

AGENDA

Regulatory Committee

Date: **Thursday 5 June 2014**

Time: **2.00 pm**

Place: **The Council Chamber, Brockington, 35 Hafod Road,
Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

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Agenda for the Meeting of the Regulatory Committee

Membership

Chairman

Councillor A Seldon

Vice-Chairman

Councillor PJ Edwards

Councillor CM Bartrum

Councillor PL Bettington

Councillor JW Hope MBE

Councillor Brig P Jones CBE

Councillor JG Lester

Councillor SM Michael

Councillor P Sinclair-Knipe

Councillor GA Vaughan-Powell

AGENDA

		Pages
1.	<p>APOLOGIES FOR ABSENCE</p> <p>To receive apologies for absence.</p>	
2.	<p>NAMED SUBSTITUTES (IF ANY)</p> <p>To receive any details of Members nominated to attend the meeting in place of a Member of the Committee.</p>	
3.	<p>DECLARATIONS OF INTEREST</p> <p>To receive any declarations of interest by Members in respect of items on the Agenda.</p>	
4.	<p>MINUTES</p> <p>To approve and sign the Minutes of the meeting held on 6 December 2013.</p>	7 - 8
5.	<p>REPORT ON REGULATORY ACTIVITY BY ENVIRONMENTAL HEALTH & TRADING STANDARDS 2013/2014 ANNUAL REPORT</p> <p>To note the main regulatory activities of the Council's Environmental Health & Trading Standards (EHTS) service for the year 2013/14 (period 1st April 2013 – 31st March 2014).</p>	9 - 50
6.	<p>PROPOSED FOOD HYGIENE INSPECTION PROGRAMME FOR 2014/15 (TO FOLLOW)</p> <p>To inform the Committee of the performance of EHTS in delivering the 2013/14 Food Hygiene Inspection Programme agreed by the Committee last year.</p> <p>To agree the proposed Food Hygiene Inspection Programme to be undertaken in 2014/15 with respect of its obligations under the Food Law Code of Practice (England)(April 2014).</p>	
7.	<p>PROPOSED FOOD STANDARDS INSPECTION PROGRAMME FOR 2014/15 (TO FOLLOW)</p> <p>To consider the proposed 2014/15 Food Standards Enforcement Programme to be undertaken by the Trading Standards Service in respect of its obligations under the Food Law Code of Practice (England) (April 2012).</p>	
8.	<p>REVIEW OF REGULATION OF INVESTIGATORY POWERS ACT (RIPA) POLICY</p> <p>To make the Committee aware of the Regulation of Investigatory Powers Act 2000 (RIPA) policy, which has been reviewed and updated to reflect legislative changes under the Protection of Freedoms Act 2012, and invite the Committee to comment if it wishes prior to the policy being presented to Cabinet.</p>	51 - 66

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HEREFORDSHIRE COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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HEREFORDSHIRE COUNCIL

MINUTES of the meeting of Regulatory Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday 6 December 2013 at 2.00 pm

Present: Councillor JW Hope MBE (Chairman)

Councillors: CM Bartrum, PL Bettington, Brig P Jones CBE, PJ McCaull and C Nicholls

8. APOLOGIES FOR ABSENCE

Apologies were received from Councillors BA Durkin and GA Vaughan-Powell.

9. NAMED SUBSTITUTES

There were no named substitutes.

10. DECLARATIONS OF INTEREST

There were no declarations of interest.

11. MINUTES

RESOLVED: That the Minutes of the meeting held on 25 June 2013 be confirmed as a correct record and signed by the Chairman.

12. PROCEDURAL ARRANGEMENTS

Noted.

13. EXCLUSION OF THE PUBLIC AND PRESS

RESOLVED that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below and it was considered that the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

- 1 Information relating to any individual.

14. DETERMINATION OF WHETHER A PERSON CONTINUES TO BE A FIT AND PROPER PERSON TO HOLD A DUAL DRIVER'S LICENCE

SUMMARY OF THE PROCEEDINGS DURING WHICH THE PUBLIC AND PRESS WERE EXCLUDED

The Sub-Committee gave consideration to a recommendation from the Taxi and County Transport Badge Officers Panel that a person's dual driver's licence should either continue to be suspended, or be revoked.

Prior to making their decision the Committee heard from a representative of the licence holder and the licence holder in person, who gave an explanation of what had occurred and why they considered the recommendation of the Officers Panel should be overturned.

The Committee considered that it was important to make clear the standard of behaviour expected of the County's taxi drivers.

RESOLVED: that a total period of suspension of six months was proportionate and necessary.

The meeting ended at 3.40 pm

CHAIRMAN

MEETING:	REGULATORY COMMITTEE
MEETING DATE	5 JUNE 2014
TITLE OF REPORT:	REPORT ON REGULATORY ACTIVITY BY ENVIRONMENTAL HEALTH & TRADING STANDARDS 2013/2014 (ANNUAL REPORT)
REPORT BY:	HEAD OF ENVIRONMENTAL HEALTH & DEVELOPMENT MANAGEMENT, AND HEAD OF TRADING STANDARDS & LICENSING

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

Countywide

4. Purpose

To note the main regulatory activities of the Council's Environmental Health & Trading Standards (EHTS) service for the year 2013/14 (period 1st April 2013 – 31st March 2014).

5. Recommendation(s)

THAT: the report be received and noted.

6. Alternative Options

There are no alternative options relevant to this information report.

7. Reasons for Recommendations

The report provides the Committee with information about the main activities and regulatory responsibilities within the Environmental Health & Trading Standards service and gives the opportunity for Members to ask for any additional information they require.

8. Key Considerations

- 8.1 The Regulatory Committee meets regularly to consider information reports and policy matters within the framework decided upon by the Cabinet Member. At the end of the year, an information report provides the Committee with an overview of the regulatory activities on a Council-wide basis, summarised at year-end as an annual report. In addition, the Committee also delegated certain matters to the Sub-Committee (such as licensing reviews) which enables the full committee to meet less frequently. This allows the Regulatory Committee to be provided with a more strategic overview of the matters which fall within its remit.
- 8.2 This report is therefore for the Regulatory Committee to note, in order to enable members to be aware of the regulatory activity of Environmental Health & Trading Standards (EHTS) for the year 2013/14 including compliance with its respective Food Hygiene and Food Standards inspection programmes in relation to the Food Standards Agency Food Law Code of Practice (England) (April 2012).
- 8.3 The report provides the Committee with a summary of activities for those service areas in the Council's Environmental Health & Trading Standards service involved in regulatory matters, namely:
- Environmental Protection & Planning Enforcement Team;
 - Environmental Health Commercial Team;
 - Environmental Health Housing Team;
 - Pest control Team;
 - Gypsy Traveller Service
 - Trading Standards
 - Community Protection
 - Children in Employment
 - Animal Health Team;
 - Licensing Team;
 - Licensing matters via the Regulatory Sub-Committee;
 - Prosecutions and other enforcement activity summary;
 - Business Satisfaction Survey Results (NI182)
- 8.4 In the year 2013/14 the entire EHTS service (including Community Protection) was budgeted to have net direct costs in the order of £2m (the service brings in about £900k income per year). At the end of the year, the actual direct costs came in under budget by £55k, over and

above the in-year savings target of £336k.

8.5 The following paragraphs outline the regulatory activities on a team by team basis:

9. ENVIRONMENTAL PROTECTION & PLANNING ENFORCEMENT TEAM

9.1 The Environmental Protection & Planning Enforcement Team covers merged environmental services (previously 4 teams), encompassing key areas such as:-

- Noise nuisance – investigation and service of noise abatement notices
- Other nuisances – e.g. odour, dust, smoke etc
- High Hedge complaints
- Burial of deceased without means
- Smoke offences – e.g. Clean Air Act and dark smoke offences
- Drainage – clearance of drains and defective septic tanks / rural drainage
- Public health complaints – clearance of land or housing with rats, mice, vermin or rubbish
- Planning enforcement (previously within Planning Services)
- Planning consultations - for environmental protection observations / conditions
- Licensing consultations – for noise observations / conditions
- Closed landfill site management – monitoring and project managing engineering works etc.
- Contaminated land – service requests, responses to planning application consultation requests and contaminated land strategy investigations
- Private water supply monitoring and regulation and overview of mains water quality
- Industrial pollution control – issuing of environmental permits for large factories & processes
- Air Quality – monitoring and assessment of air quality across the county with statutory reporting to Defra.

Environmental Protection

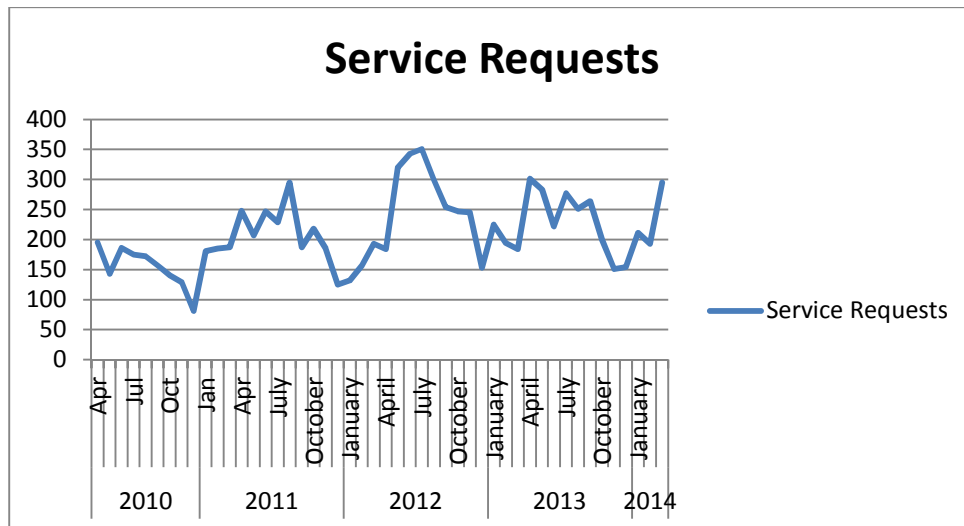
9.2. In the year 2013/14 this part of the team handled 2,802 service requests, comparing to 2,999 during 2012/13. Although this shows a slight drop from last year's workload, it still far exceeds the circa 2,400 service requests in 2011/12, reflecting greater public expectation combined with increased licensing consultation workload which is now statutorily required. The total number of service requests to the entire team numbered 3631 for 2013/14.

9.3 In 2013/14, 72% of the team's service requests were responded to within 5 working days,

compared to 77% the previous year. As public expectation continues to rise on both environmental and local community issues as well as out-of-hours work, there is considerable and growing pressure on this small team to deliver, requiring the service to deploy its staff in a more generic and flexible way.

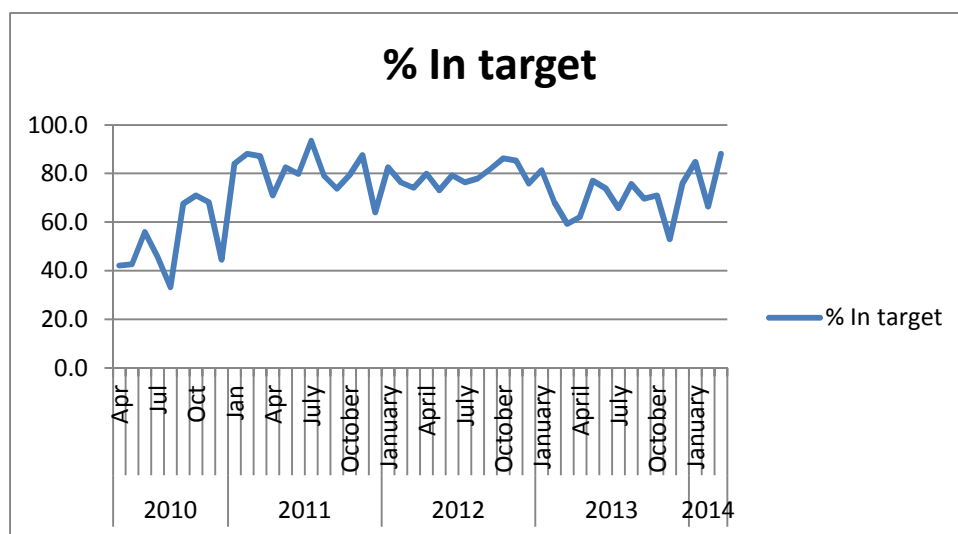
9.4 The graph below helps show the seasonality and long term rising trend for environmental protection service requests year on year.

Graph 1: Number of Environmental Protection Service Requests/Month since 2010/11



9.5 Graph 2 below shows those service requests which met EHTS's 5 day response target. It can be seen that the performance of this team significantly improved from early 2011, whereupon it seems to have stabilised, dipping only at times of increased seasonal demand or at times of long term absence of officers. Staffing resource is continually reviewed to ensure that at least a statutory minimum service delivery will at all times be maintained.

