



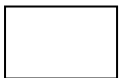
Report of the Assistant Chief Executive (Corporate Governance)

LICENSING COMMITTEE

Date: Tuesday 2nd December 2008

**Subject: Entertainment Licensing Section
Liaison & Enforcement Team – Update and Activity Report**

Electoral Wards Affected:



Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

1.0 Purpose Of This Report

- 1.1 To present the Licensing Committee with the report on enforcement activity undertaken by the Council's Entertainment Licensing Section for the period January to October 2008.

2.0 Background Information

- 2.1 2008 has been a particularly busy year for the Entertainment Licensing's Enforcement team, especially with the enactment of new legislation (Regulators' Compliance Code) which has had a significant impact on the delivery of the department's enforcement functions, in particular the manner in which licensed & unlicensed premises are targeted / inspected. In addition, the Enforcement team has seen an increase in its obligations through closer partnership working with key agencies such as, West Yorkshire Police, British Transport Police, West Yorkshire Trading Standards Service, West Yorkshire Fire & Rescue, Health & Environmental Action Service, Gambling Commission, Security Industry Authority (SIA) and others. Outcomes from closer partnership working have yielded very encouraging results creating solid foundations for further development whilst utilising agencies' resources by the most efficient and effective means.

The Licensing department's enforcement team continue to be heavily involved in the co-ordinating of Pubwatch forums throughout the Leeds district. The responsibility of the day-to-day running of Leeds' Pubwatches lies with its members i.e. licensed operators, with frequent input and guidance from agencies, in particular Entertainment Licensing and West Yorkshire Police. The Pubwatch scheme is accepted as a very useful tool in assisting with the promotion of the four licensing objectives by facilitating the sharing between its members, of intelligence, best practice, and topics of interest to name a few. Unfortunately, attendance by licensed operators to Pubwatch meetings is ad-hoc and is a significant drain on both West Yorkshire Police and LCC Entertainment Licensing resources in assisting the various forums with the co-ordinating & running of the meetings. As such, to further develop the Pubwatch scheme in Leeds, consideration is currently being given to funding a full-time Pubwatch co-ordinator post.

3.0 Main Issues

3.1 Enactment of new legislation & procedures during the reporting period

Regulators' Compliance Code: Came into force on 6th April 2008. Its aim is to embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement among the regulators it applies to, such as licensing enforcement. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on businesses etc. The Code effectively removes routine / random inspections from licensing programmes. Regulators should focus their greatest inspection effort on regulated entities i.e. pubs, bars, clubs, nightclubs, takeaways etc, where risk assessment shows that both:-

- a compliance breach or breaches (of licence/s) would pose a serious risk to a regulatory outcome; and
- there is a high likelihood of non-compliance by regulated entities.

3.2 Proposed new powers – Licensing Act 2003

Department for Culture, Media, and Sport –

“PROBLEM PREMISES ON PROBATION” – RED AND YELLOW CARDS:

Introduction of the use of a new yellow and red card system to tackle problem premises. Under the proposed red and yellow card system, enforcement agencies would be encouraged to seek reviews of a premises licence when local intelligence suggests that individual premises are selling to children or causing other crime problems or causing noise nuisance.

The aim would be to put the premises on probation, during which time authorities could impose a package of tough new conditions designed to combat the identified problem. The kinds of conditions that government has in mind are set out in Annex A, attached. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises.

Effectively they would be given a yellow card and put on notice that the next breach would mean an automatic second intervention – a red card. If satisfied that there has been no improvement, the licensing authority (by means of a licensing review) could revoke the licence.

First intervention (YELLOW card) –

Responsible authorities will be encouraged to propose a package of tough new conditions to be added to the existing conditions which are designed to combat the identified problem (by way of licence review).

Second intervention (RED card) –

In the absence of improvement, enforcement agencies should seek another licence review. The licensing authority again must grant a hearing.

If satisfied on the issue of the lack of improvement, the licensing authority should look to revoke the licence. The action should be publicised in the area as an example to other retailers.

It is envisaged by government that such a system would be highly visible and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.

Further detailed information on the proposals can be found in the attached Dept. for Culture, Media and Sport (DCMS) appendices.

3.3 Government consultation papers

Entertainment Licensing has formally responded to the following consultation papers.

