





Brighton & Hove  
City Council

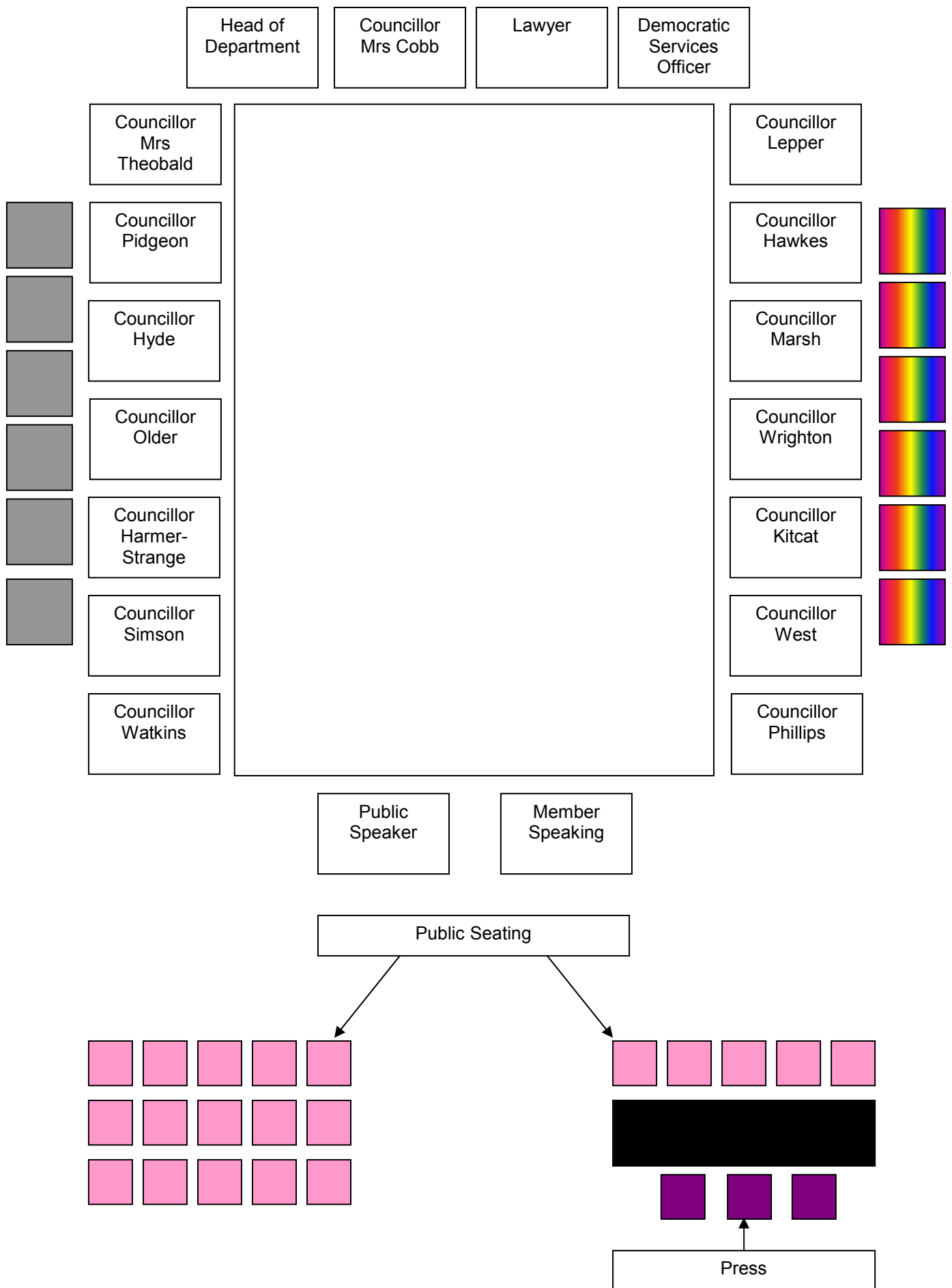
# Licensing Committee

## (Non-Licensing Act 2003 Functions)

Title:	<b>Licensing Committee (Non Licensing Act 2003 Functions)</b>
Date:	<b>24 June 2010</b>
Time:	<b>3.30pm or at Conclusion of Licensing Committee (Licensing Act 2003 Functions) meeting</b>
Venue	<b>Council Chamber, Hove Town Hall</b>
Members:	<b>Councillors:</b> Cobb (Chairman), Lepper (Deputy Chairman), West, Harmer-Strange, Hawkes, Hyde, Kitcat, Marsh, Older, Phillips, Pidgeon, Simson, C Theobald, Watkins and Wrighton
Contact:	<b>Penny Jennings</b> Democratic Services Officer 01273 291065 penny.jennings@brighton-hove.gov.uk

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# Democratic Services: Meeting Layout



## AGENDA

**Part One**

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**1. PROCEDURAL BUSINESS**

- (a) Declaration of Substitutes - Where Councillors are unable to attend a meeting, a substitute Member from the same Political Group may attend, speak and vote in their place for that meeting.
- (b) Declarations of Interest by all Members present of any personal interests in matters on the agenda, the nature of any interest and whether the Members regard the interest as prejudicial under the terms of the Code of Conduct.
- (c) Exclusion of Press and Public - To consider whether, in view of the nature of the business to be transacted, or the nature of the proceedings, the press and public should be excluded from the meeting when any of the following items are under consideration.

*NOTE: Any item appearing in Part 2 of the Agenda states in its heading either that it is confidential or the category under which the information disclosed in the report is exempt from disclosure and therefore not available to the public.*

*A list and description of the categories of exempt information is available for public inspection at Brighton and Hove Town Halls.*

**2. MINUTES OF THE PREVIOUS MEETING**

**1 - 6**

Minutes of the meeting held on 4 March 2010 (copy attached).

**3. CHAIRMAN'S COMMUNICATIONS**

**4. CALLOVER**

*NOTE: Public Questions will be reserved automatically.*

**5. PUBLIC QUESTIONS**

(The closing date for receipt of public questions is 12 noon on 17 June 2010).

No public questions received at date of publication.

**6. SEX ENTERTAINMENT VENUE POLICY AND ADOPTION**

**7 - 20**

Report of the Director of Environment (copy attached).

*Contact Officer: Jean Cranford*

*Tel :29-2550*

*Ward Affected:*

## LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)

### 7. EQUALITIES REVIEW OF TAXI LICENSING SERVICE 21 - 58

Report of the Director of Environment (copy attached).

*Contact Officer: Jean Cranford                      Tel: 29-2550*  
*Wards Affected: All*

### 8. RESPONSE TO THE REPORT OF THE OVERVIEW & SCRUTINY COMMITTEE SCRUTINY PANEL ON STREET ACCESS ISSUES 59 - 96

*Contact Officer: Christina Liassides                      Tel: 29-2036*  
*Ward Affected: All*

### 9. ITEMS TO GO FORWARD TO COUNCIL

To consider items to be submitted to the 15 July 2010 Council meeting for information.

In accordance with Procedural Rule 24.3a the Committee may determine that any item is to be included in its report to Council. In addition each Minority Group may specify one further item to be included by notifying the Chief Executive by 10.00am on 6 July 2010.

The City Council actively welcomes members of the public and the press to attend its meetings and holds as many of its meetings as possible in public. Provision is also made on the agendas for public questions to committees and details of how questions can be raised can be found on the website and/or on agendas for the meetings.

The closing date for receipt of public questions and deputations for the next meeting is 12 noon on the fifth working day before the meeting.

Agendas and minutes are published on the council's website [www.brighton-hove.gov.uk](http://www.brighton-hove.gov.uk). Agendas are available to view five working days prior to the meeting date.

Meeting papers can be provided, on request, in large print, in Braille, on audio tape or on disc, or translated into any other language as requested.

For further details and general enquiries about this meeting contact Penny Jennings, (01273 291065), email [penny.jennings@brighton-hove.gov.uk](mailto:penny.jennings@brighton-hove.gov.uk) or email [democratic.services@brighton-hove.gov.uk](mailto:democratic.services@brighton-hove.gov.uk)

Date of Publication - Wednesday, 16 June 2010

<b>LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS )</b>	<b>Agenda Item 2</b> Brighton & Hove City Council
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**BRIGHTON & HOVE CITY COUNCIL**

**LICENSING COMMITTEE (NON LICENSING ACT 2003 FUNCTIONS)**

**3.00PM 4 MARCH 2010**

**COUNCIL CHAMBER, HOVE TOWN HALL**

**MINUTES**

**Present:** Councillors Cobb (Chairman), Lepper (Deputy Chairman), Alford, Duncan, Harmer-Strange, Hawkes, Hyde, Kitcat, Marsh, Older, Phillips, Pidgeon, C Theobald, Watkins and West

**Apologies:** Councillors Simson and Wrighton

**PART ONE**

**18. PROCEDURAL BUSINESS**

**18a Declarations of Substitutes**

18.1 Councillor Duncan declared he was substituting for Councillor Wrighton.

18.2 Councillor Alford declared he was substituting for Councillor Simson.

**18b Declarations of Interests**

18.3 There were none.

**18c Exclusion of the Press and Public**

18.4 In accordance with section 100A of the Local Government Act 1972 ('the Act'), the Licensing Committee (Non Licensing Act 2003 Functions) considered whether the press and public should be excluded from the meeting during an item of business on the grounds that it was likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press or public were present during that item, there would be disclosure to them of confidential information (as defined in section 100A(3) of the Act) or exempt information (as defined in section 100(1) of the Act).

18.5 **RESOLVED** – That the press and public be not excluded.

**19. MINUTES OF THE PREVIOUS MEETING**

- 19.1 **RESOLVED** – That the minutes of the previous meeting held on 26 November 2009 be signed by the Chairman as a correct record.

