

Stuart Rosser
Interim Chief Executive
Caerphilly County Borough Council
Penallta House
Tredomen Park
Ystrad Mynach
Hengoed CF82 7PG

20 February 2014

Dear Stuart

Review of employee surveillance by Caerphilly County Borough Council

Background

Since March 2013 there has been considerable media interest in the Council's surveillance activities. Subsequently we received correspondence raising concerns with the process for undertaking employee surveillance from a number of electors. The matters were not raised as formal objections to the accounts.

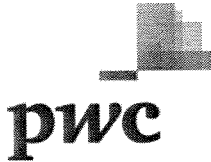
The Acting Director of Corporate Services and s151 Officer reported to the Council's Policy and Resources Scrutiny Committee on 16 April in relation to this matter. The report noted that surveillance activities had been undertaken since 2004, initially in respect of suspected fraudulent insurance claims and then subsequently in respect of employees suspected of defrauding Council. It set out that in exceptional circumstances covert surveillance can be authorised by a Head of Service and the Head of Workforce and Organisational Development, but that before authorisation of such surveillance, an impact assessment must be carried out in line with the Employment Practice Code to judge whether this arrangement is proportionate or whether there are alternatives that could be used.

The report stated that the Council does not undertake covert surveillance for minor reasons or on the 'off chance'. Only in exceptional circumstances where there is evidence of suspicion of fraud, criminal activity or malpractice by an employee is surveillance undertaken. It added that a process must be followed including completion of an 'Application for Authorisation – Directed Surveillance on Employees' form which must be authorised by a Head of Service and the completed form must be reviewed by the Head of Workforce and Organisational Development to assess its accuracy and the proportionality of the use of surveillance before final approval could then be granted.

The contractor used was Conquest Surveillance. The Council had asked its Internal Auditors to review the arrangements and they ascertained that the engagement with the contractor was not compliant with Standing Orders from a procurement perspective.

*PricewaterhouseCoopers LLP, One Kingsway, Cardiff, CF10 3PW
T: +44 (0) 29 2023 7000, F: +44 (0) 29 2080 2400, www.pwc.co.uk*

PricewaterhouseCoopers LLP is a limited liability partnership registered in England with registered number OC303525. The registered office of PricewaterhouseCoopers LLP is 1 Embankment Place, London WC2N 6RH. PricewaterhouseCoopers LLP is authorised and regulated by the Financial Services Authority for designated investment business.



As a result of the correspondence we have received, we have undertaken a review of the process in place at the Council for undertaking employee surveillance. In particular we have considered the Council's processes to comply with its own legal advice on the requirements in respect of undertaking employee surveillance and have considered the findings of the Council's own review into the procurement of the firm primarily used to conduct this surveillance.

Our work covered only the above specific matters in relation to employee surveillance and not surveillance activities in general.

Findings

Review of compliance with legal requirements

The Council obtained legal advice from its solicitors in respect of the obligations of employers under the ICO Employment Practices Code ("the Code") on 6 March 2013 in relation to the covert surveillance of employees. We have reviewed this advice, which noted *inter alia* that:

- Surveillance must be undertaken in accordance with the Data Protection Act (DPA), Human Rights Act (HRA) and European Convention on Human Rights (ECHR);
- Whilst the DPA does not prevent the monitoring of employees by employers, any potential adverse impact of monitoring on the individuals must be justified by the benefits to the employer and others. Accordingly the Information Commissioner's Office (ICO) uses the term "impact assessment" throughout the Code to describe the process undertaken by employers to decide whether or not this is the case. It is used to judge whether a monitoring arrangement is proportionate. Section 3 of the Code states that this should involve:
 - Identification of the purpose of the monitoring and the likely benefits
 - Identification of the likely adverse impact of the monitoring
 - Considering alternatives to monitoring and the different ways it may be carried out
 - Taking into account the obligations that arise from monitoring
 - Judging whether monitoring is justified
- The Council should be able to provide evidence that an evaluation of the risks involved have been considered. Whilst there is no requirement for a written impact assessment, employers should be able to point to some form of written evidence particularly in cases involving covert surveillance;
- The Council's practice at that time which required completion of an Application for Authorisation of Directed Surveillance on Employees appears to mean that the Council is carrying out an impact assessment; and
- There should be clear rules limiting disclosure of and access to the information obtained and any that is not relevant to the investigation should be deleted.