Graph 2: Percentage/Month of Environmental Protection Service Requests in Target



9.6 About 22% of the service requests received in 2013/14 related to noise. This percentage has slightly fallen from 29% in the previous year. The breakdown of the type of service requests received last year is shown in the table 1 below:

Table 1: Environmental Protection Service Requests

Type of Service Request	No. Received April 2013 to March 2014	Percentage of Total
Noise Nuisances	806	22
Other Nuisances (dust, smell, light, flies etc)	99	3
Clean Air Act / and bonfire nuisances)	131	4
Public Health (including rubbish, rats, pests and filthy / verminous houses & drainage)	230	6
Planning and Licensing Consultation Responses	1710	47
Miscellaneous and advice	655	18
Total	3631	100

- 9.7 Clearly each service request will vary considerably in complexity and therefore they cannot be equally weighted. That said, it is illustrative of the areas of workload responded to and continues to highlight noise at about 22% as the main operational activity undertaken. This reinforces our belief that Herefordshire is following the national trend of rising public expectation for the council to resolve such nuisances.
- 9.8 The breakdown in Table 1 also reveals that consultation work has increased to 47% of the total service requests in 2013/14 compared to 45% in 2012/13. This is the result of new licensing consultation workload and planning consultations.
- 9.9 Alternative sources of funding for the night time 'Noise Response Team' service have been explored but not yet proved successful, and this service was therefore not provided in 2013.
- 9.10 In addition to enforcement work, the team was consulted by Licensing and Planning Services. Each consultation request was investigated and responded to. A number of pre-application visits were also undertaken to assist Planning. This is a considerable amount of work undertaken to prevent the need for future enforcement action.

Planning Enforcement

- 9.11 In December 2013, the Planning Enforcement function transferred from Planning Services to EHTS.
- 9.12 The residual planning enforcement role now sits in the Environmental Protection Team, where it is anticipated that, over time there will be better joined up working and economies of scale to enable environmental protection officers to assist in routine planning enforcement matters and

vice versa.

- 9.13 During the period 2013/14 the Planning Enforcement function received 372 requests for service, of which 88% were in target for response time, which is shown in Table 2 below.

Table 2: Planning Enforcement Service Requests in 2013/14

	Number of Service Requests	Percentage in Target
April	44	80
May	41	91
June	40	88
July	37	89
August	36	89
September	31	84
October	30	97
November	25	88
December	17	100
January	21	86
February	22	82
March	28	82
TOTAL	372	88

- 9.14 In this time it served 29 Planning Contravention Notices, 4 Breach of Condition Notices and 9 Enforcement Notices as shown in Table 3 below.

Table 3: Planning Enforcement Action in 2013/14

Type of Action	Numbers in 2013/14
Planning Contravention Notice	29
Breach of Condition Notice	4
Enforcement Notice	9
Listed Building Enforcement Notice	1

Section 215 Notice	2
Temporary Stop Notice	3
Section 330 Requisition	3
Section 16 Requisition	2
TOTAL	53

- 9.15 Of the 372 service requests, 14% resulted in formal action e.g. service of a notice. In addition, 73 planning applications were received as a result of planning enforcement officer involvement in cases. The fees received for these applications totalled £24,963

Specialist Contaminated Land & Closed Landfill Work

- 9.16 It remains a statutory duty for the council to investigate and assess contaminated land and for this aspect to be considered as and when it arises through the planning process.
- 9.17 Nearly half of EHTS's consultations requested by Planning were undertaken for potential land contamination.
- 9.18 In particular, members of this small team have continued their close working with the Environment Agency (EA) on a detailed investigation of the Sutton Walls closed landfill site and any potential contamination from it. Written communication updates therefore continue to be sent on a regular basis to Moreton-on-Lugg, Sutton St Nicholas and Marden Parish councils as well as to the local member. The team are hopeful that this work can be drawn to a conclusion in the near future, depending on the outcome of the current monitoring work being undertaken by the Environment Agency.

Specialist Closed Landfill Work

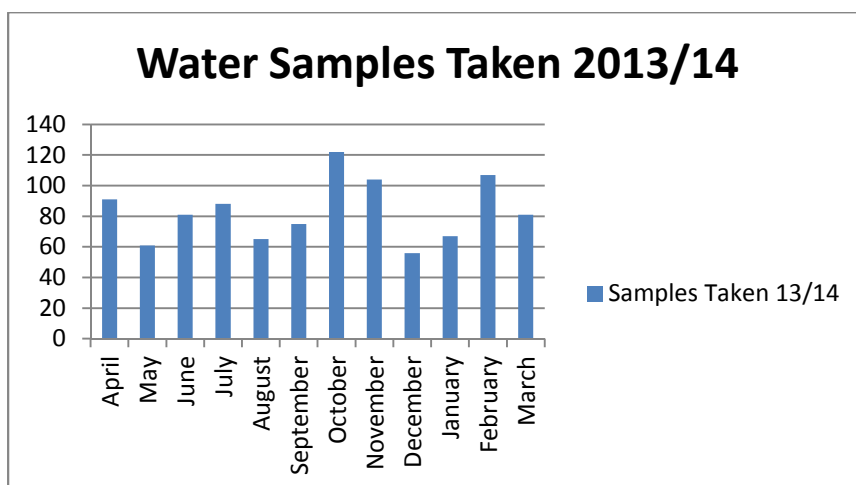
- 9.19 There is both a statutory duty and civil obligation for the council to manage its closed landfill sites and to monitor any pollution from them, such as gas or leachate migration.
- 9.20 In fulfilment of this, extensive engineering and monitoring work continued at the closed landfill site at Stretton Sugwas, as well as routine work at the closed Strangford, Belmont and Leominster sites. Grant funding has been applied for from Defra to assist in this.

Specialist Water Sampling and Monitoring Work

- 9.21 Herefordshire has about 3000 private water supplies and is unusual in that it has a much higher than average number compared to much of England. These supplies are typically in the most rural areas of the county and are often used by vulnerable people such as children or the elderly. They also often serve rural commercial premises as well as large bottling plants.
- 9.22 Although water within the county is of a generally good quality, increasingly supplies become contaminated by bacteria from either agricultural activity or rural drainage. Similarly, chemical contamination is often associated with agricultural activity or pipework. Both problems increase following extreme wet weather, such as the January / February period this year. Bacterial contamination is usually associated with the animal or human gut or general decomposition through contamination of water tanks. Chemical problems are normally associated with nitrates (fertiliser) or iron / lead (drinking water pipe corrosion).

- 9.23 There is a statutory duty for the council to routinely take water samples from these private drinking supplies, which include wells, boreholes and springs. These samples and the risk assessment of the supplies are only required where a supply is shared with other houses or is provided to the public for consumption / commercial use. Sole users of their own private water supply are therefore not required to be sampled. However, samples are undertaken from non-shared supplies if requested, although costs are fully recharged for this service.
- 9.24 Water sampling is recharged where at all statutorily possible and these fees went up in April 2012 to move those chargeable parts of the service towards full cost recovery. The service recovered £55k in this way.
- 9.25 For the year 2013/14, 1129 statutory water samples from private supplies were programmed and 998 of these were taken (88.4%). This compares to 1174 programmed in 2012/13 with 1013 being taken (86.4%), so sampling activity remains about even. This is shown in Graph 5 below.

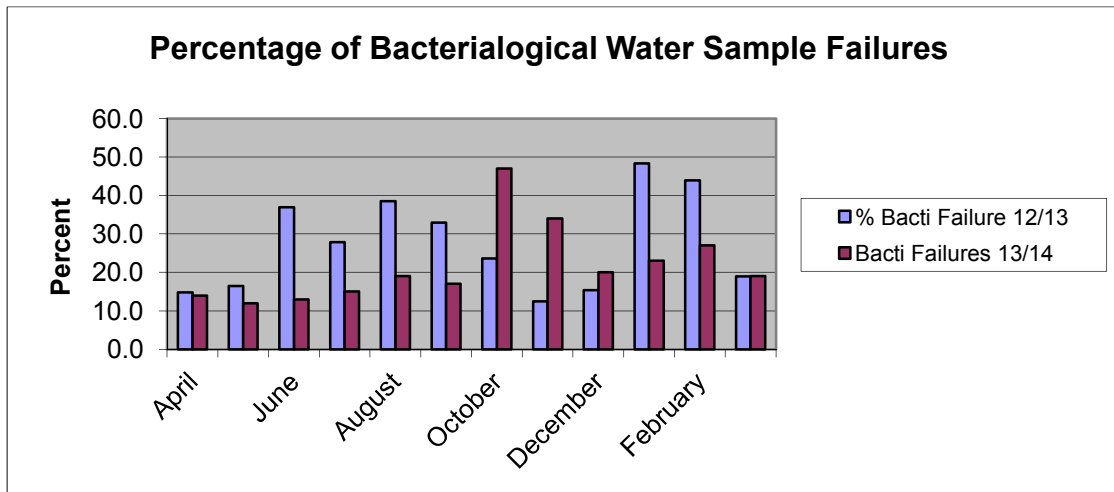
Graph 3: Programmed Water Sampling in 2013/14



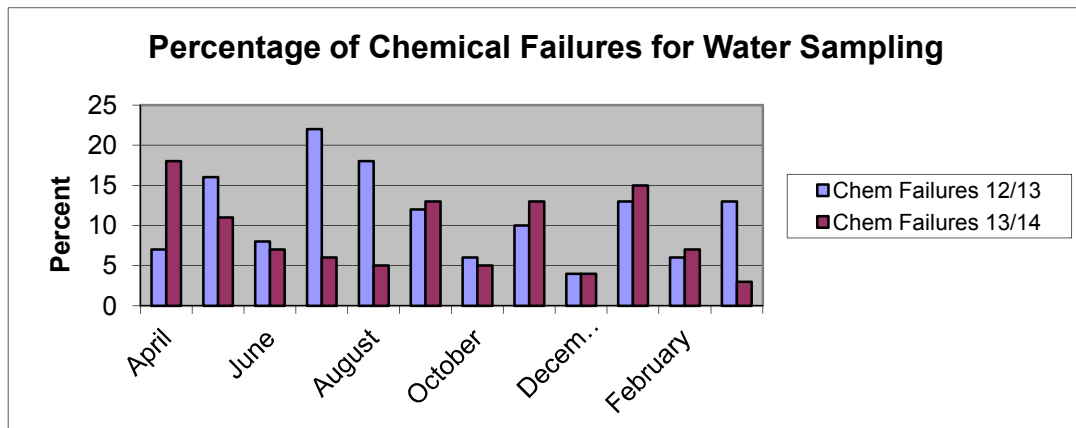
- 9.26 In 2013/14, 260 samples failed for bacteriological water quality (25.8%) and 107 chemical failures were recorded (11.2%). This regulatory work has so far resulted in only 18 notices having to be served to improve unfit / unwholesome supplies.
- 9.27 In 2012/13, 285 samples failed for bacteriological water quality (27.5%) and 135 chemical failures were recorded (13.6%), resulting in 44 18 notices having to be served. Therefore, water quality remains much the same, although arguably improving slightly.

This is shown in Graphs 4 and 5 below.

Graph 4: Bacterial Water Sample Failure Rates in 2013/14



Graph 5: Chemical Water Sample Failure Rates in 2013/14



9.28 For the year 2013/14, 87 risk assessments for these private supplies were programmed and 59 of these were able to be completed (70.4%). This compares in 2012/14 to 107 programmed and 80 taken (71.8%), so again is broadly similar. These risk assessments are statutorily required and are recharged in accordance with the regulations.

Specialist Air Quality Monitoring & Reporting

9.28 Air quality monitoring has continued at a reduced number of sites and a three yearly 'Updating & Screening Assessment' report to Defra is being prepared for release in 2014, as is statutorily required. The continuous air quality monitoring station at Victoria Street was not operated due to budgetary constraints, although it is hoped that this will be reactivated in the summer of 2014, subject to software problems being resolved.

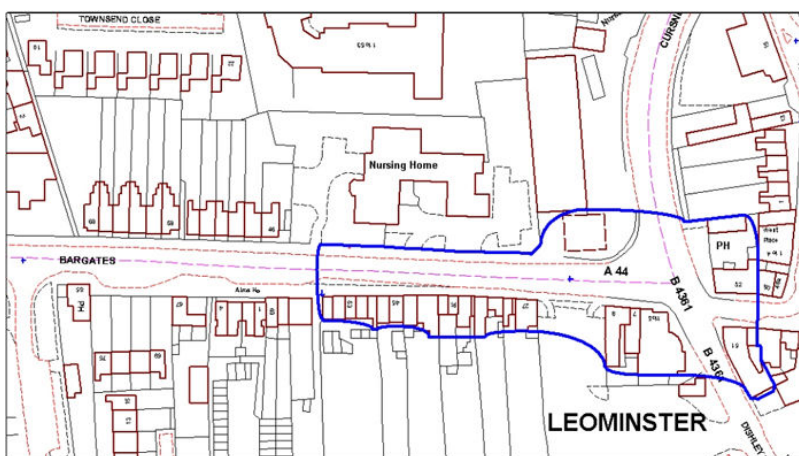
9.29 The county continues to have two declared 'Air quality Management Areas', both the result of traffic emissions as the areas fail to meet the nitrogen dioxide (NO₂) objective set by the government.

These are at:

- A) Hereford City – along the A49 corridor



B) Leominster – adjacent to the Bargates traffic lights



Specialist Industrial Pollution Control Work

9.30 Environmental permitting of the county’s potentially polluting 93 industrial processes/factories continued, the statutory recharged income from this being about £36k for 2013/14.

9.31 Several permits were varied and unlike 2012/13, inspections were made to all processes, including two large print-works and two Hereford based galvanising plants, the latter four all operating under integrated pollution prevention control (IPPC) permits due to their potential emissions.

Regulatory Environmental Protection

9.32 Rather than prosecute, the Council’s joint enforcement policy encourages the service to utilise statutory notices to resolve problems and escalate this to prosecution only when absolutely necessary. During the year 2012/13 the following statutory notices / enforcement action was taken by the Environmental Protection Team.

