



Little Brother?

Getting the balance right on surveillance powers

Nick Hope and James Hulme



New Local Government Network (NLGN) is an independent think tank that seeks to transform public services, revitalise local political leadership and empower local communities. NLGN is publishing this report as part of its programme of research and innovative policy projects, which we hope will be of use to policy makers and practitioners. The views expressed are however those of the authors and not necessarily those of NLGN.

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Executive Summary

Where are the boundaries between the state and the citizen when it comes to surveillance and law enforcement monitoring? Striking the right balance between the privacy of individuals and protecting the public has seemed difficult to achieve, provoking a highly emotive debate.

In this report, we encourage councils and government to adopt a new approach that will better ensure the responsible and proportionate use of ‘directed surveillance’ powers by local authorities.¹ We believe that the views of citizens must lie at the heart of any judgement about what is appropriate. Working with PSB,² an independent market research company, we surveyed public opinion on the use of surveillance powers.

The key findings of our survey are:

- Over 80% of people said they were favourable to the use of directed surveillance in their local area.
- People trust local government more than central government to decide when to use directed surveillance powers.
- There is significant support for councils to be allowed the freedom to decide how and when to use surveillance powers, with 61% saying that local councils should have flexibility over the decision locally, rather than central government deciding nationally.
- The more concerned people are with an issue, the more likely they are to think it is very appropriate for a council to use surveillance as a means of

¹ Throughout this paper we refer to directed surveillance which we defined to our survey respondents as “surveillance that is set up only when a specific problem is identified and needs to be monitored”.

² The survey research was conducted by Penn, Schoen & Berland Associates (PSB). Penn, Schoen & Berland Associates, a unit of the WPP group (NASDAQ = WPPGY) is a global research-based consultancy that specializes in messaging and communications strategy for blue-chip political, corporate and entertainment clients. They have over 30 years of experience in leveraging unique insights about consumer opinion to provide clients with a competitive advantage - what we call Winning Knowledge™. PSB executes polling and message testing services for Fortune 100 corporations and has helped elect more than 30 presidents and prime ministers around the world. More information is available at www.psbresearch.com.

dealing with that problem. Therefore, how appropriate it is for a council to use surveillance on a specific issue will vary depending on how big an issue it is locally.

The survey also finds that:

- Over half of those surveyed think that it is appropriate for local councils to use surveillance powers to tackle major issues, such as drug-dealing, anti-social behaviour and benefit fraud, but only a small minority believe they should be used to address more minor offences, such as putting rubbish bins out on the wrong day or breaking school catchment rules.
- Councils should also appoint a designated member of staff with responsibility for coordinating a surveillance strategy in discussion with local police and the wider community.
- Councils must retain the flexibility to use surveillance powers on areas of high priority to local people.
- 61% of the public would be more favourable towards the use of directed surveillance by their council if a local police officer was designated to monitor council surveillance operations.
- Respondents also say that actions around increasing openness and releasing information on the use of directed surveillance would make them more favourable towards its use by their local council.

Based on these findings, NLGN make the following recommendations:

- In general, councils should be encouraged to only use surveillance powers if they relate to areas where potentially a criminal act is taking place or a public service is being defrauded. Councils should resist using the powers for civil misdemeanours unless there is a particularly strong groundswell of support from the local community to do so.
- Councils should appoint a named senior local police representative to work with them in devising which surveillance powers should be used, based on the priorities of local people.
- Local residents should be able to trigger a review of the use of surveillance by councils on a particular issue through a petition.

- We encourage councils to hold regular, open public meetings with local residents and police representatives to discuss the proportional use of surveillance powers and areas in which local citizens would like them to focus their attention.
- Media coverage about use of surveillance risks creating hysteria around the issue and often fails to reflect the importance of surveillance in tackling crime and anti-social behaviour. We urge the Press Complaints Commission to write to all editors of national and regional newspapers asking for them to act responsibly in reporting such stories.

1 Introduction

Over the past year, certain elements of the media have focussed heavily on the issue of the use of surveillance powers by both local and central Government. The debate has centred upon the extent to which the state should be allowed to use surveillance techniques to combat illegal and anti-social behaviour and the abuse of public services. Whilst some in the media have caricatured these actions as “snooping” and “Big Brother tactics”, this debate requires a measured approach to ensure a balance is achieved between protecting the privacy of citizens and ensuring that those who abuse the system are held to account.

The issue has become fiercely political, with attacks on Government spilling into conspiracy theories of a “growing surveillance state” and inflammatory attacks of “councils’ snooping powers”. The Local Government Association has been more measured in its tone by recently writing to all local authorities in England and Wales, arguing that “powers should only be used when necessary and proportionate to prevent and detect a criminal offence”.³

The ongoing debate has led the Home Secretary to announce that a Government consultation will be launched on proposals to amend the Regulation of Investigatory Powers Act (RIPA) which regulates the powers councils currently use.⁴ In this paper we have polled and analysed public opinion on the issue and subsequently drawn up proposals for how local and central Government should go about engaging with this sensitive issue. We hope this report will be a timely and insightful contribution to the debate about the use of surveillance powers by councils.

The aim of this paper is to examine:

- Public attitudes to the use of surveillance powers, particularly by local authorities.
- What use of powers would normally constitute proportionate use of the powers?

³ LGA (2008), ‘Review Urged on RIPA Surveillance Powers’, <http://www.lga.gov.uk/lga/core/page.do?pageId=740231>

⁴ Home Office (2008), ‘Home Secretary’s speech: Protecting rights, protecting society’, <http://press.homeoffice.gov.uk/Speeches/home-sec-protecting-rights>

- To what extent local authorities should be allowed flexibility to vary the use of surveillance powers across localities?
- How the RIPA provides a regulatory framework for the use of investigatory powers.
- Who should decide which powers are used and to what extent should the public be consulted on any decision?

NLGN and PSB conducted 300 interviews with a representative sample of the UK general public for this report. Fieldwork was conducted between the 24th of December, 2008 and the 2nd of January 2009.

