that in relation to criminal proceedings evidence obtained by covert surveillance is obtained fairly and not in abuse of process contrary to the Police and Criminal Evidence Act 1984 (PACE).

4. THE COUNCIL'S USE OF DIRECTED SURVEILLANCE AND CHIS

- 4.1 To place matters into context the Council makes very limited use of directed surveillance. In the last inspection period it only granted 7 authorisations, all of which occurred in 2010. The Council made no use of CHIS; and never has. This is noted in the introductory paragraphs to the Inspector's report. A copy of the report is attached as Appendix A. Appendix B gives a longer term breakdown of the Council's usage of RIPA.

- 4.2 The report pays some compliments to the Council in its surveillance work and, in particular, commends the maintenance of the Central Record, which is described as an excellent document for the purposes of oversight by the Senior Responsible Officer and the RIPA Co-ordinating Officer. Some minor shortcomings in the record were identified and steps have been taken to amend the record to address those issues. The Inspector's analysis of the applications and authorisations granted indicated a less satisfactory position identifying a number of shortcomings. For example, one of the authorisations contained inadequate consideration of proportionality, the application and authorisation on the form were in the same typeface, making the contribution of each officer difficult to distinguish and the authorisation had never been cancelled. Another authorisation had been granted for an inappropriate purpose that was not the prevention or detection of crime, imprecise phraseology had been used and no expiry or review date had been included. The Inspector was of the view that in such cases the RIPA co-ordinating officer should act robustly to ensure the withdrawal of inadequate authorisations and that this had not occurred to present.
- 4.3 It was noted by the Inspector that, with one exception, all of the recommendations set out in the previous Inspector's report had been fully and satisfactorily discharged. The recommendation that was not considered to have been discharged was in relation to co-ordinating a programme of RIPA training, with the objective of improving the quality of applications and authorisations and achieving a corporate standard across the Council. The issue of training receives further consideration below.
- 4.4 Since the previous inspection the Government had introduced new regulations and codes of practice which had effect from 1 April 2010. These had limited impact upon local authorities other than to change the statutory designation of those officers who may authorise surveillance and to require the appointment of a Senior Responsible Officer (SRO), who should be a member of the Council's corporate leadership team and have ultimate oversight of the integrity and management of covert surveillance. The report contains some references to the Council not having appointed an SRO. I am able to confirm that this was an error of understanding on the part of the Inspector and that the Council did resolve to appoint Mr Frosdick as Senior Responsible Officer at a meeting of the Cabinet on 18 August 2010, following the introduction of the revised Home Office codes.

4.5 At the conclusion of the report the Inspector sets out 6 specific recommendations. These are addressed in turn.

(1) Amend the format and content of the Central Record

The Council's central record is maintained as an electronic spreadsheet which the Inspector noted was fully compliant with the relevant codes of practice, except in that it omits any procedure for the recording of self-authorisations. It was also noted that the system adopted for recording urgent authorisations, confidential information and employment of juvenile and vulnerable CHIS was dealt with by way of prefixes and although compliant was regarded by the Inspector as cumbersome and difficult to follow.

Response

Since the local codes of practice would exclude self-authorisations, provision for the recording of such might have appeared otiose. However, appropriate provision has now been made on the electronic spreadsheet. The use of prefixes has now been discontinued and replaced by the Inspector's preferred method of a separate column in the spreadsheet in respect of urgent authorisations, confidential information and employment of juvenile and vulnerable Covert Human Intelligence Sources, respectively.

(2) Establish more robust oversight procedures and raise RIPA awareness within the Council

Oversight of submitted RIPA documentation and raising RIPA awareness within the Council are two of the four principal responsibilities of the RIPA Co-ordinating Officer as identified by the Inspector in paragraph 19. In paragraph 20 the Inspector expresses the view that oversight should be robustly conducted and that if an authorisation is not of an appropriate standard the attention of the authorising officer should be drawn to it and, if necessary, he/she should be advised to cancel and re-issue it with revisions.

The Inspector also identified the possibility of unauthorised (and therefore unlawful) surveillance being conducted, especially within those departments of the Council which were generally unlikely to resort to covert surveillance activities as part of "the day job" i.e. officers may carry out directed surveillance without authorisation simply because they do not appreciate that their activities amount to directed surveillance within the meaning of the Act.

Response

It was pro-actively suggested at the inspection meeting, by the SRO, that given the low level of covert surveillance and the small number of authorisations issued it ought to be perfectly feasible for applicants/authorising officers to seek bespoke legal advice in each case from an appropriate officer of the Legal Services Division and that this ought to ensure the correct completion of the documentation. Clearly, however, documentation which has not been adequately completed should never be allowed to progress to the point where it is presented to a Magistrate for final authorisation. It is proposed that future authorisations submitted to the RIPA Co-ordinating Officer should be accompanied by a separate note indicating that legal advice has been taken and the extent of that advice. The application will then be scrutinised by the RIPA Co-ordinating Officer and if it appears to him that either the application or authorisation is not completed to an appropriate standard, he will direct the authorising officer to cancel the authorisation and re-issue it with revisions prior to its submission to a Magistrate.