**20. CHAIRMAN'S COMMUNICATIONS**

- 20.1 The Chairman addressed the Committee and stated that the Committee had previously made it clear that the Council welcomes its duty to promote equality through all its activities and functions, in particular disability equality.

As a result of recent research commissioned by the Council (the Halcrow Report) and representations made by stakeholders, an Equalities Review of the taxi service would take place. The purpose of this was to review the effectiveness of the taxi services in the city in meeting the needs of citizens and to produce an action plan to address any identified shortcomings.

The Chairman highlighted that the focus of this review would be 'equality.' She stated there was no intention of re-visiting or duplicating research undertaken to establish Significant Unmet Demand. The Committee's concern was to ensure that the service provided does not discriminate or disadvantage any particular group.

The Chairman added that she was confident that with the involvement of disabled people, operators, unions, drivers and representatives from minority groups within the trade, this Review would lead to improvements on what is already regarded as an important community service. The report and recommendations would be available by June 2010.

With regard to revocations and suspensions, since the last Committee Officers had suspended one driver for refusal to carry.

- 20.2 Councillor West noted that at the last Committee meeting, a similar recommendation had been proposed with a request for review, which was rejected. He asked why this review had come forward now and in this manner. The Chairman replied that there was a considerable amount of information to consider, and the review was wide ranging, taking in several different aspects. It was considered that the most appropriate timescale for Officers would be to aim for the June 2010 meeting.
- 20.3 Councillor Kitcat asked who had called for the report, as it had not been a recommendation of the Committee. The Chairman replied that Licensing Officers had proposed this course of action following concerns raised at the previous Committee.
- 20.4 Councillor Watkins noted that there need to be Member involvement in the review to ensure to was conducted properly and did not leave Officers open to criticism.
- 20.5 Councillor Mrs Theobald added that relevant stakeholders needed to be included in any consultations as well.

20.6 Councillor Older asked if the review was being conducted by Equalities Officers and Mr Nichols replied that the review would be led by the Head of Equalities and Inclusion, and that he was happy to offer advice or help in this regard. He added that the review would include all elements of the trade, relevant stakeholders and Members.

## 21. PUBLIC QUESTIONS

21.1 Ms Des Moulins asked the following question at the Committee meeting as follows:

At the last Licensing meeting the Chair of the Committee acknowledged that taxi drivers in Brighton and Hove discriminated against disabled people and the Committee's commissioned Halcrow report also clearly evidenced that disabled people do not receive an equitable service.

We welcome the announced Taxi review and ask that any recommendations that are consequently forthcoming to improve services to disabled people will be supported by all members.

Will the Chairman give reassurances that the Committee will do everything in its power to ensure that disabled residents enjoy the same level of service as non disabled people?

21.2 The Chairman responded to the question as follows:

We can reassure Ms DesMoulins, and the members of the Federation of Disabled People, that the Council will do everything in its power to ensure that disabled people receive a non-discriminatory taxi and private hire service.

As you may know, the Hackney Carriage Office successfully prosecuted a driver recently who had refused to take a visually impaired customer because he was accompanied by a guide dog.

We acknowledge that sometimes operators and drivers may *unwittingly* discriminate against disabled people, and there may be a poor understanding of the type of barriers that disabled travellers encounter.

Whilst enforcement activity will continue, ideally this Committee would prefer to work with the trade to *prevent* discrimination rather than merely respond. We are grateful to the Federation, therefore, for taking part in the Review, for helping to clarify the issues and identify barriers for disabled people, and assisting with the problem solving process.

We are keen that all parties contribute to the Review and we would not want to commit to recommendations - not yet proposed - especially as there are important groups within the trade who have not yet been consulted.

21.3 Ms Des Moulins asked a supplementary question as follows:

We welcome the imminent review and we request that the Committee gives its full support to this. We also raise concern about the decision making processes within the Council.

21.4 The Chairman responded to the supplementary question as follows:

We will look at each issue thoroughly and a vote will be taken at Committee according to Council procedures.

## 22. TAXI MARSHALS

- 22.1 The Committee considered a report from the Director of Environment regarding Taxi Marshals.
- 22.2 The Licensing Manager summarised the report and stated that the scheme had been given approval by the Taxi Forum following a very successful pilot programme over the New Year period. Funding had been received from the Home Office and the scheme was being carried out as part of Operation Marble. All stakeholders were so far very pleased with the outcome and the costs of £12,000 had been agreed to be split between hackney carriage vehicle licence holders which would put an additional cost of £23 per year per hackney carriage licence holder.
- 22.3 Councillor West complemented the scheme and noted the significant cost efficiency gains achieved. He noted that the police were complementary about the scheme and was pleased to see the Licence Fee had not been increased. He urged Committee Members to approve the recommendations.
- 22.4 Councillor Hawkes echoed these sentiments and felt that the scheme alleviated safety worries for young people out at night.
- 22.5 Councillor Harmer-Strange asked if there was any information on statistics for crime associated with taxi queues. The Head of Environmental Health and Licensing, Mr Nichols, replied that there were no accurate figures relating to this. He noted that it was often difficult to establish the cause of crime in the vicinity of a taxi queue, however noted that public place crime had reduced over the past 10 years in the city centre. He believed that a range of measures including a robust enforcement regime, Operation Marble and other such schemes improved the quality of life for residents and reduced the fear of crime.
- 22.6 Councillor Mrs Theobald asked how many Taxi Marshals had been employed and where were they stationed. Mr Nichols replied that four Marshals were available at any one time concentrated on three ranks in the city centre. The Inspector in charge of Operation Marble on any given night was responsible for deploying the Marshals appropriately.
- 22.7 **RESOLVED** -1. That the committee approves a hackney carriage vehicle fee of £203 including a £23 supplement to fund taxi marshalling.
2. That the Director of Environment is authorised to arrange necessary publication notices.

## 23. BLUE BOOK REVIEW

- 23.1 The Committee considered a report from the Director of Environment regarding the Blue Book review.



- 23.2 The Licensing Manager summarised the report and stated that the Blue Book was designed to combine many by-laws , conditions, advice and information for hackney carriage and private hire drivers. A review was carried out every three years and this report formed the first part of the review for 2010.
- 23.3 Councillor Pidgeon asked if Members of the Committee could be sent the most up-to-date copy of the Blue Book and the Licensing Manager agreed.
- 23.4 **RESOLVED** -That the Committee approve items 1-3 (appendix a) pending full review of the handbook - 2<sup>nd</sup> edition.

**24. ITEMS TO GO FORWARD TO COUNCIL**

- 24.1 There were none.

The meeting concluded at 3.45pm

Signed

Chairman

Dated this

day of



# **LICENSING COMMITTEE**

## **(NON-LICENSING ACT 2003 FUNCTIONS)**

### **Agenda Item 6**

Brighton & Hove City Council

**Subject:** Sex Establishment Licensing Policy Progress Report  
**Date of Meeting:** 24 June 2010  
**Report of:** Director of Environment  
**Contact Officer:** Name: Jean Cranford Tel: 29-2550  
E-mail: jean.cranford@brighton-hove.gov.uk  
**Wards Affected:** All

#### **FOR GENERAL RELEASE**

#### **1. SUMMARY AND POLICY CONTEXT:**

- 1.1 On 5 February and 26 November 2009, the committee were apprised of the Policing and Crime Bill relating to sex establishments including lap dancing clubs.
- 1.2 There is an existing policy on sex establishments, sex shops and sex cinemas which includes standard conditions. That policy has been reviewed and extended to cover the new category of sex entertainment venue which is of course, lap dancing.

#### **2. RECOMMENDATIONS:**

- 2.1 That the committee asks officers to bring the results of the consultation and the Sex Establishment Licensing Policy to the licensing committee in November 2010.
- 2.2 That members offer any political steerage during this period.
- 2.3 That Full Council is recommended to pass a resolution specifying that amendments made by Section 27 of the Policing and Crime Act 2009 to Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 shall apply to Brighton & Hove on a specified day at least one month after the day on which the resolution is made.

#### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 Brighton & Hove City Council adopted Schedule 3 to the 1982 Act (Licensing of Sex Shops and Sex Cinemas). A further resolution is necessary before the provisions introduced by Section 27 of the Policing and Crime Act (Licensing of Premises as Sex Entertainment Venues) is adopted.

- 3.2 A very early draft of sex establishment licensing policy, reviewed and renewed to cover the new category of sex entertainment venue was circulated to the Licensing Strategy Group and Licensing Councillors.
- 3.3 It is likely that it will take quite a long time to come into effect because the Policing and Crime Act 2009 requires orders to be made to set first, second and third appointed days. Officers believe these probably still need commencement orders but are estimating that between May and November 2010 the council will consider adoption, between May 2010 and May 2011, we would be accepting applications and in May 2011 the Act would take effect.
- 3.4 The proposed policy and standard conditions are unchanged except numbers have been tightened by setting maximum appropriate numbers in St. James's Street (2), the station (2) and Hove (1) with nil elsewhere recognising existing arrangements and setting a standard of not normally granting more than 2 in a street. Officers have also deleted the opening times from the standard conditions as experience indicates that these serve no useful purpose and were an unnecessary obstacle to business.
- 3.5 Sex Entertainment Venues (lap dancing) – Officers suggest that committee don't take the absolute zero option (to allow our existing 3 to continue) but the policy is phrased as tightly as possible, restricting the appropriate number to three for the commercial Brighton adult leisure centre (city centre).
- 3.6 Some emerging issues include how this will affect LGBT premises and the need for an equalities impact assessment, what to do about "burlesque" which is currently fashionable and an enquiry from Lumina Leisure (the really big night clubs) about whether the new legislation catches scantily dressed podium dancers.

