

Meeting of the

OVERVIEW & SCRUTINY COMMITTEE

Tuesday, 4 June 2013 at 7.00 p.m.

AGENDA

VENUE

Room C1, 1st Floor, Town Hall, Mulberry Place, 5
Clove Crescent, London, E14 2BG

Members:	Deputies (if any):
Chair: Councillor Motin Uz-Zaman	
Vice-Chair:	
Councillor Rachael Saunders	Councillor Tim Archer, (Designated Deputy representing Councillor David Snowdon)
Councillor Stephanie Eaton	Councillor Khaled Uddin Ahmed, (Designated Deputy representing Councillors Motin Uz-Zaman, Rachael Saunders, Helal Uddin, Abdal Ullah and Amy Whitelock)
Councillor Fozol Miah	Councillor Peter Golds, (Designated Deputy representing Councillor David Snowdon)
Councillor Amy Whitelock	Councillor Harun Miah, (Designated Deputy representing Councillor Fozol Miah)
Councillor Helal Uddin	Councillor Helal Abbas, (Designated Deputy representing Councillors Motin Uz-Zaman, Rachael Saunders, Helal Uddin, Abdal Ullah and Amy Whitelock)
Councillor Abdal Ullah	Councillor Judith Gardiner, (Designated Deputy representing Councillors Motin Uz-Zaman, Rachael Saunders, Helal Uddin, Abdal Ullah and Amy Whitelock)
Councillor David Snowdon	
1 Vacancy	

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

Co-opted Members:

Memory Kampiyawo	- (Parent Governor Representative)
Nozrul Mustafa	- (Parent Governor Representative)
Rev James Olanipekun	- (Parent Governor Representative)
Mr Mushfique Uddin	- (Muslim Community Representative)
Dr Phillip Rice	- (Church of England Diocese Representative)
1 Vacancy	- (Roman Catholic Diocese of Westminster Representative)

Committee Services Contact:

Angus Taylor, Democratic Services,

Tel: 020 7364 4333 E-mail: angus.taylor@towerhamlets.gov.uk

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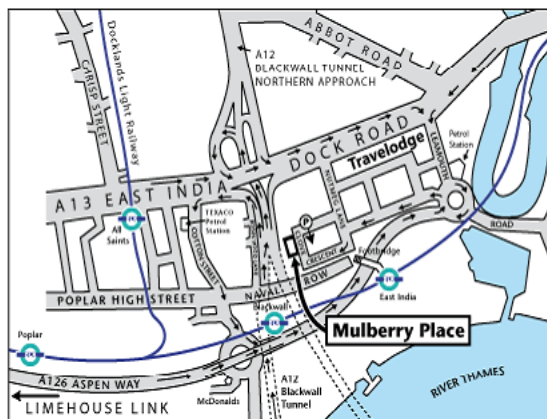
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LONDON BOROUGH OF TOWER HAMLETS
OVERVIEW & SCRUTINY COMMITTEE

Tuesday, 4 June 2013

7.00 p.m.

SECTION ONE

1. ELECTION OF VICE-CHAIR FOR THE MUNICIPAL YEAR 2013/14

To receive nominations for the election of the Vice-Chair.

2. APOLOGIES FOR ABSENCE

To receive any apologies for absence.

3. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST **1 - 4**

To note any declarations of interest made by Members, including those restricting Members from voting on the questions detailed in Section 106 of the Local Government Finance Act, 1992. See attached note from the Monitoring Officer.

4. UNRESTRICTED MINUTES **5 - 18**

To confirm as a correct record of the proceedings the unrestricted minutes of the meeting of the Overview and Scrutiny Committee held on 7th May 2013.

5. OVERVIEW AND SCRUTINY PROCEDURAL MATTERS

5.1 Overview & Scrutiny Committee Terms of Reference, Membership, Quorum, Dates of meetings, Protocols and Guidance **19 - 48**

To note the OSC Terms of Reference, Membership, Quorum, Dates of future meetings; and to agree a start time for scheduled OSC meetings in 2013/14. Also to adopt the protocols and note the guidance, to facilitate the conduct of OSC business, set out in the report.

5 .2 Appointment of Scrutiny Lead Members, Co-options to Overview and Scrutiny Committee, Health Scrutiny Panel Terms of Reference and Appointments **49 - 56**

To appoint Scrutiny Lead Members and agree the co-option of representatives in respect of education matters. Also to note the establishment of the Health Scrutiny Panel by Council with terms of reference and quorum as set out in the report, appoint members of the Health Scrutiny Panel for the Municipal Year 2013/14 and agree the co-option of representatives thereto.

6. REQUESTS TO SUBMIT PETITIONS

To receive any petitions (to be notified at the meeting).

7. UNRESTRICTED REPORTS 'CALLED IN'

No decisions of the Mayor in Cabinet (8th May 2013) in respect of unrestricted reports on the agenda were 'called in'.

8. UNRESTRICTED REPORTS FOR CONSIDERATION

8 .1 Executive Response to questions relating to budget virement decisions **57 - 74**

To note the response of the Executive to reports containing the advice of the Monitoring Officer and Chief Finance Officer in relation to Mayoral Decision Log No: 021 - Budget Implementation 2013/14 (No 1) (virements to fund East End Life) and Mayoral Decision Log No: 022 - Budget Implementation 2013/14 (No2) (virements to fund Mayoral Advisors).

8 .2 Co regulation and the Accountability of Registered Housing Providers (RPs) - Report of the Scrutiny Working Group (To Follow)

To agree the report and recommendations arising from the Scrutiny Review.

8 .3 Use of the Regulation of Investigatory Powers Act 2000 **75 - 94**

To consider and comment on the information provided in the report.

8.4 Overview and Scrutiny Committee Work Programme 2013/14 (Oral Report)

To receive an oral report and give initial consideration to the contents of the OSC Work Programme.

9. PRE-DECISION SCRUTINY OF UNRESTRICTED CABINET PAPERS

To consider and agree pre-decision scrutiny questions/comments to be presented to Cabinet.

10. ANY OTHER UNRESTRICTED BUSINESS WHICH THE CHAIR CONSIDERS TO BE URGENT

To consider any other unrestricted business that the Chair considers to be urgent.

11. EXCLUSION OF THE PRESS AND PUBLIC

In view of the contents of the remaining items on the agenda the Committee is recommended to adopt the following motion:

“That, under the provisions of Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985, the press and public be excluded from the remainder of the meeting for the consideration of the Section Two business on the grounds that it contains information defined as Exempt in Part 1 of Schedule 12A to the Local Government Act, 1972.”

EXEMPT/CONFIDENTIAL SECTION (Pink Papers)

The exempt committee papers in the agenda will contain information, which is commercially, legally or personally sensitive and should not be divulged to third parties. If you do not wish to retain these papers after the meeting, please hand them to the Committee Officer present.

12. EXEMPT/ CONFIDENTIAL MINUTES

To confirm as a correct record of the proceedings the exempt/ confidential minutes of the meeting of the Overview and Scrutiny Committee held on 7th May 2013.

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NUMBER
95 - 104**

WARDS

13. EXEMPT/ CONFIDENTIAL REPORTS 'CALLED IN'

No decisions of the Mayor in Cabinet (8th May 2013) in respect of exempt/ confidential reports on the agenda were 'called in'.

14. PRE-DECISION SCRUTINY OF EXEMPT/ CONFIDENTIAL) CABINET PAPERS

To consider and agree pre-decision scrutiny questions/comments to be presented to Cabinet.

15. ANY OTHER EXEMPT/ CONFIDENTIAL BUSINESS THAT THE CHAIR CONSIDERS URGENT

To consider any other exempt/ confidential business that the Chair considers to be urgent.

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Agenda Item 3

DECLARATIONS OF INTERESTS - NOTE FROM THE MONITORING OFFICER

This note is for guidance only. For further details please consult the Members' Code of Conduct at Part 5.1 of the Council's Constitution.

Please note that the question of whether a Member has an interest in any matter, and whether or not that interest is a Disclosable Pecuniary Interest, is for that Member to decide. Advice is available from officers as listed below but they cannot make the decision for the Member. If in doubt as to the nature of an interest it is advisable to seek advice **prior** to attending a meeting.

Interests and Disclosable Pecuniary Interests (DPIs)

You have an interest in any business of the authority where that business relates to or is likely to affect any of the persons, bodies or matters listed in section 4.1 (a) of the Code of Conduct; and might reasonably be regarded as affecting the well-being or financial position of yourself, a member of your family or a person with whom you have a close association, to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected.

You must notify the Monitoring Officer in writing of any such interest, for inclusion in the Register of Members' Interests which is available for public inspection and on the Council's Website.

Once you have recorded an interest in the Register, you are not then required to declare that interest at each meeting where the business is discussed, unless the interest is a Disclosable Pecuniary Interest (DPI).

A DPI is defined in Regulations as a pecuniary interest of any of the descriptions listed at **Appendix A** overleaf. Please note that a Member's DPIs include his/her own relevant interests and also those of his/her spouse or civil partner; or a person with whom the Member is living as husband and wife; or a person with whom the Member is living as if they were civil partners; if the Member is aware that that other person has the interest.

Effect of a Disclosable Pecuniary Interest on participation at meetings

Where you have a DPI in any business of the Council you must, unless you have obtained a dispensation from the authority's Monitoring Officer following consideration by the Dispensations Sub-Committee of the Standards Advisory Committee:-

- not seek to improperly influence a decision about that business; and
- not exercise executive functions in relation to that business.

If you are present at a meeting where that business is discussed, you must:-

- Disclose to the meeting the existence and nature of the interest at the start of the meeting or when the interest becomes apparent, if later; and
- Leave the room (including any public viewing area) for the duration of consideration and decision on the item and not seek to influence the debate or decision

When declaring a DPI, Members should specify the nature of the interest and the agenda item to which the interest relates. This procedure is designed to assist the public's understanding of the meeting and to enable a full record to be made in the minutes of the meeting.

Where you have a DPI in any business of the authority which is not included in the Member's register of interests and you attend a meeting of the authority at which the business is considered, in addition to disclosing the interest to that meeting, you must also within 28 days notify the Monitoring Officer of the interest for inclusion in the Register.

Further advice

For further advice please contact:-

Isabella Freeman, Assistant Chief Executive (Legal Services), 020 7364 4801; or
John Williams, Service Head, Democratic Services, 020 7364 4204

APPENDIX A: Definition of a Disclosable Pecuniary Interest

(Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, Reg 2 and Schedule)

Subject	Prescribed description
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	<p>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.</p> <p>This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</p>
Contracts	<p>Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority—</p> <p>(a) under which goods or services are to be provided or works are to be executed; and</p> <p>(b) which has not been fully discharged.</p>
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.
Corporate tenancies	<p>Any tenancy where (to the Member's knowledge)—</p> <p>(a) the landlord is the relevant authority; and</p> <p>(b) the tenant is a body in which the relevant person has a beneficial interest.</p>
Securities	<p>Any beneficial interest in securities of a body where—</p> <p>(a) that body (to the Member's knowledge) has a place of business or land in the area of the relevant authority; and</p> <p>(b) either—</p> <p>(i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</p> <p>(ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.</p>

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LONDON BOROUGH OF TOWER HAMLETS

MINUTES OF THE OVERVIEW & SCRUTINY COMMITTEE

HELD AT 7.00 P.M. ON TUESDAY, 7 MAY 2013

**ROOM C1, 1ST FLOOR, TOWN HALL, MULBERRY PLACE, 5 CLOVE
CRESCENT, LONDON, E14 2BG**

Members Present:

Councillor Ann Jackson (Chair)
Councillor Tim Archer
Councillor Stephanie Eaton
Councillor Sirajul Islam
Councillor Rachael Saunders (Vice-Chair)
Councillor Helal Uddin
Councillor Amy Whitelock

Co-opted Members Present:

Memory Kampiyawo – (Parent Governor Representative)
Nozrul Mustafa – (Parent Governor Representative)
Rev James Olanipekun – (Parent Governor Representative)
Dr Phillip Rice – (Church of England Diocese Representative)

Other Councillors Present:

Councillor Abdul Asad – (Cabinet Member for Health and Wellbeing)

Councillor Craig Aston –

Councillor Alibor Choudhury – (Cabinet Member for Resources)

Councillor Carlo Gibbs –

–

Officers Present:

Tahir Alam – (Strategy Policy & Performance Officer, Chief Executive's)
Sarah Barr – (Senior Strategy Policy and Performance Officer, One Tower Hamlets, Chief Executive's)
Anne Canning – (Interim Corporate Director Education Social Care

	and Wellbeing)
David Galpin	– (Head of Legal Services (Community), Legal Services, Chief Executive's)
Chris Holme	– (Acting Corporate Director - Resources)
Ian Read	– (Communications Advisor, Communications, Chief Executive's)
Louise Russell	– (Service Head Corporate Strategy and Equalities, Chief Executive's)
Takki Sulaiman	– (Service Head Communications, Chief Executive's)
Angus Taylor	– (Principal Committee Officer, Democratic Services, Chief Executive's)

COUNCILLOR ANN JACKSON (CHAIR) IN THE CHAIR

1. APOLOGIES FOR ABSENCE

Apologies for absence were received on behalf of Councillor Ohid Ahmed (Deputy Mayor).

Noted

2. DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST

No declarations of Disclosable Pecuniary Interest or other declarations of interest were made.

3. UNRESTRICTED MINUTES

Councillor Whitelock, referencing the minute pertaining to Agenda item 6.1 "Children's Centre Scrutiny Review Update" [page 14 to 16], commented that she had requested that some revisions be made to the report arising from the scrutiny review of progress on implementation of the original review recommendations, and that the revised report be circulated to OSC members to ascertain if they were content for it to be progressed, but it had not been re-circulated. Ms Sarah Barr, Senior SPP Officer undertook to **follow this up**.

The Chair **Moved** and it was:-

Resolved

That the unrestricted minutes of the ordinary meeting of the Overview and Scrutiny Committee, held on 9th April 2013, be agreed as a correct record of the proceedings, and the Chair be authorised to sign them accordingly.

Action by:

Angus Taylor (Principal Committee Officer, Democratic Services, CE's)

4. REQUESTS TO SUBMIT PETITIONS

There were no petitions.

5. UNRESTRICTED REPORTS 'CALLED IN'

No decisions of the Mayor in Cabinet on 10th April 2013 had been "called in".

6. UNRESTRICTED REPORTS FOR CONSIDERATION

6.1 East End Life Budget and future arrangements

Mr Takki Sulaiman, Service Head Communications, in introducing the report, which provided a summary of the events following the decision of Budget Council [7th March 2013] to delete funding from the Communications Budget used to fund East End Life (EEL) and the subsequent Mayoral decision to provide funding to continue EEL, and summarising the key points contained therein, highlighted that:

- He was preparing terms of reference and a programme of work to deliver a review of EEL and would be agreeing this with the Mayor shortly.
- The review process could not commence until the Mayor had reaffirmed his original decision, on 17th April, to provide funding to continue EEL.
- The 2011 review of EEL had taken 9 months and been less complex, so it was anticipated that this review would take longer.

