

Meeting of the

# CABINET

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Wednesday, 8 September 2010 at 5.30 p.m.

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## SUPPLEMENTAL AGENDA – SECTION ONE

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### VENUE

Main Hall, Stepney Green Maths and Computing College, Ben Jonson  
Road, London E1 4SD

#### Members:

Councillor Helal Abbas (Chair)	– (Leader of the Council)
Councillor Joshua Peck (Vice-Chair)	– (Deputy Leader of the Council)
Councillor Shahed Ali	– (Lead Member, Environment)
Councillor David Edgar	– (Lead Member, Resources)
Councillor Marc Francis	– (Lead Member, Housing, Heritage and Planning)
Councillor Sirajul Islam	– (Lead Member, Regeneration and Employment)
Councillor Denise Jones	– (Lead Member, Culture and Creative Industries)
Councillor Shiria Khatun	– (Lead Member, Children's Services)
Councillor Rachael Saunders	– (Lead Member, Health and Wellbeing)
Councillor Abdal Ullah	– (Lead Member, Community Safety)

[Note: The quorum for this body is 3 Members].

If you require any further information relating to this meeting, would like to request a large print, Braille or audio version of this document, or would like to discuss access arrangements or any other special requirements, please contact:

Angus Taylor, Democratic Services,

Tel: 020 7364 4333, E-mail: [angus.taylor@towerhamlets.gov.uk](mailto:angus.taylor@towerhamlets.gov.uk)

**LONDON BOROUGH OF TOWER HAMLETS**

**CABINET**

**WEDNESDAY, 8 SEPTEMBER 2010**

**5.30 p.m.**

**10 .2 Enforcement Policy and RIPA (CAB 041/101) (Pages 1 - 84)**

# Agenda Item 10.2

<b>Committee:</b> Cabinet	<b>Date:</b> 8 September 2010	<b>Classification:</b> Unrestricted	<b>Report No:</b>	<b>Agenda Item:</b>
<b>Report of:</b>  Assistant Chief Executive (Legal Services)  <b>Originating officer(s)</b> David Galpin, Head of Legal Services - Community		<b>Title:</b>  Enforcement Policy and RIPA  <b>Wards Affected:</b> All		

## **Special Circumstances and Reasons for Urgency**

There is a need to implement this new Enforcement Policy with the revised RIPA policy by September in order that the changes and member oversight required by the new Code of Conduct referred to in the report can be implemented prior to the next inspection in December 2010.

## **1. SUMMARY**

- 1.1. It is proposed that the Council adopts an umbrella enforcement policy to govern its regulatory functions. The Departments have individual policies dealing with enforcement however it is best practice to have a policy that would apply across service areas to all of the Council's criminal and quasi-criminal enforcement to promote key principles of proportionality of enforcement consistency and transparency.
- 1.2. The enforcement policy also updates the conduct of covert investigations by the Council and the rights of individuals. The Council has had a policy in place in accord with the law since 2004 under the Regulation of Investigatory Powers Act 2000 ("**RIPA**") dealing with surveillance where necessary to prevent or detect crime, protect public health and safety.
- 1.3. In March 2010, the Secretary of State issued new codes of practice under RIPA. Consistent with those codes of practice, it is proposed that members should have oversight of the Council's implementation of RIPA.

## **2. DECISIONS REQUIRED**

Cabinet is recommended to:-

- 2.1. Approve the enforcement policy contained in Appendix 1.

- 2.2. Recommend that Full Council amend the Council's Constitution so that the terms of reference of the Standards Committee includes oversight of enforcement action, as part of its ethical governance function.

### 3. REASONS FOR THE DECISION

- 3.1. Adoption of the Enforcement Policy is best practice to promote sound principles of enforcement, namely –
- **raising awareness** of the law and its requirements
  - **proportionality** in applying the law and securing compliance
  - **consistency** of approach
  - **transparency** about the actions of the Council and its officers
  - **targeting** of enforcement action.
- 3.2. The Enforcement Policy provides assistance to officers in ensuring appropriate guidance when considering the level of enforcement in individual cases.
- 3.3. Oversight of enforcement action will sit comfortably with the ethical governance remit of the Standards Committee which has a majority of independent members. This will enhance the Council's enforcement effort and ensure consistency with codes of practice issued under RIPA.

### 4. ALTERNATIVE OPTIONS

- 4.1. The Council could choose not to adopt an over-arching Enforcement Policy, or to adopt one with different terms. The Council could choose not to give members an oversight role in respect of enforcement, or to give the oversight role to a different body. For the reasons given in the report, it is considered that Cabinet should adopt the recommendations in the report as proposed.

### 5. BACKGROUND

#### 5.1. Enforcement Policy

- 5.2. The proposed Enforcement Policy is set out in Appendix 1. The Enforcement Policy deals with the Council's exercise of its criminal and quasi-criminal enforcement functions. Whilst some of the sanctions available to the Council are civil in nature, such as forfeiture of goods and money, this policy is not concerned with purely civil enforcement such as the enforcement of debts. It deals with criminal offences and contraventions of legislation that fall within the Council's power or responsibility to enforce. The departments already have specialist codes and protocols in their areas of enforcement, however it is best practice to have an overarching policy (as the Crown Prosecution Service (CPS) have published) to ensure consistency and transparency in enforcement action.
- 5.3. The Policy is designed to assist Council officers to carry out their duties consistent with clear and proportionate principles of enforcement. It specifies the kind of enforcement action that the Council may take and the matters the Council will generally consider before taking any particular kind of action. It allows

officers to take account of particular vulnerability of defendants as part of the appropriate level of enforcement. The approach to enforcement taken in the policy is founded on firm but fair regulation, around the principles expressed in paragraph 3.1 above.

5.4. The Policy will assist the Council to target its enforcement action having regard to:-

- The Tower Hamlets Community Plan, adopted under section 4 of the Local Government Act 2000
- Local improvement targets contained in the local area agreement
- The Council's Local Development Framework
- Any external targets or requirements imposed under relevant legislation.

5.5. By promoting transparency, the Policy should assist the community and other members of the public to understand why the Council approaches enforcement in a particular way in individual cases.

5.6. The Policy is a high-level document that will apply to all of the Council's relevant enforcement functions. It is recognised that individual service areas within the Council may have to take into account considerations specific to the regulatory framework in which they operate when carrying out enforcement work. To this end, there may be additional service-specific enforcement policies that operate under the broad umbrella of this policy.

#### **5.7. Regulation of Investigatory Powers Act 2000 ("RIPA")**

5.8 Attached to the Enforcement Policy is a revised RIPA policy. This is not new, the Council has had a policy in place in line with legislation since 2004. However there has been a change in the code of conduct which requires a revision of the policy.

5.9 There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to conduct directed surveillance for one or more of the following purposes: (1) preventing or detecting crime; (2) preventing disorder; (3) in the interests of public safety; or (4) protecting public health. The Council has used covert surveillance very effectively to prosecute anti-social behaviour such as drug use in housing estates or assault, graffiti and flytipping, touting for business in Brick Lane, disabled badge misuse and dangerous dogs. It plays an important part in tackling crimes that have a big impact on residents.

5.10 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 in a way which is incompatible with an individual's rights under the European

Convention on Human Rights. 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.