#### **4. CONSULTATION**

- 4.1 Early consultation was undertaken with the Licensing Strategy Group and Licensing Councillors. Brighton & Hove City Council has a new consultation portal which will be used as part of this consultation process.
- 4.2 The consultation period runs for 12 weeks starting from 15 June 2010.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

- 5.1 Financial Implications:  
Licensing fees set at a level that officers reasonably expect will cover the cost of service provision. This will include administration and enforcement of the regime. The current sex establishment licensing fee is to be set by report elsewhere on agenda. Finance officers creating a trading account for our current sex shops consider that it is: a) justified, b) set too high and should remain static until expenditure meets income. The new sex encounter establishment licence would be part of the same regime as sex shops and it is recommended that the same fee is charged for sex shops and sex encounter establishments. There are currently 4 sex shops licensed by the council and there are 3 licensed premises that provide relevant entertainment.

Finance Officer Consulted: Karen Brookshaw

Date: 03.06.10

Legal Implications:

- 5.2 European Convention on Human Rights requires peaceful enjoyment of one's possessions and that includes licences etc and retrospective criminalization of acts, may have the same effect as protecting/grandfathering existing operators.

Lawyer Consulted: Rebecca Sidell

Date: 03.06.10

Equalities Implications:

- 5.3 New powers would allow communities more influence on location of lap dancing clubs

Sustainability Implications:

- 5.4 None.

Crime & Disorder Implications:

- 5.5 New powers would give local authorities scope to reject applications for lap dancing clubs

Risk and Opportunity Management Implications:

- 5.6 None.

Corporate / Citywide Implications:

- 5.7 Effectiveness of regulation will need monitoring. Proliferation of lap dancing clubs can affect the character of an area and concern local people.

**SUPPORTING DOCUMENTATION**

**Appendices:**

Appendix A – Draft Sex Establishment Licensing Policy

**Documents In Members' Rooms:**

None

**Background Documents:**

None

## **2010 Sex Establishment Policy**

### **Introduction**

The Council has a duty to promote gender equality, consider crime and disorder and ensure fair and rational determination of applications.

### **BRIGHTON & HOVE CITY COUNCIL POLICY FOR GRANT, RENEWAL OR TRANSFER OF LICENCES FOR SEX ESTABLISHMENTS, including sex shops, sex cinemas and sex entertainment venues (SEVs)**

These are mandatory grounds for refusal.

1.1 A licence will not be granted:-

- (a) to a person under the age of 18, or
- (b) to a person who is for the time being disqualified or
- (c) to a person, other than a body corporate, who is not resident in the United Kingdom or was not so resident throughout the period of six months immediately preceding the date when the application was made, or
- (d) to a body corporate which is not incorporated in the United Kingdom, or
- (e) to a person who has, within a period of twelve months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.

These are obligatory grounds of refusal.

These are discretionary grounds for refusal. They would only be over-ridden in exceptional circumstances.

2.1 A licence will not normally be transferred in the following circumstances:-

- (a) the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason, or
- (b) that if the licence were to be transferred, the business to which it relates would be managed by or carried on for the benefit of a person, other than the applicant, who would be refused the transfer of such a licence if he made the application himself.

2.2 A licence will not normally be granted or renewed in the following circumstances.

- (a) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason.
- (b) that if the licence were to be granted or renewed the business to which it relates would be managed by or carried on for the benefit of a person other than the applicant, who would be refused the grant or renewal of such a licence if he made the application himself.

The authority may determine the number of sex establishments applicable to a locality at any particular time.

### 3.0 **Sex shops and sex cinemas**

3.1 The Council will take into account:-

- proximity to schools and places of worship;
- proximity to community facilities and public buildings;
- cumulative adverse affects of existing sex establishments in the vicinity;
- proximity to areas with high levels of recorded crime;
- the layout, character or condition of the premises, vehicle, vessel or stall in respect of which the application is made, including where the sex establishment is part of a business, whether there is a separate street entrance to the sex establishment.

In order to discourage a proliferation of sex establishments and to ensure a concentration of sex establishments does not change the character of a neighbourhood to its detriment, licences will not normally be granted:

- (a) in a shopping centre or parade with an existing licensed sex establishment,
- (b) in an area of historic importance, or



(c) in any street with two or more licensed sex establishments.

3.2 A new licence will not normally be granted in the relevant locality at a time the application is made is equal to or exceeds the number the authority considers appropriate for the locality.

Locality	Appropriate number
St. James Street shopping parades	2
Brighton Station shopping parades	2
Hove shopping parades	1
All other residential, shopping, commercial, industrial land	Nil

### 3.3 Renewals

Licences will normally be renewed unless circumstances have changed. The following matters would be taken into account:-

- (a) levels of recorded crime and disorder linked to the licensed premises;
- (b) evidence of a demonstrable impact on neighbours' safety or amenity;
- (c) effectiveness of appropriate measures, such as conditions, to mitigate adverse impacts.

3.4 Licences will normally only be granted in predominantly commercial streets, without prejudice to considering individual applications on their merits and to the generality of paragraphs 3.0 and 3.3 above.

3.5 A sexual entertainment venue is defined as a premises where live performance or live display of nudity (pubic area, genitals, anus or women's nipples) takes place, directly or indirectly for the financial gain or the organiser (i.e. a person who is responsible for organisation of management of the entertainment or the premises), provided or permitted to be provided by or on behalf of organiser, such a nature that, ignoring financial gain, must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of the audience (verbally or otherwise).

3.6 Applications for occasional events with restricted admissions are excepted or exempted from this general policy. This will allow the relevant committee or sub-committee to consider such applications on their individual merits, if objections are received.

3.7 Applications for mail order/internet sales only are excepted or exempted from this general policy, allowing the relevant committee or sub-committee to consider such applications on their individual merits.

### 3.8 Standard Conditions

All licences granted shall be subject to the Council's standard conditions.

### 4.0 Sex Entertainment Venues (SEVs)

This policy will apply to all applications for SEVs and will only be overridden in exceptional circumstances.

4.1 Licences for SEVs will not be granted within family residential areas, family leisure areas or retail areas where commercial occupiers argue plausibly that SEVs would lower the retail attraction of the area.

- Main shopping streets
- Areas with strong faith communities
- Educational areas
- Areas earmarked for regeneration
- Areas where VisitBrighton and tourism members and officers advise there should be no SEVs
- Areas with history of social difficulties
- Areas with high levels of recorded crime.

4.2 Licences for SEVs will not be granted within sightlines of:

- Schools, youth facilities and colleges
- Public buildings and community facilities

4.3 Except in exceptional circumstances, a new licence for a SEV will not be granted in the relevant locality at the time of the application is made is equal to or exceeds the number which the authority considers appropriate for the locality, as follows:

Locality	Appropriate number
Brighton Leisure Centre	3
Hove Commercial Centre	Nil
All other areas within the City	Nil

#### **4.4 Guidelines**

- Preference is given to adult, night time leisure areas, arterial routes with high road traffic but little retail and low footfall.
- Character changes may make formerly suitable areas cease to be so.
- Whether Burlesque is considered SEV is a matter of fact and degree, use of waiver may be considered in appropriate circumstances.
- Dual regulation with the Licensing Act 2003 (licensable activities) will be avoided. Relevant entertainment will not also be considered regulated entertainment.
- Exceptional circumstances might include where an operator can identify an un-catered for market that is not unlawful.

#### **4.5 Policy and tacit authorisation**

All applications must be properly determined tacit authorisations further to EU Services Directive will not apply.

### **BRIGHTON & HOVE COUNCIL**

#### **STANDARD LICENCE CONDITIONS MADE BY REGULATION FOR SEX SHOPS AND SEX CINEMAS**

In these conditions reference to the Licensing Authority means the Brighton & Hove Council, and reference to Premises includes Vehicles, Vessels or Stalls.

1. The terms, conditions and restrictions attaching to the licence shall not be varied except by the Licensing Authority after written notice has been given to the Police and the Fire Authority.
2. All due precautions for the safety of the public and employees shall be taken and except with the approval of the Licensing Authority in writing, the Licensee shall retain control over all portions of the premises to which the licence applies.
3. Good order and decent behaviours shall be maintained in the licensed premises during the hours they are open to the public and the premises shall be conducted decently, soberly and in an orderly manner.
4. The Licensee or some responsible adult nominated by him in writing, and whose nomination has been approved in writing by the Council, shall be in charge of and present in the premises at all times when the public are on the premises. The person in charge shall not be engaged in any duties which will prevent him from exercising general

supervision. Nominations in writing, submitted to the Council for approval, shall include a photograph of the person to be nominated.

5. All parts of the premises to which the public are admitted and all passages, courts, corridors and stairways to which the public have access and which lead to the outside of the premises must, in the absence of adequate daylight, be illuminated by the general lighting when the public are present. Where artificial lighting is supplied for stairs, ramps, or passages external to the premises and is operated by a switch adjacent to an exit door, it need not be in continuous operation but it shall be maintained readily available for use. The general lighting shall be provided by electricity.
6. The Licensee shall comply with any reasonable fire preventative and safety measures that may be required of him by the East Sussex Fire & Rescue Authority or Licensing Authority.
7. All parts of the licensed premises shall be open to free ingress and inspection by:
  - (i) Duly authorised officers of the Licensing Authority;
  - (ii) Police Officers;
  - (iii) Officers of the Fire Authority.
8. The Licence, or a copy thereof, shall be exhibited on the premises and shall be available for inspection by any of the persons mentioned in condition 7 above.
9. Noise such as to cause persons in the neighbourhood to be unreasonably disturbed shall not be permitted to emanate from the premises.
10. The licensee shall at all times ensure that persons entering or leaving the licensed premises conduct themselves in an orderly manner and do not in any way cause annoyance to residents and persons passing by.
11. The Licensee shall take all reasonable steps to ensure that persons entering or leaving the licensed premises and using adjacent car parks and highways do not conduct themselves in a manner so as to cause annoyance to residents and persons passing by.
12. The days and times the licensed premises are open to the public and a notice indicating those premises are open or closed may be displayed upon the door leading from the street or a public place into those premises and in letters and figures not exceeding 15 mm in height and 5 mm in thickness but on no other part of the premises. The door to which this paragraph applies shall be fitted with an effective self-closing

device and remain closed at all times other than when a person is passing through it.

