

Committee: Standards	Date: 10 May 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 and interception of communications – Annual Report for 2011/2012 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 covert investigation. The Standards Committee’s terms of reference enable the committee to receive reports on the Council’s authorisation of covert investigations under RIPA.
- 1.2. This report reviews the Council’s activities under RIPA in 2011/2012, reports on the results of inspections and summarises the impacts expected when the Protection of Freedoms Bill becomes law.

2. Decisions required

The Committee is recommended to consider and comment on the following –

- 2.1. The information regarding RIPA activity by the Council in 2011/2012.
- 2.2. The information about the Protection of Freedoms Bill.

3. Fourth Quarter

- 3.1. In the fourth quarter of 2010/2011, a single authorisation was granted with the unique reference number CS0003. A summary of this authorisation is contained in Appendix 1.

4. Directed surveillance authorisations in 2010/2011

- 4.1. In total 3 covert surveillance matters are recorded on the central record for the 2011/2012 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	3
Authorisation refused	0
Application rejected by gatekeeper	0
Application withdrawn	0
Total:	3

- 4.2. The 3 authorisations granted compared to 12 in 2010/2011. The authorisations were granted for investigations in the following enforcement areas –

Subject matter of investigation:

Anti-social behaviour	1
Touting	2
Total:	3

- 4.3. The two touting related investigations were focussed on Brick Lane and surrounding streets. The remaining investigation was concerned with activity at the Glamis Estate in Shadwell ward.

- 4.4. The reasons for the reduction in authorisations in 2011/2012 were examined in the report to the Standards Committee of 12 January 2012. An examination of the Council's overall enforcement activity during 2011/2012 is currently being carried out. In terms of prosecutions, the Council dealt with 1308 cases in 2011/2012 compared with 818 in 2010/2011. This is a significant increase and supports the reasons given to the Committee on 12 January.

- 4.5. The following priority areas are expressed in the Council's covert surveillance policy –

- 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 licence.

- 4.6. Two of the authorisations in 2011/2012 dealt with touting, which is not, in itself, an expressed priority area. That said, touting may involve anti-social behaviour, depending upon how it is conducted. The Council's approach to touting has also involved focussing on the responsible premises, particularly the imposition of conditions on any premises licence under the Licensing Act 2003 to control touting and checking whether the conditions are complied with. Both anti-social behaviour and breaches of licence are expressed priority areas. The use of

covert investigation was considered appropriate by the authorising officer in each of the touting cases.

- 4.7. 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). Training was carried out on 8 February 2012 for officers who may engage in covert investigation.
- 4.8. The enforcement activity consequent on the Council's three covert investigations may be summarised as follows –

URN	Enforcement activity
CS0001	This investigation concerned touting in the Brick Lane area. As a result of the investigation, two premises had their licences reviewed, with the result that: one of the premises had licensable activities suspended for 24 hours and had conditions imposed on its licence; and one of the premises had licensable activities suspended for seven days.
CS0002	This investigation concerned instances of homophobic and racist graffiti. The Council worked with the police and East End Homes. As a result of the investigation an individual was convicted of criminal damage and sentenced to eight weeks in prison.
CS0003	This investigation concerned touting in the Brick Lane area. The investigation only concluded on 14 April 2012 and it is too early to report on follow-up enforcement activity.

5. Covert Human Intelligence Sources

- 5.1 There were no requests during 2010/2011 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.

6. Interception of communications

- 6.1 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 2011, the Council had: two notices requiring disclosure of communications data; and 59 authorisations to acquire communications data. 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.

7. Inspections in 2011/2012

- 7.1. The Council was not inspected by the Office of Surveillance Commissioners or the Interception of Communications Commissioner's Office during 2011/2012.

8. Protection of Freedoms Bill

- 8.1. The Protection of Freedoms Bill was referred to in the report to the Committee on 19 July 2011. The Bill remains at the committee stage in the House of Lords. A further report will be made to the Committee once the Bill has been passed.

8. Comments of the Chief Finance Officer

- 8.1. 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.

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

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

10. One Tower Hamlets

- 10.1. 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.
- 10.2. The Council's enforcement policy was the subject of an equality impact assessment before adoption and it is considered that any indirect discrimination arising from targeted action is justifiable and not unlawful under the Equality Act 2010.

- 10.3. Necessity and proportionality are key considerations in respect of every application for authorisation under RIPA to ensure that the action comes within Article 8(2) of the European Convention on Human Rights and that the Council does not breach its obligations under the Human Rights Act 1998.

11. Sustainable Action For A Greener Environment

- 11.1. 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.

12. Risk Management Implications

- 12.1. 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.

13. Efficiency Statement

- 13.1 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.

14. Appendices

Appendix 1 Summary of Quarter 4 RIPA authorisations

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 4 RIPA AUTHORISATIONS

CS0003	Summary information
Service area:	Trading Standards
URN granted:	31 October 2011
Application on correct form?	Yes
Date of gatekeeper clearance:	12 March 2012
Date of authorisation:	15 March 2012
Expiry date and time:	14 June 2012
Scheduled review date(s):	16 April 2012
Dates of reviews:	16 April 2012
Cancellation:	16 April 2012
Total time open:	32 days
Type of covert investigation:	Covert surveillance
Subject matter of investigation:	Touting in Brick Lane and surrounds
Necessity:	Preventing or detecting crime and disorder. Particular offences are under: Licensing Act 2003, section 136(1) (breach of licence condition); Local Government Act 1972, section 237 (breach of anti-touting bye-law); Consumer Protection from Unfair Trading Regulations 2008, regulations 9 and 11 (false inducements and aggressive commercial practices).
Proportionality:	The Council has prosecuted touts, but touting persists in this area and there is a need to target restaurants. There has been widespread publicity of anti-touting enforcement. Every restaurant in the vicinity was written to in February 2011 and July 2011. Overt patrols, including by uniformed officers, do not gather sufficient evidence.
Collateral intrusion:	Collateral intrusion was considered likely. It was proposed that any unused material would be kept under seal for the purposes of disclosure in the event of any criminal proceedings being brought.
Outcome:	A single covert test purchase was conducted. This showed the tout's interaction with the purchaser and the relationship between the tout and the restaurant.