2 *'March of the dustbin Stasi' and other media stories*

In the past year, many media outlets have created a storm over councils supposedly 'snooping' and 'spying' on their citizens. The following headlines are good examples:

'March of the dustbin Stasi: Half of councils use anti-terror laws to watch people putting rubbish out on the wrong day', Daily Mail, 1st November 2008⁵

'Spy law 'used in dog fouling war'', BBC News, 27th April 2008⁶

Many media stories have focused on isolated examples of councils using surveillance powers in unscrupulous or underhand ways. For example, Mid Sussex District Council was lambasted in June 2008 after admitting that it monitored the rubbish of household bins to examine how much non-recycled waste was being thrown away, while Cambridgeshire Council was accused of employing staff to monitor local paperboys to ensure that they were employed with the right permits . ⁷

Such high profile cases have meant that the issue has quickly moved up the national political agenda. The Conservative Shadow Home Secretary, Dominic Grieve, said that surveillance powers were being used to “snoop on the lives of ordinary people in everyday circumstances”. ⁸

In his Annual Conference Speech, Liberal Democratic Leader Nick Clegg, said “Parents snooped on by council officials checking up on where children spend the night. They're even putting tracking chips in our bins. And for what?... They have taken our liberty from us and given us nothing in return”. ⁹

⁵ Borland, S. Slack, J. (2008) March of the dustbin Stasi: Half of councils use anti-terror laws to watch people putting rubbish out on the wrong day, Daily Mail, <http://www.dailymail.co.uk/news/article-1082225/March-dustbin-Stasi-Half-councils-use-anti-terror-laws-watch-people-putting-rubbish-wrong-day.html?ITO=1490>

⁶ Story from the BBC News (2008), Spy law 'used in dog fouling war', <http://news.bbc.co.uk/1/hi/uk/7369543.stm>

⁷ Fernandez, C. (2008), 'Bin bureaucrats' secretly taking families' wheelie-bins to sift and weigh the food they throw out, Daily Mail, <http://www.dailymail.co.uk/news/article-1025508/Bin-bureaucrats-secretly-taking-families-wheelie-bins-sift-weigh-food-throw-out.html>

⁸ Travis, A. (2008), 'Snooper's charter' to check texts and emails, The Guardian, <http://www.guardian.co.uk/uk/2008/aug/13/privacy.civilliberties>

⁹ Story from the BBC News, (2008), Nick Clegg's Speech in Full, http://news.bbc.co.uk/1/hi/uk_politics/7621045.stm

Worryingly for local councils, such sensationalist media stories and critical statements by politicians may serve to undermine public support for the use of any kind of surveillance powers by councils and risk damaging the wider reputation of local government as a whole. The publicity generated may help inform citizens of particular extreme uses of surveillance powers by councils, but they may also lead to a distortion of the debate and cause unnecessary alarm amongst the public. The characterisation of local democratic institutions as inherently intent on purposelessly prying into the personal lives of its residents is unfair and serves to fuel prejudices about councils.

By creating such hysteria around specific cases of the use of surveillance powers there is a real danger of undermining the use of surveillance by councils in general. We believe local authorities have an obligation to use the powers if they can be used effectively to combat the abuse of the public purse, such as benefit fraud, or to gather evidence against illegal acts such as fly-tipping. New technology can help to produce more effective law enforcement; in the same manner that DNA technology has helped to solve more crimes. Therefore we urge caution over any kind of debate that undermines council's ability to use surveillance powers in cases where it could help to reduce offences and lawlessness. The issue therefore is one of proportionality and ensuring that powers used are seen as legitimate and effective by the wider public.

3 *The not-so-grim RIPA?*

The debate about the use of directed surveillance by councils is frequently distorted by the misrepresentation of the Regulation of Investigatory Powers Act (RIPA) as anti-terror legislation. The RIPA was introduced in 2000 in order to provide a regulatory framework around a number of investigatory powers. The Act ensures that these powers are compatible with the 1998 European Convention on Human Rights (Article 8) and also requires considered authorisation as to the necessity of employing covert techniques .¹⁰

Prior to the RIPA, the use of directed surveillance had been patchily regulated through other laws such as the 1985 Interception of Communications Act. It regulated forms of surveillance that had until then been completely outside statutory control. With the increase in communication technologies from the 1980s onwards, the RIPA recognised the need for a comprehensive framework concerning surveillance and it “has now replaced all previous legislation as the primary legislation regulating interceptions.”¹¹

Rather than *giving* councils surveillance powers, the RIPA *regulates* the use of surveillance. As the Home Office stated to the Home Affairs Committee:

“Conduct [under the Act] may be undertaken only when necessary for a legitimate aim and proportionate to that aim and is subject to strict independent oversight...”¹²

In addition to this principle of proportionality, the RIPA has a number of safeguards against violations of privacy, where “it strictly limits the people who can lawfully use covert techniques, the purposes for and conditions in which they can be used and how the material obtained must be handled [and] it reserves the more intrusive techniques for intelligence and law enforcement agencies acting against only the most serious crimes”.¹³ A

¹⁰ Home Office (2009), About RIPA, <http://security.homeoffice.gov.uk/ripa/about-ripa/>

¹¹ Crossman, G., et al (2007), *Overlooked: Surveillance and Personal Privacy in Britain*, Liberty and the Nuffield Foundation

¹² House of Commons Home Affairs Committee (2008), pp93-4, *A Surveillance Society?*, House of Commons.

¹³ Home Office (2009), About RIPA, <http://security.homeoffice.gov.uk/ripa/about-ripa/>

further check exists in the form of an independent tribunal which hears complaints regarding improper use of the RIPA.¹⁴

The use of surveillance under RIPA by councils has been misrepresented in the media as giving local authorities intrusive means of investigation for trivial matters. In reality “local authorities are able to use a far more restricted range of investigatory techniques than intelligence and law enforcement agencies. They are limited to using the least intrusive types of communications data”.¹⁵

The 2007 Report of the Interception of Communications Commissioner states that of the 474 Local Authorities empowered to obtain communications data, “only 122 made use of their powers... [where they] are restricted to acquiring communications data for the purpose of detecting and preventing crime and mostly this involves the investigation of offences by the Trading Standards Service, Environmental Control and Housing Benefits Departments.”¹⁶

In the Annual Report of the Chief Surveillance Commissioner 2007-8, Sir Christopher Rose stated that the evidence suggests that covert surveillance tends to be used as a last resort by councils, but highlighted the better judgement of authorising officers regarding proportionality. Importantly, as the report notes, local authorities “do not have the power to grant authorisations for property interference or intrusive surveillance”.¹⁷

Applications of RIPA legislation

It is useful to provide some context to the debate about what is a proportionate use of surveillance powers by councils by looking at some examples of how they are being used in practice. In doing so we do not seek to make any judgements or claims about the examples cited, but hope that this detail provides some insight into why and how some councils are currently using them.