13. The provisions of the Indecent Displays (Control) Act 1981 shall be complied with at all times, and the warning notice defined in Section 6 of the Act of 1981 shall not be displayed on the door leading from a street or public place into the licensed premises but instead shall be displayed on a door or screen located behind or beyond it.
14. Nothing shall be permitted to be on view or visible to members of the general public from the licensed premises which would in any way indicate that the premises are a sex establishment, or that the goods, merchandise or services available therein are those defined in Schedule 3 to the above Act of 1982 as “Sex Shop”, “Sex Article”, or “Sex Cinema” and the terms of this condition shall apply to any land premises giving access to the licensed premises and shall refer to the name or title of the premises, any advertisement or notice visible outside the premises and to any sound broadcast which can be heard outside the premises.
15. Neither the Licensee nor any employee or other person shall seek to obtain custom for the Sex Shop by means of personal solicitation outside or in the vicinity of the premises.
16. No amusement or gaming machines of any kind, whether for prizes or otherwise, shall be kept or used upon the licensed premises at any time.
17. No person who is apparently under the age of eighteen years, or who is known to any person connected with the licensee’s business and present on the licensed premises to be under that age, shall be admitted to or allowed to remain on those premises.
18. The Licensing Authority reserve the power after the grant or renewal or transfer of this licence at any time to dispense with or modify or relax any of these terms, conditions and restrictions, and to make such additional terms, conditions and restrictions as they may deem requisite to meet the circumstances of any particular case.
19. The Licence may be revoked by the Licensing Authority if at any time the holder is convicted of any offence of using the licensed premises, or other premises for which a similar licence has been granted, other than in accordance with the terms, conditions or restrictions of the licence or is convicted of any offence under any enactment defined in paragraph 1 of Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982.

Prescribed standard conditions made by regulations for SEVs

1. No persons under 18 will be admitted to the premises. The premises will operate a 'Challenge 25' scheme, whereby anyone who appears to be aged 25 or younger is asked for photographic ID to prove their age. The only ID that will be accepted are passports, a driving licence with a photograph or Portman Group proof of age cards bearing the 'PASS' mark hologram. The above list of acceptable proof of age items may be extended to other forms of ID on the future with advance written agreement of the Police without the need to review the actual licence. The Challenge 25 rule and the stipulated forms of acceptable age identification will be clearly stated both on the premises website and on all membership applications, booking forms, customer contractual documents and promotional literature etc. In addition the licensee will provide a photographic identification system for all entrants to the premises. Recordings to be provided to the police at the request.
2. No under 18's events will be hosted anywhere on the premises at any time.
3. Whilst striptease entertainment is taking place, no customer under 18 shall be on the premises and clear notices shall be displayed at the entrance to the premises in a prominent position so that it can easily be read by persons entering the premises in the following terms:

NO PERSONS UNDER 18 TO BE ADMITTED  
ENTERTAINMENT WITHIN THESE PREMISES INVOLVES  
A FORM OF NUDITY  
IF YOU ARE LIKELY TO BE OFFENDED, PLEASE DO NOT ENTER

4. No intoxicating liquor shall be supplied for consumption off the premises
5. The only form of relevant entertainment which is approved and may be provided at the premises is striptease entertainment in the form of tableside and pole dancing by club dancers only.
6. The approved striptease entertainment shall be given only by the performers and entertainers and no audience and no audience participation shall be permitted
7. There shall be no physical contact between the customer and the dancer, with the exception of shaking hands with a customer and/or leading a customer by the hand from a seated area to a booth for a private dance. In addition and with the exception of the above, there shall be no deliberate physical contact between the customer and the dancer, either immediately before, during or after a dance.
8. Dancers shall only perform on the stage area or at a tableside to seated customers. All booths will have adequate lighting to ensure the safety of the dancer and to ensure that both the member / guest / audience and the performer are adhering to the Club rules at all times. A SIA licensed door supervisor will have a full and unrestricted view of any dancer performing in a booth at all times.
9. There shall be no physical contact between dancers whilst performing

10. Dancers may never give out personal information, including telephone numbers, email addresses or other contact details to audience members. Dancers may never accept any telephone number, addresses, business card or any other information from any customer.
11. The private booths will be designed in such a way that there can be no curtain or other visual barrier that can be pulled across the entrance, this concealing activities inside the booth area. The booths will be designed in such a way that the door supervisors / security staff can see into the booths to ensure the safety of the dancers performing inside and to ensure that the club rules are being strictly adhered to at all times.
12. All dancers / performers will be aged over 18 years of age and legally entitled to work in the UK before they perform at the Club. Copies of all dancers files will be made available to the Police Licensing for inspection upon request.
13. The licence holder shall ensure no dancers are trafficked, exploited or controlled for another's gain.
14. Where possible all dancers will be escorted from the premises at the end of each evening to their transport (eg taxis) to ensure their personal safety and security
15. Members and their guests may not at any time take photographs, film, video or mobile phone photographs or footage of performers.
16. The Licensee will ensure that there is no display outside the premises of photographs or other images that indicate or suggest that striptease or similar entertainment takes place on the premises.
17. Any promotional website for the premises must comply with A.S.A regulations and will not display photographs or other images of topless or nude performers, or show photographs or other images that may reasonably be construed as offensive. The website will include a clear requirement stating the challenge 25 proof of age.
18. Promotional literature. Any promotional literature circulated outside of the premises will not display photographs or other images of topless or nude performers, or show photographs or other images or words that may reasonably be construed as offensive. All promotional literature will include clear statements as to the requirements for challenge 25 proof of age.

## **All Sex Establishments**

### Hearing Procedures

New applications will be determined by Licensing Panel (Licensing Act 2003) (Licensing sub-committee). The usual hearing procedures for Licensing Panel will apply, accommodating provisions for objectors set out in paragraphs 9 of Schedule 3 to Local Government (Miscellaneous Provisions) Act 1982 concerning the objectors' names and addresses. Notice of hearing should be sent to all parties prior to hearing.

Applicant and objectors will have an opportunity to be heard.

A notice of hearing will be sent to all parties.

Renewal applications will normally be granted unless circumstances have changed. The Director of Environment is delegated authority to determine renewal applications.

Where there is any possibility that an application may be refused, the applicant must be given the opportunity to be heard by the Licensing Panel.

Any reasons for refusal will be notified orally as soon as possible and in a written statement within 7 days.



**LICENSING COMMITTEE**  
**(NON LICENSING ACT 2003**  
**FUNCTIONS)**

**Agenda Item 7**  
Brighton & Hove City Council

**Subject:** *Equalities Review*  
**Date of Meeting:** *24 June 2010*  
**Report of:** *Director of Environment*  
**Contact Officer:** Name: *Jean Cranford* Tel: **29-2550**  
E-mail: *Jean.cranford@brighton-hove.gov.uk*  
**Wards Affected:** All

**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 To review the effectiveness of Hackney Carriage and Private Hire services in meeting the needs of our citizens, in particular disabled people, and to seek Committee's recommendations for actions to address adverse impact and/or to promote equality.

**2. RECOMMENDATIONS:**

- 2.1 That Committee approves recommendations 1 - 15 as shown in Appendix 'A'.

**3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The council licenses hackney carriage and private hire, drivers, vehicles and private hire operators. The authority for doing so is by adoption of the Local Government (Miscellaneous Provisions) Act 1976, Part 11, (Section 45), The Town Police Clauses Act 1847 (Section 68) and the Public Health Act 1875 (Section 171.)
- 3.2 The Disability Discrimination Act 2005 imposes on the council, when exercising its functions, a duty to have due regard to the need to ...
- eliminate harassment of, and unlawful discrimination against disabled people
  - promote positive attitudes towards disabled people
  - encourage participation by disabled people in public life
  - promote equality of opportunity between disabled people and non-disabled people
  - take steps to meet disabled people's needs, even if this requires more favourable treatment

The Disability Discrimination Act is due to be replaced late 2010/2011 by the Equalities Act 2010. This change in the legislation provides an opportunity to look at the licensing function from an 'equalities' perspective but with a particular emphasis on disability.

#### **4. CONSULTATION**

- 4.1 Members of the Federation of Disabled People have been consulted as have operators, drivers and their representatives, and the matter has been discussed at the council's Hackney Carriage and Private Hire Consultation Forum (23.6.10).

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

- No direct financial implications.

- 5.2 As Recommendations are adopted and developed, there may be a need for legal advice.

Lawyer Rebecca Sidell Date: 11.6.10

##### Equalities Implications:

- 5.3 Recommendations are designed to promote equality of opportunity, eliminate unlawful discrimination, promote participation in public life and meet the needs of disabled people. Improving access to taxis/PHVs is a priority action in the council's Equality Scheme. Improving access to services by public transport is included in the Local Area Agreement.

##### Sustainability Implications:

- 5.4 The role of the taxi trade is included in the Local Transport Plan, which identifies it as a key element in providing sustainable transport choices. It creates important links in the transport network to other forms of sustainable transport providing a seamless connection. Improving accessibility is one of the government's four shared transport priorities.

##### Crime & Disorder Implications:

- 5.5 Sufficient late night transport to reduce public place violent crime is recognised in the community safety, crime reduction and drugs strategy. The presence of CCTV can be an important means of deterring and detecting crime.

Risk and Opportunity Management Implications:

- 5.6 The transport industry should be safe, profitable and be a positive experience for residents and visitors.