Table 4: Environmental Protection Notices Served

Type of Statutory Notice	Number Served in period 2013/14
Unwholesome Private Water Supply	18
High Hedge Notices	1
Requisition for Information	2
TOTAL	21

10. ENVIRONMENTAL HEALTH COMMERCIAL TEAM

This team is responsible for key areas such as:-

- Food hygiene & food safety
- Infectious disease notification and outbreak control
- Health & safety at work
- Ensuring smoke free workplaces
- Safety & licensing of sports stadiums

Food hygiene & food safety

10.1 The team ensures the basic food hygiene of food registered premises as well as promotion of the newly adopted Food Hygiene Rating Scheme (FHRS), which provides a score rating of premises that is publically available on a national website. The team provide business advice and support new and existing businesses.

10.2 Food hygiene inspections are carried out by suitably qualified and competent officers at intervals appropriate to the risk of the food business namely, the quantity of food supplied, the distance it travels, its type and the management of food safety (practices, procedures and the structure of the premises).

10.3 In Herefordshire there are approximately 2,500 registered food businesses. The high-risk food

business inspections are generally unannounced and during food production times, so as to ensure that a true picture of the business is being assessed. The aim of the inspection is to ensure food business are suitably controlling food safety relevant to the risk, as required in food hygiene legislation, so as to ensure food produced does not cause harm or ill-health to the consumer.

10.4 In 2013/14 the team achieved the following:

Table 5: Food Hygiene Inspection programme for 2013/14

Risk Category	Programmed for the year 2013/14	Achieved for the year 2013/14
A	6	6
B	64	64
C1	200	197
TOTAL FOR HIGH RISK	270	267
C2	109	124
D	52	74
TOTAL FOR LOW RISK	161	198
Unrated	48	39

10.5 The reason why 3 high risk premises were not inspected is because these businesses had seasonal opening times and were closed at the time of the programmed inspection and this was therefore unavoidable. The reason why 37 low risk premises were inspected more than required in the programme, was either in response to complaints from the public, a request by the business for a visit or for efficiency reasons, i.e. if an officer was visiting another premises in a specific remote/rural geographical area.

10.6 In addition to programmed and new business food hygiene inspection visits, there are other visit types that are also referred to as interventions under the food code of practice. Over the year there were a total of 970 intervention visits made to food premises.

Table 6: Food Hygiene Interventions for 2013/14

Intervention type	No of visits
Total Inspections (programmed & new business inspections)	674
Verification & Complaint visits	159
Sampling visits	27
Advice & Education visits	96

Information & Intelligence gathering visits	14
Total number of food hygiene visits	970

- 10.7 EHTS remains confident that it should be able to meet the Food Hygiene Inspection programme for 2014/15 (the details of this programme are presented in a separate report being presented today) and that this should maintain the standards currently achieved.
- 10.8 The findings of all these inspections are assessed against a national risk assessment code of practice that calculates when the next inspection is due. This is how a premise is allocated its specific risk category.
- 10.9 Part of the inspection involves producing a risk rating score which is also converted into a publicly accessible food hygiene rating detailing how well the business has managed food hygiene at the time of the inspection (currently only catering and larger retail businesses are included). This information is freely available for all to see on the National FSA Food Hygiene Rating Scheme website. This can be found at <http://ratings.food.gov.uk/>

The FHRS breakdown of applicable Herefordshire establishments for the year ending 2013/14 is shown in Table 7 below:

Table 7: Breakdown of Herefordshire Food Hygiene Rating Scores comparing 2013/14 to 2012/13

FHRS rating	2012/13 (Previous year total %)	2013/14 (Last year total %)
5 - Very good	63.3	63.7
4 – Good	21.5	21.4
3 - Generally satisfactory	11.5	10.8
2 - Improvement required	2.4	3.2
1 - Major improvement required	1.1	0,8
0 - Urgent improvement required	0.1	0.1
Total rated establishments	100.0	100.0
Establishments with rating of 3 (satisfactory) or better	96.4	95.9

- 10.10 During the period 2013/14, the percentage of premises with a 'Food Hygiene Rating Score' of satisfactory or above has remained constant at around 96%, which is significantly above the estimated west midlands average of around 90%.

- 10.11 It is worthy to mention that the performance of EHTS's Environmental Health Commercial Team was acknowledged by the 'Which Magazine' in February 2014 who classed Herefordshire Council as the best food regulator in the West Midlands and 16th best in the UK, despite the team's reduction in staffing levels. This ranking was based on the high Food Hygiene Rating Scores achieved and the team's quick response time to inspect new businesses setting up, supporting the Council's corporate objective to support economic and new business. It is therefore evident that the 2013/14 plan achieved high outcomes for the Council, despite not achieving the Food Standards Agency's code of practice for inspection levels.
- 10.12 The team operate a duty desk system where all enquiries received by the team are passed to a duty officer to respond and action as appropriate. (This is for both Health & Safety and Food Safety enquiries.) The team received a total of 1018 service requests this year, around 792 of these related to food hygiene.
- 10.13 Routine food hygiene microbiological sampling is carried out by the team to ensure that foodstuffs do not contain harmful microorganisms (e.g. Salmonella) or their toxins. The team work closely with the Food Examiners at the Food Water and Environmental Laboratory, Sutton Coldfield, Public Health England (PHE) (formerly the Health Protection Agency (HPA)) and with the Health Protection Unit (HPU also part of PHE). There is a sample allocation for submitting food samples to the PHE laboratory and currently no cost is incurred within the allocation. This year 110 food hygiene samples were taken.
- 10.14 Where issues are identified by an officer during the inspection of a food business a range of options are available, depending on the public health risk identified and the responsiveness of the food business to ensure compliance. These steps are:
- (i). advice,
 - (ii). formal letters (written warnings),
 - (ii). formal notices,
 - (iii). voluntary closure,
 - (iv). formal closure
 - (v). caution
 - (vi). prosecution.

Revisits also play an important role in ensuring significant issues are put right.

Table 8: Enforcement action taken in 2013/14 compared with 2012/13

Enforcement Action	2012/13 (Number)	2013/14 (Number)
Voluntary closure	2	2
Simple Caution	1	0
Improvement notices	7 Notices (on 2 separate premises)	0
Written warnings*	527	528

* *Written Warnings –include an inspection report and or letter, detailing contraventions that require action by the food business operator to ensure compliance with food hygiene legislation.*

Infectious Disease Notification and Outbreak Control

10.15 A number of diseases are reportable to Environmental Health via Public Health England (PHE) to enable the local authority to investigate the possible cause and in order to prevent further ill-health and risk to others. This year the team has received and investigated 289 Infectious disease notifications. These are detailed below:-

Table 9: Number of reportable diseases to Environmental Health

Infectious Disease Notification	Number in 2012/13	Number in 2013/14
Campylobacter	291	248
Cryptosporidium	19	6
E.coli	4	4
Giardia lamblia	7	9
Hepatitis	1	2
Salmonella	17	14
Shigella	4	3
Viral Hepatitis	2	0
Vibrios	0	1
Legionella	0	2
Total	345	289

10.16 Environmental and/or food safety factors can be the cause of the transmission of these infectious diseases. During 2013/14 the adverse wet weather conditions may have resulted in several of the e-coli and cryptosporidium investigations listed above. In these cases the importance of good personal hygiene e.g. hand washing, was stressed as an important control measure

Health and Safety

10.17 All high risk 'A' rated Health & Safety premises were inspected.

10.18 Accident notifications have continued to be investigated in accordance with selection criteria. 141 notifications were received (see table below).

Table 10: Accident notifications

RIDDOR Notification Category	Number in 2012/13	Number in 2013/14
Another kind of accident	40	12
Contact with moving machinery	1	1
Exposure to harmful substance	3	0
Fall from a height over 2m	4	3
Fall from a height under 2m	10	24
Hit by moving/flying object	8	9
Hit something fixed or static	8	7
Injured Handling/Lifting etc.	13	10
Physically assaulted by person	2	4
Slip Trip Fall, same level	61	61
Hit by moving vehicle		1
Exposed to fire		2
Contact with electricity		1
Not specified		6
Grand Total	150	141

10.19 The team received and actioned a total of 212 health and safety service requests as detailed in the table below:-

Table 11: Health and safety service requests

Health & Safety Service Requests	2012/13 Total	2013/14 Total
H&S Lift Report	3	3
H&S Accident not RIDDOR notified	1	0
H&S Advice	61	53
H&S Asbestos Removal Notifications	9	7

H&S Complaint	54	51
Other	6	98
Grand Total	134	212

- 10.20 Officers continued to liaise with organisers over event safety, including our Licensing Team to ensure public safety at large outdoor events.
- 10.21 The team also fulfilled the Council's statutory duties in relation to the Safety at Sports Grounds (Hereford United Football Club and Hereford Racecourse). It also continued to lead on sports grounds safety advisory groups (SAG). A wholesale review, involving all core SAG members, was carried out for the general safety certificate in place and a revised and updated certificate was issued for HUFC. A general safety certificate was issued in respect of the racecourse.
- 10.22 The Team also continued to provide advice and where necessary, enforce legislation in relation to Sunday Trading and smoke free workplaces.

11. ENVIRONMENTAL HEALTH HOUSING TEAM

- 11.1 Since April 2014, the Environmental Health (Housing) function transferred from Adult Wellbeing Services (AWS) to EHTS.
- 11.2 The Environmental Health Housing role now sits as an independent team within EHTS, where it is anticipated that, in time, training will enable better joined up working and economies of scale to enable other environmental health officers to assist in routine housing enforcement matters and vice versa.
- 11.3 During the period 2013/14 the Environmental Health (Housing) function received 494 requests for service of which 95.4% were responded to within the target time.
- 11.4 171 housing inspections were also undertaken in 2013/14, 63 of which were programmed, 42 were in response to complaints and 17 were revisits.
- 11.5 The following notices were served:

Table 12: Housing Notices

Type of Notice	Number Served in 2013/14
Hazard Awareness Notice	3
Improvement Notice	13
Clearance of Rubbish Notice (PDPA s.4)	1
Abatement Notices	3
Power of Entry Warrant	3
House in Multiple Occupation (HMO) Declaration Notice	3

Requisition for Information Notice	29
TOTAL	58

11.6 In 2013/14, 8 premises were investigated with a view to prosecution.

12. PEST CONTROL TEAM

12.1 The Pest control team deals with the eradication of most domestic pest infestations through treatment and prevention. They also operate a number of contracts with businesses for pest control services including many council services and schools. During the year 2013/14 the team has:

- Continued to respond to service requests ranging from wasps fleas, rats, mice and moles.
- Has increased its 130 contracts with businesses for pest control.
- Has increased its advertising into parish magazines, local newspapers and has looked to expand its area of operation.
- Implemented a new fee structure to ensure this service towards full cost recovery.
- Annualised the hours of staff to meet seasonal demands at no increased cost.
- Reduced the staff from 4 to 3 in order to assist EHTS meet its savings;
- Earned income of £115k for EHTS, an increase of £15k despite staff reduction.
- Relocated its poison store from Bath Street Offices to the compound at Stretton Sugwas Landfill Site.
- Introduced a cashless system to increase income and reduce risk.
- Continued to manage the seagull control programme (financed by Hereford City Council), reducing the population from circa 500 breeding pairs to circa 400, publishing an annual report and facilitating an annual Stakeholder's Forum in November 2013. Also increased the range of this programme into the retail area of the city centre, utilising business to assist with access and intelligence.
- Continued to assist the Environmental Protection and Planning Enforcement Team with regulatory work concerning overgrown gardens and backyards.
- Is available 24/7 in case of any unforeseen public health incidents or outbreaks requiring immediate pest control treatment.

13. GYPSY & TRAVELLER SERVICE

13.1 The team are responsible for the management of the six council owned gypsy & traveller sites across the county namely: -

- Croft Lane in Leominster;
- Romany Close, Grafton;
- Orchard Park, Watery Lane;
- Open Fields, Bromyard;
- Turnpike, Pembridge; and
- Tinkers Corner, Bosbury.

- 13.2 This currently equates to some 52 pitches in total. Of these 52 pitches potentially available for rent, eight are currently being redeveloped (Bromyard 'Open Fields' site) and three are currently being kept vacant to assist in the general refurbishment that is being undertaken for the remaining sites.
- 13.3 Total rental fee income for the year amounted to over £155k which compares favourably with the income target that was set at £150k for 2013/14. There will be some additional pressures during year whilst a limited number of pitches remain vacant due to site refurbishments and until Bromyard 'Open Fields' site becomes fully functional.
- 13.4 During the year 2013/14, regulatory activity occurred through intervention at 27 unauthorised encampments which resulted in formal action being undertaken in 6 cases i.e. a Direction to leave notice being served. There was one court order resulting in an eviction and there is currently one pending in relation to persons unknown at Yarkhill. Normal procedure is to make a preliminary visit to undertake a welfare needs assessment whilst also ascertaining the likely period of the encampment.
- 13.5 Following a request from the team manager for a review of the electricity utilities payment procedure within the G & T team, an audit of the current processes was undertaken by Internal Audit during March 2014. The final report indicated that overall there was only 'limited assurance' with regard to such procedures. A robust action plan has therefore been drawn up in collaboration with Internal Audit to address the concerns raised and to seek removal of the 'limited assurance' rating as soon as possible.
- 13.6 Following a successful grant bid for re-developing the Bromyard Open Fields site in December 2012, work commenced in early 2013 to make good 8 pitches to bring them back into use as well as, upgrading the existing facilities for the remaining two pitches that are currently being used. Unfortunately a considerable delay in starting the works occurred following the discovery of a bat colony within the existing buildings and the necessity for the intervention of Natural England. As a consequence, work is now scheduled to finish by the middle of June 2014. The refurbishment will not only considerably improve the living conditions for those who reside there; but it will also improve the overall ascetics of the site and help reduce its impact on the surrounding area. Bringing these pitches into use will also help alleviate some of the current shortage as well as, providing for additional income to offset the savings required of the service.

