

Council Report

Audit Committee - 19th April, 2017

Title

Inspection by the Office of the Surveillance Commissioners

Is this a Key Decision and has it been included on the Forward Plan?

Yes

Strategic Director Approving Submission of the Report

Judith Badger, Strategic Director (Finance and Customer Services)

Report Author(s)

Dermot Pearson (Assistant Director, Legal Services)

Ward(s) Affected

All

Executive Summary

On 11th January, 2017, the Council was inspected by His Honour Norman Jones QC, an Assistant Surveillance Commissioner in respect of the Council's arrangements to secure compliance with the statutory provisions which govern the use of covert surveillance. This report appends His Honour's Inspection Report and a covering letter from the Chief Surveillance Commissioner and sets out the main findings of the Inspection Report and how His Honour's recommendations will be implemented.

Recommendations

- That the Committee note the contents of the Inspection Report; and
- That the Committee approve the steps to be taken to implement the findings of the Inspection Report.
- That the Committee approve the amendment of the Council's Regulation of Investigatory Powers Act Policy as set out in paragraphs 26 and 27 of the Inspection Report.

List of Appendices Included

Appendix 1 Inspection Report of His Honour Norman Jones QC dated 12th January, 2017.

Appendix 2 Covering letter dated 24th January, 2017, from the Chief Surveillance Commissioner.

Background Papers

- The Council's Regulation of Investigatory Powers Act Policy

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No

Exempt from the Press and Public

No

Title (Main Report)

Inspection by the Office of the Surveillance Commissioners

1. Recommendations

- 1.1 That the Committee note the contents of the Inspection Report; and
- 1.2 That the Committee approve the steps to be taken to implement the findings of the Inspection Report.
- 1.3 That the Committee approve the amendment of the Council's Regulation of Investigatory Powers Act Policy as set out in paragraphs 26 and 27 of the Inspection Report.

2. Background

- 2.1 On 11th January, 2017, the Council was inspected by His Honour Norman Jones QC, an Assistant Surveillance Commissioner in respect of the Council's arrangements to secure compliance with the statutory provisions which govern the use of covert surveillance. The previous inspection took place on 11th February, 2014, and was also conducted by His Honour. As part of his inspection His Honour interviewed the following officers:
 - 2.1.1 Dermot Pearson (Assistant Director, Legal Services)
 - 2.1.2 Neil Concannon (Service Manager, Legal Services)
 - 2.1.3 Ailsa Barr (Head of Service, Locality Social Work)
 - 2.1.4 Alan Pogorzelec (Business Regulation Manager, Community Safety and Street Scene)
 - 2.1.5 Lewis Coates (Interim Safer Neighbourhoods Manager, Community Safety and Street Scene)
- 2.2 The inspection proceeded by way of interview and discussion with the officers and an examination of the Central Record of Investigations and two granted authorisations for directed surveillance arrangements through discussions with members and senior officers. The conclusions of the Inspection Report [which forms Appendix 1 to this report] can be summarised as follows:
 - 2.2.1 The Council has continued to maintain a RIPA [Regulation of Investigatory Powers Act] system which is as good as the best found in other local authorities, with an excellent training programme and which provides a well constructed and informative RIPA Policy. The result is a system which includes excellent oversight and gate keeping coupled with authorising officers of good quality who are well-trained.
 - 2.2.2 The Council had fully or largely discharged the recommendations of the previous inspection report and there was a high degree of awareness of the risks involved when undertaking covert social media investigation.

2.2.3 Some limited issues remain in relation to the drafting of applications/authorisations.

2.3 The recommendations of the Inspection Report can be summarised as being that:

2.3.1 The Council take further action to raise RIPA awareness among its staff to minimise the risk of conducting unauthorised covert surveillance.

2.3.2 The Council arrange training for officers to act as controllers and handlers of Covert Human Intelligence Sources. [The report noted that the Council has not used Covert Human Intelligence Sources since the distant past and had no intention to do so in the immediate future].

2.3.3 The Council make amendments its RIPA Policy as set out in paragraphs 26 and 27 of the Inspection Report. These amendments will provide guidance on the use of social media for surveillance and greater clarity on time limits for authorisation and the necessity test for covert surveillance.

3. Key Issues

3.1 The Inspection Report is a very positive one, as confirmed by the finding set out at 2.2.1.

3.2 A briefing will be presented to a future meeting of the M3 Managers Group which will ensure that managers understand the risk of conducting unauthorised covert surveillance. This will implement the recommendation at paragraph 2.3.1 above.

3.3 Officers are exploring options for a cost effective training programme for officers to act as controllers and handlers of Covert Human Intelligence Sources. This will implement the recommendation at paragraph 2.3.2 above.

3.4 It will be necessary to amend the Council's RIPA Policy as set out at paragraph 2.3.3 in order to comply with the recommendations in the Inspection Report.

4. Options considered and recommended proposal

4.1 The Office of Surveillance Commissioners is the statutory regulator which oversees the conduct of covert surveillance and covert human intelligence sources by public authorities in accordance with the Police Act 1997 and the Regulation of Investigatory Powers Act 2000.

4.2 It is therefore recommended that the Council implement the recommendations set out in the Inspection Report.

5. Consultation

5.1 None

6. Timetable and Accountability for Implementing this Decision

- 6.1 The recommendations set out in the report will be implemented as soon as the required training can be arranged and a briefing to M3 Managers will be presented as soon as there is space available on the agenda for the meeting. Amendments to the RIPA Policy can be made as soon as they are authorised.
- 6.2 The Assistant Director of Legal Services will be responsible for implementing any decisions made by Committee.

7. Financial and Procurement Implications

- 7.1 There will be a cost to the training recommended which can be met from existing budgets.

8. Legal Implications

- 8.1 The legal implications are dealt with in the body of the report.

9. Human Resources Implications

- 9.1 None

10. Implications for Children and Young People

- 10.1 There are no direct implications for Children and Young People.

11. Equalities and Human Rights Implications

- 11.1 None arising directly from this report

12. Implications for Partners and Other Directorates

- 12.1 None arising directly from this report

13. Risks and Mitigation

- 13.1 If the recommendations of the Inspection Report are implemented the risk that the Council will find itself in breach of its legal duties under RIPA and the associated legislation will be minimised. A particular risk is that the Council might inadvertently engage in covert surveillance without the necessary authorisation. Non-compliance with its legal duties could result in the Council being in breach of the European Convention on Human Rights and the Human Rights Act 1998 and therefore at risk of legal challenge. A successful challenge could expose the Council to both financial and reputational risk.

14. Accountable Officer(s)

Dermot Pearson, Assistant Director Legal Services

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