- Regulatory Enforcement and Sanctions Act (RESA) 2008 – Consultation on the Primary Authority Scheme (collective response to be submitted through the Council's Environmental Enforcement Working Group (EEWG)).

In September 2008, the Department for Business Enterprise & Regulatory Reform (BERR) sought comments from a wide range of stakeholders on the consultation to look at better regulation.

As a background, the Local Better Regulation Office (LBRO) has been established and given statutory powers to promote better regulation and consistency within local authority regulatory services.

Amongst other functions the LBRO will be issuing guidance to local authorities in respect of regulatory services and, where necessary, ensure that local authorities comply with this guidance and encourage best practice, and consistency in approach by regulators.

Primary Authority Principle – The provisions for the Primary Authority Scheme (Part 2) will come into force on 6th April 2009. A "Primary Authority" is a local authority registered by the LBRO as having responsibility for a particular business or organisation which may relate to single functions such as health and safety, trading standards and ** licensing.

The Primary Authority is responsible for giving advice to organisations that may be subject to regulatory enforcement and to other local authorities on how they exercise enforcement procedures in relation to that business or organisation.

The spirit of consistency, co-ordination and compliance is maintained through the creation of inspection plans and a duty to consult Primary Authorities before taking enforcement action.

** Licensing functions – The Government does not propose that any local authority enforcement actions in relation to the Licensing Act and Gambling Act should fall under the Primary Authority Scheme and may be exempt by Order. The thinking behind this is that local authorities are required to publish a three-year licensing statement describing the principles they intend to apply in exercising their various functions, which includes the approach they believe is suitable for the local and individual circumstances of the area.

- Department of Health – Safe, Sensible, Social – Consultation on further action. The Dept. of Health consulted interested parties / stakeholders (including the licensed trade) with a view to developing a new alcohol retailing code aimed at promoting responsible alcohol retailing. The consultation is looking at drinks pricing, promotion, product labeling, hospital admissions for alcohol-related harm etc. LCC Entertainment Licensing and LCC Community Safety have submitted a joint response to the Dept. of Health, endorsed by Councillor Donald Wilson, Chair of the Licensing Committee, in August 2008.

4.0 Joint Enforcement Protocol – Licensing Act 2003 (the Act)

A joint enforcement protocol was prepared and adopted by the licensing authority. This document forms a signed memorandum of understanding and joint enforcement protocol between:

Leeds City Council ('the licensing authority') and

1. West Yorkshire Police
2. West Yorkshire Fire and Rescue Service
3. The Health and Safety Executive
4. West Yorkshire Trading Standards Service
5. LCC Development Department
6. LCC Health & Safety Service
7. LCC Health & Environmental Action Service
(formerly Environmental Health Services)
8. Leeds Safeguarding Children Board

The Act and accompanying joint enforcement protocol guidance expects all parties to work in partnership to promote the four licensing objectives and to carry out other duties as defined in the Act and accompanying guidance. The protocol sets out the form of this working relationship for the risk-based enforcement of the Licensing Act 2003 following the principles of better regulation advocated by the Better Regulation Executive and the Regulators' Compliance Code.

Enforcement activity carried out in accordance with this protocol will cover premises which have a licence/certificate and unlicensed premises carrying out licensable activities. Reference is also included to police powers to object to Temporary Event Notices (TEN) on the grounds of crime and disorder.

West Yorkshire Police and West Yorkshire Trading Standards Service are the lead agencies for enforcement activities pertaining to the under-age sales / supply of alcohol for 'on' and 'off' licensed premises respectively.

5.0 Entertainment Licensing Enforcement Activity Report

Licensing Act 2003 & Gambling Act 2005: January to October 2008.

	Complaints received and investigated	*Prosecutions & Simple Cautions	** Sect. 19 "Closure Notice" served by LCC Entertainment Licensing	*** Sect. 90 Notice of withdrawal of a club premises certificate	Multi-agency visits / operations
Licensing Act 2003	220	12	12	2	51
Gambling Act 2005	2	0	Not applicable	Not applicable	6

5.1 * Prosecutions summary –

- D'Fusion, New Briggate, Leeds centre.

Court hearing date: 29th February 2008 at Leeds Magistrates' Court.

Results & Costs:

Guilty plea to 3 summons by D'Fusion Leisure Limited –

- unauthorised provision of facilities for dancing (Fined: £1,500);
- unauthorised admission to the premises of persons aged under 18 years (Fined: £2,000); and
- CCTV not operative (Fined: £500). Costs: £4, 097.90.