- 5.11 Any directed surveillance or use or conduct of covert human intelligence sources must first be authorised under RIPA. The authorisation ensures that the surveillance is both necessary and proportionate as well as limiting any potential excessive intrusion. RIPA imposes strict controls on such authorisations, requiring rigorous review and cancellation and diligent oversight through the keeping of a central register.
- 5.12 In March 2010, the Secretary of State published two new codes of practice pursuant to section 71 of RIPA, dealing respectively with covert surveillance and covert human intelligence sources. The Council is required to have regard to the codes of practice issued when exercising any power or performing any duty to which they relate. The codes of practice recommend that elected members should review the use of RIPA and set the policy each year.
- 5.13 The Standards Committee generally has a remit dealing with ethical standards and corporate governance. It has an Independent Chair and Independent Members as well as Councillors. It is considered that oversight of enforcement action, particularly in relation to the use of covert surveillance and covert human intelligence sources would fit comfortably with the existing functions of the Standards Committee. If the Standards Committee considered that there were issues in relation to either the Council's policies or the conduct of enforcement, then it could make recommendations to Cabinet for action. This would be consistent with the division between executive and non-executive functions established by the Local Government Act 2000. It will be necessary to amend the terms of reference of the Standards Committee in Article 9.03 of the Council's Constitution in order to effect this recommendation. This would need to be done by Full Council. Cabinet is requested to make a recommendation to this effect.

## **6. COMMENTS OF THE CHIEF FINANCIAL OFFICER**

- 6.1. This report proposes that the Council adopts an umbrella enforcement policy to govern its regulatory functions. In particular its enforcement policy on the use of covert Surveillance and RIPA. The report also proposes that the terms of reference of the Standards Committee include oversight of enforcement action.
- 6.2 There are no specific financial implications emanating from this report, and any additional costs that arise from implementing this enforcement policy, must be contained within existing revenue budgets. Also, if the Council agrees further action in response to this report's recommendations then officers will be obliged to seek the appropriate financial approval before further financial commitments are made.

7. **CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)**

7.1. Legal implications are addressed in the body of the report.

8. **ONE TOWER HAMLETS CONSIDERATIONS**

8.1. Enforcement action that complies with the five principles expressed in the Enforcement Policy and summarised in paragraph 5.2 above should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

8.2. 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.

8.3. 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 Supportive Community. This means a place where crime is rare and tackled effectively and where communities live in peace together.
- A Great Place to Live. This reflects the aspiration that Tower Hamlets should be a place where people enjoy living, working and studying and take pride in belonging.
- A Prosperous Community. This encompasses the objectives of reducing worklessness, supporting learning opportunities and fostering enterprise.

8.4. An Equality Impact Assessment of the Enforcement Policy has been prepared.

8.5. The Enforcement Policy sets out clear principles to guide officers in determining the appropriate level of enforcement action. It actively seeks to promote transparency in decision-making. To the extent that the policy provides officers with relevant considerations, it works against enforcement decisions being taken on irrelevant and unlawful considerations such as those based on protected characteristics (gender, race, disability, sexuality, age, religion or belief).

8.6. Targeted enforcement may in some circumstances fall disproportionately heavily on groups with protected characteristics (e.g. targeting street prostitution may impact women). To the extent that this may occur it is considered to be justifiable as a proportionate means of achieving a legitimate aim. Any indirect



adverse effect would be the consequence of the Council taking targeted enforcement action in pursuit of its lawful objectives, including the Community Plan goals. There is a need to target action to ensure that the Council not only achieves objectives, but does so having regard to its best value duty under the Local Government Act 1999. Any action should be in accordance with the principles expressed in the Enforcement Policy, which include the requirement that enforcement action should be proportionate.

- 8.7. The policy allows officers to take into account the particular vulnerability of the defendant in determining the appropriate level of enforcement. This applies equally to all defendants and so does not amount to direct discrimination. It may in effect work to the benefit of particular groups, such as older people or people with disabilities. To the extent that there may be such an effect, it would be in pursuit of what the Council considers in the public interest in the pursuit of its objectives, including the Community Plan goals. There is a good argument that such an effect is a proportionate means of achieving the Council's legitimate objectives. Enforcement might well lose its effectiveness or work counter the Council's goals of One Tower Hamlets if it were seen to fall harshly on the vulnerable.

## 9. **SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 9.1. 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.

## 10. **RISK MANAGEMENT IMPLICATIONS**

- 10.1. 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 the principles of enforcement contained in the policy provide a sound basis for decision-making that will reduce the likelihood of any adverse outcomes. The proposal for oversight by the Standards Committee should also provide a useful check that risks are being appropriately managed.

## 11. **EFFICIENCY STATEMENT**

- 11.1. 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.

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**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.
<b>Equality Impact Assessment</b>	<b>David Galpin, 020 7364 4348</b>

**12. APPENDICES**

Appendix 1 – Enforcement Policy

**LONDON BOROUGH OF  
TOWER HAMLETS**

**ENFORCEMENT POLICY**

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## **APPENDICES**

1. LBTH Policy on the Use of Covert Surveillance: Regulation of Investigatory Powers Act 2000
2. LBTH Policy on the Use of Covert Human Intelligence Sources

## **1. Introduction**

- 1.1. This Enforcement Policy is concerned with the Council's exercise of its criminal and quasi-criminal enforcement functions. Whilst some of the sanctions available to the Council are civil in nature, such as forfeiture of goods and money, this policy is not concerned with purely civil enforcement such as the enforcement of debts. Rather, it is concerned with offences and contraventions of legislation that fall within the Council's responsibility to enforce.
- 1.2. The Policy will assist Council officers to carry out their duties consistent with the principles of enforcement set out in section 5. It will assist the community and other members of the public to understand why the Council approaches enforcement in a particular way in individual cases.
- 1.3. The Policy is a high-level document that applies to all of the Council's relevant enforcement functions. It is recognised that individual service areas within the Council that carry out enforcement may have to take into account considerations specific to the regulatory framework in which they operate. To this end, there may be additional service-specific enforcement policies that operate under the broad umbrella of this policy.

- 1.4. All authorised officers of the Council will abide by this policy. Any departure must be fully considered and justified by the appropriate officer before a decision is made.

## **2. The Basis for Enforcement**

2.1. The Council will target its enforcement action having regard to the following –

- The Tower Hamlets Community Plan, adopted under section 4 of the Local Government Act 2000
- Local improvement targets contained in the local area agreement
- The Council's Local Development Framework
- Any external targets or requirements imposed under relevant legislation.

2.2. The Community Plan makes clear the role of enforcement in the goals of the Council and the Tower Hamlets Partnership. Overall, the Partnership is trying to achieve One Tower Hamlets, a borough where everyone has an equal stake and status; where people have the same opportunities as their neighbours; where people have a responsibility to contribute; and where families are the cornerstone of success. This is the broad vision of how to improve the well-being of Tower Hamlets.

2.3. One of the key themes in the Community Plan is that of achieving A Safe and Supportive Community. This means a place where crime is rare and tackled effectively



and where communities live in peace together. As part of tackling and preventing crime, the Council will have regard to prevention and reducing re-offending. However, the Council will also actively enforce and will promote its successes to support its Community Plan goals. Other key Community Plan themes that enforcement may support are A Great Place to Live (eg reducing graffiti and litter, providing first class and well-managed centres) and A Prosperous Community (eg supporting local business by eliminating unlawful trading).