A discussion followed which focused on the following points:-

- Consideration that the anticipated timescale for completion of the EEL review was overly lengthy, with clarification sought and given as to the rationale for its anticipated duration. *The previous review could not be relied upon, as this review had more complex elements: a fuller EQIA was required than in 2011, the closure of EEL that would result from the Budget Council decision required consultation with staff and trades unions which had not taken place before, and impending legislation would also need to be taken into account. The new review had only been able to commence in mid- April, when the Mayoral Decision had been confirmed, and a full terms of reference were being drawn up now for agreement with the Mayor.*
- Whilst acknowledging that consultation with staff and trades unions was a requirement of the authority's HR procedures, consideration that time needed for this would not amount to 9 to 12 months. It was noted that other recent reviews, which were as complex or more complex, such as the restructure of Children's Centres which had involved TUPE or the 5% reduction in the Social Care staffing budget, had been completed in a

shorter time. Consideration that the EEL review was unlikely to be as significant in its impact as that of such reviews, and the EQIA process therefore no more complex and lengthy. Consideration therefore that a full review had been conducted in 2011, and the additional complexity of this review, provided as a justification for a longer review, was not convincing. Clarification was sought and given as to the requirement to undertake an EQIA.

- Further detail was sought on the terms of reference and methodology for the EEL review. *These had yet to be discussed and agreed with the Mayor, and legislation in the Queen's speech on 8th May would also need to inform the review.*
- Consideration that full Council had already given a steer on the nature of the EEL review and the only locus for the Mayor was to make a decision on the basis of the outcome of the EEL review not to write the review. *Officers were clear that a review of EEL was an Executive function and therefore terms of reference for the review required discussion and agreement with the Mayor before proceeding. These could be made available to OSC once agreed.*
- Mr Holme undertook to provide details in writing as to the HR processes/ timescales relating to consultation with staff/ trades unions on staffing reviews and also those relating to re-deployment.

The Chair proposed that the deliberations and additional comments of the OSC on the EEL review be forwarded to the Mayor to inform his consideration of the nature/ timescale for the review. The Chair subsequently **Moved** and it was:-

Resolved

1. That the contents of the report be noted; and
2. That the deliberations and additional comments of the OSC on the EEL review be forwarded to the Mayor to inform his consideration of the nature/ timescale for the review.

Action by:

Angus Taylor (Principal Committee Officer, Democratic Services, CE's)
Takki Sulaiman (Service Head Communications, CE's)

6.2 Advice of the Monitoring Officer & Chief Finance Officer/ Section 151 Officer in relation to Mayoral Decision Log No: 021 - Budget Implementation 2013/14 (No 1) (virements to fund East End Life) - To Follow

The Chair informed OSC members that:

- Reports containing the advice of the Monitoring Officer and Chief Finance Officer/ Section 151 Officer in relation to Mayoral Decisions 021 (virements to fund East End Life) and 022 (virements to fund Mayoral Advisors), as requested by the OSC at their last meeting, had been

circulated to all Members of the Council on Friday 3rd May 2013 under a covering letter from Mr John Williams, Service Head Democratic Services. The documents had been **Tabled** for co-opted OSC members.

- Mr Williams had advised that although useful for OSC members to be informed of the contents of the reports without delay, the formal route for the reports was to the Executive in the first instance, who were then required in turn to report to the OSC.

A discussion followed which focused on the following points:-

- Consideration that the reports were badly drafted and the terminology used was difficult for a layperson to understand.
 - The OSC had requested advice as to whether the Mayoral decisions were outside the Budget and Policy Framework (BPF) and on the validity of the Mayor's decision that the decision being taken was non-key, however the reports did not answer whether the decisions were within the BPF.
 - The report on East End Life (EEL) virements advised that the decision was lawful which was a different matter entirely.
 - The reports contended that the decisions were not key decisions and valid based on the virement rules. Consideration that the purpose of virements was easement of the authority's financial position, in response to changes in circumstances, in order to ensure it met its obligations, whereas in these cases virements had been made to revoke decisions of the Budget Council passed by a two thirds majority. Accordingly the validity of the advice provided in both reports was disputed and clarification was sought and given as to whether the OSC could seek independent financial and legal advice on these matters and once received consider the matters further. *Mr Galpin advised that the procedure for Calling In decisions outside the BPF, contained within the authority's Constitution, had been invoked; and specifically the provisions of Rule 7.1 to request advice from the Monitoring Officer and Chief Finance Officer. Such advice had now been provided and the next stage was for the Executive to consider the advice. He was not aware of any mechanism to seek further advice and vary the constitutional process, however **Mr Galpin undertook to look into the matter and report back.***
 - Both reports referred to the 'Doncaster MBC case' which, although interesting, did not have a bearing on the issue in these cases.
- The reports provided contained no new information to that considered by OSC on 9th April, despite the OSC having requested further information.
- Clarification was sought and given on the simplified meaning of paragraph 3.1 "Virement" in both reports. *This was statutory DCLG guidance under a 2010 Act, not Officer advice, and had been directly quoted.*
- Comment that in view of the advice provided in the reports the rationale for the authority's Budget setting process in future years, and the role of Councillors in this, was both unclear and called into question.
- Comment also that the full Council had passed a motion in January 2013 that Officers should work with the LGA and London Councils in undertaking a governance review. This review encompassed a number of

areas where the Executive and Non-Executive elements of the authority's governance structure had a role/ powers, and where the inter-relationship was becoming unworkable; and in relation to which Officer advice had varied. Accordingly **proposed** that the LGA and London Council's governance review be asked to examine budget making/ virement arrangements and the decision making process relating to virements under Mayoral Decisions 21 and 22.

The Chair commented that although the OSC could not refer these matters to full Council [under the provisions of the BPF Procedure Rules] as the next stage in this procedure was for the Executive to consider the advice and report back to the OSC, she considered and **proposed** that a formal complaint in relation to the Mayoral decision making in these cases should be lodged for full Council consideration, at her request. The Chair also proposed that the deliberations of the OSC and additional comments made on these matters be forwarded to the Mayor for his consideration. The Chair subsequently **Moved** and it was:-

Resolved

1. That the advice of the Monitoring Officer and Chief Finance contained in the report be noted;
2. That the Head of Legal Services (Community) examine whether the OSC could seek independent financial and legal advice on this matter, and once received consider the matter further;
3. That the deliberations and additional comments of the OSC on this matter be forwarded to the Mayor for his consideration;
4. That a formal complaint in relation to the Mayoral decision making in this matter should be lodged for full Council consideration, at the request of the OSC Chair; and
5. That the Local Government Association and London Councils be asked to consider budget making/ virement arrangements and the decision making process relating to virements under Mayoral Decisions 21 and 22, as part of their current governance review at Tower Hamlets.

Action by:

Angus Taylor (Principal Committee Officer, Democratic Services, CE's)
[Resolution 3, 4 &5]

David Galpin (Head of Legal Services [Community], CE's) [Resolution 2, 4&5]

John Williams (Service Head Democratic Services, CE's) [Resolution 4 &5]

6.3 Advice of the Monitoring Officer & Chief Finance Officer/ Section 151 Officer in relation to Mayoral Decision Log No: 022 - Budget Implementation 2013/14 (No2) (virements to fund Mayoral Advisors) - To Follow

Please note that this item of business was considered in conjunction with Agenda item 6.2, because of the similar nature of the subject matter and the almost identical content of the reports from the Monitoring Officer/ Section 151 Officer. The deliberations of the OSC and subsequent decisions taken are detailed at Agenda item 6.2.

6.4 Adult Social Care - Budget Update (Oral Report)

Ms Anne Canning, Interim Corporate Director Education, Social Care and Wellbeing (ESW), gave an oral report which focused on areas of concern raised by the OSC including:

- Concern that the ESW directorate was required to make significant budget savings and change management programmes (such as Domiciliary Care Re-commissioning, Re-ablement, and modernising the Learning Disability Day Care), were off track, with consequent slippage in delivery of these savings. Given service delivery pressures would the savings be delivered?
- What assurance could be given that the quality of service provision would be maintained during the transition period to new service provision arrangements arising from merger of CSF and AHWB directorates, changes to service delivery and the transfer of PH responsibilities.
- The strength/ stability/continuity of strategic leadership provided by lengthy interim leadership roles, particularly in the context of the transfer of Public Health responsibilities to the authority and significant change management.

Key points were highlighted as follows:

- Ms Canning and Dr Banerjee had both recently been appointed as Interim Corporate Director ESW and Interim Director Public Health respectively; both had extensive experience in this field and were familiar with the routines and expectations of the authority, so strategic leadership would be robust. The directorate management team had also recently been strengthened with permanent appointments to the posts of Service Head Resources and Service Head Adult Social Care..
- The ESW directorate savings target for 2013/14 and how this was comprised was outlined (£10.681 million including £5.081 million and £1.5 million inherited from the AHWB and CSF directorates, with £4.1 million of new targets). The “forensic systems” in place to monitor/ ensure delivery of these savings were also outlined (Change and Efficiency Board [fortnightly], Directorate Management Team [monthly], Corporate Transformation Delivery Group [fortnightly]). OSC assured that Ms Canning and her management team were fully aware of this priority and were confident it was on track overall; alternative options for social care were being examined where there was a need to mitigate slippage in savings. A significant decision would be made the following week as to the viability of the ‘go live’ dates for new service provision arrangements (Domiciliary Care/ Homecare monitoring).

- The ESW savings to be met from 'Vacancy Management' (VM) were outlined (£3 million). Significant research had taken place on the standard vacancy rates in other local authorities and LBTH directorates and potential for consequent savings from VM before agreeing the target. Establishment mapping had been time consuming, however OSC assured of Officer confidence that the target would be met. The OSC were assured that there would be no impact on frontline service delivery from VM, and current staffing ratios and recruitment practice would be maintained. VM was not intended to reduce staffing, however a culture change was required: that staffing budgets were no longer ring-fenced and savings from non-recruitment could not be redirected for other initiatives within the service but contribute to ESW savings.
- The ESW savings to be delivered through a review of management and administration were outlined (£345k). Officers were confident that if the ESW restructuring went well that efficiency savings from combining functions could be delivered; however some delays and the impact thereof could not be predicted, as with the Children's Centres review.
- There was a risk in relation to new Domiciliary Care arrangements/ savings, primarily due to failings in ICT systems for home care monitoring. A decision would be made the following week on viability of the 'go live' dates for this. Savings to be delivered through Re-ablement were posing a challenge and there may be a need to direct savings from elsewhere to correct slippage. Exact details of mitigating action for this or other slippage was not possible because of the complexity of linkages within the savings model. Currently there was a predicted risk of a shortfall in ESW savings of £650k against a target of £10.6 million.

A comprehensive discussion followed which focused on the following points:-

- The Health Scrutiny Panel (HSP) had expressed concern and made a strong recommendation, that a permanent Director of PH in Tower Hamlets be appointed as soon as possible to ensure strong leadership during the period when the transfer of PH responsibilities to the Council would be having maximum impact. This was not a reflection on the Interim appointment, but a recognition of the potential difficulties of the transition process and risk to PH without a permanent appointment. Accordingly requested again that the HSP recommendation be expedited. *The Interim Director of PH was determined to ensure transition arrangements were smooth and PH outcomes and life chances improved. The recommendation of a permanent appointment would be taken back for HR consideration.*
- Comment that staff and trades unions had relayed concerns that the application of the proposed staff vacancy rates in the context of the current squeeze on staff/ resources would have a much greater impact on staff. Clarification sought and given on the consideration given to this and the extent of monitoring arrangements for the impact on staff including sickness absence monitoring. *Data used for VM modelling was current not historic. Difficult restructures did result in increased sickness absence but management monitoring/ management of this had improved greatly and absence levels were down overall.*

- Consideration that not paying staff for travel to and from the homes of residents receiving care services undermined the authority's policy of paying the London Living Wage.
- Commenting that the authority's re-ablement targets had not been met in the past 3 years, and domiciliary care targets had not been met due to failings of electronic homecare monitoring, clarification sought and given as to meeting these targets going forward given the environment of resource and staffing constraints. Consideration also that there was an urgent need for transparency as to how compensating savings would be achieved and a discussion of this with the Interim Director ESW was needed. Accordingly **proposed** that the HSP scrutinise the savings targets and progress on their delivery in more detail later in the year. *The importance of electronic homecare monitoring was to enable scrutiny and challenge to ascertain if clients were receiving care that met expectations/ standards. Officers were confident the ICT issues on homecare monitoring would be resolved. The direction of travel was consistent with meeting Re-ablement provision/ associated savings, and there were no notional changes to the strategy which would continue moving forward. The scale of risk on the savings required of ESW was £650k, and Ms Canning undertook to report back and discuss plans for savings at the HSP as appropriate.*
- Clarification/assurance sought and given as to whether the quality of social care services, and in particular care of the elderly, would be maintained despite savings requirements and analysis undertaken on this. *Reiterated assurance that there would be no discernible impact on front line services and current staffing levels and recruitment practices for these services would be maintained. Assurance given that savings from the review of management and administration would not impact on service provision. Assurance also given that maintaining quality of care for the elderly was an absolute driver for service provision and no deterioration in front line services was envisaged.*
- Clarification was sought and given as to the importance attached to provision of adult social care, by the Mayor and Cabinet Member for Health and Wellbeing; and its level of priority relative to other Mayoral priorities for the Borough, in the context that demand would grow and other authorities were already being forced into provision for the elderly and disabled via institutional care. *The authority had statutory obligations in this area but additionally was the only authority in the UK to provide free homecare, it had also recently been rated by the Care Quality Commission as providing a "High standard and quality of care". Future provision would depend on the resources available to the authority, and the position would continue to be reviewed. However there was no current intention to depart from the authority's preferred policy of caring safely for residents in their own homes, for as long as possible, and to support this through improved use of technology and innovative working such as Re-ablement.*
- In the context of commissioning services externally, what mechanisms were in place to monitor the effectiveness and efficiency of service provision. Also what systems were in place obtain client feedback and use this to inform commissioning. *"Peer to Peer Review" initiatives were*

*underway to train some client users on how to obtain feedback from others and to use this feedback to inform development of adult social care. Such information was starting to inform commissioning of children's services, and this would be extended. Additional manual processes to monitor delivery of homecare services would not be cost effective, and officers were confident that ICT problems with electronic monitoring would be resolved. Requested that a **summary report on Adult Social Care client complaints be presented to a future OSC.***

The Chair **Moved** and it was:-

Resolved

1. That the contents of the oral report be noted;
2. That the Health Scrutiny Panel scrutinise Adult Social Care savings targets and progress on their delivery in more detail later in the year; and
3. That a summary report on Adult Social Care complaints be presented to a future OSC for consideration.

