
REPORTS FROM THE EXECUTIVE AND COMMITTEES TO COUNCIL

3 REPORT OF THE STANDARDS COMMITTEE

The Localism Bill and Development of a Replacement Standards Framework

- 3.1 This item of business was referred by the Standards Committee on 6 July 2011 to Full Council with a recommendation relating to participation in a partnership project to develop a model standards framework following the abolition of the current statutory Standards regime. An extract of the key elements of the report of the Head of Legal, Estates and Member Services to the Committee is attached at Appendix 1.
- 3.2 The Standards Committee noted that the Localism Bill had completed its second reading in the House of Lords and that the current thinking of the Lords is that there ought to be a structure in place that obliges Councils to adopt a Code of Conduct and retain a Standards Committee. It was further noted that, until the new legislation comes into effect, the current Standards regime will continue to apply.
- 3.3 An advantage of a common approach is the opportunity for greater certainty and efficiencies in authorities that have geographical proximity. Draft documentation produced by the partnership would be the subject of detailed consultation but it would be a matter for each individual Council to determine the nature and extent of the arrangements it wished to adopt. A joint approach would facilitate the task and could provide opportunities for joint working if there was commonality in approach. Whilst it had been recognised in the parliamentary debates that the role of Independent Members was of value in dealing with matters of discipline and regulatory arrangements, it would be a matter for individual Councils to determine their involvement, subject to any changes in the proposed legislation.
- 3.4 With regard to Parish/Town Councils' apparent removal from the framework and regulation, it was noted that it would remain open for them to participate in arrangements put in place by the District Council and that they would be consulted on any proposals for a new framework.
- 3.5 It is proposed that Council **RESOLVES** to participate in the partnership project to develop a model standards framework, following the abolition of the current statutory Standards Regime, for consideration and consultation with other stakeholders including Parish and Town Councils. (HLEMS)

4 REPORT OF THE REVIEW COMMITTEE**Regulation of Investigatory Powers Act 2000 (RIPA)**

- 3.1 This item of business was referred by the Review Committee on 12 July 2011 to Full Council with recommendations relating to RIPA. An extract of the key elements of the report of the Head of Legal, Estates and Member Services to the Committee is attached at Appendix 2.
- 3.2 During discussion it was noted that, in the event that there is a marked increase in RIPA cases, the frequency of reporting to the Committee could be reviewed. It was also noted that surveillance under RIPA was only ever used by the Council as a last resort where the evidence required could not be obtained by other means.
- 3.3 It is proposed that Council **RESOLVES** that the Office of Surveillance Commissioner's inspection report and the quarterly authorisation statistics be noted and that future reports on RIPA authorisations be considered by the Review Committee on an annual basis when the annual review of the policy takes place. (HLEMS)

If you would like this report in large print, Braille or another language please contact 01702 318111.

THE LOCALISM BILL AND DEVELOPMENT OF A REPLACEMENT STANDARDS FRAMEWORK

1 SUMMARY

- 1.1 The report updates the Committee on progress to develop arrangements for a standards framework following the abolition of the current statutory Standards Regime, as proposed in the Localism Bill.

2 INTRODUCTION

- 2.1 The present Standards Regime is viewed by the Government as contrary to the principles of localism and its abolition is intended to provide Local Authorities with the power to put in place their own arrangements to maintain high standards of conduct.
- 2.2 The Committee at its last meeting on 7 April 2011 considered the implications of the Bill and its recommendation that a local code of conduct together with procedures for dealing with complaints be developed was agreed by Council (Minute 120/11 refers).

3 SUMMARY OF PROPOSED CHANGES

- 3.1 The Localism Bill abolishes the current standards regime, seeks to clarify the law on predetermination, and introduces a new statutory requirement to register and declare certain personal interests. This statutory requirement is reinforced by a new criminal offence for deliberate failure to declare interests for personal or financial gain.
- 3.2 Authorities will be free to choose whether to adopt a code of conduct, have a Standards Committee and operate a system of regulation. The Authority's powers to deal with transgressions, however, will be reduced and the power to suspend a Member from office for a breach of the code has been removed. Notwithstanding this, there remains a legal obligation to maintain high standards of conduct.
- 3.3 The Bill is currently at its second reading and it is anticipated that it will receive Royal assent in late 2011, with implementation on a fixed date, which is likely to be 2 months after the Bill is enacted. Until such time, the current statutory standards regime remains, and Standards Committees and Monitoring Officers are obliged to ensure the system continues to operate.

4 DEVELOPMENT OF REPLACEMENT STANDARDS FRAMEWORK

- 4.1 A project has been initiated by the Public Law Partnership, which comprises Authorities from Essex, Suffolk and Hertfordshire, to design a replacement framework to take over once the current arrangements are abolished. It is hoped that this will enable a consistent approach across Essex Authorities and Partnership members and will achieve savings through the development

of common precedents, procedures and practices, and allow for sharing of work, for example investigation of complaints and joint training.

