

WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

10 JUNE 2013

SUBJECT:	<i>REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)</i>
WARD/S AFFECTED:	<i>ALL</i>
REPORT OF:	<i>HEAD OF LEGAL AND MEMBER SERVICES</i>
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

- 1.1 This report summarises the use of covert surveillance by the Council between 1 September 2012 and 31 May 2013.
- 1.2 This report was requested in the work plan for the Committee.

2.0 BACKGROUND AND KEY ISSUES

- 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 Directors to designate Heads of Service and Service Managers to authorise the use of covert surveillance in accordance with the procedures prescribed by RIPA. Since 1 November 2012 such authorisations require the further approval of a magistrate.
- 2.4 The Office of Surveillance Commissioners (OSC) is responsible for overseeing the operation of RIPA. The OSC inspected the Council on 8 June 2012. The outcome of that inspection was reported to the Committee on 19 September 2012. The Committee approved amendments to the Council's Policy and Guidance Document made in response to the Report which were adopted by the Cabinet on 18 October 2012.

3.0 THE USE OF RIPA BY THE COUNCIL

- 3.1 Between 1 September 2012 and 31 October 2012 the Council granted two authorisations for directed covert surveillance to detect anti-social behaviour.
- 3.2 Since 1 November 2012 the Council has applied on two occasions to a magistrate for authorisation to use directed covert surveillance.
- 3.3 Both authorisations were approved one to obtain evidence of alleged breach of an anti-social behaviour order and the other to obtain evidence of flytipping.

4.0 CHANGES IN LEGISLATION

- 4.1 The Protection of Freedoms Act 2012 has now been enacted. It came into force on 1 November 2012 and made the following changes to the law;
 - Magistrate's approval is required for a local authority's use of RIPA and will 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 will be confined to cases where the offence under investigation carries a custodial sentence of six months or more except in relation to underage sales of alcohol and tobacco, where the threshold will not apply.

5.0 TRAINING

- 5.1 Ibrahim Hasan has provided on 4 September 2012 a full days training to officers on the new legislation in Wallasey Town Hall. He is one of the leading authorities on RIPA.
- 5.2 Refresher training is planned for September 2013.

6. UPDATING OF THE POLICY AND PROCEDURE ON THE USE OF POWERS UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 (RIPA)

- 6.1 The updated Policy and Procedure is attached as Appendix 1. It includes guidance to officers on how to apply to a magistrate for approval of an authorisation granted to enable covert surveillance to be used to detect criminal offences as explained above.

7.0 RELEVANT RISKS

- 7.1 Less effective prosecution of instances of anti social behaviour because the use of covert surveillance by local authorities is curtailed by the new legislation. There has been a steep decline in the use of covert surveillance by the Council since 1 November 2012.

- 7.2 Persistent anti-social behaviour may from 1 November 2012 only be detected by the use of directed covert surveillance if it has the prior approval of a magistrate and if it consists of criminal offences attracting a term of imprisonment of 6 months or more. Shouting, swearing, drunkenness, playing loud music, banging on walls and doors, and intimidating behaviour is no longer capable of being detected by covert surveillance unless they form part of a campaign of harassment targeted at a particular individual which may amount to an offence under the Protection from Harassment Act 1997. The perpetrators of such persistent behaviour may therefore go unpunished through the Courts. Malicious complaints of such behaviour may also go undetected.
- 7.3 The Anti-Social Behaviour Team can still use overt surveillance by witnesses to detect low level anti-social behaviour but as the alleged perpetrators will know they are being monitored they have the opportunity of intimidating potential witnesses from giving evidence in Court in support of the Council's application for an anti-social behaviour order.

8.0 OTHER OPTIONS CONSIDERED

10,1 None.

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 Protection of Freedoms Act 2012 which restricts local authorities use of covert surveillance came into force on 1 November 2012.

13.0 EQUALITIES IMPLICATIONS

13.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No because there is no relevance to equality.

14.0 CARBON REDUCTION IMPLICATIONS

14.1 None.

15.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

15.1 See paragraph 4.

16.0 RECOMMENDATION/S

16.1 That the Committee note the contents of the report on the use of covert surveillance.

17.0 REASON/S FOR RECOMMENDATION/S

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

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APPENDICES

Appendix 1 The Council's updated Policy and Procedure on RIPA.

REFERENCE MATERIAL

Authorisations for directed surveillance - exempt from publication because they relate to individuals and are the subject of continuing investigations into alleged criminal behaviour.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	30 June 2010
	28 September 2010
	22 November 2010
	28 March 2011
	30 June 2011
	28 September 2011
	1 February 2012
	14 June 2012
	19 September 2012
Report to the Cabinet	26 November 2010
	18 October 2012