

TITLE OF REPORT: ITEM REFERRED FROM OVERVIEW AND SCRUTINY COMMITTEE: 23 JULY 2013 – OFFICE OF SURVEILLANCE COMMISSIONERS INSPECTORS REPORT AND ACTION PLAN

The following is an extract from the Draft Minutes of the Overview and Scrutiny Committee meeting held on 23 July 2013.

28. OFFICE OF SURVEILLANCE COMMISSIONERS INSPECTORS REPORT AND ACTION PLAN

The Acting Corporate Legal Manager introduced the report regarding the Office of Surveillance Commissioners Inspectors report and Action Plan and informed Members that since the last inspection in July 2010 use of directed surveillance has fallen with only two authorisations in three years, neither of which were carried out and drew attention to Paragraph 7.3 of the report which gave details of those authorisations. The recent inspection made some recommendations particularly that officers should not become deskilled due to non use of the procedure and that the RIPA policy should be updated taking into account the lower number of authorising officers required. The recommendations had been addressed as follows:

- (i) Make the Central Record of Authorisations compliant with the Codes of Practice.
This had been implemented immediately by adding relevant columns to the Central Record.
- (ii) Adopt the current Home Office Forms.
This had been implemented immediately and the Home Office forms were now in use.
- (iii) Discharge fully the recommendations of the 2010 OSC report.
These recommendations had been discharged by amending the Central Record, introducing a training programme and assigning a Senior Responsible Officer to oversee the process.
- (iv) Design a training programme which addressed the issues in the report
A training programme had been designed and was detailed in Appendix B.
- (v) Amend the RIPA Policy and Procedures.
The Policy, shown at Appendix A, had been amended in line with the recommendations and would be considered by Cabinet on 30 July 2013.

The Solicitor took Members through the amendments to the RIPA Policy and drew attention to Appendix B of the Policy which detailed the reduction in the number of Authorising Officers for RIPA and CHIS, which would give the opportunity for more focused training. As all authorisations now had to be approved by the Magistrates court, the urgency provision enabling verbal authorisations had been removed. The OSC had recommended that this provision be removed, as the court would require evidence of a written authorisation prior to approval.

Members debated the report and observed that it would be useful for Members to have some training as it would assist with proper scrutiny of the process.

The Acting Corporate Legal Manager advised that the OSC had identified a need for officer training, however Members would be welcome.

The Acting Corporate Legal Manager reminded Members that the RIPA Policy and Procedures only applied to covert surveillance.

RESOLVED:

- (1) That any invitation to training regarding the RIPA Policy and Procedure be extended to Members;

- (2) That the report from the Office of Surveillance Commissioners and the Council's response to the recommendations be noted.

RECOMMENDED TO CABINET: That the proposed amendments to the Council's Regulation of Investigatory Powers Act Policy be adopted.

REASON FOR DECISION: To ensure that the Overview and Scrutiny Committee scrutinizes the proposed amendments to the Regulation of Investigatory Powers Act Policy prior to consideration by Cabinet on 30 July 2013.

The following is the report considered by the Overview and Scrutiny Committee at its meeting held on 23 July 2013.

**TITLE OF REPORT: OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT AND ACTION PLAN**

REPORT OF THE ACTING CORPORATE LEGAL MANAGER

1. SUMMARY

1. This Report presents to Overview and Scrutiny the Council's response to the report of the Office of Surveillance Commissioner's (OSC). The OSC carried out an inspection of the Council's use of surveillance, attending the Council offices on 17 April 2013. The OSC report of 15 May 2013 contains recommendations relating to the Council's processes and use of surveillance.

2. RECOMMENDATIONS

- 2.1 Note the report from the OSC and the Council's response to the recommendations.
- 2.2 That Overview and Scrutiny Committee recommend to Cabinet the proposed amendments to the Council's RIPA Policy.

2. REASONS FOR RECOMMENDATIONS

- 3.1 To update the Council's RIPA Policy and procedures following the recommendations of the OSC.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None, as the Council should respond to the recommendations contained in the inspection report.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 None.

6. FORWARD PLAN

- 6.1 This report has not been referred to in the forward plan.

7. BACKGROUND

- 7.1 The OSC inspect Local Authorities periodically to monitor the use of surveillance powers. The Council was last inspected in July 2010.
- 7.2 Since the last inspection in July 2010 the Council's use of directed surveillance has fallen, with only two authorisations in the three years. Neither of those authorisations were actually used, and no directed surveillance was carried out.
- 7.3 The first of the authorisations was on the 17th May 2011, for the installation of video recording equipment following reports of unlawful disposal of waste. Due to those involved apparently becoming aware of the use of surveillance prior to the installation of the equipment and operational changes, no directed surveillance was required or carried out. The second authorisation was for the installation of sound recording equipment in a residential premises following reports of anti-social behaviour on the 6th June 2011. The anti-social

behaviour ceased prior to the equipment being installed and therefore no directed surveillance was carried out.

- 7.4 His Honour Norman Jones QC visited the Council offices on 17 April 2013, where he conducted interviews and discussions with officers, an examination of the Central Record of Authorisations and inspected applications/authorisations, reviews, renewals and cancellations.
- 7.5 The Council's current RIPA Policy was approved by Cabinet on 25 September 2012 and came into force on 1 November 2012 to coincide with the start of changes to the RIPA approval processes introduced by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012, and sections 37 and 38 of the Protection of Freedoms Act 2012. The RIPA Policy must be reviewed annually and the proposed changes in response to the OSC Inspector's report meet this requirement for the annual review.