Action by:

Sarah Barr (Senior Strategy Policy & Performance Officer, Strategy Policy & Performance, CE's)

Anne Canning (Interim Corporate Director Education, Social Care & Wellbeing)

6.5 Overview and Scrutiny Committee - Annual Review 2012-13

Ms Sarah Barr, Senior Strategy Policy and Performance Officer, introduced and highlighted key points in the report, which provided a summary and review of the OSC's work in 2012/13 for OSC consideration/ comment prior to presentation of the annual review to full Council. Ms Barr indicated that if OSC members had additional information for inclusion, or suggested revisions, these could still be accommodated before submission to full Council.

The Chair commented that the OSC had performed as well as could be expected in difficult circumstances; and expressed the view that the OSC role appeared to be changing, with it no longer being able to undertake some of the more worthwhile activities it had previously. The Chair indicated that she would be standing down as OSC Chair in the new Municipal Year, and thanked all those who had contributed to the support of the scrutiny function over the past year.

The Chair **Moved** and it was:-

Resolved

1. The contents of the report be noted; and

2. That the Service Head Corporate Strategy and Equality be authorised to make any necessary minor amendments to the final report, before its submission to full Council, after consultation with the OSC Chair and Scrutiny Lead Members.

Action by:

Sarah Barr (Senior Strategy Policy & Performance Officer, Strategy Policy & Performance, CE's)

7. VERBAL UPDATES FROM SCRUTINY LEADS

Scrutiny - Chief Executive's - Cllr Archer

Process underway to arrange and conduct interviews with former Chief Executive's who had worked in local authorities with and without an executive mayor. Once undertaken, Councillor Archer/ Sarah Barr to draft a report.

Scrutiny – Communities, Localities and Culture - Cllr Eaton

A review on the collection and use of crime statistics, with particular focus on ASB underway.

Health Scrutiny - Cllr Saunders

The HSP had recently agreed scrutiny review reports for two areas:

- Health Assets – importance of community assets for health and wellbeing
- Public Health - work with the Voluntary Sector and using the Healthy Borough Programme model for PH.

and the reports would soon be presented to the OSC for consideration/ endorsement.

Scrutiny Review - Post-16 attainment – Cllr Whitelock

The concluding review session to distil recommendations had been held and the headline areas for recommendations were outlined. The scrutiny review report would soon be presented to the OSC for consideration/ agreement.

Scrutiny Review - Co regulation and the Accountability of Registered Housing Providers (RPs) Cllr Islam

The review work had been completed, Officers were currently drafting the scrutiny review report would soon be presented to the OSC for consideration/ agreement. There was strong potential to improve systems/performance and engagement in this area.

Scrutiny Review - Removing the barriers to youth and graduate employment- Cllr Jackson

A concluding review session to distil recommendations would be held soon. The headline areas for recommendations were outlined. The scrutiny review report would soon be presented to the OSC for consideration/ agreement.

A short discussion followed which focused on ways to harness the skills/ capacity of those parent governors who had unsuccessfully stood for election

as co-opted members of the OSC, for the benefit of the scrutiny process, such as co-option onto scrutiny reviews. There were opportunities for involvement given the range of educational activities and their extension to include 2 year olds. Consensus that Sarah Barr liaise with Governors Services (ESW) with a view to canvassing interest of such parent governors in participation in future scrutiny work.

The Chair **Moved** and it was:-

Resolved

1. That the verbal updates be noted; and
2. That the Senior SPP Officer liaise with Governor Services (ESCWB) with a view to canvassing interest of appropriate parent governors in participation in future scrutiny work.

Action by:

Sarah Barr (Senior Strategy Policy & Performance Officer, Strategy Policy & Performance, CE's)

8. PRE-DECISION SCRUTINY OF UNRESTRICTED CABINET PAPERS

No pre-decision questions submitted to the Mayor in Cabinet [08 May 2013].

9. ANY OTHER UNRESTRICTED BUSINESS WHICH THE CHAIR CONSIDERS TO BE URGENT

OSC meeting times 2013/14

The Chair informed members of the OSC that the Calendar of Meetings for the 2013/14 Municipal Year, recently agreed by full Council, had a start time of 7.30pm for OSC meetings. However, in recent years the OSC has met at 7.00pm, and the Chair considered that this time had worked well for both members of the OSC and others attending. Accordingly the Chair proposed, for the consideration of OSC members, that the OSC agree that its first scheduled meeting in the new Municipal Year 2013/14 take place at 7.00pm, in line with current arrangements; also that the new OSC membership at that point make a determination on meeting start times for the remainder of the Municipal Year.

The Chair formally **Moved** and it was:-

Resolved

1. That first scheduled meeting of the OSC in the new Municipal Year 2013/14 take place at 7.00pm, in line with current arrangements;

2. The OSC consider and make a determination on scheduled OSC meeting start times for the remainder of the Municipal Year 2013/14. at its first meeting in the new Municipal Year.

Action by:

Angus Taylor (Principal Committee Officer, Democratic Services, CE's)

10. EXCLUSION OF THE PRESS AND PUBLIC

The Chair **Moved** and it was: -

Resolved:

That in accordance with the provisions of Section 100A of the Local Government Act 1972, as amended by the Local Government (Access to Information) Act 1985, the press and public be excluded from the remainder of the meeting for the consideration of the Section Two business on the grounds that it contained information defined as exempt or confidential in Part 1 of Schedule 12A to the Local Government, Act 1972.

SUMMARY OF EXEMPT PROCEEDINGS

11. EXEMPT/ CONFIDENTIAL MINUTES

Minutes of ordinary OSC 9th April 2013 approved.

12. EXEMPT/ CONFIDENTIAL REPORTS 'CALLED IN'

12.1 Mayoral Executive Decision Call-in: Decision Log No: 020 - "Sutton Street Depot - Successful Bidder Request for Amendments to Terms of Lease"

Decision of the Mayor outside Cabinet referred back to the Mayor for further consideration.

13. PRE-DECISION SCRUTINY OF EXEMPT/ CONFIDENTIAL) CABINET PAPERS

Nil items.

14. ANY OTHER EXEMPT/ CONFIDENTIAL BUSINESS THAT THE CHAIR CONSIDERS URGENT

Nil items.

The meeting ended at 9.00 p.m.

Chair, Councillor Ann Jackson
Overview & Scrutiny Committee

Agenda Item 5.1

Committee	Date	Classification	Report No.	Agenda Item No.
Overview & Scrutiny Committee	4th June 2013	Unrestricted		
Report of: Assistant Chief Executive (Legal Services) Originating Officer(s) : Angus Taylor, Principal Committee Officer, Democratic Services		Title : Overview & Scrutiny Committee Terms of Reference, Membership, Quorum, Dates of meetings, Protocols and Guidance Ward(s) affected: All		

1. Summary

- 1.1 This report sets out the Terms of Reference, Membership, Quorum and Dates of meetings of the Overview & Scrutiny Committee (OSC) for the Municipal Year 2013/14;
- 1.2 The report also sets out suggested protocols and guidance to facilitate the conduct of the Committee's business and thereby meet its statutory and constitutional requirements.

2. Recommendation

The OSC is recommended to:-

- 2.1 Note its Terms of Reference, Membership, Quorum, Dates of future meetings, as set out in Appendices 1, 2 and 3 to this report;
- 2.2 Consider and agree a start time for scheduled OSC meetings during the remainder of the Municipal Year 2013/14; and
- 2.3 Adopt the protocols and note the guidance to facilitate the conduct of OSC business, in line with statutory and constitutional requirements, as set out at Appendix 4 to this report.

3. Background

- 3.1 At the Annual General Meeting of the full Council held on 22 May 2013, the Authority approved the proportionality, establishment of the Committees and Panels of the Council and appointment of Members thereto.
- 3.2 It is traditional that following the Annual General Meeting of the Council at the start of the Municipal Year, at which various committees are established, that those committees note their terms of reference, Membership and Quorum for the forthcoming Municipal Year. These are set out in Appendix 1 and 2 to the report respectively.

3.3 The dates of OSC meetings for the remainder of the Municipal Year, agreed by the full Council AGM on 22 May 2013 [Calendar of Meetings for the 2013/14 Municipal Year] are set out in Appendix 3 to this report.

3.4 OSC meetings are scheduled to take place at 7.30pm in accordance with the Calendar of Meetings agreed by the full Council. However in recent years the OSC has met at 7.00pm, and the former OSC Chair/ OSC members considered that this time had worked well for both OSC members and others attending. Accordingly the OSC [7 May 2013] agreed that the first scheduled OSC meeting in the new Municipal Year take place at 7.00pm, in line with current arrangements; it also agreed that at this first meeting the OSC (new 2013/14 membership) consider and agree a start time for scheduled OSC meetings during the remainder of the Municipal Year 2013/14.

4. Protocols for the conduct of business

4.1 The protocols and guidance attached at Appendix 4 to this report have been prepared with the intention of assisting the Committee to carry out its Constitutional and statutory obligations. They provide a viable framework for the practical functioning of the Committee and outline how the Committee will manage its work.

5. Comments of the Chief Financial Officer

5.1 This report describes the Terms of Reference, Membership, Quorum and Dates of meetings of the OSC for the Municipal Year 2013/14 for the information of members of the Committee.

5.2 There are no specific financial implications arising from the reports recommendations however in the event that 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.

6. Concurrent report of the Assistant Chief Executive (Legal)

6.1 Section 9F of the Local Government Act 2000 requires authorities to set up an Overview and Scrutiny Committee. The report properly informs the Committee of the Constitutional arrangements and proposes protocols and guidance for adoption by the Committee to supplement the implementation of those arrangements.

7. One Tower Hamlets Considerations

7.1 Equal opportunities and reducing poverty will be central to the work of the OSC. The report will allow the Committee and its members to function well over the coming year and work towards reducing poverty in the borough and improve equal opportunities.

8. Sustainable Action for a Greener Environment

- 8.1 There are no specific SAGE implications arising from the recommendations in the report.

9. Risk Management Implications

- 9.1 The adoption of the protocols and guidance set out in Appendix 1 will assist in the effective and efficient functioning of the OSC and therefore reduce the risk of poor delivery of the Council's Overview and Scrutiny function.

10. Crime and Disorder Reduction Implications

- 10.1 The report indicates for Member's information that the OSC has within its Terms of Reference the discharge of functions required of the Authority under the provisions of the Police and Justice Act 2006.

11. Appendices

Appendix 1 OSC Procedure Rules

Appendix 2 OSC Membership 2013/14

Appendix 3 OSC Scheduled Meeting Dates 2013/14

Appendix 4 OSC Protocols and guidance for conduct of business

LOCAL GOVERNMENT ACT, 1972 SECTION 100D (AS AMENDED) LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF THIS REPORT

Brief description of "background paper"

If not supplied
Name and telephone
number of holder

n/a

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APPENDIX 1

OVERVIEW AND SCRUTINY COMMITTEE PROCEDURE RULES

1. THE ARRANGEMENTS FOR OVERVIEW AND SCRUTINY

- 1.1** The Council will establish the Overview and Scrutiny Committee and Sub-Committees or Scrutiny Panels set out in Article 6. The Council will appoint the Chair and Members of the Overview and Scrutiny Committee and the Overview and Scrutiny Committee will appoint the Chair and Members of the Sub-Committees or Scrutiny Panels. The Vice-Chair of each Committee and Sub-Committee/Panel shall be appointed by the Committee or, as the case may be, Sub-Committee/Panel itself.
- 1.2** There will be one standing Scrutiny Panel to discharge the Council's functions under the Health and Social Care Act 2001. There will be such other Scrutiny Panels during the course of the municipal year as the Committee considers appropriate from time to time to carry out individual reviews under the Overview and Scrutiny work programme.
- 1.3** The Overview and Scrutiny Committee will comprise nine Members of the Council and six co-opted members. Up to three substitutes may be appointed for each Councillor. Its terms of reference are:
- (a) The performance of all overview and scrutiny functions on behalf of the Council.
 - (b) The appointment of such Sub-Committees (Scrutiny Panels) as it considers appropriate to fulfil those functions, determining those Scrutiny Panels' composition (including any co-opted Members) and terms of reference.
 - (c) To approve an annual overview and scrutiny work programme including the work programme of any Scrutiny Panels it appoints to ensure that there is efficient and effective use of the Committee's time and the time of the Council's Scrutiny Panels.
 - (d) To advise the Mayor and Cabinet of key issues/questions to be considered in relation to reports due to be considered by the Executive.
 - (e) To exercise the right to call in for reconsideration any executive decisions taken but not yet implemented.
 - (f) To determine whether to request full Council to review or scrutinise any decision called in, where considered contrary to the budget and policy framework and whether to recommend that the decision be reconsidered.

- (g) To receive and consider requests from the Executive for scrutiny involvement in the annual budget process.
- (h) To monitor the Executive's forward plan to ensure that appropriate matters are subject to scrutiny.
- (i) To consider any matters relevant to the remit of the Committee required by a Committee Member to be considered under s.21 (8) Local Government Act 2000.
- (j) To consider any local government matter referred to the Committee by a Councillor in accordance with section 119 of the Local Government and Public Involvement in Health Act 2007.
- (k) To discharge the functions conferred by the Police and Justice Act 2006 as the Council's Crime and Disorder Committee.

1.4 The Health Scrutiny Panel will undertake the Council's functions under the Health and Social Care Act 2001 and consider matters relating to the local health service as provided by the NHS and other bodies including the Council:

- (a) To review and scrutinise matters relating to the health service within the Council's area and make reports and recommendations in accordance with any regulations made thereunder;
- (b) To respond to consultation exercises undertaken by an NHS body; and
- (c) To question appropriate officers of local NHS bodies in relation to the policies adopted and the provision of the services.

1.5 The membership of individual Scrutiny Panels and their terms of reference will be determined by the Overview and Scrutiny Committee. They will include the following:

- (a) To investigate, scrutinise, monitor and advise in relation to:
 - How services are being delivered and the Council's functions discharged.
 - How policies have been implemented and their effect on the Council's corporate strategies (i.e. equal opportunities, anti-poverty and crime and disorder).
 - The development of relevant policy.
 - How resources are being used, spent and managed.
 - Any other matter, relevant to the specific remit of the Scrutiny Panels, which affects the Council's area or any of its inhabitants.

2. WHO MAY SIT ON OVERVIEW AND SCRUTINY?

- 2.1** All Councillors except Members of the Executive may be Members of the Overview and Scrutiny Committee and Scrutiny Panels. However, no Member may be involved in scrutinising a decision in which s/he has been directly involved.
- 2.2** The Overview and Scrutiny Committee will select from among its Councillor Members six lead Scrutiny Members, one for each of the themes set out in Article 6.04 of this Constitution. These themes may be subject to change from time to time.
- 2.3** The Lead Scrutiny Member for a Healthy Community shall be appointed as a member and Chair of the Health Scrutiny Panel.

3. CO-OPTEEES

- 3.1** The Overview and Scrutiny Committee will be responsible for approving co-opted Members for the Scrutiny Panels. Co-opted Members will be non-voting.