Corporate / Citywide Implications:

- 5.7 Tourism needs to provide a warm welcome to visitors and the tourism strategy depends upon effective partnership with transport operators particularly to achieve safe late night dispersal for the night time economy.

**SUPPORTING DOCUMENTATION**

**Appendices: A**



## APPENDIX A

### Equality Review of taxi / private hire vehicle licensing

Report prepared for Head of Environmental Health & Licensing, Brighton & Hove City Council, to review the effectiveness of taxi/private hire services in meeting the needs of our citizens, in particular disabled people, and to make recommendations for actions to address any adverse impact and/or to promote equality.

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## RECOMMENDATIONS

1. **Recommendation:** Once the relevant Commencement Order is published, that the Committee support a city-wide publicity campaign to raise awareness of the new legislation, what it means for operators / drivers and what it means for the travelling public, in particular disabled people.
2. **Recommendation:** That the committee notes the current BTEC qualification will not be available to new applicants after 30<sup>th</sup> September 2010 and approves the replacement entry-level qualification for new drivers.
3. **Recommendation:** That the HCO, working in partnership with the Federation of Disabled People and other stakeholders, develop the framework for a Certificate of Professional Competence, research providers, and report with firm proposals by the end of 2010.
4. **Recommendation:** That the HCO implement changes and improvements to the current complaints process to ensure that it is accessible and that all complainants are provided with clear, detailed responses.
5. **Recommendation:** That the Committee approve the maximum age limit for a WAV, be increased from 10 to 12 years, subject to it passing two vehicle tests per year.
6. **Recommendation:** That the Committee approve all new licences for private hire vehicles to be required to have an approved swivel seat fitted.
7. **Recommendation:** That the views and evidence provided by all contributing parties to this report, be brought to the attention of officers dealing with the school transport contracts.
8. **Recommendation:** All new and transferred licences for taxis should be for side-loading wheelchair accessible vehicles with M1 ECWVTA and include features to cater for those passengers with reduced mobility, vision and hearing.
9. **Recommendation:** That the Committee approves that CCTV approved by the Director is installed in all newly licensed vehicles.

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10. **Recommendation:** That the Committee approve a pilot scheme initially for one-year, to publish contact details of WAV drivers prepared to take bookings, and where an operator's licence is required for a single vehicle, that operator's licence is provided free of charge.
11. **Recommendation:** That the Committee support the promotion of accessible taxi/PHV services targeted at taxi voucher recipients in January 2011.
12. **Recommendation:** That the Committee, in support of National Customer Service week , encourage the taxi/PHV trade to make a WAV available in Barts Square to demonstrate access features - step, ramps, induction loop, high-viz handles etc.
13. **Recommendation:** That the Committee supports in principle a Star Rating for operators, the detail to be developed by the HCO in partnership with the Federation of Disabled People.
14. **Recommendation:** That the Committee ask the Federation of Disabled People to make a detailed proposal as to how they would envisage undertaking 'mystery shopping' setting out any costs that might be incurred.
15. **Recommendation:** That the Committee require 'Right to Work' checks carried out on application for drivers' licences.

## Introduction

Taxis/Private Hire Vehicles (PHVs) play a vital role in the transport system helping disabled people travel to jobs, services, education and social networks. For some, taxis/PHVs provide their only opportunity to travel, and their route to social inclusion.

National research shows that disabled consumers, not just wheelchair users, use taxi/PHV services differently when compared to the population as a whole. Disabled people are more likely to use these services for the essential activities of life. (80% of disabled people use taxi/PHV services to attend medical appointments in contrast to 7% in the general population.)

Disabled people nationally identify 'accessible transport' as their number one priority.

Whilst the Halcrow Unmet Demand Survey (2009) provides a significant amount of useful information, data relating to local disabled people, wheelchair users and their transport needs, is inadequate. For instance, it is impossible to establish how many wheelchair users there are resident in the city.

Nationally almost 20% of the population are disabled with between 4% and 8% of disabled people regularly using wheelchairs.

Halcrow also found that wheelchair-users had to wait approximately four times longer than non-wheelchair users for a vehicle, and that the city would need over 400 more Wheelchair Accessible Vehicles (WAVs) in order to provide the same level of service to all passengers. This situation would be even worse if it were not for the excellent service provided by the city's community transport.

Over the last five years the Licensing Committee has tried to carry out a balancing act of delivering the needed changes, while ensuring that the trade remains viable. Actions have included:

- releasing taxi plates to WAVs only
- requiring these WAVs to be attached to a circuit (over 30 vehicles)
- requiring PHVs that seat over 4 passengers to be WAVs
- introducing compulsory training for drivers prior to application for their first licence.



This Equalities Review explores how to improve access to taxis/PHVs for disabled people in Brighton & Hove, to ensure that they, in turn, might be able to have greater access and equality of opportunity. All parts of the trade have made contributions to the Review and, most importantly, disabled people have shared their experiences and positive suggestions for improvement.

## Legislative Framework

The authority for licensing vehicles, drivers and operators is derived from The Local Government (Miscellaneous Provisions) Act 1976 Part 11 (Sec 45), The Town Police Clauses Act 1847 (Sec 68) and the Public Health Act 1875 (Sec 171). The requirements of this legislation are set out in the council's policy document, The Hackney Carriage & Private Hire Handbook. ("The Blue Book.")

### Disability Discrimination Act 1995 (DDA) as amended 2005

This also includes the statutory Codes of Practice –

- Provision & Use of Transport Vehicles
- Rights of Access, Services to the Public, Public Authority Functions, Private Clubs & Premises
- The Duty to Promote Disability Equality

The legislation and the Codes of Practice can be viewed at:

<http://www.equalityhumanrights.com/our-job/what-we-do/our-business-plan/disability-equality/>

### The DDA and Public Sector Authorities

The Disability Discrimination Act 1995 was amended in 2005 to introduce the public sector Disability Equality Duty (Sec 49A).

The council now has a statutory duty, when exercising its functions (eg taxi licensing), to have due regard to the need to ...

- eliminate harassment of, and unlawful discrimination against disabled people
- promote positive attitudes towards disabled people
- encourage participation by disabled people in public life

- promote equality of opportunity between disabled people and non-disabled people
- take steps to meet disabled people's needs, even if this requires more favourable treatment

In addition, the council is required to 'involve' disabled people (not merely consult), in the development of a Disability Equality Scheme. It was during this involvement process that members of the Brighton & Hove Federation of Disabled People identified taxi/PHV licensing as a priority issue.

Another 2005 amendment to the DDA (Sec 21E) imposes on public authorities carrying out functions (eg licensing), duties equivalent to those imposed on service providers. In broad terms, this puts public authorities under a duty to make reasonable adjustments for disabled people where they are, by reason of disability, disadvantaged in some way by, or in relation to, the carrying-out of the function.

This rather complicated piece of legislation was successfully used by a member of the public at the High Court in July 2009, to challenge a taxi licensing decision made by Liverpool City Council when they declined to license a particular type of WAV.

(An account of this case can be read at:  
[http://www.bindmans.com/fileadmin/bindmans/user/News\\_stories\\_-\\_PDFs/R\\_Lunt\\_and\\_Allied\\_v\\_Liverpool\\_CC\\_briefing.pdf](http://www.bindmans.com/fileadmin/bindmans/user/News_stories_-_PDFs/R_Lunt_and_Allied_v_Liverpool_CC_briefing.pdf))

The Race Relations (Amendment) Act 2000 and The Equality Act 2006 include similar provisions giving public authorities statutory duties to promote equality and eliminate harassment and discrimination. Further details can be found in the council's single Equality Scheme.

[http://www.brighton-hove.gov.uk/downloads/bhcc/equalities/BHCC\\_SES\\_Final\\_Apr10\\_hyperlink\\_version.pdf](http://www.brighton-hove.gov.uk/downloads/bhcc/equalities/BHCC_SES_Final_Apr10_hyperlink_version.pdf)

## The DDA and Transport Service Providers

Also in 2005, Part 3 of the DDA relating to service provision, and Part 5 relating to public transport, were amended. To ensure no one faces discrimination or disadvantage when travelling, service providers of licensed taxis and PHVs are now legally obliged to consider their policies, practices and procedures.

As well as the infrastructure and support services needed to provide the transport, everybody involved is affected. It does not matter whether the services in question are being provided by a sole operator, company or other organisation, or whether the person involved in providing the service is self-employed or an employee, contractor or agent.

A disabled person may be unlawfully discriminated against if a transport provider –

- refuses to provide (or deliberately does not provide) any service which it offers to members of the public, or
- provides a service of a lower standard or in a worse manner, or
- provides the service on worse terms, or
- fails to comply with a duty to make reasonable adjustments if that failure has the effect of making it impossible or unreasonably difficult for the disabled person to use the service.

Transport providers are also subject to provisions covering the aiding of unlawful acts.

## Equality Act 2010 and its possible implications

This legislation replaces, updates and clarifies previous equality legislation including the DDA. The main provisions of the Equality Act should be introduced in October 2010 although no Commencement Orders have been published (as at June 11<sup>th</sup>). The new public sector Equality Duties are timetabled to commence in April 2011.

It should be noted that the DDA, the public sector equality duty, and the Codes of Practice remain in force until they are revoked.

The Head of Taxi and Accessibility Policy Branch at the Department for Transport (DfT) stated in an e-mail "The Department is currently working on the provisions contained in the Equality Act. I am unable to be clear on timescales at this point however we hope to have the provisions in place as soon as is possible."

