

# WIRRAL COUNCIL

## AUDIT AND RISK MANAGEMENT COMMITTEE

19 SEPTEMBER 2012

<b>SUBJECT:</b>	<b>REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)</b>
<b>WARD/S AFFECTED:</b>	<b>ALL</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF LAW, HR AND ASSET MANAGEMENT</b>
<b>KEY DECISION?</b>	NO

### 1.0 EXECUTIVE SUMMARY

- 1.1 This report summarises the use of covert surveillance by the Council between 11 June 2012 and 1 September 2012.
- 1.2 This report was requested in the work plan for the Committee.
- 1.3 The report also summarises the outcome of the inspection carried out on 8 June 2012 by Sir David Clarke, Assistant Surveillance Commissioner and recommends some consequential amendments to the existing Policy and Procedure on covert surveillance.

### 2.0 BACKGROUND AND KEY ISSUES

- 2.1 The Regulation of Investigatory Powers Act 2000 (RIPA) governs how public bodies use surveillance methods: The Council may use covert surveillance for the purpose of preventing or detecting crime or preventing disorder.
- 2.2 The origin of RIPA lies in the Human Rights Act 1998 which places restrictions on the extent to which public bodies may interfere with a person's right to respect for his or her home and private life and correspondence during the course of an investigation into suspected criminal activities. The provisions of RIPA ensure (in summary) that any such interferences are in accordance with the law and are necessary and proportionate (i.e. the seriousness of the suspected crime or disorder must outweigh any possible interferences with the personal privacy of the persons being investigated and of persons who associate with them).
- 2.3 The Council's Constitution authorises Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA.
- 2.4 The Office of Surveillance Commissioners (OSC) is responsible for overseeing the operation of RIPA. The OSC inspected the Council on 1 July 2009. The outcome of that inspection was reported to the Committee on 23 September 2009. The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report.
- 2.5 New Codes of Practice on covert surveillance have been published by the Home Office. As from 1 April 2010 every Council should report quarterly to its Audit and Risk Management Committee on its use of RIPA. The last such report was made to the Committee on 14 June 2012.

2.6 The OSC inspected the Council again on 8 June 2012 Sir David Clarke's report is contained in Appendix 1.

### **3.0 THE USE OF RIPA BY THE COUNCIL**

3.1 Between 11 June 2012 and 1 September 2012 the Council granted 4 authorisations for directed covert surveillance.

3.2 One authorisation was granted to obtain evidence of a possible arson attack on some unoccupied premises.

3.3 Three authorisations were granted to obtain evidence of alleged anti-social behaviour. Anti-social behaviour has included alleged harassment.

### **4.0 CHANGES IN LEGISLATION**

4.1 The Protection of Freedoms Act 2012 has now been enacted. When it comes into force on 1 November 2012 the following changes in the law will affect local authorities.

- Magistrate's approval will be required for a local authority's use of RIPA and will be in addition to the authorisation needed from a senior officer and the more general oversight by elected councillors.
- Use of RIPA to authorise directed surveillance will be confined to cases where the offence under investigation carries a maximum custodial sentence of six months or more except in relation to underage sales of alcohol and tobacco, where the threshold will not apply.

### **5.0 TRAINING**

5.1 Ibrahim Hasan has provided on 4 September 2012 a full days training to officers on the new legislation in Wallasey Town Hall. He is one of the leading authorities on RIPA.

### **6. INSPECTION BY THE OFFICE OF SURVEILLANCE COMMISSIONER (OSC)**

6.1 Sir David Clarke, Assistant Surveillance Commissioner, visited the Council on 8 June 2012 in order to conduct an inspection of the Council's use of covert surveillance.

6.2 Between 1 July 2009 and 8 June 2012 the Council had authorised 55 instances of directed surveillance of which 35 were for anti-social behaviour, 15 for trading standards prosecutions primarily under-age sales of alcohol, tobacco and fireworks and 5 were to detect flytipping.

6.3 Sir David found that the authorisations granted to detect anti-social behaviour were "well articulated by the applicant and the authorising officer and are a model of their kind". They covered covert surveillance to detect households who were under threat from neighbours of assault and criminal damage. They also included covert surveillance of public areas of housing estates where groups of young people were causing nuisances from noise and rowdiness through to dangerous driving, excessive drinking and alleged drug taking and drug dealing. The covert surveillance was necessary because of the culture of non-cooperation on the housing estates with the

authorities and of witness intimidation and reprisals. Without the covert surveillance evidence of criminal behaviour would not be available for presentation to the Courts in applications for anti-social behaviour orders or proceedings for possession brought by social landlords.

- 6.4 Flytipping authorisations were also of high quality. They may indeed not have been necessary where there were warning notices of CCTV surveillance posted on the approaches to the sites where illegal tipping had occurred.
- 6.5 The Council's training programme was praised as being "particularly commendable". A clear and accessible training register was maintained which was a good practice not always followed in other local authorities.
- 6.6 The central record of authorisations of covert surveillance was being kept accurately and up to date by the Director of Law, HR and Asset Management and in accordance with the recommendations of the Home Office Code of Practice.
- 6.7 All the recommendations made by the previous Inspector in 2009 had been implemented including improvements to the Policy and Procedure, and regular quarterly meetings with the RIPA co-ordinators from each relevant Department to review the authorisations granted in that quarter.
- 6.8 There were regular quarterly reports on authorisations of covert surveillance to the Audit and Risk Management Committee.
- 6.9 Sir David had visited the control room for the CCTV cameras in Wirral and had been satisfied that proper arrangements were in place and being implemented to ensure that there was no unauthorised covert use of the Council's covert CCTV equipment.

