

Committee: Standards	Date: 23 November 2010	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 Council's Constitution was amended on 27 October 2010 to add to the Standards Committee's terms of reference to enable the committee to receive reports on the Council's use of the Regulation of Investigatory Powers Act 2000 ("RIPA"). This was responsive to recommendations made in codes of practice issued by the Home Office, and by the Office of Surveillance Commissioners following an inspection on 8 June 2010, to the effect that there should be oversight by elected members. This is the first of what are expected to be regular reports to the Standards Committee on the Council's use of 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 local area agreement, 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 use of directed surveillance or covert human intelligence sources may be a necessary and proportionate part of enforcement activity conducted by officers across the Council, with the possible exception of the Adults, Health and Wellbeing directorate. The Resources directorate deals with benefits fraud. The Chief Executive's directorate deals with electoral fraud. The Development and Renewal directorate deals with building control and planning enforcement. The Children Schools and Families directorate deals with safeguarding children and takes action in respect of non-attendance at school. In fact, however, the central record maintained in Legal Services shows that, for 2009/2010 and 2010/2011, RIPA has been used exclusively within the Communities Localities and Culture directorate ("CLC"). It has been used in respect of community safety, trading standards, parking and environmental health.

3.7. 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 8 September 2010, 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.

3.8. 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.

- 3.9. In accordance with the Council's policies and manuals, a central record of all authorisations is maintained in Legal Services. The Council provides an annual return to the OSC of authorisations, based on the central record.
- 3.10. 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.
- 3.11. 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 Enforcement & Support Intervention within the Community Safety Service). In the absence of the Head of Enforcement & Support Intervention, 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. Training

- 3.14. Training will be provided for members of the Standards Committee prior to the meeting on 23 November 2010.
- 3.15. On 14 and 15 October 2010, officers from the Metropolitan Police conducted RIPA training for key Council officers engaged in the Council's implementation of RIPA, including the HLS, authorising officer and gatekeeper. Further training from the Metropolitan Police is proposed in January 2011 for Council officers who may make RIPA applications.

3.16. The Council's RIPA applications

3.17. It is proposed that quarterly reports be provided to the Standards Committee summarising the Council's RIPA authorisations in the preceding quarter.

3.18. In the second quarter of 2010/2011, Legal Services granted 9 unique reference numbers for proposed RIPA applications: CS0009 – CS0017. Out of these matters –

- 3 authorisations were granted (CS0009, CS0011 and CS0012)
- 2 applications were refused by the gatekeeper
- 2 applications were refused by the authorising officer
- 2 applications were withdrawn

3.19. A summary of the three authorisations is contained in Appendix 1.

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 body of the report.

6. ONE TOWER HAMLETS CONSIDERATIONS

6.1. Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

6.2. The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents such as the local area agreement and the Local Development Framework. For example, one of the key Community Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The enforcement policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the enforcement policy should discourage enforcement action that is inconsistent with the Council's objectives.

6.3. 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.

6.4. An Equality Impact Assessment was prepared prior to approval of the enforcement policy by Cabinet on 8 September 2010. Enforcement action may lead to indirect discrimination in limited circumstances, but this will be justified where the action is necessary and proportionate. Necessity and proportionality are key considerations in respect of every application for authorisation under RIPA.

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

7.1. 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.

8. **RISK MANAGEMENT IMPLICATIONS**

8.1. 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.

9. **EFFICIENCY STATEMENT**

9.1. 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.
None	N/A

12. APPENDICES

Appendix 1 – Summary of Quarter 2 RIPA authorisations

APPENDIX 1 - SUMMARY OF QUARTER 2 RIPA AUTHORISATIONS

CS0009	Summary information
Service area:	Local Environment Team, Public Realm, CLC
URN granted:	12 July 2010
Application on correct form?	Yes
Date of gatekeeper clearance:	24 August 2010
Date of authorisation:	31 August 2010
Expiry date and time:	30 November 2010 at 2359
Scheduled review date(s):	30 September, 31 October and 30 November 2010
Dates of reviews:	30 September 2010
Cancellation:	30 September 2010
Total time open:	1 month
Type of covert investigation:	Directed surveillance (CCTV)
Subject matter of investigation:	Fly tipping in Petticoat Lane
Necessity:	Ongoing offences. Notices issued to all businesses in the area seeking information, with 25% compliance. Educational material provided. Uniformed patrols conducted.
Proportionality:	Waste tipping serious problem. Notices and education unsuccessful. Expense to Council of removing unlawfully tipped waste.
Collateral intrusion:	Residents and visitors may be captured. Footage will only be viewed by limited council staff in a secure office and where unintended persons have been captured this will be deleted.
Outcome:	Surveillance conducted on 2, 3, 5, 14, 15, 16, 17, 27 and 28 September 2010. Information obtained shows contraventions of section 34 of the Environmental Protection Act 1990 that will support prosecution of 13 offences and issue of 12 fixed penalty notices.

CS0011	Summary information
Service area:	Community Safety, CLC
URN granted:	30 July 2010
Application on correct form?	Yes

Date of gatekeeper clearance:	30 July 2010
Date of authorisation:	2 August 2010
Expiry date and time:	2 November 2010 at 2359
Scheduled review date(s):	2 September 2010
Dates of reviews:	2 September 2010, 14 September 2010
Cancellation:	23 September 2010
Total time open:	1 and a half months
Type of covert investigation:	Directed surveillance (CCTV)
Subject matter of investigation:	Allegations of assault, harassment, vandalism and threatening behaviour at an RSL-owned property
Necessity:	Council obtained injunction for noise nuisance. Allegedly breached. Further serious allegations as set out above. Incidents occur at random times. Residents feel unsafe.
Proportionality:	Serious allegations. Evidence cannot be gathered by other means. Incidents occur at random times. Other means of investigation tried. Diary sheets issued to residents. Council and police officers have attended. Continued behaviour causing harassment, fear, alarm and distress to residents and visitors.
Collateral intrusion:	Communal hallways. Motion activated camera. Incidental footage to be deleted.
Outcome:	Allegations not supported. Some evidence of drug activity noted, which is to be passed to the SNT.

CS0012	Summary information
Service area:	Community Safety, CLC
URN granted:	30 July 2010
Application on correct form?	Yes
Date of gatekeeper clearance:	30 July 2010
Date of authorisation:	2 August 2010
Expiry date and time:	2 November 2010 at 2359
Scheduled review date(s):	2 September 2010
Dates of reviews:	2 September 2010
Cancellation:	23 September 2010

Total time open:	1 and a half months
Type of covert investigation:	Directed Surveillance (CCTV)
Subject matter of investigation:	Use of Class A drug (heroin) and Class B drug (marijuana)
Necessity:	Drug paraphernalia found in bin room on an RSL property. Suspects unknown. Lack of witnesses. Risk to residents. Residents feel intimidated.
Proportionality:	Serious and risky behaviour. Difficult to detect offences otherwise. Patrols and door-knocking failed to change behaviour. Overt cameras may lead to intimidation of complainant. Installing locks may drive offenders elsewhere.
Collateral intrusion:	Communal area. Limited footfall. Some collateral intrusion unavoidable but minimised by positioning of cameras.
Outcome:	Images of apparent drug use, made available to the local SNT. Evidence of other ASB obtained. Individuals to be identified.