

Committee	Date	Classification	Report No.	Agenda Item No.
Overview and Scrutiny	2 August 2011	Unrestricted		
Report of: Assistant Chief Executive (Legal Services) Originating Officer(s): David Galpin Head of Legal Services – Community		Title: RIPA – Annual Report for 2010/2011 Ward(s) affected: All		

1. Summary

- 1.1 This report updates the Overview and Scrutiny Committee on the Council’s use of the Regulation of Investigatory Powers Act 2000 (“RIPA”).

2. Recommendation

- 2.1 The Overview and Scrutiny Committee is asked to consider and comment on the information contained in Appendix 1.

3. Background

- 3.1. The report to the Standards Committee of 19 July 2011 is contained in Appendix 1. The report sets out relevant information on RIPA, together with legal and finance comments and information about One Tower Hamlets and risk management.

LOCAL GOVERNMENT ACT, 2000 (SECTION 97)

LIST OF “BACKGROUND PAPERS” USED IN THE PREPARATION OF THIS REPORT

Background papers

Name and telephone number of and address where open to inspection

None

N/A

APPENDIX 1

Committee: Standards	Date: 19 July 2011	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 under the Regulation of Investigatory Powers Act 2000 – Annual Report for 2010/2011 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 2010/2011, 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 2010/2011.
- 2.2. The results of inspections in 2010/2011.
- 2.3. The information about the Protection of Freedoms Bill and its likely consequences.

3. **Fourth Quarter**

- 3.1. In the fourth quarter of 2010/2011, Legal Services granted 1 unique reference number for a proposed RIPA application: CS0021. An application was subsequently made and authorised. A summary of this authorisation is contained in Appendix 1.

4. **Directed surveillance authorisations in 2010/2011**

- 4.1. In total 21 covert surveillance matters are recorded on the central record for the 2010/2011 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	12
Authorisation refused	2
Application rejected by gatekeeper	4
Application withdrawn	3
Total:	21

- 4.2. The 12 authorisations granted compared to [HOW MANY?] in 2009/2010. The authorisations were granted for investigations in the following enforcement areas –

Subject matter of investigation:

Anti-social behaviour	5
Consumer protection and counterfeit goods	2
Illegal money lending	1
Graffiti and fly-posting	1
Touting	2
Fly tipping	1
Total:	12

- 4.3. This compares favourably with the following priority areas 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.

- 4.4. The map in Appendix 2 shows the distribution of authorised directed surveillance areas across the borough.

- 4.5. A summary of outcomes and action taken is set out in Appendix 3. There have been some notable successes, particularly in relation to touting in Brick Lane (CS0007) and waste dumping around the Petticoat Lane Market area (CS0009). Some lessons have been learnt. In the case of CS 0018, no sales were observed during the surveillance and which was predominantly attributable to the fact that there was another Police/ Local Authority operation in that area. This highlighted the need for proper tasking to ensure that there are no such clashes and which is now occurring.

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, as no-one has demonstrated the skill and experience to handle a covert human intelligence source to the satisfaction of the Assistant Chief Executive (Legal Services).

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). A total of 22 applications were received by the Council's single point of contact, of which 2 were either rejected or withdrawn. The 20 remaining applications were approved. Of these, 13 were from the Illegal Money Lending Team and 7 were from Trading Standards. In each case the applications were for subscriber records.

7. Inspections in 2010/2011

- 7.1. The Office of Surveillance Commissioners inspected the Council twice in 2010/2011 in relation to its use of directed surveillance and covert human intelligence sources under Part 2 of RIPA.
- 7.2. The first inspection was in June 2010 and was not favourable, with the inspector determining to return in six months to conduct a further inspection. This resulted in an internal review of the Council's use of RIPA, with action as follows –

13 July 2010	Review by corporate management team
8 September 2010	Cabinet agrees new enforcement policy, new RIPA policies and recommends constitutional change to give oversight to Standards Committee
21 September 2010	Review by corporate management team
5 October 2010	Overview and Scrutiny consider Cabinet's decision of 8 September 2010
27 October 2010	Full Council revises the terms of reference of the Standards Committee to allow oversight.
23 November 2010	Reports to Standards Committee commence