4. EDUCATION REPRESENTATIVES

- 4.1** The Overview and Scrutiny Committee must include in its membership the following voting representatives in respect of education matters:

- 4.1.1** One Church of England diocese representative;

- 4.1.2** One Roman Catholic diocese representative; and

- 4.1.3** Three parent governor representatives elected under the procedures contained in the Parent Governor Representatives (England) Regulations 2001.

This Rule and Rule 4.2 and 4.3 below also apply to any Scrutiny Panel established in respect of education matters.

- 4.2** The Committee may also include a Muslim representative in a non-voting capacity.
- 4.3** These Members may speak but not vote on any other (i.e. non educational) matters.

5. MEETINGS

- 5.1** The Overview and Scrutiny Committee shall meet in accordance with the calendar of meetings approved by the Council. The Chair of the

Committee may call an extraordinary meeting of the Committee at any time subject to the ordinary rules on the convening of meetings and the Access to Information Procedure Rules.

- 5.2** The Scrutiny Panels shall meet in accordance with a timetable agreed by the Overview and Scrutiny Committee, but will establish their own pattern of meetings within this framework and the Chair of Scrutiny may decide to lead any scrutiny panels.

6. QUORUM

- 6.1** The quorum for the Overview and Scrutiny Committee and the Scrutiny Panels shall be three voting Members.

7. WHO CHAIRS THE OVERVIEW AND SCRUTINY COMMITTEE AND THE SCRUTINY PANELS

- 7.1** The Chair of the Overview and Scrutiny Committee and the Chairs of the Scrutiny Panels will be drawn from among the Councillors sitting on the Committee.

- 7.2** The Council shall appoint a Member to serve as Chair of the Overview and Scrutiny Committee. If the Council does not, and subject to the requirement at 7.1 above, the Committee may appoint such a person as it considers appropriate as Chair.

8. WORK PROGRAMME

- 8.1** The Overview and Scrutiny Committee will be responsible for agreeing the overview and scrutiny work programme for the year.

9. AGENDA ITEMS

- 9.1** Any Member of the Overview and Scrutiny Committee and/or any Scrutiny Panel shall be entitled to give notice to the Assistant Chief Executive (Legal Services) that s/he wishes an item relevant to the functions of the Committee to be included on the agenda for the next available meeting. On receipt of such a request the Assistant Chief Executive (Legal Services) will ensure that it is included on the next available agenda provided that it is relevant to the Committee work programme.

- 9.2** The Overview and Scrutiny Committee shall also respond, as soon as its work programme permits, to requests from the Council and if it considers it appropriate the Mayor or Executive to review particular areas of Council activity. Where they do so, the Overview and Scrutiny Committee shall report their findings and any recommendations back to the Mayor/Executive and/or Council. The Executive shall consider the matter at one of its next two meetings

following receipt of the report. If the matter is relevant to the Council only then will they consider the report at their next meeting.

9.3 Any Member of the Council may refer to the Overview and Scrutiny Committee a local government matter in accordance with section 119 of the Local Government and Public Involvement in Health Act 2007. In relation to any matter referred under this provision, the Committee shall consider whether or not to exercise its powers under section 21B of the Local Government Act 2000 to make a report or recommendation(s) to the authority or the executive on the matter.

9.4 A “local government matter” at 9.3 above is one that: (a) relates to the discharge of any function of the authority; (b) affects all or part of the Member’s electoral area or any person who lives or works in that area; and (c) is not an excluded matter. Excluded matters are: any matter relating to a planning decision; any matter relating to a licensing decision; any matter relating to an individual in respect of which the individual has a right of appeal; and any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or disclosed at, the Overview and Scrutiny Committee or Panel.

9.5 If the Committee decides not to exercise any of its powers in relation to a matter referred to it under 9.3 above, it shall notify the Member who referred the matter of its decision and the reasons for it. If the Committee does make any report or recommendation(s) to the authority or the executive on the matter referred, it shall provide the Member with a copy of that report or recommendation(s), subject to the provisions of section 21D of the Act regarding confidential or exempt information.

10. POLICY REVIEW AND DEVELOPMENT

10.1 The role of the Overview and Scrutiny Committee in relation to the development of the Council’s budget and policy framework is set out in detail in the Budget and Policy Framework Procedure Rules.

10.2 In relation to the development of the Council’s approach to other matters not forming part of its policy and budget framework, the Overview and Scrutiny Committee may make proposals to the Mayor or Executive for developments in so far as they relate to matters within its terms of reference.

10.3 The Overview and Scrutiny Committee or any Scrutiny Panel established for this purpose may hold enquiries and investigate the available options for future direction in policy development and may appoint advisers and assessors to assist them in this process. They may go on site visits, conduct public surveys, hold public meetings,

commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

11. REPORTS FROM OVERVIEW AND SCRUTINY

- 11.1** All reports from Scrutiny Panels must first be considered by the Overview and Scrutiny Committee. Once it has formed recommendations on proposals for development, the Overview and Scrutiny Committee will prepare a formal report and submit it to the Assistant Chief Executive (Legal Services) for consideration by the Mayor or Executive (if the proposals are consistent with the existing budgetary and policy framework) or to the Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- 11.2** The Executive shall consider the report of the Overview and Scrutiny Committee one of its next two meetings following submission of the report to the Assistant Chief Executive (Legal Services). The Council will consider the report at its next ordinary meeting if appropriate.
- 11.3** Where the Overview and Scrutiny Committee makes a report or recommendations in relation to a local improvement target which relates to certain partner authorities, and is specified in a local area agreement of the authority, the Committee may in accordance with section 21C of the Local Government Act 2000 (as amended) by notice in writing require the relevant partner authority to have regard to the report or recommendation in question in exercising their functions. Such notice will be accompanied by a copy of the report or recommendations (subject to the provisions of section 21D of the Act regarding confidential or exempt information. It is the duty of a relevant partner authority to which the notice is given to comply with the requirement specified in the notice.

12. MAKING SURE THAT OVERVIEW AND SCRUTINY REPORTS ARE CONSIDERED BY THE EXECUTIVE

- 12.1** Once the Overview and Scrutiny Committee has completed its deliberations on any matter it will forward a copy of its final report to the Assistant Chief Executive (Legal Services) who will allocate it to either the Executive or the Council for consideration in accordance with the Local Authorities (Functions and Responsibilities) Regulations 2000 (as amended) and the Local Authorities (arrangements for the Discharge of Functions) Regulations 2000.
- 12.2** If the Assistant Chief Executive (Legal Services) refers the matter to Council, s/he may first refer it to the Mayor or Executive, who will have two weeks in which to consider the Overview and Scrutiny

report and formulate any additional comments or recommendations. The Mayor or Executive will then refer the report, along with their own additional comments and recommendations, to the Council. When the Council does meet to consider any referral from an Overview and Scrutiny Committee, it shall also consider any additional comments or recommendations of the Mayor or Executive to the Overview and Scrutiny Committee proposals.

12.3 For the avoidance of doubt, the Mayor or Executive shall not alter or amend any Overview and Scrutiny Committee report before referring it to Council, but shall only make additional comments or recommendations (including any corporate, financial or legal implications) as may be appropriate. However, if the Council does not agree with the Mayor's or Executive's recommendations, the disputes resolution procedure in Part 4.3 – Budget and Policy Framework Procedure Rules – Rule 2 – will apply.

12.4 If the contents of the report would not have implications for the Council's budget and policy framework, and is thus not referred to Council by the Assistant Chief Executive (Legal Services), the Mayor or Executive will have 2 weeks in which to consider the matter and respond to the overview and scrutiny report.

12.5 Where the Overview and Scrutiny Committee makes a report or recommendations to the authority or the Mayor or Executive in accordance with section 21B of the Local Government Act 2000 as amended, the Committee shall by notice in writing require the authority or Mayor or Executive:-

- (a) to consider the report or recommendations;
- (b) to respond to the overview and scrutiny committee indicating what (if any) action the authority propose, or the Mayor or Executive proposes, to take;
- (c) if the Overview and Scrutiny Committee has published the report or recommendations, to publish the response,
- (d) if the Overview and Scrutiny committee provided a copy of the report or recommendations to a Member of the Authority under paragraph 9.4 of these Procedure Rules, to provide that Member with a copy of the response,

and to do so within two months beginning with the date on which the authority or Mayor or Executive received the report or recommendations or (if later) the notice.

12.6 It is the duty of the authority or Mayor or Executive to which a notice is given under 12.5 above to comply with the requirements specified in the notice.

13. RIGHTS OF COMMITTEE MEMBERS TO DOCUMENTS

- 13.1** In addition to their rights as Councillors, Members of the Overview and Scrutiny Committee or a Scrutiny Panel have such additional rights to documents, and to notice of meetings as may be set out in the Access to Information Procedure Rules in Part 4 of this Constitution.
- 13.2** Nothing in this paragraph prevents more detailed liaison between the Executive and the Overview and Scrutiny Committee as appropriate depending on the particular matter under consideration.

14. MEMBERS AND OFFICERS GIVING ACCOUNT

- 14.1** The Overview and Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of any Council function. As well as reviewing documentation, in fulfilling their role, they may require the Mayor, any other Member of the Executive, a Councillor, the Head of Paid Service and/or any senior officer to attend before it to explain in relation to matters within their remit:

14.1.1 any particular decision or series of decisions;

14.1.2 the extent to which the actions taken implement Council policy; and/or

14.1.3 their performance, within their area of responsibility; and it is the duty of those persons to attend as so required.

14.1.4 any function exercisable by a Councillor in accordance with any delegation made by the Council under section 236 of the Local Government and Public Involvement in Health Act 2007.

- 14.2** Where any Member or officer is required to attend the Overview and Scrutiny Committee or a Scrutiny Panel under this provision, the Chair of the Committee or Panel will inform the Chief Executive. The Chief Executive shall inform the Member or officer in writing giving at least 15 working days notice of the meeting at which s/he is required to attend. The notice will state the nature of the item on which s/he is required to attend to give account and whether any papers are required to be produced for the Committee or Panel. Where the account to be given to the Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that documentation.

- 14.3** Where, in exceptional circumstances, the Member or officer is unable to attend on the required date, then the Committee or Panel shall in

consultation with the Member or officer arrange an alternative date for attendance, to take place within a maximum of 21 working days from the date of the original request.

15. ATTENDANCE BY OTHERS

15.1 The Overview and Scrutiny Committee or a Scrutiny Panel may invite people other than those people referred to in Rule 14 above to address it, discuss issues of local concern and/or answer questions. It may for example wish to hear from residents, stakeholders and Members and officers in other parts of the public sector and shall invite such people to attend.

16. CALL-IN

16.1 When a decision is made by the Mayor, the Cabinet, an individual Member of the Executive, a Committee of the Executive, or a key decision is made by an officer with delegated authority or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 5 working days of being made. Members of the Overview and Scrutiny Committee will be sent copies of the records of all such decisions within the same timescale, by the person responsible for publishing the decision.

16.2 That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented at 5pm on the fifth clear working day, after the publication of the decision unless, after receiving a written request to do so, the Assistant Chief Executive (Legal Services) calls the decision in.

16.3 During that period, the Assistant Chief Executive (Legal Services) shall call-in a decision for scrutiny by the Overview and Scrutiny Committee if so requested by:

16.3.1 Not fewer than five Members of the Council; or

16.3.2 Two voting church, faith or parent governor representative in respect of any education matters only;

16.3.3 The request for a call-in must give reasons in writing and outline an alternative course of action. In particular, the request must state whether or not those Members believe that the decision is outside the policy or budget framework.

16.4 The Assistant Chief Executive (Legal Services) shall call-in a decision within twenty-four hours of receiving a written request to do so and shall place it on the agenda of the next meeting of the Overview and Scrutiny Committee on such a date as s/he may determine, where possible after consultation with the Chair of the Committee, and in

any case within five clear working days of the decision to call-in. However, the Assistant Chief Executive (Legal Services) will not call-in:

- 16.4.1** Any decision which has already been the subject of call-in;
 - 16.4.2** A decision which is urgent as defined in Rule 17.1 below and has to be implemented prior to the completion of any review. In such circumstances the decision – taker(s) shall give reasons to the Overview and Scrutiny Committee; and
 - 16.4.3** Decisions by regulatory and other Committees discharging non-executive functions;
 - 16.4.4** Day to day management and operational decisions taken by officers;
 - 16.4.5** A resolution which merely notes the report or the actions of officers;
 - 16.4.6** A resolution making recommendations to full Council.
- 16.5** Where the matter is in dispute, both the Chief Executive and the Monitoring Officer should be satisfied that one of the above criteria applies.
- 16.6** The Assistant Chief Executive (Legal Services) shall then notify the decision-taker of the call-in, who shall suspend implementation of the decision.
- 16.7** If, having considered the decision, the Overview and Scrutiny Committee is still concerned about it, then it may refer it back to the Mayor or Executive for reconsideration, setting out in writing the nature of its concerns or if the matter should properly be considered by Council refer the matter to full Council. If referred to the decision-maker they shall then reconsider within a further 5 clear working days or as soon as is reasonably practical thereafter, amending the decision or not, before adopting a final decision.
- 16.8** For the avoidance of doubt, if the Overview and Scrutiny Committee refers a matter back to the decision-making person or body, the implementation of that decision shall be suspended until such time as the decision-making person or body reconsiders and either amends or confirms that decision.
- 16.9** If following an objection to the decision, the Overview and Scrutiny Committee does not meet in the period set out above, or does meet but does not refer the matter back to the decision-making person or body, the decision shall take effect on the date of the Overview and

Scrutiny Committee meeting, or the expiry of that further 5 working day period, whichever is the earlier.

16.10 If the matter was referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective in accordance with the provision below. However, if the Council does object, then the Council will refer any decision to which it objects back to the decision making person or body together with the Council's views on the decision. That decision making person or body shall decide whether to amend the decision or not before reaching a final decision and implementing it. Where the decision was taken by the Executive as a whole or a Committee of the Executive, a meeting will be convened to reconsider within five clear working days of the Council request. Where the decision was made by an individual, the individual will reconsider within five clear working days of the Council request.

16.11 If the Council does not meet, or it does but does not refer the decision back to the decision making body or person, the decision will become effective on the date of the Council meeting or expiry of the period in which the Council meeting should have been held, whichever is the earlier.

17. CALL-IN AND URGENCY

17.1 The call-in procedure set out in Rule 16 above shall not apply where the decision being taken by the Mayor, the Executive or a Committee of the Executive, or the key decision being made by an officer with delegated authority from the Executive or under joint arrangements is urgent. A decision will be urgent if any delay likely to be caused by the call in process would seriously prejudice the Council's or the public interests.

17.2 The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in.

17.3 The Chair of the Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the Chair, the Chair of Council's consent shall be required. In the absence of both, the consent of the Deputy Chair of Council or the Head of Paid Service or her/his nominee shall be required.

17.4 Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

17.5 The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

18. THE PARTY WHIP

18.1 The use of the party whip to influence decisions of the Overview and Scrutiny Committee or one of its Panels is inappropriate.

