

Committee: Standards Advisory	Date: 16 April 2013	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Assistant Chief Executive (Legal Services) Originating officer(s) David Galpin, Head of Legal Services - Community		Title: Covert investigation under the Regulation of Investigatory Powers Act 2000 Wards Affected: All		

1. SUMMARY

- 1.1. The codes of practice issued by the Home Office in relation to Part 2 of the Regulation of Investigatory Powers Act 2000 ("RIPA") recommend that elected members have oversight of the Council's use of these provisions. The Standards Committee's terms of reference enable the committee to receive reports on the Council's authorisation of covert investigations under RIPA.

2. DECISIONS REQUIRED

Standards Committee is recommended to:-

- 2.1. Consider and comment upon the information provided in the report.

3. BACKGROUND

3.1. Covert investigation and RIPA

- 3.2. The Council has broad statutory functions and takes targeted enforcement action in relation to those functions, having regard to the Tower Hamlets Community Plan, the Council's Local Development Framework, any external targets or requirements imposed under relevant legislation and the Council's enforcement policy. There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to conduct directed surveillance or use a covert human intelligence source for the purpose of preventing crime or disorder.

- 3.3. RIPA was enacted to provide a framework within which a public authority may use covert investigation for the purpose of preventing or detecting crime or of preventing disorder. It is designed to ensure that public authorities do not contravene the obligation in section 6(1) of the Human Rights Act 1998 not to act in a way which is incompatible with an individual's rights under the European Convention on Human Rights ("ECHR"). It is particularly concerned to prevent

contravention of the qualified right in Article 8 of the ECHR to respect for private and family life, home and correspondence.

3.4. The Council's use of RIPA

3.5. The Assistant Chief Executive (Legal Services) ("ACE") is the Senior Responsible Officer for ensuring the Council complies with RIPA. The Head of Legal Services (Community) ("HLS") is her deputy.

3.6. The Council has policies on the use of directed surveillance or covert human intelligence sources. The current versions of these policies were approved by Cabinet on 3 October 2012, as appendices to the Council's enforcement policy. The Council also has in place guidance manuals to assist officers in the authorisation process. The policies and guidance are designed to help the Council comply with RIPA and the Codes of Practice issued by the Home Office in relation to directed surveillance and the use of covert human intelligence sources.

3.7. The Council's priorities for using RIPA, as specified in its policies are -

- Anti-social behaviour
- Fly-tipping
- Unlawful street vending of DVDs and tobacco
- Underage sales of knives, tobacco, alcohol and fireworks
- Fraud, including misuse of disabled parking badges and claims for housing benefit
- Illegal money-lending and related offending
- Breach of licences
- Touting.

3.8. Since 1 November 2012, the Council has only been permitted to use covert investigation for the purposes of serious offences. This means an offence of the following kind –

- An offence punishable by a maximum term of at least 6 months of imprisonment.
- An offence under section 146 of the Licensing Act 2003 (sale of alcohol to children).
- An offence under section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children).
- An offence under section 147A of the Licensing Act 2003 (persistently selling alcohol to children).
- An offence under section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to persons under eighteen).

- 3.9. It has also been a requirement since 1 November 2012 that the Council must have approval from a court, in addition to an internal authorisation granted by its authorising officer, before carrying out covert surveillance.
- 3.10. In accordance with the Council's policies and manuals, a central record is maintained in Legal Services of all authorisations and approvals granted to carry out either directed surveillance or to use covert human intelligence sources (authorisations under Part 2 of RIPA). To date this year, all applications for authorisation have been received from the Council's Communities Localities and Culture directorate ("CLC"). The Council provides an annual return to the Office of Surveillance Commissioners ("OSC"), based on the central record.
- 3.11. In order to ensure that applications for RIPA authorisation are of an appropriate standard, the Council's policies and manuals provide that all applications for authorisation to conduct directed surveillance or to use covert human intelligence sources should be considered by a gatekeeper before being passed on to the authorising officer. The Council has a single gatekeeper (the Head of Community Safety Enforcement & Markets within the Community Safety Service). In the absence of the Head of Community Safety Enforcement & Markets, the HLS may act as gatekeeper. The gatekeeper must work with applicant officers to ensure an appropriate standard of applications, including that applications use the current template, correctly identify known targets and properly address issues of necessity, proportionality and collateral intrusion.
- 3.12. The Council has a single authorising officer (Service Head - Community Safety), who has responsibility for considering applications to use directed surveillance or covert human intelligence sources. The policies provide that the Head of Internal Audit may stand in for the Service Head - Community Safety where the ACE or HLS consider it necessary.
- 3.13. The Council's policies and manuals require officers who apply for RIPA authorisations to expeditiously forward copies of authorisations, reviews and cancellations to Legal Services for the central record. The HLS attends fortnightly at CLC's internal deployment meetings to ensure the central record is being kept up to date. Representatives of each service area in CLC attend these meetings. The Council's authorising officer and gatekeeper attend. The meetings provide an opportunity to check the status of applications and authorisations under RIPA and a forum at which officers may present any operations plans where covert investigation may be required and seek a steer from those at the meeting.