With regard to unauthorised surveillance there is already a good degree of RIPA awareness among council officers within the services that might be expected to make use of surveillance to ensure that the risk is extremely low. It is acknowledged however that outside those particular service areas risk will be greater, although the likelihood of such other services finding a need to carry out surveillance and doing so without seeking guidance of their own initiative might be considered small. Nevertheless it is recognised that there would be a value in raising RIPA awareness generally within the wider Authority and this will be attended to. A strategy for promulgating RIPA awareness is being drawn up and will entail some form of dissemination of information and materials through the Council intranet and departmental management teams.

(3) Revise the structure of RIPA management

The recommendations relate to the appointment of a Senior Responsible Officer and to clarify the role of the RIPA Co-ordinating Officer.

Response

As already explained the former Borough Secretary, now Head of Legal and Governance, was appointed to the position of SRO on 18 August 2010 and he has been carrying out duties of that role since that time. The role of RIPA Co-ordinating Officer sits with the Acting

Assistant Director of Legal Services (Litigation) who has taken on board the Inspector's comments concerning the duties and responsibilities of the role and in particular has noted the Inspector's comments with respect to the degree of robust oversight to be exercised over the authorisation process.

(4) Reduce the number of Authorising Officers, appoint them on a corporate basis and ensure that all who may authorise are appropriately trained

At the time of the inspection it was noted that 11 council officers are authorised as designating officers, but that the majority have never been, and are never likely to be, called upon to consider an authorisation. Consequently, most are inexperienced and have undertaken little training. It was noted that the Chief Executive and her deputy are statutorily the only officers who may grant authorisations for the acquisition of confidential information or the employment of juvenile or vulnerable CHIS. Having regard to the low level of authorisations granted by the Council the Inspector felt that a reduction in numbers of authorising officers to no more than 4, in addition to the Chief Executive, her deputy and the SRO would adequately cover the Council's needs and the contingencies of illness and holidays. All of the authorising officers to be fully trained.

Response

This recommendation is accepted and implemented with immediate effect. In future the Council's authorising officers will be the incumbents of Head of Regulatory Services (currently Simon Frow), Assistant Executive Director Finance (Audit and Risk Management) (currently Rob Winter), Head of Benefits (currently Chris Armitage), and Assistant Director Community Safety Services (or equivalent under proposed staffing structure for enforcement) (currently Paul Brannan). There are the most experienced authorising officers within the Council and those whose services have historically made the greatest use of directed surveillance and which can therefore be expected to have the greater need, if any, to carry out directed surveillance in the future. With appropriate training, which is referred to below, the 4 authorising officers will be capable of authorising directed surveillance or CHIS both within their own, and within each others, (or any) service areas. It is considered extremely unlikely that the Council will ever be in the position of granting authorisation for the acquisition of confidential information or to employ a juvenile or vulnerable CHIS. However, in order that an authorisation can be granted, should the eventuality arise it is also proposed that the Chief Executive be designated as an authorising officer. It is considered

unnecessary to designate a deputy, since any such operations would be subject to meticulous advance planning and would factor in the availability of the Chief Executive to authorise. With the exception of those named officers and the SRO, all other authorising officer designations are revoked as being unnecessary.

- (5) **Establish a corporate RIPA training programme commencing with professional training and ensure that the issues highlighted in this report are addressed**

The Inspector has considered that there has only been a low level and somewhat piecemeal approach to RIPA training within the Authority since the previous inspection and that the previous Inspector's recommendations that training should be aimed at achieving a corporate standard across the Council has not been discharged. He is also of the view that the lack of training does show in the sometimes poor quality of authorisations and ancillary documents that he examined. His recommendation is therefore that RIPA training would best be provided by professional trainers who will provide the essential groundwork on which the Council could build a future training programme. The initial training should be attended by all officers who may be called upon to authorise, together with likely applicant officers. Thereafter regular refresher training can be attended by the same officers which may be conducted internally by the SRO and/or RIPA Co-ordinating Officer.

