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Office of Surveillance
Commissioners

OFFICE OF SURVEILLANCE COMMISSIONERS
INSPECTION REPORT

BRITISH BROADCASTING CORPORATION
(TELEVISION LICENSING)

30th October 2008

Inspector:
Mr Andrew Mackian

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Office of Surveillance
Commissioners

The Rt. Hon Sir Christopher Rose
Chief Surveillance Commissioner
PO Box 29105
London SW1V 1ZU

31st October 2008

OSC INSPECTION REPORT: BRITISH BROADCASTING CORPORATION. (TELEVISION LICENSING).

INSPECTION DETAILS

1. Date of Inspection

The inspection was undertaken on the 30th October 2008.

2. Inspector.

Andrew Mackian.

INTRODUCTION

3. The core function of BBC TV Licensing to administer the collection of television licence fees and enforcement of the television licensing system, remains as that comprehensively reported upon within the 2006 OSC inspection report. Revenue collection is the primary responsibility, with enforcement being considered as a final course of action. Under a Service Provision Agreement of 7th February 2002, Capita Business Services Ltd ("Capita") is the service provider authorised to operate detection equipment on behalf of BBC TV Licensing.
4. As described in the 2006 inspection report, an 'Escalator Strategy' consisting of interrogation of the national TV Licence database and a series of visits by investigators to premises suspected of operating unlicensed televisions is undertaken before resorting to the use of detection tactics.
5. Statutory Instrument SI 2001/1057 provides the BBC with powers to authorise lawful surveillance for the detection of television receivers in accord with section 27(A) of the Regulation of Investigatory Powers Act 2000 (RIPA). Section 26(6) of the 2000 Act defines the following: *surveillance which is carried out by means of apparatus designed or adapted for the purpose of detecting the installation or use in any residential or other premises of a television receiver and is carried out from outside those premises exclusively for that purpose is neither directed nor intrusive.*

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6. SI 2001/1057 sets out that persons designated as Authorising Officer for the purposes of Section 27(A) are any person holding the position of Head of Sales or Head of Marketing within the Television Licence Management Unit and any person holding a position within the Unit which is more senior to these designated posts. In practice the Head of Revenue Management and the Head of Sales and Marketing undertake this function.
7. Specific instruction is provided within SI 2001/1057 as to the considerations to be given by an Authorising Officer to the principles of necessity and proportionality. Modification is also made to section 43 of the 2000 Act (general rules about grant, renewal and duration), in that the maximum duration of an authorisation, before renewal, is eight weeks. In its application to the detection of television receivers, the provisions contained within sections 28 to 42 of Part 11 of the 2000 Act are omitted.
8. This report should be forwarded for the attention of Ms Pipa Doubtfire, Head of Revenue Management for TV Licensing, BBC Television Centre, 201 Wood Lane London W12 7TQ.

INSPECTION APPROACH

9. The inspection commenced by way of a meeting at BBC Television Centre with: Pipa Doubtfire (Head of Revenue Management), S. 40 (Head of Sales and Marketing), S. 40 (Field and Cash Collections Manager), S. 40 (Field Operations Manager), S. 40 and S. 40 (Legal advisors for the BBC), (Detection Manager-Capita) and S. 40 (Legal Advisor-Capita).
10. A detailed presentation was provided by S. 40 and S. 40, setting out compliance audit work undertaken by both the BBC and Capita since the last inspection. An overview of action taken to address the recommendations contained within the 2006 OSC inspection report, along with an update on training, was also given.
11. A very helpful and informative discussion then took place covering the present and future S. 31 challenges being faced by BBC Revenue Management and the potential impact on enforcement tactics and compliance with present legislative parameters. Further comment on these potential challenges will be set out within paragraph 26 of this report.
12. An examination was made of the latest BBC Policy on the Authorisation and Operation of Detection Equipment under the Regulation of Investigatory Powers Act 2000 and an inspection undertaken of the Central Record of Authorisations.
13. S. 31 authorisations were granted for the use of detection equipment during 2007 and S. 31 thus far for 2008. Ten application and authorisation records were subject of detailed inspection, the methodology confined to the most recent records, in order that current compliance standards could be assessed. It is the policy of the BBC not to reveal the operational tactics undertaken for the use of detection equipment

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and to date there have been no legal proceedings requiring the production of a surveillance authorisation. Following a positive detection result, the normal course of action is to make application for a search warrant, for execution with the assistance of the police.

14. At the end of the inspection a comprehensive feedback session was held with the attendees of the preliminary meeting.

REVIEW OF PROGRESS

The 2006 OSC inspection of BBC Television Licensing resulted in three principal recommendations.

Recommendation 1.

Policy statements to provide clearer instruction on proportionality considerations in accord with the Code of Practice (COP).

Policy amendment undertaken. Recommendation discharged.

Recommendation 2.

Applications and authorisations to accord with recommendations contained within this report. (This recommendation centred on applicants signing and dating applications, authorisations commencing at the time granted by the Authorising Officer and clearer authorisation statements).

Appropriate action has been undertaken by way of action plan to address all the points raised in the inspection report. Some confusion may be present in that there may be a belief that detection has to commence the day the authorisation is granted. This is not the case, it is the authorisation that is effective from the time and date granted. Recommendation in the main discharged, although further comment will be made in this report regarding the content of authorisations.

Recommendation 3.

Consideration to be given to the introduction of authorisation reviews in accord with the Code of Practice.

Policy has now been introduced that authorisations should be reviewed after four weeks. Recommendation discharged.