2.4. All enforcement action is based upon an assessment of the nature of the offence and the risk, nuisance or disadvantage being caused.

2.5. This policy has been written with regard to the Regulators' Compliance Code and which came into force on 6<sup>th</sup> April 2008. The Compliance Code is a central part of the Government's better regulation agenda. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to.

2.6. The Council fully acknowledges and endorses the rights of individuals who may be subject to enforcement. It will ensure that enforcement action will be taken with due regard to:

- Police and Criminal Evidence Act 1984

- Criminal Procedures and Investigation Act 1996
- Human Rights Act 1998
- Regulation of Investigatory Powers Act 2000
- Legislative and Regulatory Reform Act 2006
- Home Office Circular 14 / 2006 - The Final Warning scheme
- Home Office Circular 016 / 2008 - Simple cautioning of adult offenders
- The Code for Crown Prosecutors
- Other relevant legislation and advice.

2.7. Where specific advice or direction on enforcement action exists, this will be taken into account as appropriate. For example, in relation to licensing the Council will have regard to the guidance issued under section 182 of the Licensing Act 2003. Specific advice or direction may come from sources such as internal operating directions or arrangements.

### **3. Principles of Enforcement**

3.1. The Council's approach is founded on firm but fair regulation, around the principles of:

- **raising awareness** of the law and its requirements
- **proportionality** in applying the law and securing compliance
- **consistency** of approach
- **transparency** about the actions of the Council and its officers
- **targeting** of enforcement action.

#### **3.2. Raising Awareness**

3.3. The first step in enforcement is to prevent contraventions of the law by raising awareness and promoting good practice, by providing advice, information, guidance and support.

#### **3.4. Proportionality**

3.5. Proportionality is about balancing the crime or the wrong being investigated and the risk, nuisance or disadvantage being caused.

### 3.6. **Consistency**

3.7. Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency when: responding to requests for service; offering advice; and deciding upon enforcement action.

3.8. Consistency does not mean uniformity. Officers will need to take account of many variables when making decisions, including: the seriousness of the breach; any history of previous breaches; the attitude of the offender; and the capacity of the offender.

3.9. Whilst the appropriate officer will be expected to exercise judgement in individual cases, the Council will continue to strive to promote consistency, including: advice, guidance and training for its officers; and arrangements for effective liaison with other enforcing bodies.

### 3.10. **Transparency**

3.11. Transparency means helping those who are regulated and other individuals to understand: what is expected of them; and what they should expect from the Council as an enforcing authority.

3.12. Transparency involves: distinguishing between statutory requirements and other advice and guidance; and

explaining why an officer will or has taken enforcement action.

### **3.13. Targeting**

3.14. Targeting means ensuring that enforcement is directed primarily where:

- activities give rise to the **most serious** risks, nuisances, disadvantages or other similar situations;
- where the law places an absolute duty upon the Council;
- activities are least well controlled/managed.

3.15. Action will be primarily focused on those who are responsible for a risk or activity and are best placed to control it.

#### **4. Authorisations and Delegations**

- 4.1. For enforcement action or action taken in connection with legal proceedings, decisions will be taken by officers duly authorised under legislation, or with delegation under schemes of delegation maintained by the Council, as relevant or appropriate to the subject area (“Authorised Officers”).
- 4.2. Pursuant to the Council’s Constitution, the responsibility for instituting or participating in legal proceedings lies with the Assistant Chief Executive (Legal Services) or officers nominated by the Assistant Chief Executive (Legal Services). Accordingly, the decision whether or not to prosecute offences will be taken within Legal Services. This decision will typically be taken on instructions from Authorised Officers.
- 4.3. Officers will be authorised to carry out enforcement actions in accordance with schemes of delegation made under the Council’s Constitution.
- 4.4. Where any action is taken which may lead to or bear upon a prosecution or simple caution, or give rise to other enforcement action, e.g. service of a notice, the Council’s Legal Services will require to be satisfied as to the

adequacy and legality of documentation, procedures and evidence.

## **5. Investigations**

- 5.1. The Council will determine the appropriate approach to investigation having regard to the content of this policy, including the principles of enforcement.
  
- 5.2. As set out in paragraph 4.6 above, the Council respects the rights of individuals and will have regard to the statutes and guidance there set out. The Council will follow the policies set out in Appendices B and C to this Policy when using, respectively, covert surveillance or covert human intelligence sources under the Regulation of Investigatory Powers Act 2000.
  
- 5.3. In respect of the regulatory functions exercised by the Council which are specified in Part 3 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, the Council will, in determining the appropriate form of any investigation, comply with the requirements of the Regulators' Compliance Code.



## **6. Enforcement Options**

- 6.1. There are a wide range of enforcement options open to the Council to take and each will be dependant upon the circumstances of the offence. Not all options will apply to every enforcement service, e.g. revocation of street trading licences is an option available to Market Services.
- 6.2. Examples of the options that may be available, depending on the subject enforcement area are set out below. Guidance is given in section 8 of this policy as to the appropriate option to take in an individual case.
- 6.3. **No action**
- 6.4. The Council may choose to do nothing in respect of an apparent contravention of the law. This would be appropriate in relation to low level offending where the offender immediately puts right what was wrong (e.g. littering where the offender immediately picks up after being spoken to) and has no previous history of such offending. This would also be suitable in low level offending where the offence was down to a genuine mistake or misunderstanding.

## **6.5. Prevention**

6.6. The Council may take action designed to prevent further offending. For example, the Council presently operates the Diversion Scheme in respect of prostitution and participates in the Change Course for those found engaged in kerb crawling. These schemes have proved effective in diverting offenders away from the particular classes of offending.

6.7. A preventative approach can also be used to explain legal requirements and, where appropriate, the means to achieve compliance. An educative approach may be considered necessary when new legislation has come into force that will require time for businesses to fully understand and comply with (e.g. if new Food Regulations were introduced). This may involve the Council in undertaking pro-active education programmes.

## **6.8. Warning**

6.9. A warning is a written notification from the Council to an offender that identifies the offending conduct and offence and warns the offender that any further like breach of the law will lead to more serious enforcement action. A warning should only be considered where the following conditions are met:

- The offence is not serious;

- The offender admits the offence;
- The risk of re-offending is considered minimal; and
- Enforcement action has not previously been taken against the offender.

## **6.10. Simple Caution**

6.11. The administration of a Simple Caution is a non-statutory disposal of offences committed by adult offenders. The simple caution provides a means of dealing quickly and simply with less serious offences where the offender has admitted the offence. It records an individual's criminal conduct for possible reference in future criminal proceedings or security checks. Administering a simple caution diverts offenders from appearing in criminal courts, whilst at the same time reducing the likelihood of re-offending.

6.12. The Council will exercise discretion when deciding whether to administer a simple caution on a case by case basis. In doing so, the Council will have regard to the aims of a simple caution set out in the preceding paragraph and any relevant guidance. The relevant guidance includes Home Office Circular 16/2008: *Simple cautioning of adult offenders* and the LACORS revised Guidance on Cautioning of Offenders.

