

Pecyn Dogfennau



Mark James LLM, DPA, DCA
Prif Weithredwr,
Chief Executive,
Neuadd y Sir, Caerfyrddin. SA31 1JP
County Hall, Carmarthen. SA31 1JP

DYDD MAWRTH, 8 TACHWEDD 2016

**YR WYF DRWY HYN YN EICH GALW I FYNYCHU CYFARFOD O'R
CYFARFOD PENDERFYNIADAU AELOD O'R BWRDD GWEITHREDOL
DROS CYMUNEDAU A GYNHELIR YN YSTAFELL PWYLLGOR 2 - 3 HEOL
SPILMAN AM 10.00 AM, DYDD MAWRTH, 15FED TACHWEDD, 2016 ER
MWYN CYFLAWNI'R MATERION A AMLINELLIR AR YR AGENDA SYDD
YNGHLWM**

Mark James

PRIF WEITHREDWR



AILGYLCHWCH OS GWELWCH YN DDA

Swyddog Democrataidd:	Martin S. Davies
Ffôn (llinell uniongyrchol):	01267 224059
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Cyf:	AD016-001

AGENDA

1. DATGANIADAU O FUDDIANNAU PERSONOL.
2. LLOFNODI FEL COFNOD CYWIR COFNODION CYFARFOD AELOD Y BWRDD GWEITHREDOL DROS CYMUNEDAU A GYNHALIWYD AR Y 12FED MAI 2016. 3 - 4
3. Y DDEDDF RHEOLEIDDIO PWERAU YMCHWILIO. 5 - 46

CYFARFOD PENDERFYNIADAU AELOD O'R BWRDD GWEITHREDOL DROS CYMUNEDAU

DYDD IAU, 12 MAI 2016

YN BRESENNOL: Y Cynghorydd P.A. Palmer (Aelod y Bwrdd Gweithredol).

Yr oedd y swyddogion canlynol yn gwasanaethu yn y cyfarfod:

R. Llewellyn - Swyddog Perfformiad, Llywodraethu a Pholisi

G. Morgan – Rheolwr Gwasanaethau Democraidd

Ystafell Bwyllgor Gwasanaethau Democraidd, Neuadd y Sir, Caerfyrddin: 10.00 a.m. – 10.25 a.m.

1. DATGANIADAU O FUDDIANNAU PERSONOL.

Ni chafwyd dim datganiadau o fuddiant.

2. LLOFNODI FEL COFNOD CYWIR COFNODION CYFARFOD AELOD Y BWRDD GWEITHREDOL DROS CYMUNEDAU A GYNHALIWYD AR Y 12FED EBRILL 2014.

PENDERFYNWYD Ilofnodi bod Cofnod Penderfyniadau'r cyfarfod oedd wedi'i gynnal ar 12^{fed} Ebrill 2016 yn gofnod cywir.

3. SEFYDLU PANEL YMGYNGHOROL YNGHYLCH TRECHU TLODI

Bu'r Aelod o'r Bwrdd Gweithredol, Hyrwyddwr Gwrthdodi yr Awdurdod, yn ystyried adroddiad, ar sefydlu Panel ymgynghorol ynghylch Trechu Tlodi.

Ym mis Chwefror 2015 roedd y Pwyllgor Craffu - Polisi ac Adnoddai wedi sefydlu Grŵp Ffocws a oedd wedi awgrymu y dylid sefydlu Panel Ymgynghorol ynghylch Trechu Tlodi i roi cymorth pwysig i'r Aelod o'r Bwrdd Gweithredol. Byddai'r panel hwn yn gyfrifol am oruchwylio a monitro Cynllun Gweithredu'r Cyngor ynghylch Trechu Tlodi, ei bolisi cyffredinol a'i agenda ehangach o ran trechu tlodi.

Roedd yr adroddiad yn amlinellu amcanion arfaethedig y Panel a'r aelodau a awgrymwyd.

Wrth ategu'r awgrym a wnaed gan y Grŵp Ffocws, pwysleisiodd yr Aelod o'r Bwrdd Gweithredol y dylai'r Panel Ymgynghorol ymgysylltu â phartneriaid mewnol ac allanol i sicrhau bod y Grŵp yn pennu targedau a chamau gweithredu a fyddai'n arwain at newidiadau a chanlyniadau amlwg.

PENDERFYNWYD

- 3.1 Sefydlu Panel Ymgynghorol trawsbleidiol o blith yr Aelodau Etholedig ynghylch Trechu Tlodi i bennu camau a chefnogi a monitro gwaith y Cyngor yn ymwneud â Threchu Tlodi.
- 3.2 Cytuno ar aelodaeth y Panel Ymgynghorol fel a ganlyn:-
Yr Aelod o'r Bwrdd Gweithredol sy'n gyfrifol am Drechu Tlodi ynghyd â
2 gynrychiolydd o Grŵp Plaid Cymru: Y Cyngorydd J. Eirwyn Williams a'r Cyngorydd Alun Lenny
2 gynrychiolydd o'r Grŵp Annibynnol: Y Cyngorydd D.W. Hugh Richards a'r Cyngorydd Wyn J.W. Evans
2 gynrychiolydd o'r Grŵp Llafur: Y Cyngorydd Deryk M. Cundy a'r Cyngorydd Jan Williams

CADEIRYDD

DYDDIAD

YR AELOD O'R BWRDD GWEITHREDOL

15/11/2016

Yr Aelod o'r Bwrdd Gweithredol:	Y Portffolio:
Y Cyng. Pam Palmer	Cymunedau

Y DDEDDF RHEOLEIDDIO PWERAU YMCHWILIO

Yr Argymhellion / Penderfyniadau Allweddol sydd eu Hangen:

1. Adolygu'r gweithgaredd cudd-wyllo yr oedd y Cyngor wedi ymgymryd ag ef yn 2015/2016.
2. Nodi adroddiad Swyddfa'r Comisiynwyr Arwyllo yn dilyn arolygiad ym mis Ebrill 2016.
3. Adolygu'r weithdrefn gorfforaethol ynghylch cudd-wyllo o'r fath a chymeradwyo'r newidiadau ar gyfer 2016.

Y Rhesymau:

Mae'r canllawiau yn argymhell bod aelodau etholedig yn cadw golwg gyffredinol ar y defnydd o gudd-wyllo gan yr Awdurdod a'u bod yn adolygu'r polisi a'r gweithdrefnau sy'n llywodraethu'r gweithgareddau hynny bob blwyddyn.

