

Mr Eric Robinson
Chief Executive
Wirral Metropolitan Borough Council
Wallasey Town Hall
Brighton Street
Wallasey
CH44 8ED

25 January 2019

Dear Mr Robinson,

Inspection Report – Wirral Metropolitan Borough Council

I enclose a copy of a report dated 20th December 2018 prepared by Graham Wright, an Inspector with the Investigatory Powers Commissioner's Office. This follows an inspection visit to your Council on 17th December 2018 to review your compliance with the statutory provisions of Part II of the Regulation of Investigatory Powers Act 2000 which falls within my responsibilities.

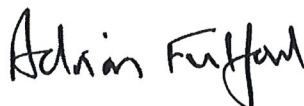
I am pleased to note that the previous recommendations have been adequately addressed and are now discharged, together with the overall very positive tenor of the present report.

There are two new recommendations, both of which relate to guidance and training provided to your staff. "Online" investigations, which are a critical tool of investigation and which can provide considerable assistance in uncovering criminality, need to be properly approached, and I support the views of the last Chief Surveillance Commissioner, Lord Judge, when he made mention of this in his final Annual Report to the Prime Minister (paragraph 15.3). Officers need to maintain their levels of training and this should be undertaken in a controlled, audited and transparent manner. The Home Office Covert Surveillance and Property Interference Code of Practice provides some helpful advice on this topic. It will be clear from what I have just set out that I do not in any sense seek to deter officials from using these investigative opportunities – quite the contrary – but, instead, this work should be undertaken by those with appropriate training.

I fully endorse the report.

I hope that you found this inspection a constructive process and I look forward to receiving your action plan in relation to the recommendations that have been made.

Yours sincerely,



The Rt. Hon. Lord Justice Fulford
The Investigatory Powers Commissioner

IPCO

Investigatory Powers Commissioner's Office

Inspection – Wirral Metropolitan Borough Council

1. Date of inspection

17th December 2018

2. Inspector

Graham Wright

3. Introduction

3.1 Wirral Metropolitan Borough Council (MBC) is one of five such councils in Merseyside. It covers the Wirral peninsular, a mixture of urban and rural areas and a population of approximately 310,000.

3.2 The previous inspection of Wirral MBC was conducted in May 2015 by OSC Assistant Surveillance Commissioner, Sir David Clarke. Since that time there have been 12 authorisations for directed surveillance granted. None of the authorisations involved the acquisition of confidential information and I was not informed of any errors.

3.3 The Chief Executive is Mr Eric Robinson and the address for correspondence is Wallasey Town Hall, Brighton Street, Wallasey CH44 8ED (email: ericrobinson@wirral.gov.uk).

4. Inspection approach

4.1 I had an initial meeting with the Chief Executive, Mr Philip McCourt (Director of Governance and Assurance) who is the appointed 'senior responsible officer' and Mr Colin Hughes (Group Solicitor) who is the RIPA Monitoring Officer. We discussed the aims of the inspection and the rise of use of the internet and social networking sites (SNS).

4.2 I then met with the following members of staff:

- Mark Camborne – Strategic Commissioner Environmental and Community Services (authorising officer)
- Caroline Laing – Constituency Manager (authorising officer)
- Mike Cockburn – Commissioner Environmental and Community Services (authorising officer)

- Colin Hughes – Group Solicitor
- Gill Vickary - Trading Standards Manager
- Amanda Jones – Social Services Manager
- Bev Hurst – Social Services, Head of Service.

4.3 I examined the Central Record of authorisations and seven of the authorisations and concluded by providing feedback to Colin Hughes on the main findings of the inspection.

5. Review of progress on recommendations

5.1 The previous inspection made two recommendations, both of which were accepted by the Council.

5.2 *The Council reconsider its present practice of conducting juvenile test purchase operations without RIPA authorisation.*

Discharged: This recommendation was made because the procedure employed was that a member of staff usually accompanied the juvenile volunteer and observed what takes place inside the licensed premises. OSC guidance at the time stated that in such circumstances an authorisation should be considered. Initially the Council maintained its original stance and did not grant authorisation as it was not considered that private information was likely to be accrued. More recently, the policy in this regard has changed and an authorisation would be sought. This change is because the Covert Surveillance and Property Interference Code of Practice now contains this guidance at paragraph 3.33 (example 4).

