

Committee: Overview and Scrutiny	Date: 4 September 2012	Classification: Unrestricted	Report No:	Agenda Item:
Report of: Assistant Chief Executive (Legal Services) Originating officer(s) David Galpin, Head of Legal Services - Community		Title: Enforcement Wards Affected: All		

1. SUMMARY

- 1.1. On 8 September 2010, Cabinet agreed a council-wide enforcement policy. The policy's implementation has been reviewed by reference to enforcement action carried out in the 2011/2012 financial year. It is considered that the policy is fit for purpose, but that it should be revised in relation to covert investigations, once the Protection of Freedoms Act 2012 takes effect.

2. DECISIONS REQUIRED

Overview and Scrutiny Committee is recommended to:-

- 2.1. Consider and comment on the information set out in the report.

3. BACKGROUND

- 3.1. The enforcement policy adopted by the Council on 8 September 2010 introduced five key principles of enforcement, namely –

- **Raising awareness** of the law and its requirements.
- **Proportionality** in applying the law and securing compliance.
- **Consistency** of approach
- **Transparency** about the actions of the Council and its officers.
- **Targeting** of enforcement action.

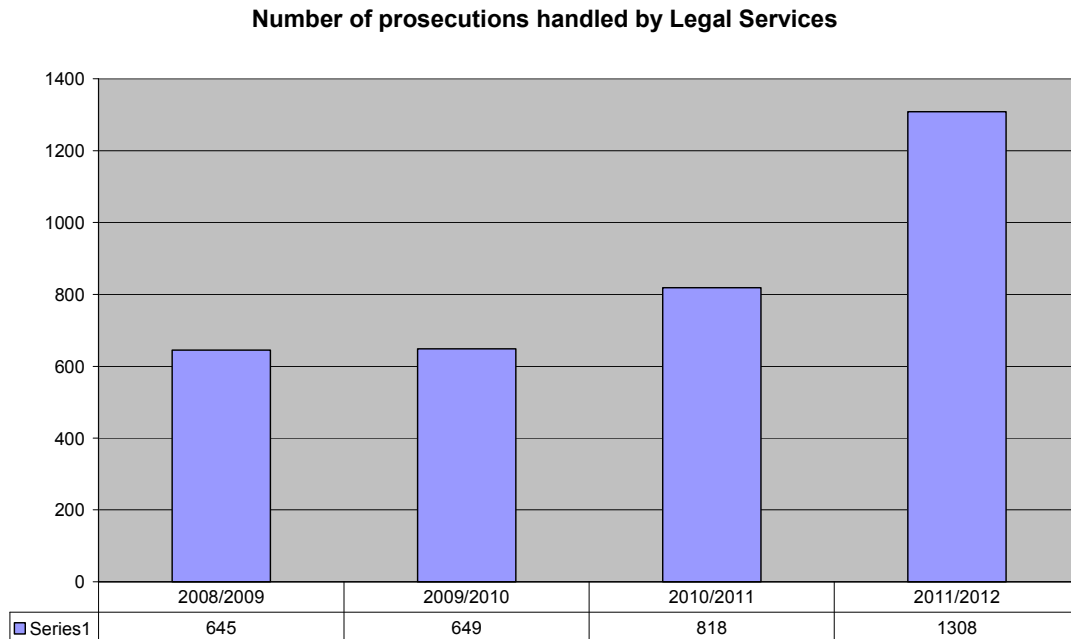
- 3.2. This report provides a summary of enforcement activity for the 2011/2012 financial year and an analysis of whether or not such action is consistent with the five expressed principles. Consideration is also given to whether the policy requires revision.

4. **BODY OF REPORT**

4.1. **ENFORCEMENT ACTIVITY: PROSECUTIONS**

4.2. In 2011/2012, the Council completed 1308 prosecutions. This was a significant increase over previous years, as shown in the following chart.

