

CORPORATE SERVICES OVERVIEW AND SCRUTINY COMMITTEE

Thursday, 2 April 2009

Present: Councillor L Fraser (Chair)

Councillors C Teggin P Southwood
J Crabtree J Keeley
K Wood

Deputies Councillors H Smith (in place of C Meaden)

52 DECLARATIONS OF INTEREST/PARTY WHIP

Members were asked to consider whether they had personal or prejudicial interests in connection with any item(s) on this agenda and, if so, to declare them and state what they were. Members were reminded that they should also declare, pursuant to paragraph 18 of the Overview and Scrutiny Procedure Rules, whether they were subject to a party whip in connection with any item(s) to be considered and, if so, to declare it and state the nature of the whipping arrangement.

No such declarations were made.

53 MINUTES

Members were requested to receive the minutes of the meeting of the Corporate Services Overview and Scrutiny Committee held on 5 March, 2009.

The Chair suggested that in respect of minute 51, third paragraph of the preamble, the first sentence be moved so it becomes the second sentence, the paragraph would then start, "A Member suggested....."

Resolved – That the minutes of the meeting held on 5 March, 2009 be approved as a correct record, subject to the amendment of minute 51.

54 USE OF POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT (RIPA)

Following the Committee's request at its last meeting (minute 51 refers) for a report on the Regulation of Investigatory Powers Act, the Director of Law, HR and Asset Management submitted a report, which had been considered by the Chief Officer's Management Team, Standards and Audit and Risk Management Committees.

At the request of the Chair, an amended version of the report, which was being considered by Cabinet on 9 April, was circulated to the Committee. The Chair stated her unhappiness with the report in that the appendices were confusingly numbered and the report was not in plainer English. She suggested that the meeting could be

adjourned if the Committee so desired but the Committee agreed that the meeting should continue.

The Director apologised for any confusion caused and stated that he was happy to take on board any constructive criticism. An amended version of the report had been circulated to the Cabinet which took account of comments made by both the Standards and Audit and Risk Management Committees at their meetings earlier in the week.

The Director then explained the contents of the report. The Regulation of Investigatory Powers Act 2000 ("RIPA") governed how public bodies used surveillance methods. Wirral Council, like other local authorities might use directed surveillance where doing so was in the public interest for the purpose of preventing or detecting crime or preventing disorder.

The Office of the Surveillance Commissioner ("OSC") was responsible for overseeing the operation of RIPA. The Council had to account to the OSC on an annual basis on its use of RIPA and had also been the subject of 2 inspections by the OSC in July 2003 and July 2007. The Council's use of RIPA was also the subject of a recent review by the Internal Audit Section. One of the recommendations of that review was that the Council's Policy and Procedures on the use of RIPA be updated. The Internal Audit review was appended to the revised report.

There had been much debate in the last 12 months around the use of surveillance powers by local authorities. The Home Office had announced an intention to consult on the use of RIPA powers by public authorities in early 2009. Unfortunately there had been a large degree of misreporting of the subject of surveillance in the media. The Home Office had published on its website a document on some of the misconceptions and this was appended to the report.

The Council had used directed surveillance to support its enforcement activity since the passing of RIPA and, in the year 2007/8, the Council had granted 45 authorisations. These related to cases investigated by the Wirral Anti-social Behaviour Team (36) and the Trading Standards team (9). The use of these powers has assisted in legal action to tackle rogue traders and to obtain court orders to tackle anti-social behaviour. The Council had used surveillance evidence in numerous court actions and its use had never been challenged. In some cases surveillance evidence obtained by the Council under RIPA had been used by the police to secure criminal convictions.

The last OSC inspection report had set out a number of recommendations and the Director outlined the actions taken to implement each one. The Internal Audit review had also identified a number of areas for improvement and an Action Plan had been agreed which also identified the need for the Council's policy and procedure on the use of powers under RIPA to be updated. The draft policy would be considered by Cabinet on 9 April, 2009.

Responding to comments from members, the Director said that the guidance from the OSC was that authorising officers, of whom there were only 7, should be of a reasonably senior level and he would be happy to clarify the seniority of those listed from the Department of Regeneration. He would also circulate to the Committee the dates of appointment and their most recent training.

Test purchasing was an overt rather than covert method of surveillance so would not be covered by RIPA but there was of course a need to make sure juveniles used for test purchasing were not put at risk. In respect of dog fouling the Director stated that it would go against standard practice to use covert surveillance as this was a matter for dog wardens to use overt rather than covert observation.

Members suggested the need to look at the actual outcome of covert surveillance with figures on the number of prosecutions and convictions and the numbers for the year 2008/09. These figures should also be seen alongside those for the Council's statistical neighbours. The Director stated that he would share with the Committee the annual report sent to the OSC including the past year's figures.

A member suggested the need for an additional layer of accountability with a senior councillor signing off any authorisations.

It was moved by Councillor Mrs Wood and seconded by Councillor Keeley, that –

“Cabinet be requested to consider the findings of the Internal Audit report following on from the findings of the OSC report and their recommendations and findings be pursued and implemented as a matter of urgency.”

