

Committee: Overview and Scrutiny	Date: 12 May 2015	Classification: Unrestricted	Report No: 7.1	Agenda Item: 7.1
Report of: Interim Monitoring Officer Originating officer(s) David Galpin, Service Head - Legal Services		Title: Covert investigation under the Regulation of Investigatory Powers Act 2000 Wards Affected: All		

REASONS FOR URGENCY

The report was not published five clear days in advance of the meeting. Before the item can be considered at this meeting, the Chair of the Committee would need to be satisfied that it is necessary to consider information about the Council's use of covert investigation without that consideration being delayed to a later meeting. As the use of covert investigation is sensitive, and given that the last meeting of the Standards Committee was cancelled, the Committee may take the view that it is important that there should not be an extended period without member oversight.

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.
- 1.2. The Council's practice is for reports to be provided to the Standards Advisory Committee and then to the Overview and Scrutiny Committee. This report was prepared for the Standards Advisory Committee meeting of 14 April 2015, which was cancelled.

2. DECISIONS REQUIRED

Overview and 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. These priorities may be reviewed when the Council's enforcement policy is brought forward for revision in 2015.

- 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 Monitoring Officer 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 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 3 of 2014/2015

3.17. A single authorisation was granted in the third quarter of 2014/2015, details of which are set out in the appendix. The internal authorisation was given by the Head of Internal Audit on 10 November 2014. This was confirmed by a District Judge at the Thames Magistrates' Court on 11 November 2014. The surveillance was conducted from 14 November 2014 to 2 December 2014. The authorisation was formally cancelled on 18 December 2014, as surveillance had concluded after sufficient evidence was obtained.

3.18. If possible, further information will be provided regarding the outcome of the investigation in the annual RIPA report.

3.19. Quarter 4 of 2014/2015

3.20. No authorisation was granted in the fourth quarter of 2014/2015.

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. The enforcement policy makes clear the need to target enforcement action towards 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 3 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.
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None

N/A

APPENDIX 1 - SUMMARY OF QUARTER 3 RIPA AUTHORISATIONS

CS0001	Summary information
Service area:	Community Safety
Date URN granted:	
Application on correct form?	Yes
Date of gatekeeper clearance:	7 October 2014
Date of authorisation:	10 November 2014
Date of Court approval	11 November 2014
Expiry date and time:	11 December 2014
Scheduled review date(s):	None
Dates of reviews:	None
Cancellation:	18 December 2014 (NB surveillance ceased 2 December 2014)
Total time open:	36 days
Type of covert investigation:	Directed surveillance (via body cameras)
Subject matter of investigation:	Bribery allegations
Necessity:	Serious allegations were made of failures to adhere to the Council's employee code of conduct, financial regulations and possible criminal offences involving traders offering inducements not to enforce or carry out financial checks and acceptance by staff of those inducements. Overt investigation would not gather the required evidence due to the clandestine nature of such activities, if the allegations are correct.
Proportionality:	The authorising officer took into account: (1) allegations of bribery are serious; (2) the allegations are fundamental to discharge of the Council's functions; (3) high standards are expected of Council staff; (4) overt investigation would be insufficient; and (5) any collateral intrusion would be low due to the surveillance taking place in public places.
Collateral intrusion:	Visual images and audio would necessarily be recorded of other persons as the investigations would take place in public places. In order to minimise intrusion cameras would only be turned on when it appears that a breach may be occurring. A working copy would be made of relevant footage, although un-edited footage would be securely kept for evidentiary

	purposes.
Outcome:	The Council is taking appropriate internal action under its relevant HR procedures. Relevant surveillance material has been provided to the Metropolitan Police, who are investigating.