Y Gyfarwyddiaeth:	Swyddi:	Rhifau Ffôn / Cyfeiriadau E-bost:
Y Prif Weithredwr	Pennaeth Gweinyddiaeth a'r Gyfraith	01267 224012 LRJones@sirgar.gov.uk
Enw Pennaeth y Gwasanaeth:		
Linda Rees-Jones		

Declaration of Personal Interest (if any): None

Dispensation Granted to Make Decision (if any): N/A

DECISION MADE:

Signed:

 EXECUTIVE BOARD MEMBER


Recommendation of Officer adopted	YES / NO
Recommendation of the Officer was adopted subject to the amendment(s) and reason(s) specified:	
Reason(s) why the Officer's recommendation was not adopted:	

EXECUTIVE BOARD MEMBER

15/11/16

REGULATION OF INVESTIGATORY POWERS ACT

Directed Surveillance

During the period 1st April 2015 to 31st March 2016 a total of 2 authorisations have been issued for Directed Surveillance, the details of which are as follows;

Reference	Offence	Granted	Approved	Cancelled	Outcome
094/DS/15	Benefit Fraud	08/05/15	21/05/15	16/07/15	Some evidence Obtained.
095/DS/15	Underage Sales	17/11/15	03/12/15	04/01/16	No evidence Obtained

Covert human Intelligence Sources

No authorisations have been issued for the use of Covert Human Intelligence Sources during this period.

Interception of Communications Data

No authorisations have been issued by the authority for the interception of communications data during this period.

Statistical Returns

Annual returns reflecting the above have been provided to the Office of the Surveillance Commissioner and the Interception of Communications Commissioner.

Inspection by the Surveillance Commissioner

The authority was inspected by a representative of the Surveillance Commissioner in April 2016. The inspection report contains only one recommendation, relating to training. Compliance with this recommendation is in hand. The report also suggests certain changes to the Council's covert surveillance procedures and a revised document incorporating those changes is attached for approval.

Changes to Reporting Practices

Given the low level of activity (which is expected to reduce further) it is proposed to cease quarterly reporting and instead inform the relevant EBM if an authorisation is granted together with an annual report summarising all such activity.

DETAILED REPORT ATTACHED ?

NO



IMPLICATIONS

I confirm that other than those implications which have been agreed with the appropriate Directors / Heads of Service and are referred to in detail below, there are no other implications associated with this report :

Signed: LINDA REES JONES

Head of Administration and Law

Policy and Crime & Disorder NONE	Legal NONE	Finance NONE	ICT NONE	Risk Management Issues NONE	Organisational Development NONE	Physical Assets NONE
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CONSULTATIONS

I confirm that the appropriate consultations have taken in place and the outcomes are as detailed below

Signed: LINDA REES JONES

Head of Administration & Law

1. Local Member(s) Not applicable
2. Community / Town Council Not applicable
3. Relevant Partners Not applicable
4. Staff Side Representatives and other Organisations Not applicable

Section 100D Local Government Act, 1972 – Access to Information List of Background Papers used in the preparation of this report:

Title of Document	File Ref No.	Locations that the papers are available for public inspection
Legal file	LS-0134/10	County Hall Carmarthen



COVERT SURVEILLANCE

COUNCIL PROCEDURES

September 2016

Tudalen 9

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10. Use of Electronic Surveillance Devices
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Appendix 1 – List of Authorising Officers

Appendix 2 – Use of Social Media

Appendix 3 – Mock Application

Section 1 – Introduction

1. Local Authorities powers to conduct covert surveillance come from the provisions of the Local Government Act 1972. The main restrictions on the use of those powers can be found in the Human Rights Act 1998, and in particular Article 8 of the European Convention on Human Rights (The right to respect for a person's private and family life).
2. The Regulation of Investigatory Powers Act 2000 (RIPA) (as amended) regulates covert investigations by a number of bodies, including local authorities. It was introduced to ensure that individuals' rights are protected whilst also ensuring that law enforcement and security agencies can still exercise the powers they need to do their job effectively. The Act only applies to covert surveillance carried out by a local authority for the purposes of investigating qualifying criminal offences.
3. Covert surveillance carried out for reasons other than the investigation of qualifying criminal offences falls outside the scope of RIPA. Such surveillance can still be lawful, but extra care is needed to ensure such surveillance does not breach an individual's Human Rights. The purpose of this document is to set out the circumstances where RIPA applies, and the procedures to be followed when conducting covert surveillance
4. Regard has been had to the Codes of Practice issued by the Home Office, and Guidance and Practice notes issued by the Office of the Surveillance Commissioner (OSC) in preparing these procedures.
5. Subject to the provisions of Section 6 of this document, any covert surveillance activity carried out by or on behalf of the Council **MUST** be authorised one of the properly trained Authorising Officers listed in Appendix 1, and dealt with in accordance with Sections 5 or 10 of this document.
6. Individual Investigating Officers and Authorising Officers should familiarise themselves with this procedure document, the Codes of Practice issued by the Home Office, and such Guidance as is issued by the OSC from time to time.
7. Deciding when an authorisation is required is a question of judgement. However, if an investigating officer is in any doubt, he/she should immediately seek legal advice. **As a basic rule however, it is always safer to seek the appropriate authorisation.**
8. The Senior Officer within the Council with strategic responsibility for RIPA issues is Linda Rees-Jones, Head of Administration & Law
9. The 'Gate-keeping' Officer, with responsibility for vetting all RIPA applications and maintaining the Central register is Robert Edgecombe, Legal Services Manager.

10. The elected member responsible for reviewing the authority's use of RIPA and setting the authority's RIPA policy each year is Councillor P A Palmer.

11. ALL OFFICERS MUST NOTE THAT THE COUNCIL MAY ONLY AUTHORISE COVERT SURVEILLANCE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT FOR THE PURPOSE OF PREVENTING OR DETECTING A CRIMINAL OFFENCE PUNISHABLE BY AT LEAST 6 MONTHS IMPRISONMENT.

12. THE ONLY EXCEPTION TO THIS IS FOR TEST PURCHASING OPERATIONS IN RELATION TO THE SALE OF ALCOHOL OR CIGARETTES TO CHILDREN.

SECTION 2 - BENEFITS OF OBTAINING AUTHORISATION UNDER RIPA

1. RIPA states that where an authorisation is obtained, and the covert surveillance activity is conducted in accordance with that authorisation, then the activity will be lawful for all purposes.
2. Where an authorisation is not obtained, there is a risk that any evidence obtained as a result could be ruled as inadmissible in subsequent legal proceedings.
3. Furthermore, unauthorised covert surveillance activity is more likely to result in a breach of an individual's human rights, leading to a compensation claim against the Council.

SECTION 3 - DIRECTED SURVEILLANCE

1. Directed Surveillance includes;
 - The monitoring, observing or listening to persons, their movements, their conversations or their other activities or communication.
 - The recording of anything so monitored observed or listened to in the course of surveillance.
 - The surveillance by or with the assistance of a surveillance device.
2. Directed Surveillance does NOT occur where covert recording of suspected noise nuisance takes place and the recording device is calibrated to record only excessive noise levels.
3. Surveillance is 'Directed' for the purposes of RIPA if it is covert (but not intrusive) and is undertaken;
 - For the purposes of a specific investigation into a criminal offence punishable by a 6 month custodial sentence.
 - In such a manner as is likely to result in the obtaining of private information about a person (whether or not one is specifically identified for the purposes of the investigation or operation); and
 - Otherwise than by an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation to be sought for the carrying out of the surveillance.