¹⁴ Ibid

¹⁵ Home Office (2009), Misconceptions of RIPA, <http://security.homeoffice.gov.uk/ripa/about-ripa/RIPA-misconceptions/>

¹⁶ Kennedy, P. (2008), Report of the Interception of Communications Commissioner, House of Commons

¹⁷ Ibid

Trading Standards and Consumer Protection

It is worth noting that in a Press Association news agency survey carried out in April 2008, 70% of those that responded stated that they had used it for investigations into trading standards and consumer protection.¹⁸ This helps to indicate a fact missing from much of the reporting on this issue; that trading standards and consumer protection are the main use of powers regulated by the RIPA.

Durham Council

Durham County Council was found in the Press Association survey to be the most prolific user of powers regulated by the RIPA, having used the powers 144 times in the previous 12 months. This consisted of 131 authorisations of physical surveillance and 13 requests for communications data.¹⁹ The news coverage did not mention that they were all in regard to trading standards and consumer protection, either dealing with sales of age restricted products, or sales of counterfeit goods. These are criminal offences which the council has an obligation to deal with, and to do this, they need evidence that will stand up in court.

The council's actions have included monitoring car boot sales and sending children with secret equipment into shops to see if they could buy cigarettes and alcohol.²⁰ These may be regarded by some as disproportionate, but others regard them as in line with the council's duty to stop criminal activity and to protect local citizens. In a press release, in response to some of the negative publicity attacking the use of these powers, Durham Council stated that:

*"The fact that we have used them (the RIPA powers) more than others suggests that we take our role in protecting children and tackling rogue traders and rip-off merchants seriously. That should be reassuring to parents and consumers in county Durham"*²¹

¹⁸ Press Association (2008) 'Review urged as councils track citizens'

¹⁹ Ibid

²⁰ Hastings, C. (2008), Anti-terrorism Laws used to Spy on Noisy Children, The Telegraph, available for download from: <http://www.telegraph.co.uk/news/uknews/2696031/Anti-terrorism-laws-used-to-spy-on-noisy-children.html>

²¹ Durham County Council, (2008), 'Terror Laws' Publicity Masked Council's Protective Motives, <http://www.durham.gov.uk/durhamcc/pressrel.nsf/Web+Releases/300C371F85BEF84F80257442003E7FB7?OpenDocument>

Other examples of councils using powers regulated under the RIPA include Lewisham, who have been reported to use their powers to investigate a rogue removal firm and a rogue pharmacy,²² and Bromley, who requested billing information about fraudulent traders targeting elderly consumers.²³

Benefit Fraud

Another common use of the powers regulated by the RIPA are in the investigation of fraudulent benefit claims. According to the LGA the amount of money defrauded fell from £500m in 2002 to £180m in 2007, with 5,727 people prosecuted last year, and the increase is attributed to use of RIPA powers.²⁴ 17 of the 46 councils (of which 16 did not use the RIPA) surveyed by the Press Association stated that they had used surveillance to investigate benefit fraud.²⁵

Kensington and Chelsea Council

Kensington and Chelsea Council, for example, have investigated the misuse of a disabled parking badge.²⁶ This has been condemned by some sections of the press as not necessary or proportionate, however, it is worth looking more closely at Kensington's understanding of the matter. Investigations into fraudulent use of disabled parking are investigated by the Corporate Investigations Group, and seen in the same light as benefit fraud²⁷. Disabled parking is regarded by the council as particularly important because it is a limited resource, and therefore a fraudster is taking something away from someone in genuine need.²⁸

Whether this particular use of powers is proportionate or not, it is important to acknowledge that the other side of this team's work is dedicated towards identifying cases of serious benefit fraud, for which powers regulated by the RIPA have been a key resource. For example, they have been used by the

²² Glendinning, L. (2008), Councils admit using information laws to monitor residents, *The Guardian*, <http://www.guardian.co.uk/politics/2008/jun/05/freedomofinformation>

²³ Story from Manchester Evening News, (2008), How Councils use surveillance, http://www.manchestereveningnews.co.uk/news/s/1047176_how_councils_use_surveillance

²⁴ Story from the LGA, LGA: 'Don't Fear the RIPA', <http://www.lga.gov.uk/lga/core/page.do?pageId=1080950>

²⁵ Press Association (2008) Review urged as councils track citizens

²⁶ BBC News, (2008), Councils warned over spying laws, <http://news.bbc.co.uk/1/hi/uk/7468430.stm>

²⁷ Royal Borough of Kensington and Chelsea (2008), Uncovering fraud, <http://www.rbkc.gov.uk/RBKCDirect/rdbehaviour/asb0809.asp>

²⁸ Ibid

council to prosecute a couple who fraudulently claimed £27,000 in housing and council tax,²⁹ a man who had falsely claimed incapacity benefit, housing benefit, council tax benefits and disability living allowance in order to receive £33,000, and a woman who had used false passports to claim £63,000 in housing benefit, income support, incapacity benefit and disability living allowance from addresses in Kensington and Chelsea, Hammersmith and Fulham, Hounslow and Bexley.³⁰

Dog Fouling

One example most frequently cited in the press of the misuse of powers regulated by the RIPA has been in relation to dog fouling. Often presented as symbolic of the disproportionate use of the legislation, it is seen, in Shami Chakrabarti's words as 'using a sledgehammer to crack a nut'.³¹ A number of councils have been named in relation to this use of the legislation, including: Derby City Council, Bolton, Gateshead, Hartlepool, Wyre Council, Northampton, Gosport Borough Council.³²