Response

Clearly the expenditure of resources upon training needs to be proportionate to the Council's sparing use of surveillance activity. It is also considered that the training requirements for applicants and authorising officers should be viewed in the context of the offer by Mr Frosdick in his capacity as SRO and Solicitor to the Council that advice should be sought from the Council's Legal Services Division prior to any authorisation being submitted. Since that authorisation would then in turn be subject to oversight by the RIPA Co-ordinating Officer, as recommended and accepted within this report, together with periodic examination of the filed documents by the SRO there are a number of levels of assurance in place. Notwithstanding, in view of the particularly strong recommendation by the Inspector that professional training should be undertaken in the first instance, work is currently being undertaken to identify the most appropriate and cost effective deliverer of such training. It is intended that training will be delivered to the target group identified by the Inspector during the first half of 2013. In-house refresher training will be provided thereafter at appropriate intervals.

(6) Amend the RIPA Local Codes of Practice and Guidance in relation to directed surveillance and CHIS

It is noted that the former RIPA Co-ordinating Officer has produced comprehensive Local Codes of Practice and Guidance in relation to directed surveillance and CHIS intended to regulate the activities of the Authority within the statutory scheme. In Section 30 of his report the Inspector sets out a number of bullet points helpfully indicating some desirable amendments that could be made to the Council's documentation.

Response

All of the proposed revisions will be attended to in early course and have only not been produced to date because of the needs to prioritise other work within the Legal Services Department. It was suggested at the inspection meeting that the revised documents should be uploaded and form part of a bundle of RIPA reference material to be maintained on the Council intranet both for useful ease of access by those officers who may be concerned with surveillance activities and as part of a wider RIPA awareness initiative. This suggestion was commended by the Inspector and will be implemented as soon as possible after the recommended revisions to the documentation have been completed.

IMPACT ON LOCAL PEOPLE

- 5.1 It is clear that the application of the RIPA Scheme will have an impact on those who are identified as surveillance subjects. The application of the Scheme may also have an impact on those local people who are not targeted but who are, for example, included in the observations as they pass by. The former impact can be controlled by ensuring that the tests set down for the authorisation of surveillance are met (especially those relating to necessity and proportionality) and that the forms for application and authorisation are properly completed. Clearly in view of the Inspector's report there is room for some improvement here. The package of proposals set out in response to the Inspector's recommendation are intended to address this. The latter can be controlled by ensuring that consideration is given to collateral intrusion and that this assessment (which is provided for in the standard application form) is closely linked to the matter of the proportionality of the proposal for surveillance.

COMPATABILITY WITH EUROPEAN CONVENTION ON HUMAN RIGHTS

- 6.1 The purpose of RIPA is to ensure that covert surveillance is compatible with the convention. Whilst there has been no suggestion of breach by the Council, improved assurances for the right to respect for private life will result from the package of proposals put forward in response to the Inspector's recommendations.

REDUCTION OF CRIME AND DISORDER

- 7.1 The use of the RIPA Scheme should have a positive benefit on reducing crime and disorder in relation to matters in respect of which the Council is the enforcing authority. However, it should be borne in mind that covert surveillance is only one means of enforcement and normally a wide range of other investigative approaches, as well as other methods of enforcement, such as campaigns, will have a proportionally greater impact.

RISK MANAGEMENT

- 8.1 The inappropriate or non-compliant use of RIPA may lead to applications for damages under the Human Rights Act 1998 in respect of breaches of the right to respectful privacy etc under Article 8 of the convention or to applications for evidence to be excluded under PACE. The proper use of RIPA, especially the integrity of the authorisation process will mitigate this risk. The additional levels of assurance proposed in respect of that process, as set out in this report, should assist in reducing any risks of non-compliance or inappropriate use.
- 8.2 On the other hand, failure to use RIPA as a valuable investigative tool in appropriate cases may result in crime and disorder not being tackled. This must be reserved as a matter for the judgement of the enforcing directorates as to the correct level and means of enforcement. Whilst it is noted that the Council is a limited use of directed surveillance and does not use CHIS there is no reason to suppose that this has resulted in ineffective enforcement. Additionally, where, for example, the Safer Neighbourhoods Unit identify a need for covert surveillance it is likely that this will be given effect through the use by the Police of their own authorisation process as part of effective partnership working between the 2 organisations. The potential use of CHIS has been discussed between the SRO and relevant service heads. Those service heads do not currently view CHIS as a necessary enforcement tool. In the unlikely event that CHIS should be proposed then a full risk assessment would be carried out in respect of the particular investigation through the authorisation process.

FINANCIAL IMPLICATIONS

- 9.1 Financial implications are considered within service budgets (including training budgets) which includes the time of the Assistant Director, Legal Services (Litigation), in maintaining the central register and monitoring the Scheme.

EMPLOYEE IMPLICATIONS

- 10.1 There are no employees employed specifically to operate or monitor RIPA. It is in effect written into the job descriptions of relevant staff and in many respects it is simply something relevant staff has to do as part of the day job.

