

	<p style="text-align: center;">Audit Committee 17 December 2009</p> <p style="text-align: center;">Report from the Director of Finance and Corporate Resources</p>
For Information	Wards Affected: ALL
<p>Use of Directed Surveillance</p>	

1. Summary

- 1.1. The purpose of this report is to advise members on the use of covert surveillance across the council.

2. Recommendations

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

3. Detail

Background

- 3.1. During the latter part of 2008 there was a significant amount of negative publicity regarding the use of surveillance methods by local authorities. Initially raised by the Daily Telegraph in April 2008¹⁻³, coverage continued in various publications, including the local press and was debated in the BBC's Question Time programme on 26th June 2008⁴. Much of the reporting was misleading, particularly by the Telegraph³ who reported that councils could bug phones. This is not the case, there is no legal power for a local authority to bug a phone or intercept email communication. The Telegraph later corrected this error although the adverse public reaction had already begun and worsened when Poole Council were criticised for using surveillance to observe a family who it believed were misrepresenting their home address in order to get their child into a particular school.
- 3.2. The main thrust of the coverage was that councils were inappropriately using powers conferred for anti-terrorism purposes to investigate minor offences. Again this is misleading as the legislation which underpins surveillance makes no mention of anti-terrorist activity and is for the investigation of all criminal activity. The Guardian (2008)⁵ provided a more balanced view and pointed out that councils are not able to bug telephones and that the police do not

have time to investigate the offences which local authorities are required to investigate. It went on to say, *"Councils are also dealing with matters which are a nuisance and can't be ignored - fly-tippers, noisy neighbours, dodgy food - which again the police don't have time or the money to investigate."*

- 3.3. It was, however, the case that a small number of authorities were using surveillance for what were, considered to be, trivial matters. These included littering and dog fouling. As a result, on 20th June 2008 the Local Government Association⁶ (LGA) wrote to every council leader. The LGA requested that council leaders, *"...satisfy yourself that the use of these powers is only being authorised after the most careful consideration at the appropriate senior political and managerial level. It would also be helpful if you could review existing permissions to ensure that their continuance meets the "necessary and proportionate" test. Perhaps you might consider reviewing these powers annually by an appropriate scrutiny committee or panel of your council which could invite evidence from the public"*.
- 3.4. Subsequently the Home Office⁷ announced 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 Home Office is currently revising its code of practice on the use of surveillance. It is considered likely that the level of authorisation for surveillance within local authorities will be raised to departmental director and that members will be required to have greater oversight as to the use of surveillance.
- 3.5. The purpose of this report is to begin to address this oversight role, in advance of the new code of practice, and to provide wider assurance to members as to the appropriateness of the use of surveillance within the council..

Control of Surveillance

- 3.6. It should be noted that prior to the introduction of the Regulation of Investigatory Powers Act (2000), councils and other law enforcement agencies were conducting surveillance operations. The Act was introduced to regulate the use of surveillance by many different public bodies into crime in general and to create a framework within which they can operate. The use of surveillance by local authorities is not a new phenomena caused by the introduction of this act. Surveillance activity has been taking place for many years and is better regulated now than at anytime.
- 3.7. The Act requires 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. The Act also set up 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.

- 3.8. 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.
- 3.9. The council has a confidential 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.
- 3.10. Surveillance may only be authorised by designated persons under the Regulation of Investigatory Powers Act 2000. In the council the following are authorising officers:
- Director and Deputy Directors of Trading Standards
 - Director of Housing and Community Care
 - Director and Deputy Director of Finance and Corporate Resources
 - Director of Streetcare
 - Director of Health, Safety and Licensing
 - Deputy Director of Environmental Health
 - Assistant Director of Social Care
 - Corporate Complaints Manager
 - Head of Community Safety
 - Deputy Borough Solicitor
 - Chief Executive
- 3.11. All those listed above have received appropriate training in RIPA, the Human Rights Act and surveillance generally, specifically covering issues of proportionality, necessity and collateral intrusion.
- 3.12. The council must comply with this legislation for surveillance material to be admissible in court and to prevent claims under the human rights act for a

breach of the right to privacy. The council has a procedure in place, which is effectively governed by the legislation and statutory guidance. Each surveillance operation must be authorised by one of the authorising officers listed above. 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.