Wyre Council

Newspapers reported that Wyre Council used plainclothes investigators to pose as dog walkers using hidden cameras to monitor dog walkers in parks. In response, Wyre's neighbourhood services enforcement officer, Michael Pike, said: "Dog fouling is a big concern. Because it doesn't tend to happen when uniformed officers are around, we need to be in plain clothes".³³ Jim Corey, the Chief Executive, added that dog fouling is at the top of people's priorities in the area, stating that: "Dog fouling is at the top of their list in terms of issues they want the council to be tackling on the ground, so I know the public are only too pleased to see us catching people".³⁴

²⁹ LGA (2008) LGA: 'Don't Fear the RIPA', <http://www.lga.gov.uk/lga/core/page.do?pagelId=1080950>

³⁰ Royal Borough of Kensington and Chelsea (2008), Uncovering fraud, <http://www.rbkc.gov.uk/RBKCDirect/rdbbehaviour/asb0809.asp>

³¹ BBC News, (2008), Spy law 'used in dog fouling war', <http://news.bbc.co.uk/1/hi/uk/7369543.stm>

³² Press Association (2008) 'Review urged as councils track citizens'

³³ Lancashire Evening Post (2008) <http://www.lep.co.uk/environmental/Dirty-dog-walkers-caught-by-4015449.jp>

³⁴ BBC News, (2008), Councils warned over spying laws, <http://news.bbc.co.uk/1/hi/uk/7468430.stm>

Environmental Health

Some environmental health departments have used RIPA to investigate crimes involving waste such as fly-tipping and offences related to domestic waste. In the Press Association survey, 9 of 46 councils had used them in relation to fly tipping.³⁵ Both politicians and the press have expressed concern about the use of powers to these offences as a justification for surveillance. The Home Secretary recently argued that ‘trapping fly tippers who dump tonnes of rubbish on an industrial scale across the countryside’ was a legitimate use of council powers regulated by the RIPA.³⁶

Bolton Council

Bolton Council replied to the Press Association survey stating that it had authorised 124 directed surveillance operations over the past 12 months in everything from benefit fraud to dog-fouling, and has been widely cited to spy on litter louts. However, missing from the news coverage was the fact that the council was able to successfully secure an ASBO against a prolific fly-tipper. Bolton spends around £1.25 million per year dealing with fly-tipping, so it is not a trivial matter in this area. After finding a fly-tip in a Sainsburys recycling site, the council traced the rubbish to a shop in Farnworth which had used the services of a ‘man with a van’. A microchip was placed in bags due to be collected from the shop, and this allowed council officers who were working in conjunction with the police to witness the man unloading 15 rubbish bags.³⁷

Anti-Social Behaviour

In the Press Association survey, 15 councils stated that they had used RIPA to counteract anti-social behaviour.³⁸ Much of this consists of monitoring noise levels through video or audio surveillance in response to complaints by residents, sparking headlines such as ‘anti-terrorism laws used to spy on noisy children’.³⁹

³⁵ Press Association (2008) ‘Review urged as councils track citizens’

³⁶ Home Office, (2008), Home Secretary’s Speech: Protecting Rights, Protecting Society, <http://press.homeoffice.gov.uk/Speeches/home-sec-protecting-rights>

³⁷ Bolton Council (2008), Court Action Warning for Fly Tippers, http://www.bolton.gov.uk/portal/page?_pageid=147,1026119&_dad=portal92&_schema=PORTAL92

³⁸ Press Association (2008) Review urged as councils track citizens

³⁹ Hastings, C. (2008), Anti-terrorism Laws used to Spy on Noisy Children, The Telegraph, <http://www.telegraph.co.uk/news/uknews/2696031/Anti-terrorism-laws-used-to-spy-on-noisy-children.html>

Newcastle City Council

Newcastle City Council are reported to have authorised 123 investigations in the past 12 months in relation to anti-social behaviour or breaches of tenancy conditions.⁴⁰ 32 of the 123 authorisations were given to record noise through Digital Audio Tape recorders, but this should be put into the context of the council receiving about 8,000 noise complaints per year.⁴¹

⁴⁰ Press Association (2008) 'Review urged as councils track citizens'

⁴¹ The Times, (2008), Big Brother Only Wants to Help You, available for download from: <http://www.timesonline.co.uk/tol/news/uk/crime/article5200949.ece>

4 A 'surveillance society'?

Surveillance has been a topic covered by Select Committees in both the House of Commons and House of Lords in the past year. In 2005 the Surveillance Studies Network ⁴² published a report for the Information Commissioner terming the UK a 'Surveillance Society'.⁴³ Following this, the House of Commons Home Affairs Select Committee launched an inquiry and published their findings in 'A Surveillance Society?' in June 2008. The House of Lords Constitution Committee has also recently published the results of its inquiry into surveillance powers and recommended that there should be a public consultation on the levels of authorisation required for different surveillance activities.⁴⁴

The Constitution Committee's report is unequivocally hostile towards the use of surveillance powers in general, claiming that "ever increasing use of surveillance and data collection risks undermining fundamental freedoms" and questioning whether local authorities are the appropriate body to utilise these powers. In our view, its hostility to all forms of surveillance represents a regrettable lack of insight into how technology can and does help to prevent offences and prosecute criminals. It also lacks any insight into the distinction between different forms of surveillance and shows a lack of understanding about the democratic legitimacy of local authorities and their mandate to protect their own citizens.

The Constitution Committee's recommendations are fundamentally anti-devolutionary as they would see powers currently held by elected local authorities centralised and given to a new unelected Information Commissioner. Such a move would take decision making power away from local people. Whilst we recognise that a new framework to deciding whether to use surveillance powers is required, we believe a new partnership between councils, the police and local citizens should be at the heart of any future approach.

⁴² Surveillance Studies Network is a non-profit organisation dedicated to the study of surveillance in all its forms, and the free distribution of scholarly information.