5.3 *Care be taken to ensure that correct expiry dates are accurately set, so as to minimise the risk of challenge to any future authorisations.*

Discharged: The problem was that the expiry date was on occasions set at a day or two after the correct expiry date. It was suggested by Sir David that the expiry date only be set once Magisterial approval had been obtained. The authorisation forms have been amended to cater for this process and all authorisations that I examined were correct.

6. Policies and procedures

6.1 In advance of my inspection visit I had examined the main policy and guidance document, *Policy and Procedure on the Use of Powers Under the Regulation of Investigatory Powers Act*. This is in many ways a very good document. It is comprehensive, contains practical advice and guidance for practitioners and makes good use of operational examples that are relevant to Wirral MBC activity. There is a brief section on the use of the internet and social networking sites (SNS). However, the following emendations need to be made to this document:

- i. The new provisions contained in the recently revised Covert Surveillance and Property Interference and Covert Human Intelligence Sources Codes of Practice (August 2018) need to be incorporated;
 - ii. As was discovered during the group session, there is a need for more detailed guidance regarding use of the internet and SNS, in departments that are outside of the usual RIPA audience (for more details see this report section *Use of the Internet and Social Networking Sites* below). **I make a recommendation in this regard.**
- 6.2 The core authorisation procedure is that applicants who have been identified and trained as 'Applying Officers' will complete the requisite form and forward this to an authorising officer for their input – only such trained persons can make applications. The applicant will take the authorisation to a local Magistrates' Court for approval and then the documents will be given to Legal Services for completion of the Central Record of authorisations. A copy of the authorisation is retained by Legal Services.
- 6.3 The 'senior responsible officer' is the Director of Governance and Assurance and the Group Solicitor has day to day oversight of RIPA matters. Meetings are held on a quarterly basis with these two officers and representatives from the main enforcement departments to discuss issues and any emerging trends.
- 6.4 There are currently three appointed and trained authorising officers, aside from the Chief Executive. Most authorisations are granted by one of these officers and the other two are very rarely, if ever, used. It may be beneficial to consider introducing a process whereby each officer is occasionally called upon to act in this capacity.
- 6.5 Elected Members on the Audit and Risk Committee receive regular reports on the usage of RIPA and this same committee also approves any policy changes.
- 7. Related training**
 - 7.1 Annual training sessions are held for authorising officers, applying officers and enforcement staff. The last such session was provided by an external trainer and I examined the contents of the course. I found the training to be relevant, comprehensive and gave accurate and useful advice to attendees.
 - 7.2 Training is seen by the Investigatory Powers Commissioner as a fundamental requirement of a compliant regime and it was heartening to see that this is still a priority, notwithstanding the financial constraints that councils face. I also have no doubt that this is a major contributory factor in the high standards that I found.

8. Inspection Findings

Directed Surveillance

- 8.1 This is the only form of covert activity that Wirral MBC has ever undertaken, and its usage has declined over the years – as it has in every council we inspect.
- 8.2 The reasons for this decline are: the reduction in resources; the increased bureaucracy of obtaining an authorisation; the loss of enforcement functions such as benefit fraud; and the use of more overt activity to resolve matters.
- 8.3 The main area of enforcement that utilises this is in relation to fly-tipping. Some use in relation to anti-social behaviour has also been made and on one occasion when Trading Standards monitored the SNS site of a subject suspected to be selling counterfeit goods online. In relation to the use in operations regarding under-age sale of alcohol/tobacco, these have not been conducted under an authorisation for the reasons cited above at paragraph 5.2 but will be in future.
- 8.4 I examined seven authorisations and related records and overall found them to be of a very high standard. Applications fully addressed all the required information and considerations and the input from authorising officers was clear, relevant and evidenced appropriate consideration of the key principles. Timeliness of processes was maintained throughout the life of an authorisation and reviews and cancellations were of an equal standard.