6.13. In each case, the Council will consider whether a caution is appropriate to the offence and the offender and whether

it is likely to be effective in the circumstances. In considering whether a Caution is appropriate, the Council will consider the following factors:-

- Is there sufficient evidence of the suspect's guilt?
- Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)? A Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example where intent is denied or there are doubts about the person's mental health or intellectual capacity or where it is likely that the person could avail themselves of the provisions of a statutory defence).
- Is it in the public interest to use a Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors

6.14. If there is a victim, then the Council will also take into account the victim's views before administering a simple caution.

### **6.15. Enforcement notice**

6.16. The Council has a variety of statutory powers to issue enforcement notices. For example, in food safety cases the Council may issue a Hygiene Improvement Notice under the Food Safety Act 1990. Another example is the

Council's power to issue an abatement notice under the Environmental Protection Act 1990 in respect of statutory nuisances (eg noise nuisance). The Council will consider whether or not an enforcement notice is an appropriate response by reference to the provisions of any applicable statutory provision and the circumstances of the case.

### **6.17. Works in default**

6.18. In some cases, the Council has power to carry out works to remedy non-compliance with an enforcement notice, or to deal with a dangerous situation. If there is immediate danger, the Council will be primarily concerned with remedying that. In other cases, the Council will have regard to a cost benefit analysis.

### **6.19. Injunction**

6.20. An injunction is a [court order](#) that requires a person to do, or to refrain from doing, specified acts. The Council has some statutory powers that enable it to seek injunctions, such as section 222 of the Local Government Act 1972. The Council will generally only consider injunctions for enforcement purposes where it can be demonstrated that prosecution will afford an inadequate remedy, or there is a significant risk to the safety, health or economic welfare of the public at large or to individuals.

### **6.21. Review or revocation of licence**

6.22. The Council is responsible for administering a variety of licences and permissions, such as under the Licensing Act 2003. Where there are contraventions of the law associated with those licences and permissions, the Council may have statutory powers enabling review or revocation. The Council will exercise those powers having regard to its responsibilities under the applicable legislation. The Council will consider whether other enforcement action should be taken or, if it has been taken, whether further enforcement action is appropriate.

### **6.23. Anti-social behaviour order (ASBO)**

6.24. The Council has power under the Crime and Disorder Act 1998 to apply for an ASBO against a person who has caused harassment, alarm or distress to a person not of the same household. The Council may do so either on a stand-alone basis or post-conviction for an offence. The Council has adopted and published an ASB Strategy that sets out its policies and strategy for dealing with anti-social behaviour. The Council will consider whether or not to seek an ASBO, or whether to take any of the other action that is available for combating anti-social behaviour, by reference to its ASB Strategy.

## **6.25. Fixed penalty notice (FPN)**

6.26. The Council has power to issue FPNs in respect of a variety of offences, under statutes such as the Clean Neighbourhoods and Environment Act 2005. An FPN provides the recipient the opportunity to pay a penalty in respect of offending conduct, rather than being prosecuted. Receiving a notice is not a criminal conviction, but failure to pay will lead to prosecution. The recipient of an FPN may choose to have the matter dealt with in court, then the Council will give consideration to the same matters applicable on prosecution (with the exception of considering alternatives to prosecution).

6.27. The Council will generally only consider the use of FPNs where the following conditions are met –

- The offence is one for which an FPN may be issued under a relevant statutory power.
- The offender admits the offence, or at least has not indicated to the issuing officer that the offence is denied.
- The risk of re-offending is considered minimal.
- Enforcement action has not previously been taken against the offender (with the exception of no action, a warning or a FPN having been taken); and
- The offender has not been given an FPN in the preceding six months or two FPNs in the preceding 12 months.

## **6.28. Confiscation**

6.29. A confiscation order is made after conviction to deprive the defendant of the benefit that he has obtained from crime. The Council may seek confiscation under the Proceeds of Crime Act 2002.

6.30. The Council is generally committed to taking action for confiscation when it is available, so that offenders do not benefit from their crimes. The Council will seek to obtain, so far as possible, confiscated monies in order to apply them to the support of its enforcement work.

6.31. In determining whether confiscation is appropriate, the Council will have regard to the relevant statutory power and the circumstances of the case. The Council will take into account a cost benefit analysis of whether confiscation action should be taken, recognising that the costs of the action need to be weighed against the likely amount of the confiscation order.

## **6.32. Prosecution**

6.33. The Council is empowered to prosecute a variety of common law and statutory offences. In some instances, the Council is tasked to be an enforcing authority by statute. The Council also has a general power to enforce



arising from section 222 of the Local Government Act 1972.

6.34. Before recommending prosecution to Legal Services, the instructing officer must be satisfied that there is substantial, reliable and admissible evidence to prove that the offence was committed by the accused.

6.35. The later sections of this Policy set out the considerations that will be applied by the Council in determining whether or not to prosecute.

## **7. Levels of Enforcement Action**

7.1. There will be circumstances in which the Council has available several enforcement options. In determining the appropriate level of enforcement action, the Council will always take into account the circumstances of the individual case. Even where the Council is targeting a particular type of behaviour, it will be appropriate to consider individual circumstances.

7.2. In choosing a particular enforcement option, the Council will have regard to the basis for enforcement (section 4 of this Policy), the principles of enforcement (section 5 of this Policy) and the general approach to each option (section 7 of this Policy). The Council will also have regard to the following matters when deciding between options –

- The seriousness and effect of the offence
- The previous history of the party concerned
- Whether the offence was intentional, accidental or otherwise
- The offender's attitude to the offence and whether he or she has shown remorse
- The willingness of the alleged offender to prevent a recurrence
- The consequences of non-compliance

- The deterrent effect of a prosecution on offenders and others
- Whether there is sufficient evidence to prove the offence
- The age, capacity or vulnerability of the offender.

7.3. In respect of the regulatory functions exercised by the Council which are specified in Part 3 of the Schedule to the Legislative and Regulatory Reform (Regulatory Functions) Order 2007, the Council will, before taking enforcement action, comply with the requirements of the Regulators' Compliance Code. The responsible officer should consider whether it is appropriate to discuss the circumstances with those suspected of the regulatory breach and, if so, take that discussion into account when deciding on the best approach. Reasons should be given to the person against whom enforcement action is taken, at the time the enforcement action is being taken.

7.4. There are particular considerations that apply before the Council will prosecute. The Council will apply the Code for Crown Prosecutors to any proposed prosecution, as further explained in section 11 of this Policy. The Council will also have regard to the following:

- the seriousness of the alleged offence;
- the level of risk, nuisance or caused;
- the history of the individual concerned;

- availability of key witnesses and their willingness to co-operate;
- willingness of the prospective defendant to prevent a recurrence;
- whether a defence exists and the likelihood of the defendant being able to establish such a defence;
- probable public benefit of a prosecution and the importance of the case, e.g. whether it may create a legal precedent;
- whether other formal action would be more appropriate or effective;
- any explanation offered by the defendant;
- the age, capacity or vulnerability of the offender;
- the vulnerability of any victim;
- whether, owing to circumstances beyond the offender's control, the commission of the offence was unavoidable.

