
Report of the Assistant Chief Executive (Corporate and Governance)

Licensing Committee

Date: 1st December

Subject: Yellow and Red Card Scheme

Electoral Wards Affected:

All

Specific Implications For:

Ethnic minorities

Women

Disabled people

Executive Summary

In September 2008 Gerry Sutcliffe, Minister for Sport, wrote to all Chief Executives with a proposed initiative describing a Yellow and Red Card system which could be applied by Licensing Authorities to deal with problem premises.

In effect this would be an additional tool Licensing Committees can use when considering review applications especially when there has been no improvement. It provides an opportunity to make an example of premises and to provide a consistent approach.

However the scheme has no basis in law, and removes the step of negotiating with premises licence holders which could leave the council open to legal challenge.

1.0 Purpose Of This Report

- 1.1 The purpose of this report is to inform Licensing Committee of the Scheme, providing the details given by Mr Sutcliffe in 2008. This report asks the Licensing Committee to consider the use of the scheme and decide if it should be adopted.

2.0 Background Information

- 2.1 In March 2008 the Government evaluated the impact of the Licensing Act 2003 and found that the powers available to licensing authorities were being underused.
- 2.2 In June 2008 Ministers met with Local Authority representatives and senior police officers to explore how existing powers could be utilized to tackle problem premises.
- 2.3 In September 2008 Gerry Sutcliffe wrote to Chief Executives enclosing information on a proposed Yellow and Red Card Scheme (**Appendix 1**) and asked the Chief Executive to “share the letter and attachments with colleagues responsible for issues relating to the management for the night time economy and with local partnerships, such as CDRPs”.
- 2.4 Officers have been waiting for the Home Office toolkit and further guidance from the Government to support this scheme (para 15, appendix 1).
- 2.5 We are now in receipt of a further communication from the DCMS (**Appendix 2**) and so feel that it would now be an appropriate time to consider the use of this scheme.

3.0 Main Issues

The Scheme

- 3.1 The Yellow and Red Card Scheme itself is simple and similar to the practices of this Authority when dealing with problem premises and review applications. It introduces a two stage process which is instigated by a review of the premises licence taken by a responsible authority:
- 3.1.1 First Intervention (Yellow Card) – The responsible authority is encouraged as part of their first review application to propose a package of tough new conditions to be added to the existing conditions which are designed to combat the identified problem.
- 3.1.2 Second Intervention (Red Card) – In the absence of improvement, the responsible authority should seek a second review. If satisfied that there has been a lack of improvement, the Licensing Authority should revoke the licence.
- 3.2 The scheme encourages enforcement agencies to seek more reviews and not give informal warnings. Therefore the scheme does not allow for responsible authorities to implement a package of measures before review, such as action plans and warnings which are presently supported by the council’s Leeds Responsible Authority Liaison and Joint Enforcement Protocol (Licensing Act 2003). The

practice of negotiation, action plans and informal warning provide support for licensing sub-committee decisions if challenged on appeal.

- 3.3 As per Mr Sutcliffe's letter in September 2009, the Yellow Card should be "highly visible in the community 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" although not necessarily a physical card on the premises.

Existing Measures

- 3.4 Leeds City Council's Entertainment Licensing Enforcement Team issued more Section 19 Closure Notices than any other council (*Alcohol, Entertainment and Late Night Refreshment Licensing, England and Wales, April 2008 - March 2009, DCMS*) which are effective in providing a warning to problem premises regarding the breach of licensing conditions whilst clearly highlighting steps to be taken to remedy the breach/es identified.
- 3.5 The Licensing sub-committees already operate a common sense approach whereby each review is dealt with on a case by case basis and any premises showing no improvement by the second review would have the appropriate action taken against them.
- 3.6 Members should note that there is existing provision under the Licensing Act 2003 for an immediate review of premises causing serious crime or disorder issues.

4.0 Implications For Council Policy And Governance

- 4.1 There are no direct implications for council policy and governance.

5.0 Legal And Resource Implications

- 5.1 This scheme is not mentioned in the Licensing Act 2003, secondary legislation or the Government's Guidance to Licensing Authorities. It would be open to legal challenge. Additional appeals based on the challenge to the Licensing Sub-committee decision to revoke a licence would have a resource implication for both Entertainment Licensing and Legal.

6.0 Conclusions

- 6.1 This is a simple scheme suggested by the Home Office and DCMS but has no basis in law and removes the step of negotiating with premises licence holders.
- 6.2 It is a scheme that may be effective in Authorities who have an inconsistent approach to enforcement, however Leeds City Council make good use of the powers already given to them under the Licensing Act 2003.
- 6.3 Paragraph 16 of the scheme advises "Central government cannot tell licensing authorities what to do. The review powers are devolved to them. Similarly, central Government cannot direct enforcement agencies how to enforce the law. It would remain their judgment when and how to act."

7.0 Recommendations

7.1 That Members note the contents of the report and appendices.

7.2 That Members consider the use of this scheme and decide on whether to adopt it.

Appendices

Appendix 1 – Yellow and Red Card Scheme

Appendix 2 – Letter from Gerry Sutcliffe dated 09/09