14. TRADING STANDARDS SERVICE

- 14.1 The service encompasses key trading standards activities such as:-
- The provision of **Business Advice and Support** – assisting businesses with regulatory matters helping them get it right first time, especially small & medium sized enterprises.
 - **Consumer Safety** - ensuring the safety of consumer goods and legality of 'CE' the mark.
 - **Food and Agriculture Standards** – advising businesses on food labelling ensuring that

food composition and description are correct and truthful, ensuring animal feeding stuffs relating to labelling and composition are also correct.

- **Fair Trading** – ensuring goods and services are legally compliant covering numerous commercial practices such as package travel, misleading packaging, green claims, time share etc., and also protecting the elderly and vulnerable against cold calling, rogue traders and scams; taking appropriate enforcement action in line with the Council's Enforcement and Prosecution Policy.
- **Metrology** – ensuring that weights and measures used in trade are correct and that suitable equipment is used, checking the quantity of goods sold ranging from bread to petrol.
- **Licensing of Petroleum & Explosive Storage** – ensuring petroleum and explosives are suitably stored and dispensed, minimising the risk to health & safety.
- **Provision of 2nd Tier Consumer Advice** – supporting vulnerable consumers through advice and intervention where appropriate

14.2 Money Saved or Recovered for Consumers & Businesses during the Year £25,966

14.3 Central England Trading Standards Authorities (CEntSA) and the National Trading Standards Board (NTSB).

14.3.1 CEntSA is the regional body that co-ordinate the work of those 14 local authority trading standards services based within the West Midlands Local Government Region. It has a national reputation for partnership working and for delivering excellent professional development (CPD) training for trading standards practitioners throughout the region and the country, as well as providing training and development opportunities to other regulatory disciplines and professions. It also acts as a conduit for drawing down Government / Food Standards Agency (FSA) funding via the National Trading Standards Board (NTSB) for tasked project work and enforcement activities ranging from:-

- supporting the delivery and implementation of an Intelligence Operating Model 'IOM' for trading standards services including supported membership of an intelligence data base;
- Supporting regional working to combat tobacco fraud, and consumer detriment in relation to motor vehicles;
- Supporting local authorities in tackling rogue trading and cold calling activities;
- Undertaking e-crime surveillance initiatives;
- Co-ordinating food standards and feed hygiene inspection & sampling projects;
- Consumer safety & Intellectual Property enforcement projects;
- Producing a regular dedicated business support newsletter.

During February 2014, the Head of Trading Standards & Licensing was elected chairman of CEntSA and as such, represents the region as a board member of the NTSB which is chaired by Lord Toby Harris and is comprised of the chairs of the other English & Welsh regional groups the WLGA, Scotland and government officials and departments including (BIS).

14.4 Illicit Tobacco & Alcohol

14.4.1 The sale and supply of illicit tobacco is a problem within the county and unfortunately, appears to be prevalent throughout the country as a whole. During the last year 10 'intelligence led' enforcement visits were undertaken resulting in a considerable quantity of illicit tobacco and cigarettes being seized and removed from the market place. Not only does such the supply of such illicit product undermine the legitimate retailer, it also, due to its low relative low pricing point, makes it economically easier for people to take up the habit and to continue smoking. The quality control of such products is highly dubious and the constituents are likely to be more damaging than the legitimate product. Tackling this issue at a local level will continue to be a main priority for the trading standards service. A summary of the quantities seized and financial revenues involved are highlighted in table 13 below:

Table 13: Summary of the quantities seized and financial revenues

Activity 2013/14	
Total non UK duty cigarettes seized	212,160
Total fake cigarettes seized	41,040
Total cheap whites seized	37,300
Fake HRT	6kg
Non duty paid HRT	33.2kg
Total street value approximately	£58,000
Tax revenue lost to the exchequer	Circa £86,000

14.5 Rogue Trading / Cold Calling / Scams

14.5.1 During the year 23 rogue trading / Cold Calling / Scam Activities were reported to the trading standards team which compares to 33 for the previous year. Although these figures may indicate a reduction in the number of incidents occurring, it is generally accepted that only 1:10 incidents are actually reported. Tackling rogue traders and eliminating such scams remain a key priority for the service that operates a 'zero tolerance policy' in respect of such matters. Several high profile and complex investigations were undertaken during the year resulting in subsequent enforcement activity being undertaken to protect and safeguard the vulnerable individuals that were targeted. A general summary of all prosecutions is included at Appendix 2 to this report. Two specific Rogue Trader incidents that were concluded during the year of particular interest are highlighted below.

- New Look Roof Coatings – This limited liability company based in Monmouthshire, operated over a 2 year period throughout Herefordshire, Wales and the South West. Business activity was estimated in the region of £2.5 million during this period. Some 535 victims were identified which equates to £5k detriment for each person. The work entailed jet washing roofs and applying a paint covering to the tiles. The work was unnecessary, often resulting in damage to the existing structure and was undertaken by unqualified employees. Spurious claims were made about the treatments and processes undertaken and their specific properties. It was found that mainly the elderly living in bungalows were targeted. Following a successful prosecution, a 12 month prison sentence was imposed

upon the two main operators of the business and the company ceased trading.

- Security Alarm Scam – Information was received that a salesman from a Cambridgeshire based known rogue company was in the county, cold calling a number of properties trying to get consumers to sign up to a security alarm system that on the face of it, would only cost £299. In reality however, the consumer would have ended up committing to a 5 year maintenance contract costing in the region of £3,500. Officers intervened quickly and managed to save two consumers from paying such maintenance costs and getting them out of the contracts they had signed. The salesman’s remaining appointment contacts were obtained and these were contacted and alerted to the scam.

14.6 Food Standards Inspections

- 14.6.1 A revised inspection programme was subject of a separate report to Committee in accordance with a recommendation made by both Internal Audit and the Food Standards Agency following their respective audits. I am pleased to report that this revised programme was fully completed as detailed in the table below:-

Table 14: Planned Inspections – High Medium Low Food Standards Inspections 2013/14

Risk rating	Total No. of premises	No. of Inspections due in year and required by the FSA code of practice	Target % (Number)	Achieved
High	93	93	75% (70)	71
Medium	508	254	5%(13)	32
Low	289	58	5%(3)	11
Unrated	Potential 1600	0	0	n/a
Food Sampling - circa 60 food samples to be taken.				
Achieved - 80 (55 food and 25 feed samples)				

14.7 Adoption of the revised Food Standards Agency (FSA) / National Trading Standards Board (NTSB) Risk Rating Scheme.

- 14.7.1 Following a review of the national premise risk rating scheme by the Food Standards Agency and its subsequent adoption by the NTSB, a new risk rating scheme for food standards inspection has been adopted nationally. This was implemented by Herefordshire trading standards during November 2013. As a result of its implementation, the risk rating criteria, risk rating categories and subsequent inspection frequency for food standards premises nationally has changed – effectively, the ‘goal posts’ have moved. The new rating system has significantly reduced the overall number of premises that are due for inspection during

the year and especially those rated as high risk, reducing from 93 high risk premises in 2012/13 to only 1 due in 2014/15. The new risk categories are now High, Medium High, Medium Low and Low and are now principally based on the confidence that the authority has in the operation of that business. Although the overall risks have been reduced for 2014/15, it is envisaged that as the inspection programme is undertaken, the risk rating of premises is likely to increase and therefore in subsequent years, the number of high risk premises and resulting inspections are likely to increase.

14.8 Protected Geographical Indications

14.8.1 Herefordshire Trading Standards Service is the EU recognised authority for 6 Protected Geographical Indications (PGI), namely “Herefordshire Cider”, “Herefordshire Perry”, “Worcestershire Cider”, “Worcestershire Perry”, “Gloucestershire Cider” and “Gloucestershire Perry”. As such we are responsible for the administration and award of this legally protected mark and undertake audits for all 3 counties with regard to renewals (every 3 years) and new registrations, as well as carrying out surveillance visits each year. Currently there are **11** producers with a total of **94** PGI products. **9** of these are within Herefordshire with a total of **80** products. We are currently in the process of auditing/registering a further 2 producers.

14.9 Food / Feed Samples

14.9.1 **55** food samples and **25** feeding stuffs samples were taken over the year. The majority were part of the Food Standards Agency (FSA) Food / Feed Sampling Grant which was undertaken in partnership with Worcestershire Scientific Services & Worcestershire Regulatory Services. The grant paid for the sample cost and the analysis cost and of the **80** samples taken, circa **9% (7)** were found to be unsatisfactory.

14.10 Business Advice & Support

14.10.1 There were **362** business contacts during the year involving requests for advice and assistance which is an increase of **49%** on the previous year (**243**). Such contacts involve providing advice and guidance on legislation ranging from food labelling and composition queries, ensuring the descriptions of goods and services are correct and that distance selling regulations are understood and adhered to. The provision of business advice and support is seen as a key component to supporting the economic growth of the county.

14.11 Feed Standards

14.1 All high risk animal feed producers along with a number of farms within the county have been visited to ensure integrity of the food chain. The FSA also provided a grant to ensure a range of premises where inspected for compliance with the Feed Hygiene Regulations and overall, those premises were found compliant.

14.1 The FSA is nationally placing very high priority on Feed Hygiene as this is where the initial contamination of foods that ultimately end up as part of the food chain can take place. A breakdown of inspections is produced in the following table:

Table 15: Breakdown of inspections

Type of Premise visited	Number visited
Approved Premises (A1,A7)	3

Registered Manufacturers of compound feedstuffs (R4)	9
Registered Hauliers (R8)	5
Registered Storage (R9)	1
Registered Farms that are mixing Feed Additives (R10,R11)	20
Food Manufacturers producing co products e.g. Apple Pulp (R7, R12)	4
Registered Farms not mixing additives Feed Hygiene (R13)	84
Registered Farms not mixing additives for Food Hygiene	84

14.12 Feed Samples

14.12.1 There were 25 Feed Samples taken from in county producers and included 11 as part of the FSA food sampling grant which covered the sample and the analysis cost.

14.13 EC Feed Hygiene Controls

14.13.1 The FSA have now given this area of work a high priority and are through the NTSB providing additional regional funding for local authority trading standards services to implement a comprehensive inspection and sampling programme. This is to help ensure that the integrity and composition of animal feed is not compromised and that the primary food chain is protected. All elements ranging from manufacture, mixing, storage, transportation, supply and usage of feeding stuffs are covered.

14.13.2 During 2013/14 **99** premises were inspected out of a target of **150** which equates to **66%**. The shortfall was attributable to a reduction in staff from 4 to 2 and a spike in welfare cases being reported which diverted officers from undertaking this activity following an exceptionally wet period during the first quarter of the year.

14.14 Summary of other TS Inspection Activities.

14.14.1 Petroleum & Vapour Recovery Inspections

Table 16: Petroleum & Vapour Recovery Inspections

Petroleum Planned	Inspections	Achieved	Compliance
27 due		27 (100%)	4 compliant 23 Non-compliant

Vapour Recovery 26 due	26 (100%)	Not recorded.
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14.14.2 Licensing Act Consultations (Alcohol)

As a responsible authority trading standards are consulted where applications for a new licence and to vary a licence in regard to the sale of alcohol are requested. This has taken the format of securing suitable conditions being placed on the licence such as appropriate training, 'Challenge 25' and the instigation of a refusals register. All areas which are deemed best practice to eliminate or reduce the chance of alcohol being sold to children under the age of 18 Trading Standards Service responded to 50 license consultations over the last year ensuring appropriate conditions are attached to the licence to protect children from harm.

15. Community Protection

15.1 Following the implementation in December 2013 of a restructure within the Parking Enforcement & Community Protection Service area, the Community Protection function transferred to the Trading Standards Service who are now responsible for overseeing its work. Activity has been prioritised in the areas of 'fly –tipping', abandoned vehicles and 'duty of care' checks with regards to waste disposal and carriage. Total income achieved through the issue of fixed penalty notices and court costs awarded was over £10k for the year. A summary of the team's activities are included in table 5 below.

15.2 Table 17 Community Protection Team Activity Summary 2013/14

ACTIVITY	2012/13	2013/14
Fly Tips	863	677
Abandoned Vehicles	134	153
Stray Dogs	226	287
Duty of Care Checks	289	146
Fixed Penalty Notices Issued	103	33
Prosecutions	41	30

16. Children in Employment

Following a restructure in the Children's Services Directorate, the permitting of children in employment and truancy function has now passed to trading standards. The relevant aspects of this new function are highlighted below.

16.1 Child Licensing

16.1.1. Dedicated officers within the trading standards service are now the single point of contact for schools and academies, professionals and the public for all legal matters relating to truancy related prosecutions, child employment and entertainment licences and chaperone requests.

They will also attend safeguarding meetings, (Child Protection, Child In Need, CAF and In Year Fair Access), with colleagues and other professionals to ensure children are safeguarded.

16.2 Child Employment

- 16.2.1 Children who are 13 or older and still of compulsory school age are entitled to work part-time as long as their job does not cause their education to suffer or put them at risk of harm or injury. Children under the age of 13 may not have jobs.
- 16.2.2 Any child wanting to have a part-time job must hold a valid license in order to do so. If a child is working without a license, their employer is breaking the law and will not be insured against any damage or injuries caused or incurred by the child. They also risk legal action being taken against them.
- 16.2.3 Trading Standards will therefore issue licenses as well as respond to, enquiries about child employment licences in line with legislation (Children and Young Peoples Act 1933 and Herefordshire Council's bylaws), as well as promoting guidance on licencing and undertaking inspection and enforcement visits to employers.

