

AUDIT & RISK MANAGEMENT COMMITTEE – 28 SEPTEMBER 2010

REPORT OF THE DIRECTOR OF LAW, HR AND ASSET MANAGEMENT

REGULATION OF INVESTIGATORY POWERS ACT 2000

1. SUMMARY

This report summarises the use of covert surveillance by the Council between 1 June and 31 August 2010 and recent developments in this field.

2. BACKGROUND

- 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 the Directors of Law, HR and Asset Management, Technical Services and Finance 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 every Council should report quarterly to its Audit and Risk Management Committee on its use of RIPA.

3. THE USE OF RIPA BY THE COUNCIL

- 3.1 Between 1 June 2010 and 31 August 2010 the Council granted 5 authorisations for covert surveillance.

- 3.2. Of those authorisations, 3 were for covert surveillance by the Wirral Anti-Social Behaviour Team to gather evidence of serious anti-social behaviour (mainly on housing estates) for use in proceedings for possession injunctions and anti-social behaviour orders. The use of covert surveillance by the installation of cameras and sound recording equipment is a valuable means of overcoming the barriers raised by witness intimidation to evidence obtained by other means. It also is potentially more reliable evidence than the recollection of a witness whose memory may be fallible and whose evidence may be perceived as biased against the defendant.
- 3.3 The reasons for those authorisations were complaints of criminal damage to windows and fencing, verbal abuse, shouting, persistent harassment through targeted noise nuisance and fighting. The evidence obtained from covert surveillance was used to obtain an ASBO.
- 3.4 One authorisation was for covert surveillance by Wirral Trading Standards officers for use in an investigation with the Police into the sale of cigarettes and alcohol to under-age children. As a result of that surveillance evidence was obtained of 3 offences of illegal sales to children of alcohol and tobacco.
- 3.5 One authorisation was granted to investigate possible licensing offences by a pub landlord. Evidence was obtained of offences which was forwarded to the police.

4. PATON v POOLE BOROUGH COUNCIL - DECISION OF THE INVESTIGATORY POWERS OF TRIBUNAL PUBLISHED ON 29 JULY 2010

- 4.1 Poole Borough Council had authorised directed surveillance of a family whose mother was suspected of giving a false address to ensure her children attended the school of her choice.
- 4.2 The Tribunal held that the surveillance was unlawful because its purpose was not for the detection or prevention of crime but to obtain evidence that would justify the Council's withdrawal of the offer of a place at the school in question.
- 4.3 Wirral Council has never used covert surveillance to detect breaches by parents of its Schools Admission Policy.

5. REVIEW BY THE GOVERNMENT OF LOCAL AUTHORITIES POWERS TO USE COVERT SURVEILLANCE

- 5.1 The Home Office is undertaking this review under the oversight of Lord MacDonald QC.
- 5.2 It is anticipated that the review will recommend that only magistrates can authorise local authorities to use covert surveillance. This would be an acceptable independent safeguard against improper use of RIPA.

5.3 More controversially it has been suggested that local authorities should only be allowed to use covert surveillance to detect serious crime (eg crimes of violence or offences which would usually attract prisons sentences of 3 years or more). This would mean that local authorities could no longer use RIPA to obtain evidence of anti social behaviour and offences such as sale of counterfeit goods, fly-tipping or contravention of the licensing laws. Enforcement of the law by local authorities would become substantially more difficult and this would not be in the public interest.

6. **FINANCIAL, STAFFING, LOCAL AGENDA 21, PLANNING, SOCIAL INCLUSION AND LOCAL MEMBER IMPLICATIONS**

There are no Financial, Staffing, Local Agenda 21, Planning, Social Inclusion and Local Member Implications arising from this report.

7. **EQUAL OPPORTUNITIES IMPLICATIONS**

The purpose of RIPA is to strike a fair balance between the rights of individuals to privacy and the rights of public bodies to act in the public interest to detect and prevent criminal behaviour and disorder.

8. **COMMUNITY SAFETY IMPLICATIONS**

The use of RIPA enables the Council to use covert surveillance to tackle the problem of anti-social behaviour and disorder.

9. **BACKGROUND PAPERS**

The report to the meeting of this Committee on 23 September 2009 and 30 June 2010.

10. **RECOMMENDATIONS**

10.1 That the Committee notes the report on the Council's use of RIPA.

10.2 That the Committee recommends to the Home Office that local authorities be allowed to continue to use covert surveillance to detect crime and disorder provided it has been authorised by an independent magistrate.

BILL NORMAN
DIRECTOR OF LAW, HR AND ASSET MANAGEMENT