7.5. If prosecution is available, the Council will generally consider it to be appropriate where one or more of the following apply –

- There has been a serious breach of or blatant disregard for the law.
- There is a refusal to achieve basic minimum legal requirements.
- There has been a previous prosecution.

- There has been a Simple Caution administered within the preceding 2 years.
- There has been a refusal to accept a Simple Caution
- There has been a refusal to heed an earlier warning.
- An FPN has been given in the preceding 6 months or two FPNs in the preceding 12 months.

7.6. Before issuing a warning or caution, consideration will be given to whether the person has received any previous warnings or cautions for similar breaches and when those were given. If the person has been given a warning or caution for a similar offence within the previous two years, or if the person has a history or pattern of more than one warning or caution for similar offences, then it may be inappropriate to adopt this enforcement action again.

7.7. The factors referred to above are not exhaustive. In particular there may be service-specific factors to be taken into account. A decision as to the appropriate enforcement option will depend on the particular circumstances of each case. The Council will make an overall assessment having regard to the importance of all relevant factors and the circumstances of the case.

7.8. The responsible officer should in each case make a written record of the reasons for any enforcement action taken.

7.9. The Council will give consideration to how its enforcement action affects individuals and groups within Tower Hamlets. In appropriate cases, the Council may use information about offenders and particularly any trends observed to develop measures for addressing the causes of offending and re-offending. Such measures may affect the Council's determination of the appropriate level of enforcement action in an individual case.

7.10. The Diversion Scheme developed by the Council in conjunction with its partners for dealing with street prostitution is an example of a measure of the kind mentioned in paragraph 7.9. On arrest, prostitutes are given information about the Diversion Scheme and may choose to engage in meetings with the Diversion Scheme Worker at Safe Exit. This involves a needs assessment and referral to an appropriate support agency with the aim of helping individuals get away from prostitution, rather than fining them and potentially forcing re-offending. The Council is the prosecutor in respect of such offences, rather than the Crown Prosecution Service, and, if the scheme is completed, the Council generally discontinues the prosecution.

## **8. Young people**

- 8.1. From time to time, Council Enforcement Officers will be required to deal with persons under the age of 18 as offenders. Council Officers will not interview a Youth about an offence unless an appropriate adult is present and in full compliance with the relevant parts of PACE Code C.
- 8.2. The Council will not normally prosecute any person who on the day of the relevant offence is under the age of 18 but will, in accordance with Home Office guidance look, where possible, at ways of diverting youths away from the criminal justice system.
- 8.3. The Council may, however, prosecute a person under the age of 18 where the offence is of a serious nature (e.g. assault, fraud etc.) or the person has been given a reprimand or warning under Home Office Circular 14/2006 or the person has previously been convicted of an offence.

## **9. Other Enforcement Agencies**

- 9.1. The Council will co-operate as appropriate with other enforcement agencies (for example, the Metropolitan Police and the Federation Against Copyright Theft), to ensure the efficient and effective regulation of activities in Tower Hamlets. The Council will take into account, amongst other things, the terms of this Policy in determining the appropriateness of co-operation.
- 9.2. Section 4 of this Policy identifies the relationship between the Community Plan and the Council's enforcement action. The Council's co-operation with other agencies will be affected by the Community Plan and other partnership arrangements.
- 9.3. Where the Council has concurrent or overlapping powers of enforcement with other agencies, the Council will liaise as appropriate with those agencies to ensure effective co-ordination, avoid inconsistencies, ensure that any action taken is the most appropriate in the circumstances and agree the lead prosecuting agency.



## **10. The Role of Legal Services**

10.1. Legal Services is a department within the Council, headed by the Assistant Chief Executive (Legal Services) and based at 6<sup>th</sup> Floor of Mulberry Place, 5 Clove Crescent, London E14 2BG. Pursuant to the Council's Constitution, the responsibility for instituting or participating in legal proceedings lies with the Assistant Chief Executive (Legal Services) or officers nominated by the Assistant Chief Executive (Legal Services). Accordingly, the decision whether or not to prosecute offences will be taken within Legal Services. This decision will typically be taken on instructions from Authorised Officers.

## **11. The Code for Crown Prosecutors**

11.1. In determining whether or not the Council will prosecute an offence, the Council will consider the matters set out in section 8 above, including the Code for Crown Prosecutors.

11.2. The Code for Crown Prosecutors sets out the basic principles to be followed by Council Prosecutors when they make case decisions. The decision on whether or not to go ahead with a case is based on two tests outlined in the Code.

### **11.3. The evidential test**

11.4. This is the first stage in the decision to prosecute. Prosecutors must be satisfied that there is enough evidence to provide a “realistic prospect of conviction” against each defendant on each charge. Prosecutors must consider the reliability of the evidence; the credibility of any witness; and the admissibility of the evidence. They must also consider what the defence case may be and how that is likely to affect the prosecution case. A “realistic prospect of conviction” is an objective test. It means that a jury or a bench of magistrates, properly

directed in accordance with the law, will be more likely than not to convict the defendant of the charge alleged. (This is a separate test from the one that criminal courts themselves must apply. A jury or magistrates' court should only convict if it is sure of a defendant's guilt.) If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be.

### **11.5. The public interest test**

11.6. If the case does pass the evidential test, Prosecutors must then decide whether a prosecution is needed in the public interest. They must balance factors for and against prosecution carefully and fairly. Some factors may increase the need to prosecute but others may suggest that another course of action would be better. A prosecution will usually take place however, unless there are public interest factors tending against prosecution which clearly outweigh those tending in favour. Prosecutors will only start or continue a prosecution if a case has passed both tests.

11.7. Consistent with section 5 of this Policy, the decision whether or not to prosecute rests ultimately with the Assistant Chief Executive (Legal Services).

## 12. Equalities and Diversity

12.1. In conducting enforcement work, the Council will be mindful of its statutory responsibilities in respect of equalities and will take into account *Valuing Diversity: Our Policy Statement On Diversity And Equality*. The Council will take steps to gather information as appropriate in relation to relevant equality strands, in order to assess the impact of enforcement action.

### **13. Changes to the Policy**

13.1. The Council will keep this policy under review and may amend the policy from time to time as it considers appropriate.

## **14. Complaints**

14.1. The Council operates a corporate complaints system. If there are any complaints regarding the Council's enforcement action or the application of this Policy, then they may be made and dealt with in accordance with the corporate complaints system. This is without prejudice to any other rights that a person may have at law.

**APPENDIX 1**

**LONDON BOROUGH OF TOWER**

**HAMLETS**

**POLICY ON THE USE OF COVERT**

**SURVEILLANCE**

**REGULATION OF INVESTIGATORY**

**POWERS ACT 2000**

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## 1. Introduction

1.1. The Council has broad statutory functions and takes targeted enforcement action in relation to those functions having regard to the following –

- The Tower Hamlets Community Plan, adopted under section 4 of the Local Government Act 2000
- Local improvement targets contained in the local area agreement
- The Council's Local Development Framework
- Any external targets or requirements imposed under relevant legislation
- The Council's enforcement policy

1.2. There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to conduct directed surveillance for one or more of the following purposes –

- Preventing or detecting crime
- Preventing disorder
- In the interests of public safety
- Protecting public health

1.3. The Council is mindful of its obligation under section 6(1) of the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right (meaning the European Convention on Human Rights ("ECHR")).