- 4.2 The proposed new framework comprises three core components:-
- a) A Code of Conduct.
 - b) A system of regulation and enforcement allowing for efficient procedures to deal with complaints and any subsequent appeals.
 - c) Model Terms of Reference for the Standards Committee.
- 4.3 Work has commenced on the production of a draft set of documents with the aim of simplifying the current procedures and making the regulation of the system more straightforward. The draft documentation will be subject to extensive consultation and it is expected to be available in autumn for initial consideration and discussion.

5 RISK IMPLICATIONS

- 5.1 There is reputational risk to the Council if adequate arrangements are not in place to maintain standards of conduct and deal with complaints and allegations of impropriety.

6 LEGAL IMPLICATIONS

- 6.1 The Council is under a legal obligation to meet the requirements of the Localism Bill, once the Bill becomes law.

7 PARISH IMPLICATIONS

- 7.1 The Council will no longer be responsible for ethical governance of Parish and Town Councils.

8 ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The Council is not obliged to have any particular standards regime in place and can instead choose to rely on common and criminal law provisions, although this is unlikely to provide the same degree of public confidence and transparency as afforded by a clear and effective standards regime.

REGULATION OF INVESTIGATORY POWERS ACT 2000 (‘RIPA’)

1 SUMMARY

- 1.1 On the 8 March 2011 the Review Committee received a report which summarised the Council’s use of RIPA powers and made recommendations with respect to Member involvement in the future oversight of the regime.
- 1.2 Following that meeting the Surveillance Commissioner carried out a programmed inspection of the Council and this report highlights his findings.

2 INTRODUCTION

- 2.1 As recommended by the Codes of Practice the Council agreed that the Review Committee should oversee the Council’s use of RIPA. This includes receiving quarterly reports on the Council’s use of its powers and reviewing the Council’s policy relating to RIPA on an annual basis.
- 2.2 The Inspection by the Surveillance Commissioner took place on 7 April 2011 and a copy of his report is appended.
- 2.3 The purpose of this report is to highlight the key findings of the Inspector and advise on the Council’s use of surveillance powers over the last quarter.

3 SURVEILLANCE COMMISSIONER’S REPORT

- 3.1 The report is very positive on the Council’s management and use of RIPA and the Committee will note the following key points:-
 - The 3 areas for improvement identified in the previous Inspector’s report made in 2008 have all been satisfactorily discharged.
 - The Council’s recently revised RIPA policy has been described as “*comprehensive and easy to understand*”.
 - The Inspector examined this Committee’s involvement with the RIPA process and concluded that, “*The minutes clearly illustrate that the Council and its Members approach their statutory responsibilities in a serious manner.*”
 - There is a high level of staff awareness on RIPA and the standard of training given is comprehensive.
 - Recent RIPA authorisations were of a good standard and complied within the law.
- 3.2 The Inspector identified some areas for further consideration:-

At paragraph 9 he indicates that it is not ideal that the Senior Responsible Officer (SRO) also has authority to give authorisations.

Although this may not be ideal in a larger organisation it doesn't present a difficulty in a small authority where there are few cases and where clear scrutiny arrangements are in place. The Inspector made no recommendations for change and it is not considered that any are necessary given the size of the authority and the number of cases dealt with.

At Paragraph 18 the Inspector highlights that in 2008 a RIPA authorisation to carry out surveillance was granted for one week, whereas the Code of Practice states that authorisations should continue for up to 3 months unless renewed or cancelled.

New measures have been introduced to regulate the process since that time including reducing the number of authorising officers and authorisations made after 2008 have been fully compliant with the 3 month requirement.

4 QUARTERLY STATISTICS ON THE COUNCIL'S USE OF RIPA POWERS

1 January – 31 March 2011

Authorisation Date	Nature of Authorisation	Expiry date / Review Date(s)/ Cancellation Date
08/02/11	Revenue & Benefits investigation requiring surveillance of residential premises. Allegation of overpayment of benefits to one person due to the non disclosure of the occupation of another person who is believed to be working.	Expiry date – 04/05/11 Reviewed – 23/02/11 Cancelled – 10/03/11

- 4.1 Due to the minimal number of authorisations granted it is proposed that reports on authorisations are made to the Committee on an annual basis rather than a quarterly basis with the next report in March 2012 when the Committee carries out its annual review of the RIPA policy.

5 RISK IMPLICATIONS

- 5.1 The improper or disproportionate use of RIPA powers could lead to adverse publicity in the media and serious reputational damage.

