

Report Title: **Office of the Surveillance Commissioners (OSC) Inspection**

Report authorised by: **Chief Financial Officer**



Report of and Contact Officer: Anne Woods, Head of Audit and Risk Management

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Wards(s) affected: **All**

Report for: **Non-key decision**

1. Purpose of the report

- 1.1 To inform Members of the inspection visit made to Haringey by the Assistant Surveillance Commissioner in March 2009.
- 1.2 To inform members of the recommendations made by the OSC and the council's response in order to ensure these are appropriately addressed.

2. State link(s) with Council Plan Priorities and actions and/or other Strategies:

- 2.1 Audit and Risk Management contribute to the Council priority to deliver excellent, customer focused, cost effective services by reviewing key services and making recommendations for improvement where appropriate.

3. Recommendations

- 3.1 That the Audit Committee notes the content of the OSC inspection report.
- 3.2 That the Audit Committee approves the action plan to address the recommendations made by the Surveillance Commissioner.

4. Reason for recommendation(s)

- 4.1 The Audit Committee is responsible for overseeing the Council's arrangements for corporate governance and compliance with its own and other regulations as part of its Terms of Reference. Compliance with legislation in relation to the Regulation of Investigatory Powers Act 2000 (RIPA) falls within this remit. In order to facilitate this, reports are provided for review and consideration by the Audit Committee.
- 4.2 Where further action is required or recommended, this is highlighted in the covering report and appendices and included in the recommendations for the Audit Committee.

5. Other options considered

5.1 Not applicable

6. Summary

6.1 The Head of Audit and Risk Management acts as the lead officer in relation to compliance with RIPA legislation for the Council. This report outlines the results of the recent inspection of the Council's policies and procedures by the Office of the Surveillance Commission and focuses on:

- The conclusions of the inspector on the Council's policies, procedures, training and application/use of RIPA in practice
- The recommendations for improvement and how the Council will address these.

7. Head of Legal Services Comments

7.1 The Head of Legal Services has been consulted in the preparation of this report, and makes the following comments.

7.2. The Head of Legal Services agrees that the measures set out in the action plan at Appendix A, do form an appropriate and adequate response to the OCS Recommendations.

8. Chief Financial Officer Comments

8.1 The Chief Finance Officer has no additional comments to make.

9. Head of Procurement Comments

9.1 Not applicable

10. Equalities and Community Cohesion Comments

10.1 This report deals with how RIPA legislation is applied and used within the Council. Use of directed surveillance could have an impact on the community as a whole if used incorrectly; therefore it is important to ensure that safeguards are in place to enable the council to comply with the legislation. Used in accordance with the requirements of the Act, directed surveillance can enable the council to improve conditions for those who live and work in the borough.

11. Consultation

11.1 No external consultation was required or undertaken in the production of this report. Consultation has been undertaken with relevant service managers where the application of RIPA is included in their responsibilities to ensure that the recommendations will be addressed.

12. Service Financial Comments

12.1 There are no direct financial implications arising from this report. The costs of ensuring the Council complies with RIPA legislation and operating guidelines are contained and managed within the Audit and Risk Management and relevant service departments' revenue budgets.

13. Use of appendices

- 13.1 Appendix A – Action Plan
Appendix B – OSC report

14. Local Government (Access to Information) Act 1985

- 14.1 For access to the background papers or any further information please contact Anne Woods on 0208 489 5973.