1.4. The Council recognises the terms of Article 8 of the European Convention of Human Rights provides:

*Everyone has the right to respect for his private and family life, his home and his correspondence.*

*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

- 1.5. The Council recognises that individuals have the right to a fair trial under Article 6 of the ECHR and that this may be affected if evidence is improperly obtained.
- 1.6. The Council understands that it is obliged to comply with the provisions of the Regulation of Investigatory Powers Act 2000 (“RIPA”) in order to conduct directed surveillance. The Council believes that by complying with the provisions of RIPA, the Council should also ensure that any directed surveillance comes within the qualification in Article 8(2) of the ECHR and, accordingly, the Council should not breach its obligation under section 6(1) of the Human Rights Act 1998.
- 1.7. The Office of Surveillance Commissioners (‘OSC’) has recommended as best practice that public authorities

develop a corporate policy. The Council concurs with the OSC that a corporate policy is best practice and has had such a policy in effect since 27<sup>th</sup> July 2004. This document is the Council's corporate policy in relation to directed surveillance. The Council also has a policy in place in respect of the use of covert human intelligence sources, which is contained in a separate document.

- 1.8. The Council has prepared guidance notes and a procedure manual on the use of directed surveillance, which should be read with this policy.

## **2. Responsibilities**

2.1 The Assistant Chief Executive (Legal Services) (“ACE”) is responsible for the following –

- Ensuring the proper implementation of this policy and the guidance and procedures that go with it.
- Ensuring the Council complies with the requirements of Part II of RIPA.
- Ensuring that due regard is given to any code of practice issued pursuant to section 71 of RIPA.
- Engaging with commissioners and inspectors when they conduct inspections under RIPA.
- Overseeing the implementation of any recommendations made by a commissioner.

2.2 The Head of Legal Services (Community) (“HLS”) is the deputy to the ACE for the purposes of carrying out the functions in 2.1.

2.3 The Service Head – Community Safety is the Council’s authorising officer for the purposes of considering applications for authorisation to conduct directed surveillance, with the exception of cases where confidential information is either targeted or likely to be obtained. If the Service Head – Community Safety is unavailable and the ACE or HLS agree that it is appropriate in respect of a specified application for authorisation, then the Head of Audit

may act as the Council's authorising officer in respect of that application.

- 2.4 In cases where the directed surveillance targets confidential information or confidential information is likely to be obtained, then the Council's authorising officers is the Chief Executive, or, in the Chief Executive's absence, the person acting as Chief Executive.
- 2.5 The Council considers that applications for authorisation to conduct directed surveillance should be of a high and consistent standard. For this reason, all applications should be cleared by a gate-keeper before consideration by the authorising officer. The Council's gate-keeper is the Head of Enforcement and Support Intervention in Community Safety. In the absence of that officer, the HLS may act as the gate-keeper.
- 2.6 All officers have responsibility to ensure that directed surveillance is only conducted where there is an authorisation from the authorising officer and the surveillance is conducted in accordance with that authorisation or any other directions given by the authorising officer.

### 3. Directed Surveillance

3.1 Terms used in this policy have the meanings given by RIPA or any relevant code of practice made under section 71 of RIPA.

3.2 Directed surveillance is surveillance that is covert (i.e. secret) but not intrusive and which is undertaken:

- for the purposes of a specific investigation or a specific operation;
- in such a manner as is likely to result in the obtaining of private information about a person (whether or not one specifically identified for the purposes of the investigation or operation); and
- otherwise than by way of an immediate response to events or circumstances the nature of which is such that it would not be reasonably practicable for an authorisation under Part II of RIPA to be sought for the carrying out of the surveillance.

3.3 Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle. It involves the presence of an individual inside the residence or vehicle or is carried out by means of a surveillance device. **The Council is not permitted to conduct intrusive surveillance under RIPA and will not use intrusive surveillance.**

#### **4. Priorities**

4.1. The Council will use directed surveillance only where an authorisation has been obtained under RIPA and only in accordance with the terms of the authorisation.

4.2. An authorisation may only be granted where it is necessary for one of the following purposes: (1) preventing or detecting crime; (2) preventing disorder; (3) in the interests of public safety; and (4) protecting public health.

4.3. Having regard to the permitted purposes and to the requirements in the Council's Enforcement Policy that enforcement action should be targeted (to the Council's stated objectives), the Council's current priorities for the use of RIPA 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.

## **5. Authorisations**

- 5.1. Prior to directed surveillance taking place RIPA provides that the surveillance must be authorised and such surveillance can only take place where it is for the purpose of preventing or detecting crime or of preventing disorder. The authorisation ensures that the surveillance is both necessary and proportionate as well as limiting any potential collateral intrusion. Further the authorisation will need to consider whether confidential information is likely to be obtained as a result of the covert surveillance.
- 5.2. There is a Code of Practice that has been issued by the Secretary of State relating to the use of Covert Surveillance and Property Interference and this came into force on 6<sup>th</sup> April 2010.
- 5.3. The Council is committed to only using directed surveillance in accordance with RIPA and the Code of Practice. The Council has adopted a guidance manual to assist officers to make only make applications and grant authorisations in accordance with RIPA and the Code.
- 5.4. The Council is not permitted to authorise intrusive surveillance under RIPA or property interference under the Police Act 1997. The Council will not use either measure in its investigations. Where an investigation will involve



property interference such as the placing of a tracker on a vehicle then that will have to be authorised by the police.

- 5.5. Requests to undertake directed surveillance must be authorised by the Council's authorising officer as defined in section 2 of this Policy.
- 5.6. All authorisations are required to have a Unique Reference Number ("URN") and the officer seeking the authorisation must obtain the URN from Legal Services at the time of preparing the application (ie prior to seeking authorisation) and the authorising officer is not to authorise that authorisation unless a URN has been provided.
- 5.7. The Council is committed to achieving a consistent high standard in applications for authorisation to conduct directed surveillance. All applications must first be submitted to the Council's gatekeeper as specified in section 2 of this Policy. Only when the gatekeeper has cleared the application may the authorised officer consider it.

## **6. Training**

- 6.1 Authorising officers can only authorise once they have undertaken training on the operation of RIPA and the Code of Practice. The Council's gatekeepers may only clear applications for consideration by the authorising officer after undertaking the same training as the authorising officers.
- 6.2 All officers who may seek to use directed surveillance during an investigation must also have undertaken training on the operation of RIPA and the Code of Practice.
- 6.3 The Council will arrange appropriate training courses at regular intervals. It is expected that members of the Corporate Management Team will require authorising officers, gatekeepers and those who may apply to conduct directed surveillance to undertake the training.