18.2 In this rule “a party whip” means any instruction given by or on behalf of a political group to any Councillor who is a Member of that group as to how that Councillor shall speak or vote on any matter before the Council or any Committee, or the application or threat to apply any sanction by the group in respect of that Councillor should s/he speak or vote in any particular manner.

19. PROCEDURE AT OVERVIEW AND SCRUTINY COMMITTEE MEETINGS

19.1 The Overview and Scrutiny Committee and the Scrutiny Panels shall consider the following business:

- (i) Minutes of the last meeting;
- (ii) Declarations of interest;
- (iii) Consideration of any matter referred to the Committee for a decision in relation to call-in;
- (iv) Responses of the Executive to reports of Overview and Scrutiny;
- (v) The business otherwise set out on the agenda for the meeting.

19.2 Where the Overview and Scrutiny Committee or a Scrutiny Panel conducts investigations (e.g. with a view to policy development), the body may also ask people to attend to give evidence at meetings of the body. Such meetings are to be conducted in accordance with the following principles:

19.2.1 that the investigation be conducted fairly and all Members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;

19.2.2 that those assisting the Committee by giving evidence be treated with respect and courtesy; and

19.2.3 that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

19.3 Following any investigation or review, the Committee or Panel shall prepare a report, for submission to the Mayor/Executive and/or

Council as appropriate by the Overview and Scrutiny Committee, and shall make its report and findings public in so far as the report does not contain exempt or confidential information.

20. SUSPENSION

- 20.1** Any part of these Rules may be suspended in accordance with Council Procedure Rule 26 of Part 4.1 of this Constitution provided such suspension is not contrary to the law.

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**OVERVIEW AND SCRUTINY COMMITTEE
MEMBERSHIP 2013/14**

Labour Group Nominations (and deputies)	Conservative Group Nomination (and deputy)	Respect Group Nomination (and deputy)	Other Nomination Liberal Democrat (and deputy)
Cllr Motin Uz Zaman (Chair) Cllr Rachael Saunders Cllr Helal Uddin Cllr Abdal Ullah Cllr Amy Whitelock Deputies:- Cllr Helal Abbas Cllr Khales Uddin Ahmed Cllr Judith Gardiner	Cllr David Snowdon Deputies:- Cllr Tim Archer Cllr Peter Golds	Cllr Fozol Miah Deputy:- Cllr Harun Miah	Cllr Stephanie Eaton 1 vacancy (Deputy:- TBC)

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APPENDIX 3

OVERVIEW AND SCRUTINY COMMITTEE

SCHEDULE OF MEETING DATES 2013/14

Tuesday 2 July 2013
Tuesday 23 July 2013 (5.30pm)
Tuesday 10 September 2013
Tuesday 1 October 2013
Tuesday 5 November 2013
Tuesday 3 December 2013
Tuesday 7 January 2014
Monday 20 January 2014 (Budget)
Tuesday 4 February 2014
Tuesday 4 March 2014
Tuesday 1 April 2014
Tuesday 27 May 2014 (provisional*)
Tuesday 24 June 2014 (provisional*)

Note

Meetings are currently scheduled to take place at 7.30pm in accordance with the Calendar of Meetings agreed by the full Council AGM, with the exception of the meeting on 23 July which is scheduled to commence at 5.30pm, as it falls within the holy month of Ramadan.

*The date is currently provisional subject to confirmation of the date of the next local elections.

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Overview and Scrutiny Committee – Protocols and Guidance

1. Introduction

- 1.1 The report outlines protocols and guidance for the functioning of the Overview and Scrutiny Committee (OSC) in Tower Hamlets. The protocols and guidance are intended to assist the OSC to implement the requirements of the Local Government Act 2000 and the Council's Constitution. To the extent of any inconsistency, the Act and the Constitution prevail.

Guidance

2. Roles and Responsibilities for Scrutiny Members

- 2.1 The overall purpose of each position will be to strengthen the Scrutiny process in Tower Hamlets and to make it part of the process of improvement. To accomplish this Members will have the following roles and responsibilities.
- 2.2 Chair of Overview and Scrutiny
- co-ordinates the work of Scrutiny by developing the Committee's work programme in line with the Council's Forward Plan
 - chairs the Committee meetings
 - plans co-operatively meeting agendas and timetables with officers and other members (from both minority and majority parties) to ensure all areas of Scrutiny business are undertaken effectively
 - leads the work of OSC on budget matters
 - represents Overview and Scrutiny at Executive meetings and at community and other outside events
 - represents Tower Hamlets at London Scrutiny Network meetings
 - works in a cross-party and consensual manner to ensure the effectiveness of Scrutiny
 - contributes to developing the community leadership role of Scrutiny
 - Delegates to scrutiny Members to represent the Committee at Council meetings and external events.
- 2.3 Overview and Scrutiny Committee will appoint Scrutiny Leads who will:
- ensure the accountability of those Executive members and chief officers who have primary responsibility within their portfolio theme
 - assess the effectiveness of existing policy in the portfolio area
 - support the development of new and revised policy
 - ensure effective liaison with the Tower Hamlets Partnership
 - lead and co-ordinate scrutiny activity in his/her area including reviews, investigations and challenge sessions
 - ensure effective liaison with internal and external stakeholders
 - work in a cross-party and consensual manner to ensure the effectiveness of Scrutiny
 - contribute to developing the community leadership role of Scrutiny
- 2.4 Skills and aptitudes
Members will require the following skills and aptitudes to undertake the above roles effectively:

- understanding of the Scrutiny process and its place within the Council’s overall objectives
- understanding of how Scrutiny can help improve performance management by effective performance monitoring
- willingness to help develop Scrutiny’s role within the local Partnership agenda and, where appropriate, within London-wide and national arena
- willingness to work co-operatively with members from all political parties, officers and partners (outside organisations)
- ability to chair meetings
- ability to question constructively and get the best from those attending Scrutiny meetings
- willingness to liaise with officers in the drafting of reports and refining reporting mechanisms
- willingness to participate in developmental work to strengthen the Scrutiny process including training and seminars

A willingness to develop these skills through Member Learning and Development will be as crucial as being able to demonstrate them.

3. Agenda

3.1 The Committee’s regular agenda items will comprise of the following in the course of the year:

Report	Timing
‘Call-in’	When these occur – see paragraph 4.1
Budget and Policy Framework items	Normally considered at the OSC meeting the evening before Cabinet - see paragraph 4.3
Strategic Performance and Budget Monitoring reports	Timetabled through the year - see 4.4
Tracking progress of OSC recommendations	Periodic reports on progress implementing previous scrutiny reviews.
Updates on implementation of previous scrutiny reviews	Timetabled throughout the year
Scrutiny Spotlights	Timetabled throughout the year
OSC Work Programme including the programme of topics for review.	Beginning of the municipal year and progress considered each month thereafter - see paragraph 4.2

3.2 Ad hoc agenda items might include the following:

- Items of business requested by members of the Overview and Scrutiny Committee under the provisions of the Council’s Constitution as amended (Part 4 – “Rules of Procedure”, Section 4.5 – “Overview and Scrutiny Procedure Rules”, Rule 9.1). See paragraph 4.7.
- Matters referred to the Overview and Scrutiny Committee under the provisions of the Council’s Constitution as amended (Part 4 – “Rules of Procedure”, Section 4.5 – “Overview and Scrutiny Procedure Rules”, Rule 9.3) in accordance with Section 119

of the Local Government and Public Involvement in Health Act 2007. See paragraph 4.8.

4. Procedures/ Protocols

4.1 'Call-In'

4.1.1 For details of the call-in procedure, please see Appendix 1.

4.1.2 There are 2 forms of Executive Decision that can be 'Called In':

- Decisions of the Mayor taken in Cabinet
- Decisions of the Mayor taken outside Cabinet (Mayor's Executive Decision Making).

Should the OSC decide to refer a 'Call In' back to the Executive for further consideration it will be referred to the Mayor in Cabinet or Mayor outside Cabinet consistent with the way in which the original decision was taken.

4.1.3 Protocol for transacting a 'Call In' at OSC:

If a decision is Called In, the OSC will consider it at its next meeting in a strictly time limited slot of up to one hour. The protocol for transacting this business would be as follows:

- presentation of the 'Call In' by one of the 'Call In' Members followed by questions from OSC Members
- response from Cabinet Members/officers followed by questions from OSC Members
- general debate among OSC Members followed by a decision
- The 'Call In' Member who presented to OSC would not be allowed to speak again or vote on the item
- the Committee would then either resolve to take no action (in effect endorsing the original decision) or refer the matter back to Cabinet for further discussion, setting out the nature of its concerns and possibly recommending an alternative course of action.

4.2 Overview and Scrutiny work programme

4.2.1 OSC will agree its work programme at the beginning of the municipal year and consider progress every month. The work programme will take into account the Cabinet's Forward Plan. The programme will include when OSC will consider budget and policy framework reports and Strategic Performance & Budget Monitoring reports.

4.3 Budget and Policy Framework items

4.3.1 The Budget and Policy framework, set out in Article 4 of the Constitution, outlines the plans and strategies required by statute to be approved by the full Council and which OSC should examine:

- Crime and Disorder Reduction Strategy
- Development Plan Documents and plans/ alterations which together comprise the Development Plan.
- Licensing Authority Policy Statement
- Sustainable Community Strategy
- Authority's Housing Strategy
- Authority's Environmental Strategy
- Employment Strategy

- Enterprise Strategy
- Waste Strategy
- Open Space Strategy

4.3.2 The Council's budget which the OSC should examine includes the annual allocation of financial resources to different services and projects following the announcement of the government's grant to the authority, the treatment of risk including level of reserves and proposed contingency funds, setting the council tax (including the recommended council tax base), and decisions relating to the control of the Council's borrowing, the control of its capital expenditure and the setting of virement limits.

4.4 Performance and information monitoring

4.4.1 OSC will throughout the course of the year regularly monitor and examine reports on performance monitoring, Strategic Plan performance and Budget monitoring (Quarterly). Within the Scrutiny Spotlight session, it will also receive presentations from the Mayor, the Borough Commander, Lead Members and Corporate Directors on the performance and challenges facing key Council services.

4.5 Reviews, Investigations and Challenge Sessions

4.5.1 As part of its work programme for the year, OSC will include issues and services for investigation, review and challenge sessions. This must be:

- flexible to allow some capacity to address new issues during the year or to delve deeper into some issues following initial work.
- achievable and reflect the capacity available to support Scrutiny's work.

4.5.2 The Work Programme will be drawn up after consideration of key documents such as the Annual Residents' Survey, Annual Audit and Inspection Letter, Strategic Plan Performance & Budget monitoring, Tower Hamlets Index and the Local Area Partnership Plans to identify potential scrutiny issues. It will also consider issues raised through Scrutiny's own work such as the performance monitoring role, as well as specific reviews.

4.5.3 The following criteria act as a guide in prioritising the selection of issues:

- a service or issue that requires significant improvement
- a service or issue of poor or challenging performance
- an area of national policy development that impacts or has the potential to impact on one or more sections of the community
- an inspection is planned for the service where Scrutiny would add value to Council and partner performance
- a controversial or sensitive issue that would benefit from a risk-management approach and the pro-active engagement of partners and local communities.

4.5.4 Where Scrutiny Panels are established to deliver the Committee's work, their membership will be constituted according to proportionality rules and in liaison with Party whips. It would be expected that membership would be based on the expressed interests of Members.

4.5.5 Please see Appendix 1 to this report for further details on the conduct of scrutiny reviews.

4.5.6 A report on all investigations, reviews and challenges sessions will be presented to OSC. Where there are recommendations that Cabinet need to consider, the review

report will be submitted to Cabinet with an action plan (via the usual pre-agenda planning process). Reports may also be submitted to partner organisations for their response following consideration by Cabinet. Challenge Session reports are agreed by OSC following this an action plan is developed by the department which is then monitored through an implementation progress report. In circumstances, where there are resource implications the report will be presented to Cabinet.

4.5.7 Progress updates on implementation of previous scrutiny review recommendations will be considered throughout the year by OSC. .

4.6 Pre-decision scrutiny of Cabinet business

4.6.1 Consideration of the Forward Plan will allow the OSC to highlight upcoming issues for the review programme or for further work by the relevant Lead Scrutiny Member.

4.6.2 The OSC meets the night before Cabinet and has the opportunity to raise questions which it considers Cabinet should take into account in reaching its decisions. OSC Members receive the Cabinet papers on their initial despatch the week before the meeting.

4.6.3 Protocol for submission of pre-decision scrutiny questions:

- Members must notify the Chair in writing (via the SPP Team) of any questions they wish to raise by 12 noon on the Monday of the same week of OSC and Cabinet meetings.
- When necessary, the Chair, Vice Chair and a nominated Minority Member will meet prior to OSC meeting to determine how the time allocated for pre-decision scrutiny questions at the OSC meeting could best be used if there are a significant number of questions raised. The following criteria would be used:
 - questions should be new and not ones already addressed in the report or that have been the subject of correspondence or review elsewhere
 - questions for information should be raised directly with the report author
 - first priority should be given to consideration of reports with large scale, cross-borough policy implications
 - questions should consider they can influence the decision of the Cabinet to ensure it meets local needs.

4.6.4 Protocol for transacting pre-decision scrutiny at OSC:

- There will be a maximum time slot of 45 minutes to consider pre-decision scrutiny questions for Cabinet.
- Members will be able to raise questions and comments only, not to have a full scale debate on issues.
- The OSC will aim for a consensual agreement on the issues/ questions to be raised with Cabinet.

4.6.5 The OSC Chair will have an allocated 10 minute slot on the Cabinet agenda to feedback any questions together with any other issues from the Committee's deliberations. The Chair may also appoint a delegate to undertake this function if he/she is unavailable to attend.

4.7 Items of business requested by members of the OSC under the provisions of the Overview and Scrutiny Procedure Rule 9.1

4.7.1 Members of the OSC may request the Assistant Chief Executive to include an item relevant to the functions of the Committee on the agenda of the next available meeting. Please see Appendix 1 to this report for full details.

4.7.2 Protocol for transacting such business at OSC:

- “Presentation” by requesting Member to the Committee - Time allowed 10 minutes. Member to outline why he/she thinks the OSC should initiate a review of the matter and set out his/her alternative course of action.
- OSC members then to be given the opportunity to ask questions of clarification and receive answers from requesting Member.
- Corporate Director response to be asked to address the points raised by the requesting Member (brief written response to be tabled providing sufficient information for the Committee to take a view) and any remaining points raised by the OSC members in the Question and Answer session.
- Cabinet Member (who may be present) may be given an opportunity, by the Chair, to make a contribution on specific points if he/she so wishes but this not to be a generalised right of reply or a lengthy matter.
- OSC members to discuss and reach a determination. The Chair to summarise the deliberations and move a motion for consideration/ agreement of the Committee.