3.14. The Council's RIPA applications

3.15. Quarter 3 of 2012/2013

3.16. A single authorisation was granted in quarter 3 of 2012/2013. This was granted on 17 October 2012 in respect of application CS0002. The subject matter of the investigation was touting and details of the authorisation are set out in Appendix 1 to this report.

3.17. A unique reference number (CS0003) was issued on 3 December 2012, but the matter did not proceed to the gatekeeper for consideration.

3.18. Quarter 4 of 2012/2013

3.19. There were no authorisations granted in quarter 4 of 2012/2013.

3.20. Directed surveillance authorisations in 2012/2013

3.21. In total 3 covert surveillance matters are recorded on the central record for the 2012/2013 financial year. These applications all came from the council's communities localities and culture directorate and were dealt with as follows –

Application outcomes:

Authorisation granted	2
Authorisation refused	0
Application rejected by gatekeeper	0
Application withdrawn	1
Total:	3

3.22. The 2 authorisations granted compared to 3 in 2011/2012. The authorisations were granted for investigations in relation to touting. Both were focussed on Brick Lane and surrounding streets. Following revision of the enforcement policy in October 2012, touting is recorded as one of the priority areas for covert investigation, so the authorisations may be considered to be broadly in line with the Council's policy.

3.23. Throughout the year, covert investigation was the subject of regular discussion at safer communities operations meetings organised by the Council's communities, localities and culture directorate. These meetings are attended by relevant officers in the Council, as well as police and a representative from Tower Hamlets Homes Ltd. The meetings provided an opportunity to discuss the appropriateness of covert surveillance in individual cases and to check the progress of any live authorisations (additional to formal review by the authorising officer).

3.24. Training has not been carried out since 8 February 2012 for officers who may engage in covert investigation, but is in the process of being scheduled.

3.25. Enforcement activity

3.26. The enforcement work arising from the covert investigations authorised under CS0001 may be summarised as follows –

- 19 prosecutions with guilty pleas, resulting in fines of £8,531.00 and costs of £6,184.50. There are 2 prosecution cases in which the defendants have pleaded not-guilty and the trials have yet to take place.
- 10 premises have had their licences reviewed. 8 premises had their licences suspended for periods of between 1 week and 4 weeks. 1 of the premises had additional (anti-touting) conditions imposed on the licence. In the remaining case no action was taken.

3.27. More detailed information is set out in Appendix 2 to this report.

3.28. The enforcement work in relation to CS0002 is still at an early stage. The outcomes can be reported to the Committee at a later date.

4. Covert Human Intelligence Sources

4.1 There were no authorisations granted during 2012/2013 for authorisation to use covert human intelligence sources. This is consistent with the Council's policy, which requires officers to first demonstrate to the satisfaction of the Assistant Chief Executive (Legal Services) that they have the skill and experience to handle a covert human intelligence source, before seeking authority to use a covert human intelligence source.

5. Interception of communications

5.1 The interception of communications is dealt with under Part 1 of RIPA (by contrast, directed surveillance and the use of covert human intelligence sources are dealt with under Part 2 of RIPA). The interception of communications is regulated by the Interception of Communications Commissioner's Office (IOCCO). The IOCCO reports on a calendar year. During 2012, the Council had: zero notices requiring disclosure of communications data (compared with two the previous year); and 23 authorisations to acquire communications data (compared with 59 the previous year). All of these were processed by the National Anti-Fraud Network (NAFN) as the Council's single point of contact. All of these were subsequently approved by the Council's designated person (who is also the Council's authorising officer for covert surveillance). In each case the applications were for subscriber records.

6. Inspections in 2012/2013

- 6.1. The Council was not inspected by the Office of Surveillance Commissioners or the Interception of Communications Commissioner's Office during 2012/2013. NAFN was inspected by the IOCCO and the feedback received is summarised in Appendix 2.