## **7. Reviews/Cancellations**

- 7.1. An authorisation for directed surveillance lasts for 3 months before having to be renewed but when authorising directed surveillance the authorising officer is required to set a date for review of that authorisation. This is known as the first review. The Code of Practice requires regular reviews be undertaken by the authorising officer to assess the continuing need for the surveillance.
- 7.2. The frequency of reviews must be considered at the outset by the authorising officer as frequently as is considered necessary and practicable on a case by case basis. In any event, the authorising officer must set a first review date when granting the authorisation.
- 7.3. If after the first review the authorising officer considers that the directed surveillance is to continue then s/he will be required to set a further date of review. Again, this assessment will be on a case by case basis and in a time that is considered necessary and practicable.
- 7.4. If on the review, however, the authorising officer is satisfied that the authorisation is no longer necessary on the ground under which it was granted or renewed or it is no longer proportionate to what is sought to be achieved by carrying it out then the authorising officer must request that the

authorisation be cancelled and no further surveillance under that authorisation is to be carried out.

- 7.5. It should be stressed that authorisations for directed surveillance must be cancelled. They cannot and must not be allowed to just lapse.

## **8. Combined Authorisations**

8.1 From time to time, it may well be that the directed surveillance will be undertaken by a Covert Human Intelligence Source (“CHIS”). If it does then both actions must be authorised. A single authorisation can combine the two, however, and this should be done on the application form used for the authorisation of the CHIS.

## **9. Security of Covert Technical Equipment**

- 9.1. The Council also requires each Service that uses covert technical equipment when undertaking surveillance to ensure that such equipment is securely locked away when not used. Further, such equipment will only be issued to an officer who has authorisation to use it. There will be a logging in and out book and the officer will be required to sign for the equipment. In signing for the equipment, the officer will be reminded that misuse of the equipment is a disciplinary offence.

## **10. Member Oversight**

10.1 The Council's Standards Committee will review this Policy and the Council's conduct of directed surveillance. If issues arise, the Standards Committee will make recommendations to Cabinet for action.

## **11. Central Recording**

11.1 The Council is required to keep records in relation to authorisations centrally. Those records will be maintained by Legal Services.

11.2 The relevant authorising officer must provide copies of all authorisations and all reviews, renewals and cancellations to the Assistant Chief Executive (Legal Services), the Head of Legal Services – Community, or a person nominated by either of them. The authorisation officer must provide those documents forthwith after following signing by the authorising officer.

11.3 All officers are expected to use the most up to date versions of forms recommended by the Home Office.



**APPENDIX 2**

**LONDON BOROUGH OF TOWER**  
**HAMLETS**

**POLICY ON THE USE OF COVERT**  
**HUMAN INTELLIGENCE SOURCES**  
**REGULATION OF INVESTIGATORY**  
**POWERS ACT 2000**

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## **1. Introduction**

1.1. The Council has broad statutory functions and takes targeted enforcement action in relation to those functions having regard to the following –

- The Tower Hamlets Community Plan, adopted under section 4 of the Local Government Act 2000
- Local improvement targets contained in the local area agreement
- The Council's Local Development Framework
- Any external targets or requirements imposed under relevant legislation
- The Council's enforcement policy

1.2. There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to use covert human intelligence sources for one or more of the following purposes –

- Preventing or detecting crime
- Preventing disorder
- In the interests of public safety
- Protecting public health

- 1.3. The Council is mindful of its obligation under section 6(1) of the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right (meaning the European Convention on Human Rights (“ECHR”)).
- 1.4. The Council recognises the terms of Article 8 of the European Convention of Human Rights provides:

*Everyone has the right to respect for his private and family life, his home and his correspondence.*

*There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

- 1.5. The Council recognises that individuals have the right to a fair trial under Article 6 of the ECHR and that this may be affected if evidence is improperly obtained.
- 1.6. The Council understands that it is obliged to comply with the provisions of the Regulation of Investigatory Powers Act 2000 (“RIPA”) in order to use covert human intelligence sources. The Council believes that by complying with the

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provisions of RIPA, the Council should also ensure that any use of a covert human intelligence source comes within the qualification in Article 8(2) of the ECHR and, accordingly, the Council should not breach its obligation under section 6(1) of the Human Rights Act 1998.

- 1.7. The Office of Surveillance Commissioners ('OSC') has recommended as best practice that public authorities develop a corporate policy. The Council concurs with the OSC that a corporate policy is best practice and has had such a policy in effect since 27<sup>th</sup> July 2004. This document is the Council's corporate policy in relation to covert human intelligence sources. The Council also has a policy in place in respect of the use of directed surveillance, which is contained in a separate document.
  
- 1.8. The Council has prepared guidance notes and a procedure manual on the use of covert human intelligence sources, which should be read with this policy.

## **2. Responsibilities**

2.1 The Assistant Chief Executive (Legal Services) (“ACE”) is responsible for the following –

- Ensuring the proper implementation of this policy and the guidance and procedures that go with it.
- Ensuring the Council complies with the requirements of Part II of RIPA.
- Ensuring that due regard is given to any code of practice issued pursuant to section 71 of RIPA.
- Engaging with commissioners and inspectors when they conduct inspections under RIPA.
- Overseeing the implementation of any recommendations made by a commissioner.

2.2 The Head of Legal Services (Community) (“HLS”) is the deputy to the ACE for the purposes of carrying out the functions in 2.1.

2.3 The Service Head – Community Safety is the Council’s authorising officer for the purposes of considering applications for authorisation to use covert human intelligence sources, with the exception of cases where confidential information is either targeted or likely to be obtained. If the Service Head – Community Safety is unavailable and the ACE or HLS agree that it is appropriate

in respect of a specified application for authorisation, then the Head of Audit may act as the Council's authorising officer in respect of that application.

2.4 In cases where the covert human intelligence source is targeted to obtain confidential information or confidential information is likely to be obtained, then the Council's authorising officers is the Chief Executive, or, in the Chief Executive's absence, the person acting as Chief Executive.

2.5 The Council considers that applications for authorisation to use covert human intelligence sources should be of a high and consistent standard. For this reason, all applications should be cleared by a gatekeeper before consideration by the authorising officer. The Council's gate-keeper is the Head of Enforcement and Support Intervention in Community Safety. In the absence of that officer, the HLS may act as the gatekeeper.

2.6 All officers have responsibility to ensure that covert human intelligence sources are only used where there is an authorisation from the authorising officer and the surveillance is conducted in accordance with that authorisation or any other directions given by the authorising officer.

2.7 Section 8 deals with the responsibilities of the controller, the handler and the record keeper for any covert human intelligence source. Section 5 specifies that the officers

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nominated to control, handle and record-keep in respect of a covert human intelligence source must be trained to the satisfaction of both the authorising officer and the ACE before any authorisation may be granted.



### **3. Covert Human Intelligence Sources**

3.1 Terms used in this policy have the meanings given by RIPA or any relevant code of practice made under section 71 of RIPA.

3.2 Under RIPA, a person is a covert human intelligence source if the person establishes or maintains a personal or other relationship with another person for the purpose of facilitating either –

(a) Covertly obtaining information or providing another person with access to any information.

(b) Covertly disclosing information obtained by use of the relationship or as a consequence of the existence of the relationship.

#### **4. Priorities**

4.1. The Council will use covert human intelligence sources only where an authorisation has been obtained under RIPA and only in accordance with the terms of the authorisation.

4.2. An authorisation may only be granted where it is necessary for one of the following purposes: (1) preventing or detecting crime; (2) preventing disorder; (3) in the interests of public safety; and (4) protecting public health.

