

	<p style="text-align: center;"><b>Audit Committee</b> 16 December 2010</p> <p style="text-align: center;"><b>Report from the Director of Finance and Corporate Services</b></p>
<p>For Information</p>	<p style="text-align: right;">Wards affected: ALL</p>
<p><b>Regulation of Investigatory Powers Act 2000 – Review of the use of Surveillance and CHIS</b></p>	

## **1. Summary**

- 1.1. The purpose of this report is to advise members on the council's use of covert surveillance and covert human intelligence sources (CHIS) for 2009/10 and the period April 2010 to November 2010. The report also seeks approval for the council's policies on the use of these techniques.

## **2. Recommendations**

- 2.1. The Audit Committee note the content of the report.

## **3. Detail**

### **Background**

- 3.1. This report is the second annual report on surveillance activity. The first report was issued in December 2009<sup>1</sup>. These reports are intended to address the oversight role set out in the Home Office Codes of Practice<sup>2, 3</sup>. "Best Practice," as set out in paragraph 3.30 of the Code requires that elected members should review the use of directed surveillance and set the policy at least once a year. The Code also requires that members consider "internal reports" on the use of surveillance and chis on a quarterly basis to ensure they are being used in accordance with the council's policy and that the policies remain fit for purpose.
- 3.2. These are new requirements arising from concerns that some local authorities were misusing the powers following significant negative publicity in the latter part of 2008. The publicity was led, primarily, by the Daily Telegraph and, although, much of the coverage was misleading, the Home Office responded with a review of the RIPA legislation and issued a consultation on whether the

powers should be used by Local Authorities, for what and who should authorise them. The consultation ended in July 2009 and the new codes of practice came into force on 6<sup>th</sup> April 2010.

- 3.3. Furthermore, the coalition government's manifesto committed to limiting the surveillance powers of local authorities to "serious crime" with a requirement to gain authorisation from a magistrate. A new RIPA Review was therefore undertaken by Lord Donaldson QC and an announcement is expected imminently in this regard.
- 3.4. The main thrust of the negative publicity was that councils were inappropriately using powers conferred for anti-terrorism purposes to investigate minor offences. Although the coverage misrepresents the purpose of the legislation, which makes no mention of anti-terrorist activity, it was the case that a small number of authorities were using surveillance for what were, considered to be, trivial matters. Of particular concern was the use of surveillance by Poole Council to follow a family to determine whether or not they had misrepresented their permanent address on a school admission application. In July 2010 the Investigatory Powers Tribunal ruled that surveillance in such circumstances was inappropriate, determining that there must be real intent to bring criminal proceedings if surveillance is to be authorised.

### **Control of Surveillance**

- 3.5. RIPA and the Codes of Practice require certain procedures to be followed and considerations to be given prior to surveillance being authorised. The authorisation has to be done by a designated officer and there are safeguards in place regulating the length of time an operation can be authorised for and to ensure there is ongoing review of live operations.
- 3.6. RIPA also created the Office of Surveillance Commissioners (OSC) to carry out oversight on behalf of the Government to ensure the powers were being used appropriately. The Commissioners carry out regular on site inspections and the council has been the subject of four inspections, with a fifth due in February 2011.
- 3.7. Local authorities are permitted, under RIPA, to conduct a number of covert activities. These are: Directed surveillance, Covert Human Intelligence Sources (CHIS) and obtaining communication subscriber and traffic data. Councils may not conduct intrusive surveillance, which is surveillance conducted in any private place. Neither may councils obtain the content of communications, i.e. listen into phone calls or intercept emails. The surveillance methods available are:
  - Directed surveillance - covert monitoring of individuals in a public place for the purposes of a specific investigation. It does not include general CCTV use, although CCTV used to monitor specific individuals would constitute directed surveillance.
  - CHIS - any person, either employed directly by the council or a third

party informant who is directed by the council to obtain and provide information about the subject of an investigation.

- Communication data - details of the subscriber to a telephone or email account or records of calls made from a specific telephone number.
- 3.8. The council has a policy and procedure manual which has been issued to all units who conduct surveillance. This manual covers the procedures for the authorisation of directed surveillance, covert human intelligence sources and accessing communications data. The manual also covers issues of proportionality, necessity, collateral intrusion and the right to privacy. The policy will be subject to review following the next OSC inspection and will subsequently be submitted to this committee for approval.
- 3.9. The procedure is effectively governed by the legislation and statutory guidance. Each surveillance operation must be authorised by an authorising officer. The key tests are whether the authorising officer considers the surveillance to be necessary (surveillance is used only as a last resort and all other avenues of investigation have been explored), proportionate (the level of intrusion is balanced against the seriousness of the alleged criminal offence) and that issues of collateral intrusion (the intrusion into innocent third parties) have been considered. These tests must all be applied prior to authorisation and the authorising officer is required to state, on the application form, what they have considered and what surveillance activity is being authorised. Operatives must remain within the scope of the application.
- 3.10. Details of all surveillance operations are held on a central record maintained by Legal Services. Surveillance cannot take place without a unique reference number being issued by Legal Services. Copies of authorisations and all subsequent forms are kept with Legal Services for audit purposes. Legal Services conduct periodic audits to ensure the relevant tests are being applied.