16.3 Child Entertainment

- 16.3.1 Similar to the child employment, children require a licence to carry out public performances and modelling. This also includes the registering of Chaperones. There is a requirement to issue child entertainment, modelling and chaperone licences in accordance with Children and Young Persons Act 1963 Section 37 and The Children and Young Persons (Performances) Regulations 1968, as well as promoting guidance on licencing and undertaking inspection and enforcement visits to employers.

16.4 Truancy related legal cases

- 16.4.1 To respond to referrals from schools to issue fixed penalty notices and warnings in accordance with Herefordshire Council's Penalty Notice Code of Conduct and The Education (Penalty Notice) (England) Regulations 2007. Keep the Penalty Notice Code of Conduct up to date with statutory changes and consult with stakeholders as appropriate.
- 16.4.2 Where required to advise schools and academies through the legal process of summonses for prosecution of parents for their child's non-attendance at school, as required in the appropriate sections of the Education Act 1996, the Children and Young People Act 1969, the Children Act 1989, the Education Act 1993.

17. ANIMAL HEALTH & WELFARE TEAM

- 17.1 The team fulfils the following functions: Undertake the inspection of farms and livestock, work with farmers to ensure that disease control measures are in place and are adhered to; Provide support and guidance in relation to animal health & welfare legislation, the control of animal by-products and bovine TB; Ensure the welfare of animals and integrity of the food chain through livestock market surveillance, monitoring the transport of animals; and also inspecting primary food producers.

17.2 Animal Health Market Inspections

- 17.2.1. Visits are undertaken to all markets. Such visits are seen as integral to maintaining the good reputation of Herefordshire Livestock markets as well as ensuring animal disease security measures are maintained.

17.2.2 Officers attended various livestock markets at Hereford, Kington and Ross on Wye totalling some 122 separate visits. It was planned to attend on 144 occasions however, due to a spike in welfare complaints as previously reported, officers were unable to complete all the visits programmed.

17.3 Animal Health Breach Reports

17.3.1 During the year, 185 Breaches have been investigated and recorded on the departments database Civica.

17.4 Animal By-products

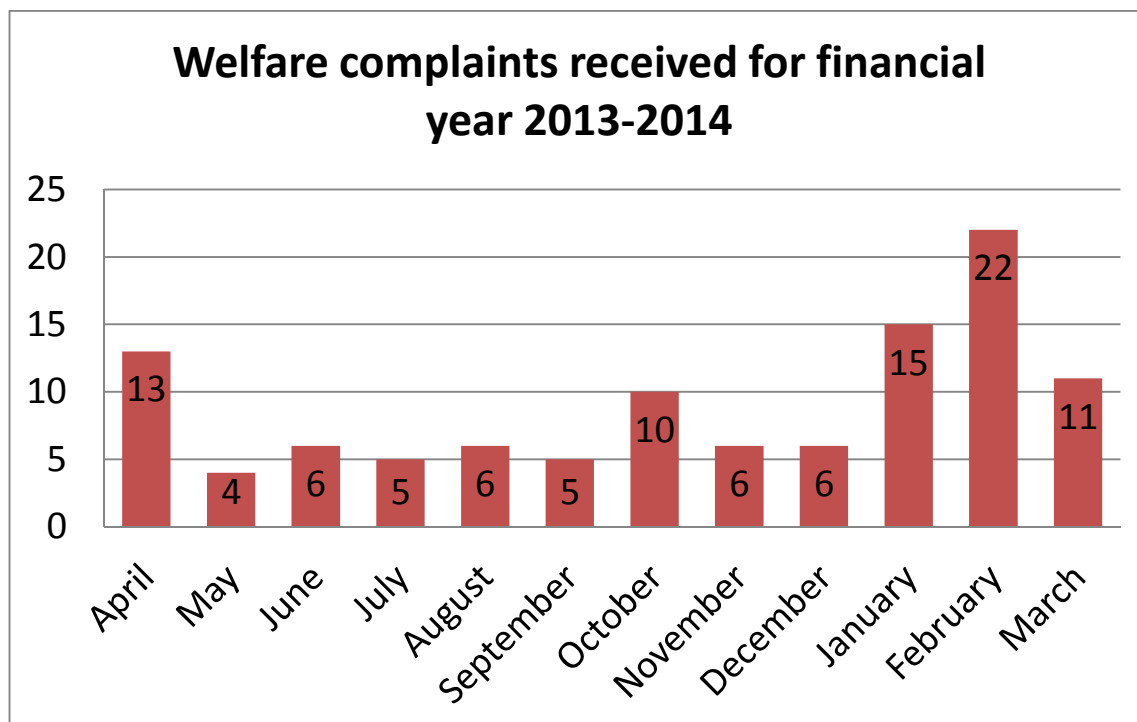
17.4.1. Work was undertaken during the year to investigate the type of animal by-products going from Herefordshire Manufacturers to Farmers for inclusion as animal feed. It was established that the main product going to farms was apple pulp and there was very little animal product that was subject to control. It was highlighted however, that there may be more of an issue regarding small bakers, butchers, restaurants and hotels etc. that could supply waste to farms which is prohibited, and may be the subject of a future project.

17.5 Animal Health Welfare Complaints

17.5.1 .Some 66 complaints were received regarding animal welfare and possible disease issues, including the non-disposal of dead carcasses. Reactive visits were made to the premises within the 3 day target of being notified and action taken to ensure that matters were rectified including animals being treated and brought back to better condition. Officers have also assisted with a West Mercia Police investigation regarding the welfare of horses that were seized from several holdings within Herefordshire.

17.5.2 A total of 109 welfare complaints were received for the year compared with 55 recorded for last year. The near 100% increase in complaints was due to the severe weather conditions experienced during the first quarter of the year but it is also thought due in part, to the previous poor economic conditions being experienced within the farming community and economy as a whole. Graph 6 below provides a breakdown of the welfare complaints received **over the year.**

Graph 6: Breakdown of the welfare complaints



18. LICENSING TEAM

18.1. The Licensing Team is self-financing and achieved its income target for 2013/14 of £400k. It encompasses the key areas of:-

- Taxi Licensing
- Licensing Act (pubs and clubs and events)
- General Licensing (animal boarding, riding establishments, skin/beauty therapies, street collections etc)
- Gambling Act licensing

18.2 During the year 2013/14 the Officers' Taxi Panel has met on 6 occasions and dealt with the following matters:

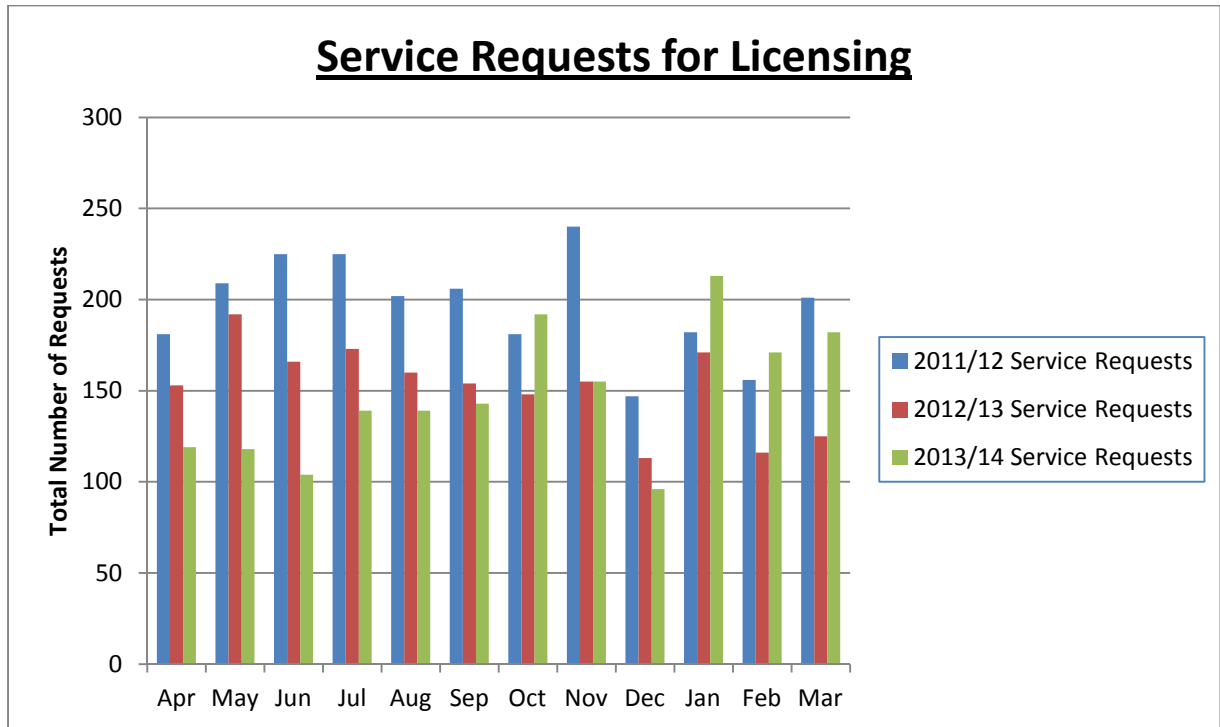
- a. applications for a County Transport Badge that needed referral – 8
- b. applications for hackney carriage/private hire drivers licence that needed referral – 9
- c. suspension of a hackney carriage/private hire drivers licence - 3
- d. disciplinary matters regarding the holder of a hackney carriage/private hire drivers licence - 4

18.3 The panel is facilitated by the Licensing Team and is chaired by the Head of Service. It comprises a lead officer from the areas of licensing, adult's and children's safeguarding, school transport admissions, legal, Hoople DBS Team and an officer from West Mercia

Constabulary. This forum enables the council to not only fulfil its statutory responsibilities when considering taxi drivers who have breached conditions or who do not meet the high standards normally accepted for our dual driver badges, but also enables these crucial decisions to be made in a joined up manner involving the council's and police's expert officers. The panel also regulates county transport badge holders who drive Herefordshire's school buses or escort vulnerable children and adults. Where necessary (e.g. revocations and appeals) these matters are referred onto the Sub Regulatory and/or Regulatory Committee, in accordance with the Council's constitution and the protocol for the Taxi Panel. See [Appendix 1](#) for these case referrals.

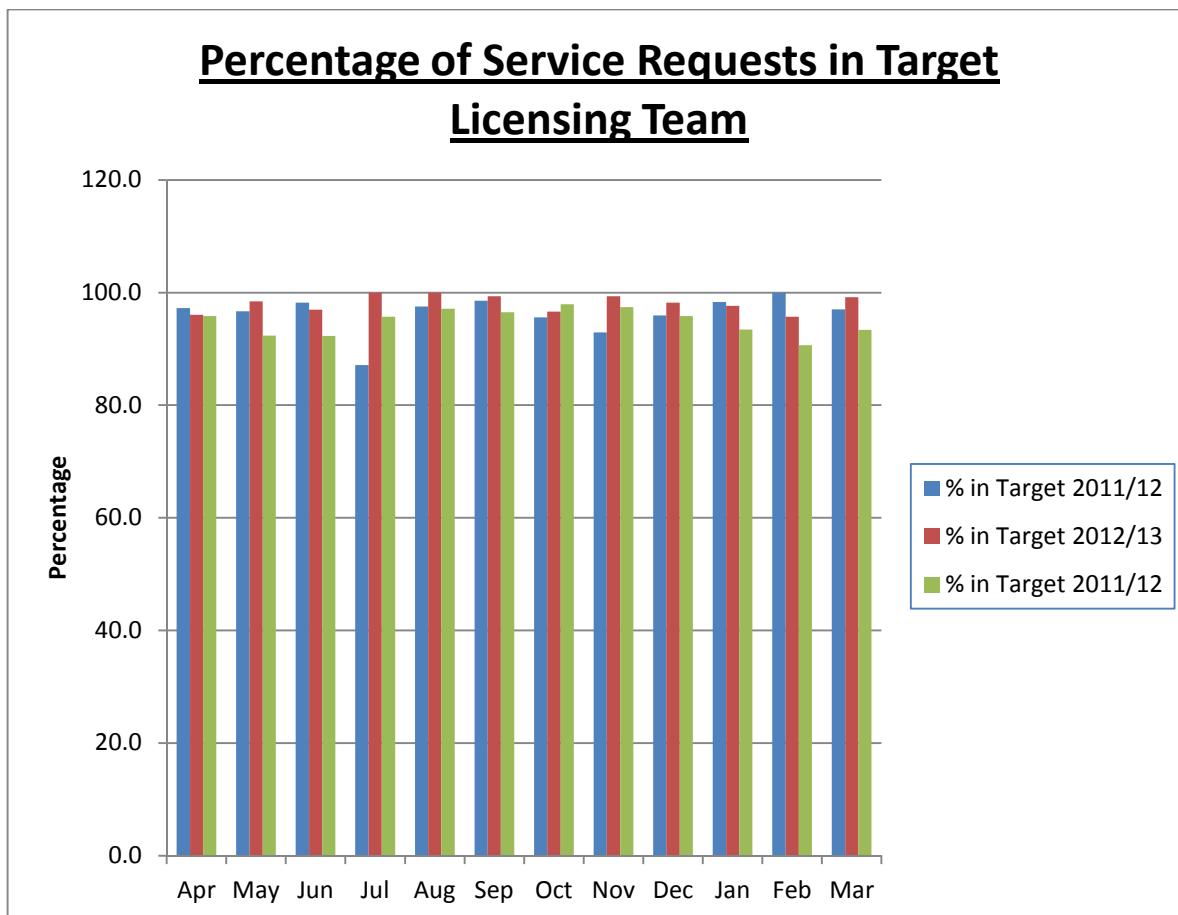
- 18.4 During the year 2013/14, the Sub-Committee has met on 15 separate occasions and has dealt with 21 cases presented by the Licensing Team. These were mostly licensing reviews and representations, but also included several matters relating to taxi vehicles and drivers referred from panel. This work also included several expedited reviews. Members should be aware that, based on police data, the number of licensing reviews undertaken in Herefordshire far exceed those carried out by the licensing authorities in the other areas of West Mercia's police force, which clearly demonstrates the close partnership working developed between Herefordshire Council's licensing team and West Mercia Police and the willingness to use the Licensing Act as intended by the Home Office. As a consequence, the police remain confident that Hereford's night time economy is still the safest in their region which hopefully reassures members of the good and effective work undertaken by the Regulatory Sub Committee. These cases are itemised for reference in [Appendix 2](#) attached.
- 18.5 The number of licensing matters going to the Committee over the last 12 months has decreased, yet the number of applications is roughly about the same. It would appear that since we have become a responsible authority and have been making representations, applicants appear to be more likely to accept the conditions requested without going to committee.
- 18.6 In addition to the above committee work, the licensing team also deals with many enquiries and complaints from the public. In 2013/14 there were 1771 such service requests, which compares to 1826 recorded during the previous year, implying a reduction in retail/hospitality activity in the county. In 2013/14, 95% of these service requests have been responded to within our 5 day response target which compares to a 98% response rate in the previous year. Since April 2013 businesses have been encouraged to use e-mail as the first contact and this has resulted in a rise in contacts direct to the Licensing inbox. This is in line with the corporate shift towards more electronic forms of communication being the norm as opposed to 'in person' methods. These figures will be reported upon next year as currently they are not recorded in the contact figures.
- 18.7 As is typical, the Christmas period also entailed a significant increase in licensing workload and regulation, although inspections were kept to an absolute minimum as a consequence of reducing expenditure.
- 18.8 The workloads and trends are shown in Graphs 7 and 8 below.

