

Committee: Standards	Date: 18 January 2011	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, particularly the authorisation information in Appendix 1

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 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.

3.7. 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.

3.8. In accordance with the Council's policies and manuals, a central record is maintained in Legal Services of all authorisations 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”).

3.9. The Council provides an annual return to the Office of Surveillance Commissioners (“OSC”), based on the central record. The OSC is due to conduct an inspection of the Council’s use of Part 2 of RIPA, which has been proposed for 19 January 2011.

3.10. 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.

3.11. 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.

3.12. 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.

3.13. The Council's RIPA applications

3.14. In the third quarter of 2010/2011, Legal Services granted 2 unique reference numbers for proposed RIPA applications: CS0018 and CS0019. Out of these matters –

- 1 authorisation was granted (CS0018)
- 1 application has still not been passed by the gatekeeper (CS0019).

3.15. A summary of the single authorisation 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 3 RIPA authorisations

APPENDIX 1 - SUMMARY OF QUARTER 3 RIPA AUTHORISATIONS

CS0018	Summary information
Service area:	Trading Standards
URN granted:	12 October 2010
Application on correct form?	Yes
Date of gatekeeper clearance:	22 October 2010
Date of authorisation:	22 October 2010*
Expiry date and time:	22 January 2011 at 2359*
Scheduled review date(s):	25 October 2010
Dates of reviews:	25 October 2010
Cancellation:	25 October 2010
Total time open:	3 Days
Type of covert investigation:	Directed surveillance (use of covert recording equipment as part of test purchases)
Subject matter of investigation:	Illegal tobacco sales in the Brick Lane/Sclater Street area/
Necessity:	Intelligence showed potential offences being committed against the following: section 12 of the Consumer Protection Act 1987 (product labelling requirements for tobacco products); section 92 of the Trade Marks Act 1994 (counterfeit products); and section 38 of the London Local Authorities Act 1990 (street trading without a licence). Identification of the seller is essential and generally requires more than the word of the purchaser. Unlawful sales are widespread and have a detrimental effect on the area and persons who shop there. As a result of prior enforcement action, sellers have become more aware, trading away from overt cameras and not holding product on their persons.
Proportionality:	Recordings will be made in a public market. Unlawful sales are widespread and have a detrimental effect on the area and persons who shop there.
Collateral intrusion:	There was limited chance of collateral intrusion from the covert camera due to its range and the experience of the operator.
Outcome:	No sales were obtained. There was an overt police operation targeting illegal bike sellers in the area at the same time and tobacco sellers were recorded as being

	too on edge.
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* There appears to be a recording error on the authorisation form in relation to dates.