OFFICERS SHOULD NOTE THAT THE SURVEILLANCE OF AN INDIVIDUAL'S ACTIVITIES AND/OR CONVERSATIONS IN A PUBLIC PLACE MAY STILL AMOUNT TO THE OBTAINING OF PRIVATE INFORMATION

4. Surveillance is 'covert' if it is carried out in a manner calculated to ensure that the target is unaware it is or may be taking place. Therefore surveillance of an individual using city centre CCTV cameras could still require RIPA authorisations if the cameras are targeted on that individual and he/she is unaware that they are being watched.
5. Covert surveillance becomes 'intrusive' if;
 - It is carried out in relation to anything taking place on any residential premises or in any private vehicle, and

- Involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device on the premises/vehicle, or
- Is carried out by means of a surveillance device in relation to anything taking place on any residential premises or in any private vehicle but is carried out without that device being on the premises or vehicle, where the device is such that it consistently provides information of the same quality and detail as might be expected to be obtained from a device actually present on the premises or vehicle.

THE COUNCIL HAS NO POWER TO AUTHORISE INTRUSIVE SURVEILLANCE UNDER THE ACT. IF INVESTIGATING OFFICERS HAVE ANY CONCERNS REGARDING THIS THEY SHOULD IMMEDIATELY SEEK LEGAL ADVICE.

6. Surveillance is for the purposes of a specific investigation or operation if it is targeted in a pre-planned way at an individual or group of individuals, or a particular location or series of locations.
7. Surveillance will not require authorisation if it is by way of an immediate response to an event or circumstances where it is not reasonably practicable to get an authorisation.

SECTION 4 - COVERT HUMAN INTELLIGENCE SOURCES (CHIS)

1. A person is a CHIS if;
 - He/she establishes or maintains a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within the paragraphs immediately below.
 - He/she covertly uses such a relationship to obtain information or provide access to any information to another person, or
 - He/she covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship.
2. A purpose is covert in this context if the relationship is conducted in a manner that is calculated to ensure that one of the parties is unaware of that purpose.
3. Council policy is to treat all such activities as being in need of authorisation whether or not the information sought is private information.
4. When considering whether to make use of CHIS, investigating officers **MUST** consult with the gate-keeping officer before taking any action, in order to ensure that the relevant Home Office Code of Practice is complied with. Where use is made of CHIS, his/her designated handler must be a properly trained officer, who may not necessarily be based within the same department/section as the investigating officer.

ONLY THE CHIEF EXECUTIVE MAY AUTHORISE THE USE OF A JUVENILE CHIS.

SECTION 5 - AUTHORISATION PROCESS

1. Applications must be in writing, using the standard forms
2. Although it is possible to combine two or more applications in the same form, this practice is generally to be avoided. One situation where it may be appropriate is during a covert test purchase exercise involving more than one premise. In such cases investigating officers should contact the gate-keeping officer to discuss the operation before completing the forms.
3. The application form must set out in detail:
 - (a) What information it is hoped the surveillance will obtain
 - (b) Why that information is essential to the investigation
 - (c) What steps have already been taken to obtain that information

A sample application is attached to this document at Appendix 3
4. Once the appropriate application forms are completed, they should be submitted by email to the gate-keeping officer.
5. The gate-keeping officer will then vet the application, enter it onto the Central Register and allocate a unique central reference number.
6. The gate-keeping officer may recommend changes to the application, or agree to it being submitted unaltered to a designated authorising officer.
7. Where an application must be authorised by the Chief Executive (ie in cases of a juvenile CHIS or confidential information), the gate-keeping officer will arrange a meeting between the investigating officer, gate-keeping officer and Chief Executive.
8. In all other cases the investigating officer shall arrange to meet one of the authorising officers to discuss the application.
9. When determining whether or not to grant an authorisation, Authorising Officers must have regard to;
 - Whether what is proposed is necessary for preventing/detecting criminal offences that meet the requirements in Section 1 paragraphs 11 and 12 above.
 - Whether what is proposed is proportionate to the aim of the action
 - Whether the proposed action is likely to result in collateral intrusion into the private lives of third parties, and if it is, whether all reasonable steps are being taken to minimise that risk.

- In the case of applications to authorise the use of a CHIS, whether all the requirements of the Code of Practice relating to the authorisation of a CHIS issued by the Home Office are complied with.
10. If an application is refused, the reasons for refusal shall be endorsed on the application
 11. If an application is granted, the authorising officer must specify;
 - The scope of the authorisation
 - The duration of the authorisation
 - The date (not more than 28 days) for review of the authorisation.
 12. Irrespective of the outcome of the application, the investigating officer must immediately forward a copy of the authorisation or refused application, to the gate-keeping officer, who will make the appropriate entries in the Central Register, and place the copy application or authorisation in the Central Record.
 13. The gate – keeping officer will then arrange for an application to be made to the Magistrates Court for the judicial approval of the authorisation.

ALL OFFICERS MUST NOTE THAT THE AUTHORISATION WILL NOT TAKE EFFECT UNTIL IT HAS BEEN JUDICIALLY APPROVED.

14. If, upon initial review of the authorisation, the authorising officer determines that it should remain in effect, reviews must take place every 28 days during the life of the authorisation. The investigating officer must keep a record the results of any review and communicate them to the gate-keeping officer for entry in the Central Register.
15. Once an authorising officer determines that an authorisation is no longer necessary it must be cancelled immediately.
16. Once the operation to which the authorisation relates is concluded, or the activity authorised ceases, then the investigating officer must immediately meet the authorising officer to cancel the authorisation.
17. Whenever an authorisation is cancelled, the authorising officer must endorse the cancellation with his/her views as to the value of the authorised activity.
18. Whenever an authorisation is cancelled, a copy of that cancellation must be sent to the gate-keeping officer for it to be placed in the Central Record, and appropriate entries to be made in the Central Register.
19. Unless previously cancelled, an authorisation will last as follows;
 - Written authorisation for Directed Surveillance – **3 months**

- Written authorisation for use of a CHIS – **12 months**
20. If shortly before an authorisation ceases to have effect, the authorising officer is satisfied that the grounds for renewing the authorisation are met, then he/she may renew the authorisation. *(Before renewing an authorisation, authorising officers must have regard to the appropriate sections of the relevant code of practice issued by the Home Office)*
21. An authorisation may be renewed for;
- In the case of a written renewal of a Directed Surveillance authorisation - **3 Months**.
 - In the case of a written renewal of a CHIS authorisation – **12 months**.
22. An authorisation may be renewed more than once.
23. Applications for renewal of an authorisation must record all matters required by the relevant Code of Practice issued by the Home Office
24. Where an authorisation is renewed, it must continue to be reviewed in accordance with the requirements set out above.
25. Where an authorisation is renewed, a copy of the renewal must be sent to the gate-keeping officer and placed in the Central Record and appropriate entries made in the Central Register.
26. The gate-keeping officer will then arrange for an application to be made to the local magistrates' court for the judicial approval of the renewal.