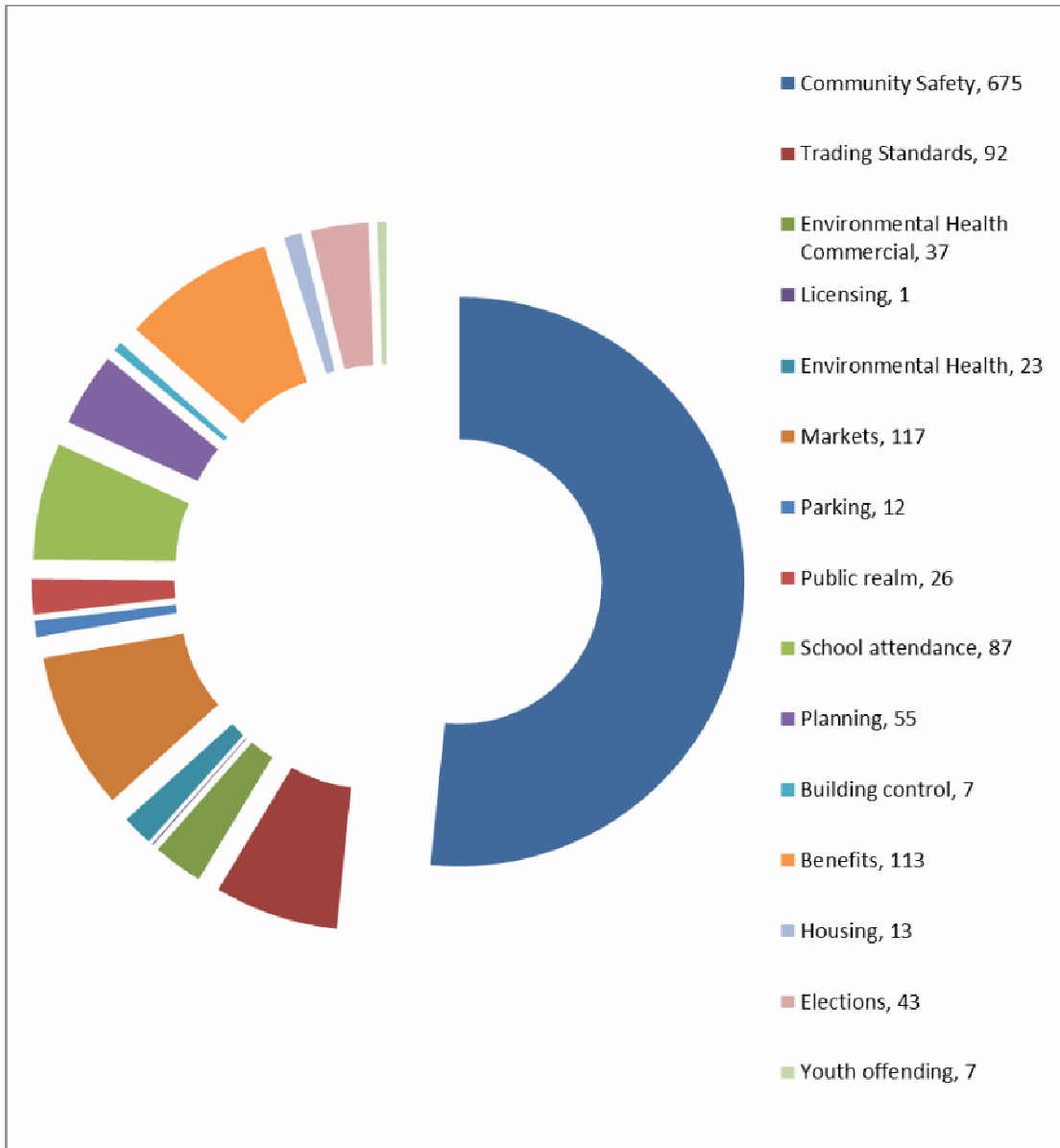
Figure 1



4.3. The prosecution types and outcomes are set out in Appendix 1. Figure 2 shows the breakdown of Council prosecutions in 2011/2012 by reference to broad areas of enforcement.

4.4. The Communities Localities and Culture directorate made the single largest contribution to the Council's prosecutions, with 971 cases (74%). The Tower Hamlets Enforcement Officers contributed 554 cases (42%) of the Council's total prosecutions.

Figure 2 - Council Prosecutions in 2011/2012



- 4.5. The elections cases referred to in Figure 2 involved enforcement by the Council of compliance with the canvass and this work is referred to in more detail in paragraphs 4.77 to 4.81 below. Any allegations of more serious offences related to elections are referred to the Metropolitan Police.
- 4.6. Overall, the Council brought 1,308 prosecutions and obtained 908 convictions. There were 238 cases with in which simple cautions were administered or the

Council obtained other successes. This makes a total of at least 1146 cases (87%) in which successful outcomes were obtained.

- 4.7. Prostitution cases provide an example of where the Council may look for “other successes”. The Council operates the Diversion Scheme pursuant to which prostitutes are given the opportunity to participate in the Safe Exit programme after being charged, rather than the Council pursuing a conviction and fine, potentially forcing re-offending. The programme involves a needs assessment and referral to an appropriate support agency, with the intention of helping individuals get away from prostitution. If the programme is completed, the Council generally discontinues the prosecution. The Council considers the discontinued cases to be successes.
- 4.8. There were 130 cases (10%) in which charges were not served, or were withdrawn or otherwise discontinued after service. There may be a variety of reasons why cases are not proceeded with, such as where new material is made available to the Council that affects the prospects of success in the case.
- 4.9. The Council lost or offered no evidence in just 20 cases, which amounts to 3% of the total cases.
- 4.10. Defendants were ordered to pay the following amounts –
- | | |
|-----------------------|----------|
| • Fines | £166,324 |
| • Costs | £200,457 |
| • Confiscation Orders | £780,944 |
| • Cash seizures | £2,743 |
| • Compensation awards | £138,317 |
- 4.11. In addition to fines, terms of imprisonment were imposed in 71 cases. In 43 of those cases, however, the term was suspended with a requirement that the defendant do unpaid work in the community. In a further 35 cases, Community Orders were imposed with requirements to also do unpaid work. A post-conviction Anti-social Behaviour Order was obtained against a prolific persistent offender who was a street drinker and, when drunk, abused people.
- 4.12. A notable success was the case of SM. This was a joint prosecution undertaken with the Department of Work and Pensions in which the Council was the prosecution agency. The Council’s corporate fraud manager led a multi-disciplinary investigation, which revealed that over a period of six years SM submitted a number of different claims for financial support to different agencies. Specifically, SM submitted: claims to the Council for financial assistance with residential or nursing home fees for his father; claims for income support to the DWP for himself; and claims to the Council for housing and council tax benefits for himself. In making these claims, SM failed to declare savings that he and his father had and which at their highest were in excess of £170,000. SM was

arrested and charged with offences under the Theft Act 1968; the Social Security Administration Act 1992; and the Fraud Act 2006. SM pleaded guilty to a total of seven charges in the Crown Court and was sentenced to 13 months imprisonment on each charge to be served concurrently. In addition, SM was ordered to pay compensation amounting to £116,781.08 being the amount of the overpayments.

4.13. Following investigations by the Housing Options Service the Council prosecuted offenders who made fraudulent homelessness applications under the Housing Act 1996 or fraudulent applications to go on the housing waiting list or both. In each case, the relevant fraud involved the applicant falsely asserting, on the relevant application form, that he or she did not own other property. Between 1st April 2011 and 31st March 2012, six people were convicted of offences relating to such fraudulent applications. One individual was sentenced to 16 months imprisonment, suspended for 2 years, and also ordered to do 100 hours unpaid work. Another individual was sentenced to a 12 month Community Order with a 50 hours unpaid work requirement.

4.14. **ENFORCEMENT ACTIVITY: OTHER THAN PROSECUTIONS**

4.15. **Safer Communities**

4.16. The Council's safer communities service, within the Communities, Localities and Culture directorate, deals with anti-social behaviour, public order, consumer protection and environmental health matters, broadly connected with the Community Plan objectives of A Great Place to Live and A Safe and Cohesive Community.

