


Non-Executive Report of the: Overview & Scrutiny Committee 1 February 2016	
Report of: Melanie Clay, Corporate Director – Law, Probity & Governance and Monitoring Officer	Classification: Unrestricted
Report of Investigations under the Regulation of Investigatory Powers Act (RIPA)	

Originating Officer(s)	Graham White – Interim Service Head, Legal
Wards affected	All wards

Summary

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. This report summarises the Council’s use of those powers and other activities under RIPA.

Recommendations:

The Overview & Scrutiny Committee is recommended to:

1. Consider and comment upon the information provided in the report.

1. **REASONS FOR THE DECISIONS**

- 1.1 The information in the report is provided so that members may oversee the Council’s use of powers under RIPA.

2. **ALTERNATIVE OPTIONS**

- 2.1 It is open to members to provide such comments on the Council’s use of RIPA powers as they consider appropriate.

3. **DETAILS OF REPORT**

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 Monitoring Officer is the senior responsible officer for ensuring the Council complies with RIPA.

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 has in place guidance manuals to assist officers in the authorisation process. The policy is in the course of being refreshed.

3.7 The Council's current 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 will be considered in the review of the enforcement policy.

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, Safer Communities 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) may attend fortnightly at CLC's internal deployment and tasking meetings to ensure the central record is being kept up to date. Representatives of each service area in CLC and the Police 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 in Q1 – Q3**
- 3.16 One application has been made for a RIPA authorisation in the second quarter of 2015/2016 (under Unique Reference Number 15/16 –CS -005) by the Trading Standards Service. This was authorised on 14th September 2015. Judicial Approval was obtained on 6th October 2015.

3.17 The observations using CCTV and officers' observations gathered evidence of a network of street traders and business premises in Whitechapel involved in the supply of illicit tobacco. The observations coupled with Trading Standards investigations provided information towards getting entry warrants under Schedule 5 to the Consumer Rights Act 2015. As a result Stratford Magistrates Court issued five entry warrants. The warrants were executed pm 26th November 2015, with the following results:

- Illicit cigarettes - 738 packets, 18,960 cigarettes.
- Illicit shisha – 78 packets;
- HRT – 12350 (12.35kg);
- Chewing tobacco not carrying appropriate warnings – 3186

3.18 A large quantity of cash was discovered by Trading Standards staff along with gold bars which were seized by the Police under the Proceeds of Crime Act 2002.

On 7th December 2015, the Authorisation was cancelled.

3.19 No applications were made in the first and third quarters.

3.20 Update

3.21 The annual RIPA report indicated that Members would be updated in due course on any enforcement action taken following the single authorisation granted in 2014/2015. However, those matters have not yet reached a point at which a report may be made.

3.22 The annual report also indicated that training needed to be arranged. This is yet to be put in place as difficulties have been experienced with the previous supplier and alternative arrangements may need to be made. Legal Services are making further enquiries.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

4.1 This is a report of the Council's use of the Regulation of Investigatory Powers Act 2000 ("RIPA"). There are no financial implications arising from the recommendations in this report.

5. LEGAL COMMENTS

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. BEST VALUE (BV) IMPLICATIONS

- 7.1 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 primarily through the Standards (Advisory) Committee but also through the Overview & Scrutiny Committee. This will provide an opportunity to judge whether the Council's enforcement action is being conducted efficiently.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 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.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 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 Members should also provide a useful check that risks are being appropriately managed.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 As set out in paragraphs 3.1 and 3.2 of the report, the Council's use of covert investigation may be a necessary part of its enforcement work, but must be carried out having regard to the requirements of RIPA.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- NONE

Local Government Act, 1972 Section 100D (As amended)

List of "Background Papers" used in the preparation of this report

- NONE

Officer contact details for documents:

- N/A