Deliberations

- The Committee are required to decide whether or not further scrutiny of the matter in question is appropriate.
- The OSC must be satisfied that the matter is relevant to its work programme, and if it is not the request for consideration must be refused. If the request is determined to be relevant to the work programme the Committee should identify the item in the work programme to which it relates.
- If the committee decide that further scrutiny is required it should indicate how the matter should be dealt within the context of the work programme item ie specify what form the further scrutiny should take. Perhaps requesting a detailed report from officers and their attendance at the next OSC meeting to address the issues, or perhaps a scrutiny review.
- Should the Committee decide to undertake a scrutiny review:
 - The broad terms the terms of reference of the Scrutiny Working Group should be stated.
 - A date should be set for submission of a report upon the Working Group’s findings to the Committee.
 - It should be established upon a representational basis as per paragraph 4.5.4 above.

4.7.3 Scrutiny Review Groups

Once appointed it is the responsibility of a Scrutiny Working Group:

- To scope the review and establish a timetable to meet the Committee’s reporting requirement
- To convene one or more meetings to scrutinise/review the issues under consideration
- To prepare a report with such recommendations as the Working Group considers appropriate for submission to the Committee.

4.8 Items referred to OSC by councillors under the provisions of the Overview and Scrutiny Procedure Rule 9.3

- 4.8.1 Any member of the Council may refer a local government matter to the OSC for examination under the Councillor Call for Action (CCfA) provisions introduced by Section 119 of the Local Government and Public Involvement in Health Act 2007 that came into force on 1st April 2009.

5. Health Scrutiny

- 5.1 The Health Scrutiny Panel is a sub-committee of the OSC which meets on a quarterly basis. With terms of reference and membership as set out in the Constitution (Article 6 and Part 4 – “Rules of Procedure”, Section 4.5 – “Overview and Scrutiny Procedure Rules”. As well as its statutory obligations the Panel will also consider a work programme agreed by the OSC. The Scrutiny Lead for “Adult Health and Wellbeing” chairs the Health Scrutiny Panel must regularly report to OSC on the work of the Panel.

6. Protocol for the Conduct of Business

- 6.1 Given the Terms of Reference of the Committee, the nature of business that it will consider will vary depending upon the role it is undertaking. It can also be assumed that in addition to Committee Members, a variety of persons, in differing capacities are likely to attend meetings of the Committee. These would include:
- Church/Faith or Parent Governor representatives
 - the Mayor and Cabinet Members
 - non-executive members
 - members of the Health Scrutiny Panel
 - chief officers or their representatives
 - external witnesses invited by the Committee to give evidence and advice
 - members of the public
- 6.2 In order to facilitate the smooth conduct of business it will be necessary for all concerned to have an understanding of when and how it is appropriate for them to participate in meetings of the Committee. It is therefore suggested in accordance with the provisions of the Council’s Constitution, the Committee continues to use the protocol previously adopted for the conduct of business as detailed below:
- (i) Voting Members to occupy specified seats (nearest to the Chair and Vice-Chair and Lead Officer.)
 - (ii) “Call In” Members to occupy specified seats.
 - (iii) Cabinet Member(s) to occupy specified seats.
 - (iv) Subject to any variance agreed by the Committee, items of business to be dealt within the order that they appear on the agenda.
 - (v) The agenda be structured so that business is considered in the order set out in Appendix 1 to this report.

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Agenda Item 5.2

Committee Overview and Scrutiny	Date 04 June 2013	Classification Unrestricted	Report No.	Agenda Item No.
Report of: Service Head Democratic Services Originating Officer(s): Angus Taylor, Principal Committee Officer, Democratic Services		Title Appointment of Scrutiny Lead Members, Co-options to Overview and Scrutiny Committee, Health Scrutiny Panel Terms of Reference and Appointments Ward(s) affected: All		

1. Summary

- 1.1 This report requests the Overview & Scrutiny Committee (OSC) to note the changes to Scrutiny Lead portfolios based on the Council's Directorates and consider the appointment of Lead Scrutiny Members for those portfolios, in accordance with the Council's Constitution (as amended).
- 1.2 The OSC is also requested to agree the co-option of representatives in respect of education matters in accordance with statutory requirements and the Council's Constitution (as amended).
- 1.3 This report informs the OSC of the establishment, by full Council, of the Health Scrutiny Panel, to discharge the Council's functions under the National Health Service Act 2006, with terms of reference and quorum as set out in the Council's Constitution.
- 1.4 The OSC is also requested to consider making appointments to the Health Scrutiny Panel for the Municipal Year 2013/14, the exact membership of which remains a matter for its determination (provided it is congruent with proportionality requirements and other specific constitutional provisions).
- 1.5 The OSC is further requested to agree the co-option of 2 representatives from the Tower Hamlets Local Involvement Network in accordance with constitutional provisions.

2. Recommendations

The OSC is recommended to:

- 2.1 Appoint Lead Scrutiny Members for the Scrutiny Lead portfolios as set out at Section 3 of this report.
- 2.2 Agree the co-option to the membership of the OSC of representatives in respect of education matters, as set out at paragraphs 4.1 to 4.7 of this report;

- 2.3 Note the establishment of the Health Scrutiny Panel by full Council, to discharge the Council's functions under the National Health Service Act 2006 and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 as set out in paragraph 5.1 of this report; with terms of reference and quorum as set out in paragraph 5.2 and Appendix 1 to this report;
- 2.4 Appoint members to the Health Scrutiny Panel for the Municipal Year 2013/14 as set out at paragraph 5.3 of this report; and
- 2.5 Agree the co-option of representatives from the Tower Hamlets Local Involvement Network to the membership of the Health Scrutiny Panel for the Municipal Year 2013/14, as set out at paragraph 5.4 of this report.

3. Scrutiny Lead Portfolios

- 3.1 The OSC is requested to note that the Scrutiny Lead portfolios were aligned to the Authority's directorates for the Municipal Year 2011/12 and 2012/13.
- 3.2 The OSC is requested to consider the appointment of Lead Scrutiny Members for the portfolios set out below:

- **Adults, Health and Wellbeing**
- **Children's Services**
- **Communities, Localities and Culture**
- **Development and Renewal**
- **Chief's Executives**
- **Resources**

4. Co-option of Education and other Representatives to Overview and Scrutiny Committee

- 4.1 Section 9FA(4) of the Local Government Act 2000 provides that an overview and scrutiny committee of a local Council may include persons who are not members of the Council. This provision empowers, rather than obliges, local authorities to have co-opted members on their overview and scrutiny committees.
- 4.2 However Schedule A1 to the LGA 2000 also has effect in relation to the Council's executive arrangements. Paragraph 7 of Schedule A1 makes provision for overview and scrutiny committees to have church representatives. The Council must have a Church of England co-opted member on its overview and scrutiny committee if the committee's functions relate wholly or partly to education functions and if the Council maintains one or more Church of England Schools. Similarly, the Council must have a Roman Catholic representative on its overview and scrutiny committee if the committee's functions relate wholly or partly to education functions and if the Council maintains one or more Roman Catholic schools.

- 4.3 Paragraph 7 of Schedule A1 to the LGA 2000 also deals with appointment of the church representatives. The Church of England representative must be nominated by the Diocesan Board of Education for any Church of England diocese which falls wholly or partly in Tower Hamlets. The Roman Catholic representative must be a nominated by the bishop of any Roman Catholic diocese which falls wholly or partly in Tower Hamlets.
- 4.4 Paragraph 8 of Schedule A1 to the LGA 2000 sets out power for the Secretary of State to make regulations requiring local authorities to have representatives of parent governors at maintained schools included on their overview and scrutiny committees. The Secretary of State has made the Parent Governor Representatives (England) Regulations 2001. Regulation 3 provides that a local education Council shall appoint at least two, but not more than five, parent governor representatives to any overview and scrutiny committee that has functions which relate wholly or partly to any education functions which are the responsibility of the Council's executive. The Regulations specify the process for electing representatives.
- 4.5 Consistent with the statutory provisions, the Council's Constitution provides in Part 3 "Responsibility for Functions", for the membership of the overview and scrutiny committee to include a Church of England representative, a Roman Catholic representative and two Parent Governor representatives. The Constitution also provides for the committee to have a non-voting Muslim faith representative, although this is not a statutory requirement.
- 4.6 The Constitution as amended (Part 4 – "Rules of Procedure", Section 4.5 – "Overview and Scrutiny Procedure Rules", Paragraph 4 "Education Representatives" Rule 4.1 states that "The Overview and Scrutiny Committee must include in its membership the following voting representatives in respect of education matters:
- One Church of England diocese representative;
 - One Roman Catholic diocese representative; and
 - Three parent governor representatives elected under the procedures contained in the Parent Governor Representatives (England) Regulations 2001."

Rule 4.2 states that "The Committee may also include a Muslim representative in a non-voting capacity. "

Rule 4.3 states that "These members may speak but not vote on any other (i.e. non educational) matters. "

- 4.7 the OSC is requested to agree the co-option of nominated representatives in respect of education matters as set out in the table below.

Church of England Diocese representative	Dr Phillip Rice
Roman Catholic Diocese representative	A nomination is awaited
Parent Governor representative	Memory Kampiyawo
Parent Governor representative	Nozrul Mustafa
Parent Governor representative	Reverend James Olanipekun
Muslim Community Representative	Mr Mushfique Uddin

5. Health Scrutiny Panel

5.1 Establishment

- 5.1.1 The Constitution states that the Annual Council Meeting will establish “such other committees/panels as it considers appropriate to deal with matters which are neither Executive Functions nor reserved to the Council”.
- 5.1.2 The Council’s Constitution refers to the establishment of “a standing Sub-Committee to discharge the Council’s functions under the Health and Social Care Act 2001 to be known as the Health Scrutiny Panel”. The reference to the Health and Social Care Act 2001 is out of date and this should be taken as a reference to the National Health Service Act 2006 and the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
- 5.1.3 At the Annual General Meeting of the Council, held on 22 May 2013 the Health Scrutiny Panel was established for the Municipal Year 2013/14 with a membership numbering 7, and an allocation of places in accordance with overall proportionality requirements as follows: 4 Majority Group Members (Labour), 1 Minority Group Member (Conservative) and 2 Minority Group Members (Independent). The OSC is therefore requested to note the establishment of the Health Scrutiny Panel, its total membership and the allocation of places between the political groups.

5.2 Terms of Reference and Quorum

- 5.2.1 The Health Scrutiny Panel will undertake the Council’s functions under the National Health Service Act 2006 and associated Regulations and consider matters relating to the local health service as provided by the NHS and other bodies including the Council:

- (a) To review and scrutinise matters relating to the health service within the Council's area and make reports and recommendations in accordance with any regulations made thereunder;
- (b) To respond to consultation exercises undertaken by an NHS body; and
- (c) To question appropriate officers of local NHS bodies in relation to the policies adopted and the provision of the services.

5.2.2 The quorum will be 3 voting members.

5.3 Appointment of Members to Health Scrutiny Panel

5.3.1 As indicated in para 5.1.3 above the total membership for the Health Scrutiny Panel and the allocation of these places between the political groups has been determined by the full Council.

5.3.2 However the exact membership of the Health Scrutiny Panel remains a matter for the determination of the OSC (provided it is congruent with proportionality requirements and other specific constitutional provisions). The OSC should note that the Scrutiny Lead Member: Adult Health and Wellbeing should have been determined by it, following a motion from the Chair, at recommendation 2.1 above and this Member must be appointed as a member and Chair of the Health Scrutiny Panel.

5.3.3 Accordingly the OSC is requested to consider making appointments to the Health Scrutiny Panel for the Municipal Year 2013/14.

5.4 Co-option of Representatives to the Health Scrutiny Panel

5.4.1 The Overview and Scrutiny Procedure Rules state that:

"The Overview and Scrutiny Committee will be responsible for approving co-opted Members for the Scrutiny Panels. Co-opted Members will be non-voting."

5.4.2 In the Municipal Year 2012/13 two representatives previously recruited from the Tower Hamlets Local Involvement Network served as co-opted members of the Health Scrutiny Panel. It is recommended that these representatives be co-opted to the membership of the Health Scrutiny Panel in 2013/14.

5.4.3 Accordingly the OSC is requested to agree the co-option of representatives from the Tower Hamlets Local Involvement Network to the membership of the Health Scrutiny Panel for the Municipal Year 2013/14, as set out below:

Mr David Burbridge
Dr Amjad Rahi

6. Comments of the Chief Financial Officer

- 6.1 This report describes the OSC request to consider the appointment of Lead Scrutiny Members, in accordance with the Council's Constitution (as amended).
- 6.2 Also, OSC are requested to agree the following: co-option of representatives in respect of education matters in accordance with statutory requirements and the Council's Constitution; the creation of a Health Scrutiny Panel; co-option of 2 representatives from the Tower Hamlets Local Involvement Network.
- 6.3 There are no specific financial implications emanating from this report but in the event that 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 Most of the relevant statutory and constitutional provisions are set out in the body of the report. It is also proposed that independent members be co-opted to the Health Scrutiny Panel. Section 9FA(4) of the Local Government Act 2000 confirms that a sub-committee of an overview and scrutiny committee may include persons who are not members of the authority. This is consistent with section 102(3) of the Local Government Act 1972 which makes similar provision in relation to committees and sub-committees.

8. One Tower Hamlets Considerations

The establishment of the Health Scrutiny Panel may contribute to the reduction of any health inequalities that exist in the borough.

9. Sustainable Action for a Greener Environment

- 9.1 There are no specific SAGE implications arising from the recommendations in the report.

10. Risk Management Implications

- 10.1 The appointment of Scrutiny Lead Members, Co option of representatives in respect of education matters and establishment of the Health Scrutiny Panel is necessary for the Overview and Scrutiny Committee to meet its statutory and constitutional obligations and in particular the functions conferred on the Council by the provisions referred to in the body of the report.

11. Crime and Disorder Reduction Implications

- 11.1 There are no specific Crime and Disorder Reduction implications arising from the recommendations in the report.

**LOCAL GOVERNMENT ACT, 1972 SECTION 100D (AS AMENDED)
LIST OF "BACKGROUND PAPERS" USED IN THE PREPARATION OF
THIS REPORT**

Brief description of "background paper"

If not supplied
Name and telephone
number of holder

n/a

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Agenda Item 8.1

Committee: Overview and Scrutiny Committee	Date: 04 June 2013	Classification: Unrestricted	Report No:	Agenda Item:
Report of: The Mayor and Executive Originating officer(s) Matthew Mannion, Committee Services Manager		Title: Executive Response to questions relating to budget virement decisions Wards Affected: All Wards		

1. **SUMMARY**

- 1.1 On 25 March the Executive Mayor published decisions to vire funds to maintain publication of East End Life until a review had been completed and to maintain funding for the Mayor's Office whilst considering his options for that service. These decisions were called in and reviewed at the Overview and Scrutiny Committee meeting held on 9 April.
- 1.2 Whilst reviewing the decisions, the Overview and Scrutiny Committee requested a report back to them on whether the decisions were in contravention of the authority's Budget and Policy Framework and on the validity of the Mayor's determination that the decisions were Key Decisions.
- 1.3 Reports on those issues were prepared by the Monitoring Officer and the Section 151 Officer and considered by Cabinet on 8 May 2013. Following Executive consideration those reports are now submitted to the Overview and Scrutiny Committee for its consideration

2. RECOMMENDATIONS

The Overview and Scrutiny Committee is recommended to:-

- 2.1 To note the Executive response to reports attached at Appendices 1 and 2.

