

Committee: Standards	Date: 12 January 2012	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 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"). The Council provides an annual return to the Office of Surveillance Commissioners ("OSC"), based on the central record.

3.9. 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.

3.10. 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.

3.11. 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.

3.12. The Council's RIPA applications

3.13. Quarter 3 of 2011/2012

3.14. No authorisations were granted in the third quarter.

3.15. Quarter 1 of 2011/2012

3.16. In the report to the Committee of 11 October 2011, reference was made to the authorisation granted in respect of CS0001 on 4 July 2011. At the time of preparing that report, the authorisation was still current and so no details were provided in the report. Authorisation CS0001 was cancelled on 30 September 2011, slightly earlier than expected, and details of the authorisation are now set out in Appendix 1 to this report.

3.17. Quarter 2 of 2011/2012

3.18. At the meeting on 11 October 2011, the Committee requested further information concerning the outcome of authorisation number CS0002. For the sake of convenience, the summary provided in respect of CS0002 on 11 October 2011 is set out in Appendix 2. The police charged the alleged perpetrator on 20 October 2011 with nine counts of criminal damage, based on the incidents recorded by the Council on CCTV. On 23 November 2011, the defendant pleaded not guilty at Thames Magistrates' Court and a trial was fixed to take place (at Stratford

Magistrates' Court) on 3 February 2012. The action taken is considered to be consistent with the Council's objectives in respect of combating anti-social behaviour.

3.19. Reduction in covert activities

3.20. On 11 October 2011, the Committee asked officers to comment on the reduction in requests for RIPA authorisation in 2011/2012, compared to the previous financial year.

3.21. As reported to the Committee on 19 July 2011, there were 21 referrals in 2010/2011, but only 12 authorisations were granted. Of the remaining nine referrals (42%), two were refused authorisation, four were rejected by the gatekeeper and three were withdrawn. The reduction in referrals in 2011/2012 is considered to relate in part to increased scrutiny by managers in order to identify cases where covert investigation is appropriate. This includes giving consideration to whether ordinary methods of investigation have been fully explored.

3.22. The following table provides a comparison of authorisations in 2011/2012 to date, compared with 2010/2011.

Subject matter of investigation:	2010/2011	2011/2012
Anti-social behaviour	5	1
Consumer protection and counterfeit goods	2	0
Illegal money lending	1	0
Graffiti and fly-posting	1	0
Touting	2	1
Fly tipping	1	0
Total:	12	2

3.23. It should be noted that the London Illegal Money Lending Team ceased to be the responsibility of Tower Hamlets in the current financial year.

3.24. The Tower Hamlets Enforcement Officers (THEOs) have contributed to the reduction in applications. In the past there was no asset to task to a problem location, with the consequence that there was greater resort to the use of covert cameras. Now that there uniformed officers are available, they are tasked to attend problem locations as a first option and they gather evidence for use in enforcement. In relation to anti-social behaviour, the work of police, registered social landlords and Tower Hamlets Homes Ltd have also had an impact.

3.25. The report to the Committee on 19 July 2011 indicated that not all authorisations granted in that year were successful in the sense of obtaining evidence of offences that could be used in enforcement action. By contrast, both

authorisations granted to date in 2011/2012 have obtained evidence that can be used for enforcement. This may indicate that more sparing use of covert investigation is warranted.

- 3.26. There is no indication that the reduction in use of covert surveillance has led to a reduction in the Council's overall enforcement activity. As at 31 December 2011, the Council had already exceeded the 818 prosecutions conducted for the whole of 2010/2011, with 959 having been recorded at the time of preparing this report. There has likely been a shift in the types of cases handled and this can be analysed further at the end of the financial year. It is clear that the greatest increase in prosecution referrals has come from the Tower Hamlets Enforcement Officers, who had contributed 398 (42%) of the prosecution cases recorded to the end of December 2011.

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.

12. APPENDICES

Appendix 1 – Summary of Quarter 1 RIPA authorisations

Appendix 2 – Summary of Quarter 2 RIPA authorisations

**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 1 RIPA AUTHORISATIONS

CS0001	Summary information
Service area:	Community Safety
URN granted:	20 May 2011
Application on correct form?	Yes
Date of gatekeeper clearance:	This matter went direct to the authorising officer
Date of authorisation:	4 July 2011
Expiry date and time:	3 October 2011
Scheduled review date(s):	1 August 2011, 5 September 2011
Dates of reviews:	1 August 2011, 5 September 2011
Cancellation:	30 September 2011
Total time open:	89 Days
Type of covert investigation:	Directed surveillance
Subject matter of investigation:	Touting in the Brick Lane area
Necessity:	Touting continues in the Brick Lane, with potential offences contrary to 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. The associated anti-social behaviour affects residents and others in the Brick Lane area. The trading malpractices affect consumers and businesses that do not use touts.
Proportionality:	Other less intrusive investigative means were tried, including: prosecution of touts; a letter sent to restaurants warning them of the criminal consequences of touting; publicity of anti-touting enforcement; and overt walk-throughs. Evidence obtained through overt means (ie without recording) has been successfully challenged as unreliable.
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:	Breaches were identified in relation to four businesses. Some licence reviews were triggered and further enforcement action is being considered.

APPENDIX 2 - SUMMARY OF QUARTER 2 RIPA AUTHORISATIONS

CS0002	Summary information
Service area:	Community Safety
URN granted:	27 July 2011
Application on correct form?	Yes
Date of gatekeeper clearance:	This matter went direct to the authorising officer
Date of authorisation:	29 July 2011
Expiry date and time:	28 October 2011
Scheduled review date(s):	26 August 2011
Dates of reviews:	26 August 2011
Cancellation:	13 September 2011 (However, the authorising officer instructed orally that the surveillance should cease on 12 September 2011 at 1700)
Total time open:	46 Days
Type of covert investigation:	Directed surveillance
Subject matter of investigation:	Homophobic hate crime and criminal damage in a housing property
Necessity:	Less intrusive investigation failed to identify the perpetrator. Homophobic graffiti causing harassment, alarm and distress to residents and visitors at the property. One resident felt targeted and notified a desire to move.
Proportionality:	There were potential offences under: section 1 of the Criminal Damage Act 1971 (graffiti); and section 4 of the Public Order Act 1986 (causing harassment, alarm or distress). Other less intrusive investigative means were tried, including: a letter to the block requesting information; a request for extra police patrols; a block "door knock" requesting information. Residents reported feeling intimidated, vulnerable and fearful. There was a threat to community cohesion as some residents felt they might be blamed. There were concerns about escalation of the situation.
Collateral intrusion:	The cameras were sited in communal areas and there was thus a risk of collateral intrusion. The cameras were placed so as not to view inside any private dwelling. The investigating officer undertook to delete any recording unrelated to the offences.

Outcome:

The perpetrator was identified and information provided to the police.