4.17. The Tower Hamlets Enforcement Officers ("**THEOs**") provide a highly visible, uniformed presence in the borough. The service also works closely with the police and other services across the Council. The work of the THEOs cuts across other enforcement areas referred to below. Particular matters dealt with include: public urination; criminal damage; prostitution; fly posting; licensing; touting, unlicensed street trading; anti-social behaviour; begging; dog fouling; dogs off leads; failures to surrender alcohol; graffiti; highway obstruction; and littering.

4.18. The prosecution work done on behalf of community safety is referred to in section 4 above. Other enforcement work carried out by the THEOs was as follows –

- 962 fixed penalty notices issued
- 1470 occasions of confiscating alcohol (excluding minors)
- 42 occasions of confiscating alcohol from persons under 18.
- 30 occasions of confiscating alcohol from minors under 16.
- 206 counterfeit DVDs seized.

- 10 noise abatement notices issued.
- 4.19. In relation to anti-social behaviour, the Council successfully completed two restorative justice meetings (where the victim and perpetrator engage in mediation to discuss issues and seek to find a resolution, signed 57 anti-social behaviour contracts and issued 83 warning letters in respect of anti-social behaviour contracts. The services issued 164 anti-social behaviour warning letters. One premises closure order was obtained in respect of 101-109 Fairfield Road, E3. This followed youth congregation, littering, shisha smoking and severe noise nuisance in and around the premises.
- 4.20. **Trading standards**
- 4.21. The Council has responsibility for enforcing a variety of consumer protection legislation, including the Trade Marks Act 1994, the Consumer Credit Act 1974, the Consumer Protection Act 1987 and related statutory instruments. The Council's trading standards team seeks to prevent a variety of unlawful trading activity, including: touts offering deals that are not honoured, sales of counterfeit goods; sales of unlabelled goods; schools offering education that they cannot deliver.
- 4.22. The Council's staff spent 12 days visiting off-licences in partnership with the Metropolitan Police Service and with Her Majesty's Revenue and Customs. The Council took the lead in prosecuting a major importer of fake consumer goods, working in partnership with the City of London Police. This led to a conviction in the Crown Court in May 2012 and the offender was sentenced to 33 months imprisonment.
- 4.23. The Council received 5750 consumer complaints in 2011/2012. It recorded 1660 visits to premises. The Council issued 108 simple cautions. The Trading Standards team triggered 11 premises licence reviews under the Licensing Act 2003, resulting in amendment of licence conditions and eight licence suspensions. As a result of the Council's investigations, three web sites were suspended. The Council served five premises closure notices.
- 4.24. **Environmental health commercial**
- 4.25. The Council is responsible for carrying out enforcement action in respect of health and safety matters under the Health and Safety at Work etc Act 1974, food safety under the Food Hygiene (England) Regulations 2006, special treatment premises under the London Local Authorities Act 1991 and smoke free premises under the Health Act 2006. This enforcement work is dealt with primarily in the Council's Communities, Localities and Culture directorate.
- 4.26. The Environmental Health Commercial team has worked with Police and with other Council teams to combat illegal shisha bars.

4.27. In order to identify issues and to work with premises to prevent breaches of the law, the Council carried out 2675 inspections and re-inspections of premises as follows during 2011/2012 –

- 826 health and safety inspections
- 111 health and safety re-inspections
- 1112 food safety inspections
- 626 food safety re-inspections

4.28. The Council issued 2635 written warnings, 2016 in respect of health and safety breaches and 619 in respect of food safety breaches. The Council gave four simple cautions, three in respect of health and safety at work and for breach of a special treatments licence. The Council issued statutory notices, as follows –

- 123 food hygiene improvement notices.
- 16 formal food closures.
- 4 remedial action notices.
- 80 health and safety improvement notices.
- 11 health and safety prohibition notices.

4.29. There were, in addition, five voluntary closures of food premises in circumstances where the Council had inspected and identified breaches. The Council issued 10 fixed penalty notices in respect of smoking at premises required to be smoke free.

4.30. The Council carried out one seizure in a health and safety case and eight seizures of illegally imported food. There were an additional eight cases in which food was voluntarily surrendered to the Council as a result of investigation.

4.31. **Licensing**

4.32. The Council is responsible for administering the Licensing Act 2003. This work is carried out within the Council's Communities, Localities and Culture directorate. In 2011/2012, the Council recorded 354 visits by the Licensing Team of premises in the borough. The Council issued 27 written warnings for licensing infringements and held 24 reviews of licences under the Licensing Act.

4.33. **Environmental health – environmental protection**

4.34. Environmental protection enforcement is dealt with in the Council's Communities, Localities and Culture directorate and covers noise, pollution and other public health matters. Significant pieces of legislation dealt with by the team are the Environmental Protection Act 1990, Control of Pollution Act 1974, Public Health Act 1936, Prevention of Damage by Pests Act 1936 and the Housing Act 2004.

4.35. The service has contributed to partnership working in a variety of ways, including the following –

- Established close working arrangements with Crossrail, the Olympic Delivery Authority, Joint Local Authority Regulatory Services (JLARS), London City Airport, Thames Tideway Tunnel and Building Schools for the Future projects with the objective of minimising noise disturbance from works.
- Work with the Metropolitan Police Service, the Council's planning department, the Fire Service and the Royal borough of Greenwich over licensing applications and conditions.
- Participation in the Licensing Enforcement Forum, and the Entertainment Licensing Safety Advisory Group.
- Participation in the community safety group and close collaboration with the police and THEOs.
- Assisting registered social landlord partners in resolving problems.
- Work with social services in relation to service users with mental health problems.
- Work with the Fire Service to resolve fire safety in housing.
- Work with the housing benefits team that deals with landlords.
- Collaboration with the Dogs Trust on the neutering voucher scheme.

4.36. By way of prevention, the service agreed noise management plans for licensed events, including major events in Victoria Park and the Baishaki Mela. The service worked closely with developers to set noise and pollution limits on major construction projects. The service was also responsible for licensing houses in multiple-occupation and issued 68 licences for this purpose under the Housing Act 2004.

