

<p><b>Non-Executive Report of the:</b></p> <p><b>Standards Committee</b></p> <p>1 March 2017</p>	
<p><b>Report of:</b> Graham White Acting Corporate Director – Governance and Interim Monitoring Officer</p>	<p><b>Classification:</b> Unrestricted</p>
<p><b>Report of Investigations under the Regulation of Investigatory Powers Act (RIPA)</b></p>	

<p><b>Originating Officer(s)</b></p>	<p>Graham White – Acting Corporate Director Governance and Interim Monitoring Officer</p>
<p><b>Wards affected</b></p>	<p>All wards</p>

### 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 and other activities under RIPA.

### Recommendations:

The Overview & Scrutiny 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 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 Monitoring Officer is the senior responsible officer for ensuring the Council complies with RIPA.

- 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 in the course of being refreshed.

- 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 will be considered in the review of the enforcement policy.

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's gatekeeper is the Head of Community Safety (within the Community Safety Service) and the deputy gatekeeper is the Intelligence Team Leader, Risk Management & Audit. In the absence of the Head of Community Safety, the deputy 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's authorising officer, the Divisional Director, Public Realm, 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 Divisional Director, Public Realm where the Monitoring Officer or Divisional Director, Legal 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 Divisional Director, Legal (or deputy) may attend fortnightly at internal deployment and tasking meetings to ensure the central record is being kept up to date. Representatives of the Place Directorate and the Police attend these meetings. 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 2016/17**

- 3.16 No applications were made in the first, second and third quarters of 2016/2017.

- 3.17 On 11 December 2015, a RIPA training session was arranged for the Tower Hamlets Enforcement Officers (THEOs). Members of the Enforcement Team in Legal Services also attended.

- 3.18 On 7 November 2016, a RIPA training session was arranged for the Fraud & Audit Teams.

- 3.19 On 25 January 2017, a training session was held for the THEOs.

- 3.20 Recently, there have been new appointments for the Authorising Officer, Gatekeeper and Deputy Gatekeeper.

- 3.21 On 15 March 2017, there will be an inspection by the Office of the Surveillance Commissioners with regards to compliance with the Regulation of Investigatory Powers Act 2000 (RIPA). The last inspection was May 2013.

## **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"). 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 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 primarily through the Standards (Advisory) Committee but also through the Overview & Scrutiny 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 Members 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.
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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- NONE

### **Appendices**

- NONE

### **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