

AUDIT COMMITTEE ON 21st JANUARY 2015**REGULATION OF INVESTIGATORY POWERS ACT 2000****PURPOSE OF THE REPORT**

- 1.1 This is a periodic report to update the Committee on the level of surveillance activity undertaken by the Council and on other matters relevant to the Council's exercise of its powers under the Regulation of Investigatory Powers Act 2000 (RIPA).

RECOMMENDATION

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

BACKGROUND

- 3.1 Local Authorities are empowered to authorise certain limited forms of surveillance activity in accordance with the provisions of RIPA. The Local Authority may undertake covert surveillance by means of either directed surveillance, or the use of a Covert Human Intelligence Source (CHIS).
- 3.2 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.
- 3.3 Covert Human Intelligence Source (CHIS) is where a person establishes or maintains a personal or other relationship with another person (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.
- 3.4 The ultimate purpose of the RIPA Scheme of Legislation 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 and to ensure that evidence to be used in criminal proceedings has been fairly obtained. Accordingly, a Local Authority's use of surveillance is significantly constrained by statutory safeguards which are both substantive and procedural.
- 3.5 Legislative changes which were introduced by the Protection of Freedom's Act 2012 make local authority authorisations subject to judicial approval. The change means that local authorities need to obtain an order approving the grant or renewal of an authorisation from a magistrate. If the magistrate is satisfied that the statutory tests have been met and that the use of the technique is necessary and proportionate, he or she will issue an order approving the grant or renewal for the use of the surveillance technique as described in the application. The authorisation cannot commence until this has been obtained. The amendment means that local authorities are no longer able to orally authorise the use of RIPA techniques.

Further changes introduced by The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 provide that:

- Local authorities can only authorise use of directed surveillance under RIPA to prevent or detect criminal offences that are either punishable by a maximum term of at least six months' imprisonment or are related to the underage sale of alcohol and tobacco.
- Local authorities cannot authorise directed surveillance under RIPA for the general purpose of preventing disorder unless this involves a criminal offence(s) punishable by a maximum term of at least six months' imprisonment.
- A local authority may not authorise the use of directed surveillance under RIPA to investigate low-level offences which may include, for example, littering, dog control and fly-posting.

- 3.6 The RIPA regime provides that local authorities are periodically scrutinised by inspectors appointed by the Office of the Surveillance Commissioners (OSC). This Authority was last inspected on 17th October 2012. The Inspector's report setting out his recommendations and the Council's proposals in response thereto was considered by the Committee on 27th March 2013. A further report updating the Committee on progress in implementing the Inspector's recommendations was considered on 6th November 2013.

SURVEILLANCE ACTIVITY

- 4.1 Previous reports presented to the Committee have noted that the Council makes very limited use of directed surveillance. Since the last report to Committee in November 2013 there have been no authorisations for the use of directed surveillance. The last occasion upon which any authorisation was granted for directed surveillance was in 2010. Since the last report the Council has made no use of CHIS. Indeed the Council has never authorised a CHIS.

PROGRESS REPORT

- 5.1 It was noted by the Committee on 6th November 2013 that since applications for covert surveillance have become a rarity the Director of Legal & Governance is able to ensure that where either directed surveillance or CHIS are being considered, both the applicant and authorising officer in any such case will receive bespoke legal advice from a Solicitor within the Legal Services Division. It was acknowledged that the implementation of measures recommended by the Inspector should be considered in that context and approached with the appropriate degree of proportionality. It was also noted that a number of the Inspector's recommendations, such as amending the method of recording on the Central Register and applying a more robust oversight of authorisations, would only be brought to bear in the context of a practical application of an authorisation process. Since none have occurred it is not possible to assess the impact of any improvements in process. However, the officers that would be engaged in such a process are fully aware of the requirements, should the need arise.

Training

- 5.2 Notwithstanding the current availability of bespoke legal advice the Inspector made a strong recommendation that all officers who may be called upon to authorise, together with likely applicant officers should receive formal training provided by a professional external trainer. No such training had taken place since 2009 and it has to be acknowledged that there

is a possibility that surveillance activity may increase in the future. Accordingly it was considered that there would be tangible benefit in providing training and thus also discharging the Council's commitments in response to the Inspector's report.

- 5.3 Following a quality/cost assessment by the RIPA Monitoring Officer of proposals submitted by four leading trainers within the field, Bond Solon were selected and the training was delivered by expert Counsel in January 2014. The training course took place on Council premises and was well attended by a cross section of potential applicants together with the Council's five authorising officers (including the Chief Executive Officer), the RIPA Senior Responsible Officer and the RIPA Monitoring Officer. Feedback from attendees indicated that they had found the session to be of value.

Codes of Practice

- 5.4 It was noted by the Inspector that the Council has produced comprehensive local codes of practice and guidance in relation to directed surveillance and CHIS which are intended to regulate the surveillance activities of the authority within the statutory scheme. He did nonetheless go on to highlight a small number of desirable amendments that could be made to the Council's documentation.
- 5.5 On 10th December 2014 the Home Office issued two new national codes of practice; "Covert surveillance and Property interference Code of Practice" and "Covert Human Intelligence Sources Code of Practice". These were followed by a new "OSC Procedures and Guidance Document", which was promulgated to local authorities on 7th January 2015. The contents of these substantial documents will require some detailed assessment and the local codes will thereafter need to be revised to reflect the new national guidance. Revised local codes incorporating all necessary or recommended amendments will be presented to a future meeting of this Committee, for its approval. In the meantime, as directed by the OSC, the new national documentation has been made available to those officers who might apply for, or grant authorisations for covert activities.

IMPACT ON LOCAL PEOPLE

- 6.1 Covert surveillance will have an impact on those who are identified as subjects. It may also impact on those local people who are not targeted but who are, for example, included in the observations as they pass by. These impacts 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. The availability of bespoke legal advice and the application of a robust overnight procedure should provide the necessary safeguards.

COMPATABILITY WITH EUROPEAN CONVENTION ON HUMAN RIGHTS

- 7.1 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 measures set out in this report.

REDUCTION OF CRIME AND DISORDER

- 8.1 Surveillance activity authorised under RIPA is simply one of a number of tools available to combat crime and disorder in respect of matters for which the Council is the enforcing

authority. Currently it is evident that other investigative approaches and other methods of enforcement are being utilised.

RISK MANAGEMENT

- 9.1 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.

FINANCIAL IMPLICATIONS

- 10.1 None arising from this report.

EMPLOYEE IMPLICATIONS

- 11.1 None arising from this report.

BACKGROUND DOCUMENTS

- (i) Office of Surveillance Commissioners Inspection Report dated 17 October 2012.
- (ii) Report of Assistant Chief Executive, Legal and Governance to the Audit Committee on 27 March 2013
- (iii) Report of Assistant Chief Executive, Legal and Governance to the Audit Committee on 6th November 2013
- (iv) The Council's Local Codes of Practice
- (v) 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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