- 7.3. A follow-up inspection took place on 21 January 2011 at which time the OSC found the Council much improved. The OSC report, dated 10 February 2011, stated that there had been "an enormous improvement" and that "it is difficult to envisage what more could have been done in a relatively short period". The OSC referred positively to the revised policies and procedures, stringent oversight, improved training and the active involvement of council members.
- 7.4. The IOCCO inspected the Council on 1 September 2010 in relation to its interception of communications under Part 1 of RIPA. The Inspector advised that: "Overall I was

generally satisfied that the Council is acquiring communications lawfully and for a correct statutory purpose". A key suggestion was that the council should consider using the single point of contact (SPoC) facility offered by the National Anti-Fraud Network ("NAFN"). This change was introduced from January 2011. It means that NAFN carries out a gate-keeping function for the Council. NAFN checks that applications meet the legislative requirements before submission to the council's authorising officer for approval.

8. Protection of Freedoms Bill

- 8.1. The Freedom Bill was presented to Parliament on 11 February 2011. It has subsequently been re-named the Protection of Freedoms Bill.
- 8.2. The explanatory notes published with the Bill make reference to the Home Secretary's review of counter-terrorism and security powers, conducted from July 2010 to January 2011, which concluded that directed surveillance by local authorities should be subject to a seriousness threshold and that all covert techniques available to local authorities under RIPA should be subject to a magistrates' approval mechanism. The explanatory notes state that –

Chapter 2 of Part 2 amends the Regulation of Investigatory Powers Act 2000 ("RIPA") so as to require local authorities to obtain judicial approval for the use of any one of the three covert investigatory techniques available to them under the Act, namely the acquisition and disclosure of communications data, and the use of directed surveillance and covert human intelligence sources ("CHIS").

- 8.3. As drafted, the Bill requires that a relevant council officer first grant an authorisation, following which it must be presented for judicial approval. This means that the council must, in effect, retain its own internal system of control. The justice must be satisfied that there are reasonable grounds for believing the requirements of the Act have been met, this would include being satisfied that the action is necessary and proportionate. The justice will also need to be satisfied that the correct level of officer granted the authorisation (the council's procedures cover this) and that any prescribed conditions are satisfied.
- 8.4. The order prescribing conditions with which authorisations will need to comply has not yet been published. However, the explanatory notes make it clear that in relation to directed surveillance there will be a "seriousness threshold". This is clearly designed to prevent the much publicised incidents of local authorities using directed surveillance to tackle dog fouling or for checking an individual resides in a school catchment area. The review of counter-terrorism and security powers recommended the application of a threshold based on the maximum custodial sentence applicable to an offence. The review found the choice between a 6-month and 1-year to be "finely balanced" but ultimately recommended that:

Use of RIPA to authorise directed surveillance only should be confined to cases where the offence under investigation carries a maximum custodial sentence of 6 months or more. But because of the importance of directed surveillance in corroborating investigations into underage sales of alcohol and

tobacco, the Government should not seek to apply the threshold in these cases. The threshold should not be applied to the two other techniques (CD and CHIS) because of their more limited use and importance in specific types of investigation which do not attract a custodial sentence.

- 8.5. It is expected that this recommendation will be implemented by order once the Freedom Bill becomes law. If it is, then directed surveillance will continue to be available to the council in relation to a number of the offences that it prosecuted in 2010/2011. A list of the offences for which directed surveillance will likely remain available is set out in Appendix 4, grouped by reference to the council's strategic priorities for RIPA.
- 8.6. At the time of writing, the Protection of Freedoms Bill was at the committee stage in the House of Commons. A further update will be provided to the Standards Committee once the Bill becomes law.
- 8.7. There will be a need to revise the council's policies and guidance manuals in relation to RIPA to reflect the changes made to the approvals process.

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
Appendix 2	Map of RIPA authorisations
Appendix 3	Summary of outcomes related to 2010/2011 RIPA applications
Appendix 4	Council offences considered likely to meet the seriousness threshold

Local Government Act, 1972 Section 100D (As amended) List of "Background Papers" used in the preparation of this report