3. **BACKGROUND**

- 3.1 The original Executive Mayoral Decisions to vire funding to East End Life and the Mayor's Office to allow for review periods were published on 26 March 2013. Both decisions were subsequently called-in.
- 3.2 The Overview and Scrutiny Committee considered the call-ins at its meeting on 9 April 2013 and, supporting the call-ins, referred both decisions back to the

Mayor for further consideration. The Mayor confirmed his original decisions on 17 April 2013.

4. BODY OF REPORT

4.1 During discussion of the call-ins on 9 April, the Overview and Scrutiny Committee Members requested a report from officers as to whether the decisions were contrary to the Council's Budget and Policy Framework and for consideration as to the validity of the decision by the Mayor that both decisions were Non-Key Decisions.

4.2 This request was made under the Budget and Policy Framework Procedure rules paragraph 7.2 which follows the statutory regulations as set out in the attached reports.

4.3 The reports in response to the request were, as required under the procedure in the constitution, presented to the Mayor and Cabinet on 8 May 2013 to consider and to allow a report back to Overview and Scrutiny to be prepared.

4.4 The Decision Sheet of the meeting of Cabinet on 8 May 2013 records that:

The Mayor considered two tabled reports by the Monitoring Officer and Section 151 Officer in relation to Individual Mayoral decisions taken to vire money to provide funding to (a) East End Life and (b) the Mayor's Office.

AGREED

1. The two reports confirm that the Mayoral decisions were not in breach of the Budget and that I had taken the appropriate considerations into account in respect of my decision that they were not 'key decisions'. The Executive accepts the reports and has nothing further to add. I ask that the officers prepare a report for submission to the next Overview and Scrutiny Committee meeting confirming this response.

4.5 This covering report has therefore been prepared to allow the response of the Executive to the reports of the Monitoring Officer and Section 151 Officer to be presented to the Overview and Scrutiny Committee. The reports are attached at Appendices 1 and 2.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

5.1 The attached reports were prepared by the Section 151 Officer in conjunction with the Monitoring Officer and contain his full comments.

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

- 6.1 The attached reports were prepared by the Monitoring Officer in conjunction with the Section 151 Officer and contain her full comments.
- 6.2 There is no further process under the constitution in respect of the reports as the reports have concluded these were in accordance with the financial rules of the constitution and therefore authorised by the Executive Mayor

7. ONE TOWER HAMLETS CONSIDERATIONS

- 7.1 None directly related to this report.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 Not applicable to this report.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 Any risk management issues in relation to the decisions are dealt with in the attached appendices.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 Not applicable to this report.

11. EFFICIENCY STATEMENT

- 11.1 Not applicable to this report.

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

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

12. APPENDICES

Appendix 1 – Virement report – East End Life
Appendix 2 – Virement report – Mayor’s Office

**REPORT OF THE MONITORING OFFICER AND THE SECTION 151
OFFICER IN RESPECT OF MAYORAL VIREMENT
EAST END LIFE**

1. Summary

1.1 At the Budget Council on 7 March 2013 Full Council agreed a budget motion to take savings of £433,000 from advertising for public notices, choice based lettings and general advertising, for the purpose of causing East End Life to cease publication. The Executive Mayor did not want to cease publication without due consideration and on 22 Mach 2013 he made a decision to make a virement of £443,000 from unallocated reserves to Chief Executive budget in order to ensure sufficient resources were available to continue the production of East End Life pending considerations of the options for the service and the implications of ceasing the production of paper.

1.2 On 9 April 2013, Overview and Scrutiny Committee agreed to call-in the Mayor's decision of 22 March 2013 and asked the Mayor to reconsider his decision to make the virement and at the same time they resolved to ask the Monitoring Officer and the Chief Finance Officer/Section 151 Officer to provide a report pursuant to rule 7.2 of the Budget and Policy Framework Rules of the Council's Constitution to advise whether the decision of the Mayor outside Cabinet was in contravention of the authority's Budget and Policy Framework and in that report to include their advice on the validity of the Mayor's determination that the decision was not a key decision. On the 17th April the Mayor reconfirmed his decision to make the virement.

2. Background

2.1 Under the terms of the Council's Constitution where Overview and Scrutiny Committee is of the opinion that an Executive decision is contrary to the Policy Framework or contrary to or not wholly in

accordance with the Council's Budget then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer. At paragraph 7.2 (set out at page 178) of the Council's Constitution it states that:

"in respect of functions which are the responsibility of the Mayor or the Executive the report of the Monitoring Officer and/or Chief Finance Officer shall be to the Mayor and Executive with a copy to every Member of the Council.....The Executive must meet within 21 days of receipt of the report to decide what action to take in respect of the Monitoring Officer or Chief Finance Officer's report..."

This report will deal with the Budget as the Policy Framework means its plans and strategies set out in Article 4.01 (a) of the Constitution which are not relevant to this matter.

3. Virement

3.1 Virement rules are a key part of the Council's financial regulations in the standing orders to the constitution. Statutory guidance issued by the Secretary of State in connection with the Local Government Act 2000 in respect of Council's Constitutions indicated that;

"once a Budget had been adopted by the Council, the Executive will need to be able to respond to changing circumstances which might require reallocation of funds from one service to another. A local authority's standing orders for financial regulations will need therefore to include reasonable provision to allow the Executive to reallocate monies within the Budget... The Secretary of State recommends the provision in the local authority's standing orders or financial regulations should enable the Executive to take any decision which is contrary to or not wholly in accordance with the Budget or the Capital Plan providing that the additional costs incurred can be offset by additionalcontingency funds (reserves and balances)..."

- 3.2. Under the Local Government Act 1972 it is for the full Council to determine the Authority's budget. Under Schedule 4 of the Local Government (Functions and Responsibilities) (England) Regulations 2000. ('the Regulations') it is generally for the Council to determine a matter in respect of the Budget if the Executive is minded to make a decision that is contrary to, or not wholly in accordance with the Authority's Budget. But this is only the case if the Executive is not authorised by the Council's rules or procedures (including its financial regulations) to make a Budget decision in the terms proposed by the Mayor.
- 3.3 The Council's Constitution contains provisions in the Financial Regulations that the Executive can make decisions to make virement of up to £1 million. The virement decisions are spending decisions which are within the Budget.
- Accordingly at the time the decision was made the Executive Mayor had the power to make the decision to make a virement from unallocated reserves.

Virement in respect of East End Life

- 3.4 The decision to maintain the operation of East End Life is an Executive decision within the meaning of the Regulations. It has been held in R (Buck) v Doncaster MBC [2012] LGR 663, that although it is for the Council to decide in the Budget what funds to allocate for expenditure by the Mayor, it cannot otherwise use its budgetary powers to dictate how Executive functions should be exercised. Therefore, if the Mayor is able, by virements or otherwise to finance the continued publication of East End Life, he is entitled to do so, even if the Council wished its publication to be terminated. An appeal is due to be heard in Buck in late July, but as matters stand, this judgement represents the law. .
- 3.5 The Executive Mayor confirmed in his decision on 22 March 2013 that he was making the decision to vire monies to continue East End Life

'in order to ensure sufficient resources are available to continue East End Life and implications of ceasing production. I have done this as I do not believe the proposals adopted in the Budget were properly evaluated and the timescales for alternative sourcing taken into account'.

Further the report contained comments of the Section 151 Officer confirming that there were sufficient monies in unallocated reserves to cover the virement and the virement was in within the Virement Rules. Since the Council has met to consider its Budget, it had received confirmation of a number of sources of funding over and above the funding included in the budget. These exceed the costs of the Mayor's decisions. There was therefore no impact on reserves of the Mayoral decisions relative to the assumptions made in setting the budget in March.

- 3.6 The Budget motion itself was not clear. It stated ...”to delete funding of £1.214 million”. By reducing the budgets for advertising public notices, choice based lettings and general advertising to the sum of £433,000. The budget for East End Life forms part of the Communications Service Budget. East End Life does not have a net budget it is zero budgeted which means that it has a requirement to generate £1.2 million of income each year to counter balance costs of producing and delivering the paper which it achieves through advertising income by selling advertising in the paper. Some of that advertising comes from internal departments and it was this internal expenditure that the Council made a decision to in effect cap.

Conclusion

The virement in respect of East End Life was lawful and it was not contrary to the Councils Budget.

4. **Key Decisions**

4.1 The Council's Constitution states in Article 13 that a key decision is an Executive decision which is likely to :

- a) result in the local authority incurring expenditure which is, or the making of savings, which are, significant having regard to the local authority's budget or the service or the function which the decision relates ; or
- b) to be significant in terms of the its effects on the community living or working in the area compromising two or more wards in the borough

This definition is the same as that set out in the Local Authorities (Executive Arrangements) Meetings and Access to Information Regulations 2012.

4.2 In making the decision as to whether the matter is "key" the Mayor must have regard to the following criteria when determining what amounts to a key decision:-

- whether the decision may incur a significant social, economic or environmental risk
- the likely extend of the impact of the decision both within and outside the borough
- whether the decision is likely to be a matter of political controversy
- the extent to which the decision is likely to result in substantial public interest.

4.3 In making his decision on 22 March 2012 in respect of East End Life the Executive Mayor stated that he had considered whether or not the matter was a key decision under Article 13 of the Constitution and that when making the decision he did not consider the virement of £443,000 was a significant amount in respect of the local authority's overall budget for the communication services and publicity budget of £4.1 million (representing 10.8%) nor was the virement decision significant

in terms of the effects upon the community living or working in an area compromising of two or more wards in the borough

- 4.4 Ultimately, a decision is only a key decision if it falls within the definitions set out in paragraph 4.1 above. The fact that it is likely to be a matter of “political controversy” or result in substantial public interest is a matter to which the decision-maker should have regard, and the implication is that the potential for such controversy or interest may in some cases be evidence of it being a decision which will have significant effects. However, a decision is not a key decision simply because it is politically controversial or of public interest. In this case the Mayor had regard to these matters and acknowledged that his decision may be of public and/ or political interest.
- 4.5 The Mayor went on to say that ‘ it would not incur significant risk socially, economically or environmentally and indeed would act to mitigate such risks’. The impact on the decision to vire the money will not be significant inside or outside the borough. “I am content that the decision to vire £443,000 is a non key decision and I require officers to put it into effect”. At the same time the Mayor required officers to conduct the review detailed in paragraph 3.2 of the report.

Conclusion

In making the decision as to whether the matter was a ‘key decision’ the Mayor had taken into account the specified matters under Article 13.

- 4.6 The question of whether a particular decision is a key decision is one for the decision maker (the Mayor), provided that all relevant considerations are taken into account and a rational conclusion is reached. In the view of the Monitoring Officer and the Chief Finance Officer, the Mayor did have regard to relevant considerations and reached the conclusion (that it was not a key decision) to which he was entitled to come. The Mayor was not referred specifically to the

Secretary of State's guidance on key decisions contained in Chapter 7 of the New Council Constitutions, but the matters referred to in that guidance are similar to those which the Mayor took into account.

Isabella Freeman
Monitoring Officer



Chris Holme 
Interim Chief Finance Officer

Dated 2nd May 2013

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REPORT OF THE MONITORING OFFICER AND THE SECTION 151 OFFICER IN RESPECT OF MAYORAL VIREMENT

Funding the Mayoral office

1. Summary

- 1.1 At the Budget Council on 7 March 2013 Full Council agreed a budget motion to take savings of £296,000 for Mayoral Advisers. The costs of the Mayors office are part of the Democratic Services budget and therefore it's a reduction in the Democratic Services budget. The Executive Mayor decided that he wanted to keep the advisors whilst he considered his options and the implications of reducing the expenditure, and on 25 Mach 2013 he made a decision to make a virement of £296,000 from unallocated reserves to the Democratic Services budget in order to ensure sufficient resources were available to continue the current arrangements pending consideration of the options and the implications to his Office of reducing the expenditure.
- 1.2 On 9 April 2013, Overview and Scrutiny Committee agreed to call-in the Mayor's decision of 25th March 2013 and asked the Mayor to reconsider his decision to make the virement and at the same time resolving to ask the Monitoring Officer and the Chief Finance Officer/Section 151 Officer to provide a report pursuant to rule 7.2 of the Budget and Policy Framework Rules of the Council's Constitution to advise whether the decision of the Mayor outside Cabinet was in contravention of the authority's Budget and Policy Framework and in that report to include their advice on the validity of the Mayor's determination that the decision was not a key decision. On the 17th April the Mayor reconfirmed his decision to make the virement.

2. Background

- 2.1 Under the terms of the Council's Constitution where Overview and Scrutiny Committee is of the opinion that an Executive decision is

contrary to the Policy Framework or contrary to or not wholly in accordance with the Council's Budget then it shall seek advice from the Monitoring Officer and/or Chief Finance Officer. In paragraph 7.2 (set out at page 178) of the Council's Constitution it states that:

"in respect of functions which are the responsibility of the Mayor or the Executive the report of the Monitoring Officer and/or Chief Finance Officer shall be to the Mayor and Executive with a copy to every Member of the Council.....The Executive must meet within 21 days of receipt of the report to decide what action to take in respect of the Monitoring Officer or Chief Finance Officer's report..."

This report will deal with the Budget as the Policy Framework means its plans and strategies set out in Article 4.01 (a) of the Constitution which are not relevant to this matter.

3. Virement

- 3.1 Virement rules are a key part of the Council's Financial Regulations in the standing orders to the Constitution. Statutory guidance issued by the Secretary of State in connection with the Local Government Act 2000 in respect of Council's Constitutions indicated that "once a budget had been adopted by the Council, the Executive will need to be able to respond to changing circumstances which might require reallocation of funds from one service to another. A local authority's standing orders for financial regulations will need therefore to include reasonable provision to allow the Executive to reallocate monies within the Budget.... The Secretary of State recommends the provision in the local authority's standing orders or financial regulations should enable the Executive to take any decision which is contrary to or not wholly in accordance with the Budget or the Capital Plan providing that the additional costs incurred can be offset by additionalcontingency funds (reserves and balances)..."