15. Background

- 15.1 An inspection of the Council's policies and procedures relating to the Regulation of Investigatory Powers Act, 2000 (RIPA) was conducted by an Assistant Surveillance Commissioner (ASC), from the Office of Surveillance Commissioners, in March 2009.
- 15.2 The inspection focused on directed surveillance and covert human intelligence sources (CHIS) and a range of compliance issues. Broadly speaking these were: policies and procedures, completion of RIPA authorisations, training, and roles and responsibilities, including the designated Lead Officer to oversee RIPA.
- 15.3 A report on the outcome of the inspection was received by the Chief Executive on 30th March 2009 from the Chief Surveillance Commissioner, the Rt. Hon. Sir Christopher Rose. This is attached as Appendix B. In summary, the report concludes that the Council has good policies, procedures and training in place.
- 15.4 Whilst the Chief Surveillance Commissioner stated that the council appeared to be well placed to use the powers available to it under RIPA, the report at Appendix A does contain some suggestions for improving the application of the required processes.
- 15.5 The Council has confirmed that it accepts the Surveillance Commissioner's recommendations and will implement them in order to ensure full compliance with the requirements of RIPA.

16. The Inspection

- 16.1 The ASC met with the Head of Audit & Risk Management (the Council's Lead Officer for RIPA), together with the Head of Enforcement to the Council's use of RIPA.
- 16.2 The ASC reviewed and discussed the Council's policy and procedures documentation in relation to their operation and best practice. A review of RIPA applications, authorisations, renewals and cancellations was also undertaken. Feedback from the ASC during the course and at the end of the inspection was positive on the understanding and application of RIPA principles across the Council, and on the Council's training for Authorised Officers, which was provided in-house by Legal Services.
- 16.3 The ASC did not find any material gaps in approach or compliance in the Council's use of RIPA. No omission in information required by the authorisation forms, or the authorising officer statements was identified. However, the ASC did make a number of recommendations to ensure the Council met best practice and improved its existing processes. The recommendations made by the OSC are detailed in the table below, which indicates how these are to be addressed and implemented.



OSC INSPECTION VISIT MARCH 2009 – ACTION PLAN

OSC Recommendation	Management Response	Deadline and Responsibility
<p>Procedure Notes The Council's procedure notes (paragraph 7.1.2) should be amended to include the OSC's guidance, as contained within paragraphs 103 and 104 of their December 2008 'Procedures and Guidance' handbook, on proportionality.</p>	<p>Agreed. The OSC guidance will be incorporated into the revised procedure notes and circulated to all authorising officers.</p>	<p>Completed. Head of Audit & Risk Management</p>
<p>Home Office Forms The Council should ensure that the most up to date Home Office applications forms are used by all departments to ensure that the process is efficient and includes all relevant information.</p>	<p>Agreed. The Head of Audit & Risk Management will: 1. formally remind all authorising officers to destroy copies of pre-existing forms and only use the forms contained within the re-issued guidance notes; 2. request authorising officers provide copies of the latest guidance notes and forms to their staff; and 3. ensure that a final check is undertaken on receipt of completed forms within Audit & Risk Management to ensure that current forms are in use.</p>	<p>Completed for points 1 and 2. Ongoing for point 3. Head of Audit & Risk Management All Authorising Officers</p>
<p>Central Record of Authorisations An Index, compliant with the Home Office Code of Practice (paragraphs 2.14, 2.15 and 4.14) should be added to the central record of authorisations.</p>	<p>Agreed. An index is already incorporated into the electronic central record, but one will be added to the hard copy records.</p>	<p>May 2009 Head of Audit & Risk Management</p>
<p>Training Based on a review of authorised forms, it was recommended that future training should concentrate on how to ensure that:</p>	<p>Agreed. Refresher training will be planned for authorising officers in the future and will incorporate the recommendations made in</p>	<p>March 2010 Head of Audit and Risk Management</p>

OSC Recommendation	Management Response	Deadline and Responsibility
<ul style="list-style-type: none"> • the details of the proposed operation are full and complete, including the use of any equipment; • the issue of proportionality is appropriately addressed; • the authorising officer's statement is a full account of what is being authorised. 	<p>the report.</p>	<p>Senior Lawyer - Criminal</p>
<p>Authorising Officer's Statement It is good practice for the Authorising Officer's statement to be completed in handwriting as a personal contemporaneous record of the thinking which justified the authorisation.</p>	<p>Partly agreed. In the majority of cases, requests for and authorisations are done electronically.</p> <ol style="list-style-type: none"> 1. Authorising officers will be formally reminded to complete the forms based on the evidence contained within each individual request. 2. A final check will be undertaken on receipt of completed forms within Audit & Risk Management to ensure that authorising officers are fulfilling this requirement. 	<p>Completed for point 1. Ongoing for point 2.</p> <p>Head of Audit & Risk Management All Authorising Officers</p>
<p>The Chief Executive should write to the Chief Surveillance Commissioner confirming the Council's acceptance of the OSC Inspection Report and recommendations.</p>	<p>Agreed.</p>	<p>Completed.</p>

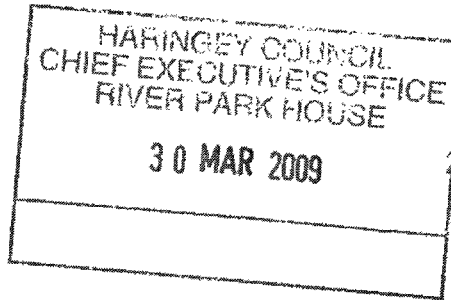


Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

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25th March 2009

Dear Dr. O'Donovan,

Covert Surveillance

On 3rd March 2009, an Assistant Surveillance Commissioner HH Dr Colin Kolbert again visited your Council on my behalf to review your management of covert activities. I am grateful to you for the facilities afforded for the inspection.

I enclose a copy of Dr Kolbert's report which I endorse.

I am pleased to see that you have good policies, procedures and training in place, so it is disappointing to see that up to date Home Office forms are still not being used, despite Dr Kolbert drawing attention to this in the report 2 years ago.

The recommendations are that your RIPA Procedure Notes be revised as discussed, that only up to date Home Office forms be used, that future training concentrate on the matters identified in para 10 of the report and that an index, compliant with the Code of Practice, be added to your Central Record and used by the monitoring officer.

I shall be glad to learn that your Council accepts the recommendations and will see that they are implemented.

One of the main functions of review is to enable public authorities to improve their understanding and conduct of covert activities. I hope your Council finds this process constructive. Please let this Office know if it can help at any time.

*Yours sincerely
Chris Rose*

Dr Ita O'Donovan
Chief Executive
London Borough of Haringey
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Wood Green
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**Office of Surveillance
Commissioners**

OFFICE OF SURVEILLANCE COMMISSIONERS

INSPECTION REPORT

**COUNCIL OF THE LONDON BOROUGH OF
HARINGEY**

3 March 2009

**Assistant Commissioner:
His Honour Dr. Colin Kolbert**

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DISCLAIMER

This report contains the observations and recommendations identified by an individual surveillance inspector, or team of surveillance inspectors, during an inspection of the specified public authority conducted on behalf of the Chief Surveillance Commissioner.

The inspection was limited by time and could only sample a small proportion of covert activity in order to make a subjective assessment of compliance. Failure to raise issues in this report should not automatically be construed as endorsement of the unreported practices.

The advice and guidance provided by the inspector(s) during the inspection could only reflect the inspectors' subjective opinion and does not constitute an endorsed judicial interpretation of the legislation. Fundamental changes to practices or procedures should not be implemented unless and until the recommendations in this report are endorsed by the Chief Surveillance Commissioner.

The report is sent only to the recipient of the Chief Surveillance Commissioner's letter (normally the Chief Officer of the authority inspected). Copies of the report, or extracts of it, may be distributed at the recipient's discretion but the version received under the covering letter should remain intact as the master version. Distribution beyond the recipient's own authority is permissible but it is requested that the 'Secretary to OSC', Office of Surveillance Commissioners, is informed of the named individuals to whom copies or extracts have been sent. Any references to it, or extracts from it, must be placed in the correct context.

The Office of Surveillance Commissioners (OSC) is not a public body listed under the FOI Act 2000, however, requests for the disclosure to a third party of any information contained within this report should be notified to the Secretary to OSC."

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OSC/INSP/075

Chief Surveillance Commissioner
Office of Surveillance Commissioners
PO Box 29105
LONDON
SW1V 1ZU

5th March 2009

OSC INSPECTION REPORT – LONDON BOROUGH OF HARINGEY

Date of Inspection 3rd March 2009
Assistant Commissioner HH Dr Colin Kolbert

London Borough of Haringey

- 1 The nature of the area for which the Council is responsible, the size of its staff and the extreme diversity of the population served, many of whom are newcomers to the United Kingdom and amongst whom over 200 different languages are spoken, have not changed significantly since Irwin Nettleship made the first OSC Inspection Report in October 2002. Since then I have made Inspections in August 2004 and in May 2006, when I was able to report that all the elements were in place for effective use to be made of covert surveillance when necessary.
- 2 The Chief Executive, as previously, is Dr Ita O'Donovan, Civic Centre, High Road, Wood Green, London, N22 8LE. She heads a Corporate Management Team of two Assistant Chief Executives and four Directors.

Inspection

- 3 The Inspection was conducted with the most helpful assistance of Anne Woods (Head of Audit and Risk Management) who is a veteran of my two previous visits, and Robin Payne (Assistant Director, Urban Environment).
- 4 A copy of the Council's *RIPA Procedure Notes*, revised after my last Inspection, was made available in advance of this Inspection. It is succinct, accurate and practical in its approach. In light of the issues raised in paragraph 10 below, which were thoroughly discussed during the Inspection, it is suggested that paragraph 7.1.2 of the *Procedure Notes* would gain in value by adding full guidance on *proportionality* as in the OSC's *Procedures and Guidance*, paragraphs 103 and 104.

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- 5 Several other policy documents were also made available, dealing with Fraud and Corruption (Housing Benefit and Council Tax Benefit), Anti-Social Behaviour, CCTV, Food Health and Safety and Noise Control. Some gave wording of the potential use of covert surveillance, but did not raise any RIPA issues. The Heavy Enforcement Team (now given the less dramatic title "Tactical Enforcement Team") claims significant successes in dealing with anti-social behaviour in many forms throughout the Borough, notably gangs, brothels, and crack houses (74 closures in eleven months to February 2008).

Policies and Procedures

- 6 The Council's *RIPA Procedure Notes* are considered in paragraph 4 above.
- 7 Copies of the latest Home Office application forms for authorisation of Directed Surveillance were included in the pre-inspection bundle, but they were not in use by the main user. The out-of-date forms make the task of applicant and Authorising Officer more difficult than it need be, because the questions to be dealt with do not appear in the most logical order, nor is there guidance as to the issues which need to be spelt out.
- 8 Nine Authorising Officers are listed by name and post in Appendix 1 to the *Procedure Notes*. All comply with S.I. 2003, No. 3171. The Chief Executive is listed as Authorising Officer for cases involving *confidential information*. Both Assistant Chief Executives are listed also, with particular responsibility for serious anti-social cases – gangs, brothels and crack houses.
- 9 The Central Record of Authorisations is kept securely by Anne Woods in her capacity as "lead officer for monitoring the implementation of RIPA and the use of the authorisation forms" (*Procedure Notes*, paragraph 10.1.1). It exists as a paper bundle (complete with the authorisations) and as a computer spreadsheet. The addition of an Index compliant with the Home Office *Code of Practice* paragraphs 2.14, 2.15 and 4.14 (referred to in paragraph 9 of my last Report) is no mere bureaucratic requirement, but would enable the monitoring officer, at a glance, to ensure a degree of quality control and prompt reviews, renewals and cancellations.
- 10 Examination of a sample of authorisations led to a discussion of four specific issues which, once put right, should enable an Authorising Officer unfortunate enough to be in the witness box, to withstand hostile cross-examination. All are more easily dealt with by following all the prompts on the most up-to-date Home Office forms:
- (i) Description of the proposed operation should be full and detailed. Specify any equipment to be used; use maps or sketches to show, e.g. observation posts and target premises. Be sure that there are no ambiguities, remembering the disaster which befell the Lincolnshire Police in *R v Sutherland* as the result of a simple misunderstanding.

- (ii) *Proportionality* must be carefully explained, not merely asserted, nor is describing parts of the operation itself germane to *proportionality*. A good explanation should refer to three elements (a) balance the extent of the problem against the size and scope of the operation, demonstrating that it is not the proverbial “sledgehammer to crack a nut”, (b) explain that intrusion is to be kept to a minimum and (c) show that having considered all other practical courses there is no other way in which the necessary evidence can be obtained (i.e. a covert operation is the last resort).
 - (iii) The Authorising Officer’s statement is not a mere rubber stamp. It should include a full account of what is being authorised (five “Ws”) and *how* and *why* the Authorising Officer is satisfied that the operation is *necessary* and *proportionate*. Do not be put off if there seems to be repetition – the Authorising Officer, possibly under cross-examination two years later must be able to demonstrate his own thought processes *at the time* and will be in a weak position if he has to rely upon the applicant’s account by adoption. A competent cross-examiner would be able easily to raise the point that the Authorising Officer did not apply his mind to the vital issues in the case.
 - (iv) It is good practice for the Authorising Officer’s statement to be completed in handwriting as a personal contemporaneous record of the thinking which justified the authorisation.
- 11 There were twelve authorisations of Directed Surveillance in the past year. Although anti-social behaviour and environmental crime are high-profile priorities in Haringey, the Tactical Enforcement Team has been highly successful in using straightforward methods and covert surveillance is used only in the last resort. This approach in itself shows a good practical understanding of *proportionality*, even if it is not yet usually fully spelled out on application forms.
- 12 No use has been made of CHIS and none is contemplated, as was noted in paragraph 12 of my last Inspection Report.

Training

- 13 Training is evidently effective and the most recent session had been conducted on 2nd March 2009 (the day before this Inspection). It was provided by Joyce Golder (Senior Criminal Litigation Lawyer) who should be commended for her excellent training materials. One notable PowerPoint slide on *proportionality* and *necessity* was headed **KEY TERMS** in bold capitals.
- 14 All updates, such as new forms are circulated electronically on the Council’s Intranet: so it is all the more surprising to find old authorisation forms still in use, though the solution would seem to be straightforward if a fool-proof method can be devised to ensure that all relevant staff do consult the intranet regularly for RIPA methods. As a last resort, the monitoring officer should reject such forms when they are presented for inclusion in the Central Record.

CCTV

- 15 The Council's CCTV control room was not visited on this occasion. It has previously been noted as excellent with fully trained staff and good practical protocols which are still operated in close co-operation with the Metropolitan Police.

Conclusions

- 16 The Council appears to have everything necessary in place to operate RIPA effectively, namely good policies and procedures and good training: so it is a little disappointing to find it necessary to repeat the conclusion of my last Report, especially as it is such a simple matter which could yield significant results: "it is hoped that use of the revised Home Office forms will in itself ease or even remove the long-standing problems referred to in paragraph 11" (c.f. paragraph 10 of this Report).

Recommendations

- 17 The Council's *RIPA Procedure Notes* should be revised as was discussed and as outlined in paragraph 4 above.
- 18 All out-of-date authorisation forms should be removed and only the latest version used in future (see paragraphs 7 and 14 above).
- 19 Future training would be enhanced by concentrating on the issues outlined in paragraph 10 above.
- 20 A compliant Index should be added to the Central Record of Authorisations and used by the RIPA monitoring officer as a simple tool for management and quality control (see paragraph 9 above).



Assistant Surveillance Commissioner