Graph 7: Licensing Service Requests



Graph 7 above shows a slight reduction in service request activity, although the number of licensed premises remains largely unchanged at about 850.

Graph 8: Licensing Service Requests



Graph 8 above shows a slight % decrease in the 5-day response to service requests by the team. Overall the percentage for 13/14 in target was 95%, compared to the previous year's 98%.

18.9 Taxi licensing enforcement work has continued into 2013/14, both in the day time and late at night.. This has involved checks on driver identity as well as checks on vehicle suitability. The number of drivers and vehicle proprietors issued penalty points for breach of conditions are:

- 15 drivers
- 14 vehicle proprietors

18.10 'General licensing fees' continue to move the service towards full cost recovery and were uplifted by 2% in April. Many of the fees are set by Central Government so cannot be varied, for the small amount licences which can be varied we expect the full costs to be recovered. There has been a reduction in income from the General Licensing function, due to the budget forecast being set during the unusually busy Jubilee year. The Government are proposing that a change in legislation will enable Local Authorities to set their own fees; we can then continue to work towards full cost recovery.

- 18.11 Taxi Marshalling has been undertaken in Hereford City since early December 2012. The scheme that operated in 2013/14 was funded by Hereford City Council, Public Health, West Mercia Police and through a grant received from the Police & Crime Commissioner, although the overall funding obtained for 2013/14 was £20k being some 2/3rds of the previous year. As a consequence, the scheme was reviewed during 2013 and due to reduced night time activity on Friday evenings, was operated on Saturday Night /Sunday mornings only.
- 18.12 Following a request from the trade and Police to extend the finishing time due to concerns that taxi operations & behaviour deteriorated after 3:00am on a Sunday morning, it was agreed to extend the scheme to 3:30am in order to address such concerns and subsequent feedback has indicated that the situation improved.
- 18.13 Police and A&E statistics show that the taxi marshalling initiative has proved to be very effective in managing the way taxis operate in Commercial Road. It is believed that effective dispersal of revellers and better regulation of taxis has been key in this improvement. The taxi marshalling scheme is also very popular with the taxi trade itself as it ensures a level playing field and etiquette amongst competing taxi drivers and taxi companies, which before was sometimes lacking.
- 18.14 The impact on A&E admissions and crime & disorder will continue to be monitored. It is hoped that the programme will continue beyond 31st March. Work is currently being undertaken to secure longer term funding with delivery potentially through an external partner agency. This would give the scheme more security as well as the ability to expand into other social enterprise activities subject to an external funding bid being approved.
- 18.15 The Licensing Team play a key role in a monthly meeting co-chaired with the police which involves most of the leading public agencies in Herefordshire, called 'MATAC' (Multi Agency Tasking and Coordination). It is through this forum that intelligence is shared which ensures that partnership working is achieved and targeted licensing enforcement is undertaken.
- 18.16 The Scrap Metal Dealers Act 2013 received Royal Assent on 28th February 2013, and replaced the previous registration requirements for scrap metal dealers and motor salvage operators from 1st October 2013. Scrap metal dealers and motor salvage operators are both "scrap metal dealers".
- 18.17 The legislation provides:
- An enhanced licence application process, including consultation with the police and Environment Agency. There are two categories of licence:
 - a site licence (can be for multiple sites within the council's area)
 - a mobile collector's licence (separate licences will be required for each council area where collections take place)
 - Requirement to obtain a basic Disclosure certificate of criminal record for each person.
 - Power for council to refuse or revoke licence or impose conditions where appropriate, subject to the right to make representations before refusal, revocation or the imposition of conditions (these are limited to times of operation and a requirement that metal will be kept in its original form for minimum of 72 hours)
 - Licence to be displayed at site or on mobile collector's vehicle where it can be read by the public
 - Sellers must produce prescribed personal ID at the point of sale
 - No cash purchases of scrap metal in any circumstances - payment must be by cheque or electronic transfer of funds
 - Police and council will have powers to inspect sites and records of scrap metal transactions
 - Central on-line register of licences published by the Environment Agency

- Fees are set locally - currently £419 for a 3year collector's licence and £490 for a 3year one site licence - £730 for two sites, £998 for three sites etc (Fees were increased 2% in April)
- Closure Notice (from police or council) for unlicensed sites; Closure Orders (via Magistrates' Court) if still used as such after seven days.

18.18 The Licensing Team have currently licensed 19 sites and 19 collectors generating approx £20k increased income.

18.19 The Mobile Homes Act 2013 has now been enacted and will potentially provide further licensing income in relation to the licensing and inspection of residential park/home sites. Early indications show that there are approx 60 such sites in the County with over 750 individual residential plots.

19. Community Impact

19.1 The report provides information about the regulatory matters which have an impact on the public of Herefordshire, including those activities which specifically help to safeguard our vulnerable people, protect consumers and businesses, and protect the environment as well as those activities which ensure that disease control and welfare of its livestock / animals is maintained at a high standard.

20. Equality and Human Rights

20.1 There are a number of areas within the Council's regulatory function which assist with the promotion or observance of equality and human rights.

20.2 This information report has paid due regard to our public sector equality duty.

21. Financial Implications

21.1 There are no direct financial implications regarding the information set out in this report.

23. Legal Implications

23.1 The Council's regulatory functions are undertaken within the scope of the relevant legislation and Council policies.

24. Risk Management

24.1 There are no particular risk management matters associated with the contents of this report, as it is an information report only.

25. Consultees

25.1 None

26. Background Papers

26.1 None identified.

27. Appendices

27.1 Appendix 1: Sub Regulatory (Licensing) Committees activities

Appendix 2: Summary of prosecution and formal enforcement activities for EHTS

Appendix 3: NI 182 Business Satisfaction Survey for EHTS

Appendix 1

2013/14	21 Reviews held by Sub Regulatory (Licensing) Committees
April	<p><u>25th April</u></p> <ul style="list-style-type: none"> • Fitness of Taxi H055 following VOSA inspection • Fitness of Taxi H275 following VOSA inspection • Fitness of Taxi H088 following VOSA inspection • Application for New Premises Licence for Marmaris Take Away, Union Street, Hereford – Adjourned until 24th July. <p><u>30th April</u> - objection received to 2% taxi fee increase –</p>
May	<p><u>21st May</u> –</p> <ul style="list-style-type: none"> • Review of accumulation of Penalty Points by drivers for repeat breaches of conditions x4 – Warnings issued re future behaviour • New Premises Licence application Chicken Munchies, Commercial Road, Hereford – Granted with conditions
June	<p><u>5th June</u></p> <ul style="list-style-type: none"> • Expedited Review of the premises licence for Lyde Court, Hereford. Conditioned pending full review <p><u>17th June</u></p> <ul style="list-style-type: none"> • Representation against the interim steps for Lyde Court – No change in conditions <p><u>28th June</u></p> <ul style="list-style-type: none"> • Full review of premises licence for Lyde Court – Conditions added to licence
July	<p><u>24th July</u></p> <ul style="list-style-type: none"> • Re-convened hearing for Marmaris – Licence granted with conditions • Variation of premises licence for Bromyard Kebab House – granted with amended conditions <p><u>30th July</u></p> <ul style="list-style-type: none"> • Review of the suspension of a taxi driver – upheld and licence revoked
August	<p><u>28th July</u></p> <ul style="list-style-type: none"> • Application for a Temporary Event Notice for Yew Tree Inn, Preston on Wye – Granted
Sept	<p><u>23rd September</u></p> <ul style="list-style-type: none"> • Variation of the premises licence in respect of The Victory Public House, Hereford – Granted with conditions – Subsequently appealed to the Magistrates Court and the appeal was withdrawn
November	<p><u>27th November</u></p> <ul style="list-style-type: none"> • Expedited review of the premises licence for the Brewers Arms, Hereford – Licence suspended
December	<p><u>2nd December</u></p> <ul style="list-style-type: none"> • Representation against the interim steps for the Brewers Arms – Licence reinstated with conditions

December	<u>20th December</u> <ul style="list-style-type: none"> • Full review of the premises licence for the Brewers Arms – Conditions added to licence • Review of the suspension of a taxi driver – upheld and suspension extended to total of 6 months
January	<u>6th January 2014</u> <ul style="list-style-type: none"> • Application for variation of the premises licence for the Potting Shed, Ryeland Street, Hereford – Granted with conditions
April	<u>29th April</u> <ul style="list-style-type: none"> • Review of the premises licence in respect of the Yew Tree Inn, Preston on Wye – Temporary change of conditions on licence

Appendix 2:

ENVIRONMENTAL HEALTH AND TRADING STANDARDS ENFORCEMENT ACTIONS

ENVIRONMENTAL HEALTH AND TRADING STANDARDS (INCLUDING COMMUNITY PROTECTION) PROSECUTIONS FROM APRIL 2013 TO MARCH 2014 – CUMULATIVE LIST

PROSECUTIONS									
Name & Location	Defendants Trade	Nature of Offence	Act	No of Charges	Plea	Result	Costs Requested	Costs Awarded	Remarks
Phillip Twose 11 Cyd Terrace Clyne Neath SA114ES NEW LOOK ROOF COATINGS	Roof Contractor	Making false claims regarding pricing and deceiving consumers	4 x Consumer Protection from Unfair Trading Regs 2008	4	Guilty	12 months imprisonment concurrent Hearing: 15.04.2013	£15,800	£0	Compensation Order applied for £17,500 but not awarded.

John Gumbrell 22 Rolss Avenue Monmouth NP25 5AY NEW LOOK ROOF COATINGS	Roof Contractor	Making false claims regarding pricing and deceiving consumers	4 x Consumer Protection from Unfair Trading Regs 2008	4	Guilty	12 months imprisonment concurrent Hearing: 15.04.2013	£15,800	£0	Compensation Order applied for £17,500 but not awarded.
Nadeem Ghani Weatherguard (Nottingham) Ltd 33 Woodall Road Wollaton Nottingham NG8 1LE	Roof Contractor	Making false claims regarding pricing and deceiving consumers	As Director: 1 x Consumer Protection from Unfair Trading Regs 2008 As individual: 2 x Consumer Protection from Unfair Trading Regs 2008	1 2 (3 x charges withdraw)	Guilty	£400 £400 x 2 Hearing: 10.05.2013	£2100.00	£1200.00	Compensation - £3400 given to prosecution just before hearing to hand over to victim and therefore not strictly part of the sentence
Sean Murphy 4 Rudhall View Herefordshire HR9 7ND (case 646)	Builder	Fly-tipping	1 x S33 1 and 6 Environmental Protection Act 1990	1	Guilty	£429.37 Compensation Order Hearing: 06.09.2013	£494.75	£495.75	
Stephen Lines Delvern Stockenhill Road Leominster Herefordshire HR6 8PP (case 595)	Builder	Fly-tipping offences and transporting waste when not a registered waste carrier	2 x S33 1 a and 6 Environmental Protection Act 1990 1 x S34 1 b of Environmental Protection Act 1990 1 x S1 Control of Pollution (Amendment) Act 1989	1 & 3 dropped	Guilty	Settled out of court before trial on 29/07/2013	£448.00	£250.00	Settled out of court before trial

Nawzad Sherzad Said Flat 3 25 Broad Street Leominster Herefordshire HR6 8BT	Shop Proprietor	Selling cigarettes which bore signage which could be mistaken for registered trade mark. Selling cigarettes which did not have the written or pictorial health warnings	4 x Trade Marks Act 1994 (S92) 3 x Consumer Protection Act 1987 (S12)	4 3	Guilty	4 month imprisonment on each charge – concurrent One months imprisonment on each charge – concurrent with all other sentences Hearing: 19.11.2013	£4034.54	£0	Overall sentence then 4 months imprisonment – as all were concurrent. Pre-sentence report recommended unpaid work and a reoffending probability of 16%, Judge indicated a deterrent sentence was needed.
Simon Gibbs 1 St Gregory's Court Abbotsmead Road Belmont Hereford CS/652	NHS Worker	1 x charge for littering	Environmental Protection Act 1990	1	Guilty	£75 fine Hearing: 24.1.14	£344.75	£235.75 (£185.75 EHTS & £50.00 LEGAL)	

