

WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

18 MARCH 2014

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

1.0 EXECUTIVE SUMMARY

- 1.1 This report summarises the use of covert surveillance by the Council between 1 January 2014 and 1 March 2014 and the Government's proposals for amending its Code of Practice on covert surveillance.
- 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.
- 2.5 On 18 September 2013 the Committee approved an updated Policy and Guidance Document. It has been further updated to reflect changes in legislation (viz the prohibition of oral authorisations) and is attached at Appendix 1.

3.0 THE USE OF RIPA BY THE COUNCIL

- 3.1 There has not been any use by the Council of covert surveillance between 1 January 2014 and 1 March 2014.

4.0 CHANGES IN LEGISLATION

4.1 The Protection of Freedoms Act 2012 came into force on 1 November 2012 and made the following changes to the law;

- A Magistrate's approval is required for a local authority's use of RIPA. It is 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 is confined to cases where the offence under investigation carries a custodial sentence of six months imprisonment or more except in relation to underage sales of alcohol and tobacco, where this sentencing threshold will not apply.

5.0 CONSULTATION ON HOME OFFICE CODES OF PRACTICE ON COVERT SURVEILLANCE

5.1 The Home Office has published its proposals to update its Codes of Practice on covert surveillance by taking into account the changes in the law described above. A summary of those proposals is attached at Appendix 2. The consultation closes on 27 March 2014.

5.2 Most of the proposals have been anticipated by the Council's Policy and Procedure Document which was adopted on 18 September 2013.

5.3 It is however suggested that paragraph 2.29 of the proposals be re-worded to make it clear that no RIPA authorisation is required to monitor shouting from a property which is audible in the street outside or adjoining property.

5.4 It is also suggested that in paragraph 3.31 the third bullet point should include as an example of the use by a local authority of directed surveillance, the investigation of behaviour which would constitute the offence of harassment of eg a neighbour.

6.0 RELEVANT RISKS

6.1 Less effective action in response to 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 to detect anti social behaviour since 1 November 2012.

6.2 Persistent anti-social behaviour may now 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 then amount to an offence under the Protection from Harassment Act 1997.

6.3 Following a strategic service review of Community Safety (including anti-social behaviour) an assessment will be undertaken of all current cases managed by the Anti-Social Behaviour Team to determine whether an application for authorisation of covert surveillance could be made having regard to the statutory components of the

offence of harassment. It is intended that an application will be made in due course for magistrates approval of covert surveillance where there is strong evidence of behaviour which meets the definition of the criminal offence of harassment. Depending upon the outcome this could be a prelude to a more robust use of covert surveillance to tackle serious anti-social behaviour.

7.0 OTHER OPTIONS CONSIDERED

7.1 None.

8.0 CONSULTATION

8.1 None.

9.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

9.1 None.

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

10.1 None at present.

11.0 LEGAL IMPLICATIONS

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

12.0 EQUALITIES IMPLICATIONS

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

No because there is no proposal which is relevant to equality.

13.0 CARBON REDUCTION IMPLICATIONS

13.1 None.

14.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

14.1 See paragraphs 4 and 6.

15.0 RECOMMENDATION/S

15.1 That the Committee note the contents of this report on the use of covert surveillance and the updated Policy and Guidance Document.

15.2 That the Committee authorise the officers to take part in the consultation on updating the Home Office Code of Practice by making the suggestions in paragraphs 5.3 and 5.4 above.

16.0 REASON/S FOR RECOMMENDATION/S

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

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REFERENCE MATERIAL

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

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Reports to the Audit & Risk Management Committee	28 March 2011 30 June 2011 28 September 2011 1 February 2012 14 June 2012 19 September 2012 10 June 2013 18 September 2013 28 January 2014
Report to the Cabinet	18 October 2012