4.37. During 2011/2012, the service routinely sent warning letters to landlords on receipt of complaints regarding housing safety. Three warnings were sent by animal wardens. The service administered three simple cautions in respect of dangerous animals and one simple caution in respect of noise. The service issued 503 enforcement notices, as follows –

- 64 notices under section 61 of the Control of Pollution Act 1974 giving prior consent to noise levels on construction sites
- 11 notices controlling noise on construction sites under section 60 of the Control of Pollution Act 1974
- 135 abatement notices for statutory nuisances under section 80 of the Environmental Protection Act 1990
- 7 notices for cleansing of properties under section 83 of the Public Health Act 1936
- 13 notices under the Prevention of Damage by Pests Act 1936
- 101 improvement notices under section 11 of the Housing Act 2004
- 20 improvement notices under section 12 of the Housing Act 2004

- 26 prohibition orders under section 20 of the Housing Act 2004
 - 10 revoke and vary prohibition orders under section 25 of the Housing Act 2004.
 - 2 emergency remedial action orders under section 40 of the Housing Act 2004
 - 10 overcrowding notices under section 139 of the Housing Act 2004.
 - 104 notices to produce documents under section 235 of the Housing Act 2004.
- 4.38. The Council carried out works in default of compliance with a statutory notice in 16 cases. These included works to disable misfiring alarms, removal of refuse under the Prevention of Damage by Pests Act 1936 and the cleansing of filthy and verminous premises. In 15 cases, the Council applied for warrants to enable entry to premises to carry out works.
- 4.39. The service triggered reviews of premises licences under the Licensing Act 2003 in five cases. The service's representations led to reduction of the hours operated by some premises and in one case the premises licence was revoked.
- 4.40. The service conducted five seizures of property under the Environmental Protection Act 1990 and one seizure of a stray dog under "collar and tag" legislation. 20 dog control enforcement actions are pending from incidents occurring in 2011/2012.
- 4.41. Animal wardens have contributed to raising awareness by two roadshows with the RSPCA at Asda, Roman Road, and one with the Dogs Trust at Victoria Park. The animal wardens contributed to two residents' community days with Island Homes.
- 4.42. Significant achievements in 2011/2012 are as follows –
- Early consultation and discussion with major project and major infrastructure developers has reduced the number of complaints from the public regarding environmental damage.
 - The partnership work of the Licensing Enforcement Forum and other licensing forums has reduced the number of complaints from the public about noise.
 - Working with the Police, THEOs and the Council's ASB team has been useful in highlighting problem areas of work and channelling resources to them.
 - Seizure of drums from nuisance drummers in Brick Lane achieved in cooperation with THEOs.
 - Seizure of a bull terrier from minors in the Watney Market area with police assistance, following extensive complaints including dog fighting from local residents.
 - Increased joint working with all enforcement partners.

- Destruction of a dangerous dog after it came in as stray. There was a history of attack incidents, registered on the exempted dogs register under the Dangerous Dogs Act 1991.

4.43. **Markets**

- 4.44. The Council is responsible for regulating unlawful activities associated with the borough's markets, including offences of unlawful street trading contrary to the London Local Authorities Act 1990. This enforcement work is dealt with by the Markets team within the Council's Communities Localities and Culture directorate.
- 4.45. The Markets team worked with Police, City of London and Hackney Council in relation to its enforcement work. Within the Council the Markets team also worked closely with Trading Standards, the THEOs, Highways and Clean and Green. The Markets team worked with the London Mosque to raise awareness of the law in relation to unlawful street trading activities.
- 4.46. In 2011/2012, the Council issued 479 written warnings in respect of unlawful market activities. The Council confiscated 286 items such as bicycles, DVD's and bric-a-brac associated with unlawful activities.
- 4.47. The prosecution work in respect of markets is set out in section 4 above. A particularly successful case involved a bike theft witnessed by a market officer. Police arrested the offender, who was found to be in breach of bail conditions relating to earlier, similar offences. The offender was convicted and sentenced to four months' imprisonment.

4.48. **Parking**

- 4.49. Parking enforcement is dealt with in the Council's Resources directorate and covers cases of fraud and misuse of parking permits. This may involve persons making false statements to obtain a parking permit, such as a disabled badge, forging a permit or using another person's permit. Such cases may arise under the Road Traffic Regulation Act 1994, the Fraud Act 2006, the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000, or the Chronically Sick and Disabled Persons Act 1970. It is not concerned with the issuing of penalty charge notices under the Traffic Management Act 2004 and the Civil Enforcement of Parking Contraventions (England) General Regulations 2007.
- 4.50. The Council conducted daily beat checks and five joint working operations with police. By way of non-prosecution enforcement, the Council carried out the following –
- 9 warnings.
 - 29 simple cautions.

- 76 removals of vehicles.
- 180 fixed penalty notices.
- 123 confiscations of disabled badges.
- 108 confiscations of visitor scratch cards.

4.51. The Council assisted other authorities in 12 cases where a fake or fraudulent Tower Hamlets blue badge was used outside the borough.

4.52. **Public realm**

4.53. The Council's Public Realm service, within the Communities, Localities and Culture directorate, consists of three departments: Clean and Green; Transportation & Highways; and Parking Services.

4.54. Public Realm deal with street cleansing, waste and recycling collections, parks maintenance, road and pavement repairs, contract management, environmental crime (includes littering, fly-tipping, graffiti, fly-posting), highways enforcement, community transport services, the provision of cycle lanes and management of street parking, including disabled parking. Services provided by Public Realm are broadly connected with the Community Plan objectives of A Great Place to Live and A Safe and Cohesive Community.

4.55. The Streetcare and Commercial Waste THEO team within the Clean and Green department carry out the enforcement function in relation to environmental crime and highways enforcement. They provide a visible, uniformed presence in the borough. The Commercial Waste THEOs mainly concentrate on commercial waste enforcement and work in close partnership with the Council's waste contractor Veolia Environmental Services and other enforcement agencies. Local street care officers provide a front line interface between residents, businesses and other local bodies in order to keep any publicly owned space clean, safe and environmentally friendly. These officers are responsible for the management of street related services. The Streetcare teams are based in local hubs, from which they carry out inspections of parks, play areas and highways. The teams enforce against environmental and highways offences. The teams are also responsible for licensing of temporary structures and road closures.