⁴³ Ball, K. et al (2006), A Report on the Surveillance Society, Surveillance Studies Network

⁴⁴ House of Commons Home Affairs Committee, (2008), A Surveillance Society?, Fifth Report of Session 2007–08

The Home Affairs Committee heard evidence from Tony McNulty MP, then Minister of State for Security, Counter-terrorism, Crime and Policing, in which he argued that the media had purposely conflated the powers of interception of communications and those of access to communications data, which were of a very different degree. The Home Affairs Committee report argued that access to communications data was actually a significant intrusion of privacy. It recommended that the Home Office should both raise awareness of why this data was collected, and to produce a statement each time a new public body was given access to this data. They also recommended that there should be a public consultation on the levels of authorisation required for different surveillance activities.⁴⁵

In the Government response to the Home Affairs Committee report in July 2008, the government agreed that better guidance on issues such as proportionality should be given to local authorities, and that public awareness should be raised about surveillance. However, their strongest announcement was that secondary legislation was being developed which would review those public authorities with access to powers and the purposes for which they may use these powers.⁴⁶

In a speech in December 2008 the Home Secretary, Jacqui Smith MP, reiterated this commitment and highlighted the need for reform.⁴⁷ She stated unequivocally that these powers should not be used 'to target people for putting their bins out on the wrong day, for dog fouling offences, or to check whether paper boys are carrying sacks that are too heavy'.⁴⁸ The Home Secretary also laid out the specific revisions that would be announced reviewing which public authorities can use the powers and how their use is authorised and hinted at reinforcing public confidence through putting authorisation at the level of a senior executive, subject to oversight from elected councillors.

We believe that any changes that are made must be informed by the views of the public. There is however little empirical data on the public attitudes towards the use of surveillance powers by councils. In conjunction with PSB, an independent market research company, NLGN has set out to survey attitudes and opinions on this issue.

⁴⁵ House of Lords (2008), *Surveillance: Citizens and the State*, 2nd Report of Session 2008-2009

⁴⁶ Government reply to report from the home affairs committee A Surveillance Society?; July 2008

⁴⁷ Home Office (2008), 'Home Secretary's speech: Protecting rights, protecting society', <http://press.homeoffice.gov.uk/Speeches/home-sec-protecting-rights>

⁴⁸ *ibid*

5 *What do the public think?*

In our research we aimed to establish how the general public felt about surveillance, what they believed it was appropriate for and which authorities they had confidence in carrying it out. We surveyed 300 UK residents, representative by gender, age, social class and region.

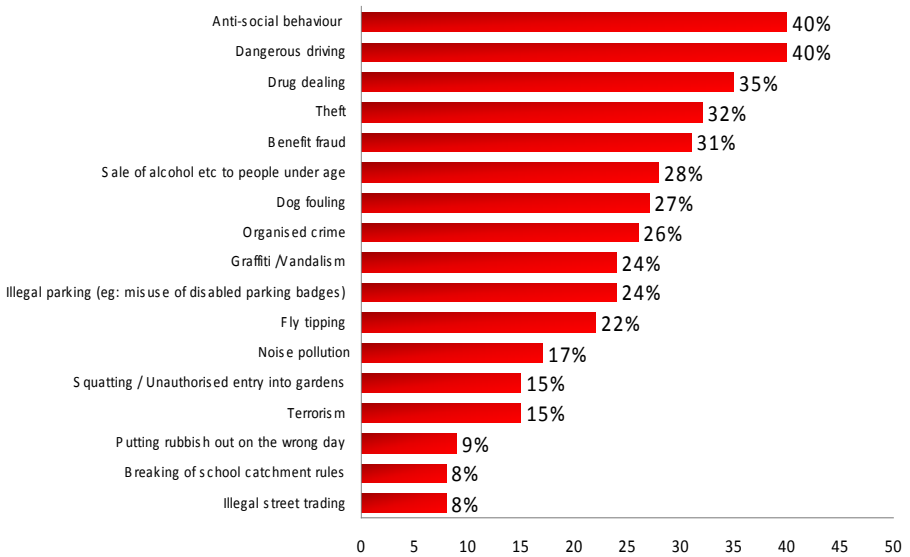
Feelings about Surveillance

The survey established a key finding not necessarily apparent from media coverage of the issue:

- 61% of respondents said that directed surveillance makes them feel safer in their day to day life and 83% were favourable to it being used in their local area.
- The research found that local councils were trusted more than central government to administer surveillance powers responsibly and to decide where and when the powers are used. Those surveyed also indicated that they would be more favourable to, and trusting of, councils use of directed surveillance if they were more transparent about the issue.
- There was also considerable support for a greater involvement of the local police force, in conjunction with the council, in deciding which surveillance powers should be used.

Which issues do the public care about?

In the survey, participants were asked to rate how concerned they were about a number of issues around illegal or anti-social behaviour in their area. The issues of top concern were anti-social behaviour, dangerous driving and drug dealing. Theft, benefit fraud and the sale of prohibited goods to minors were also issues that over 1 in 4 people were very concerned with.



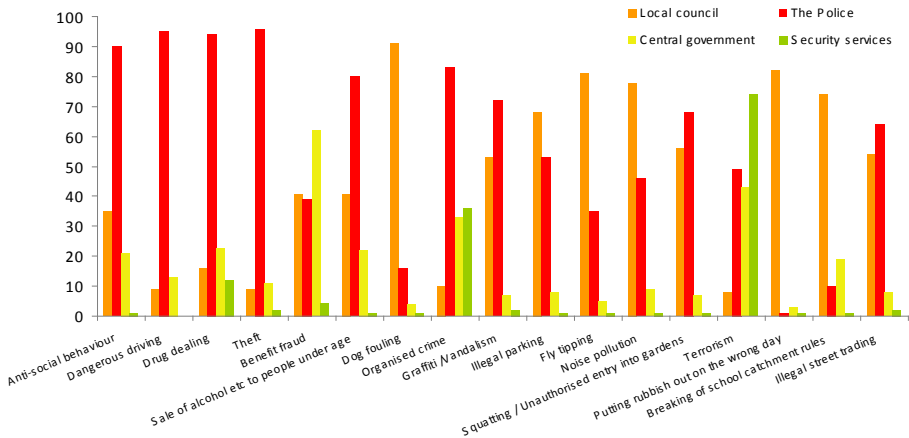
Q23-40: How concerned are you about the following issues in your local area ? (Very concerned)

Interestingly, the results indicate that a relatively low-level crime such as graffiti (24%) is rated as a higher concern than terrorism (15%), perhaps reflecting that the latter is seen as an issue of national rather than local concern.