Our work identified that surveillance was originally instigated by the Insurance and Risk Department (I&R) and that historically cases did not always go to the Human Resources Department (HR) for approval. We were informed that, as part of an ongoing review by the Head of Workforce and Organisational Development including the need to consider changes in legislation, it was determined



that further assurances needed to be introduced into the process. As a result, a temporary measure was introduced whereby all requests needed to be approved by the Head of Service and the Head of Workforce and Organisational Development. In the meantime, given the changing nature of the law, Legal Services worked with HR to design a new process which included a requirement to complete an application for surveillance to be undertaken from January 2012. We understand that the Council is considering a requirement that in addition to approval by a Head of Service and the Head of Workforce and Organisational Development, approval should also be required from the Head of Legal.

However, as at July 2013 there were still no written procedures covering the process to be followed to initiate, consider and authorise employee surveillance. At the time of our review, the Council informed us that it was consulting with the Union in order to agree a policy in this area. The Council also informed us that there was no written framework or guidance to assist officers to determine whether to proceed with surveillance; this was described as matter of judgement.

We also confirmed that historically there was no formal documentation in place to evidence consideration of an impact assessment when employee surveillance was being proposed. As noted above, such a form now exists. In respect of one instance of employee surveillance, initiated and approved by I&R prior to the introduction of the new processes, the Council was unable to provide any documentary evidence that clearly showed that such an impact assessment had been undertaken.

Conclusion

The processes underpinning the use of employee surveillance at the Council historically do not appear to have been formalised and, at least in one case this has resulted in a lack of written documentation to evidence that legal requirements have been appropriately considered prior to undertaking such surveillance.

Whilst the Council has identified the need to ensure that these processes are made more robust, there are still no formal written policies and processes setting out what is required in relation to considering the appropriateness of employee surveillance. We understand however, that such surveillance activities have been suspended pending the development of the relevant policies and processes.

The Council should ensure that such processes and policies are finalised at the earliest possible opportunity.

Review of procurement

The Council's S151 Officer asked the Council's Internal Audit Department to undertake an independent review of the procurement of the main contractor used by the Council to undertake employee surveillance services.

We note that the Internal Auditors have yet to finalise their report in this area, although we understand that their fieldwork has been completed. Their findings indicate that proper procurement processes were not followed in relation to letting this contract, which we understand has cost the Council £209,000 over a 6 year period, with over £150,000 having been spent in the three years to the end of 2013. This latter element of spend means that EU procurement rules should have been followed to let this contract.



Conclusion

The Council has previously publically acknowledged that the letting of the contract was not compliant with its Standing Orders for the procurement of services. It will be important for the Council to understand the root cause of the failure to comply with procurement requirements and to put in place actions to prevent a reoccurrence. We understand that the Procurement Department does undertake some monitoring of suppliers where there is spend of greater than £10,000 (the limit under which formal tendering for services is not required). The Council should consider whether this is a sufficient level of control going forward.

Overall conclusion

The development of employee surveillance activities at the Council does not appear to have been appropriately controlled and formalised, with little evidence of oversight. This has led, in at least one instance, to a situation where there is inadequate documentary evidence that legal requirements were followed appropriately.

The Council has responded to this by taking steps to formalise this process and it should ensure that its wider governance review seeks to identify whether there are other areas of operations where informal practices may have developed, which put the Council at risk.

We also consider that internal audit reports should be finalised and issued promptly.

Yours sincerely

A handwritten signature in black ink that reads 'Lynn Pamment'. The signature is written in a cursive style with a large initial 'L'.

Lynn Pamment