<p>Nigel Williams 38 Huntsman Drive Hereford HR4 0PN</p> <p>DS/648</p>	<p>Driver</p>	<p>1 x charge for fly tipping</p>	<p>Environmental Protection Act 1990 (S33 1 a & 6)</p>	<p>1</p>	<p>Guilty</p>	<p>Conditional Discharge 12 months</p> <p>£15 victim surcharge</p> <p>Hearing: 06.03.14</p>	<p>£221.74</p>	<p>£221.00</p>	
<p>Ata Abdullah Hassan 68 Princess Street Birmingham B5 7PZ (t/a Istanbul Mini Market, Leominster)</p> <p>TT/657</p>	<p>Shop Proprietor</p>	<p>Selling cigarettes which bore signage which could be mistaken for registered trade mark.</p> <p>Selling cigarettes which did not have the written or pictorial health warnings</p>	<p>6 x Trade Marks Act 1994 (S92)</p> <p>5 x Consumer Protection Act 1987 (S12)</p>	<p>6</p> <p>5</p>	<p>Guilty</p>	<p>£200 per offence</p> <p>£200 per offence except for 01/12/2013 where no separate penalty</p> <p>Hearing: 28.02.2014</p>	<p>£2235.81</p>	<p>£2000.00</p>	<p>Magistrates said fine would have been £3K but reduced by 1/3 for early guilty plea. Fine and costs and £200 gov surcharge to be paid £100 pm. He had wanted to pay £50pm but magistrates demanded it was £100. The TMA charges all relate to Golden Virginia sold on 5 occasions and what was seized on 06/11/13.</p>

FORMAL CAUTIONS		Date of Caution	
		1 x s34 1 a of the Environmental Protection Act 1990 – failed to take measures to ensure waste was carried by an authorised waste carrier	08.04.2013
		1 x s33 1 a and 5 of the Environmental Protection Act 1990 – attempted to knowingly cause controlled waste to be deposited	08.04.2013
		1 x s33 1 a and 5 of the Environmental Protection Act 1990 – fly tipping when no waste management licence authorising the deposit was in force at the time	18/07/2013
	Ebay Seller	2 x charges – S 92 (1) (c) of the Trade Marks Act 1994 – selling body jewellery which bore sign identical to a registered trade mark	23.12.13
	Ebay Seller	2 x charges – S 92 (1) (b) of the Trade Marks Act 1994 – selling mobile socks which bore signs likely to be mistaken as a registered trade mark	23.12.13
	Site Manager	1 x charge – 33 (1) (a) and 33 (6) of the Environmental Protection Act 1990 – fly tipping when no waste management licence authorising the deposit was in force.	08.10.13

WRITTEN WARNINGS			
One	Farmer	Cattle Identification Regulations 2007 & Animal Health Act 1981 etc., – moving three unregistered calves.	23.12.13

PROSECUTION FILES ISSUED / OPENED DURING THIS PERIOD	28 (EHTS and CPT)
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Appendix 3: Business Satisfaction Survey (National Indicator 182)

Background

- This is an ongoing survey, conducted to measure the previous National Indicator NI 182, “Satisfaction of business with local authority regulation services”
- This survey has been conducted regularly from October 2008 and samples businesses where one of the EH & TS regulatory services has had a contact with them.
- This report presents the results of the survey for the period from April 2013–March 2014 (2013/2014) and a summary of the results are provided below-

Results:

- All results published here relate to the period April 2013 to March 2014 (2013/2014).
- Of the total of **183** questionnaires distributed, 89 completed responses were received equating to a response rate of **48.6%**.(our target is 50%) Of these responses, 19 were from ‘non-compliant’ contacts, 69 were compliant (i.e. ‘not non-compliant’) and one business did not provide enough details.
- **The NI 182 score for the period April 2013 to March 2014 is 90%.** This compares with 74% for the period April to October 2012 which represents the year 2012-13.
- 100% of respondents agreed that their business was treated fairly. The corresponding figure for the period April to October 2012 was 91%; while 5% disagreed.
- 100% of respondents agreed that the contact was helpful. The corresponding figure for the period April to October 2012 was 90%; while 4% disagreed.
- 100% were satisfied with the service received overall. The corresponding figure for the period April 2012 to September 2012 was 90%; while 4% disagreed.



MEETING:	REGULATORY COMMITTEE
MEETING DATE:	5 JUNE 2014
TITLE OF REPORT:	REVIEW OF REGULATION OF INVESTIGATORY POWERS ACT (RIPA) POLICY
REPORT BY:	SOLICITOR TO THE COUNCIL

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

County-wide

Purpose

To make the Committee aware of the Regulation of Investigatory Powers Act 2000 (RIPA) policy, which has been reviewed and updated to reflect legislative changes under the Protection of Freedoms Act 2012, and invite the Committee to comment if it wishes prior to the policy being presented to Cabinet.

Recommendation

THAT: the report for Cabinet on the current legal position with regard to RIPA and the revised policy be noted, subject to any comment the Committee wishes to make.

Alternative Options

1. Not approving the revised policy would lead to failure to follow legislative provision.

Reasons for Recommendations

2. The council policy on RIPA has been updated to reflect the legislative changes detailed in the draft report for Cabinet (included at Appendix 1).

Further information on the subject of this report is available from
Erica Hermon, Corporate Statutory Services Manager on Tel (01432) 261906

Key Considerations

3. The Regulation of Investigatory Powers Act 2000 (RIPA) provides the framework under which authorised regulators are able to carry out surveillance activities and access communications data which would otherwise not be legal because of the impact on human rights. RIPA regulates councils in a manner that is compatible with the European Convention of Human Rights and Fundamental Freedoms, which is incorporated into domestic law by the Human Rights Act 1998.

Community Impact

4. As detailed in Appendix 1.

Equality and Human Rights

5. As detailed in Appendix 1.

Financial Implications

6. As detailed in Appendix 1.

Legal Implications

7. As detailed in Appendix 1.

Risk Management

Consultees

8. As detailed in Appendix 1.

Appendices

Appendix 1 – draft report to Cabinet on updated RIPA policy

Background Papers

None

MEETING:	CABINET
MEETING DATE:	12 JUNE 2014
TITLE OF REPORT:	REVIEW OF REGULATION OF INVESTIGATORY POWERS ACT (RIPA) POLICY
REPORT BY:	SOLICITOR TO THE COUNCIL

Classification

Open

Key Decision

This is not a key decision.

Wards Affected

County-wide

Purpose

The purpose of this report is to seek approval of the Regulation of Investigatory Powers Act 2000 (RIPA) policy which has been reviewed and updated to reflect legislative changes under the Protection of Freedoms Act 2012.

RIPA provides a legal framework for a local authority to conduct covert surveillance techniques. The legislation ensures that any surveillance activity conducted by the council is legal, proportionate and necessary. The recent legislative changes provide further protection to individuals to ensure that covert surveillance techniques are only used if they are judicially approved and are required to detect or prevent serious crime.

Recommendation

THAT: Cabinet note the current legal position with regard to the Protection of Freedoms Act 2012 and approve the revised policy.

Alternative Options

1. Not approving the revised policy would lead to failure to follow legislative provision.

Reasons for Recommendations

2. The council policy on RIPA has been updated to reflect the legislative changes identified below and is included as Appendix 1.

Key Considerations

3. The Regulation of Investigatory Powers Act 2000 (RIPA) provides the framework under which authorised regulators are able to carry out surveillance activities and access communications data which would otherwise not be legal because of the impact on human rights. RIPA regulates councils in a manner that is compatible with the European Convention of Human Rights and Fundamental Freedoms, which is incorporated into domestic law by the Human Rights Act 1998.
4. Herefordshire Council will, on occasion, need to use covert surveillance in order to carry out its enforcement functions effectively. Examples of enforcement activities which may require the use of RIPA include trading standards enforcement activities against rogue traders and loan sharks, community and fire safety, fraud investigations and child protection.
5. RIPA provides safeguards to ensure that where councils undertake directed surveillance, use Covert Human Intelligence Sources (CHIS) or access communications data, their usage is always recorded and fully transparent.
6. Some local authorities have been criticised in the past for using surveillance powers in low level cases such as school admissions issues or bin collections. On 1 November 2012 legislative changes were introduced governing how local authorities use RIPA. Amendments in the Protection of Freedoms Act 2012 mean that local authority authorisations under RIPA can only be given effect once an order approving the authorisation has been granted by a Justice of the Peace (JP).
7. In addition a local authority can only grant authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences that could attract a custodial sentence of six months or more, or relate to knife, tobacco or alcohol sales to children. In recent years the council has only used RIPA for these types of activities.
8. Local authorities will no longer be able to use directed surveillance in some cases where it was previously authorised. But this does not mean that it will not be possible to investigate these areas with a view to stopping offending behaviour. The statutory RIPA Code of Practice on covert surveillance makes it clear that routine patrols, observation at trouble 'hotspots', immediate response to events and overt use of CCTV are all techniques which do not require RIPA authorisation.
9. RIPA applications must still go through the current authorisation process and be authorised by one of the specified authorising officers. The authorised RIPA application must then be presented to the Magistrate for judicial approval. The primary function of local government enforcement work is to protect the public, the environment and groups such as consumers and workers. Carrying out regulatory functions and enforcement in an equitable, practical and consistent manner helps to promote a thriving national and local economy, and can help prevent and detect crime and disorder.

Community Impact

10. Local authorities have a wide range of functions and are responsible for enforcing 1,000 separate Acts of Parliament and secondary legislation. Regulatory functions include consumer protection, animal health and welfare, fire safety and child protection. Effective and efficient enforcement protects the most vulnerable in our communities and acts as an enabler for economic progress.

Equality and Human Rights

11. RIPA sets out a regulatory framework for the use of covert surveillance techniques by public authorities. If such activities are conducted by Council officers then RIPA regulates them in a manner which is compatible with the European Convention on Human Rights (ECHR), particularly Article 8 (the right to respect for private and family life).

Financial Implications

12. There are no financial or value for money implications as a result to the change in policy due to legislative changes in the Protection of Freedoms Act 2012.

Legal Implications

13. Compliance with RIPA and its provisions ensures that regulatory officers have the necessary permissions to operate, and that the activity is legal, necessary and proportionate.
14. The proposed policy helps safeguard the council in its use of RIPA and when followed will ensure we comply with the law. Should the council fail to approve the policy or a similar revised legally compliant policy, we would be at real risk of legal challenge in our subsequent use of RIPA.

Risk Management

15. Failure to follow the legislative provision could result in legal challenge and would seriously damage the council's ability to deliver its statutory roles in regulation.

Consultees

Trading standards
Legal
Children's commissioning
Parking and CCTV
Management board

Appendices

Appendix 1 – Updated RIPA policy

Background Papers

None

The Regulation of Investigatory Powers Act 2000

GENERAL STATEMENT OF POLICY

This policy document explains how Herefordshire Council will comply with the Regulation of Investigatory Powers Act 2000 ('RIPA') in relation to directed surveillance, use of covert human intelligence sources and the acquisition of communications data. This Policy is supplementary to the legislation, the [statutory code of practice](#) and the [Home Office guidance to local authorities in England and Wales on the judicial approval process for RIPA and the crime threshold for directed surveillances](#).

1.0 BACKGROUND

- 1.1 The primary function of central and local government regulation and enforcement is to protect the individual, the environment, and a variety of groups such as consumers and workers. At the same time, carrying out regulatory functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy, and to prevent and detect crime and disorder.
- 1.2 The Regulation of Investigatory Powers Act 2000 (RIPA) came into effect in September 2000. RIPA sets out a regulatory framework for the use of covert surveillance techniques by public authorities. If such activities are conducted by Council officers then RIPA regulates them in a manner which is compatible with the European Convention on Human Rights (ECHR), particularly Article 8 (the right to respect for private and family life).
- 1.3 Sections 37 and 38 of the Protection of Freedoms Act 2012 (the Act) came into force on 1 November 2012. Under the Act, local authority authorisations and notices for the use of particular covert techniques (direct surveillance, covert human intelligence sources (CHIS) and the acquisition of communications data) can only be given effect once an order approving the authorisation or notice has been granted by a Justice of the Peace (JP).
- 1.4 In addition amendments to the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 ("the 2010 Order") mean that a local authority can now only seek approval for an authorisation under RIPA for the use of directed surveillance where the local authority is investigating particular types of criminal offences. These are criminal offences which attract a maximum custodial sentence of six months or more or criminal offences relating to the underage sale of alcohol or tobacco.
- 1.5 Herefordshire Council will on occasion need to use covert surveillance in order to carry out its enforcement functions effectively. Examples of enforcement activities which may require the use of RIPA include trading standards, community and fire safety, fraud investigations and child protection.
- 1.6 The Council takes seriously its responsibilities as a regulatory authority and will at all times act in accordance with the law, ensuring that any regulatory and enforcement action it takes is lawful, necessary and proportionate.