The results also show little concern for arguably less serious misdemeanours such as putting rubbish out in the wrong day (9%) or breaking of school catchment rules (8%). The figures would therefore seem to corroborate the tabloid outrage at using surveillance powers to counter these 'minor offences'

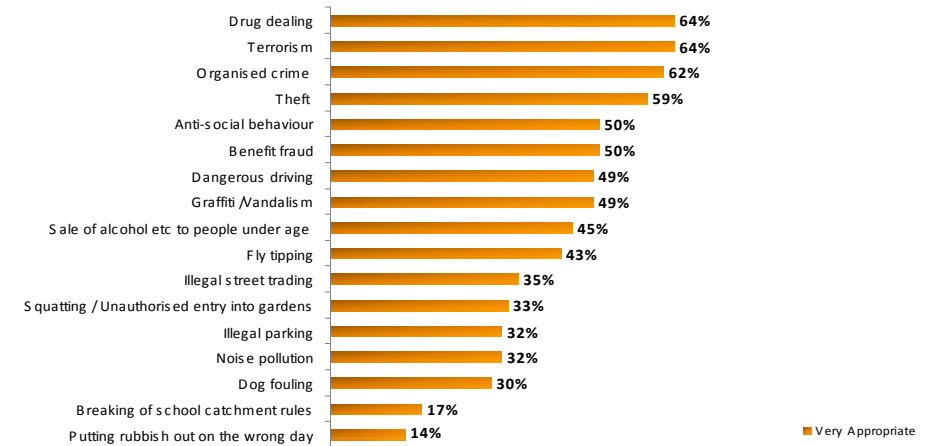
Who do the public think should have responsibility for tackling these offences?

The research looked at which public bodies should have responsibility for tackling these offences. The results show strong support for police having responsibility for dealing with major offences, particularly those which were of the greatest concern amongst those interviewed.



Q42-58: Which public body, or bodies, do you think should be responsible for dealing with the following issues in your local area? (Ranked by Very Concerned)

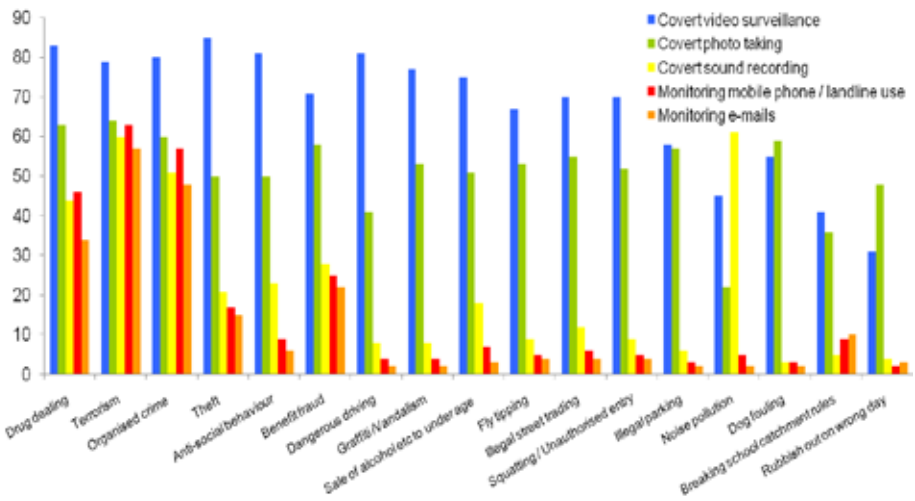
However, the results also show that local councils are seen to have some responsibility over key issues such as tackling anti-social behaviour, benefit fraud, graffiti and vandalism. This suggests that there is significant scope for councils and police forces/security services to work more closely together on these issues where they share overall resistibility for tackling the problem.



Q77-93: Please indicate how appropriate it would be for a local council to use directed surveillance as a means of dealing with the following issues

The public's appetite for local authorities to have a greater role in tackling significant offences is again mirrored when asked to rate the appropriateness of councils using directed surveillance to counter certain issues. The results show significant support for councils using some directed surveillance to counter serious offences relating to drug dealing, terrorism and organised crime, whilst those interviewed showed little support for taking similar action against breaking school catchment rules and putting a rubbish bin out on the wrong day.

These views would again seemingly endorse media 'outrage' at the over-zealous use of surveillance powers over spurious issues. However, it also shows that the public see a clear role for local authorities in tackling more serious offences, many of which are seen as of major concern to localities.



Q94-110: Please indicate which of the following possible directed surveillance methods your local council would be justified in using as a means of dealing with the following issues (Ranked by appropriate for local council to use surveillance)

We asked which direct surveillance methods a local council would be justified in using. Many cases reported in the media of council use of surveillance concentrate on – often luridly reported – stories of ‘snooping’ and using

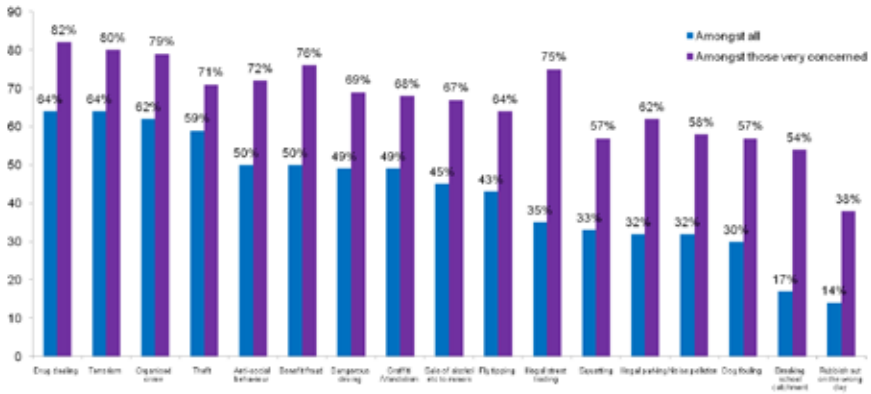
underhand tactics. The visual metaphor of council officials secretly filming from behind a bush is often used. We wanted to gauge therefore whether there is a differentiation in public opinion towards the different methods of surveillance a council could employ.