LIST OF APPENDICES

Appendix A - Inspector's Report

Appendix B – Summary Statistics of a Number of Uses of RIPA

BACKGROUND DOCUMENTS

- (i) Cabinet Resolution dated 5 March 2009
- (ii) Scrutiny Commission Report dated 12 November 2008
- (iii) The Council's Local Codes of Practice
- (iv) Central Register of Authorisations (this document consists of exempt information pursuant to the Local Government Act 1972 Schedule 12A Part I paragraphs 1, 2 and 7).

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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

**Barnsley Metropolitan Borough Council
17th October 2012**

**Assistant Surveillance Commissioner:
HH Norman Jones QC.**

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This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

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29th October 2012.

**INSPECTION REPORT
BARNSELEY METROPOLITAN BOROUGH COUNCIL**

Inspection 17th October 2012.
Inspector His Honour Norman Jones QC.
 Assistant Commissioner

Barnsley Metropolitan Borough Council.

1. **Barnsley MBC is a unitary authority in South Yorkshire. It administers a largely urban area of 127 square miles with a population of about 231,000. Barnsley is the principal town with some 67 other townships and villages scattered throughout the area.**
2. **The Corporate Management Group is headed by the Chief Executive, Ms. Diana Terris, who has assumed office since the last inspection. She is supported by two Assistant CEOs, The Borough Secretary and five Executive Directors. Presently three of the Executive Directors are appointed on an acting or interim basis. In turn these officers are supported by Assistant Directors and Heads of Services**
3. **Until very recently responsibility for *RIPA* substantially rested in the hands of Mr. Stephen Parker, Assistant Borough Secretary, who fulfilled the role of *RIPA Co-ordinating Officer*. However he left the employ of the Council only a matter of days before the inspection. A Senior Responsible Officer has not been appointed as such but the Borough Secretary fulfils that role within the Council with functions set out in the Council's *RIPA Local Code of Practice and Guidance in Relation to Directed Surveillance***
4. **The Council was last inspected by the OSC on 8th. December 2009 by Mr. Neil Smart, Surveillance Inspector.**
5. **Barnsley MBC makes minimal use of *RIPA* having granted only seven authorisations since the last inspection, all in 2010. It follows that for the last two years there has been no use of authorised covert surveillance by the Council. All were for *directed surveillance*. None concerned *self authorisation*, the acquisition of *confidential information*, or the use of the *urgency* provisions.**

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6. The Council address is Bamsley MBC, PO Box 609, Bamsley, South Yorkshire.

Inspection.

7. A cordial welcome to the Council was extended by Mr. Andrew Frodick, Borough Secretary (Solicitor to the Council) and Council Monitoring Officer, Mr. Simon Frow, Head of Regulatory Services (Trading Standards, Licensing and Environmental Health) and an authorising officer for RIPA and Mr. Gary Kirk, Interim Assistant Borough Secretary and solicitor in Legal Services who is likely to be assuming the role of RIPA Co-ordinating Officer.
8. The inspection commenced and concluded with interviews and discussions with the officers. An examination of the Central Record of Authorisations and a sample of the retained applications/authorisations, reviews, renewals and cancellations was undertaken, the results of which were related to the officers during the interviews. The RIPA issues covered included progress on past recommendations, management of RIPA including the risks of unauthorised covert surveillance, authorising officers, training, recent changes in legislation, policy and procedures, councillor responsibilities and CCTV.
9. The ready assistance and contributions afforded by all officers was much appreciated.

Examination of Records

10. The Central Record is maintained on an electronic spreadsheet which is fully compliant with the requirements of the *Code of Practice for Covert Surveillance and Property Interference*, (8.1) save that it omits any procedure for the recording of *self authorisations*. Additionally the system adopted for recording *urgent authorisations, confidential information* and the employment of *juvenile and vulnerable Covert Human Intelligence Sources (CHIS)* is cumbersome and difficult to follow. (See *Previous Recommendations* below). Amendments to the format were discussed and considered appropriate. Of considerable value, and reflective of the oversight procedure adopted by the previous RIPA Co-ordinating Officer, is a column setting out that officer's comments on the quality of the authorisation and actions taken thereon. A column relating to the subject matter of the authorisation contains brief details of the nature of the investigation. This is an excellent document for the purposes of oversight both by the *Senior Responsible Officer (SRO)* and the *RIPA Co-ordinating Officer* which will be improved by the amendments discussed.

See recommendation

11. Since the last inspection two authorisations have been granted for investigations of the supply of tobacco on which duty had not been paid and two for the investigation of alleged fraudulent personal injury claims against the Council. One each has been granted for the investigation of anti-social behaviour, benefit fraud and noise nuisance.