ALL OFFICERS MUST NOTE THAT THE RENEWAL WILL NOT TAKE EFFECT UNTIL IT HAS BEEN JUDICIALLY APPROVED.

WHERE AN APPLICATION IS GRANTED OR RENEWED THE INVESTIGATING OFFICER MUST ENSURE THAT ALL OFFICERS TAKING PART IN THE COVERT SURVEILLANCE ACTIVITY HAVE AN OPPORTUNITY TO READ THE AUTHORISATION AND FAMILIARISE THEMSELVES WITH ITS TERMS AND RESTRICTIONS BEFORE THE OPERATION COMMENCES.

SECTION 6 - COVERT SURVEILLANCE AUTHORISED OUTSIDE RIPA

1. Certain instances of covert surveillance that may be carried out by public authorities are incapable of being authorised under RIPA. Examples of these include;
 - The investigation of criminal offences punishable by less than 6 months imprisonment.
 - The investigation of general disorder or anti-social behaviour.
 - Surveillance carried out as part of a planning investigation prior to issuing an enforcement notice
 - Surveillance carried out as part of a public health investigation prior to issuing an abatement notice.
 - Surveillance carried out as part of an internal disciplinary, child protection or POVA investigation.
 - Surveillance carried out in support of the defence of a personal injury claim
 - The use of surveillance devices to monitor a person living in a residential care setting where it is considered to be in their 'best interests' to do so.

2. None of these examples can be authorised as directed surveillance under RIPA, although all are capable of being justifiable cases of interference with an individual's human rights on the grounds that they are necessary in a democratic society in the interests of public safety, the economic well-being of the country, for the protection of health or morals or for the protection of rights and freedoms of others. In these cases, although the authority cannot rely upon RIPA to authorise surveillance, such surveillance can still be carried out provided steps are undertaken to ensure any interference with an individual's human rights complies with the requirements set out in Article 8 of the European Convention on Human rights..

3. Wherever an officer wishes to consider carrying out directed surveillance, which cannot be justified on the grounds in RIPA, but which may fall within the scope of paragraphs 1 and 2 above, he/she must contact the gate-keeping officer for advice.

4. Where it is considered that the proposed surveillance activity could be justifiable under paragraph 2 above, the officer will submit a written request to the gate-keeping officer. This request must be accompanied by a detailed Privacy Impact Assessment. The Gate-Keeping officer will vet the application, enter it into the Central Register and consult with the Council's Head of Administration and Law/Monitoring Officer before advising further.

5. **NO SURVEILLANCE ACTIVITY OF THE SORT OUTLINED IN PARAGRAPH 1 ABOVE MAY TAKE PLACE UNLESS IT HAS BEEN EXPRESSLY APPROVED IN WRITING BY THE HEAD OF**

**ADMINISTRATION AND LAW OR HER APPOINTED DEPUTY OR
BY A COURT ORDER.**

SECTION 7 - CONFIDENTIAL MATERIAL

1. Confidential material such as personal medical or spiritual information, confidential journalistic information or information subject to legal privilege is particularly sensitive and is subject to additional safeguards.
2. In cases where such information may be obtained, an investigator must seek immediate legal advice.
3. **Only the Chief Executive may authorise surveillance activity which may result in confidential information being obtained.**
4. Any application for an authorisation, which is likely to result in the acquisition of confidential material **MUST** include an assessment of how likely it is that confidential material will be acquired.
5. Special care should be taken where the target of the investigation is likely to be involved in handling confidential material. Such applications should only be considered in exceptional and compelling circumstances and with full regard to the proportionality issues this raises.
6. The following general principles apply to confidential material acquired under such authorisations;
 - Officers handling material from such operations should be alert to anything that may fall within the definition of confidential material. Where there is any doubt, immediate legal advice should be sought.
 - Confidential material should not be retained or copied unless it is necessary for a specified purpose.
 - Confidential material should only be disseminated, after legal advice has been sought, where it is necessary for a specified purpose.
 - The retention and/or dissemination of confidential material should be accompanied by a clear warning of its confidential nature.
 - Confidential material should be destroyed as soon as it is no longer necessary to retain it for a specified purpose.

SECTION 8 - JOINT OPERATIONS

1. Where officers are engaged in operations with other public authorities, any covert activity must be authorised either in accordance with this document, or by an appropriate officer employed by the other authority.
2. Officers should always ensure that when operating under an authorisation issued by another authority, that the authorising officer has the power to issue that authorisation, and that the authorisation covers the scope of the proposed activity.
3. Officers are advised to request a copy of the relevant authorisation, or at least obtain a written note of the scope, duration and conditions of the authorised activity.
4. Officers should also have regard to any other protocols specifically dealing with joint operations.

SECTION 9 - HANDLING & DISCLOSURE OF PRODUCT

1. Officers are reminded of the rules relating to the retention and destruction of confidential material set out in section 7 above.
2. Authorising Officers must ensure compliance with the appropriate data protection requirements and the relevant codes of practice in the handling and storage of material.
3. Where material is obtained by surveillance, which is wholly unrelated to a criminal or other investigation or to any person who is the subject of such an investigation, and there is no reason to believe it will be relevant to future criminal or civil proceedings, it should be destroyed immediately.
4. Consideration as to whether or not unrelated material should be destroyed is the responsibility of the Authorising Officer.
5. RIPA does not prevent material properly obtained in one investigation being used in another investigation. **However, the use of any covertly obtained material for purposes other than that for which the surveillance was authorised should only be sanctioned in exceptional cases and only after seeking legal advice.**

SECTION 10 - USE OF SURVEILLANCE DEVICES

1. Surveillance devices include, static and mobile CCTV cameras, covert surveillance cameras, noise monitoring/recording devices, and any other mechanical and/or recording devices used for surveillance purposes.
2. Static CCTV cameras include 'Town Centre' cameras operated from Police Stations under the control of Council staff, as well as fixed security cameras located in council buildings.
3. Fixed security cameras, which are incapable of being remotely controlled, do not require RIPA authorisation ***provided*** their existence and purpose is made clear to the public through appropriate signage.
4. 'Town Centre' and mobile CCTV cameras will not ordinarily require authorisation where their existence and use is also made clear by signage. However, where camera operators are requested to control the cameras so as to target specific individuals or locations, then the following rules apply;
 - Where the request is made by way of an immediate response to an incident or intelligence received, no authorisation is required, subject to the requirements below.
 - Where a request is made in accordance with the paragraph above and the surveillance lasts, or is likely to last for 30minutes or more, authorisation must be obtained.
 - Where the request is made as part of a pre-planned operation or investigation, authorisation must be obtained.
5. Camera operators should normally refuse to comply with any requests for surveillance activity unless they are satisfied;
 - That an authorisation is unnecessary, or
 - That an authorisation has been obtained and the scope, duration and limitations of the permitted activity have been confirmed in writing.
6. It is recognised that many departments maintain conventional cameras and mobile phone cameras for use by staff on a regular basis. Staff must be reminded;
 - That the covert use of such cameras (ie where the 'target' is not aware that he/she is being photographed) may require authorisation.
 - As a general rule, unless the photograph is being taken as an immediate response to an unexpected incident, authorisation should be sought.
7. Use of noise monitoring/recording equipment may also require authorisation, where the equipment records actual noise, as opposed to just noise levels. Much will depend upon what noise it is intended, or likely, to record.

