

WIRRAL COUNCIL

AUDIT AND RISK MANAGEMENT COMMITTEE

22 SEPTEMBER 2015

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| 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? | <i>NO</i> |

1.0 EXECUTIVE SUMMARY

- 1.1 This report summarises the use of covert surveillance by the Council between 1 June and 1 September 2015.
- 1.2 It also informs the Committee of the outcome of an inspection on 13 May 2015 by an Assistant Surveillance Commissioner of the Council's use of covert surveillance.
- 1.3 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. There was a further inspection by the OSC on 13 May 2015 the report of which is attached as Appendix 1.

- 2.5 On 18 September 2013 the Committee approved an updated Policy and Guidance Document. It was further updated to reflect changes in legislation and approved by the Committee at its meeting on 18 March 2014.

3.0 THE USE OF RIPA BY THE COUNCIL

- 3.1 Since the last meeting on 8 June 2015 the Council has obtained on 26 August 2015 approval from a magistrate to use covert surveillance to detect suspected illegal flytipping at a site in Wirral.

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 VISIT OF THE ASSISTANT SURVEILLANCE COMMISSIONER

- 5.1 This took place on 13th May 2015. The Commissioner was Sir David Clarke. His report was on the whole favourable to the Council. In particular he was satisfied that (i) the Central Record of Authorisations complied fully with the Codes of Practice, (ii) there were regular minuted meetings of the RIPA Departmental Coordinators, (iii) there were regular quarterly reports to this Committee on the use of RIPA, (iv) the authorisations of which he inspected were of high quality and fully justified but did however contain some blemishes as explained below, (v) the annual training programme and training register were particularly commendable.
- 5.2 He pointed out that except in relation to the use of juveniles and investigations that would reveal the contents of confidential information, authorising officers for covert human intelligence sources do not have to be the Chief Executive. Sir David considered the Council's policy of restricting all authorisations of covert human intelligence sources to the Chief Executive to be unusual and could not be justified. The Chief Executive would have to be fully trained on RIPA in order to be able to deal with any rare occurrences when CHIS would be used by the Council.
- 5.3 Sir David repeated the arguments contained within the guidance from the Office of Surveillance Commissioners that authorising officers should attend before a

Magistrate in order to secure the Magistrates approval of their authorisation. He did however concede that this guidance was not consistent with the Home Office guidance and that the Council could take the view that the attendance of an experienced Applying Officer combined with a comprehensive and detailed authorisation should be sufficient in the majority of cases.

- 5.4 Sir David expressed the opinion of the Office of Surveillance Commissioners that authorisation for directed covert surveillance should be obtained whenever officers accompany juveniles who purchase alcohol or tobacco from retailers. He saw no distinction between a juvenile wearing a concealed camera and a juvenile being accompanied by an adult who discreetly made a record of the unlawful sale. The contrary view (adopted by Trading Standards Officers) was that as long as there was no attempt to cultivate a false relationship with the retailer and as long as the purchase was completed openly in the public part of the premises, there would be no reasonable expectation of privacy on part of the retailer and no attempt to entrap him by deception. An authorisation under RIPA would not therefore be needed. Sir David has recommended that the Council reconsider its present practice. A solution might be to obtain a magistrates approval for an authorisation for directed covert surveillance whenever Trading Standards Officers reasonably apprehend that the retailer may conduct the sale surreptitiously eg out of sight of customers when a concealed camera on the juvenile would provide useful evidence for any prosecution and an authorisation under RIPA would be required.
- 5.5 Sir David pointed out some defects in the Authorisations of Covert Surveillance that he inspected during his visit. He drew our attention to the expiry date of the authorisation being three months (less one day) from the date on which the authorisation was approved by the Magistrate and not from the date it was granted by the Authorising Officer.
- 5.6 Other defects in some of the authorisations were detected by Sir David. The lesson to be learnt is that the Applying Officer should carefully check the authorisation drawn up by the Authorising Officer in case it contains clerical or factual errors before an application for approval is made to the Magistrates.
- 5.7 Sir David suggested some amendments to the Council's Policy and Guidance document on RIPA which have been incorporated in the amended Guidance attached as Appendix 2 of this report. They included deletions of references to the prevention of disorder being a ground for authorisation (only the detection or prevention of criminal offences can now legally justify the authorisation of covert surveillance). Sir David also suggested that there be a paragraph on the monitoring of social media during investigations. One has been inserted (paragraph 9). As long as there is no invasion of privacy or any attempt to cultivate a false relationship/friendship, the monitoring of the content of social media would not normally require an authorisation under RIPA.

6. ANNUAL TRAINING

- 6.1 This took place on 3 September 2015 and was conducted by Ibrahim Hasan an acknowledged expert in this field.

- 6.2 It is essential that all Authorising Officers receive training at not more than two yearly intervals. This requirement has been met. Training is also provided to Applying Officers.

7.0 SUCCESSFUL PROSECUTIONS

- 7.1 On 11 August 2015 a member of the public failed to attend a trial in Liverpool Crown Court on charges of unlawful flytipping in Brimstage Lane. A warrant for his arrest was issued which has yet to be executed by the police.
- 7.2 The alleged offence was detected by means of covert surveillance.

8.0 RELEVANT RISKS

- 8.1 These have been discussed in previous reports.
- 8.2 There is a risk that some investigations of anti-social behaviour will not be able to use covert surveillance because the suspected criminal behaviour does not carry a custodial sentence of 6 months or more.
- 8.3 The Anti-Social Behaviour Team are however intent on applying to the Court for approval of covert surveillance in suitable cases of suspected harassment of individuals which would amount to an offence under the Protection from Harassment Act 1997 (which can attract a sentence of 6 months or more imprisonment).

9.0 OTHER OPTIONS CONSIDERED

- 9.1 None.

10.0 CONSULTATION

- 10.1 None.

11.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

- 11.1 None.

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

- 12.1 None at present.

13.0 LEGAL IMPLICATIONS

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

14.0 EQUALITIES IMPLICATIONS

14.1 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.

15.0 CARBON REDUCTION IMPLICATIONS

15.1 None.

16.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

16.1 See paragraphs 4 and 6.

17.0 RECOMMENDATION/S

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

17.2 That the Committee adopt the recommendations of the Assistant Surveillance Commissioner in his report of 19 May 2015.

17.3 That the Committee approve the amendments to the Policy and Guidance Document contained in Appendix 2.

18.0 REASON/S FOR RECOMMENDATION/S

18.1 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 | 1 February 2012 14 June 2012 19 September 2012 10 June 2013 18 September 2013 |

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| Report to the Cabinet | 28 January 2014 18 March 2014 17 September 2014 27 January 2015 8 June 2015 18 October 2012 |
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