4.3. Having regard to the permitted purposes and to the requirements in the Council's Enforcement Policy that enforcement action should be targeted (to the Council's stated objectives), the Council's current priorities for the use of RIPA 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.

## **5. Authorisations**

- 5.1. Prior to a CHIS being used RIPA provides that the use must be authorised and the CHIS can only be used where it is for the purpose of preventing or detecting crime or of preventing disorder. The authorisation ensures that the use of the CHIS is both necessary and proportionate as well as limiting any potential collateral intrusion. Further the authorisation will need to consider whether confidential information is likely to be obtained as a result of the use of a CHIS.
- 5.2. There is a Code of Practice that has been issued by the Secretary of State relating to the use of a CHIS and this came into force on 6<sup>th</sup> April 2010.
- 5.3. The Council is committed to only using covert human intelligence sources in accordance with RIPA and the Code of Practice. The Council has adopted a guidance manual to assist officers to only make applications and grant authorisations in accordance with RIPA and the Code.
- 5.4. Requests to undertake covert human intelligence sources must be authorised by the Council's authorising officer as defined in section 2 of this Policy. No authorisation is to be granted unless both the authorising officer and the Assistant Chief Executive (Legal Services) are satisfied that the officers proposed as controller, handler and record-keeper have had sufficient training. The Council may as an

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alternative work in partnership with police, so that the police rather than the Council control any covert human intelligence source who may be required for one of the Council's investigations.

- 5.5. All authorisations are required to have a Unique Reference Number ("URN") and the officer seeking the authorisation must obtain the URN from Legal Services prior to seeking authorisation and the authorising officer is not to authorise that authorisation unless a URN has been provided.
- 5.6. The Council is committed to achieving a consistent high standard in applications for authorisation to conduct directed surveillance. All applications must first be submitted to the Council's gatekeeper as specified in section 2 of this Policy. Only when the gatekeeper has cleared the application may the authorised officer consider it.
- 5.7. The Council will not permit the authorisation of a CHIS who is under the age of 18.

## **6. Reviews/Cancellations**

- 6.1 An authorisation for use of a CHIS lasts for a maximum of 12 months before having to be renewed. When authorising the use of a CHIS the authorising officer is required to set a date for review of that authorisation. This is known as the first review. The Code of Practice requires regular reviews be undertaken by the authorising officer to assess the continuing need for the use of the CHIS.
- 6.2 The frequency of reviews must be considered at the outset by the authorising officer as frequently as is considered necessary and practicable on a case by case basis. In any event, the authorising officer must set a first review date when granting the authorisation.
- 6.3 If after the first review the authorising officer considers that the use of the CHIS is to continue then s/he will be required to set a further date of review. Again, this assessment will be on a case by case basis and in a time that is considered necessary and practicable.
- 6.4 If on the review, however, the authorising officer is satisfied that the authorisation is no longer necessary on the ground under which it was granted or renewed or it is no longer proportionate to what is sought to be achieved then the authorising officer must request that the authorisation be

cancelled and the CHIS no longer used under that authorisation.

- 6.5 It should be stressed that authorisations for the use of a CHIS must be cancelled. They cannot and must not be allowed to just lapse.

## **7. Training**

- 7.1 Authorising officers can only authorise once they have undertaken training on the operation of RIPA and the Code of Practice. The Council's gatekeepers may only clear applications for consideration by the authorising officer after undertaking the same training as the authorising officers.
- 7.2 Officers may only undertake the roles of controller, handler, or record-keeper if they have undertaken training in the discharge of those roles. If there are no officers who have been trained to the satisfaction of the authorising officer and the Assistant Chief Executive (Legal Services), then the Council will not use covert human intelligence sources.
- 7.3 All officers who may seek to use covert human intelligence sources during an investigation must also have undertaken training on the operation of RIPA and the Code of Practice.
- 7.4 The Council will arrange appropriate training courses at regular intervals. It is expected that members of the Corporate Management Team will require authorising officers, gatekeepers and those who may apply to conduct directed surveillance to undertake the training.

## **8. Controller/Handler/Record Keeper**

- 8.1 Where the use of a CHIS is authorised then section 29(5)(a) of RIPA requires the Council to have at all times a person holding a position with the Council who will have day-to-day responsibility for dealing with the source (“the handler”). This will not be the officer seeking authorisation but will be the responsibility of the person who supervises the investigation.
- 8.2 Further, section 29(5)(b) of RIPA requires the Council to have at all times another person holding a position with the Council who will have general oversight of the use made of the source (“the controller”). The controller is the officer responsible for the general oversight of the use of the source. . . . The controller will be the Service Manager for the Service in which the officer seeking the authorisation is based so that the Service Manager will be the controller and will be the person managing the handler.
- 8.3 Although an authorising officer can also act as the controller of a source, the Council will not permit an authorising officer to be responsible for authorising their own activities, e.g. those in which they, themselves, are to act as the source or in tasking the source. Therefore if the authorising officer would be the Service Manager for the handler then a Service Manager of the same level from another Service will be the controller.



8.4 Additionally, section 29(5)(c) of RIPA requires the Council to have at all times a person holding a position with the Council who will have responsibility for maintaining a record of the use made of the CHIS. This will be the Service Head (i.e. the Service Manager's manager) responsible for the service area using the covert human intelligence source. If the service area falls within the authorising officer's responsibility, then the Corporate Director Communities, Localities and Culture must maintain the record.

8.5 Guidance suggests that a local authority may prefer to seek the assistance of the police to manage its CHIS. In such a case a written protocol between the parties should be produced in order to ensure that an identified CHIS is properly managed. Without such an agreement the local authority must be capable of fulfilling its statutory responsibilities. Where the CHIS is not a Council Officer then the intention is to seek assistance of the police. Where the CHIS is a Council Officer then prior to the authorisation being sought the investigating officer must give consideration to seeking the assistance of the Police and if it is decided not to then justification for that decision must be included within the risk assessment for the use of the CHIS.

## **9. Combined Authorisations**

- 9.1. From time to time, it may well be that the use of a CHIS involves directed surveillance. If it does then the directed surveillance must also be authorised. A single authorisation can combine the two, however, and this should be done on the application form used for the authorisation of the CHIS.

## **10. Security of Covert Technical Equipment**

10.1. The Council requires each Service that uses covert technical equipment when undertaking surveillance to ensure that such equipment is securely locked away when not used. Further, such equipment will only be issued to an officer who has authorisation to use it. There will be a logging in and out book and the officer will be required to sign for the equipment. In signing for the equipment, the officer will be reminded that misuse of the equipment is a disciplinary offence.

## **11. Member Oversight**

11.1. The Council's Standards Committee will review this Policy and the Council's use of covert human intelligence sources. If issues arise, the Standards Committee will make recommendations to Cabinet for action.

## **12. Central Recording**

12.1. The Council is required to keep records in relation to authorisations centrally. Those records will be maintained by Legal Services.

12.2. The relevant authorising officer must provide copies of all authorisations and all reviews, renewals and cancellations to the Assistant Chief Executive (Legal Services), the Head of Legal Services – Community, or a person nominated by either of them. The authorisation officer must provide those documents forthwith after following signing by the authorising officer.

12.3. All officers are expected to use the most up to date versions of forms recommended by the Home Office.

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