The motion was put and carried (7:0).

It was moved by Councillor Teggins and seconded by Councillor Mrs Wood, that –

“A report be brought to this, or any replacement, scrutiny committee, on an annual basis so that the committee may monitor the use of the RIPA powers and ensure their responsible and proportional application. The report, which would also inform COMT, to detail:

- Any changes to systems and processes are in place in this authority to monitor and regulate and approve the use of RIPA powers.
- Any changes to specific RIPA powers this authority employs when conducting any investigations.
- Those members of staff in this authority who have the power to grant authorisation for use of RIPA.
- The grades of the staff who are able to authorise the use of RIPA.
- The grades of the staff who are able to apply for the use of RIPA.
- Confirmation of staff training to ensure staff involved with RIPA are current in their practices.
- Explanation of the types of crimes for which this authority has authorised the use of RIPA powers for investigations in the year just ended and the year before that for comparison.
- The outcome of these investigations.
- The number of times the use of RIPA power was authorised by this authority in the year just ended and the year before that for comparison.
- Comparative figures for statistical neighbour authorities.”

The motion was put and carried (7:0).

It was moved by Councillor Keeley and seconded by Councillor Mrs Wood, that –

“This committee recommends to cabinet that:

Any request to undertake RIPA surveillance, after being approved by the authorising officer, must be signed off by an appropriate committee. Councillors would have the freedom to reject any application if they think it appropriate. This will provide democratic accountability, whilst recognising that the decision on whether to initiate surveillance should be made by trained professionals.

Standard existing provisions on councillors declaring prejudicial interests could be applied to ensure that councillors do not have a conflict of interest in any surveillance request.”

The motion was put and lost (3:4).

Resolved – That –

(1) Cabinet be requested to consider the findings of the Internal Audit report following on from the findings of the OSC report and their recommendations and findings be pursued and implemented as a matter of urgency.

(2) a report be brought to this, or any replacement, scrutiny committee, on an annual basis so that the committee may monitor the use of the RIPA powers and ensure their responsible and proportional application. The report, which would also inform COMT, to detail:

- **Any changes to systems and processes are in place in this authority to monitor and regulate and approve the use of RIPA powers.**
- **Any changes to specific RIPA powers this authority employs when conducting any investigations.**
- **Those members of staff in this authority who have the power to grant authorisation for use of RIPA.**
- **The grades of the staff who are able to authorise the use of RIPA.**
- **The grades of the staff who are able to apply for the use of RIPA.**
- **Confirmation of staff training to ensure staff involved with RIPA are current in their practices.**
- **Explanation of the types of crimes for which this authority has authorised the use of RIPA powers for investigations in the year just ended and the year before that for comparison.**
- **The outcome of these investigations.**
- **The number of times the use of RIPA power was authorised by this authority in the year just ended and the year before that for comparison.**
- **Comparative figures for statistical neighbour authorities.**

55 BUILDING MAINTENANCE

Following the Committee’s request at its last meeting (minute 51 refers) for a report on building maintenance, the Director of Law, HR and Asset Management submitted a report on the current situation regarding the repair and maintenance of the Council’s building stock.

Ian Brand, Head of Asset Management, introduced the report and explained the figures in the appendix including the indicators A and B and the definitions of condition categories and priority levels. He apologised that no explanation of the indicators had been provided.

At its meeting on 19 March 2009 (minute 408 refers) the Cabinet had received a report regarding Property Performance Management. That report, in an appendix, had advised that the number of buildings surveyed had been increased from 148 in 2007/08 to 387 in 2008/09. This figure did not include any of the schools estate. The total maintenance backlog, in respect of structural elements only (not mechanical and electrical) was now approximately £5.8 million. As a rule of thumb guide, where £6 of expenditure was needed on structural repairs, a further £4 was likely to be required to address mechanical and electrical repairs.

In the corresponding report to Cabinet on 13 March 2008, the total maintenance backlog figure, including M & E costs, was estimated to be £9.89 million. There were only 14 more properties to be surveyed and once that information was included, the figures now reported would confirm this estimate, based on more detailed and accurate information.

The Chair expressed her dissatisfaction with the report in its lack of clarity and with the inaccuracies in the appendix.

The Director stated that a re-written report would be circulated to the Committee members by the end of next week. He informed the Committee that an annual property maintenance plan would be considered by Cabinet in June.

Responding to further comments, the Director clarified that the figure of 387 buildings surveyed in 2008/09 was a cumulative total.

On a motion by Councillor Mrs Wood, seconded by Councillor Smith, it was -

Resolved – That this Committee recognises that a planned maintenance report would be submitted to Cabinet in June and a report be brought to this or its equivalent scrutiny committee in June also.

56 ANY OTHER URGENT BUSINESS APPROVED BY THE CHAIR

As it was the last ordinary meeting of the municipal year, the Chair thanked all the members of the Committee and the officers for their work over the past year.