12. One of the tobacco authorisations was examined. The *RIPA Co-ordinating Officer* had remarked on the facts that there was inadequate description in the application of the surveillance proposed and that whilst the authorisation referred to the taking of photographs no such request could be found in the application. In addition it was found that when considering *necessity* the applicant properly indicated that covert surveillance was the only means available for acquiring evidence but failed to indicate what, if any, other means had been considered. The consideration of *proportionality* in both the application and authorisation failed to address any of the required three elements (a) that the proposed covert surveillance is proportional to the mischief under investigation; (b) that it is proportional to the degree of anticipated intrusion on the target and others, and (c) it is the only option, other overt means having been considered and discounted. The authorisation was well considered and detailed but was typed and in the same typeface as the application. Mr. Frow, who had drafted the authorisation, was able to assure the inspection that he had addressed the issues himself and completed the form. However he appreciated the nature of a challenge which could arise from the structure of the document. It was indicated that handwriting of the authorisation is best practice. The *confidential information* box had been completed when there was no requirement to do so. No expiry date had been included, though a review date was set. The two reviews had been well executed with good detail provided by Mr. Frow. However, although authorised on 26th January 2010, it has never been cancelled.
13. One of the internal audit authorisations for personal injury claim investigations was examined. No comments were raised by the *RIPA Co-ordinating Officer*. However, whilst mention was made of *Section 2 of the Fraud Act 2006* a perusal of the application and authorisation left the impression that there was no intention to consider criminal prosecution if the investigation produced evidence of fraud. The investigation was clearly directed at achieving evidence to challenge the claimant in the civil courts and was to be conducted by an enquiry agent instructed by solicitors acting for the Council in that action. It should be noted that in a discourse on *Q V The Police and others* contained in the Council's *RIPA Local Code of Practice and Guidance in Relation to Directed Surveillance* it was established as Council policy that an authorisation to carry out covert surveillance would not be granted for an employment enquiry involving suspected fraud unless there was an intention to prosecute it as a crime. The same principle should be taken to apply to civil claims against the Council. That aside the application and authorisation were both well drafted giving good detail of what was required and what was authorised. The authorisation would have benefitted from more detail of how equipment which was to be used would be deployed. The application dealt appropriately with both *necessity* and *proportionality* but the authorisation only with the former. (See paragraph 11 above). The application indicated that *confidential information* was "unlikely" to be acquired. Since such phraseology leaves open the possibility of such likelihood it could be argued that the authorisation was required to be undertaken by the Chief Executive (See *Code of Practice for Covert Surveillance and Property Interference Appendix A*). In fact there was no such likelihood and the application should say so. The authorisation, which was typed, bore no expiry or review date and, although authorised on the 9th September 2010, had not been cancelled.

14. An application and authorisation for noise nuisance surveillance using audio recording equipment was on an old style form. Neither application nor authorisation dealt adequately with *necessity* or *proportionality* and similar comments to those made above apply. The box relating to the likelihood of acquiring *confidential information* in the application was left blank. The authorisation, which it was encouraging to note was handwritten, did not detail what was being authorised with no attempt made to address the "5Ws" set out as a prompt in the box. A review date was set but no expiry. It was appropriately cancelled.
15. Whilst there was clear evidence that the *RIPA Co-ordinating Officer* had exercised oversight on the authorisations there was no evidence that this had lead to a withdrawal of authorisations which he considered inadequate, though he took steps to ensure that the authorising officers concerned received further training. Consequently the authorisations were activated even though there must have been some concern in some cases as to whether they would be upheld if challenged in a courtroom. A more robust approach is required.

See recommendation

Past Recommendations

16. Four recommendations were made in the last Inspection report:

- (i). *The Central Record should be amended in order to fully comply with paragraph 2.14 and 4.14 of the Covert Surveillance Sources Codes of Practice.*

At the time of the last inspection Mr. Smart was unaware that a system existed to ensure compliance with the *Codes of Practice* in relation to Central Record recording of *urgent, confidential information* and *self authorised* authorisations. As remarked above the system is cumbersome and difficult to follow. Whilst it ensures compliance with the *Codes of Practice* it is confusing to use, and would be so for the *SRO* and *RIPA Co-ordinating Officer* when exercising oversight. It should be discontinued in favour of the system discussed at the inspection of inserting separate columns in the spreadsheet for each item. Separate Records now exist for *directed surveillance* and *CHIS*. An amendment has been made to record Magistrate's approvals but again that would benefit from being placed in separate columns and not crammed within those for existing records. Whilst this recommendation has been discharged the further amendments outlined would greatly benefit those using the document.

See recommendation

- (ii). *The Council amends the policy document as detailed to create clarity around the process.*

This recommendation has been discharged.

- (iii). *The Council must ensure it operates within parameters dictated by SI 2003/3171.*

The authorisations examined relied on the sole ground available to the Council. This recommendation has been discharged.

