

WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

28 SEPTEMBER 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:	GEORGE DAVIES
KEY DECISION?	NO

1.0 SUMMARY

- 1.1 This report summarises the use of covert surveillance by the Council between 1 June 2011 and 1 September 2011.
- 1.2 This report was requested in the work plan for the Committee.

2.0 RECOMMENDATION/S

That members note the contents of the report on the use of covert surveillance.

3.0 REASON/S FOR RECOMMENDATION/S

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 Directors 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 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 30 June 2011.

5.0 THE USE OF RIPA BY THE COUNCIL

- 5.1 Between 1 June 2011 and 1 September 2011 the Council granted 7 authorisations for covert surveillance.
- 5.2 Two authorisations were granted to obtain evidence of serious offences of fly-tipping at sites in the Borough where this offence has become a public nuisance. One has led to a prosecution.
- 5.3 Five authorisations were granted to obtain evidence of alleged anti-social behaviour. One authorisation has provided evidence for possession proceedings and three authorisations are current (at the time of writing this report). Anti-social behaviour has included alleged racial harassment, intimidation, the lighting of fires in derelict property, criminal damage, drunken and abusive behaviour and the playing of loud music.

6.0 CHANGES IN LEGISLATION

- 6.1 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.
- 6.2 On the 26 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.

- 6.3 The above proposals have been incorporated in the draft legislation and are expected to be enacted in a year's time.
- 6.4 If the Bill becomes 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.
- 6.5 Evidence obtained by authorised cover surveillance has been used to support civil proceedings for anti-social behaviour, and in prosecutions for fly-tipping, underage sales of tobacco, and of counterfeit goods. It is a valuable resource for a local authority provided proper safeguards are in place to prevent its abuse.

7.0 RELEVANT RISKS

Less effective prosecution of instances of anti social behaviour.

8.0 OTHER OPTIONS CONSIDERED

The Council has to accept the will of Parliament.

9.0 CONSULTATION

None

10.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

None

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

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 proposed new legislation was delivered on 7 June 2011 by Ibrahim Hasan (an acknowledged expert in the field) to Authorising and Applying Officers.
- 12.3 Pending the implementation of the proposed new legislation the Council's current policy on the use of RIPA still applies.

13.0 EQUALITIES IMPLICATIONS

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

None

15.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

See paragraph 6.

REPORT AUTHOR: Bill Norman
Director of Law, HR and Asset Management

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 28 March 2011 30 June 2011
Report to the Cabinet	26 November 2010