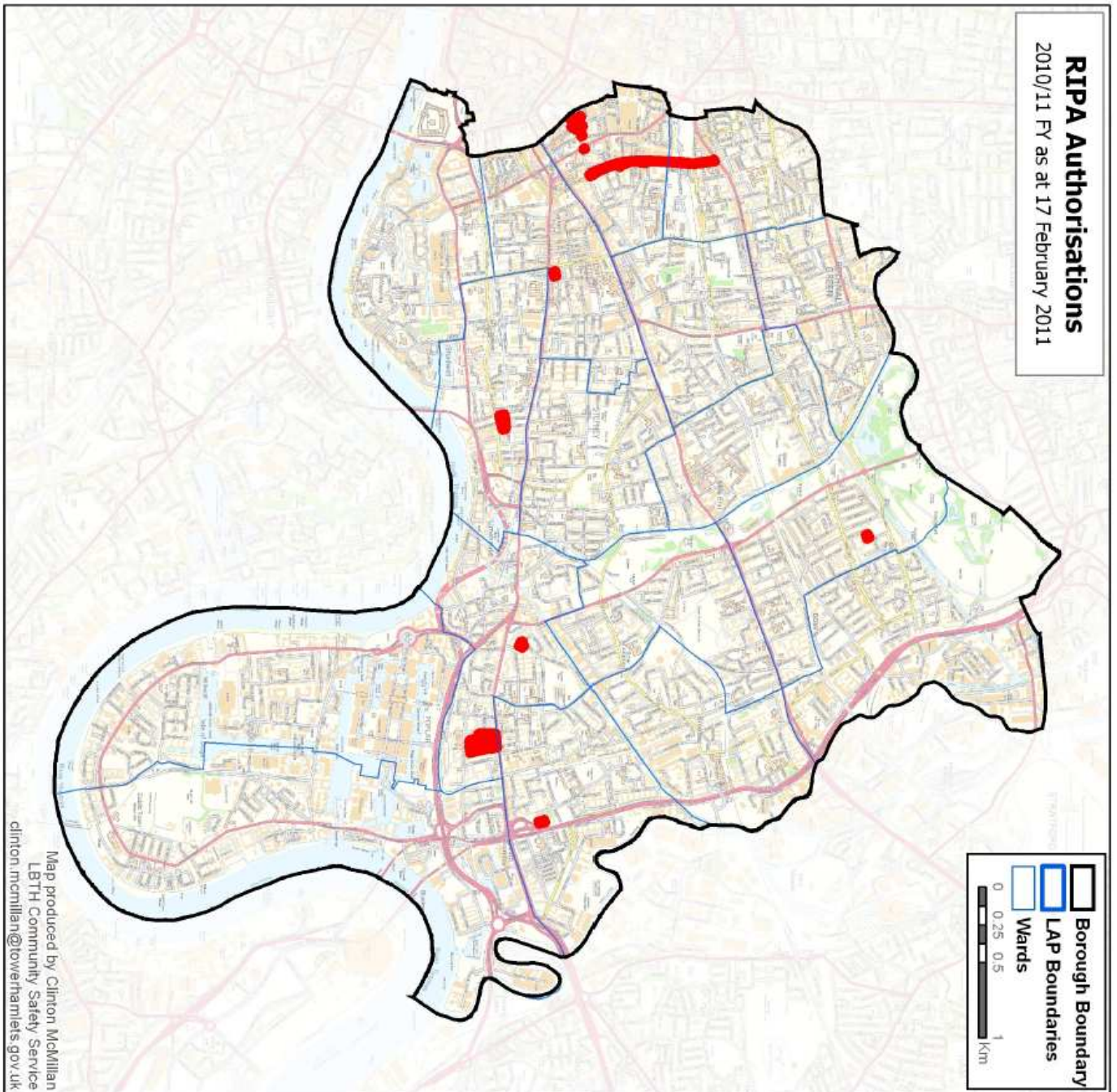
Brief description of "back ground papers"	Name and telephone number of holder and address where open to inspection.
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None	N/A
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APPENDIX 1 - SUMMARY OF QUARTER 4 RIPA AUTHORISATIONS