- (iv). *Training should be reviewed to produce corporate standards across the Authority. Training should include what should be written on the RIPA forms, especially with regard to the documentation of necessity and proportionality, and the structure of authorisations. A programme of refresher training should also be established for the future.*

The only training undertaken since the last inspection was the attendance in April 2010 by the Principal Auditor on a one day course under the auspices of "Act Now" an independent professional trainer, and a course given by Mr. Parker to the Neighbourhood Safety Unit staff and authorising officer in July 2010. Otherwise training appears to have been dependant on that which specific professional staff have received through the aegis of their professional associations. No attention appears to have been paid to Mr. Smart's recommendation that training should be aimed at achieving a corporate standard across the Council. (See Training below) This recommendation has not been discharged.

RIPA Management

17. A formalised RIPA management structure does exist at Barnsley as described above (See Paragraph 3 above). However, with the departure of Mr. Parker, it is currently deficient in an officer with wide RIPA experience. There can be no doubt that Mr. Parker took his RIPA responsibilities very seriously. It was he who drafted two of the most comprehensive policy and procedure documents seen in inspections of local authorities. He was responsible for the maintenance of the Central Record and exercised oversight over the RIPA process. He advised departments on covert surveillance and the authorisation process.
18. However his departure does present the Council with an opportunity to revise the structure of its RIPA management and to bring it more into line with the requirements of the *Codes of Practice* and common local authority practices. To that effect it would be appropriate to appoint an officer who would be the SRO and who would undertake the functions outlined in the *Code of Practice for Covert Surveillance and Property Interference* (3.28) which include responsibility for the integrity of the RIPA process within the Council; for compliance with RIPA and its regulatory framework; for engagement with the Commissioners and Inspectors when they conduct inspections; for overseeing the implementation of any recommendations made by the OSC and for ensuring that authorising officers are of the appropriate standard. The *Code* (3.29) recommends that such an officer should be a member of the corporate leadership team. The Borough Secretary has undertaken some of these functions and would be the obvious candidate for such a role.

See recommendation

19. Some consideration has already been given to filling Mr. Parker's role. Mr. Kirk may be appointed to do so and this would be an opportune moment to set out

the requirements of a *RIPA Co-ordinating Officer* so that there is clarity within the Council as to who does what. The day to day responsibilities of the *RIPA Co-ordinating Officer* should include: (a) maintaining the Central Record of Authorisations and collating the original applications/authorisations, reviews, renewals and cancellations; (b) oversight of submitted *RIPA* documentation; (c) organising a *RIPA* training programme; and (d) raising *RIPA* awareness within the Council.

See recommendation

20. Discussion took place concerning the oversight responsibilities of both officers and the risks of unauthorised surveillance. It was emphasised that the *RIPA Co-ordinating Officer* should exercise oversight on each *RIPA* document as it was submitted from authorising officers to the Central Record. That oversight should be robustly conducted and would be supported by the *SRO* who should undertake periodic examination of the filed documents. If an authorisation was not of an appropriate standard the attention of the authorising officer should be drawn to it and, if necessary, s/he should be advised to cancel and reissue it with revisions. Assistance was available within departments from individual solicitors seconded to the department who could act as gatekeepers on applications/authorisations and so raise the standard. In relation to unauthorised surveillance the officers were of the view that there was a good degree of *RIPA* awareness among Council officers which achieved the aim of reducing the risks of such surveillance. Indeed prior to the inspection Services had been questioned about such risks and had indicated a high degree of awareness of the risks of conducting unauthorised covert surveillance. Nevertheless there was some degree of hesitancy as to whether that confidence could be placed in all departments, especially those which were generally unlikely to resort to covert surveillance activities. Methods of raising awareness were discussed which included using the Council intranet and newsletters to heighten *RIPA* awareness, and to cascade down *RIPA* information through management meetings. Encouragement would be given to seek legal advice from the Legal Enforcement Department.

See recommendation

Authorising Officers

21. The Council designates no less than 11 officers to be authorising officers of whom at least five have never been, and are unlikely ever to be, called upon to consider an authorisation. Most are wholly inexperienced, and in the case of at least some, substantially untrained.
22. Considering the level of authorisation at the Council there is a need to reduce their numbers. It is unnecessary that each department should have its own authorising officers since each authorising officer should be competent to authorise for any department. A reduction in numbers will ensure that the Council has a select and well trained band of authorising officers.
23. The Chief Executive and whoever deputises for her in her absence are the only officers authorised to grant authorisations for the acquisition of *confidential information* or the employment of juvenile or vulnerable *CHIS*. As

such they require to be trained as authorising officers. However it is unlikely that they will be called upon otherwise to authorise.