4.56. The prosecution work done on behalf of Clean and Green is referred to in section 4 above under Public Realm. Other enforcement work carried out by the Streetcare and Commercial Waste THEOs during 2011/2012 was as follows –

- 1099 fixed penalty notices (FPN).
- 1810 warning letters to residents and business.
- 109 commercial waste-related warning letters.
- 892 waste investigations.
- 292 Statutory Notices, as follows: 143 under section 34, Environmental Protection Act 1990; 107 under section 47, Environmental Protection Act

1990; 1 litter clearance notice under the Environmental Protection Act 1990; 41 notices under the Highways Act 1980.

- 20 informal graffiti removal requests.
- 32 graffiti removal notices under the London Local Authorities Act 1995.
- 39 warning letters to beneficiaries of fly-posting.
- 55 warning letters to estate agents for unauthorised signs.
- 265 fly-poster removal notices to beneficiaries of fly-posting.

4.57. Of the 1099 FPNs issued, there were: 820 for depositing litter; 6 for graffiti and fly-posting; 27 for failure to comply with a waste receptacle notice; 71 for failure to produce authority (waste transfer notes); 6 for Wilful obstruction of highway; 1 for depositing a builder's skip on a highway without permission; 6 for failure to secure lighting or other marking of builder's skip; 1 for failure to comply with conditions of skip permission; 1 for erecting scaffolding or other structure without licence; and 160 for displaying advertisement in contravention of regulations. As at 8 May 2012, of the FPNs issued in 2011/2012: 654 have been paid; 131 withdrawn, following successful representations; and 311 remain outstanding, some of which have been processed for prosecution.

4.58. Leading up to the Olympics the Commercial Waste THEOs have been working in partnership with Veolia Environmental Services to remove all trade waste bins from main roads and introduce time-banded collections. The team introduced a voluntary code of conduct for businesses to reduce the impact of enforcement activity. The code highlighted the need for businesses to comply with their duty of care and outlined what actions they could face if they failed to adhere to the code of conduct. The project is ongoing and being rolled out throughout the borough. It has already seen success by reducing clutter, obstruction and litter from the highways. The introduction of two night-time Streetcare officers, has ensured that a uniformed presence is maintained to deal with all sorts of environmental crime.

4.59. **School attendance**

4.60. The Council is responsible for enforcing non-school attendance under the Education Act 1996. This enforcement work is dealt with in the Council's Children's Schools and Families directorate. In addition to prosecuting parents (which cases are referred to in section 4 above), the Council issued a number of written warnings, the total number of which is estimated at 500.

4.61. **Planning**

4.62. The Council is responsible for planning enforcement under the Town and Country Planning Act 1990 and related legislation and statutory instruments. The work is dealt with in the Council's Development and Renewal directorate.

4.63. The planning enforcement team worked in partnership with other agencies and Council departments as follows –

- Work with the Environment Agency and Police and, internally, with Clean and Green, Environmental Health, Licensing and Asset Management to prevent use of land at Alisa Street for car-breaking, waste storage and related activities. The land was restored to acceptable condition.
- Work with Police and, internally, with Licensing and Trading Standards to enforce planning and licensing conditions for premises at Brick Lane.
- Work with Police and, internally, with Smokefree and Markets to close an illegal Shisha Club at Pennington Street.

4.64. The Council issued a number of verbal and written warnings in respect of planning enforcement during 2011/2012, the precise number of which have not been recorded. The Council issued a single simple caution in respect of a tree removal at Chapel House Street. The Council issued 138 statutory notices as follows –

- 58 enforcement notices.
- 41 planning contravention notices.
- 2 temporary stop notices.
- 1 notice to remove an advert.
- 1 notice to carry out repairs.
- 1 tree replacement notice.
- 27 breach of condition notices.

4.65. The Council carried out works in default of compliance with statutory notices to remove three roadside illuminated hoardings.

4.66. The planning enforcement service made representations in respect of premises licences under the Licensing Act 2003. This led to premises at 60-62 Commercial Street (Gramophone Bar) having hours reduced to mirror planning hours. The license was suspended for 3 months.

4.67. Significant achievements in planning enforcement in 2011/2012 were –

- 60 Sutton Street – two successful prosecutions with fines totalling £24,000 and demolition of illegal works (3-storey former public house).
- 12 Hanbury Street – successful prosecution with a fine and costs of £15,500. Illegal Extensions were removed and the twin ridge roof restored.
- Roman Road – removal of illegal high level signage (shop and estate agents) and installation of new shop fronts to buildings with commercial units boarded up.
- 24 Marshfield Street – removal of illegal extension and a pending prosecution.

- Advertisement Project – removal via direct action and voluntarily of some 20 large scale billboards throughout the borough, with work on-going.
- Alisa Street – cessation of illegal uses at St Leonards Wharf and on-going negotiations regarding restoration of the land.
- 101 – 109 Fairfield Road – cessation of illegal shisha club, with buildings now demolished and being redeveloped.

4.68. **Building control**

4.69. The Council is responsible for enforcing the Housing and Building Control Act 1984, the London Building Acts Amendment Act 1939 and related statutory instruments. The work is dealt with in the Council's Development and Renewal directorate. In 2011/2012, the service issued four warning letters and 10 enforcement letters.

4.70. **Benefits**

4.71. The Council is responsible for preventing fraud in respect of benefits that it administers. This work is dealt with in the Council's Resources directorate and involves action under the Social Security Administration Act 1992.

4.72. By way of non-prosecution enforcement, the Council administered the following –

- 54 simple cautions.
- 45 administrative penalties.

4.73. The Council carried out joint working with the Department of Work and Pensions. This led to the Council taking the lead on a successful prosecution, with the Council's legal service acting on behalf of the Council and the DWP. The case led to the defendant being ordered to repay an amount in excess of £100,000.