Some sections of the new Act (explained below) apply specifically to taxis/PHVs and can be viewed at:

[http://www.opsi.gov.uk/acts/acts2010/ukpga\\_20100015\\_en\\_17](http://www.opsi.gov.uk/acts/acts2010/ukpga_20100015_en_17))

**Sec 160:** Gives power for the Secretary of State to make Regulations specifying the technical standards applying to licensed taxis and imposing Regulations on drivers to enable disabled people to access taxis safely, even when seated in a wheelchair, and to be carried in safety and reasonable comfort. (So – it could be an offence for a WAV taxi driver not to comply with a requirement to have a ramp and safety straps for a wheelchair user, or to carry a wheelchair user who is not properly positioned or secured.)

**Sec161:** The licensing authority cannot refuse to license a WAV on the grounds of controlling taxi numbers as the council does now with its 'managed growth policy,' if the proportion of WAVs is smaller than the proportion prescribed in Regulations by the Secretary of State.

The "proportion prescribed" is not known at this stage but the Department for Transport's Equality Impact Assessment, suggests 50% WAVs in the taxi fleet. The city currently has approx 530 taxis, approx 126 being WAVs. In theory, to achieve 50% WAV fleet, the council could be required to release 400 new plates! There are currently over 100 people on the Hackney Carriage Office waiting list.

Research conducted by the Office of Fair Trading and others, seems to suggest that when licensing authorities abandon quantity-regulation, there is an increase of approx 30% taxis. This leads to a driver waiting time significantly greater than the reduction in passenger waiting times. The result is either a lower income for drivers or longer working hours, coupled with a drop in the plate premium for existing plate-holders.

Initially, as Halcrow found, the city could expect a significant number of PHV WAVs applying for plates, but making little difference to the total number of WAVs available to disabled people.

Whilst increasing the number of WAVs should make it more likely that a vehicle is available for a wheelchair user, without appropriate operating practices, disability awareness of drivers, and effective enforcement, numbers alone will not deliver an improved service.

**Sec 162:** This relates to franchise agreements between operators of transport facilities (eg Brighton Railway Station) and taxi/PHV operators requiring vehicles/drivers to ensure accessibility for disabled people.

**Sec 163:** Prevents a licensing authority granting a taxi vehicle licence *unless* the vehicle complies with Sec 160 (ie a WAV).

Renewals of vehicles already licensed (within the previous 28 days) are exempt. However, the Secretary of State has the power to impose an end-date to this exemption, which could be applied differently in different licensing areas.

This would lead to a 100% WAV taxi fleet over a period of years. It may possibly lead to taxi drivers transferring to PHVs because the cost of purchasing expensive accessible taxis may make the business unprofitable.

London has had a 100% WAV taxi fleet for some years, yet wheelchair users are still complaining that taxi drivers do not stop for them and go to some lengths to avoid picking them up.

**Sec164:** The Secretary of State may make Regulations allowing a licensing authority to apply for an exemption from Sec 163 only if Sec 163 would reduce the number of taxis to an unacceptable level. The authority would need "to undertake consultation, publish the outcome and take account of representation."

Before deciding whether or not to grant/refuse the application, the Secretary of State is required to consult the Disabled Persons Transport Advisory Committee (DPTAC – a ministerial advisory group) and 'any other appropriate persons.' Where an exemption is given from the full accessibility requirements, taxis may instead be required to be fitted with swivel seats and to conform to any safety conditions when such seats are in use.

**Sec 165:** Imposes duties on drivers of designated taxis/PHVs to carry wheelchair users at no additional charge, in safety and reasonable comfort, and to provide reasonable assistance. It also requires them to carry a wheelchair if the passenger chooses to sit in a passenger seat.

This applies to drivers of 'designated' vehicles – see Sec 167. Refusal by such a driver is an offence. NB No mention of 'operators'.

**Sec 166:** The Secretary of State may make Regulations which allow the licensing authority to exempt a driver from the duties in Sec 165 due to a medical or physical condition. The exemption certificate must be displayed in the vehicle.

**Sec 167:** Permits a licensing authority to maintain a list of WAV taxis/PHVs. If the authority wishes it may list just those vehicles that also hold a special licence to operate a local bus service. Until the city has 100% WAV taxis, it would seem sensible to keep such a list.

Drivers of these designated WAVs must comply with Sec 165.

**Sec 168:** Taxis must carry assistance dogs and allow them to remain *with* the passenger without making any additional charge.

The licensing authority is entitled to consider the physical characteristics of any vehicle being driven. (eg a driver with a medical condition may be able to carry an assistance dog in a London-type taxi with a screen between the driver and the dog, but not in a saloon.)

**Sec 169:** Taxi drivers can seek exemption certificates if they cannot carry an assistance dog on medical grounds or the vehicle is not suitable for the carriage of assistance dogs. The exemption certificate must be displayed on the taxi, as now.

(NB No exemption on grounds of religion or belief, as now.)

**Sec 170:** PHVs – similar obligations placed on PHV drivers and operators to carry assistance dogs.

**Sec 171:** PHVs – similar obligations placed on PHV drivers re exemption certificates.

**Sec 172:** Allows appeals against the refusal of a medical exemption. It also enables the owner of a taxi/PHV to appeal the licensing authority's decision to list his/her vehicle as a 'designated WAV' on the grounds that it is not accessible.

On an intellectual level, members of the trade understand and support the underlying aims of the Equality Act – to improve transport options for disabled people. However, on an emotional level, there are genuine and growing concerns that livelihoods will be adversely affected if the council are required to release a substantial number of taxi plates.

Stakeholders have identified a range of potential impacts caused by the Equality Act from rank over-crowding, to extra workload for the HCO.

**Recommendation 1:** Once the relevant Commencement Order is published, that the Committee support a city-wide publicity campaign to raise awareness of the new legislation, what it means for operators / drivers and what it means for the travelling public, in particular disabled people.

## Issues identified by local Disabled People

Disabled people were generally supportive of the taxi trade in Brighton & Hove and felt that the city had a really high standard of taxi/PHV service. There were numerous stories involving acts of kindness and consideration with people reporting that, very often, it was the sheer goodwill of taxi/PHV drivers that enabled them to travel and enjoy living in the city.

However, they identified several barriers to accessing taxi/PHV services, many of them long-standing issues which have been raised before, and which have a significant adverse impact on disabled people's lives.

These barriers tend to fall into 3 categories:

### Physical Barriers - *examples*

- Availability of wheelchair accessible vehicles (WAVs) especially at peak times of day (school start times/late evening at weekends)
- Availability of WAVs that can accommodate a range of modern wheelchairs (larger than the 'reference' wheelchair)
- Ambulatory disabled people (in particular blind and partially sighted people) and some wheelchair users, struggling with WAVs and preferring saloons
- Drivers not skilled in the use of assistive equipment – ramps/straps etc

### Organisational Barriers - *examples*

- Operators not taking advanced bookings for WAVs
- Complaints not being dealt with efficiently and effectively (including those made to the HCO)
- BHCC support walking/cycling/buses/car club, but appear unaware of the importance of taxis/PHVs to disabled people
- Taxi Vouchers not sufficiently promoted/advertised

### Attitudinal/behavioural Barriers - *examples*

- Drivers refusing wheelchair users or assistance dogs at pick-up
- Ambulatory disabled people and drivers unaware of swivel seats, steps, induction loops in vehicles and how to use them
- Inappropriate conversation by drivers – poor disability etiquette
- Lack of awareness around the type of assistance that might be required & the impact poor service has on disabled people's lives

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## Assessments and training

1 Before the first issue of a taxi or PHV driver's licence, the council require applicants to undertake the Driving Standards Agency (DSA) taxi assessment, the Edexcel BTEC level 2 award in Transporting Passengers by Taxi and Private Hire, and a topographical knowledge test.

1.1 Since March 2010, proprietors of vehicles have been required to ensure that all drivers are trained to assist wheelchair users in and out of the vehicle, and to carry them safely. Proprietors must be able to demonstrate, on demand, that training has been provided.

### DSA Assessments

2 The DSA taxi assessment covers the Highway Code, traffic signs and cabology.

2.1 For an additional £26 it is possible to do the DSA Wheelchair Exercise which requires drivers to demonstrate competence around erecting ramps and safely installing a wheelchair and occupant in a WAV, ensuring that both are secured, and then reversing the process. (The Wheelchair Exercise may be carried out at the DSA testing centre in Eastbourne but not Burgess Hill.)

2.2 It would be inappropriate for the council to require all new drivers to undertake the Wheelchair Exercise as not all will drive a WAV. In addition, we are unable to apply conditions to taxi drivers' licences once they have been issued.

2.3 It is possible to introduce a condition to the *vehicle licence* of WAVs (both taxis and PHVs) that they are only driven by licensed drivers who have completed and passed the DSA Wheelchair Exercise. This issue would first need to be the subject of consultation at the Taxi Forum.

### BTEC - Transporting Passengers by taxi and private hire

3 The BTEC qualification is generally viewed as being suitable for individuals planning to become professional drivers. It includes customer service, legislation relating to drivers, vehicles and operators, transporting people and luggage safely, map reading and route planning, equality and diversity, and a module on disability awareness.

3.1 This disability module covers the legislation, recognising impairments, providing sensitive assistance, removing barriers, safe restraining and stowage, and the different types of assistive equipment for taxis/PHVs.

3.2 The training, arranged by the HCO and provided by PDM Training & Consultancy Ltd, costs £250 plus VAT which includes 2 days training and course materials. Included in this is an English language, literacy and numeracy assessment, approved by GoSkills (the Sector Skills Council), in order to ensure that applicants will be able to derive full benefit from the course. Members of the HCO attend to confirm the identities of the students.

3.3 The arrangement involving PDM has proved controversial although it is important to stress that the company are highly regarded and no criticism has been made of the training they provide or the results achieved. Some members of the trade were under the impression that BTECs achieved elsewhere in the country or through other providers were not recognised by the council. Clearly, this cannot be the case.