The results show strong, majority support for councils being able to use video or photographic recordings to monitor most offences listed, with particularly strong support for taking action against drug dealing, theft and dangerous driving. However, there is much less support for councils using methods more closely associated with the security services, such as phone tapping or having access to personal e-mails.

These results might reflect the fact that the public are in general used to being recorded on CCTV or speed cameras in the public realm, but regard the intrusion of personal phone calls or e-mails as far more intrusive. They do show however that councils need to be vigilant when choosing which type of surveillance to use in order not to alienate the local population.

How does level of concern effect favourability towards local council's use of surveillance?

Our survey shows that if an issue is of high concern to residents in a particular area, they are more likely to think that it is appropriate for their local council to use directed surveillance to tackle that problem. For example, three quarters of those very concerned about illegal street trading feel that it is appropriate for local authorities to deal with the problem using directed surveillance, compared to just over a third of the general public. We believe that this means that councils must retain the flexibility to use surveillance powers to tackle issues of high priority to local people when they feel it is appropriate for them to do so.



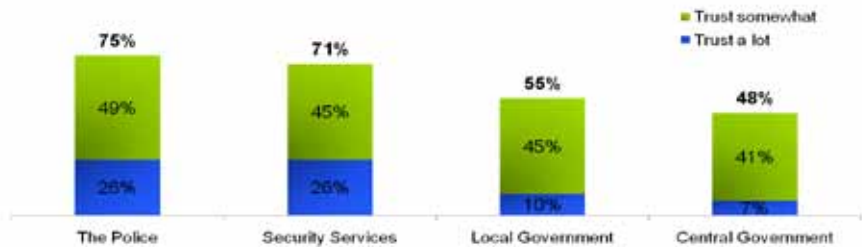
77-93: Please indicate how appropriate it would be for a local council to use directed surveillance as a means of dealing with the following issues (all those who answered Very Appropriate)

Take for example the issue of dog fouling. Our data suggests that the majority of those very concerned about dog fouling feel that it is appropriate for local authorities to deal with the problem, compared to under a third of the whole study population. Local authorities receive around 70,000 complaints about, and spend £22m a year on, dog fouling and elected representatives reportedly receive more letters about dog fouling than anything else. ⁴⁹ If dog fouling is a particular concern to residents in a particular locality and they feel use of surveillance by the council to tackle the problem is appropriate, it would seem inappropriate for central government to deny the local council the ability to act behalf of their citizens.

⁴⁹ The Guardian (2009), 'The Mess We're In', <http://www.guardian.co.uk/environment/2009/feb/12/waste-environment-society-dog-owners>

6 *Who do the public trust?*

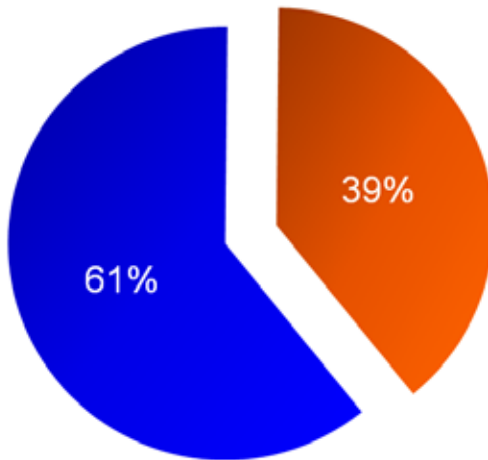
Our polling suggests that there is considerable public support for local authorities using certain types of surveillance technology to tackle some offences. We asked respondents who they trusted most to make decisions about when and how to use surveillance powers.



O65-68: How much do you trust the following public bodies to use directed surveillance responsibly?

These results may be seen as an endorsement of local authorities over central government, but they should also be seen as a caution. Whilst a majority, 55%, trust local government to use directed surveillance, a considerably greater number trust the security services and the police to use such powers responsibly.

Whilst local government is trusted more than central government, there is an obvious legitimacy 'gap' between councils and the police. This could be because people put more trust in the police to use surveillance as it is a key part of their job, something that the RIPA regulations reflect. RIPA legislation works on this assumption, using a system of authorisations to reserve the most intrusive powers to the police and the security services. This again shows the need for some form of collaboration between local police forces and local authorities, combining each other's authority and expertise to create a framework for using surveillance appropriately and proportionately, whilst ensuring the highest levels of public trust and support.



- I think that local councils should be allowed to decide how and when to use surveillance in their local area so that they can effectively address local issues
- I think central government should decide how and when local councils can use directed surveillance so that it is applied in the same way across the country

This view was endorsed by our survey when participants were asked who should have the primary responsibility for decisions about directed surveillance. Again the results are encouraging for local authorities, with those polled preferring local councillors or council Chief Executives to have responsibility over Members of Parliament or central government officials. However, again there was greatest support for police representatives to have control.

To address this lack of trust in local government, councils can work more closely with local residents and the police. The public do see a role for councils in using surveillance to tackle specific offences, but that they don't really trust them to be the sole arbiter of the process as a whole.

In order for local government to deal with this issue, we need to explore the causes of this lack of trust and look at what changes to the process would make people more comfortable. When asked directly what would make them more favourable, predictably, police representatives came out on top:



Q113: Which, if any, of the following actions could your local council take in order to make you more favourable towards your local council's use of directed surveillance?

The high level of public trust in the police is perhaps not surprising given that polling figures show that they are regularly trusted more than many other public sector employees ⁵⁰.

Another key way to drive trust in council's use of surveillance is to take actions around increasing openness and accountability; providing information, releasing records and allowing greater public involvement all score highly.