6 CRIME AND DISORDER IMPLICATIONS

- 6.1 Use of RIPA powers in an appropriate and proportionate manner can assist in the prevention and detection of crime.

7 LEGAL IMPLICATIONS

- 7.1 Failure to comply with RIPA legislation may mean that covert surveillance evidence will not be accepted in court and there may be issues of privacy/human rights contraventions.

The Rt Hon. Sir Christopher Rose



Office of Surveillance
Commissioners



Chief
Surveillance
Commissioner

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25th May 2011

Mr P. Warren,

Covert Surveillance

On 7th April 2011, one of my Inspectors, Mr Kevin Davis, 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 Mr Davis's report which I endorse. I am pleased to see that the recommendations made following the last inspection 3 years ago have been discharged. Although you rarely use your covert powers, it is commendable that your officers are keen to discharge their RIPA responsibilities appropriately.

The single recommendation is that authorising officers familiarise themselves with the revised Codes of Practice, particularly in relation to the duration of authorisations.

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
Christopher Rose*

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Office of Surveillance
Commissioners

OSC INSP/075

The Rt. Hon. Sir Christopher Rose
Chief Surveillance Commissioner
PO Box 29105
London SW1 1ZU

18th April 2011

OSC INSPECTION REPORT-ROCHFORD DISTRICT COUNCIL.

The inspection took place on Thursday the 7th of April 2011.

Inspector

Mr Kevin Davis.

General Description

1. Rochford is a small District located in South East Essex. It is bounded by River Crouch to the north and the urban areas of Southend and Castle Point to the south. The District has three main towns: Rayleigh, Rochford and Hockley. Much of the remaining area is green belt with a large area around Foulness under Ministry of Defence control. London Southend Airport straddles the District's southern boundary with Southend.
2. The Office of National Statistics (ONS) mid-year population estimates showed Rochford District as having a population of 82,000. The area is relatively affluent, ranking 314 out of 354 authorities nationally, where 1 is the most deprived and 354 the least deprived.
3. The Corporate Management structure consists of the Chief Executive (Mr Paul Warren) and six Heads of Service responsible for the following areas:
 - Information and Customer Services
 - Legal Estates and Member Services
 - Planning and Transportation
 - Community Services
 - Finance
 - Environmental Services
4. Correspondence should be forwarded to the Chief Executive, Rochford District Council, Council Offices, South Street, Rochford SS4 1BWL

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Inspection Approach

- 5 The purpose of the inspection was to examine policies, procedures, operations and administration in relation to directed surveillance and covert human intelligence sources (CHIS) under the Regulation of Investigatory Powers Act 2000 (RIPA).
- 6 A meeting took place with Mr Nick Khan, Principal Solicitor who holds the day-to-day responsibilities for the Central Record of authorisations and RIPA oversight and with Mr Albert Bugeja Head of Legal, Estates and Member Services who is also the Senior Responsible Officer (SRO) in accordance with paragraph 3.28 of the revised Codes of Practice.
- 7 I examined the Central Record, a number of authorisations for directed surveillance and relevant documentation. I had informative meetings with a number of practitioners and gave informal feedback at the conclusion of the inspection to Mr Khan and Mr Bugeja.

Review of Progress

- 8 HH Norman Jones QC, in his inspection of 2008, made three recommendations:

(1) The Guidance and Working Code of Practice should be amended:

(a) in accordance with paragraph 12 (ii)

(b) in accordance with paragraph 13

Action

The Council has revised its Covert Surveillance Policy and Procedure Manual to incorporate (a) above, which refers to the need for a description of 'proportionality and necessity and (b) increased RIPA oversight by a single post holder to act as the Monitoring Officer.

Discharged

(2) An officer of the Council should be designated as RIPA Monitoring Officer to undertake the duties outlined in paragraph 13.

Action

Mr Khan the Principal Solicitor undertakes this role.

Discharged

(3) that future training should be concentrated on ensuring:

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(i) *that the concepts of necessity and proportionality are clearly understood and dealt with in the written applications and authorisations;*

(ii) *that applicants should be encouraged to use maps and plans to define what they are seeking to have authorised (paragraphs 12 (iii) and 19);*

(iii) *that authorising officers define the parameters of authorisations in detail and with clarity (paragraphs 16 and 20);*

(iv) *that time limits are correctly noted and observed, and that review dates are set and observed (paragraph 21).*

Action

See paragraph eleven of this report concerning training.