8. Where a target is made aware in writing that noise monitoring will be taking place, then authorisation is not required.

SECTION 11 – COVERT SURVEILLANCE OF SOCIAL NETWORKING SITES

1. Care must be taken when using or monitoring a social networking site for work purposes. Even though a site may seem to be an open source of publically available information, the author may have expectations of privacy, especially if they apply at least some access controls.
2. The use of a false identity on a social networking site for this purpose is permissible, but is likely to require authorisation under the terms of this document.
3. If the monitoring of a social networking site is proposed which involves getting past access or privacy controls without the author of the site knowing that it is a public authority that is trying to gain access, then it is likely that covert surveillance is taking place which interferes with that persons human rights and authorisation will be required.
4. Any use of a Social Networking site for these purposes must also comply with Council policies on Internet and Social Media Usage. Links to these policies can be found in Appendix 2

SECTION 12 - CODES OF PRACTICE

1. The Home Office has issued Codes of Practice relating both to Directed Surveillance and the use of CHIS. Copies of these codes are available via the Home Office, or Office of the Surveillance Commissioner (OSC) websites, or can be obtained from the gate-keeping officer.
2. Whilst these codes do not have the force of law, they represent best practice, and adherence to them will give the authority a better chance of opposing any allegation that RIPA and/or the Human Rights Act has been breached.
3. Investigating and Authorising Officers should ensure that when dealing with applications, regard is had to these codes.
4. The Office of the Surveillance Commissioner has also publishes useful guidance, copies of which can be obtained from his website or the gate-keeping officer.

SECTION 13 - SCRUNTINY AND TRIBUNAL

The council will be subject to an inspection by an OSC inspector roughly every 2 years. The inspector will;

- Examine the Central Register
- Examine authorisations, renewals and cancellations
- Question officers regarding their implementation of the legislation.
- Report to the Chief Executive regarding his/her findings

A Tribunal has also been set up to deal with complaints made under RIPA. The tribunal may quash or cancel any authorisation and order the destruction of any record or information obtained as a result of such an authorisation.

Courts and Tribunals may exclude evidence obtained in breach of an individual's human rights. Failure to follow the procedures set out in this document increases the risk of this happening.

This document will be kept under annual review by the relevant Executive Board Member, who will also receive regular reports as to its implementation.

APPENDIX 1 – LIST OF AUTHORISING OFFICERS UNDER THE
REGULATION OF INVESTIGATING POWERS ACT

Name	Post
Mark James	Chief Executive
Ainsley Williams	Head of Waste
Roger Edmunds	Trading Standards Manager
Sue E Watts	Public Health Services Manager

APPENDIX 2 – USE OF SOCIAL MEDIA SITES

http://brian/worklife/Document%20Library/IT%20Services/Internet_Usage_and_Monitoring_Policy_V1.6.pdf

<http://brian/worklife/Document%20Library/HR%20Policies%20and%20Guidance/Social%20Networking/Social%20Networking%20guidance%202011.pdf>

APPENDIX 3 – MOCK APPLICATION – ATTACHED SEPERATELY

Unique Reference Number

Part II of the Regulation of Investigatory**Powers Act 2000****Authorisation Directed Surveillance**

Public Authority <i>(including full address)</i>	Carmarthenshire County Council County Hall Carmarthen, SA31 1JP		
Name of Applicant	A N Other	Unit/Branch /Division	Fraud Investigation Team
Full Address	County Hall Carmarthen SA31 1JP		
Contact Details	Telephone : 01267 224xxx Email: ANOther@carmarthenshire.gov.uk		
Investigation/Operation Name (if applicable)	Mr Davies		
Investigating Officer (if a person other than the applicant)			

Unique Reference Number	
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DETAILS OF APPLICATION	
1 Give rank or position of authorising officer in accordance with the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 No. 521. ¹	
2 Describe the purpose of the specific operation or investigation.	The purpose of the investigation is to gather evidence of alleged offences under section 111 of the Social Security Administration Act 1992 and the Fraud Act which it is believed are being committed by Mr Davies. In particular the purpose of the proposed surveillance operation is to gather evidence to show that Mr Davies is residing with a Mrs Jones at no.82 High Street.
3 Describe in detail the surveillance operation to be authorised and expected duration, including any premises, vehicles or equipment (e.g. camera, binoculars, recorder) that may be used.	The surveillance will take the following form; <ol style="list-style-type: none"> 1. Direct observation by between 1 and 4 officers located in 1 or 2 unmarked vehicles parked in High Street on week day mornings 2. Surveillance will take place between 08.00 and 09.00 each day or until Mr Davies is seen leaving the property, upon which surveillance will cease. 3. The officers engaged in the surveillance will record any observations in written surveillance logs and will not make use of any cameras or other surveillance or recording devices. 4. Officers will not follow the target after he has left the premises.
4 The identities, where known, of those to be subject of the directed surveillance.	<ul style="list-style-type: none"> • Name: Mr A Davies • Address:82 High Street • DOB: • Other information as appropriate:
5 Explain the information that it is desired to obtain as a result of the directed surveillance.	

¹ For local authorities: The exact position of the authorising officer should be given. For example, Head of Trading Standards.

Unique Reference Number

1. Whether Mr Davies leaves the target property for work each day
2. Whether his vehicle is at the property each weekday morning

6. Identify on which grounds the directed surveillance is necessary under Section 28(3) of RIPA. Delete those that are inapplicable. Ensure that you know which of these grounds you are entitled to rely on (SI 2010 No.521).

- For the purpose of preventing or detecting crime or of preventing disorder

7. Explain why this directed surveillance is necessary on the grounds you have identified [Code paragraph 3.3].

Information has been received from another Council department that Mr Davies is residing at the target address with Mrs Jones. If this information is correct the Mr Davies (and possibly Mrs Jones) is likely to have committed fraud in respect of a variety of applications and claims submitted to the Council, all of which have resulted in substantial sums of money being paid to Mr Davies over a number of years.

To date investigating officers have taken the following steps to obtain the required information;

- (a) Searched council records for information suggesting Mr Davies lives at the target address and that Mr Davies and Mrs Jones are cohabiting
- (b) Searched DVLA records which show a vehicle registered in Mr Davies's name at the target address
- (c) Undertaken a credit search which shows Mr Davies has obtained credit on the basis he lives at the target address
- (d) Checked marriage records, which show that Mr Davies and Mrs Jones married in 2012
- (e) Mr Davies is the father of Mrs Jones daughter, born in 2014.

