

Inspection of the Council's Covert Surveillance Policy and Procedures

SUMMARY

- 1.1 On 12th April 2013, His Honour Norman Jones QC, Assistant Surveillance Commissioner with the Office of Surveillance Commissioners conducted a comprehensive inspection of the Council's use and governance arrangements for conducting covert surveillance.
- 1.2 The use of covert surveillance is strictly governed by the Regulation of Investigatory Powers Act 2000 as amended. The responsibility for the overall governance arrangements rests with the Director of Legal & Democratic Services who acts as the Senior Responsible Officer.
- 1.3 Covert surveillance is authorised activity which a Local Authority can undertake in places other than residential premises or private vehicles.
- 1.4 The Council's Policy and Procedures should be reported to the Audit and Accounts Committee on an annual basis to ensure it is fit for purpose and the Council's usage should be reported quarterly to the Committee.

RECOMMENDATION

- 2.1 To note that the Director of Legal & Democratic Services in conjunction with the Head of Governance & Assurance shall implement the Action Plan as detailed at Appendix 2 of this report to respond to the recommendations given by the Office of Surveillance Commissioners.
- 2.2 To note that the Director of Legal & Democratic Services and the Head of Governance & Assurance shall ensure that mandatory training to Officers is facilitated in respect of the use of covert surveillance
- 2.3 The Director of Legal & Democratic Services shall provide an annual report to the Audit & Accounts Committee to consider the fitness for purpose of the Council's policy and quarterly reports in respect of the Council's usage of covert surveillance.
- 2.4 That the Monitoring Officer be requested to make arrangements for the Constitution to be amended in accordance with the Inspection recommendations as detailed at Appendix 2 of this report.

REASONS FOR RECOMMENDATION

- 3.1 The Council is required to respond to the recommendations arising from the recent Inspection so as to ensure that the procedures followed by Officers are lawful and that any evidence gained and utilised in a future prosecution has been lawfully obtained and hence can be relied upon in Court.

SUPPORTING INFORMATION

- 4.1 There are occasions when the Council will have a need to obtain evidence in a covert as opposed to an overt manner, ie there are no publicly available means of obtaining or securing the required information.
- 4.2 Obtaining evidence in a covert manner is very strictly regulated and the recent amendments to the Regulation of Investigatory Powers Act 2000 have placed additional limitations upon the Council's powers.
- 4.3 It is now only possible for the Council to undertake covert surveillance when seeking to prevent or detect criminal offences that are either punishable, whether on summary conviction or indictment, by a maximum term of at least 6 months imprisonment or are related to the underage sale of alcohol or tobacco.
- 4.4 An application to undertake covert surveillance must be completed by an Officer who has received appropriate training and must satisfy the tests of proportionality, necessity and intrusion and confidentiality. A trained Authorised Officer of Service Manager, Head of Service or Director in rank must evaluate the application and decide whether the proposed covert surveillance activity is required. An authorised application must then be approved by a magistrate before any surveillance activity can commence.
- 4.5 The monitoring of any authorised covert surveillance activity must be reviewed monthly and logged by Legal Services accordingly. Authorised applications are only valid for a period of three months.
- 4.6 Due to the prescriptive nature of the legislation, inspections undertaken by the Office of Surveillance Commissioners are extremely rigorous. The last inspection undertaken recommended a number of actions to be taken in order to improve upon the Council's practices and this inspection has resulted in significantly fewer amendments being required to build upon the progress being made.
- 4.7 The findings and recommendations from the Inspection have been incorporated into the Council's Annual Governance Statement for 2012/2013.
- 4.8 For the sake of clarity, any covert surveillance undertaken in respect of safeguarding activity falls outside of the RIPA Policies and procedures.

- 4.9 The Council's current RIPA Policies and Procedures can be found in iDerby at <https://iderby.derby.gov.uk/finance-procurement-and-legal/legal-services/ripa/>

OTHER OPTIONS CONSIDERED

- 5.1 There are no other options available for consideration at this time.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Janie Berry, Director of Legal & Democratic Services, Monitoring Officer N/A N/A N/A N/A Richard Boneham, Head of Governance & Assurance
For more information contact: Background papers: List of appendices:	Janie Berry 01332 643616 janie.berry@derby.gov.uk Home Office Code of Practice to Local Authorities Derby City Council RIPA Policy & Procedures Appendix 1 – Implications Appendix 2 – Action Plan

IMPLICATIONS

Financial and Value for Money

- 1.1 The Inspection recommendations include the requirement to facilitate of Officer training by an external provider. This will incur a fee.

Legal

- 2.1 Covert surveillance activity is prescribed by the Regulation of Investigatory Powers Act 2000 as amended by the Protection of Freedoms Act 2012. The Home Office has issued codes of Practice and Guidance to Local Authorities to support the development and implementation of a Council Policy and Procedure.
- 2.2 Any evidence obtained via covert surveillance activity which has not been authorised by an Authorising Officer and subsequent approval by the Magistrates Court cannot be relied upon in any potential court hearing and would constitute a breach of human rights.
- 2.3 The Council's Senior Responsible Officer for RIPA is required to seek member approval that the Council's Policy and Procedures are fit for purpose on an annual basis and also report quarterly to Elected Members on the Council's authorised covert surveillance activity

Personnel

- 3.1 Staff wishing to undertake covert surveillance and those being required to authorise applications are required to attend mandatory training on at least an annual basis.

Equalities Impact

- 4.1 None directly related to this report

Health and Safety

- 5.1 As part of the authorisation process risks must be highlighted and addressed including any potential risk to staff.

Environmental Sustainability

- 6.1 None directly related to this report

Property and Asset Management

7.1 None directly related to this report

Risk Management

8.1 As part of the authorisation process risks must be highlighted and addressed including any potential risk to staff.

Corporate objectives and priorities for change

9.1 None directly related to this report