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| Non-Executive Report of the: Standards Advisory Committee 14 July 2015 |  TOWER HAMLETS |
| Report of: Service Head – Legal Services | Classification: Unrestricted |
| Annual report of Investigations under the Regulation of Investigatory Powers Act (RIPA) | |

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| Originating Officer(s) | David Galpin, Service Head – Legal Services |
| Wards affected | All wards |

Summary

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. This report summarises the Council’s use of those powers but also other activities under RIPA.

Recommendations:

The Standards Advisory Committee is recommended to:

1. Consider and comment upon the information provided in the report.

1. REASONS FOR THE DECISIONS

- 1.1 The information in the report is provided so that elected and independent members may oversee the Council's use of powers under RIPA.

2. ALTERNATIVE OPTIONS

- 2.1 It is open to members to provide such comments on the Council's use of RIPA powers as they consider appropriate.

3. DETAILS OF REPORT

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 Interim Monitoring Officer is the senior responsible officer for ensuring the Council complies with RIPA. The Service Head - Legal Services ("HLS") is his 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 has in place guidance manuals to assist officers in the authorisation process. The policy is due to be refreshed in 2015.

- 3.7 The Council's current 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 These priorities may be considered when the enforcement policy is reviewed, later in 2015.
- 3.9 The Council may only 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).
- 3.10 The Council must also have approval from a court, in addition to an internal authorisation granted by its authorising officer, before carrying out covert surveillance.
- 3.11 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). The Council provides an annual return to the Office of Surveillance Commissioners (“OSC”), based on the central record.
- 3.12 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.
- 3.13 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, Safer Communities where the Monitoring Officer or HLS consider it necessary.

- 3.14 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 (or deputy) may attend fortnightly at CLC's internal deployment and tasking meetings to ensure the central record is being kept up to date. Representatives of each service area in CLC and the Police 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.
- 3.15 **The Council's RIPA applications in 2014/2015**
- 3.16 In 2014/2015, a single authorisation was granted under Part 2 of RIPA and details are set out in the Appendix. The internal authorisation was given by the Head of Internal Audit on 10 November 2014. This was confirmed by a District Judge at the Thames Magistrates' Court on 11 November 2014. The surveillance was conducted from 14 November 2014 to 2 December 2014. The authorisation was formally cancelled on 18 December 2014, as surveillance had concluded after sufficient evidence was obtained.
- 3.17 As a result of the investigation, the Council is taking appropriate internal action under its procedures. Relevant surveillance material has been provided to the Metropolitan Police, who are investigating. Details of the actual enforcement action taken cannot be provided at this time.
- 3.18 The single authorisation granted in 2014/2015 compared to 2 in 2013/2014, 2 in 2012/2013 and 3 in 2011/2012, showing consistent low levels of use of RIPA by the Council. Previous investigations have targeted touting and the investigation of underage sales of tobacco, but there were no such investigations with the use of RIPA in 2014/2015. This does not mean there has been no activity in respect of these issues. The council have used the resources of the police and their statutory powers to tackle both issues during 14/15. In addition the change can also be accounted for owing to more use of overt uniformed enforcement officers dealing with a wider range of offences and more combined partnership working with the police
- 3.19 No training was conducted in 2014/2015, but training for key officers is currently planned for August 2015; this will be a refresher training for key officers and the council's enforcement lawyers delivered by a designated team from the Metropolitan Police. The training will be tailored to the types of matters the council may deal with as well as a session on the internet and social media surveillance as a popular new topic.

3.20 **Covert Human Intelligence Sources**

3.21 There were no authorisations granted during 2013/2014 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 Monitoring Officer or HLS that they have the skill and experience to handle a covert human intelligence source, before seeking authority to use a covert human intelligence source.

3.22 **Interception of communications**

3.23 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).

3.24 All of the Council's authorisations for the interception of communications are processed by the National Anti-Fraud Network (NAFN) as the Council's single point of contact, as has been the case since January 2011. All of the Council's authorisations are subsequently approved by the Council's designated person (who is also the Council's authorising officer for covert surveillance).

3.25 The IOCCO reports on a calendar year. In 2014, the Council did not intercept any communications data. This was down significantly on 2013, when the Council had 25 authorisations to acquire communications data and 2012 when the Council had 23 authorisations. The reduction is a result of a change in the type of investigations Trading Standards are conducting. In previous years there were a number of major consumer frauds, whereas the current investigations are such that communications data does not need to be accessed. Officers do not need to acquire the data to further their investigations; of course this requirement may change, should circumstances change.

3.26 **Inspections in 2014/2015**

3.27 The Council was not inspected by the Office of Surveillance Commissioners (OSC) in 2014/2015.

3.28 The Council was not inspected by the IOCCO in 2014/2015 but NAFN were inspected from 7 to 9 July 2014. The IOCCO commented that NAFN had once again emerged very well in the inspection and had processes to lawfully acquire data. IOCCO also said that local authorities showed a good standard of application.

4. COMMENTS OF THE CHIEF FINANCE 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.

5. LEGAL COMMENTS

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

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1 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.
- 6.2 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.
- 6.3 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.

7. BEST VALUE (BV) IMPLICATIONS

- 7.1 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.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 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.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 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.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 As set out in paragraphs 3.1 and 3.2 of the report, the Council's use of covert investigation may be a necessary part of its enforcement work, but must be carried out having regard to the requirements of RIPA.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix 1 – Summary of RIPA authorisations

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

- NONE

Officer contact details for documents:

- N/A

APPENDIX 1 - SUMMARY OF RIPA AUTHORISATIONS

| CS0001 | Summary information |
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| Service area: | Community Safety |
| Date URN granted: | |
| Application on correct form? | Yes |
| Date of gatekeeper clearance: | 7 October 2014 |
| Date of authorisation: | 10 November 2014 |
| Date of Court approval | 11 November 2014 |
| Expiry date and time: | 11 December 2014 |
| Scheduled review date(s): | None |
| Dates of reviews: | None |
| Cancellation: | 18 December 2014 (NB surveillance ceased 2 December 2014) |
| Total time open: | 36 days |
| Type of covert investigation: | Directed surveillance (via body cameras) |
| Subject matter of investigation: | Bribery allegations |
| Necessity: | Serious allegations were made of failures to adhere to the Council's employee code of conduct, financial regulations and possible criminal offences involving traders offering inducements not to enforce or carry out financial checks and acceptance by staff of those inducements. Overt investigation would not gather the required evidence due to the clandestine nature of such activities, if the allegations are correct. |
| Proportionality: | The authorising officer took into account: (1) allegations of bribery are serious; (2) the allegations are fundamental to discharge of the Council's functions; (3) high standards are expected of Council staff; (4) overt investigation would be insufficient; and (5) any collateral intrusion would be low due to the surveillance taking place in public places. |
| Collateral intrusion: | Visual images and audio would necessarily be recorded of other persons as the investigations would take place in public places. In order to minimise intrusion cameras would only be turned on when it appears that a breach may be occurring. A working copy would be made of relevant footage, although un-edited footage would be securely kept |

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| | for evidentiary purposes. |
| Outcome: | The Council is taking appropriate internal action under its relevant HR procedures. Relevant surveillance material has been provided to the Metropolitan Police, who are investigating. |