POLICIES AND PROCEDURES

15. The corporate policy on the operation of Detection Equipment is a well constructed document that defines the meaning of surveillance, provides guidance on the authorisation process, compliance administrative requirements and a useful flowchart explaining the tests of necessity and proportionality. The policy is reviewed annually by BBC legal advisors and approved by the Head of Revenue Management.

16. S.31 - LAW ENFORCEMENT.

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All applications to undertake detection activity pass through a quality assurance 'gatekeeper' process before submission to the Authorising Officer. Consideration may wish to be given to recording this process on the application form by introducing a specific section for this purpose, or the introduction of a minute sheet for each application/authorisation. Where rejection of an application has taken place this action, with explanation, is recorded on the Central Record of Authorisations.

RELATED TRAINING

19. A structured training plan remains in place, co-ordinated by the Capita Legal Team. Training records are maintained, recording both initial and refresher training. Detection staff receive RIPA training in addition to training in the use of detection equipment. They are tested in their knowledge and understanding before being signed-off to undertake detection duties. Authorising Officers have received training from BBC/Capita legal staff.

SIGNIFICANT ISSUES

20. Central Record of Authorisations.

This record is maintained in electronic format and as reported upon within previous inspection reports, provides a contemporaneous record of whenever an authorisation is granted, renewed, or cancelled. Due to the unique and limited powers of surveillance granted to BBC TV Licensing by virtue of SI 2001/1057, there is little likelihood of confidential information being obtained. There is no legislative provision for BBC TV Licensing to invoke the urgency provision as set out in paragraph 4.13 of the Covert Surveillance Code, nor is it likely that Authorising Officers would be responsible for authorising investigations in which they are directly involved (paragraph 4.14 of Covert Surveillance Code of Practice).

21. Detection Authorisations.

Applications are completed electronically by Capita staff and must be presented to the BBC Authorising Officer a minimum of 4 working days prior to when the authorisation is needed to be effective. It was noted that revisions were made to the forms in June and September 2007, leading to the construction of a standard form of narrative covering the statement of authorisation with confirmation of the considerations of necessity and proportionality undertaken by the Authorising Officer, being reduced to a tick box process.

22. The opportunity was taken to discuss the content of the forms with the BBC Legal representatives, who were the authors of the revisions. Whilst it is not challenged that due consideration is given by both applicant and Authorising Officer, a careful balance needs to be achieved between the desire for expediency and the important requirement for an Authorising Officer to evidence proper judgement of each application.

23. Whilst the use of Detection techniques is classified as Lawful Surveillance in accord with section 27(A) of the 2000 Act and not Directed Surveillance, it is

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recommended that a clear statement of authorisation is provided by an Authorising Officer, unique to each application. The statement should evidence the consideration of the express necessity and proportionality provisions as set out in SI 2001/1057, along with instruction on the principles of who, what, why, where, when and how the detection activity is to be undertaken. It would be good practice also for operational staff to acknowledge that they have had sight of an authorisation to use detection equipment.¹ This could simply be undertaken by the initialling of the authorisation.

24. An authorisation undertaken just prior to the revisions of the forms was singled out as having met most of the provisions contained within the foregoing paragraph. It was recommended that the present forms be reviewed and that clear subdivision is achieved between the application and authorisation sections and that a clear statement of authorisation is provided by the Authorising Officer.
25. The introduction of authorisation reviews, following the 2006 OSC recommendation, now provides the Authorising Officer with a synopsis of the activity undertaken and the opportunity to confirm the continuing detection activity remains necessary and proportionate. In the majority of cases there has been no need to undertake a review as the activity has been completed before such a requirement was necessary. Where reviews had been completed, the content was found to be concise, providing an appropriate account of the surveillance activity undertaken.
26. Cancellations were promptly undertaken and duly recorded on the Central Record of Authorisations. S.31

A summary report is completed once such analysis has been carried out. It would be good practice for the Authorising Officer to have sight of summary reports in order to judge the outcome in terms of meeting the requirements of necessity and proportionality.

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27. S.31

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¹ See SI 2001/1057 paragraph 3 s.s. 4.

CONCLUSIONS

29. BBC TV Licensing, along with their partners Capita, continue to discharge responsibilities to undertake lawful surveillance in a responsible and professional manner. Clear policy, supported by structured training and effective record keeping provides a sound and accountable compliance process.
30. The change in procedures to record detection surveillance authorisations by way of a standard authorisation narrative and a 'tick box' process should be reviewed. The 2006 inspection report made comment that: *'Authorising Officers need to ensure that each authorisation has been subject of detailed consideration and sufficient unique narrative is in place to evidence this action'*. The present procedure to record authorisations has further exacerbated the situation.
31. Although it is considered unlikely that an authorisation granted by BBC TV Licensing to conduct lawful surveillance will feature in judicial proceedings, other challenges to test the efficacy of the process to use legislative powers may well emerge from elsewhere. The requirement placed on the Authorising Officer to evidence their consideration of an application to undertake lawful surveillance is the key feature in this process and each authorisation must record this undertaking.
32. The arrangements made for the inspection visit and courtesy of all involved was greatly appreciated.

RECOMMENDATION.

33. Authorisations to undertake lawful surveillance through the use of television receiver detector technology should clearly evidence and record the consideration given by both applicant and Authorising Officer to matters of necessity and proportionality as set out in SI 2001/1057.
(Paragraphs 22, 24 29 and 30).

S. 40.

Surveillance Inspector