8. ISSUES

- 8.1 The Inspector's report concluded that the Council does have "good structures already in place for which it should be commended. The RIPA Policy and Procedures is of a high standard, the management structure for RIPA is sound, the Enforcement Forum serves a useful purpose and systems exist for raising awareness and avoiding unauthorised surveillance". The report also identified "grounds for optimism" and that two key officers "appear to be dedicated, efficient and determined to create a system which will achieve high standards".
- 8.2 The report made recommendations on how the process can be improved, and most of these changes were actioned immediately following receipt of the report, see paragraph 8.3 for further detail.
- 8.3 The lack of directed surveillance activity has made it more difficult for the Council to demonstrate actions taken against the OSC's recommendations in 2010 and keep the profile of RIPA high. The previous recommendations have now been dealt with along with the recommendations contained in paragraph 31 of the OSC report. The following actions are being taken in relation to the recommendations:
- i. *Make the Central Record of Authorisations compliant with the Codes of Practice.* This has been implemented with additional columns added to the Central Record.
 - ii. *Adopt the current Home Office forms.* These have been adopted and have replaced the forms on the intranet.
 - iii. *Discharge fully the recommendations of the 2010 OSC Report.* These have been discharged with the amendments to the Central Record, introduction of the Training Programme, assigning a Senior Responsible Officer (SRO) to oversee the process, and will be demonstrated in future authorisations.
 - iv. *Design a training programme which addresses the issues in this report.* This is addressed by the introduction of the Training Programme at Appendix B.
 - v. *Amend the RIPA Policy and Procedures.* The Policy has been amended in line with the recommendations and is attached at Appendix A.
- 8.4 The Inspector comments in the report that the Council should give consideration to further reducing the number of Authorising Officers. Due to the Council's relatively low use of RIPA authorisations, and the introduction of the requirement for Magistrates Court approval of authorisations likely to

decrease this further, it is no longer necessary to have a large number of Authorising Officers. There are other benefits to reducing the number of Authorising Officers, including the opportunity for more focused training, and a greater likelihood of more practical experience for the fewer Authorising Officers. The proposed Policy changes reduces the number of Authorising Officers to four (see page 24 of Appendix A). The Strategic Directors are no longer Authorising Officers, although they may deputise for the Chief Executive in his absence.

- 8.5 The OSC report recommends that the Council identify the requirement for a controller and handler to manage Covert Human Intelligence Sources (CHIS), and train the appropriate officers to undertake these roles. The report recognises that it has never been the practice for the Council to use CHIS. The proposed Policy changes identify the three Heads of Service that are Authorising Officers as CHIS controllers and handlers (see page 24 of Appendix A). Currently vulnerable CHIS are authorised by the Chief Executive, but other CHIS may be authorised by any of the Authorising Officers. There may be benefit in keeping the number of officers responsible for CHIS as small as possible, given there is a similar de-skilling/lack of awareness issue which might mean a source inadvertently becoming a CHIS and falling into the scope of the legislation. The proposed Policy changes reduces the number of CHIS Authorising Officers to one, the Chief Executive only (or Strategic Director in his absence).
- 8.6 The OSC report identified a need for further RIPA training, and it is proposed this is addressed with a training programme, the draft of which is attached at Appendix B. The Inspector recognised that training provided in February 2011 was of a high standard and that the Corporate Enforcement Forum serves a valuable purpose in alerting officers to changes in legislation or procedures. The Inspector identified that where authorities do not regularly use RIPA (which is the case with this Council) there was a risk that officers may become de-skilled, or the general level of awareness is not sufficient, and that potentially might lead to inadvertent unauthorised surveillance. The report therefore identified a need for an ongoing RIPA training programme for officers, which will be the responsibility of the Senior Responsible Officer.

9. LEGAL IMPLICATIONS

- 9.1 The Council's RIPA Policy must be updated to ensure that the Council acts lawfully within its powers and complies with best practice. The Policy must be reviewed annually.
- 9.2 The Council's Overview and Scrutiny Committee's Terms of Reference and Council's Constitution state that it shall be entitled to consider reports relating to the authority's use of the Regulation of Investigatory Powers Act (2000) (RIPA).
- 9.3 The Overview and Scrutiny Committee will consider this report and make a recommendation to Cabinet in line with its Terms of Reference. It is Cabinet's responsibility to adopt the updated Policy.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications arising from this Report.

11. RISK IMPLICATIONS

- 11.1 It is important that the Council continues to operate in accordance with RIPA to ensure that it is able to effectively manage its reputational risk whilst also

exercising its legitimate evidence gathering powers in connection with enforcement activity.

12. EQUALITIES IMPLICATIONS

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 8.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups. The commencement of improvements arising from the 'Protections of Freedoms Act' strengthens existing Human Rights Legislation, protecting individuals from inappropriate levels of covert surveillance, such as that used by some authorities, featured in the national media, regarding the enforcement of school catchment areas.

13. SOCIAL VALUE IMPLICATIONS

13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

14.1 The officer involvement required to comply with these statutory obligations are factored into service plans and work plans. The training programme will be met from existing budgets.

15. APPENDICES

15.1 Appendix A - NHDC's RIPA Policy and Procedures with suggested amendments.
Appendix B – Training Programme.
Appendix C – OSC Report dated 15th May 2013.

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17. BACKGROUND PAPERS

17.1 None