3.4 Several members of the trade locally felt that, when enrolling on a nationally accredited course such as the BTEC, it should be for individuals to seek out their own training providers. These might also include the local knowledge schools where the trainers are able to pass their professionalism on to the new generation of drivers. (Clearly the knowledge schools and assessors would need a licence agreement from Edexcel before they would be able to offer the training.)

3.5 To complicate matters, the government is introducing the Qualifications and Credit Framework (QCF) which is a new framework for creating and accrediting vocational qualifications. The accreditation end date for the BTEC is 30<sup>th</sup> September 2010. This will be the last date that an applicant can register for the BTEC although they have until 30<sup>th</sup> September 2012 to complete the work.

3.6 The council's own professional drivers (the Children's Trust Departmental Transport Service) have recently completed an NVQ2 funded by Train to Gain and this has been mooted as a suitable replacement qualification for the BTEC. It covers safe and efficient driving, care of disabled and young passengers, health and safety, cleanliness, dealing with emergencies, route planning and fare collection.

3.7 However, the NVQ2 is an assessment suitable for those individuals *actually working as drivers* and not suitable for prospective drivers. In addition, there is some question as to whether funding will still be available. The cost (without funding) is approximately £900.

3.8 Edexcel, the Qualifications Body that offers the BTEC, have announced that there will be a replacement course/qualification available from October 2010 that will fit the new QCF.

3.9 The HCO has been contacted by the NPHA who have been working with GoSkills, the DfT, NALEO, and taxi/PHV trainers, to develop an entry-level Vocationally Related Qualification. Apparently, the DfT have asked for a vehicle maintenance section, a more robust disability awareness section and stronger emphasis and detail regarding the legislation.

**Recommendation 2:** That the committee notes the current BTEC qualification will not be available to new applicants after 30<sup>th</sup> September 2010 and approves the replacement entry-level qualification for new drivers.

## Disability Awareness Training

4 The GMB and the Federation of Disabled People strongly support the introduction of disability awareness training for drivers and staff employed by operators. Best practice in this field is that disability awareness training involves disabled people.

4.1 In their joint proposal they suggest that training must be 'of a required standard' but there is no readily available, trade-specific disability awareness training, save for the various modules that make up other qualifications (the BTEC or NVQ2) and a GoSkills DVD.

4.2 There is, however, a training framework prepared by the Disabled Persons Transport Advisory Committee which could provide ideas for a bespoke training package for taxi/PHV personnel in the city. It can be viewed at:

<http://dptac.independent.gov.uk/education/stafftraining/index.htm>

4.3 Recent research by Transport for London has revealed that taxi drivers in the capital (100% WAV) may not be clear about their obligations to disabled people, how to use the assistive equipment on their vehicles, and disability communication and etiquette. TfL are in the process of developing disability awareness training for all London cabbies.

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4.4 Other areas about to develop their own disability awareness training include Essex and York. It seems that there is an opportunity here for pulling this information together and developing a programme that would meet the needs of several licensing authorities including colleagues across Sussex.

4.5 First there needs to be an analysis of staff training requirements locally and some clear aims and objectives.

4.6 Brighton & Hove could then work towards its own Certificate of Professional Competence (CPC) for drivers/operators' staff. This could take the form of 3 modules – disability awareness, customer service and equality & diversity. Each person could complete the modules over a 3 year period – the time commitment being 3 7-hour days, preferably one day per year – the cost to each person would be in the region of £100 per day.

4.7 Because this would not be a nationally accredited course, to ensure quality and consistency, it would need to be delivered by one identified training provider.

4.8 The council are unable to put new conditions on established taxi drivers' licences so attendance for them would be voluntary, as it would be for operators' staff.

4.9 However, the training might be required as part of the conditions for new licenses and mandated for experienced taxi drivers following receipt of a complaint, or offered as an alternative to enforcement. The thinking behind this is that FPNs do not change attitude or behaviour – we want to improve standards for disabled people rather than punish individuals who are unaware that they may have caused offence.

**Recommendation 3:** That the HCO, working in partnership with the Federation of Disabled People and other stakeholders, develop the framework for a Certificate of Professional Competence, research providers, and report with firm proposals by the end of 2010.

## COMPLAINTS

5 Although only a very small number of disabled people consulted had actually complained to the operators or the HCO, all felt frustrated and disillusioned with the process. Their criticisms were that the process itself was confusing and inaccessible, cases took far too long to investigate with no regular updating, and there was no confidence that lessons would be learnt.

5.1 Those that were aware of the HCO complained that the council required them to make the complaint in writing by letter or e-mail. This would deter a significant number of people including those with learning disabilities or visual impairments. In fact, the HCO not only accepts complaints by other methods, but will assist a member of the public who finds the system inaccessible. However, this is not explicitly stated on the council's taxi licensing page on the website.

5.2 Members of the Federation of Disabled People felt that one element is frequently overlooked from complaints procedures generally, and that is the impact on the individual disabled person.

5.3 For instance, whilst it is irritating for anybody to see their taxi/PHV drive off before they can reach it, most of us have other options – walk, cycle, get the bus or train, drive ourselves, or get a lift. The Federation make the point that for a disabled person who does not have these options, the impact could be disastrous. They believe that without understanding the impact, complaints handlers might regard some of their complaints as really trivial.

5.4 The main cause of confusion was whether people should complain to the operator first or the HCO. Most said they would complain to the HCO if they did not get satisfaction from the operator.

5.5 One of the big operators had a particularly impressive complaints process and was able to show that his complaints were fully documented, investigated and resolved in a matter of days rather than weeks. His company complaints are subject to external audit every three months.

5.6 The other operators deal with low-level complaints in-house, but send the more serious complaints to the HCO for action. Concern was expressed that if the council do not deal with complaints effectively, it would adversely affect the operator's reputation and business.

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5.7 The GMB have an interest in ensuring transparency and fairness in the complaints system not just on behalf of individual members, but to demonstrate to the public that drivers are skilled professionals. They too are calling for changes to the current procedure.

5.8 The complaints process needs to be brought into line with other complaints standards used across the council and be customer focused, objective and used to inform corrective action.

5.9 In order to monitor and evaluate changes made as a result of this Review, it would be useful to have complaints data relating to disability – that is disability-related complaints (eg refusal to carry assistance dog), as well as complainants who identify as DDA disabled (eg a disabled person complaining about a dirty vehicle).

**Recommendation 4:** That the HCO implement changes and improvements to the current complaints process to ensure that it is accessible and that all complainants are provided with clear, detailed responses.

## Vehicles

6 It is important that a disabled person should be able to hire a taxi on the spot with the minimum of delay or inconvenience. The city currently has 530 taxis, 126 of which are WAVs. (A lower proportion compared with many other authorities in England.) This is expected to change later in 2010.

6.1 Some disabled people do not attempt to hire a taxi in the street or on the ranks because they have had occasions when drivers refuse to take them, so they phone one of the operators. So long as they can travel from A to B, they do not care whether they get a taxi or a PHV.

6.2 Research published as recently as June 2010 by TfL, has found that even in London which has a 100% WAV taxi fleet, disability groups claim that drivers regularly fail to stop for disabled passengers. It appears that the numbers and types of vehicles available are not the only answer to the problem.

6.3 The PHV fleet consists of approximately 450 vehicles (although this number fluctuates) of which approximately 21 are WAVs. All new PHVs able to carry more than 4 passengers are required to be WAVs.

6.4 Several people consulted felt that there needed to be more WAVs in the PHV fleet especially as wheelchair users tended to phone an operator rather than hire a taxi. Vehicle costs were cited as the reason why most PHVs are saloons, that and the fact that drivers tend to use their vehicles for personal use. As a compromise, a suggestion was made that a swivel seat should be required in every new PHV.

6.5 The Halcrow report identified that an additional 428 WAVs linked to a radio circuit were needed if we were to eliminate discrepancies in waiting times for wheelchair users.

6.6 The GMB have suggested that an increase in the age limit on WAVs, from a maximum of 10 years to 12 years would improve the situation. They go on to suggest that WAVs over 10 years old could be subject to 2 council tests per year.

6.7 The present position is that vehicles over 10 years, if in exceptional condition as confirmed by the inspecting garage, can continue to be licensed now. Whilst the DfT advise against setting 'arbitrary age limits' they do go on to recommend greater frequency of testing for older vehicles.

6.8 Many disabled people, in particular blind/partially-sighted people, those with arthritis, back problems etc, make the point that an *accessible* vehicle is not just one that is *wheelchair accessible*. When it comes to access, disabled people have competing requirements, a point made by members of the Licensing Committee.

6.9 The complaints about WAVs are around the 'high step' into the vehicle, not being able to grip the handrails and having to manoeuvre whilst bent over, in order to reach the seat. Some people might find WAVs more accessible if they were aware of the additional step that can be utilised, or the swivel seats available in some vehicles.

6.10 Swivel seats may not be appropriate for lower limb amputees, and some visually impaired people simply feel safer in a saloon. Until there is a 'one size fits all' vehicle design, there is a strong case for ensuring there is a mixed fleet available.

6.11 Not all WAVs are able to accommodate the full range of modern wheelchairs – in particular the heavy chairs or those needing greater

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headroom. The range of wheelchairs approved by the Medical Devices Agency is vast and includes powered and manual wheelchairs. The Agency also approve a growing number of frames, 'walkers' and other mobility aids that passengers may want to carry with them.

6.12 Some disabled people worry about not being able to communicate with the driver and are unaware that all vehicles in the city have either intercom or a means of communication with the driver. Some of the newer WAVs have induction loops but disabled people are not confident that drivers understand the technology available in their own vehicles.

6.13 The RNIB have produced a free sign for blind or partially-sighted people to use, in order to hail a taxi in the street, but few disabled people and drivers recognise the design.

