

WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

28 MARCH 2011

(SUBJECT:	REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)
WARD/S AFFECTED:	ALL
REPORT OF:	THE DIRECTOR OF LAW, HR AND ASSET MANAGEMENT
RESPONSIBLE PORTFOLIO HOLDER:	CHRIS BLAKELEY
KEY DECISION?	NO

1.0 SUMMARY

- 1.1 This report summarises the use of covert surveillance by the Council between 9 November 2011 and 15 March 2011.
- 1.2 This report was requested in the work plan for the Committee.

2.0 RECOMMENDATION/S

- 2.1 That members note the contents of the report

3.0 REASON/S FOR RECOMMENDATION/S

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

4.0 BACKGROUND AND KEY ISSUES

- 4.1 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.
- 4.2 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).

- 4.3 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.
- 4.4 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.
- 4.5 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. The last such report was made to the Committee on 28 September 2010.

5.0 THE USE OF RIPA BY THE COUNCIL

- 5.1 Between 9 November 2010 and 1 March 2011 the Council granted 1 authorisation for covert surveillance.
- 5.2 The authorisation was granted to obtain evidence of serious offences of flytipping at a site in the Borough where this offence has become a public nuisance.
- 5.3 In the same period an existing authorisation for flytipping was reviewed and extended.

6.0 CHANGES IN LEGISLATION

- 6.1 Members will recall public and media concern about the use of surveillance for inappropriate purposes. At the meeting of the Audit and Risk Management Committee on the 28th September 2010 members received a report from the Director of Law, HR and Asset Management outlining Government proposals which would have the effect of severely limiting the use of surveillance by local authorities. Members endorsed the recommendation of the Director of Law, HR and Asset Management to recommend 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, be referred to the Cabinet for consideration.
- 6.2 On the 25th November 2010 Cabinet endorsed the report and noted that the number of cases where RIPA had been used in Wirral continues to be relatively low and the responsible and proportionate use of this legislation in

tackling extreme cases of anti-social behaviour, underage sales, fly tipping, trading standards and licensing contraventions be supported.

- 6.3 In July 2010 the Home Secretary announced a review focusing on which security powers could be scaled back in order to restore the balance of civil liberties, including the use of RIPA by local authorities. The review was overseen by Lord MacDonald QC. The Local Government Association provided considerable evidence showing how evidence obtained through proper use of RIPA helped local authorities support communities.
- 6.4 On the 26th January 2011 the Home Office published its review and made the following recommendations concerning local authorities;
- Magistrate's approval should be required for local authority use of RIPA and should 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 should be confined to cases where the offence under investigation carries a maximum custodial sentence of six months or more. But because of the importance of directed surveillance in corroborating investigations into underage sales of alcohol and tobacco, the Government should not seek to apply the threshold in these cases.
- 6.5 If the recommendations become law, it will become more difficult to obtain evidence of anti social behaviour. Persistent acts of disorder and nuisance will not pass the threshold. Witnesses will be more reluctant to give evidence if the outcome of the case is less certain because the evidence of covert surveillance is no longer available to prove they are telling the truth. They will fear retaliation. The change in the law will protect the right to privacy of suspected perpetrators of anti-social behaviour which will be regarded as a higher priority than the right of their victims to live peacefully and without fear.

7.0 RELEVANT RISKS

- 7.1 Less effective prosecution of instances of anti social behaviour.

8.0 OTHER OPTIONS CONSIDERED

- 8.1 The Council has to accept the will of Parliament.

9.0 CONSULTATION

- 9.1 None

10.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 10.1 None

11.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

11.1 None at present.

12.0 LEGAL IMPLICATIONS

12.1 The current review of the Regulation of Investigatory Powers Act will require the Council to review its procedures for authorising directed surveillance, access to communications data and the use of covert human intelligence sources.

12.2 Training on the new legislation has been arranged for 7 June 2011.

13.0 EQUALITIES IMPLICATIONS

13.1 Any directed surveillance used will be authorised and conducted in accordance with the requirements of the Regulation of Investigatory Powers Act, including any new requirements concerning approval by a magistrate.

14.0 CARBON REDUCTION IMPLICATIONS

14.1 None

15.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

15.1 None.

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Director of Law, HR and Asset Management

APPENDICES

REFERENCE MATERIAL

SUBJECT HISTORY (last 3 years) AND BACKGROUND PAPERS

Council Meeting	Date
Reports to the Audit & Risk Management Committee	23 September 2009 30 June 2010 28 September 2010 22 November 2010
Report to the Cabinet	26 November 2010