4.74. **Housing**

4.75. The Council is responsible for preventing fraud in respect of housing allocations and homelessness applications. This work is dealt with in the Council's Development and Renewal directorate and may involve action under the Fraud Act 2006.

4.76. During 2011/2012, the enforcement action focussed on prosecutions. Eight individuals who falsified their housing applications were successfully prosecuted for fraud during this period, as summarised above.

4.77. **Elections**

4.78. During the annual canvass period, it is the duty of the Electoral Registration Officer (ERO) to carry out an annual audit of the Borough of Tower Hamlets to

ascertain if the information currently held on the Register of Electors is correct. The Council enforces compliance with the canvass and this work is carried out in the Chief Executive's directorate. More serious offences related to elections are referred to the Metropolitan Police.

- 4.79. In Tower Hamlets, canvass staff are employed for a period of three months to conduct personal visits to all properties in the borough to assist with completion of the Voter Registration Form. If residents do not respond to the personal visits, the initial form is posted through the letterbox. Staff will then follow up their visits with a reminder form during September and October. If a resident refuses to comply with this statutory duty, a letter is sent confirming that any person failing to provide information in pursuance of this requisition is liable on summary conviction to a fine not exceeding £1,000.
- 4.80. If no response is received from the property after the first two stages of the canvass, a final reminder form is posted out via Royal Mail. Following completion of the annual audit period at the end of November 2011, those properties identified as 'refused to register' who failed to complete the Voter Registration Form are checked against the borough's Council Tax records to confirm the name of the resident, before being passed on to the Legal Services to commence court proceedings.
- 4.81. Figure 2 in section 4 above shows that, in 2011/12, 43 prosecutions were taken by Legal Services for Elections and 42 of those were for failing to return voter registration forms. The Council continues to encourage such residents to enrol. Prior to serving a summons, the Council sends out a letter with a voter registration form asking for its return. If it is not returned then a summons is served with a further voter registration form for completion and advising that, if the form is returned, the proceedings will be withdrawn. Further, at any time up to and including the day of the hearing, the form can be returned and the proceedings withdrawn. 29 persons either returned forms or moved address so that they were no longer required to be registered and the proceedings were withdrawn.
- 4.82. **Youth offending**
- 4.83. The Council is responsible for ensuring compliance in relation to statutory Court Orders made through the Youth Court. In 2011/2012 this work was carried out by the Offending Service (YOS) within Children Schools and Families.
- 4.84. There were at least 160 orders requiring compliance during 2011/2012, including referral orders, youth rehabilitation orders and custodial licence periods. To enforce these orders, the Council follows a specific YOS compliance procedure, in keeping with Ministry of Justice National Standards (NS). This requires the issue of a formal warning letter for each missed appointment deemed to have no reasonable excuse. Three such warnings trigger a compliance panel meeting,

which decides whether the matter be returned to court for breach proceedings. During 2011/2012, at least 253 warning letters were sent. There were 61 breach proceedings prosecuted by the Council which reached an outcome. 7 of these cases were contested, all of which were proved.

5. RAISING AWARENESS

5.1. The Council took a variety of steps during 2011/2012 to raise awareness of the law, which included –

- Holding an event to promote the anti-touting strategy, writing to premises and posting stickers.
- Working with the London Mosque to raise awareness of the law on unlawful street trading.
- Writing to occupiers of premises regarding breaches and potential breaches of the law.
- Participating in public awareness sessions in relation to dog ownership.
- Promoting successes in the area of anti-social behaviour, where appropriate, using the “you said, we did” format. This was done via leaflets, posters and advertisements in East End Life, depending on what was considered proportionate in individual cases.

5.2. The Council actively publicised its enforcement activity throughout 2011/2012. This involved stories in East End Life and media releases about enforcement programmes and enforcement successes. The Council’s Communications Team recorded 47 separate instances where the Council promoted enforcement activity, which are summarised in Appendix 2 to this report.

5.3. This material demonstrates that the Council is taking steps to promote awareness of the law, consistent with the requirements of its enforcement policy. To the extent that the enforcement policy encourages raising awareness, it is proposed that the policy should remain unchanged.

6. CONSISTENCY

6.1. The enforcement policy specifies that –

Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Council aims to achieve consistency when: responding to requests for service; offering advice; and deciding upon enforcement action.

Consistency does not mean uniformity. Officers will need to take account of many variables when making decisions, including: the seriousness of the breach; any history of previous breaches; the attitude of the offender; and the capacity of the offender.

- 6.2. Numerous examples may be provided in respect of the enforcement action covered in sections 4 and 5 above. It is proposed, however, to give a single example by reference to the enforcement work carried out by electoral services, set out in paragraphs 4.76 to 4.80 above. The work carried out to ensure compliance with the annual canvass involves a clear progression through the following stages: personal visit; delivery of the form; reminder; warning letter; final reminder; and prosecution. If the prosecution leads to return of the canvass form, then the prosecution is withdrawn. This process of enforcement has a clear purpose and is followed consistently based on the underlying purpose rather than the identity of the individual concerned. The methodology is in accordance with the Council's enforcement policy and is capable of explanation to any person who sought to understand the Council's approach.
- 6.3. It is considered that the Council is generally complying with its policy in relation to taking consistent enforcement action and that this element of the policy should remain unchanged.