However this information is insufficient to prove that Mr Davies lives at the target address to the criminal standard of proof. Without further evidence that he is actually living at the property it will not be possible to progress the case further.

8. Supply details of any potential collateral intrusion and why the intrusion is unavoidable. [Bear in mind Code paragraphs 3.8 to 3.11.]

Describe precautions you will take to minimise collateral intrusion.

Unique Reference Number	
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Officers conducting the surveillance will be instructed not to record anything in the surveillance logs which does not directly relate to the actions of Mr Davies. Any references to Mrs Jones and/or her daughter are to be kept to solely those which relate to their interaction with Mr Davies.

Officers should not record the activities of any other persons unless it is appropriate to do so as evidence of the commission of a crime by that person

9. Explain why this directed surveillance is proportionate to what it seeks to achieve. How intrusive might it be on the subject of surveillance or on others? And why is this intrusion outweighed by the need for surveillance in operational terms or can the evidence be obtained by any other means [Code paragraphs 3.4 to 3.7]?

Steps taken to date as outlined in box 7 above do not provide sufficient evidence to progress this investigation to conclusion. Without the additional information it is hoped to obtain by surveillance, the investigation will have to be abandoned.

The degree of intrusion into Mr Davies's family life is minimal. Only activities which can take place in full public view (i.e Mr Davies leaving the target property) will be recorded. No surveillance will take place of activities inside the property.

10. Confidential information [Code paragraphs 4.1 to 4.31].

INDICATE THE LIKELIHOOD OF ACQUIRING ANY CONFIDENTIAL INFORMATION:

NONE

Unique Reference Number	
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11. Applicant's Details			
Name (print)		Tel No:	
Grade/Rank		Date	
Signature			
12. Authorising Officer's Statement. [Spell out the "5 Ws" – Who; What; Where; When; Why and HOW– in this and the following box.]			
<p>I hereby authorise directed surveillance defined as follows: [<i>Why is the surveillance necessary, whom is the surveillance directed against, Where and When will it take place, What surveillance activity/equipment is sanctioned, How is it to be achieved?</i>]</p>			
13. <u>Explain why you believe</u> the directed surveillance is necessary [Code paragraph 3.3].			
<u>Explain why you</u> believe the directed surveillance to be proportionate to what is sought to be it achieved by carrying out [Code paragraphs 3.4 to 3.7].			

**APPENDIX 3 MOCK
APPLICATION**

Unique Reference Number

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14. (Confidential Information Authorisation.) Supply detail demonstrating compliance with Code paragraphs 4.1 to 4.31.

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Date of first review

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Programme for subsequent reviews of this authorisation: [Code paragraph 3.23]. Only complete this box if review dates after first review are known. If not or inappropriate to set additional review dates then leave blank.

--

Name (Print)

--

Grade / Rank

--

Signature

--

Date and time

--

Expiry date and time [e.g.: authorisation granted on 1 April 2005 - expires on 30 June 2005, 23.59]

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Unique Reference Number	
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15. Urgent Authorisation [Code paragraph 5.9]: Authorising officer: explain why you considered the case so urgent that an oral instead of a written authorisation was given.

16. If you are only entitled to act in urgent cases: explain why it was not reasonably practicable for the application to be considered by a fully qualified authorising officer.

Name (Print)		Grade/ Rank		
Signature		Date and Time		
Urgent authorisation Expiry date:		Expiry time:		
<i>Remember the 72 hour rule for urgent authorities – check Code of Practice.</i>	e.g. authorisation granted at 5pm on June 1 st expires 4.59pm on 4 th June			

Mae'r dudalen hon yn wag yn fwriadol



OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT

Carmarthenshire County Council

14th April 2016

**Surveillance Inspector:
Mr Neil Smart.**

OFFICIAL - SENSITIVE

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.

The Office of Surveillance Commissioners is not a public body listed under the Freedom of Information Act 2000, however, requests for the disclosure of the report, or any part of it, or any distribution of the report beyond the recipients own authority is permissible at the discretion of the Chief Officer of the relevant public authority without the permission of the Chief Surveillance Commissioner. Any references to the report, or extracts from it, must be placed in the correct context.

OFFICIAL – SENSITIVE

File ref: OSC / INSP / 075

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

14th April 2016

OSC INSPECTION REPORT – CARMARTHENSHIRE COUNTY COUNCIL

1 Date of Inspection

14th April 2016

2 Inspector

Mr Neil Smart.

3 General Description

- 3.1 Carmarthenshire County Council is the local authority for the county of Carmarthenshire, Wales, providing a full range of services under the elected control of councillors that includes education, planning, transport, social services, and public safety. The council is one of 22 unitary authorities that came into existence on 1st April 1996 under the provisions of the Local Government (Wales) Act 1994. The Council has some 6000 staff (excluding teachers) (FTE) serving a population of approximately 183,800¹ people.
- 3.2 The Strategic Management Team comprises the Chief Executive (Head of Paid Service) who is supported by two Assistant Chief Executives (Regeneration & Policy; and People Management & Performance), the Head of Administration and Law (Mrs Linda Rees-Jones who is the senior responsible officer (SRO) for RIPA), and a Joint Head of IT Services.
- 3.3 There are five 'Directorates': 'Chief Executive'; Community Services; Corporate Services; Environment; and Education and Children's Services.
- 3.4 The Chief Executive is Mr Mark James C.B.E.. The address for correspondence is Carmarthenshire County Council, County Hall, Castle Hill, Carmarthen, SA31 1JP.

¹ Figures from the 2011 census.

- 3.5 The grade prescribed by SI 2010 No 521 for authorisation under the Regulation of Investigatory Powers Act 2000 (RIPA) for directed surveillance and the use of covert human intelligence sources (CHIS) within a Local Authority is *'Director, Head of Service, Service Manager or equivalent'*. There are currently eight authorising officers designated for this Authority (subject to further comment in the 'Policy and Procedures' section of the report below) including the Chief Executive, who would be the authorising officer in respect of confidential information or juvenile CHIS.
- 3.6 Since the last OSC inspection of the Council in April 2013 there have been 13 authorisations conducted for directed surveillance (five in 2013, five in 2014 and three in 2015. There have been no authorisations to date this year). These were in respect of investigations into the underage sale of alcohol, benefit fraud (investigations now undertaken by the Department for Work and Pensions (DWP)) and 'fly tipping'. There have been no authorisations for the use and conduct of a covert human intelligence source (CHIS).

