



Report of: **Corporate Director of Resources**

Meeting of:	Date	Agenda item	Ward(s)
Audit Committee	29 September 2014		All

Delete as appropriate		Non-exempt
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SUBJECT: THE COUNCIL'S USE OF SURVEILLANCE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000

1. Synopsis

- 1.1 The report updates the committee on the council's use of covert surveillance under the Regulation of Investigatory Powers Act 2000 (RIPA).
- 1.2 The report also provides feedback on the inspection from the Office of Surveillance Commissioners (OSC) on 15 November 2013.

2. Recommendations

- 2.1 To note the report from the OSC following its inspection on 15 November 2013.
- 2.2 To note the Council's action plan to address the recommendations of the OSC inspection report.
- 2.3 To note the level and nature of covert surveillance undertaken by the council.

3. Background

- 3.1 RIPA provides a statutory framework regulating the use of directed surveillance and the conduct of covert human intelligence sources (informants or undercover officers) by public authorities. The Act requires public authorities, including local authorities, to use covert investigation techniques in a way that is necessary, proportionate and compatible with human rights. RIPA also provides for the appointment of a Chief Surveillance Commissioner to oversee the way in which public authorities carry out covert surveillance.
- 3.2 Directed surveillance is covert surveillance that is conducted for the purposes of a specific investigation or operation and it is likely to result in the obtaining of private information about a person. Private information includes any aspect of a person's private or personal relationship with others, including

family and professional or business relationships. Whilst a person may have a reduced expectation of privacy when in a public place, covert surveillance of that person's activities in public may still result in the obtaining of private information.

3.3 The use of covert surveillance techniques by local authorities has been the subject of some controversy in recent years. The Government introduced significant changes under the Protection of Freedoms Act 2012 which came into effect on 1 November 2012. The changes mean that a local authority can now only grant authorisations under RIPA for the use of directed surveillance where it is for the purpose of investigating criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. A magistrate's approval is also required before the RIPA authorisation can take effect.

3.4 All RIPA authorisations must be signed by an authorising officer. Authorising officers must be trained before issuing any authorisations and they should also attend regular refresher training. The council currently has 5 authorising officers:

- Corporate Director Housing & Adult Social Services
- Director of Operations (Housing)
- Service Director Public Protection
- Director Public Realm
- Audit Manager (Investigations)

3.5 The Home Office revised code of practice sets out that it is considered good practice for elected members of a local authority to review the authority's use of RIPA and its policy and procedures. The revised code also sets out that it is good practice for public authorities to appoint a Senior Responsible Officer (SRO) to be responsible for the authority's compliance with RIPA. The SRO will engage with the OSC inspectors when they conduct their inspections and where necessary oversee the implementation of post-inspection action plans. Within local authorities, the SRO should be a member of the corporate leadership team and the Corporate Director of Finance & Resources has been nominated to this role for the council.

4. OSC inspection

4.1 The OSC carries out an inspection of the council's management of covert activities every 2 to 3 years. The inspection on 15 November 2013 was carried out by Assistant Surveillance Inspector, Mr L W Turnbull. The Inspector concluded, "This council has clearly tried to comply with the requirements of the legislation: the array of policy and guidance does provide evidence of this."

4.2 The Inspector set out recommendations in his inspection report and an action plan has been drawn up to address these recommendations. An exempt copy of the Commissioner's report is at annex A and an exempt copy of the action plan is at annex B to this report.

4.3 The council maintains a central register of authorisations. The register was previously maintained by Internal Audit but following the recommendation of the OSC Inspector the register is now maintained by Legal Services. Legal Services is now also responsible for issuing the unique reference numbers (URNs) for investigations.

5. Use of RIPA

5.1 During this financial year since 1 April 2014 the council has authorised directed surveillance on 2 occasions as follows:

- 1 to investigate anti-social behaviour on an estate involving drug taking and dealing, intimidating residents and arson.
- 1 to investigate unlawful sub-letting

Both RIPA authorisations have been given judicial approval by a magistrate.

- 5.2 For the period 1 April 2013 to 31 March 2014 the council authorised directed surveillance on 6 occasions to investigate anti-social behaviour and drug-dealing. All 6 authorisations were given judicial approval by a magistrate.
- 5.3 The council has not authorised the use of a covert human intelligence source in the period from 1 April 2013 to date.
- 5.4 The trend in the number of RIPA authorisations has been downwards. By comparison the council has granted the following number of directed surveillance authorisations in previous years:
- 2013/14 - 6
 - 2012/13 – 17
 - 2011/12 – 15
 - 2010/11 – 23
 - 2009/10 – 34
 - 2008/09 - 38

6. Future developments

- 6.1 On 22 July 2014 the Government published draft RIPA codes of practice on the authorisation of covert surveillance and covert human intelligence sources by public authorities. The Government is consulting on the draft codes which will be subject to approval by Parliament.
- 6.2 The draft codes reflect the safeguards brought in by the Government since the last codes were issued in 2010 including the introduction in the Protection of Freedoms Act 2012 of judicial supervision for local authorities' use of the powers.
- 6.3 When the consultation has concluded and the codes of practice are approved by Parliament, the council's policies and procedures will be updated to reflect the changes.

7. Implications

7.1 Financial implications:

There are no financial implications arising directly from this report. Robust anti-fraud activity is an integral part of the council's strategy for safeguarding its assets and maximising its use of resources. The use of investigatory surveillance is one of the tools the council uses to achieve these aims.

7.2 Legal Implications:

RIPA was introduced to ensure that covert surveillance undertaken by public authorities is undertaken in accordance with the European Convention on Human Rights and the Human Rights Act 1998.

The council can only undertake covert surveillance if the proposed operation is authorised by one of the council's authorising officers and subsequently approved by a magistrate. A local authority can only use directed surveillance if it is necessary to prevent or detect criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco. The authorising officer must also be satisfied that the proposed directed surveillance is proportionate to what is sought to be achieved.

There has been a reduction in the number of directed surveillance authorisations granted by the council since 1 November 2012 when the Protection of Freedoms Act 2012 introduced significant changes to local authorities' use of RIPA. However, the council could still face a legal challenge to the way in which covert surveillance is conducted. This could lead to the evidence obtained being ruled as inadmissible or a complaint to the Investigatory Powers Tribunal. The council's action plan addresses the comments and recommendations in the OSC report and will minimise the risk of the council being challenged for non-compliance with RIPA.

7.3 Environmental Implications:

Nil

7.4 Equality Impact Assessment:

An equalities impact assessment has not been conducted as this report only provides monitoring information and a legal update for the Committee.

8. Conclusion and reasons for recommendations

- 8.1 The council has comprehensive RIPA policy and procedures and this was recognised in the recent report from the OSC. The OSC made recommendations as to how the council could improve the management of its covert activities and these recommendations are being implemented.
- 8.2 The Protection of Freedoms Act 2012 has introduced additional safeguards to the use of RIPA and the impact of covert surveillance on the privacy of those under investigation. This has seen a reduction in the use of directed surveillance by the council.

Appendix A (exempt) OSC Inspection Report 15.11.13

Appendix B (exempt) Action plan to implement recommendations of OSC Inspection Report

Background papers: None.

Final report clearance:

Signed by:



Corporate Director for Finance and Resources Date

Received by:

Head of Democratic Services Date

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