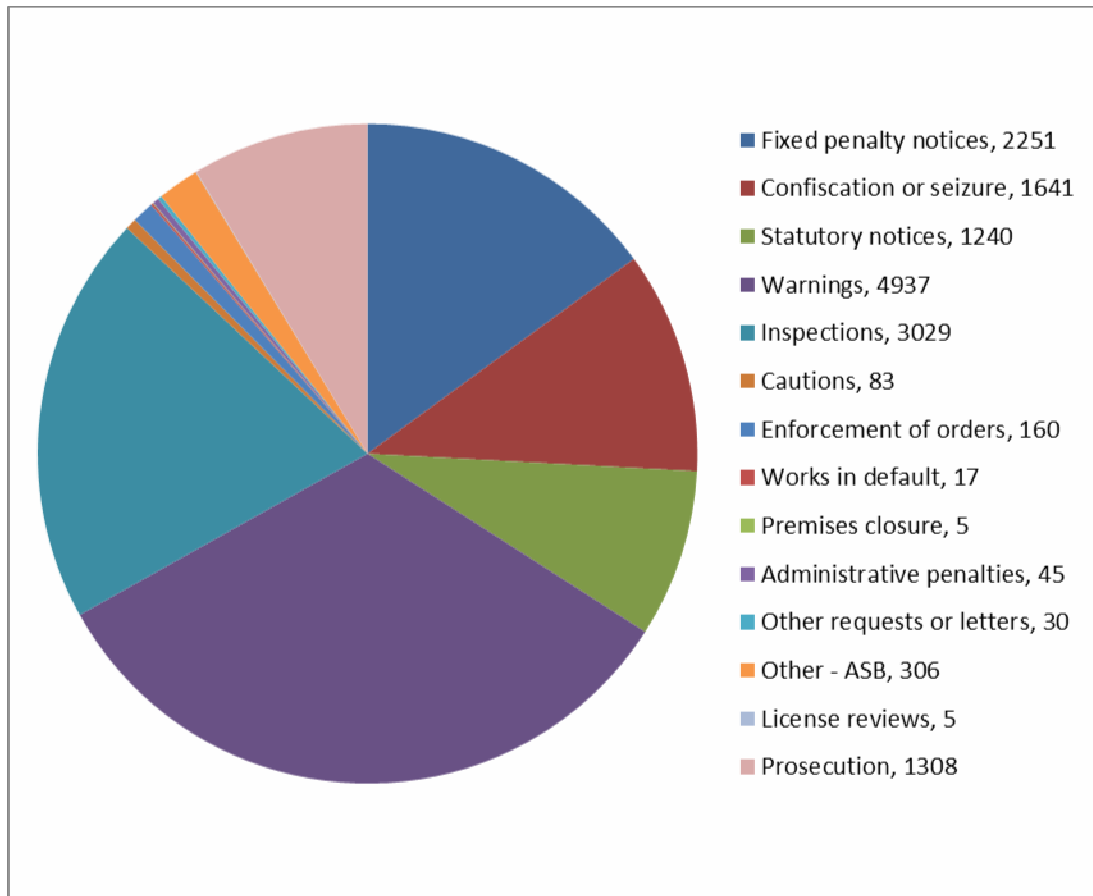
7. TRANSPARENCY

- 7.1. The Council's first step towards transparency is having an enforcement policy that specifies the kind of enforcement action it may take and how it will make decisions about what action to pursue. This helps individuals and businesses understand the Council's decision-making process. It is proposed that the information in this report be published in reports to members so that members of the public can further understand the Council's overall approach to enforcement. To the extent that the enforcement policy encourages raising awareness, it is proposed that the policy should remain unchanged.

8. PROPORTIONALITY

- 8.1. The review of the Council's enforcement action in sections 4 and 5 of the report shows that the Council is making full use of the variety of enforcement measures available to it. The Council does not just prosecute in every case, with inspections and warnings forming by far the largest part of the Council's overall enforcement effort (see figure 3).
- 8.2. The Council's approach is tailored to the type of offending conduct. Fraud cases show a much higher tendency to prosecution. In respect of commercial premises, the approach is far more collaborative, with inspections being focussed on assisting premises to prevent breaches. The Council offers prostitutes the opportunity to undergo a support programme, which aims to avoid re-offending rather than punishing individuals.
- 8.3. It is considered that the Council is generally complying with its policy in relation to taking proportionate enforcement action and that this element of the policy should remain unchanged.

Figure 3 - Types of Enforcement Action 2011/2012



9. TARGETING

9.1. The enforcement policy requires that the Council's enforcement action should be aligned with the Council's key policies and strategies. The Community Plan provides the primary direction in this regard. It contains the following key themes: –

- A Great Place to Live
- A Prosperous Community
- A Safe & Cohesive Community
- A Healthy and Supportive Community

9.2. The Community Plan has the following four cross-cutting themes:-

- One Tower Hamlets: tackling inequalities and promoting inclusion
- Community Engagement: supporting a powerful public
- Efficiency: delivering value for money services
- Localisation: delivering services closer to people.

- 9.3. The Council's enforcement in respect of parking, benefits and housing is concerned with the fair and efficient allocation of resources. This work contributes directly to the key cross-cutting themes in the Community Plan of One Tower Hamlets and Efficiency.
- 9.4. The Council's enforcement in respect of electoral services is concerned with maintaining an accurate and up to date register. This helps the conduct of elections and to ensure that people resident in the borough exercise their democratic rights. This work contributes directly to the cross-cutting themes of One Tower Hamlets and Community Engagement.
- 9.5. The Council's enforcement in the areas of trading standards, environmental health commercial, markets and licensing protects consumers and helps to maintain a level playing field for local businesses. The continuing work to stop unlawful DVD sellers provides an excellent example. Consumers are protected from poor quality products, some of which don't play at all. Families are protected from vendors who display 18+ and pornographic DVDs alongside products targeted at children. Local businesses that sell or hire DVDs are supported by the removal of unlawful operators who would otherwise undercut them with inferior products. This enforcement work contributes to the key themes of A Great Place to Live and A Prosperous Community.
- 9.6. Enforcement action in the areas of community safety, environmental health, public realm, planning and building control make direct contributions to the environment in Tower Hamlets. For example, by combating nuisance behaviour such as public urination and street prostitution, the Council is making a difference to the everyday experience people have in Tower Hamlets. This is targeted to helping make Tower Hamlets A Great Place to Live.
- 9.7. The Council's work in respect of non-school attendance is designed to promote the education of children in the borough and in this respect helps to achieve the key theme of A Prosperous Community.
- 9.8. This review of enforcement action shows how the Council's enforcement is connected with its Community Plan goals. There are numerous examples in section 5 of this report indicating how the Partnership works together on enforcement. It is considered that the Council is generally complying with its policy in relation to taking targeted enforcement action and that this element of the policy should remain unchanged.