4 Inspection

- 4.1 The purpose of the inspection was to examine policies and procedures relating to the Regulation of Investigatory Powers Act 2000 (RIPA), in respect of directed surveillance and covert human intelligence sources (CHIS).
- 4.2 The inspection programme was agreed with the Council in advance and took the form of an initial meeting with Mr Robert Edgecombe (Legal Services Manager responsible for RIPA oversight / gate-keeping and the Central Record of Authorisations) and Mrs Linda Rees-Jones (Head of Administration and Law / SRO).
- 4.3 I held a focus group meeting with the following staff:
- a) John Gravelle – Revenue Services Manager / authorising officer
 - b) Aled Thomas – Trading Standards Officer / RIPA applicant
 - c) Paul Morris – Environmental Safety Manager / RIPA applicant
 - d) Rober Edgecombe - Legal Services Manager / Gate-keeper

Discussions included RIPA training, test purchase operations, the use of Social Networking Sites (SNS) to obtain intelligence, overt observations, directed surveillance, technical equipment management, 'status drift' issues from human intelligence sources towards that of a CHIS, and covert human intelligence sources (CHIS). A reasonable level of awareness of the legislation and associated processes was evident from those in attendance.

- 4.4 The inspection included examination of the 'Central Record', Policy / Guidance document, training record / material, and a discussion in respect of RIPA training. I examined five authorisations and related documents for directed surveillance, and the processes to obtain 'Judicial Approval'.
- 4.5 Feedback of the outcome of the inspection was given in a discussion with the SRO and RIPA Gate-keeper.

5 Recommendations from the previous inspection

- 5.1 The Council was previously inspected by Mr Andrew Mackian on 16th April 2013. On that occasion there were three recommendations made on which I report the progress to date.
- 5.2 ***Recommendation 1 – Standard Operating Procedure for the covert use of Social Networking Sites to be included within the Council RIPA procedural document. (Paragraph 14)***
- 5.3 A section has been added to the procedural document. Although this is subject to some fine tuning requirements (referred in the ‘Policy and Procedures’ section of the report below) I am satisfied that **the recommendation is discharged.**
- 5.4 ***Recommendation 2 – Retention of the original documentation by the gate-keeper and improved oversight. (Paragraphs 14 and 18 – 20)***
- 5.5 Original documents are still retained by investigators and copies electronically held on the IT system as attachment files to each operation in the same ‘folder’ as the Central Record of Authorisations on the Council’s computer system. This was a conscious decision to reduce the administrative burden. Although I have again raised the issue in respect of centralised management of original documents with the SRO and the position will be reviewed, the Council is compliant with this legislation in respect of documentation held. There has been an improved level of oversight and a process introduced using the Central Record to ensure the prompt submission of reviews and cancellations. I am satisfied that **this recommendation is discharged.**
- 5.6 ***Recommendation 3 – Consideration be given to the introduction of an electronic Central Record.***
- 5.7 The Central Record of Authorisations is now an ExCel spreadsheet retained on the Council’s IT system in a restricted access file. **The recommendation is discharged.**

6 Training

- 6.1 RIPA training has been conducted by external trainers (Act Now) since the last inspection; the last was in February of this year. In addition some internal training has been conducted by the Legal Services Manager. Records are kept of those in attendance. Those officers encountered during the inspection were reasonably confident in relation to the use of the legislation.
- 6.2 The examination of RIPA documentation during the inspection revealed a training need in respect of what should be written on the RIPA forms, in particular ‘painting a pertinent picture’ as to why directed surveillance was required as a tactic, supporting that with a concise intelligence case, and proportionality considerations. There would clearly be a value in the introduction of some sort of practical exercise(s) during the training days, as discussed with the SRO and is advised.
- 6.3 Any opportunities for joint training with other Councils in the area or Dyfed Powys Police should be seized upon. It is important that training continues in order for staff to retain their skills base and appropriate standards can be achieved and maintained.

- 6.4 **Recommendation 1 - RIPA training should continue to be formally delivered by the Council to staff who are likely to engage the legislation to ensure it can be applied to the appropriate standard. Training should include some practically based scenarios in respect of what should be written on the RIPA forms.**

7 **Policies and Procedures**

- 7.1 The 'Central Record' for covert surveillance is in the form of an ExCel spreadsheet maintained by the RIPA 'Gate-keeper / Co-ordinator. The record is fully compliant with paragraph 8.1 of the Code of Practice (Surveillance). The record in addition includes reviews which although not a statutory requirement is a useful management tool. A comments section would also facilitate the collation of oversight critique for analytical purposes over the year and is advised. The entry of relevant data from the Central Record to the 'Performance Information Management System' (PIMS) generates reminders to applicants and the RIPA Gate-keeper / Co-ordinator which has tightened document submission in respect of timeliness. This is considered good practice.
- 7.2 The Council has made no use of CHIS although it is empowered to do so. It is advised that a Central Record in respect of Covert Human Intelligence Sources (CHIS) be established containing the relevant data documented within paragraph 7.1 of the Code of Practice (CHIS) to formally record the Council's position. This could be done on a separate tab of the existing Central Record.
- 7.3 The 'Covert Surveillance Council Procedure' document was last revised in May 2015 and includes the requirements under the provisions of the Protection of Freedoms Act 2012.
- 7.4 The document was examined in detail. The following minor amendments should be made to the document when next revised. It is comprehensive and useful guidance to practitioners.
- a) It would be wise to ensure total clarity of purpose to split the document when next revised into separate sections in respect of 'Covert Surveillance' and 'CHIS'.
 - b) Section three, Paragraph 5 refers to Intrusive Surveillance and quite rightly states that the council can not engage in such activity. It would be prudent in this section to also cover the interference with property which the Council also can not authorise. It may be the case that some degree of trespass may need to take place on land, for example in order to deploy surveillance equipment for use in directed surveillance in relation to 'fly tipping'. In any such case where a trespass is envisaged officers should seek immediate advice from the Legal Services Manager.
 - c) The document should include reference to paragraphs 2.25 and 2.26 of the Code of Practice (Surveillance) in respect of '*core functions*' of the Council and Investigatory Powers Tribunal case *C v The Police and Secretary of State for the Home Office IPT/03/32/H dated 14th November 2006* in relation to employees.
 - d) Section 11 in respect of Social Media and on-line activity should be aligned to Note 288 of the OSC Procedures and Guidance 2014.

- e) The CHIS section should include a caveat that if the use and conduct of a CHIS is being considered, urgent advice should be sought from the Legal Services Manager before any engagement takes place.
- f) The cancellation section should be aligned to Note 109 of the OSC Procedures and Guidance 2014.

7.5 The document, in an Appendix, sets out eight authorising officers (including the Chief Executive) for the Authority. Given the level of engagement the Council has had with the legislation since the last inspection it would be wise for the SRO to review this number and consider a reduction, to ensure that those appointed had exposure to live cases and became proficient in the role.