CS0021	Summary information
Service area:	Trading Standards
URN granted:	13 January 2011
Application on correct form?	Yes
Date of gatekeeper clearance:	13 January 2011
Date of authorisation:	1 February 2011
Expiry date and time:	30 April 2011
Scheduled review date(s):	25 February 2011
Dates of reviews:	25 February 2011, 25 March 2011, 25 April 2011
Cancellation:	25 April 2011
Total time open:	84 Days
Type of covert investigation:	Directed surveillance (use of covert recording equipment as part of test purchases and use of CCTV to track test purchasers)
Subject matter of investigation:	Touting in Brick Lane
Necessity:	Continued touting observed in Brick Lane resulting in offences under the Local Government Act 1972 (breach of bye law), the Licensing Act 2003 (breach of licence condition), and the Consumer Protection from Unfair Trading Regulations (false inducements, aggressive commercial practices).
Proportionality:	Touts have been prosecuted previously. Every restaurant in the vicinity was written to in January 2011 warning of the criminal consequences of misleading offers. Licenses were reviewed following a previous operation. Overt actions do not capture sufficient evidence.
Collateral intrusion:	There is the possibility for collateral intrusion by capturing unrelated conversations. Images may be captured of passers-by and restaurant customers. A tape would be prepared of evidence and other material would be sealed and kept for disclosure purposes in any criminal proceedings.
Outcome:	Evidence of touting captured as a result of which: one premises accepted the addition of a touting condition to its premises license; and one premises operator was warned in respect of an offence. Information was obtained in respect of five other premises, in respect of which offences are continuing.

APPENDIX 2



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APPENDIX 3 – SUMMARY OF OUTCOMES RELATED TO 2010/2011 RIPA APPLICATIONS

<u>URN</u>	<u>BRIEF DESCRIPTION</u>	<u>OUTCOME</u>
CS 0001	To establish if evidence of arson & drug taking & other ASB in the bin chamber at Sandall House	The covert recording showed no incidents of arson etc. Further the bin chamber is locked shut when Old Food housing staff not on site. Further no further incidents have been reported by Old Ford Housing
CS 0002	To see whether misleading banner being displayed	The covert recording showed that the misleading banner was not being displayed. Another banner was observed, however, that could have been false and misleading. The investigation into this revealed that a Company other than the restaurant owner was involved in selling restaurant accolades and an investigation into that Company is ongoing
CS 0003	To establish if evidence of drug taking & prostitution in common parts of Peter Best House	The covert recording showed no reported incidents to substantiate the allegation
CS 0004	To identify perpetrators throwing large objects from high floors of Balfron Tower	A perpetrator was identified and it is understood that there are ongoing possession proceedings being taken by Poplar HARCA
CS 0005	To monitor and examine text messages	No relevant information obtained but perpetrator has been charged with offences and case listed for trial in August with 5 to 6 day time estimate.
CS 0006	To gather evidence of criminal damage and fly posting	No relevant evidence received but this was due to the perpetrators being tipped off as to location of covert cameras and covert cameras being destroyed and the matter referred to the Police. The Council is not undertaking any further investigation

<u>URN</u>	<u>BRIEF DESCRIPTION</u>	<u>OUTCOME</u>
CS 0007	To gather evidence regarding touting	<p>9 restaurants identified as employing touts. 9 reviews of Premises Licences were taken as a result. All successful with additional touting conditions being imposed and in 3 cases the Premises Licence was suspended: for 3 months, 2 weeks and 1 week respectively. The case involving the 2 week suspension was appealed to the Magistrates' Court by the Premises Licence holder and the Appeal was unsuccessful.</p> <p>4 of the 9 were also investigated with a view to prosecution. In 1 of the 4 cases no proceedings were issued as there was not a realistic prospect of a conviction. In 2 of the remaining 3, proceedings have been issued and the remaining case, the papers are currently being considered</p>
CS 0008	To gather evidence of underage sales of tobacco and aerosol spray paint	Due to what was proposed, this was not authorised. Test purchases took place without the use of covert recording equipment over 2 consecutive days. On day 1, 14 test purchases of which only 2 resulted in sales and on day 2, 16 test purchases with only 1 sale
CS 0009	To identify businesses unlawfully dumping waste in and around the "Petticoat Lane Market Area"	18 businesses identified. Fixed Penalty Notices issued in 17 of the cases. 15 were paid. 2 of the Companies were going Court of business so no further action was taken. One business was prosecuted and which resulted in fine, costs etc. totalling £2,110. There was also a reduction for a couple of months after the operation ended of unlawful dumping of business waste in the area
CS 0010	To detect underage sale of alcohol, tobacco, knives and aerosol spray paints to persons under 18	

