

Committee: Cabinet	Date: 8 September 2010	Classification: Unrestricted	Report No: CAB 041/101	Agenda Item:
Report of: Assistant Chief Executive (Legal Services) Originating officer(s) David Galpin, Head of Legal Services - Community		Title: Enforcement Policy and RIPA Wards Affected: All		

1. SUMMARY

- 1.1. It is proposed that the Council adopts an umbrella enforcement policy to govern its regulatory functions. The policy would apply across service areas to all of the Council's criminal and quasi-criminal enforcement. It would not apply to purely civil enforcement, such as debt recovery. The policy is intended to promote key principles of enforcement, including consistency and transparency.
- 1.2. The proposed enforcement policy expressly deals with the conduct of investigations by the Council and the rights of individuals. Covert investigative techniques are important, albeit last resort, measures employed by the Council to further its objectives. The Council has for several years had officer-developed policies and manuals under the Regulation of Investigatory Powers Act 2000 ("**RIPA**") dealing with directed surveillance and use of covert human intelligence sources.
- 1.3. In March 2010, the Secretary of State issued new codes of practice under RIPA. Consistent with those codes of practice, it is proposed that members should have oversight of the Council's implementation of RIPA. It is recommended that this function be exercised by the Standards Committee with a reporting line to Cabinet in respect of any identified issues.

2. DECISIONS REQUIRED

Cabinet is recommended to:-

- 2.1. Approve the enforcement policy contained in Appendix 1.
- 2.2. Recommend that Full Council amend the Council's Constitution so that the terms of reference of the Standards Committee includes oversight of enforcement action, particularly use of directed surveillance and use of covert human intelligence sources.

3. REASONS FOR THE DECISION

3.1. Adoption of the Enforcement Policy should promote sound principles of enforcement, namely –

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

3.2. The Enforcement Policy should also provide useful assistance to officers when selecting the appropriate level of enforcement in individual cases.

3.3. Oversight of enforcement action will sit comfortably with the other functions of the Standards Committee. This will enhance the Council's enforcement effort and ensure consistency with codes of practice issued under RIPA.

4. ALTERNATIVE OPTIONS

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

5. BACKGROUND

5.1. Enforcement Policy

5.2. The proposed Enforcement Policy is set out in Appendix 1. The Enforcement Policy is concerned with the Council's exercise of its criminal and quasi-criminal enforcement functions. Whilst some of the sanctions available to the Council are civil in nature, such as forfeiture of goods and money, this policy is not concerned with purely civil enforcement such as the enforcement of debts. Rather, it is concerned with offences and contraventions of legislation that fall within the Council's power or responsibility to enforce.

5.3. The Policy is designed to assist Council officers to carry out their duties consistent with clear principles of enforcement. It specifies the kind of enforcement action that the Council may take and the matters the Council will generally consider before taking any particular kind of action. The approach to enforcement taken in the policy is founded on firm but fair regulation, around the principles expressed in paragraph 3.1 above.

- 5.4. The Policy should assist the Council to target its enforcement action having regard to –
- The Tower Hamlets Community Plan, adopted under section 4 of the Local Government Act 2000
 - Local improvement targets contained in the local area agreement
 - The Council's Local Development Framework
 - Any external targets or requirements imposed under relevant legislation.
- 5.5. By promoting transparency, the Policy should assist the community and other members of the public to understand why the Council approaches enforcement in a particular way in individual cases.
- 5.6. The Policy is a high-level document that is intended to apply to all of the Council's relevant enforcement functions. It is recognised that individual service areas within the Council may have to take into account considerations specific to the regulatory framework in which they operate when carrying out enforcement work. To this end, there may be additional service-specific enforcement policies that operate under the broad umbrella of this policy.
- 5.7. All authorised officers of the Council would be expected to abide by this policy. Any departure would need to be fully considered and justified by the appropriate officer before a decision is made.
- 5.8. Regulation of Investigatory Powers Act 2000 (“RIPA”)**
- 5.9. There may be circumstances in the discharge of its statutory functions in which it is necessary for the Council to conduct directed surveillance for one or more of the following purposes: (1) preventing or detecting crime; (2) preventing disorder; (3) in the interests of public safety; or (4) protecting public health.
- 5.10. RIPA was enacted to provide a framework within which a public authority may use covert investigation for the purpose of preventing or detecting crime or of preventing disorder. It is designed to ensure that public authorities do not contravene the obligation in section 6(1) of the Human Rights Act 1998 not to in a way which is incompatible with an individual's rights under the European Convention on Human Rights. It is particularly concerned to prevent contravention of the qualified right in Article 8 of the ECHR to respect for private and family life, home and correspondence.
- 5.11. Since at least 2004, the Council has had in place policies regarding its use of directed surveillance and use or conduct of covert human intelligence sources under RIPA.
- 5.12. Any directed surveillance or use or conduct of covert human intelligence sources must first be authorised under RIPA. The authorisation ensures that the