Discharged

Policies and procedures

- 9 The Council now has revised RIPA Policies and procedures. A new document titled 'Covert Surveillance Policy and Procedure Manual' produced in 2011 is both comprehensive and easy to understand. Clear guidance is available to both the applicant and authorising officers as to their responsibilities. The Council, following advice given during the last inspection, has reduced the number of authorising officers. There are now two, Mr Khan and Mr Bugeja. It is not ideal that Mr Bugeja should act as both the SRO and authorising officer. Paragraph 3.29 of the Covert Surveillance and Property Interference Codes of Practice states the following:

Within local authorities, the senior responsible officer should be a member of the corporate leadership team and should be responsible for ensuring that all authorising officers are of an appropriate standard in light of any inspection recommendations in the inspection reports prepared by the Office of Surveillance Commissioners. Where an inspection report highlights concerns about the standards of authorising officers, this individual will be responsible for ensuring the concerns are addressed.

- 10 I examined the minutes of the 'Review Committee' that is charged with providing RIPA oversight in accordance with paragraph 3.30 of the Codes of Practice which states the following:

'In addition, elected members of a local authority should review the authority's use of the 2000 Act and set the policy at least once a year. They should also consider internal reports on use of the 2000 Act on at least a quarterly basis to ensure that it is being used consistently with the local authority's policy and that the policy remains fit for purpose. They should not, however, be involved in making decisions on specific authorisations.'

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The minutes clearly illustrate that the Council and its members approach their statutory responsibilities in a serious manner.

Training

- 11 There was a high level of RIPA awareness amongst those members of staff interviewed. An external provider delivered training for applicants, authorising officers and councillors in January 2011. I was able to examine the training material used, which was comprehensive. Practitioners interviewed who had attended the training described it as valuable.

Significant issues

Council ethos

- 12 The Council is not a prolific user of the powers vested under RIPA, though it is evident that covert surveillance techniques are regarded as valuable, if only as a last resort.

Central Record of Authorisations

- 13 The Central Record of authorisations is compliant with paragraph 8.1 of the revised Code of Practice for Covert Surveillance and Property Interference.

Directed Surveillance

- 14 Since the last inspection there have been three authorisations for directed surveillance. Two were for suspected benefit fraud and the other for a number of planning regulation breaches. I would make the following comments. The applications and authorisations were generally of a good standard with proportionality, necessity and collateral intrusion argued cogently. There was consideration of alternative less intrusive methods; this was particularly relevant in the directed surveillance authorisation that concerned planning breaches in which there was a detailed description of the actions taken by the Council over a two-year period before finally deciding upon covert surveillance.
- 15 I was pleased to note the inclusion of detailed intelligence pictures, supplemented in one case by a copy of an anonymous letter received by the Council; the contents of which were supported by other known facts.
- 16 All three of the authorisations clearly articulated the requirements of Note 116 of the OSC Procedures and Guidance 2010 that that states:

Section 32 (5) of RIPA requires the authorising officer to describe and specify he is granting. This may or may not be the same as requested by the applicant. For the benefit of those operating under the terms of an authorisation, or any person who may subsequently review or inspect an authorisation, it is essential to produce, with clarity, a description of

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that which is being authorised (i.e. who, what, where, when and how). The authorising officer should as a matter of routine state explicitly and in his own words what is being authorised, and against which subjects, property or location. Mere reference to the terms of the application is inadequate.

17 Reviews and cancellations were timely. The results of the investigations included a brief analysis as to whether the objectives of the covert activity were achieved.

18 An area of concern arose in an investigation in 2008 where the authorising officer stated:

'It is agreed to carry out the surveillance for one week in order to identify a place of employment'

Authorising officers are reminded that paragraph 5.10 of the revised Codes of Practice for Covert Surveillance and Property Interference states that:

'A written authorisation granted by an authorising officer will cease to have effect (unless renewed or cancelled) at the end of a period of three months beginning with the time at which it took effect.'

Authorising officers are not allowed to grant surveillance for periods less than this duration.

CHIS

19 There have been no authorisations for the use of CHIS since the last inspection. The use of CHIS is not an area of covert surveillance that the Council believes it has the experience or the desire to embark upon. The Council's guidance document is clear for practitioners as to action and the level of authorisation required.

Observations

20 Rochford District Council is not a significant user of RIPA but it was evident from the inspection that it is keen to discharge its legal responsibilities appropriately. The Council has adopted the advice given within the last inspection report, which has allowed it to improve RIPA compliance.

21 The Council has taken the view that it would be prudent to have only two authorising officers one of whom is the SRO. As I have mentioned in paragraph nine of this report, this is not an ideal solution. While in a small organisation this may be pragmatic, the Council may wish to reconsider the issue.

Finally, I would to thank all of those who participated so positively in the inspection process, and in particular Mr Nick Khan for making all the necessary arrangements.

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8.1.14

Recommendations

- 22 That authorising officers familiarise themselves with the Codes of Practice in particular the sections that relate to the durations of authorisations.



Kevin Davis

Surveillance Inspector

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8.1.15