- 3.13. 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 are logged with Legal Services for audit purposes. Legal Services conduct periodic audits to ensure the relevant tests are being applied. In addition to internal oversight by Legal Services, the Council has been inspected on three occasions by the OSC and has received positive reports on all such occasions. These inspections include reviewing individual surveillance operations to ensure they are within the scope of the legislation.
- 3.14. In addition to the statutory safeguards listed above there are also operational safeguards, such as the use of formal risk assessments, experienced and trained personnel and formal briefings.
- 3.15. The council has been the subject of four inspections by the Office of Surveillance Commissioner. The inspectors have found no fundamental weaknesses in the council's approach or any concerns with specific operations.

Surveillance Activity

- 3.16. Between 1st April 2008 and 31st March 2009, 37 authorisations were given for directed surveillance. These are summarised in table 1 below together with a comparison against last year's figures:

Table 1: Surveillance Operations by Service Unit April 2007 to September 2009

Service Unit	2007/08	2008/09	Apr 2009 to Sep 2009
Trading Standards	12 Counterfeiting, under age sales, licensing	22 Counterfeiting (9) Under age sales (13)	8 Under age sales (6) Car Cloning (1) Consumer Protection (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)	5 Housing (2) Blue Badge Misuse (3)
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
Total	28	37	14

3.17. 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 surveillance exercises over time. Clearly, a number of those cases identified in table 1 above will not yet have reached a conclusion. To give an indication of the effectiveness of surveillance operations, the Audit and Investigations Team have conducted 45 operations since April 2003 in which the case has been closed. Of these, sixteen resulted in no further action. Of the remaining 29 cases, six resulted in criminal convictions for benefit fraud in excess of £340,000, twelve council properties were recovered and four right to buy applications refused, five staff were either dismissed or resigned for fraud and a further six cases resulted in some other form of sanction.

3.18. Trading Standards have many examples of the successful use of surveillance including:

- Two counterfeiters sentenced to a combined total of 28 months imprisonment for their illicit wholesale trade in counterfeit goods. One of the defendants was sentenced to 21 months imprisonment, whilst the other received a 7 months sentence suspended for 2 years, and is to be electronically tagged preventing him from leaving his home between 8pm and 6am every day.
- A confiscation order for £40,000 against a market trader under the Proceeds of Crime Act 2002 and he was ordered to pay in full within 12 months. The defendant was previously convicted for his part in a major counterfeiting operation for which he was sent to prison for one year. His enterprise sold counterfeit goods at Wembley and Shepherds Bush markets.

- Two Wembley market traders convicted for up to two years for dealing in counterfeit goods.
- Three local retailers were fined a total of £1,200 by Brent Magistrates Court and ordered to pay a further £2,150 in prosecution costs to the London Boroughs of Brent & Harrow Trading Standards Service after they each pleaded guilty to offences under the Licensing Act 2003.
- One man was jailed and three others given community service orders at for their part in a major counterfeiting operation involving £400,000 worth of designer clothes and footwear.
- An employee of a local retailer fined for selling a knife to two 12 year old children.

4. Financial Implications

4.1. None

5. Legal Implications

5.1. None

6. Diversity Implications

6.1. None

7. Background Papers

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<http://www.telegraph.co.uk/news/uknews/1584713/Poole-council-spies-on-family-over-school-claim.html>
3. Daily telegraph (2008c). *Phones tapped at the rate of 1,000 a day*. Retrieved 9th September 2008 from:
<http://www.telegraph.co.uk/news/uknews/1576937/Phones-tapped-at-the-rate-of-1,000-a-day.html>
4. BBC 2008. *Question Time* [Television Programme 26th June 2008] Retrieved 9th September 2008 from:
http://news.bbc.co.uk/1/hi/programmes/question_time/default.stm
5. Guardian (2008). *Snoopers or protectors? Let's not get hysterical. There are far graver threats to our liberties than the man from the town hall* Retrieved 9th September 2008 from:
<http://www.guardian.co.uk/commentisfree/2008/jun/08/civilliberties.localgovernment?gusrc=rss&feed=uknews>
6. Local Government Association (2008). *Letter to all council leaders*

7. Home Office (2009). *Regulation of Investigatory Powers Act 2000: consolidating orders and codes of practice - consultation and response*. Retrieved 2nd December 2009 from:
<http://www.homeoffice.gov.uk/documents/cons-2009-ripa/>

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