7.6 Oversight in the form of retrospective quality assurance is conducted by the Gate-Keeper / RIPA Co-ordinator. A 'comments' column on the Central Record to document any issues identified is advised. It is important that issues identified in the oversight process lead to remedial action where required (a full audit trail of all documents should be maintained) and in addition are fed into RIPA training to ensure these matters are corporately addressed and others have the benefit of the learning. As discussed during the inspection, benefit would be derived from the occasional dip sampling of investigations by the Legal Services Manager to ensure no unauthorised covert surveillance is being conducted.

7.7 Elected members are advised of the level of covert activity conducted by the Council and the current Policy and Procedures by way of a quarterly report to the Executive Board Member (Pam Palme) who is the Deputy Leader of the Council. An annual report is also placed before the Executive Board as an 'open document' for discussion if considered necessary.

8 Significant Issues

Directed Surveillance

8.1 Five of the more recent applications / authorisations and related documents were examined in relation to underage sale of alcohol, benefit fraud, and 'fly tipping'.

8.2 Applications were of a reasonable standard however would benefit from more clarity in respect of painting a 'pertinent picture' as to why directed surveillance was being considered as a tactic, which should be supported by an intelligence case. This was particularly relevant to a 'fly tipping' investigation application and another in respect of a 'test purchase' operation involving an underage volunteer where some 15 premises were targeted in relation to the underage sale of alcohol.

8.3 The intelligence case in respect of the 'fly tipping' case was nonexistent. Intelligence in respect of the test purchase operation examined was generic in nature and could not have justified 'proportionality' grounds for directed surveillance from the documentation examined. It is clear that the Council has an obligation to 'check and test' legislative compliance in relation to the sale of alcohol where visits by 'underage test purchase officers' may be conducted where no surveillance equipment is worn, and any positive sale may be considered intelligence for the future and where the shop owner / manager is given advice. Failure to heed the advice or more complaints may result in an 'evidential' test purchase operation. Such an approach may overcome some of the issues being experienced by Council officers in justifying directed surveillance.

- 8.4 Statutory considerations were generally well made but could be improved. As discussed during the inspection, it is wise to include, if reference can be made, that the matter is *a priority issue for the Council* and the public expectation of enforcement activity in relation to such matters i.e. *'there is a pressing social need for intervention and enforcement'*. The balance between the levels of the intrusion into the private lives of those affected by the surveillance against the need for the activity in operational terms was also not documented to the required standard. Less intrusive means tried / considered was generally documented but under 'necessity' rather than 'proportionality'. Attention is drawn to Notes 73 and 74 of the OSC Procedures and Guidance 2014.
- 8.5 Authorisations were appropriately documented although the authorising officer frequently made conditions to the authorisation in respect of where observations should be conducted, for example a car in the road staffed by one officer, and during what times, e.g. between 8am and 9.30am daily. An authorisation is for a three month period. More intensive management can be undertaken by suitably short review dates. On occasions conditions made were tactical, best left to practitioners as these may change due to circumstances on the ground.
- 8.6 It was noted that authorisations frequently excluded basic camera equipment in the text. Although a matter for the authorising officer, investigators should surely attempt to obtain 'best evidence' if covert surveillance is being undertaken to prove or disprove the investigative requirement, hence the justification for it.
- 8.7 Cancellation documentation was generally sufficiently detailed in relation to the extent and outcome of the surveillance activity and what product was obtained. Authorising officers should make direction in respect of the management of that product in the cancellation (Note 109 of the OSC Procedures and Guidance 2014 refers).
- 8.8 It was noted that from the date of authorisation to the obtaining of 'Judicial Approval' could be a period of several weeks. For example, URN 94/15 was authorised on 8th May 2015 and Judicial Approval granted on 21st May. Discussions revealed this to be an issue. This may be a matter the Chief Executive / SRO may wish to take up with Her Majesty's Courts Service as the delay in starting the surveillance may impact on the ongoing proportionality case due to the intelligence being historic before the surveillance actually gets to commence. This issue was discussed with the SRO on conclusion of the inspection.
- 8.9 It was also noted that each application for 'Judicial Approval' was accompanied by a full witness statement from the investigator setting out the detail of, and requirements of the investigation. It was surprising that the statement contained far more detail than the application. This should not be the case. The requirement for a statement is a matter between the Council and the Magistrates' Court, however the statement should not impact on or be part of the RIPA process. An application should be able to stand alone for consideration by the authorising officer.
- 8.10 There is a comprehensive regime in respect of the secure management of technical equipment capable of being used for covert surveillance with appropriate records kept by a designated officer. These records are cross referenced with the URN of the directed surveillance authorisation.

Covert Human Intelligence Sources (CHIS)

- 8.11 No CHIS authorisations have been conducted by the Council. There is an appropriate understanding within the Council of the statutory obligations in respect of roles, management of risk, and documentation required should this be a future consideration.

Social Networking Sites (SNS)

- 8.12 The Trading Standards Department has use of a 'standalone' computer that is not attributable to the Council for use in purchases on line. The department has investigators who have false personas on the 'Facebook' social networking site. These are used to access on line trading sites only in respect of counterfeit goods. There appears to be no issue in respect of unauthorised activity. It is advised that a Central Record of false personas is maintained by the Legal Services Manager and the use of Social Networking Sites by Trading Standards Officers be subject to periodic oversight.

9 CCTV

- 9.1 The Council has overt CCTV with monitoring facilities at three Dyfed Powys police stations. Last summer, funding was withdrawn by the Police and Crime Commissioner (PCC) and these are no longer monitored. They remain in fixed positions and live. The police cannot operate the cameras, although can arrange to view historic product should there be an operational requirement to do so. The matter will be subject to review after the PCC elections in May.

10 Good Practice Identified

- 10.1 The use of the PIMS IT system to generate reminders in respect of critical dates (Paragraph 7.1 refers).

11 Observations

- 11.1 Like many other councils, Carmarthenshire County Council has adopted a problem solving approach to investigations and some previously undertaken, now rest with the DWP. As a consequence little recent use of this legislation has been made. The Council's responsibilities under the legislation are however taken seriously and there are systems and processes in place to use it effectively.
- 11.2 Training has been conducted and it is appreciated that staff likely to use the legislation require periodic training. The importance of thorough and clear documentation when the legislation is used is key to ensure the process is not vulnerable to legal challenge if used in proceedings. This is a matter that should be considered ongoing professional development for the practitioners concerned.
- 11.3 Some good work has been undertaken since the last inspection to increase RIPA awareness and tighten processes. The increase in compliance standards since the last OSC inspection, in particular regarding the timeliness of reviews and cancellations, is formally acknowledged.

11.4 I would like to thank the staff from Carmarthenshire County Council for their participation and positive approach to this inspection process, in particular Mr Robert Edgecombe who facilitated it.

12 Recommendations

12.1 Recommendation 1 - RIPA training should continue to be formally delivered by the Council to staff who are likely to engage the legislation to ensure it can be applied to the appropriate standard. Training should include some practically based scenarios in respect of what should be written on the RIPA forms (Paragraphs 6.1 – 6.4, 8.2 – 8.7 refer).



Surveillance Inspector