

	<p style="text-align: center;">Audit Committee 15 December 2011</p> <p style="text-align: center;">Report from the Director of Finance and Corporate Services</p>
<p>For Information</p>	<p style="text-align: right;">Wards Affected: ALL</p>
<p>Use of Surveillance and CHIS for 2010/11</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 2010/11 and the period April 2011 to November 2011.

2. Recommendations

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

3. Detail

Background

- 3.1. This report is the third annual report on surveillance activity. The first report was issued in December 2009¹. These reports are intended to address the oversight role set out in the Home Office Codes of Practice^{2, 3}. "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 relatively new requirements arising from concerns that some local authorities were misusing the powers. These concerns primarily arose from negative publicity in the latter part of 2008 as a result of one authority using surveillance to investigate a allegation of fraud within the school admissions process. 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 6th April 2010.

- 3.3. 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 misrepresented the purpose of the legislation, which makes no mention of anti-terrorism 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.
- 3.4. The new 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 RIPA Review was undertaken by Lord Donaldson QC and this has resulted in a number of changes being included within the Protection of Freedoms Bill which is currently at the Committee Stage in the House of Lords.
- 3.5. The restrictions within the Protection of Freedoms Bill relate to the threshold for offences which can be considered for surveillance, which must carry a custodial sentence of more than six months and the requirement to obtain approval from a magistrate. There are some 20 bodies empowered to use RIPA, Local Authorities are the only organisation who are being restricted in this way. These new restrictions have attracted criticism from the government's own regulatory body for surveillance, the Office of the Surveillance Commissioner. In his annual report⁴ for 2010/11 he stated,

"Reports relating to local authority use of covert surveillance have been misleading and often inaccurate. I have identified no systemic attempts to misuse legislation... I expressed particular concern regarding the proposal to require local authorities to seek approval for their covert surveillance from magistrates. Leaving aside the cost of training and reimbursing many more magistrates than there are authorising officers, it is not apparent why local authorities should be treated differently from other public authorities and, as is apparent from this and my previous Annual Reports, local authorities are, generally speaking, exercising their powers properly. The higher threshold in the proposed legislation will reduce the number of cases in which local authorities have the protection of RIPA when conducting covert surveillance... I anticipate unnecessary complications resulting from the use of magistrates and confusion regarding the threshold for local authority authorisation if the current proposals in the Protection of Freedoms Bill are adopted."
- 3.6. Despite such evidence it is likely that the government will press ahead with these restrictions. A further report will be presented to committee once the

legislation has been enacted.

Control of Surveillance

- 3.7. 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.
- 3.8. 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.
- 3.9. 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.
- 3.10. 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 is currently under review pending the introduction of the Protection of Freedoms Bill and once this is enacted, the policy will be presented to members for approval.
- 3.11. 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.

- 3.12. 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

- 3.13. Between 1st April 2010 and 31st March 2011, 43 authorisations were given for directed surveillance. A further 23 have been authorised in the period 1st April 2011 to 30th November 2011. 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	Apr 11 – Nov 11
Trading Standards	12 Counterfeiting, under age sales, licensing	22 Counterfeiting (9) Under age sales (13)	17 Counterfeiting, under age sales, licensing, Fraud.	14 Test Purchasing Counterfeit Goods Theft from Multiple parking meters in LBB	6
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	2 Blue Badge Fraud	1
Housing	5 Anti-Social Behaviour (5)	3 Anti-Social Behaviour (3)	1 Anti-Social Behaviour (1)	0	1
Social Services	1 Child Protection (1)	2 Child Protection (2)	0	0	
Streetcare			1 Criminal Damage [Graffiti]	8 Commercial Fly Tipping Criminal Damage	4
Total	28	37	26	24	12

Table 1 – Surveillance Operations by Service Area April 2007 to November 2011

- 3.14. For the Trading Standards Service, 5 of the 14 authorisations in 2010/11 have led to a legal action being taken, resulting in a total of 16 individuals being successfully prosecuted. Three further cases have pending legal proceedings.
- 3.15. Authorisations of interest include Operation Capital which saw six Wembley Market traders convicted for selling counterfeit goods. Three of these traders received a curfew and were electronically tagged, two received community service totalling 240 hours between them, one case the defendant is awaiting sentencing and the final investigation is still in the Court system. Costs have been awarded in these cases totalling £2,892.
- 3.16. A similar operation called Orbit took place later in the year resulting in a further four market traders being taken to Court for selling counterfeit goods. One trader who had previous convictions for selling hooky designer wear received a 200 hour community order and was ordered to pay £2,000 costs. Another received a 100 hour community order and had £1,256 confiscated from him whilst two others received a fine or conditional discharge with a total of £418 confiscated from them.
- 3.17. RIPA authorisation is regularly obtained for underage sales operations. In 2010/11 five prosecutions were taken for illegal underage sales, three of which included the sale of fireworks. By coincidence, all three cases resulted in fines of £1,000 with a collective total of £1,000 costs being payable to the Service
- 3.18. Streetcare were the other main users of surveillance during 2010/11.
- 3.19. The Audit and Investigations Team have conducted very few surveillance operations since April 2011. An analysis of activity since April 2003 shows that 74 cases have been closed where surveillance has been used. Of these, 28 resulted in no further action. Of the remaining 46 cases, 17 resulted in criminal convictions for benefit fraud in excess of £960,000 with a further 9 sanctions applied to benefit fraud cases worth £150,000. 14 council properties were recovered and seven right to buy applications refused, 6 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.

- 5.2. The Protection of Freedoms Bill is currently at the House of Lords Committee Stage. Current proposals within the bill will mean significant changes for surveillance activity within local government. This includes:

(a) Magistrates Approval

- The local authority will have to seek approval from a Magistrate prior to conducting any surveillance
- This will be in addition to the authorisation currently needed by a LA Senior Manager and the more general oversight by elected councillors as set out in the new Codes

(b) Serious Offence Test

- Local authorities will only be able to use surveillance where the offence under investigation carries a possible custodial sentence of 6 months or more. However, this limit will not apply to test purchasing

6. Diversity Implications

- 6.1. None

7. Background Papers

1. Report from the Director of Finance and Corporate Resources to the Audit Committee. 17th December 2009. *Use of Directed Surveillance*
2. Home Office (2009). *Covert Surveillance and Property Interference. Revised Codes of Practice*. Retrieved 2nd 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 2nd December 2010 from:
<http://www.homeoffice.gov.uk/counter-terrorism/regulation-investigatory-powers/ripa-codes-of-practice/>
4. Office of the Surveillance Commissioner (2011). *OSC Annual Report*

8. Contact Officer Details

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