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

- 4.1 This is a report of the Council's use of the Regulation of Investigatory Powers Act 2000 ("RIPA") to the Standards Committee. There are no financial implications arising from the recommendations in this report.

8. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

- 8.1. Legal implications are addressed in the body of the report.

9. ONE TOWER HAMLETS CONSIDERATIONS

- 9.1. Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 9.2. The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents such as the local area agreement and the Local Development Framework. For example, one of the key Community Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The enforcement policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the enforcement policy should discourage enforcement action that is inconsistent with the Council's objectives.
- 9.3. The exercise of the Council's various enforcement functions consistent with the enforcement policy and its principles should also help achieve the following key Community Plan themes –
- A Safe and Cohesive Community. This means a safer place where feel safer, get on better together and difference is not seen as a threat but a core strength of the borough.
 - A Great Place to Live. This reflects the aspiration that Tower Hamlets will be a place where people live in quality affordable housing, located in clean and safe neighbourhoods served by well-connected and easy to access services and community facilities.
 - A Prosperous Community. This encompasses the objective that Tower Hamlets will be a place where everyone, regardless of their background

and circumstances, has the aspiration and opportunity to achieve their full potential.

- 9.4. An equality analysis was conducted prior to approval of the revised enforcement policy by Cabinet on 3 October 2012. Enforcement action may lead to indirect discrimination in limited circumstances, but this will be justified where the action is necessary and proportionate. Necessity and proportionality are key considerations in respect of every application for authorisation under RIPA.

10. **SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 10.1. The enforcement policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the enforcement policy aligns enforcement action with the Community Plan it will tend to promote sustainable action for a greener environment.

11. **RISK MANAGEMENT IMPLICATIONS**

- 11.1. Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to RIPA, the codes of practice, the Council's policies and guidance will ensure that risks are properly managed. Oversight by the Standards Committee should also provide a useful check that risks are being appropriately managed.

12. **EFFICIENCY STATEMENT**

- 12.1. The report does not propose any direct expenditure. Rather, it is concerned with regularising decision-making in areas in which the Council is already active. The enforcement policy seeks to ensure that enforcement action is targeted to the Council's policy objectives. This is more likely to lead to efficient enforcement action than a less-controlled enforcement effort. It is also proposed that members will have an oversight role through the Standards Committee. This will provide an opportunity to judge whether the Council's enforcement action is being conducted efficiently.

13. **APPENDICES**

- Appendix 1 – Summary of Quarter 3 RIPA authorisations
- Appendix 2 – Summary of enforcement action to date for CS0001
- Appendix 3 – Summary of IOCCO inspection of NAFN

Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report

Brief description of “back ground papers”	Name and telephone number of holder and address where open to inspection.
None	N/A

APPENDIX 1 - SUMMARY OF QUARTER 3 RIPA AUTHORISATIONS

CS0001	Summary information
Service area:	Community Safety
Date URN granted:	11 October 2012
Application on correct form?	Yes
Date of gatekeeper clearance:	17 October 2012
Date of authorisation:	17 October 2012
Expiry date and time:	16 January 2013 @ 23.59
Scheduled review date(s):	16 November 2012 20 December 2012
Dates of reviews:	20 November 2012
Cancellation:	20 December 2012
Total time open:	64 Days
Type of covert investigation:	Directed surveillance
Subject matter of investigation:	Touting in the Brick Lane area
Necessity:	Preventing or detecting crime, namely offences against: section 136(1) of the Licensing Act 2003; section 237 of the Local Government Act 1972; regulations 9 and 11 of the Consumer Protection From Unfair Trading Regulations 2008. Test purchases are considered necessary in order detect offences and combat the recognised touting problem in the Brick Lane area. Test purchasers will wear recording equipment, which requires authorisation.
Proportionality:	Every restaurant in Brick Lane was written to in February 2011, warning of the criminal consequences of touting. A further letter was sent in July 2011 inviting businesses to sign up to the Council's anti-touting policy. Overt walk-throughs do not gather sufficient evidence to identify the agency relationship between touts and restaurants. Using test purchasers without recording equipment leads to challenges against the reliability of evidence. Use of recording equipment produces an objective record.
Collateral intrusion:	Visual images would be recorded of passers-by and restaurant customers. A tape would be prepared of highlights and any remaining material kept under seal to be made available in criminal proceedings in

	accordance with the Criminal Procedure Rules.
Outcome:	A number of breaches were identified which have resulted in prosecution referrals to Legal Services and licence reviews. A full summary will be provided in the annual report.