In addition, 9 Simple Cautions were administered to D'Fusion Leisure Limited (Premises Licence Holder) and the designated premises supervisor in respect of additional similar charges.

- Headingley Sandwiches, North Lane, Leeds 6

Further to complaints received, Officers from the department conducted a series of covert evidence gathering visits to the premises between the hours of 11pm and 5am whereby they purchased hot food. The business was successfully prosecuted by the dept. on three charges for the unauthorised provision of late night refreshment.

Result & Costs:

Guilty plea by both defendants (business proprietors). 12 months conditional caution and no order for costs.

- Stop Over Café, Ashley Road, Harehills, Leeds 9

Premises used for the unauthorised sale of alcohol and late night refreshment. Joint operation undertaken with the West Yorkshire Police (Entertainment Licensing – lead agency). A quantity of alcohol was seized by agencies at the time of the joint visit. Comprehensive evidence gathered and person in charge interviewed under caution for Licensing Act breaches. The premises owner, further to the department's intervention, served notice on the premises user to vacate the premises. This has since happened.

Result:

Simple caution administered to the premises user. The seized alcohol was disclaimed by the premises user.

5.2 ** Section 19 Closure Notice (Criminal Justice & Police Act 2001) -

- Section 19 Closure Notice, Criminal Justice & Police Act 2001 (Sections 126 & 127 of Schedule 6 to the Licensing Act 2003) (found to be an effective tool in remedying breaches of licence conditions).

'Closure notices' can be issued by the police or local authority to premises, member's clubs and functions operating under Temporary Event Notices (T.E.N.), which are conducting alcohol activities which are 'unauthorised'. Note -The closure notice does not apply to off-licensed premises alone.

A Closure Notice can be issued when the premises have been used to sell alcohol for consumption ON the premises, or in the vicinity of the premises, within the last 24 hours and either:

- (a) There is no licence authorisation at all; or
- (b) there is a licence, but the premises are operating in breach of its licence conditions, as detailed in the operating schedule. For example, CCTV cameras may be required to be used, but none are operating.

The "closure notice" does NOT close down non-compliant premises with immediate effect, instead it merely informs the premises about any breaches and the action required by them to remedy the identified breaches. Following the service of a "closure notice" and where the breaches identified have not been remedied, the

police or local authority may apply to the magistrates' court between 7 days and six months after the service of a closure notice to apply for a "closure order". The magistrates may include in their order a requirement that the premises be closed immediately to the public and remain closed until the police or the local authority issues a certificate that they are satisfied that the need for the closure order has ceased.

Since the department commenced issuing section 19 "closure notices" in July 2008, 13 closure notices have been issued to licensed premises i.e. pubs, restaurant and nightclub, throughout the Leeds district for a variety of licensing breaches. The most common licence condition breaches being one or more of the following: no CCTV or CCTV in situ but not compliant with West Yorkshire Police guidelines, No DPS, blocked fire exit routes, no NiteNet radio, no drug safe, trading beyond permitted hours.

5.3 *** Section 90 Notice of withdrawal of a club premises certificate (Licensing Act 2003) –

- Section 90, Licensing Act 2003, Notice of withdrawal of a club premises certificate.

Where a club holds a club premises certificate and it appears to the Licensing Authority that the club does not satisfy the conditions for being a qualifying club in relation to a qualifying club activity to which the certificate relates, the authority must give a notice to the club withdrawing the certificate relating to that activity. The club which holds or held the certificate may appeal against the decision to withdraw it to the magistrates' court.

Section 90 Notices have been served on the following premises:

- i) West Grange Social Club, Belle Isle, Leeds 10
- ii) The Common Place, Wharf Street, Leeds 2

6.0 Implications For Council Policy And Governance

6.1 No implications identified

7.0 Legal And Resource Implications

7.1 Whilst the Entertainment Licensing Section is presently adequately resourced, the new legislation and initiatives as set out at paragraph 3, above, will have an impact on the Entertainment Licensing Section, Legal Services and Corporate Governance. In particular, the 'Red Card, Yellow Card' system will attract an increase in the number of review applications given that responsible authorities will not have to build a detailed history of offences to justify a review.

8.0 Recommendations

8.1 Members are requested to note the contents of this report.