2.0 SCOPE AND DEFINITIONS

2.1 This policy applies to all Herefordshire Council services and services provided on their behalf.

2.2 The main purpose of RIPA is to ensure that the relevant investigatory powers are used in accordance with human rights. These powers are:

- interception of communications
- acquisition of communications data (e.g. billing data)
- intrusive surveillance (on residential premises/in private vehicles)
- directed surveillance in the course of specific operations
- use of covert human intelligence sources (informants etc)
- access to encrypted data

2.3 By working in conjunction with other, pre-existing legislation, the Act ensures the following points are clearly covered:

- purposes to which relevant powers may be used
- which authorities can use the powers
- authorisation of the use of the powers
- the use that can be made of material gained
- independent judicial oversight
- a means of redress for the individual where powers are breached

2.4 Local authorities use three investigatory techniques that can be authorised under RIPA. These techniques are:

- **Directed surveillance** - surveillance which is covert but not intrusive, and which is undertaken for the purposes of a specific investigation or a specific operation, in such a manner as is likely to result in obtaining private information about a person – whether or not the target of the investigation/operation and conducted otherwise than by way of an immediate response to events or circumstances, the nature of which are such that it would not be reasonably practicable for an authorisation.
- A **covert human intelligence source (CHIS)** - undercover officers, public informants and people who make test purchases.
- **Communications data (CD)** - is the 'who', 'when' and 'where' of a communication, but not the 'what' (i.e. the content of what was said or written). RIPA groups CD into 3 parts:
 - 'traffic data' (which includes information about where the communications are made or received);
 - 'service use information' (such as the type of communication, time sent and its duration); and
 - 'subscriber information' (which includes billing information such as the name, address and bank details of the subscriber of telephone or internet services).

2.5 The Council must be satisfied that there is an identifiable offence before authorising any covert surveillance. In addition the key tests in any application for authorisation are:

- Necessity
- Proportionality and
- Risk of collateral intrusion

3.0 DIRECTED SURVEILLANCE

3.1 Directed surveillance is defined in Section 26(2) of RIPA as surveillance which is covert, but not intrusive, and undertaken:

- for the purposes of a specific investigation or specific operation;
- in such a manner as it is likely to result in the obtaining of **private information** (Section 13) about the person (whether or not one specifically identified for the purposes of the investigation or operation); and
- otherwise than by way of an immediate response to events or circumstances, the nature of which is such that it would not be reasonably practical for an authorisation under Part II of RIPA to be sought for the carrying out of the surveillance

3.2 The Council can only use directed surveillance to investigate a crime where the offence being investigated meets one of the following conditions:

- The offence is punishable, whether on summary conviction or on indictment to a maximum term of at least 6 months of imprisonment, or
- Section 146, 147 or 147A of the Licensing Act 2003 or
- Section 7 of the Childrens and Young Persons Act 1933

3.3 The crime threshold applies only to the authorisation of **directed surveillance** by local authorities under RIPA, not to the authorisation of local authority use of CHIS or their acquisition of CD.

3.4 No officer of the council will undertake intrusive surveillance. Intrusive surveillance is covert surveillance that is carried out in relation to anything taking place on residential premises or in any private vehicle and which involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device.

3.5 Surveillance operations will only be carried out by officers who have received appropriate training in human rights and the Act.

3.6 No officer within the Council will undertake directed surveillance without prior or emergency authorisation.

3.7 Authorisation will only be given by the Solicitor to the Council in his/her position as the Monitoring Officer or, in his/her absence, by Director Economies, Communities and Corporate.

3.8 The use of directed surveillance under RIPA will not be authorised to investigate matters that do not involve criminal offences or to investigate low-level offences that do not meet the threshold test.

4.0 COVERT HUMAN INTELLIGENCE SOURCE (CHIS)

4.1 A CHIS is defined by section 26(8) of RIPA as a person who establishes or maintains a personal or other relationship with another person for the covert purpose of facilitating the doing of anything falling within the following points;

- covertly uses such a relationship to obtain information or to provide access to any information to another person: or
- covertly discloses information obtained by the use of such a relationship or as a consequence of the existence of such a relationship and

4.2 Authorisations for CHIS will only be given to officers who have undergone appropriate training in human rights and the Act.

4.3 The authorisation for the conduct and use of CHIS may include:

- someone employed or engaged by the Council to hide their true identity or motivation and covertly use a relationship to obtain information and disclose it to the local authority (an undercover officer); or
- a member of the public who provides a tip-off to a local authority and is asked to go back and obtain further information by establishing or continuing a relationship whilst hiding their true motivation (an informant).

4.4 Vulnerable individuals (a person who is in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care or protect himself against significant harm or exploitation) may be authorised to act as a CHIS **only in the most exceptional circumstances**. Authorisation must be given by the Chief Executive or in his/her absence the Director Adults Wellbeing and he/she will only do so after taking advice from the Solicitor to the Council.

4.5 Authorisation will only be given for the use of a covert human intelligence source, when the activity is necessary:

- to prevent or detect crime,
- in the interests of public safety,
- for the economic well-being of the UK,
- the purposes of national security
- for protecting public health.
- or is revenue related or specified by the Secretary of State.

5.0 COMMUNICATIONS DATA

5.1 The term 'communications data' embraces the 'who', 'when' and 'where' of a communication but not the content, not what was said or written. It is information about a communication - not the communication itself.

5.2 Under RIPA a local authority can only authorise the acquisition of the less intrusive types of communications data such as service use and subscriber information. Under **no circumstances** can local authorities be authorised to obtain traffic data under RIPA.

- 5.3 In the case of communications data the RIPA authorisation or notice will be scrutinised by a single point of contact (a 'SPoC'). The SPoC is either an accredited individual or a group of accredited individuals trained to facilitate lawful acquisition of communications data and effective co-operation between a public authority and Communication Service Providers (CSPs). An accredited SPoC promotes efficiency and good practice in ensuring only practical and lawful requests for CD are made
- 5.4 Under RIPA it is against the law for a business to intercept any electronic communication on its, or anyone else's, system. There are some exceptions to this:
- Interception is authorised under a warrant (this does not apply to local authorities)
 - where the interception takes place with consent
 - where the interception is connected with the operation of the communications service itself
- 5.5 Interception for business related workplace monitoring may be applicable in certain circumstances by the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000. The regulations are designed to meet the legitimate needs of businesses to manage their information systems, making use of the capabilities of modern communications technology, but in a way that is consistent with high standards of privacy.
- 5.6 Interception of Council telecommunications will only be made in accordance with the Regulations, and following procedures agreed by the Solicitor to the Council. Interception may be carried out in the following circumstances:
- To establish the existence of facts or to ascertain compliance with regulatory or self-regulatory practices (e.g. to keep records of communications where the specific facts are important, such as being able to prove that a customer has been given certain advice).
 - To check the standards are being achieved or ought to be achieved (e.g. to check the quality of e-mail responses sent by members of staff to customer enquiries or for staff training).
 - To prevent or detect crime (e.g. to check that employees or others are not involved in defrauding the Council).
 - To investigate or detect unauthorised use of the telecommunications system. Note that interception that is targeted at personal communications that do not relate to the business is not allowed regardless of whether the use of the system for such communications is authorised.
 - To ensure the security of the system and its effective operation (e.g. to check for viruses or other threats to the system or to enable automated processes such as caching or load distribution).
- 5.7 The Council will make all reasonable efforts to inform potential users that interceptions may be made.

6.0 AUTHORISATION

- 6.1 At the start of an investigation, council officers will need to satisfy themselves that what they are investigating is a criminal offence. Directed surveillance is an invasive technique

and at the point it is decided whether or not to authorise its use, it must be clear that the threshold is met and that it is necessary and proportionate to use it.

- 6.2 The applicant will complete a written RIPA authorisation or notice form (Appendix 1) setting out for consideration by the authorising officer or, for communications data the designated person, why use of a particular technique is necessary and proportionate in their investigation. This authorising officer or designated person will consider the application, recording his/her considerations and countersign the form if he/she believes the statutory tests are met.
- 6.3 In cases where, through the use of surveillance, it is likely that knowledge of confidential information will be acquired, the use of surveillance is subject to a higher level of authorisation. The Chief Executive or in his/her absence Director Economy, Communities and Corporate will authorise surveillance activity in such circumstances, and will do so only after taking advice from the Solicitor to the Council.
- 6.4 “Confidential information” is defined for the purposes of RIPA as matters subject to legal privilege, confidential personal information or confidential journalistic material. Confidential material must not be copied or retained unless for a specific purpose – e.g. use as evidence in proceedings, and may only be disseminated following advice from the Solicitor to the Council.
- 6.5 After the form has been countersigned the local authority will seek judicial approval for their RIPA authorisation or notice. The Justice of the Peace (JP) will decide whether a local authority grant or renewal of an authorisation or notice to use RIPA should be approved and it will not come into effect unless and until it is approved by a JP.
- 6.6 The time limits for authorised applications are 3 months for directed surveillance and 12 months for a CHIS (one month if the CHIS is under 18). Authorisations and notices for communications data will be valid for a maximum of one month from the date the JP has approved the grant. This means that the conduct authorised should have been commenced or the notice served within that month.

7.0 RESPONSIBILITIES

7.1 Corporate Directors to:

- ensure all regulatory staff are aware of and trained in the Act
- provide procedures to be adopted in the application for, granting etc of, and recording of authorisation
- ensure copies of the Codes of Practice for Covert Surveillance, The Use of Covert Human Intelligence Sources, and Acquisition and Disclosure of Communications Data are available for public reference on the Council’s website.
- ensure that details of the complaints procedure involving the Investigatory Powers Tribunal are readily available for public reference purposes on the Council’s website.

7.2 Director Economy, Communities and Corporate to:

- Fulfil the role of senior responsible officer for RIPA and will be responsible for:
 - the integrity of processes for the management of CHIS

- compliance with Chapter II of Part I of RIPA (Acquisition and Disclosure of Communications Data)
- compliance with Part II of RIPA (Surveillance and Covert Human Intelligence Sources)
- oversight of the reporting of errors to the Surveillance and Communications Commissioners, identification of the cause(s) of errors and the implementation of processes to minimise repetition of errors
- engagement with the Commissioners' inspectors when they conduct their inspections
- oversight of the implementation of post-inspection action plans approved by the relevant Commissioner
- maintaining a log of all RIPA applications, authorisations etc including copies of all completed forms, and reviewing the quality of applications, authorisations etc.
- ensuring that all authorising officers are of an appropriate standard in light of any recommendations made by Inspectors' reports
- ensuring that Cabinet Members and members of the Audit & Assurance Committee have sufficient understanding of human rights and RIPA to be able to discharge their responsibilities under this policy

7.3 Solicitor to the Council to:

- act as the authorising officer or, for communications data, the designated person to consider applications, and issue, renew, cancel or refuse authorisations relating to investigations of Council employees, in accordance with the criteria set out in the Act and in the Office of Surveillance Commissioners Guidance for Inspections.
- maintain a record of all authorisations granted in the Council
- report to Audit & Assurance Committee annually so that the Committee can ensure that RIPA use is consistent with the policy and that the policy remains fit for purpose
- Hold copies of all authorisations, extensions to and cancellations of authorisations and carry out an annual review of authorisations.

7.4 Head of Trading Standards and Licensing to:

- ensure applications are complete and are made out on the appropriate *pro forma*, except in the case of emergency applications
- maintain a record of applications and authorisations, and provide copies to the Solicitor to the Council within 5 working days of the application, irrespective of whether the authorisation is granted, and copies of all cancelled authorisations within 5 working days of the cancellation.
- ensure all staff involved in surveillance operations have access to the relevant Codes of Practice

- review authorisations at least weekly and record the review on the authorisation and ensure that authorisations are cancelled as soon as they have either served their original purpose or no longer meet the criteria for issue, whichever is the earlier
- ensure that the forms and procedures detailed in the Trading Standards Investigations Manual are kept up to date and comply with RIPA and the draft Codes of Practice
- in the case of communications data, to act as a single point of contact (a 'SPoC').

7.6 All staff involved in surveillance operations to:

- be familiar with Act, the relevant Codes of Practice, and the Office of Surveillance Commissioners Guidance for Inspections
- ensure that the authorising officer is provided with all relevant information available to the investigation to enable an informed decision to be made
- advise the authorising officer as soon as practicable when an operation unexpectedly interferes with the privacy of an individual who is not the subject of the surveillance.
- cease the surveillance operation immediately if it no longer meets the authorisation criteria

Relevant Background Papers

Covert Surveillance Code of Practice and Covert Human Intelligence Sources Code of Practice issued by the Home Office:

Guidance to local authorities on the judicial approval process for RIPA and the crime threshold for directed surveillance:

The Regulation of Investigatory Powers Act (RIPA) 2000:

<http://www.opsi.gov.uk/acts/acts2000/20000023.htm>

**Application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance.
Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.**

Local authority:.....

Local authority department:.....

Offence under investigation:.....

Address of premises or identity of subject:

.....
.....

Covert technique requested: (tick one and specify details)

Communications Data

Covert Human Intelligence Source

Directed Surveillance

Summary of details

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Note: this application should be read in conjunction with the attached RIPA authorisation/RIPA application or notice.

Investigating Officer:.....

Authorising Officer/Designated Person:.....

Officer(s) appearing before JP:.....

Address of applicant department:.....

.....

Contact telephone number:.....

Contact email address (optional):.....

Local authority reference:.....

Number of pages:.....

Order made on an application for judicial approval for authorisation to obtain or disclose communications data, to use a covert human intelligence source or to conduct directed surveillance. Regulation of Investigatory Powers Act 2000 sections 23A, 23B, 32A, 32B.

Magistrates' court:.....

Having considered the application, I (tick one):

- am satisfied that there are reasonable grounds for believing that the requirements of the Act were satisfied and remain satisfied, and that the relevant conditions are satisfied and I therefore approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal of the authorisation/notice.
- refuse to approve the grant or renewal and quash the authorisation/notice.

Notes

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Reasons

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Signed:

Date:

Time:

Full name:

Address of magistrates' court: