



OSC/INSP/075

Office of Surveillance
Commissioners

The Rt. Hon. Lord Igor Judge
Chief Surveillance Commissioner
Office of Surveillance Commissioners
PO Box 29105
London
SW1V 1ZU

2nd March 2017

OSC INSPECTION – LANCASHIRE COUNTY COUNCIL

1. Date of inspection

28th February 2017

2. Inspector

Graham Wright

3. Introduction

3.1 Lancashire County Council is an upper-tier authority serving a county area comprising 12 district councils. These include Preston City Council, which has not acquired unitary status, but excludes the unitary councils of Blackpool and Blackburn with Darwen. The Council employs approximately 10,000 staff (not including teaching staff) serving a population of approximately 1.2 million.

3.2 The Senior Corporate Management structure comprises the Chief Executive, two Corporate Directors and four Directors.

3.3 The previous OSC inspection of the Council was conducted by Sir David Clarke, Assistant Surveillance Commissioner, on 3rd February 2014. Since that inspection there have been two directed surveillance authorisations and five Covert Human Intelligence Source (CHIS) authorisations granted. None was concerned with the likely acquisition of confidential information and I was not informed of any breaches.

3.4 The Chief Executive is Ms Jo Turton and the address for correspondence is County Hall, Fishergate, Preston, Lancashire, PR1 8XJ.

4. Inspection approach

4.1 The purpose of the inspection was to examine policies, procedures and operations in respect of Part II of the Regulation of Investigatory Powers Act (RIPA) 2000.

4.2 My visit commenced with a meeting with Ian Young, Corporate Director and Deputy Chief Executive (I had been scheduled to meet with the Chief Executive but she had been called away at short notice to be part of the selection panel in connection with the appointment of a new Chief Constable for Lancashire Constabulary). We discussed collaborative working in the County and the recent application to central government for greater devolved powers, the outcome of which was awaited. We also discussed the Council's use of covert activity, social networking sites (SNS) and the internet in support of its statutory functions.

OFFICIAL - SENSITIVE

PO Box 29105 London SW1V 1ZU Tel 020 7035 8127 Fax 020 7035 3114

Web: <https://osc.independent.gov.uk> email: oscmmailbox@osc.gsi.gov.uk

OFFICIAL - SENSITIVE

- 4.3 I then met with Laura Sales, Director of Legal and Democratic Services, who has day to day oversight of RIPA matters, and Amanda Maxim, Trading Standards Manager, who is the main authorising officer. We discussed the response to the previous recommendations, training provision, core authorisation processes and I gave feed-back on the pre-read material that I had been provided with. We were later joined by Ian Young, Director of Governance Finance and Public Services, who is the 'senior responsible officer'. I discussed with him his role as SRO and engagement with elected members.
- 4.4 I examined the Central Record of authorisations and several authorisations granted in the period since the previous inspection
- 4.5 There was a group meeting with the under mentioned staff during which we discussed the use of covert activity, SNS and the internet by staff from the departments represented:

- 4.6 I gave feed-back to Trading Standards staff on the authorisations that I examined.
- 4.7 I concluded my visit by providing feed-back on the main findings to Laura Sales, Ian Young and Amanda Maxim.

5. Review of progress on recommendations

- 5.1 The 2014 inspection made four recommendations.
- 5.2 *That Authorising Officers be appointed so that the Senior Responsible Officer no longer acts as an Authorising Officer but exercises the oversight responsibility described in the Codes of Practice; (this is effectively a repeat recommendation)*
- The SRO is no longer an authorising officer. Four Trading Standards Managers now carry out this function. Completed.
- 5.3 *That the extant CHIS authorisation should be cancelled.*
- The case was cancelled a short time after the inspection. Completed.
- 5.4 *That LCC's RIPA Policy be further revised in accordance with this report.*
- The points for revision have all been addressed in the latest policy document. Completed.
- 5.5 *That LCC consider conducting its future juvenile test purchase operations under directed surveillance authorisation, the premises to be tested being limited to a manageable number, addressing the issues of necessity and proportionality in relation to each.*

The Council has reconsidered its position in relation to how it conducts under-age test purchase operations and consider that authorisations for directed surveillance are not appropriate as there is little likelihood of acquiring private information. It was agreed that all such operations should be considered on an individual basis (for more details in this regard see this report section *Directed Surveillance* below). Completed.

6. Policies and procedures

6.1 As I have mentioned above, I had been provided with a copy of the policy and guidance documents to examine prior to my visit and I gave feed-back on them during the inspection. Those documents and my comments in relation to them are as follows:

- i. *Corporate Policy and Guidance on RIPA* – the main policy document and in many ways it is comprehensive and useful. There is reference at paragraph 1.2.2 that any child custody/protection investigation must use a Non RIPA process if covert surveillance is to be conducted. When I queried this I was told that several years ago during an OSC inspection staff had been told that RIPA was not to be used for child protection matters. I can find no reference in previous inspection reports but I accept that there has been this interpretation put on advice given during an inspection. I pointed out that similar to many aspects of RIPA, there needs to be a case by case assessment and it may be that some child care cases may not meet the criterion of 'preventing or detecting crime' but many cases/investigations would ultimately be to prevent or detect cruelty, abuse, neglect, other harm be posed against a child and would thus be afforded the full protection of RIPA.

Paragraph 4.2.8 refers to a member of staff making a telephone call to a person who does not know the real identity of the caller and a relationship being formed. In such case an authorisation for CHIS and directed surveillance will be required. This is not correct; an authorisation for CHIS would suffice.¹

- ii. *Shadow RIPA Surveillance Policy* – a recently revised policy intending to cater for covert activity in support of investigations into matters that are not criminal, or where the matter under investigation does not meet the threshold imposed by the Protection of Freedoms Act 2012. There is a clear explanation of the rationale and procedure to be adopted, which is closely aligned to that for full RIPA authorisation.
- iii. *CCTV Policy* – a comprehensive policy covering the usual subjects of Data Protection Act compliance, subject access, signage, retention of images etc. There is very little reference to RIPA but the CCTV systems that the Council owns are not city centre systems, they are highway related. There is a protocol with Lancashire Constabulary relating to the use of the system under a RIPA authorisation.
- iv. *Covert Social Networking Checks and Surveillance Policy* – a recently drawn up policy (November 2016) and described as 'a piece of work in progress'. It contains basic and accurate advice and recognises the potential that this form of activity may meet the criteria for authorisation as directed surveillance or CHIS. What it lacks is more specific and practically based guidance for practitioners and based upon my findings there is a need for this and careful consideration as to how such guidance is best disseminated. I make a recommendation in this regard.

6.2 The core authorisation procedure is that applicants would complete the requisite forms, which are available in electronic format on the Intranet. There would usually be discussion between the applicant, manager and authorising officer prior to an application being generated. The application is forwarded to an authorising officer for completion of their input. When this is done the applicant will take the authorisation to a local Magistrates' Court for approval. Original documents are retained by the authorising officer and a copy is sent to Information Governance for completion of the Central Record and secure retention.

¹ CHIS Code of Practice paragraphs 3.24 and 3.25 refer

OFFICIAL - SENSITIVE

- 6.3 In relation to the Shadow RIPA process, applicants will complete forms designed for this purpose (basically RIPA forms but with all references to RIPA taken out) which are available electronically. As above, there would be discussion regarding the proposed activity with managers etc. The completed form will be submitted to the Director of Legal and Democratic Services (who is trained as an authorising officer) for approval and then a copy is forwarded to a Trading Standards Manager (who is an authorising officer) who will retain the record and complete an entry on the Central Record created for this purpose. I pointed out that it would make more sense for there to be a more aligned process for RIPA and Shadow RIPA authorisations (except for the Magisterial approval).
- 6.4 The 'senior responsible officer' is the Director of Governance Finance and Public Services. This officer is a trained authorising officer but no longer acts in this capacity. He carries out quarterly checks of the Central Record and authorisations granted. The SRO has provided RIPA refresher briefings to the Chief Executive and Deputy Chief Executive.
- 6.5 Annual reports on RIPA usage are provided by the SRO to the Executive Scrutiny Committee and Cabinet.
7. **Related training**
- 7.1 In 2015 authorising officers, managers and applicants attended a one day RIPA Conference in Leeds. Staff from councils throughout the North of England attended.
- 7.2 In September 2016 an external trainer carried out a one day training event for authorising officers, the SRO and applicants from LCC. Staff from other councils in the County were also able to attend. I saw the contents of the training and found it to be comprehensive and accurate. There was good use made of scenarios pertinent to the audience.
8. **Significant issues arising**
- Central Record and Oversight*
- 8.1 There is currently a single Central Record of authorisations that contains details of directed surveillance and CHIS authorisations. It is in the form of a computerised spreadsheet. Whilst all the required information is recorded, it would be preferable that separate records for CHIS and directed surveillance be maintained. When I pointed this out, it was accepted and could be easily implemented.
- 8.2 Within the processes for authorisation there is a lack of objective oversight in a formal manner, albeit that I accepted that throughout the application and authorisation process dialogue took place and advice would be sought. Only the quarterly checks made by the SRO provides any quality assurance but this can be several months after an authorisation is granted, which is a long time if there is a flaw in the authorisation. This can still happen notwithstanding the requirement for judicial approval by a Magistrate.
- Directed Surveillance*
- 8.3 The usage of this form of covert activity has continued to decrease in recent years, due to staffing cuts and a reversion to more overt enforcement activity. In the group meeting I was assured that no unauthorised activity was being undertaken. I did question Trading Standards staff regarding the methodology for conducting under-age test purchase operations. I was told that each premises to be visited was assessed regarding the likelihood of obtaining private information and in all cases the member of staff accompanied the volunteer as a safety measure and merely observed the transaction involving the volunteer rather than any other activity taking place inside the premises. I advised that, if not already done so, that these considerations should be recorded.

- 8.4 There was some discussion of the use to be made of the Shadow RIPA process and it was apparent, from discussions as well as references in the policy document, that there is a misconception that only Trading Standards investigations could use RIPA, therefore all other investigations seeking to carry out covert surveillance should use the Shadow RIPA process. I pointed out that any investigation that met the necessity criteria of being '*for the purpose of preventing or detecting crime*', and the 'serious crime' threshold, could seek authorisation under RIPA (as long as other conditions were met, e.g. proportionality) no matter which department was undertaking the investigation/operation.

8.8 The comments that I have in relation to the authorisations that I examined are:

- i. As is now recognised, an authorisation should be for a single CHIS and should be accompanied by a Risk Assessment for that CHIS;
- ii. At reviews there was a lack of detail regarding what activity the CHIS had undertaken;
- iii. At cancellation a similar lack of detail left one wondering what exactly a CHIS had done and in the case where there were two CHIS authorised there was even greater confusion as to the extent of activity of each.

8.9 The purpose of CHIS records is that they should give a clear picture of how a CHIS is being safely managed and used, the intelligence or evidential product they obtain and what use is made of that product.

Use of Social Networking Sites (SNS) and the Internet

8.10 This issue is increasingly a subject of detailed discussion during inspections of local authorities and this council was no exception. I had specifically requested that representatives from departments that, whilst not carrying out 'conventional covert activity', experience has shown were making use of these media.

8.11 It became apparent during the group meeting that regular use is being made of SNS and the internet in support of council business. Trading Standards do this on a regular basis in support of investigations into counterfeit goods and have sought authorisations for directed surveillance and CHIS in relation to this sort of activity. Other departments such as Schools Admission, Litigation, Human Resources and Children's Services use the media to varying degrees. Among the staff that I met there is a mixture of overly cautious use and naive/innocent usage, whereby the activity might meet the criteria for RIPA authorisation or at the least might be an infringement of privacy.

8.12 I certainly felt that there was a lack of clear understanding as to where the boundaries lie, even among staff that have an understanding of RIPA and most definitely among staff from departments which are outside of the usual 'RIPA audience'. There is a need for guidance to be provided to all staff to whom it may be applicable and I make a recommendation in this regard.

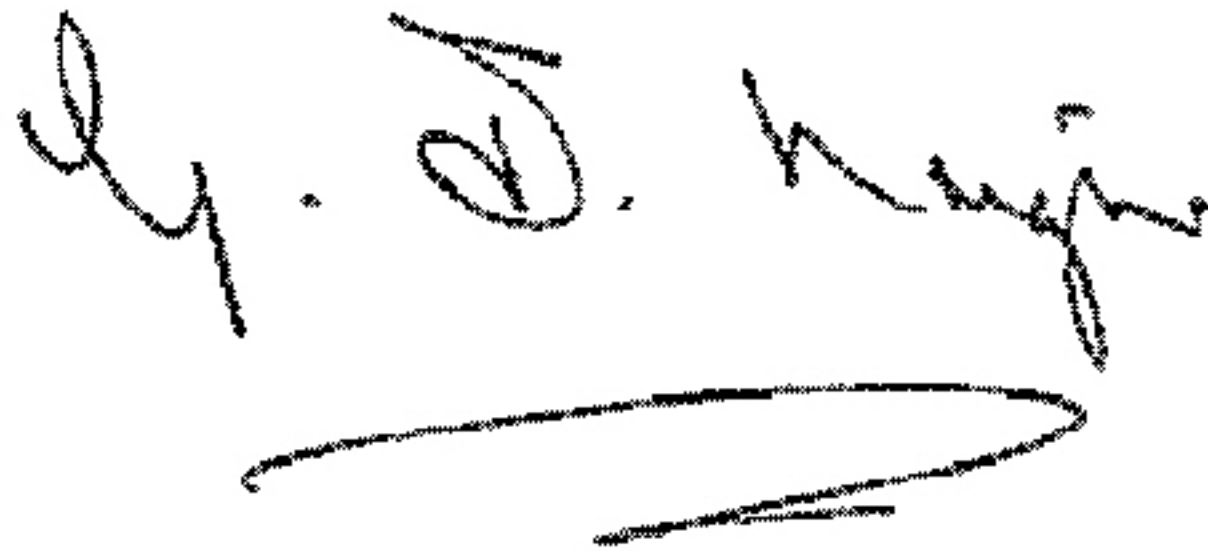
9. Conclusions

9.1 Lancashire County Council has always made infrequent use of the powers vested under the Regulation of Investigatory Powers Act 2000 and its usage has declined over a number of years to its current level.

9.2 There is a sound guidance and advice regime in place (notwithstanding the challenge regarding the use of SNS and the internet) and those with oversight and authorising officer responsibilities are knowledgeable and conscientious. Some rationalising of current systems and processes would be an improvement, i.e. a re-formatting of the Central Record and unifying authorisation procedures for RIPA and Shadow RIPA. I also draw out some learning points from the authorisations that I examined. Whilst not making them the subject of a recommendation I urge that attention is given to those points.

OFFICIAL - SENSITIVE

- 9.3 I did at times feel that staff were uncertain regarding how they could use, or if they could use, the powers under RIPA and this related to both real world activity and virtual world activity. Hopefully the inspection will have provided some clarification to those areas of uncertainty. To be fair staff tended to err on the side of caution, demonstrating a reluctance to conduct covert activity under RIPA.
- 9.4 The one recommendation I make is in relation to the need for more expansive and relevant guidance regarding use of SNS and the internet. The challenge for the council is how this can be disseminated proactively to all relevant departments.
- 9.5 I would like to thank all the staff that I met for their co-operation and courtesy and in particular Laura Sales, who made the arrangements for my visit and provided me with comprehensive pre-read material.
- 10 Recommendation
- 10.1 Guidance in relation to the use of social networking sites and the internet by staff in support of their work for the council should be expanded and made more relevant to council functions, and this guidance then needs to be actively disseminated to all relevant staff – paragraphs 6.1 (iv) and 8.12.



Surveillance Inspector