We argue that public knowledge and understanding about the use of surveillance powers is critical to building a new consensus around the issue and demystifying some of the more lurid media stories on it. Our survey suggests that there is a large proportion of people who would like to be far more informed about surveillance, and that this would itself create a greater trust between the public and local authorities.

When asked what would increase their favourability towards the use of directed surveillance powers, the two actions that came out on top were using police

⁵⁰ Ipsos MORI (2008) Doctors once again the most trusted profession, available at <http://www.ipsos-mori.com/content/doctors-once-again-the-most-trusted-profession1.ashx>

representatives and guaranteeing that surveillance will pay for itself. These findings are very encouraging as they offer insight into the practical ways in which trust in local council's use of surveillance can be increased. Police representatives would be an effective way of developing trust in council surveillance, as long as it was done in conjunction with councils ensuring that people were given much more information about their actions. Without the increase in knowledge about council surveillance, this strategy would run the risk of confirming current suspicions that councils merely misused surveillance powers.

In conclusion, the results of our poll show that local authorities do have a legitimate role in using directed surveillance powers to tackle offences. It also shows however that by coordinating any decisions with the local police and in consultation with the local community, local councils can increase levels of public trust. There is no evidence in our polling to suggest that people would be in favour of centralising the decision making process, as proposed by the Lords Constitution Committee. What is clear is that councils should take a common sense approach to using directed surveillance powers by only taking action in areas where the public give them consent and only using methods that are acceptable with the wider population.

7 *Conclusions and recommendations*

In this paper we hope to have dispelled some of the myths about the public's attitude to the use of surveillance powers and provided some actionable insights on how to build a better framework for the future.

At the heart of this very emotive debate there is a need to strike a balance between a public demanding action to tackle crimes and local issues and councils providing assurances that peoples' privacy is being protected.

Based on our research we are making the following recommendations to the reform of RIPA and behavioural changes at a local authority level:

Legitimacy and proportionality

At the heart of the RIPA legislation is an insistence that surveillance be proportional. In order to ensure that this is adhered to, we propose that:

- Councils should appoint a named senior local police representative to work with them in devising which surveillance powers should be used, taking into account the priorities of local people.
- Councils should also appoint a designated member of staff with responsibility for coordinating a surveillance strategy in discussion with local police and the wider community.
- Councils should be encouraged to only use surveillance powers if they relate to areas where potentially a criminal act is taking place or a public service is being defrauded. Councils should resist using the powers for civil misdemeanours unless there is a particularly strong groundswell of support from the local community to do so.

Flexibility and public trust

We strongly reject the intonation of the Lords Committee report that local authorities should not have responsibility for using surveillance powers and believe that our research helps refute such a view. Whilst we encourage councils to use the RIPA powers sensibly and proportionately, local authorities must have

the flexibility to use their judgement on how to use the powers most effectively and in line with the wishes of local residents.

- Therefore, we recommend that councils retain the flexibility to use surveillance powers on areas of high priority to local people.

Flexibility within the legislation will entail an emphasis on training local government officials to make decisions about surveillance that can clearly not be made from the centre. Training in this sense is very different from the current focus on learning rules and trawling through complex guidelines. As a recent Demos report argues, policy makers should think about how to cultivate the skills and institutional capabilities for making and supporting judgements about the use of surveillance.⁵¹

Underlying any reforms to the RIPA is a need to ensure public trust and, by extension, public knowledge of surveillance that is being carried out by their council. Without a real effort at keeping the public informed about the use of surveillance powers, the only public knowledge about the RIPA will come through sensationalised press coverage, 'exposing' the council. Councils must ensure that their citizens are well informed about the issue, engaged in the debate and can influence the decision-making process.

- We encourage councils to hold regular, open public meetings with local residents and police representatives to discuss the proportional use of surveillance powers and areas in which local citizens would like them to focus their attention.

The Government recently announced that it would introduce a new duty on councils to respond to all petitions, including electronic petitions, relating to local authority functions.⁵²

- In the same vein, we recommend that local residents should be able to trigger a review of the use of surveillance by councils on a particular issue through a petition.

If residents believe there is an issue of particular concern and that the council should consider using surveillance to tackle it, and equally if residents feel that the council is using surveillance in an irresponsible or disproportionate way

⁵¹ Perri et al (2008), *A Place of Greater Safety*, in 'UK Confidential', eds Edwards. C, and Fieschi. C, Demos, 2008

⁵² CLG (2008), 'Communities in Control: real people, real powers'

regarding a particular issue, we believe that they should be able to call a review into the matter. The response to the petition by the council should be more than a 'checkbox' exercise and could be along similar lines as those outlined in the Government's Empowerment White Paper:

*'If the council's overview and scrutiny committee decides the response is not adequate or substantive, petitioners will be able to secure a debate of the full council. In any event, if five per cent of the local population sign a petition, there will have to be a full council debate.'*⁵³

It is clear from our research that the public require better information and more evidence that local authorities can use the powers responsibly before they will fully trust them. Therefore we suggest:

- The Press Complaints Commission writes to all editors of national and regional newspapers asking for them to be responsible and provide balance when reporting stories regarding the use of surveillance.
- Councils openly state in the public realm what surveillance powers they use, why they use them, and the results of using them.

In this report we have attempted to offer a balanced and pragmatic approach to using surveillance technology in the right manner. By rejecting the hyperbole of some in the tabloid press and in Westminster, and by also accepting that councils should be more transparent and cooperative in the way they act, we hope to have set a path that protects the privacy of ordinary citizens whilst also helping to deter and solve crimes and prevent offences.

⁵³ CLG (2008), 'Communities in Control: real people, real powers'





Where are the boundaries between the state and the citizen when it comes to surveillance and law enforcement monitoring? Striking the right balance between the privacy of individuals and protecting the public has seemed difficult to achieve, provoking a highly emotive debate.

In this report, we encourage councils and government to adopt a new approach that will better ensure the responsible and proportionate use of 'directed surveillance' powers by local authorities. We believe that the views of citizens must lie at the heart of any judgement about what is appropriate. Working with PSB, an independent market research company, we surveyed public opinion on the use of surveillance powers.