

COMMITTEE REFERRAL

AUDIT AND RISK MANAGEMENT COMMITTEE

19 September 2012

29 REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

The Acting Director of Law, HR and Asset Management presented a summary of the use of covert surveillance by the Council between 11 June 2012 and 1 September 2012, in accordance with the Regulation of Investigatory Powers Act 2000 (RIPA). He outlined the key issues associated with RIPA and indicated that during the monitoring period, four authorisations had been granted, one to obtain evidence of a possible arson attack and three to obtain evidence of alleged anti-social behaviour.

The Protection of Freedoms Act 2012 had now been enacted and training had been provided to officers on the new legislation by one of the leading authorities on RIPA. He indicated that when it came into force on 1 November 2012, the following changes in the law would affect local authorities –

- Magistrate’s approval would be required for a local authority’s use of RIPA and would 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 would be confined to cases where the offence under investigation carried a maximum custodial sentence of six months or more, except in relation to underage sales of alcohol and tobacco, where the threshold would not apply.

The Acting Director also provided a summary of the outcome of an inspection of the Council’s use of covert surveillance, carried out on 8 June 2012 by Sir David Clarke, Assistant Surveillance Commissioner. The inspection had found that the authorisations granted to detect anti-social behaviour were “well articulated by the applicant and the authorising officer and were a model of their kind”. The Council’s training programme was commended; the central record of authorisations was accurate and up to date and the Inspector was satisfied that proper arrangements were in place and being implemented to ensure that there was no unauthorised use of the Council’s covert CCTV equipment.

There were some criticisms of the content of the Council’s Policy and Procedure on the use of covert surveillance and a number of non-controversial amendments were proposed to ensure compliance with recommendations. In response to a comment from a Member, he also confirmed that sufficient designated authorising officers had been trained and been given delegated authority to ensure adequate coverage for absence.

The Acting Director also referred to concerns that had been expressed 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.

Consequently, future authorisations would be required to address issues of necessity and proportionality and, in addition, from 1 November 2012, the requirement for magistrate's approval before any covert surveillance could be authorised by the Council. In response to a request from a Member for information in respect of the use of children making test purchases, the Acting Director agreed to request the Council's Trading Standards Strategic Manager to respond direct to all Members of the Committee.

Risks identified related to the less effective prosecution of instances of anti social behaviour when the use of covert surveillance by local authorities was curtailed by the new legislation. From 1 November 2012, persistent anti-social behaviour may only be detected by the use of covert surveillance if it had the prior approval of a magistrate and if it consisted 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 would no longer be capable of being detected by covert surveillance unless they formed part of a campaign of harassment targeted at a particular individual, which amounted to an offence under the Protection from Harassment Act 1997. Consequently, the perpetrators of such persistent behaviour may go unpunished through the Courts and malicious complaints of such behaviour could also go undetected.

Some Members expressed their concern that some anti-social behaviour could go unpunished as a result of the new legislation, which was seen as a retrograde step for Wirral, where RIPA had always been used responsibly. Members commented also that the powers conferred by RIPA may have been used inappropriately in some areas.

Resolved –

- (1) That the report be noted.**
- (2) That the amendments and additions to the Council's Policy and Procedure on RIPA as advised by the OSC be approved.**
- (3) That the OSC's recommendations on the use of RIPA to detect under age sales of alcohol and tobacco be approved.**
- (4) That the Cabinet be recommend to adopt on behalf of the Council the recommendations in (2) and (3) above.**