10. PROTECTION OF FREEDOMS ACT 2012

- 10.1. The Protection of Freedoms Act 2012 received royal assent on 1 May 2012. Sections 37 and 38 of the Protection of Freedoms Act have not yet been commenced, but they propose to amend Parts 1 and 2 of the Regulation of

Investigatory Powers Act 2000 (“RIPA”) so as to require local authorities to obtain judicial approval for activities under RIPA. This means that before obtaining or disclosing communications data under Part 1 of RIPA, or conducting covert surveillance under Part 2 of RIPA, the Council will require its own authorisation to be approved by a justice of the peace. This adds an extra layer of approval.

10.2. The changes to be made by the Protection of Freedoms Act 2012 to Part 2 of RIPA permit the Secretary of State to impose additional conditions that a local authority’s authorisation of covert surveillance must meet. The Secretary of State has made the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources (Amendment) Order 2012, which is due to come into force on 1 November 2012. When the Order takes effect, it will restrict the Council’s use of covert investigation to the following offences –

- 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).

10.3. The Council’s RIPA policies are appended to the enforcement policy. The policies and the guidance in place under those policies will need to be amended to reflect the need to additionally obtain court approval and the limitation on the use of covert investigation to the specified offences.

11. COMMENTS OF THE CHIEF FINANCIAL OFFICER

11.1. This is a report of a review of the Council's council-wide enforcement policy and the enforcement action taken in 2011-12. There are no financial implications arising from the recommendations in this report however the enforcement policy is designed to meet the Council’s requirements to minimise the risk of fraud, error and omission to Council’s services, finances and assets.

12. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)

12.1. This report originates in Legal Services and any necessary legal comments are set out in the body of the report.

13. ONE TOWER HAMLETS CONSIDERATIONS

- 13.1. Enforcement action that complies with the five principles expressed in the enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.
- 13.2. As specified in section 10 of the report, the Council is targeting its enforcement action with its Community Plan goals, in accordance with the principles expressed in the enforcement policy. This includes action specifically designed to achieve One Tower Hamlets.
- 13.3. The Enforcement Policy sets out clear principles to guide officers in determining the appropriate level of enforcement action. It actively seeks to promote transparency in decision-making. To the extent that the policy provides officers with relevant considerations, it works against enforcement decisions being taken on irrelevant and unlawful considerations such as those based on protected characteristics.
- 13.4. The policy allows officers to take into account the particular vulnerability of the defendant in determining the appropriate level of enforcement. This applies equally to all defendants and so does not amount to direct discrimination. It may in effect work to the benefit of particular groups, such as older people or people with disabilities. To the extent that there may be such an effect, it would be in pursuit of what the Council considers in the public interest in the pursuit of its objectives, including the Community Plan goals. There is a good argument that such an effect is a proportionate means of achieving the Council's legitimate objectives. Enforcement might well lose its effectiveness or work counter the Council's goals of One Tower Hamlets if it were seen to fall harshly on the vulnerable.
- 13.5. An equality impact assessment was prepared in respect of the enforcement policy, prior to its adoption. The impact assessment showed that targeted enforcement may in some circumstances fall disproportionately heavily on groups with protected characteristics (eg targeting street prostitution may impact women). To the extent that this may occur it is considered to be justifiable as a proportionate means of achieving a legitimate aim. Any indirect adverse effect would be the consequence of the Council taking targeted enforcement action in pursuit of its lawful objectives, including the Community Plan goals. There is a need to target action to ensure that the Council not only achieves objectives, but does so having regard to its best value duty under the Local Government Act 1999. Any action should be in accordance with the principles expressed in the Enforcement Policy, which include the requirement that enforcement action should be proportionate.
- 13.6. The impact assessment included particular examination of the impact of prosecution of street prostitution and DVD offences. In 2011/2012, a further

analysis has been carried out of enforcement action against touting. The results of that analysis are consistent with the findings of the impact assessment carried out prior to adoption of the enforcement policy.

- 13.7. The analysis considered the fact that all the individuals prosecuted for touting have been Asian and the companies are also Asian businesses. The targeting of enforcement action to deal with touting therefore affects this race group. This would not be the result of direct discrimination, that is, the unlawful targeting of such groups contrary to the Race Relations Act 1976. The Council would take this approach irrespective of the race of the tout or restaurant operator. It is instead, an indirect effect arising from the fact that it is a particular ethnic group which operates the restaurant business within that area.
- 13.8. To the extent that there is any indirect adverse effect on a particular race group by reason of touting prosecutions, it is considered to be the consequence of the Council taking targeted enforcement action in pursuit of its lawful objectives as set out in section 2 above (including the Community Plan goals). There is a need to target action to ensure that there is a positive overall benefit not only to the local community but also to the other restaurant businesses in the area who do not employ touts. The action is designed to reduce offending and the associated anti-social behaviour caused by the activities of the touts. Further, as touts offer inducements to customers that are not then honoured, action protects consumers and increases consumer confidence. Part of the work regarding touting is to increase awareness of the problems associated with touting and to persuade businesses to sign up to the anti-touting code.

14. **SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

- 14.1. Enforcement action in the areas of community safety, environmental health, public realm, planning and building control make direct contributions to the environment in Tower Hamlets. For example, by combating unlawful development, the Council is making a difference to the appearance of the borough. This is targeted to helping make Tower Hamlets A Great Place to Live.

15. **RISK MANAGEMENT IMPLICATIONS**

- 15.1. Conducting enforcement in accordance with the enforcement policy should help to ensure the Council's actions are appropriate and defensible. It is appropriate to review the enforcement carried out and the effectiveness of the policy.

16. **EFFICIENCY STATEMENT**

- 16.1. The Council's enforcement in respect of parking, benefits and housing is concerned with the fair and efficient allocation of resources. This work contributes directly to the key cross-cutting themes in the Community Plan of One Tower Hamlets and Efficiency.

17. APPENDICES

Appendix 1 – Prosecution case summary
Appendix 2 – Publicity summary

**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.
None	N/A