### **Surveillance Activity**

- 3.11. Between 1<sup>st</sup> April 2009 and 31<sup>st</sup> March 2010, 26 authorisations were given for directed surveillance. A further 11 have been authorised in the period 1<sup>st</sup> April 2010 to 30<sup>th</sup> November 2010. These are summarised in table 1 below together with a comparison against previous years' figures. There have been no authorisations for Covert Human Intelligence Sources (CHIS):

Service Unit	2007/08	2008/09	2009/10	2010/11
Trading Standards	12 Counterfeiting, under age sales, licensing	22 Counterfeiting (9) Under age sales (13)	17 Counterfeiting, under age sales, licensing, Fraud.	7 Under age sales (4) Counterfeiting (2) Unsafe Goods (1)
Audit and Investigations	10 Housing Benefit Fraud (3) Housing Sub-Letting (4) False ill-health claim (1) Blue Badge Misuse (2)	10 Housing Benefit Fraud (2) Housing (5) Direct Payments (1) Blue Badge Misuse (3)	7 2 Blue Badge 2 Fraudulent Council tenancy 3 Housing & Council Tax Benefit Fraud	1 Blue Badge
Housing	5 Anti-Social Behaviour (5)	3 Anti-Social Behaviour (3)	1 Anti-Social Behaviour (1)	
Social Services	1 Child Protection (1)	2 Child Protection (2)	0	
Streetcare			1 Criminal Damage [Graffiti]	3 Commercial Fly Tipping
Total	28	37	26	11

**Table 1 – Surveillance Operations by Service Area April 2007 to November 2010**

3.12. Due to differences in case management systems and availability of historic case records, it is not possible to give a complete picture of the results of all surveillance exercises over time. Of the 24 operations run by Trading Standards since 2009/10, 21 of these have resulted in convictions. Specific results are set out below:

- The Trading Standards Service secured confiscation of £254,000 from a market trader after he was caught dealing in counterfeit goods. This order was made under the Proceeds of Crime Act 2002 and gave him six months to pay or face imprisonment. His three houses, a business premise, a 6 series BMW and thousands of pounds in various bank accounts were frozen as part of this investigation.
- A trader who sold fake designer clothing was sentenced to 150 hours of unpaid work and ordered to pay £1,000 in costs.
- 7 people were arrested as a result of a joint operation with the Police investigating fraudulent parking especially on event days around the Wembley Stadium area. The police have since secured a large number of successful convictions as a result.
- A market trader, whose stock of fake jewellery was seized and forfeited was ordered to wear an electronic tag and remain under curfew at his house between 8.00pm and 5.00am for 12 weeks and was also ordered to pay £800 to Trading Standards towards the cost of bringing the prosecution.
- An employee of a local retailer was fined £750 for selling alcohol to children aged 13 and 14. In another case, a local shopkeeper was fined and ordered to pay costs amounting to £857 for selling cigarettes to a 15 year old child.

- 3.13. The Audit and Investigations Team have conducted 71 operations since April 2003 in which the case has been closed. Of these, 24 resulted in no further action. Of the remaining 47 cases, 15 resulted in criminal convictions for benefit fraud in excess of £900,000, 14 council properties were recovered and four right to buy applications refused, 5 staff were either dismissed or resigned for fraud and a further 13 cases resulted in some other form of sanction.

#### **4. Financial Implications**

- 4.1. None

#### **5. Legal Implications**

- 5.1. Statutory Instrument 521 of 2010, to be read in conjunction with the Codes of Practice on Covert Surveillance and Property Interference, paragraph 3.29, requires the appointment of a Senior Responsible Officer. This officer must be a member of the corporate leadership team (CMT) and should be responsible for ensuring that all authorising officers are of an appropriate standard. The council's SRO is currently the Head of Legal and Procurement.

#### **6. Diversity Implications**

- 6.1. None

#### **7. Background Papers**

1. Report from the Director of Finance and Corporate Resources to the Audit Committee. 17<sup>th</sup> December 2009. *Use of Directed Surveillance*
2. Home Office (2009). *Covert Surveillance and Property Interference. Revised Codes of Practice*. Retrieved 2<sup>nd</sup> December 2010 from:  
<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>
3. Home Office (2009). *Covert Human Intelligence Sources. Revised Codes of Practice*. Retrieved 2<sup>nd</sup> December 2010 from:  
<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>
4. Local Government Association (2008). *Letter to all council leaders*

#### **8. Contact Officer Details**

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