- 3.2. Under the Local Government Act 1972 it is for the full Council to determine the Authority's budget. Under Schedule 4 of the Local Government (Functions and Responsibilities) (England) Regulations 2000. ('the Regulations') it is generally for the Council to determine a matter in respect of the Budget if the Executive is minded to make a decision that is contrary to, or not wholly in accordance with the Authority's Budget. But this is only the case if the Executive is not authorised by the Council's rules or procedures (including its financial regulations) to make a Budget decision in the terms proposed by the Mayor.
- 3.3 The Council's Constitution contains provisions in the financial regulations that the Executive can make decisions to make virement of up to £1 million. The virement decisions are spending decisions which are within the Budget.
Accordingly at the time the decision was made the Executive Mayor had the power to make the decision to make a virement from unallocated reserves.
- 3.4 The decision to maintain an office to support the Mayor in his role as the Executive is an Executive decision within the meaning of the Regulations. It has been held in R (Buck) v Doncaster MBC [2012] LGR 663, that although it is for the Council to decide in the Budget what funds to allocate for expenditure by the Mayor, it cannot otherwise use its budgetary powers to dictate how Executive functions should be exercised. Therefore, if the Mayor is able, by virements or otherwise to finance the continued operation of Mayor's Advisors, he is entitled to do so, even if the Council wished otherwise. An appeal is due to be heard in Buck in late July, but as matters stand, this judgement represents the law.
- 3.5 The Executive Mayor confirmed in his decision on 25th March 2013 that he was making the decision to vire monies to Democratic Services

'in order to ensure sufficient resources are available to continue the current arrangements in the Mayors Office whilst I consider all of the options for the service and the implications of reducing the expenditure.. I have done this as I do not believe the proposals adopted in the Budget were properly evaluated and the timescales for alternative sourcing taken into account'.

Further the report contained comments of the Section 151 Officer confirming that there were sufficient monies in unallocated reserves to cover the virement and the virement was in within the Virement Rules. Since the Council has met to consider its Budget, it had received confirmation of a number of sources of funding over and above the funding included in the budget. These exceed the costs of the Mayor's decisions. There was therefore no impact on reserves of the Mayoral decisions relative to the assumptions made in setting the budget in March.

3.6

Conclusion

The virement in respect of Democratic Services for the Mayor's Office was not contrary to the Councils Budget .

4. Key Decisions

4.1 The Council's Constitution states in Article 13 that a key decision is an Executive decision which is likely to :

- a) result in the local authority incurring expenditure which is, or the making of savings, which are, significant having regard to the local authority's budget or the service or the function which the decision relates; or
- b) to be significant in terms of the its effects on the community living or working in the area compromising two or more wards in the borough

This definition is the same as the Local Authorities (Executive Arrangements) Meetings and Access to Information Regulations 2012.

- 4.2 In making the decision as to whether the matter is “key” the Mayor must have regard to the following criteria when determining what amounts to a key decision:-
- whether the decision may incur a significant social, economic or environmental risk
 - the likely extend of the impact of the decision both within and outside the borough
 - whether the decision is likely to be a matter of political controversy
 - the extent to which the decision is likely to result in substantial public interest
- 4.3 In making his decision on 25 March 2012 in respect of Democratic Services the Executive Mayor stated that he had considered whether or not the matter was a key decision under Article 13 of the Constitution and that when making the decision he did not consider the virement of £296,000 was a significant amount in respect of the local authority’s overall budget for the Democratic services of £2.97 million (representing 10%) nor was the virement decision significant in terms of the effects upon the community living or working in an area compromising of two or more wards in the borough
- 4.4 Ultimately, a decision is only a key decision if it falls within the definitions set out in paragraph 4.1 above. The fact that it is likely to be a matter of “political controversy” or result in substantial public interest is a matter to which the decision-maker should have regard, and the implication is that the potential for such controversy or interest may in some cases be evidence of it being a decision which will have significant effects. However, a decision is not a key decision simply because it is politically controversial or of public interest. In this case

the Mayor had regard to these matters and acknowledged that his decision may be of public and/ or political interest. .

- 4.5 The Mayor went on to say that 'it would not incur significant risk socially, economically or environmentally and indeed would act to mitigate such risks'. The impact on the decision to vire the money will not be significant inside or outside the borough. "I am content that the decision to vire £296,000 is a non key decision and I require officers to put it into effect". At the same time the Mayor required officers to conduct the review detailed in paragraph 3.4 of the report.

Conclusion

In making the decision as to whether the matter was a 'key decision' the Mayor had taken into account the specified matters under Article 13.

- 4.6 .The question of whether a particular decision is a key decision is one for the decision maker (the Mayor), provided that all relevant considerations are taken into account and a rational conclusion is reached. In the view of the Monitoring Officer and the Chief Finance Officer, the Mayor did have regard to relevant considerations and reached the conclusion (that it was not a key decision) to which he was entitled to come. The Mayor was not referred specifically to the Secretary of State's guidance on key decisions contained in Chapter 7 of the New Council Constitutions, but the matters referred to in that guidance are similar to those which the Mayor took into account.

Isabella Freeman
Monitoring Officer



Chris Holme
Interim Chief Finance Officer



Dated 2nd May 2013

Agenda Item 8.3

Committee: Overview and Scrutiny	Date: 4 June 2013	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Assistant Chief Executive (Legal Services) Originating officer(s) David Galpin, Head of Legal Services - Community		Title: Use of the Regulation of Investigatory Powers Act 2000 Wards Affected: All		

1. **SUMMARY**

- 1.1. Attached is the most recent report considered at Standards Advisory Committee.

2. **DECISIONS REQUIRED**

Overview and Scrutiny Committee is recommended to:-

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

3. **BACKGROUND**

- 3.1. This is set out in the attached report. There is one change, which is that, contrary to what is said in paragraph 3.24 of the report to Standards Advisory Committee, update training was provided in March 2013.

4. **COMMENTS OF THE CHIEF FINANCIAL OFFICER**

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

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

- 5.1. Legal implications are addressed in the attached report.

6. **ONE TOWER HAMLETS CONSIDERATIONS**

- 6.1. One Tower Hamlets comments are set out in the attached report.

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

- 7.1. These comments are set out in the attached report.

8. **RISK MANAGEMENT IMPLICATIONS**

8.1. These comments are set out in the attached report.

9. **EFFICIENCY STATEMENT**

9.1. These comments are set out in the attached report.

10. **APPENDICES**

Appendix 1 – Report to Standards

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

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

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

1. SUMMARY

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

2. DECISIONS REQUIRED

Standards Committee is recommended to:-

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

3. BACKGROUND

3.1. Covert investigation and RIPA

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

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

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

3.4. The Council's use of RIPA

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

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

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

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

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

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

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

3.14. The Council's RIPA applications

3.15. Quarter 3 of 2012/2013

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

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

3.18. Quarter 4 of 2012/2013

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

3.20. Directed surveillance authorisations in 2012/2013

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

Application outcomes:

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

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

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

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

3.25. Enforcement activity

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

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

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

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

4. Covert Human Intelligence Sources

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

5. Interception of communications

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

6. Inspections in 2012/2013

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

7. COMMENTS OF THE CHIEF FINANCIAL OFFICER

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

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

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

9. ONE TOWER HAMLETS CONSIDERATIONS

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

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

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

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

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

11. **RISK MANAGEMENT IMPLICATIONS**

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

12. **EFFICIENCY STATEMENT**

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

13. **APPENDICES**

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

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

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

APPENDIX 1 - SUMMARY OF QUARTER 3 RIPA AUTHORISATIONS

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

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

PROSECUTIONS 2012 TO 2013 - OUTCOMES

A	B	C	D	E	F	G	H	I	J	K
Offences	Offence Date	Client/Case Type	Final Hearing Date	Court	Outcome	Fines (including victim surcharge)	Costs	Cash Confiscation/ Forfeiture/ Compensation	Other Sentence	Further details of Outcome (if applicable)
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition in Annex 2)	13/07/2012	SC - Licensing - Touting	20/12/2012	TMC	Guilty	£165.00	£500.00	£0.00		(2) withdrawn - alternative charge to (1)
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition in Annex 2)	13/07/2012	SC - Licensing - Touting	20/12/2012	TMC	Guilty	£165.00	£0.00	£0.00		(2) withdrawn - alternative charge to (1)
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition in Annex 2)	27/08/2012	SC - Licensing - Touting	08/01/2013	TMC	Guilty	£1,000.00	£0.00	£0.00		(1) No evidence offered & dismissed - due to change of plea to guilty on (2)
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition 7 in Annex 3)	27/08/2012	SC - Licensing - Touting	08/01/2013	TMC	Guilty	£1,015.00	£850.00	£0.00		
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition 1 in Annex 2)	21/09/2012	SC - Licensing - Touting	11/10/2012	TMC	Guilty	£165.00	£175.00	£0.00		
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition 1 in Annex 2)	27/09/2012	SC - Licensing - Touting	06/12/2012	TMC	Guilty	£881.00	£500.00	£0.00		(2) withdrawn - part of plea bargain
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition 1 in Annex 2)	28/09/2012	SC - Licensing - Touting	06/12/2012	TMC	Guilty	£1,015.00	£807.00	£0.00		(1) Fine £500 (2) Fine £500
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition 1 in Annex 2)	06/07/2012	SC - Licensing - Touting	22/11/2012	TMC	Guilty	£65.00	£300.00	£0.00		(2) withdrawn - alternative offence
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition 5 in Annex 3)	06/07/2012	SC - Licensing - Touting	22/11/2012	TMC	Guilty	£110.00	£450.00	£0.00		(2) & (4) withdrawn - alternative offences
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition 6 in Annex 3)	05/07/2012	SC - Licensing - Touting	25/10/2012	TMC	Guilty	£915.00	£250.00	£0.00		(4), (5) & (6) - Withdrawn as alternative charges
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition 10 in Annex 2)	05/07/2012	SC - Licensing - Touting	25/10/2012	TMC	Guilty	£915.00	£250.00	£0.00		(1) Fine £200 (2) Fine £200 (3) Fine £200
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition 13 in Annex 2)	05/07/2012	SC - Licensing - Touting	25/10/2012	TMC	Guilty	£915.00	£250.00	£0.00		(4), (5) & (6) - Withdrawn as alternative charges
(4) s.138(1)(a) Licensing Act 2003 (Breach of condition 10 in Annex 2)	05/07/2012	SC - Licensing - Touting	25/10/2012	TMC	Guilty	£915.00	£250.00	£0.00		(4), (5) & (6) - Withdrawn as alternative charges
(5) s.138(1)(a) Licensing Act 2003 (Breach of condition 11 in Annex 2)	05/07/2012	SC - Licensing - Touting	25/10/2012	TMC	Guilty	£915.00	£250.00	£0.00		(4), (5) & (6) - Withdrawn as alternative charges
(6) s.138(1)(a) Licensing Act 2003 (Breach of condition 11 in Annex 2)	05/07/2012	SC - Licensing - Touting	25/10/2012	TMC	Guilty	£915.00	£250.00	£0.00		(4), (5) & (6) - Withdrawn as alternative charges
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition 10 in Annex 2)	06/07/2012	SC - Licensing - Touting	11/10/2012	TMC	Guilty	£165.00	£175.00	£0.00		
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition 3 in Annex 2)	04/09/2012	SC - Licensing - Touting	17/01/2013	TMC	Guilty	£915.00	£712.50	£0.00		(1) Fine £250 (2) Fine £250
(1) s.138(1)(a) Licensing Act 2003 (Breach of condition 3 in Annex 2)	17/07/2012	SC - Licensing - Touting	25/10/2012	TMC	Guilty	£115.00	£100.00	£0.00		
(2) s.138(1)(a) Licensing Act 2003 (Breach of condition 3 in Annex 2)	11/07/2012	SC - Licensing - Touting	11/10/2012	TMC	Guilty	£65.00	£100.00	£0.00		

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PROSECUTIONS 2012 TO 2013 - STATISTICS

Client/Case Type	Cases	Guilty	Council win - Appeal dismissed	Simple Caution	Other success (e.g. engaged in Diversion Scheme)	Lost	No Evidence Offered Case dismissed	Not served	Count left to lie on file	Withdrawn	Discontinued	Fines (inc. Victim Surcharge)	Costs	Confiscation	Forfeiture	Compensation
SC - Licensing - Touting	20	19	0	0	0	0	0	1	0	0	0	£8,531.00	£6,184.50	£0.00	£0.00	£0.00
	<u>20</u>	<u>19</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>£8,531.00</u>	<u>£6,184.50</u>	<u>£0.00</u>	<u>£0.00</u>	<u>£0.00</u>

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RIPA Authorisation	Review Hearing Date	Outcome	Appeal	Appeal Outcome
12-13 - CS - 0001	13/09/2012	Two (2) conditions added: (1) No person shall be employed to solicit for custom or be permitted to solicit for custom for business for the premises in any public place within 500 metre radius of the premises; and (2) Clear signage is to be placed in the restaurant windows stating that the premises supports the Council's No Touting policy	No	-
12-13 - CS - 0001	08/11/2012	2 week suspension & removal of DPS	Yes	Still awaiting 1st date of hearing from Court
12-13 - CS - 0001	15/11/2012	2 week suspension	No	-
12-13 - CS - 0001	15/11/2012	2 week suspension & removal of DPS	No	-
12-13 - CS - 0001	15/11/2012	4 week suspension	No	-
12-13 - CS - 0001	15/11/2012	1 week suspension	No	-
12-13 - CS - 0001	29/11/2012	4 week suspension & removal of DPS	Yes	To be determined
12-13 - CS - 0001	29/11/2012	4 week suspension & removal of DPS	No	-
12-13 - CS - 0001	29/11/2012	Due to papers being missing from agenda pack, members decided that no further action would be taken at this time	No	-
12-13 - CS - 0001	06/12/2012	4 week suspension Standard CCTV conditions added	No	-

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IoCCO Report Feedback

NAFN are very pleased to report that we have had yet another successful Interception of Communication Commissioners Officer (IoCCO) inspection.

Despite this being our fourth positive inspection in a row, this has not been achieved without considerable effort. Our legal team, SPoCs, and RIPA Administrators have all worked hard to ensure that these high standards continue to be maintained on a daily basis. With the proposed introduction of judicial authorisation for RIPA applications, our management team is also in negotiations to ensure that we continue to manage the lion's share of the process.

What did IoCCO have to say?

IoCCO's feedback to NAFN emphasised just how few problems they encountered when auditing our service. The standard of application was considered to be impressively high, a fact attributable not just to our SPoCs but also to you, as Applicants and Designated Persons. As we learn together, the standard of incoming applications is improving and ever more complex cases are confidently being pursued. The trust that our members have in us is evinced by the increasingly serious nature of the crimes we are assisting you to investigate. The volume of applications has also increased, and we now have more local authorities than ever before on board for RIPA. This is thanks in part to IoCCO, who actively encourage and endorse membership of NAFN wherever possible, but also down to the strong lines of communication that we are building between different authorities.

IoCCO also noted that the data expansion suggested by our SPoCs was of a good standard, adding significant value to your investigations. Applicants should remember that it may significantly benefit a case to cover the full dates of the offences being investigated, ensuring that you don't miss out on any vital information by restricting the data period unnecessarily. For example, very few Pay As You Go customers will top up every day. If you know the offences took place over a couple of weeks, tell us, because the chances of getting a useful result are increased if you search over a longer period. It may also mean that the need for further applications is avoided if we cover the relevant dates and conduct in the initial request, saving both time and effort.



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Agenda Item 12

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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