Use of the Internet and Social Networking Sites

- 8.5 It became obvious in the group session that use was being made of these media to assist in enforcement activity, monitoring of some persons of interest and internal audit. Whilst I found no evidence that this was being done in an excessively intrusive or reckless manner it was apparent that there was not a full understanding as to the circumstances in which an authorisation for directed surveillance may be appropriate.
- 8.6 This was particularly true of departments that stood outside of the usual RIPA training and guidance regime and **I make a recommendation in this regard.**

9. Good Practice identified

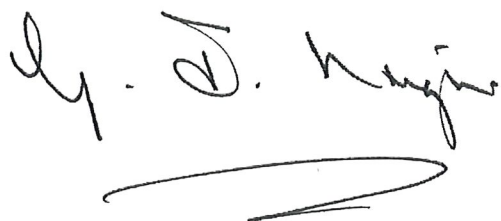
- 9.1 The practice of having persons identified and trained to make applications – paragraph 6.2.

10. Conclusion

- 10.1 Wirral Metropolitan Borough Council continues to make use of the Regulation of Investigatory Powers Act 2000, albeit for a limited range of covert activity and for a reducing number of cases.

- 10.2 The training, guidance and oversight regimes are very good and produce authorisations of very good quality. The main policy and guidance document needs updating to incorporate the changes introduced by the recently revised Home Office Codes of Practice. In addition, it would be beneficial to expand the guidance and training in relation to the use of the internet and SNS. This is a common finding on inspections and the recommendation is not intended to hint that improper usage is taking place.
- 10.3 I would like to thank all the people that I met on this inspection and particular thanks should be passed to Colin Hughes (a veteran of OSC/IPCO inspections), who made the arrangements for my visit, provided me with the pre-read material and accompanied me on the day.

11. Recommendations

A handwritten signature in black ink, appearing to read 'G. D. Hughes', with a large, sweeping underline stroke below it.

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DISCLAIMER

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Investigatory Powers Commissioner's Office.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Investigatory Powers Commissioner's Office.

The report is sent only to the recipient of the Investigatory Powers Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version.

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Wirral Council

Chief Executive

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The Rt Hon Lord Justice Fulford
Investigating Powers Commissioner's Office
PO Box 29105
LONDON SW1V 1ZU

Date: 12 February 2019

Your
Ref:
Our
Ref: ER0247/DLK/
Service Chief Executive

Email: ericrobinson@wirral.gov.uk

Dear Lord Fulford

INSPECTION REPORT - WIRRAL BOROUGH COUNCIL

I thank you for your letter of 25 January enclosing the report of your Inspector Graham Wright upon the inspection that he carried out on 17 December 2018.

I can confirm that the Council will be implementing Mr Wright's recommendations in the following manner:

- 1) A report will be prepared for the next meeting of the Council's Audit and Risk Management Committee on 11 March 2019 in which additions to the Policy and Guidance on RIPA will be recommended for its approval that take into account;
 - (a) The recently revised Covert Surveillance and Property Interference and Covert Human Intelligence Sources Codes of Practice (August 2018).
 - (b) The recent annual training on RIPA delivered by Act Now on 19 October 2018.
 - (c) The recommendations made by Mr Wright in his report on expanding the guidance regarding the use of the internet and social networking sites.
- 2) Representatives from the Department of Children's Services will be invited to attend the quarterly meetings of the RIPA coordinators convened by Mr Hughes and the annual training that he organises.
- 3)
 - (a) Discussions will take place with those departments outside the usual RIPA audience (eg Children's Services) on the more detailed guidance that the practitioners will need on the circumstances in which RIPA

authorisations should be sought for monitoring of Social Networking Sites (SNS) that are likely to yield evidence relevant to the welfare of a child in need.

- (b) In this regard liaison with the police will be continued as they are often more proficient than Council officers in obtaining the full extent of the evidence that can be derived from open source SNS sites in circumstances that may require a RIPA authorisation. This was evident from the examples given by Mr Morris in his annual training in October 2018 and also by Mr Wright himself during the inspection.

It is accepted that lawful and proportionate covert surveillance techniques need to keep pace with the surprising extent to which people nowadays publicise their private lives on open source SNS.

Yours sincerely

A handwritten signature in black ink, appearing to read 'E. Robinson', written over the typed name.

Eric Robinson
Chief Executive