24. The *SRO* appears to be required to be an authorising officer (see *Code of Practice for Covert Surveillance and Property Interference - note 29*) but should not authorise save for exceptional circumstances since to do so would conflict with his oversight responsibilities. For the same reason the *RIPA Co-ordinating Officer* should not be an authorising officer.
25. It was felt that a reduction in numbers of authorising officers to no more than four in addition to the Chief Executive, his deputy and the *SRO* would adequately cover the Council's needs and the contingencies of illness and holidays. All must be fully trained.

See recommendation

Training

26. There is no corporate training programme for *RIPA* at Barnsley MBC. The last corporate training was conducted in 2009 just prior to the last inspection. Otherwise such training as has been undertaken since the last inspection is referred to under paragraph 18(iv) above. The lack of training does show in the poor quality of authorisations and ancillary documents examined. It may well be that training has understandably been delayed because of the anticipated changes in legislation. With the Council going through a period of re-organisation, with new staff appointed to some of the *RIPA* positions and with substantial changes in the *RIPA* legislation and regulation it is an opportune time to undergo fresh corporate training. Whilst good suggestions were made by the officers that the acquisition of training packages produced by professional training companies would provide assistance in keeping officers abreast of developments and that the National Anti Fraud Network could be approached to provide some training these are unlikely to provide the basis required by authorising officers and likely applicants at this time. Such training would best be provided by professional trainers who would provide the essential groundwork on which the Council could build the future training programme to be established by the *RIPA Co-ordinating Officer*.
27. The initial training should be attended by all officers who may be called upon to authorise, together with likely applicant officers. In the interests of economy approaches could be made to neighbouring local authorities who may need similar training to share the services of a supplier. Thereafter regular refresher training attended by the same officers should be held at intervals of 12 to 18 months and can be conducted internally perhaps by the *SRO* and/or *RIPA Co-ordinating Officer*. The suggestion by the officers that a bundle of *RIPA* reference documents should be maintained on the Council intranet is to be commended.
28. Although the Council discourages the employment of *CHIS* nevertheless the legislation empowers it to do so and occasionally such employment is unavoidable. Consequently the Council must be prepared for such an eventuality and it is important that officers are trained as handlers and controllers to manage *CHIS*. Such training can be provided by the professional trainer and thereafter refreshed during periodic refresher training.

See recommendation

Policy and Procedures.

29. As already remarked the Council has in its *RIPA Local Code of Practice and Guidance in Relation to Directed Surveillance* and its sister volume relating to *CHIS* comprehensive guides to its *RIPA* policy and procedures. Indeed if the documents suffer any defect it lies in their immense detail and discursive style. As such it may prove somewhat difficult for an officer requiring direction befitting a particular situation to quickly identify what s/he needs. The production of flow charts for *directed surveillance* and *CHIS* for the benefit of officers was suggested which again should be commended.
30. The policy and procedure documents appear to have last been revised following the publication of the current edition of the *Codes of Practice* and the promulgation of legislation relating to legal privilege. In addition Mr. Fosdick has produced a Supplementary Note on the *Protection of Freedoms Act 2012* and the *Regulation of Investigatory Powers (Directed Surveillance and CHIS(Amendment))Order, SI 2012/1500* which is now attached to the policy document. Nevertheless there is a need for some revision of the overall document and amendments were discussed with the officers as follow:
- The roles of the *SRO* and *RIPA Co-ordinating Officer* should be included in a separate section.
 - Appoint authorising officers on a corporate rather than a directorate basis and continue to identify them by name and rank in an appendix to the policy. Require all authorising officers to be appropriately trained before being permitted to authorise.
 - In the sections concerning *necessity* and *proportionality* indicate that reasons should be given when making an application or granting an authorisation as to why it is *necessary* to use covert surveillance in the investigation and that a consideration of *proportionality* should contain a consideration of the three elements (a) *that the proposed covert surveillance is proportional to the mischief under investigation; (b) that it is proportional to the degree of anticipated intrusion on the target and others; and (c) it is the only option, other overt means having been considered and discounted.*
 - *Urgency* should contain an indication that oral urgent authorisations may no longer be granted and that the *urgency* provisions should only be considered when there was likelihood that life may be endangered or the investigation, the subject of the authorisation, may be jeopardised. Advise that officers should always first consider whether the *immediate response* provisions of *Section 26(2)(c)* of *RIPA* apply.
 - Amend the officers who may authorise for the acquisition of *confidential information* and the employment of juvenile and vulnerable *CHIS* to accord with the Appendices to the *Codes of Practice*, namely the Head of Paid Service or, in his/her absence, whoever deputises for him/her.

- Add details of the provisions of the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500* and the *Protection of Freedoms Act 2012. (Section 38)*.