surveillance is both necessary and proportionate as well as limiting any potential collateral intrusion. Consideration must be given to whether confidential information is likely to be obtained as a result of the covert surveillance. RIPA imposes strict controls on such authorisations, requiring rigorous review and cancellation and diligent oversight through the keeping of a central register.

- 5.13. In March 2010, the Secretary of State published two new codes of practice pursuant to section 71 of RIPA, dealing respectively with covert surveillance and covert human intelligence sources. The Council is required to have regard to the codes of practice issued when exercising any power or performing any duty to which they relate. The codes of practice are admissible in any civil or criminal proceedings, including proceedings alleging non-compliance with RIPA or the Human Rights Act 1998. The codes of practice recommend that elected members should review the use of RIPA and set the policy each year.
- 5.14. The Standards Committee is concerned with standards of conduct of members and corporate governance. It is considered that oversight of enforcement action, particularly in relation to the use of covert surveillance and covert human intelligence sources would fit comfortably with the existing functions of the Standards Committee. If the Standards Committee considered that there were issues in relation to either the Council's policies or the conduct of enforcement, then it could make recommendations to Cabinet for action. This would be consistent with the division between executive and non-executive functions established by the Local Government Act 2000. It will be necessary to amend the terms of reference of the Standards Committee in Article 9.03 of the Council's Constitution in order to effect this recommendation. This would need to be done by Full Council. Cabinet is requested to make a recommendation to this effect.

6. COMMENTS OF THE CHIEF FINANCIAL OFFICER

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

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

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

8. ONE TOWER HAMLETS CONSIDERATIONS

- 8.1. Enforcement action that complies with the five principles expressed in the Enforcement Policy and summarised in paragraph 5.2 above should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 8.2. The Enforcement Policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents such as the local area agreement and the Local Development Framework. For example, one of the key Community Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The Enforcement Policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the Enforcement Policy should discourage enforcement action that is inconsistent with the Council's objectives.
- 8.3. The exercise of the Council's various enforcement functions consistent with the Enforcement policy and its principles should also help achieve the following key Community Plan themes –
 - A Safe and Supportive Community. This means a place where crime is rare and tackled effectively and where communities live in peace together.
 - A Great Place to Live. This reflects the aspiration that Tower Hamlets should be a place where people enjoy living, working and studying and take pride in belonging.
 - A Prosperous Community. This encompasses the objectives of reducing worklessness, supporting learning opportunities and fostering enterprise.
- 8.4. An Equality Impact Assessment of the Enforcement Policy has been prepared.
- 8.5. The Enforcement Policy sets out clear principles to guide officers in determining the appropriate level of enforcement action. It actively seeks to promote transparency in decision-making. To the extent that the policy provides officers with relevant considerations, it works against enforcement decisions being taken on irrelevant and unlawful considerations such as those based on protected characteristics (gender, race, disability, sexuality, age, religion or belief).
- 8.6. Targeted enforcement may in some circumstances fall disproportionately heavily on groups with protected characteristics (e.g. targeting street prostitution may impact women). To the extent that this may occur it is considered to be justifiable as a proportionate means of achieving a legitimate aim. Any indirect adverse effect would be the consequence of the Council taking targeted enforcement action in pursuit of its lawful objectives, including the Community Plan goals. There is a need to target action to ensure that the Council not only achieves objectives, but does so having regard to its best value duty under the

Local Government Act 1999. Any action should be in accordance with the principles expressed in the Enforcement Policy, which include the requirement that enforcement action should be proportionate.

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

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

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

10. **RISK MANAGEMENT IMPLICATIONS**

- 10.1. Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that the principles of enforcement contained in the policy provide a sound basis for decision-making that will reduce the likelihood of any adverse outcomes. The proposal for oversight by the Standards Committee should also provide a useful check that risks are being appropriately managed.

11. **EFFICIENCY STATEMENT**

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

provide an opportunity to judge whether the Council's enforcement action is being conducted efficiently.

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.

Equality Impact Assessment

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12. APPENDICES

Appendix 1 – Enforcement Policy