## **7. PROPOSED IMPROVEMENTS AND UPDATING OF THE POLICY AND PROCEDURE ON THE USE OF POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)**

- 7.1 Sir David made some criticisms of the content of the Council's Policy and Procedure on the use of covert surveillance. In Appendix 2 are some proposed amendments to paragraphs 3.6, 3.13(h), 3.19.1, 4.3, 4.6.3 and 7.1. They are intended to comply with the first recommendation made in Sir David's report. The amendments and additions are not controversial. In addition some amendments have been made to paragraphs 1.3, 1.4 and 3.9 to bring the document up to date.

## **8. AUTHORISATIONS FOR JUVENILE TEST PURCHASE OPERATIONS**

- 8.1 Concerns were expressed by Sir David about the authorisation of directed covert surveillance granted in the Trading Standards Section for the detection of under aged sales of alcohol, tobacco and fireworks. He drew attention to the need to specify in the authorisation the evidence which led the Trading Standards Section to suspect offences were being committed in a particular retail outlet. Only if such evidence were set out and evaluated would it be possible for the use of covert surveillance to be necessary and proportionate. Blanket test purchases from retail outlets by children under the direction of Trading Standards Officers could not be justified and could be regarded as "fishing expeditions" which were neither necessary nor proportionate.

- 8.2 Future authorisations for juvenile test purchase operations must therefore be more restricted in scope and care must be taken to address the issues of necessity and proportionality in relation to targeted premises as recommended by Sir David in his second recommendation.
- 8.3 Future authorisations will be monitored to ensure that Sir David's recommendations are carried out. In addition as from 1 November 2012 there will be a requirement for magistrates approval before any covert surveillance can be authorised by the Council.

## **9.0 RELEVANT RISKS**

- 9.1 Less effective prosecution of instances of anti social behaviour when the use of covert surveillance by local authorities is curtailed by the new legislation.
- 9.2 Persistent anti-social behaviour may from 1 November 2012 only be detected by the use of covert surveillance if it has the prior approval of a magistrate and if it consists of criminal offences attracting a maximum term of imprisonment of 6 months or more. Shouting, swearing, playing loud music, banging on walls and doors, and intimidating behaviour will no longer be capable of being detected by covert surveillance unless they form part of a campaign of harassment targeted at a particular individual which may amount to an offence under the Protection from Harassment Act 1997. The perpetrators of such persistent behaviour may therefore go unpunished through the Courts. Malicious complaints of such behaviour may also go undetected.

## **10.0 OTHER OPTIONS CONSIDERED**

10,1 None.

## **11.0 CONSULTATION**

11.1 None.

## **12.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

12.1 None.

## **13.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

13.1 None at present.

## **14.0 LEGAL IMPLICATIONS**

14.1 The Protection of Freedoms Act 2012 which restricts local authorities use of covert surveillance comes into force on 1 November 2012 and may require the Council to review further its policy and procedure as the new law is applied by the courts.

## **15.0 EQUALITIES IMPLICATIONS**

15.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality.

## **16.0 CARBON REDUCTION IMPLICATIONS**

16.1 None.

## 17.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

17.1 See paragraph 4.

## 18.0 RECOMMENDATION/S

18.1 That the Committee note the contents of the report on the use of covert surveillance.

18.2 That the Committee approve the amendments and additions to the Council's Policy and Procedure on RIPA as advised by the OSC and as contained in Appendix 2.

18.3 That the Committee approve the OSC's recommendations on the use of RIPA to detect under age sales of alcohol and tobacco.

18.4 That the Committee recommend to the Cabinet that it adopts on behalf of the Council the recommendations in 18.2 and 18.3 above.

## 19.0 REASON/S FOR RECOMMENDATION/S

19.1 The Home Office Code of Practice on covert surveillance requires every Council to report quarterly on its use of RIPA.

19.2 It is necessary for the Council to amend its Policy and Procedure on the use of RIPA in order to comply with the recommendations of the OSC arising from their inspection on 8 June 2012 and with the change in the law which comes into effect on 1 November 2012.

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## APPENDICES

Appendix 1 Report of the Assistant Surveillance Commissioner on his inspection carried out on 8 June 2012.

Appendix 2 Proposed amendments to the Council's Policy and Procedure on RIPA.

## REFERENCE MATERIAL

Authorisations for directed surveillance - exempt from publication because they relate to individuals and are the subject of continuing investigations into alleged criminal behaviour.

## SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	23 September 2009
	30 June 2010
	28 September 2010
	22 November 2010
	28 March 2011
	30 June 2011
	28 September 2011
	1 February 2012
	14 June 2012
	Report to the Cabinet