

<b>Committee:</b> Overview and Scrutiny	<b>Date:</b> 5 November 2013	<b>Classification:</b> Unrestricted	<b>Report No:</b>	<b>Agenda Item:</b>
<b>Report of:</b> Assistant Chief Executive (Legal Services)  <b>Originating officer(s)</b> David Galpin, Head of Legal Services - Community		<b>Title:</b> Covert investigation under the Regulation of Investigatory Powers Act 2000  <b>Wards Affected:</b> 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

Overview and Scrutiny 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 Interim Monitoring Officer is the senior responsible officer for ensuring the Council complies with RIPA. The Head of Legal Services (Community) ("HLS") is his 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 3 October 2012, 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
- Touting.

3.8. The Council may only use covert investigation for the purposes of serious offences. This means an offence of the following kind –

- An offence punishable by a maximum term of at least 6 months of imprisonment.
- An offence under section 146 of the Licensing Act 2003 (sale of alcohol to children).
- An offence under section 147 of the Licensing Act 2003 (allowing the sale of alcohol to children).
- An offence under section 147A of the Licensing Act 2003 (persistently selling alcohol to children).
- An offence under section 7 of the Children and Young Persons Act 1933 (sale of tobacco etc. to persons under eighteen).

- 3.9. The Council must also have approval from a court, in addition to an internal authorisation granted by its authorising officer, before carrying out covert surveillance.
- 3.10. In accordance with the Council's policies and manuals, a central record is maintained in Legal Services of all authorisations and approvals granted to carry out either directed surveillance or to use covert human intelligence sources (authorisations under Part 2 of RIPA). The Council provides an annual return to the Office of Surveillance Commissioners ("OSC"), based on the central record.
- 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 Community Safety Enforcement & Markets within the Community Safety Service). In the absence of the Head of Community Safety Enforcement & Markets, 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. 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 (or deputy) 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.
- 3.14. The Council's RIPA applications**
- 3.15. Quarter 1 of 2013/2014**
- 3.16. There were no authorisations granted in quarter 1 of 2013/2014.

### **3.17. Quarter 2 of 2013/2014**

- 3.18. A single authorisation was granted in quarter 2 of 2013/2014. This was granted on 7 August 2013 in respect of application CS0001. The subject matter of the investigation was touting and details of the authorisation are set out in Appendix 1 to this report.
- 3.19. The authorisation was the first one under the new regime, whereby approval is also required from a court. An application was made to the Thames Magistrates' Court and approval was given on 25 September 2013.

### **3.20. Inspection by the Office of Surveillance Commissioners**

- 3.21. The Council was inspected by the Office of Surveillance Commissioners (**OSC**) on 16 May 2013. The report of the inspection was provided by the OSC on a restricted basis.
- 3.22. Overall, the inspector found that measures put in place in 2011 had delivered exemplary standards of compliance in all areas the subject of OSC scrutiny. The inspector specifically noted –

- A comprehensive guidance and procedural manual, with clearly defined roles.
- Strict oversight controls by the authorising officer.
- Regular partnership meetings at which RIPA is a standing item.
- Regular reporting to the Standards Committee.
- A policy for securing technical equipment.
- An effective training strategy.
- A central record compliant with codes of practice.
- An exemplary standard of application and authorisation.

- 3.23. The inspector made some recommendations for further improvement, which are being taken forward. These include –

- Briefing practitioners on the parameters of an authorisation, the matters which a cancellation statement should take into account use of RIPA in relation to social networking. On 2 September 2013, a briefing was given by Legal Services to the regular community safety partnership meeting about these matters.
- Creation of a single ongoing record, rather than an annual record to facilitate consideration of whether a particular application is proportionate or not.

#### **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. 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.

**10. APPENDICES**

Appendix 1 – Summary of Quarter 2 RIPA authorisations

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**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.
<b>None</b>	<b>N/A</b>

## APPENDIX 1 - SUMMARY OF QUARTER 2 RIPA AUTHORISATIONS

CS0001	Summary information
Service area:	Community Safety
Date URN granted:	12 April 2013
Application on correct form?	Yes
Date of gatekeeper clearance:	
Date of authorisation:	7 August 2013
Date of Court approval	25 September 2013
Expiry date and time:	31 October 2013
Scheduled review date(s):	None
Dates of reviews:	None
Cancellation:	Still active
Total time open:	14 days (at time of writing)
Type of covert investigation:	Directed surveillance
Subject matter of investigation:	Touting in the Brick Lane area
Necessity:	The action was considered necessary given: (1) the level of public complaints; (2) the failure of high visibility patrols to catch individuals touting or to deter individuals engaged in touting; and (3) despite warnings, education of licence holders, written advice and meetings, the touts and restaurants continue to operate in a way that impacts on visitors and residents. The action will prevent or detect crime, namely offences against: 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.
Proportionality:	The authorising officer took into account: (1) the preventative work undertaken in the area to educate and inform restaurant owners of their licence conditions and the offences they commit; (2) the level of public complaints associated with the activity; (3) the continual presence of uniformed police officers and council officers which only curtail the activity while they are near the offending individuals.
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:	The operation is ongoing at the time of writing this report.