<u>URN</u>	<u>BRIEF DESCRIPTION</u>	<u>OUTCOME</u>
CS 0011	To establish complaints of harassment, assault and criminal damage	<p>An incident was captured. An injunction was obtained. There has subsequently been breaches of that injunction and the perpetrator is now staying in Manchester until the next Court hearing and which is in July.</p> <p>Separately, activity associated with drug dealing was seen at an unconnected property and this information was referred to the Police for intelligence purposes.</p>
CS 0012	To establish evidence of persons using Class A and Class B drugs	An area that should be secured was noted as being used for drug taking. The area was inspected and items removed that could be viewed to be combustible and the room secured. Individuals who have been seen using drugs were being identified and referred to the Drug and Alcohol Action Team for intervention and engagement
CS 0013	To carry out surveillance in respect of disabled badge misuse	This application was refused by the Authorising Officer as it was not up to standard. Compliance testing is currently being undertaken without using covert surveillance
CS 0014	To carry out surveillance relating to dangerous dogs and dog fouling	This application did not pass the Gatekeeper as it was not up to standard. Advice was given by the Gatekeeper. The investigating officer advises that no alternative enforcement action was taken as it was felt that all other surveillance methods available had been tried and that as complaints continue it is intended to make another RIPA application
CS 0015	To carry out surveillance relating to the sale of and/ or possession for supply of illicit tobacco products	This application was not submitted as it was too late to run the operation as planned. A fresh application was submitted on a later occasion when the surveillance was authorised (see CS 0018).

<u>URN</u>	<u>BRIEF DESCRIPTION</u>	<u>OUTCOME</u>
CS 0016	To examine a USB stick	This application did not pass the Gatekeeper as it was considered that alternative means were available and which should have been considered. The case did not ultimately proceed as there was not a realistic prospect of a conviction. The contents of the USB stick did not have an impact on that decision.
CS 0017	To carry out surveillance in respect of disabled badge misuse	This application was not submitted. Compliance testing is currently being undertaken without using covert surveillance.
CS 0018	To carry out surveillance relating to the sale of and/ or possession for supply of illicit tobacco products	No sales were observed. This was mostly down to the fact that there was another Police/ Local Authority operation in that area. This highlighted the need for proper tasking to ensure that there are no such clashes and which is now occurring.
CS 0019	To carry out surveillance into allegations of Benefit Fraud & misuse of disabled parking permit	The application was submitted to the Gatekeeper but then withdrawn. No other enforcement action has to date been taken
CS 0020	To carry out surveillance in respect of disabled badge misuse	This application was not submitted. Compliance testing is currently being undertaken without using covert surveillance.
CS 0021	To gather evidence regarding touting	7 restaurants identified as employing touts. In respect of 5 of the 7 there are ongoing criminal investigations and Premises Licence reviews are to be made. In the remaining 2 cases, the Premises Licence holder in 1 case has voluntarily accepted the new conditions and no further action is being taken and in the other case, a letter of warning was issued over aiding and abetting breaches of "inducements/touting" bye.

APPENDIX 4 – OFFENCES LIKELY TO SURVIVE THE SERIOUSNESS THRESHOLD (BY REFERENCE TO THE COUNCIL’S RIPA PRIORITIES)

Anti-social behaviour

- Section 1 Crime and Disorder Act 1998 (breach of ASBO)

Fly-tipping

- Sections 33 and 34 of the Environmental Protection Act 1990 (offences relating to disposal etc of Commercial waste)

Unlawful street vending of DVDs and tobacco

- Section 92 Trade Marks Act 1994
- Section 9 Video Recordings Act 1984
- Section 10 Video Recordings Act 1984
- The Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 (Section 12(1) Consumer Protection Act 1987)

Underage sales of knives, tobacco, alcohol, fireworks and aerosol paint

- Section 6 Offensive Weapons Act 1996
- Section 7(1) of the Children and Young Persons Act 1933
- Section 146 Licensing Act 2003
- Regulation 15 Pyrotechnic Articles (Safety) Regulations 2010 (Section 12 Consumer Protection Act 1987)
- Section 54 Anti-social Behaviour Act 2003

Fraud, including misuse of disabled parking badges and claims for housing benefit

- Fraud Act 2006
- Social Security Administration Act 1992
- Section 115(1) Road Traffic Regulation Act 1984

Illegal money-lending and related offending

- Section 39 Consumer Credit Act 1974
- Section 327 Proceeds of Crime Act 2002
- Section 329 Proceeds of Crime Act 2002

Breach of licence

- Sections 136 and 137 Licensing Act 2003 (unauthorised licenseable activity and exposing alcohol for unauthorised sale)
- Consumer Protection from Unfair Trading Regulations 2008