See recommendation

Protection of Freedom Act 2012

31. The *Protection of Freedoms Act 2012* and the *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012, SI 2012/1500* were discussed. Both will commence on 1st November 2012 and the relevant provisions of the *P of F Act (Section 38)* will amend *RIPA* by the addition of two sections (32A and 32B) requiring local authority authorisations to receive approval by a magistrate before becoming effective and outlining the procedure for obtaining such approval. Guidance has been provided to both local authorities and Magistrates by the Home Office. The *RIP(Directed Surveillance and CHIS)(Amendment)Order 2012* further limits the ground of *necessity* upon which local authorities may authorise *directed surveillance* and creates a minimum level of seriousness for authorisation. Additional guidance is to be found in Mr. Fosdick's Supplementary Note.
32. This legislation creates substantial changes in the *RIPA* process which must be understood by all who engage in it. In particular it requires a further level of approval beyond the authorisation before covert surveillance of any form may be undertaken by local authorities and it substantially curtails the range of investigations for which *RIPA* authorisations may be granted for *directed surveillance*, though this latter position in relation to *CHIS* remains unaltered. In addition the *P of F Act* creates a CCTV Commissioner who will have responsibilities relating to the regulation of local authority CCTV systems.
33. Additionally Councils will have to consider who the appropriate officer is to attend on the Magistrate when seeking approval. Whilst the Home Office Guidance indicates a preference for the investigating officer it must be appreciated that it is the authorisation granted by the authorising officer for which approval is sought.

Councillor Responsibilities

34. Elected members are required to be kept informed of the Council's *RIPA* performance (see *Code of Practice for Covert Surveillance and Property Interference (3.30)* and *Code of Practice for CHIS (3.26)*). At present such information is provided to the Audit Committee in an annual report. The production of a Quarterly report providing information of *RIPA* activity, as advised by the *Codes of Practice*, has been considered by Elected Members but a decision has been made that, in the light of the low level of *RIPA* usage, such a report is not required. Elected members are aware that they may not be involved in decision making on specific authorisations. It follows that details of individual authorisations must remain confidential to the officers concerned.

CCTV

35. As at the time of the previous inspection the police continues to operate the Council resourced CCTV system within the Borough.

Conclusions

36. Barnsley MBC is a very sparing user of covert surveillance, a usage which is likely to diminish with the incidence of recent legislative changes.
37. Whilst it was reassuring to note that three of the four recommendations made in the last OSC inspection report were addressed it was somewhat disappointing that attention had not been given to training. This must be addressed forthwith to ensure that the authorisations granted are compliant with the legislation and will achieve approval from the magistrates.
38. The quality of authorisation was not of the highest order. However standards are likely to improve with the creation of a more robust oversight process and the institution of a training programme. This will require the *RIPA Co-ordinating Officer* to be well versed in *RIPA* and able to advise authorising and applicant officers in the case of difficulties.
39. The reduction of the number of authorising officers will reduce the numbers requiring *RIPA* training and ensure that individual officers gain more experience of authorisation. This should help address the weaknesses observed during this inspection.

Recommendations

- 40.
- I. Amend the format and content of the Central Record. (*Paragraphs 10 and 16(i)*)
 - II. Establish more robust oversight procedures and raise *RIPA* awareness within the Council. (*Paragraph 15 and 20*)
 - III. Revise the structure of *RIPA* management. (*Paragraphs 18 to 20*)
 - IV. Reduce the number of authorising officers, appoint them on a corporate basis and ensure that all who may authorise are appropriately trained. (*Paragraphs 21 to 25*)
 - V. Establish a corporate *RIPA* training programme commencing with professional training and ensure that the issues highlighted in this report are addressed. (*Paragraphs 16(iv), 26 to 28*)
 - VI. Amend the *RIPA Local Codes of Practice and Guidance in Relation to Directed Surveillance* and *CHIS*. (*Paragraph 30*)

Hls Honour Norman Jones, QC.
Assistant Surveillance Commissioner.

Summary statistics of the number of uses of RIPA

Year	Regulatory Services	Housing Benefits	Internal Audit¹	Community Safety	Total
2003	1	1	5	2	9
2004	2	-	9	1	12
2005	-	-	12	8	20
2006	1	-	23	3	27
2007	2	1	17	2	22
2008	5	1	2	-	8
2009	5	-	1	-	6
2010	2	1	2	2	7
2011	-	-	-	-	-
2012	-	-	-	-	-

¹ Many of these authorisations relate to investigations of various forms of alleged misconduct by Council employees. At the December 2007 inspection the Inspector drew attention to a decision of the Investigatory Powers Tribunal that RIPA did not cover investigations which were done for disciplinary purposes only. From 2008 onwards, authorisations on behalf of Internal Audit have been limited to cases where there is a clearly identifiable allegation of criminal behaviour. This explains the reduced number of authorisations in this column from 2008.

