

Committee: Standards Advisory	Date: 21 October 2014	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Interim Monitoring Officer 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 Advisory 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 Service Head - Legal Services ("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. At its meeting in January 2014, the Committee queried whether the priorities for RIPA could be amended to include electoral fraud and unlawful subletting. Ultimately this will be a matter for the executive and may be addressed when the Council's enforcement policy is brought forward for revision in 2015. However, the following observations may be made –
- The Prevention of Social Housing Fraud Act 2013 came into force on 15 October 2013 which makes unlawful sub-letting a criminal offence. The criminal offence applies to the Council's tenancies as well as to assured shorthold tenancies. A tenant commits an offence if: (a) the tenant, in breach of the terms of his tenancy sub-lets the whole or part of the dwelling house without the landlord's written consent; (b) the tenant ceases to occupy the dwelling as his only or principle home; and (c) the tenant knows that subletting is in breach of the term of his tenancy. In addition, there is a greater offence that is committed if the tenant dishonestly and in breach of the tenancy sub-lets part or the whole of the dwelling without the landlord's written consent.

- A person convicted of the lesser offence would be liable to a fine of up to £5,000. However, if convicted for dishonesty, then the person could be liable for a term of imprisonment up to six months imprisonment and/or a fine of up to £5,000; and on indictment, up to two years in prison, a fine or both. The dishonesty offence would meet the requirements for use of RIPA but the lesser offence would not.
- In the area of elections, the Council's enforcement efforts have focused to date on the failure by individuals to return information to the Council as part of the annual canvass. The relevant offence is found in regulation 23 of the Representation of the People (England and Wales) Regulations 2001 and carries a maximum penalty of a fine of £1000. This is not a serious offence for the purposes of the Council's use of RIPA.
- The Council is proactive in encouraging residents and other parties to report cases of suspected electoral fraud. For example, at the elections held in May 2014 a dedicated e-mail account was set up for this purpose. However, the investigation of alleged fraud is the responsibility of the police and all such potential cases are referred to the Metropolitan Police for investigation. It would be a matter for the police to determine whether or not to use covert surveillance in respect of any such referral. The Council asked the police to see details of its RIPA authorisations but the police declined to provide this information.

3.9. 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).

3.10. 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.

3.11. 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.

- 3.12. 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.
- 3.13. 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.
- 3.14. 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.

3.15. The Council's RIPA applications

3.16. Quarter 4 of 2013/2014

- 3.17. No authorisation was granted in the fourth quarter of 2013/2014.

3.18. Quarter 1 of 2014/2015

- 3.19. No authorisation was granted in the first quarter of 2014/2015.

3.20. Quarter 2 of 2014/2015

3.21. No authorisation was granted in the second quarter of 2014/2015. A unique reference number was issued (14/15 – CS004), the application for which had progressed to the gatekeeper by the end of the quarter.

3.22. Summary of directed surveillance authorisations in 2013/2014

3.23. In total 3 covert surveillance matters are recorded on the central record for the 2013/2014 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	2
Authorisation refused	0
Application rejected by gatekeeper	0
Application withdrawn	1
Total:	3

3.24. The 2 authorisations granted compared to 2 in 2012/2013 and 3 in 2011/2012, showing consistent low levels of use of RIPA by the Council. The authorisations were granted for investigations in relation to touting and the investigation of underage sales of tobacco. Both touting and underage sales of tobacco are identified priorities for the Council's use of RIPA, as indicated in paragraph 3.7 above.

3.25. The touting authorisation was focussed on Brick Lane and surrounding streets. The underage sales authorisation was in respect of a number of named premises, also in the Brick Lane area. Maps showing the location of RIPA activity in the years 2011/2012, 2012/2013 and 2013/2014 will be made available at the meeting.

3.26. 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).

3.27. Training was conducted in March 2013 for officers who may engage in covert investigation and will need to be re-run in 2014 or early 2015.

3.28. Enforcement activity arising from 2013/2014 authorisations

3.29. The following enforcement action resulted from Operation Creek VII –

- A premises licence holder in respect of premises on Brick Lane has been prosecuted for two offences. One of those offences relates to touting and has been charged in the alternative, alleging that the licence holder either: *carried out* licensable activity otherwise than under or in accordance with the premises licence; or *knowingly allowed* a licensable activity to be carried out otherwise than under or in accordance with the premises. This offence is contrary to section 136 of the Licensing Act 2003 and carries a maximum penalty of 6 months in prison or a fine of £20,000 or both. The other offence concerns failing to display the required summary of the premises licence. The defendant has pleaded not guilty and the trial is listed for 29 October 2014.
- One premises (Sajna Indian Grill) had its licence reviewed, resulting in a revocation, subsequently confirmed on appeal by Thames Magistrates' Court. The District Judge noted that the Licensing Sub-Committee's decision to revoke the licence was most likely influenced by a statement made by one of the directors of the business to the effect that he would not stop touting because it was the only way for the business to survive. To the Court this indicated that the business had decided to put profit above the duty to comply with the licence and it suggested the situation would not change. The Court considered the licence should be revoked and dismissed the appeal.

3.30. No enforcement action resulted from Operation Singles. It appeared that the suspect premises only make sales to minors they know, so test purchases did not disclose evidence of offences. Using a juvenile covert human intelligence source was considered disproportionate and beyond the resources and skills of Trading Standards. As a consequence the investigation was not taken further.

3.31. Covert Human Intelligence Sources

3.32. There were no authorisations granted during 2013/2014 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 Monitoring Officer or HLS that they have the skill and experience to handle a covert human intelligence source, before seeking authority to use a covert human intelligence source.

3.33. Interception of communications

3.34. 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).

3.35. The IOCCO reports on a calendar year. During 2013, the Council had:

- 0 notices requiring disclosure of communications data (compared with 0 the previous year);
- 25 authorisations to acquire communications data (compared with 23 the previous year);
- 0 applications submitted to a designated person for decision which were rejected.

3.36. All of the Council's authorisations were processed by the National Anti-Fraud Network (NAFN) as the Council's single point of contact, as has been the case since January 2011. All of the Council's authorisations 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.

3.37. **Inspections in 2013/2014**

3.38. The Council was inspected by the Office of Surveillance Commissioners (**OSC**) on 16 May 2013. The report of the inspection was provided to the Committee at its meeting on 24 October 2013.

3.39. 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.

3.40. The inspector made some recommendations for further improvement, which were reported to the Committee and have subsequently been addressed.

3.41. The Council was not inspected by the IOCCO in 2013/2014 and we have no report of NAFN having been inspected. We were notified that NAFN was to be inspected from 7 to 9 July 2014 and this may be reported to the Committee in due course.

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

None

**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.
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None	N/A
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