6.14 The RNIB also support a Tactile Plate System which, without screws, attaches a small plate with the vehicle number in Braille cells and Tiresias font, to just under the door handles (both internal and external). A blind or partially sighted person, on approaching the vehicle, can check that they are in fact getting into a taxi/PHV. If they need to know the taxi number when they are inside the vehicle, again they are able to read the tactile plate. (Attempts have been made to ascertain the cost of these plates – as yet no response.)

6.15 Disabled people would like drivers to ask if they need or want assistance especially as it became clear during the consultation that disabled people do not know about the various features found in the vehicles.

**Recommendation 5:** That the Committee approve the maximum age limit for a WAV, be increased from 10 to 12 years, subject to it passing two vehicle tests per year.

**Recommendation 6:** That the Committee approve all new licences for private hire vehicles to be required to have an approved swivel seat fitted.

## WAVs – Side Loading v. Rear Loading

7 DfT guidance issued February 2010 includes "best practice is for local licensing authorities to adopt the principle of specifying as many different types of vehicle as possible ..... and might usefully set down a range of general criteria leaving it open to the trade to put forward vehicles of their own choice ..... so there can be flexibility for new vehicle types to be readily



taken into account.” It goes on ..... “Licensing authorities should give very careful consideration to a policy which automatically rules out particular types of vehicle ...”

7.1 Strong local objections to rear loading WAVs come from the GMB and the Federation of Disabled People. They cite safety concerns, as do many other authoritative national organisations such as RADAR, SCOPE, Disabled Person’s Transport Advisory Committee and other bodies concerned with road safety.

7.2 The main objections are around wheelchair users being in the road when entering and leaving the vehicle, drivers not being confident around assisting the wheelchair user on/off the kerb, and passengers being seated in the ‘crumple zone’ near the back of the vehicle. They highlight other practical problems such as rear-loading vehicles blocking already scarce ramp space, and lack of alternative exits for wheelchair users, in the event of an accident.

7.3 There are concerns that when the Equality Act is implemented, preventing the council refusing taxi plates for WAVs until the numbers reach the ‘proportion prescribed,’ because rear-loading vehicles may be cheaper than side loaders, there may be a significant number of applicants and over time may lead the entire WAV fleet to be rear-loaders.

7.4 Supporters of rear loading WAVs point out that thousands of disabled people and special schools/charities have rear loading vehicles often bought on the Motobility scheme, and that driver fatigue is more of a safety issue than design of the vehicle. They claim that entering and leaving the vehicle is quicker than with a side loading vehicle and easier for the driver, especially when the vehicle is fitted with a lift.

7.5 Operators make the point that, because rear-loading vehicles tend to be cheaper to buy/run, it would follow that more WAVs would be put into service, thereby increasing the opportunities for travel to wheelchair users. In addition, several adjoining licensing authorities in Sussex license rear loading WAVs without problems.

7.6 There is a perception within the trade that BHCC (not just Licensing) is inconsistent in its approach to rear-loading WAVs and its support for local business. There have been calls for more ‘joined-up working.’ When city operators tender for the lucrative BHCC school transport contracts, they claim they are at a disadvantage because they are competing with operators licensed outside the city who operate the much cheaper rear-loading WAVs.

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7.7 Brighton and Hove operators claim that if they were permitted to license rear-loading WAVs, they would be better able to keep costs down and win BHCC contracts. They believe that this would help the economy in the city, provide more work for local drivers, reduce carbon emissions and, most importantly, increase the chances of wheelchair users having ready access to WAVs, even during the busy school-run periods.

7.8 It should be noted that individual children's journeys to school are risk assessed with many being picked up from driveways or designated bays outside their homes and taken straight to a school where the drop-off point is off-road. Drivers are provided with training and it is also likely that parents/carers will be in attendance at pick-up and drop-off. So, this type of journey is very different to plying for hire or general PHV work.

7.9 Earlier this year a Coroner called the head of licensing in Birmingham to give evidence at the inquest of a 14 year old wheelchair user who died from injuries sustained when the taxi in which she was travelling, braked. Whilst the issues in this case were safe use of the equipment and driver training, it highlights the need for councils to take all possible steps to ensure the safety of passengers in taxis/PHVs and to be prepared to justify decisions in courts.

7.10 The Licensing Committee will understand the limits of its authority in relation to the school transport contracts but may want to bring the issues raised by the trade to the attention of officers undertaking the Equality Impact Assessment on school transport provision as a matter of urgency.

**Recommendation 7:** That the views and evidence provided by all contributing parties to this report, be brought to the attention of officers dealing with the school transport contracts.

**Recommendation 8:** All new and transferred licences for taxis should be for side-loading wheelchair accessible vehicles with M1 ECWVTA and include features to cater for those passengers with reduced mobility, vision and hearing.

## CCTV

8 The council has already approved a CCTV system but its installation and use in vehicles is optional. The approved system provides continuous audio and visual recording when the ignition is on and records for a set time after the ignition has been turned off.

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8.1 Whilst there was some support for compulsory CCTV in vehicles, broadly speaking the response from drivers was lukewarm, especially the PHV drivers. One of the drivers' representatives explained that most of the PHV drivers use their vehicles for private purposes and want to be able to turn the system off.

8.2 Although the cost of CCTV was mentioned, this was not the over-riding objection. In fact, the GMB offer an affordable CCTV-hire package that includes a year membership of the union. An alternative system is offered by a local company charging approximately £70+VAT for installation, with a weekly charge of under £10.

8.3 Improving services for disabled people will necessitate all the partners working together, raising awareness, training, complaints handling, but as a last resort - enforcement. There is little point in government amending legislation to provide greater protection for disabled people if it is not enforceable.

8.4 The approved CCTV system will help the HCO identify those drivers who either fail to carry wheelchair users safely, or refuse to carry them at all.

8.5 It will also provide evidence in relation to other incidents or complaints. Supported by Sussex Police, it should lead to a greater sense of safety for both driver and passenger. 28% of people surveyed by Halcrow stated that CCTV would improve safety, and drivers reported to the survey team that they felt unsafe 'in certain parts of the city.'

**Recommendation 9:** That the Committee approves that CCTV approved by the Director is installed in all newly licensed vehicles.

### Operating practices

9 A criticism often heard from disabled people is that drivers on the circuits are not accepting wheelchair jobs and consequently wheelchair users have to wait some time for a vehicle, or they are asked to phone later.

9.1 This is not acceptable and potentially actionable. There is legislation in place already requiring all transport providers to ensure they provide an equitable service and it is unlawful to 'aid' an act of disability discrimination by another. It is essential, therefore, that operators do not allow their drivers to refuse wheelchair jobs routinely, save for the couple of drivers who have Medical Exemptions.

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9.2 The Licensing Committee has for several years only issued new taxi plates to WAVs. On one occasion 20 plates were issued on the understanding that these vehicles were attached to one of the operators' circuits. Operators who allow WAV drivers to 'opt out' of wheelchair jobs effectively undermine the Committee's efforts to improve the transport options for disabled people, and along with the drivers, may be in breach of the DDA.

9.3 Two of the major operators have software in place that requires the drivers to accept a job before they know it is a wheelchair run. They are able to identify any driver with a WAV who turns down wheelchair work, and would take action against him/her by removing them from the circuit.

9.4 The third company has a system that enables drivers to express a preference for the jobs they are willing to take, (eg wheelchair, shopping, child seat, more than 5 passengers etc) and this information is then entered on the company computer. It is possible, therefore, for a driver to obtain a taxi plate because they run a WAV, and then make a decision *not* to take wheelchair jobs.

9.5 The operator concerned is actively addressing this issue and is aware that when Secs 165 & 7 Equality Act 2010 are implemented, (designated lists of WAVs) drivers will be the subject of enforcement if they fail to carry wheelchair users, save for a very small number of drivers with medical exemptions.

9.6 On the positive side, this company operates an incentive scheme which pays £5 to WAV drivers who travel out of their area to pick up a wheelchair user. This had been an informal arrangement but a vote was taken at the organisation's AGM and is now permanent policy.

9.7 All the big operators allow people to specify 'saloons' when they book by phone. One company has, on average, approx. 30 customers per day requesting saloons, not WAVs. Another operator uses their software to note regular customers' vehicle preference.

9.8 Disabled people have also complained that they cannot book WAVs in advance, although the operators say they have been taking bookings for about 18 months.

9.9 A possible solution would be to publish a list of independent WAV drivers and their contact numbers so disabled people could phone them direct. (This list would probably not include the details of WAV drivers attached to a circuit primarily because there are strict protocols around the fair allocation of jobs and it is likely that the operators would remove them from the circuit.)

9.10 It is envisaged that the HCO would need to write to every independent WAV driver asking if they wanted to appear on a list which would need to be updated regularly. This list could be publicised via BHCC website, City News, Visit Brighton, Brighton & Hove Federation of Disabled People etc.

The list would look something like ...

Fred Bloggs	07111111111	After 2 pm	WAV/induction loop
John Brown	07222222222	Days only	WAV/Portslade area
Tom Smith	07333333333	Night driver	WAV/no dogs (medical exemption)

You may also book a WAV from:

- City 01273 ...
- Radio 01273 ...
- Streamline 01273 ...

*NB: The above-named companies have wheelchair accessible vehicles available and will accept BHCC taxi vouchers*

9.11 To take bookings over the phone, PHV drivers would need an operators' licence, and in addition to the licensing provisions to which they are already subject, they would need to answer the phone in the city, and keep very basic records of bookings for 6 months. (Date/time of booking/hire, collection point/destination and name if possible – to be produced on request.) Local Government (Miscellaneous Provisions) Act 1976.

**Recommendation 10:** That the committee approve a pilot scheme initially for one-year, to publish contact details of WAV drivers prepared to take bookings, and where an operator's licence is required for a single vehicle, that operator's licence is provided free of charge.

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## TAXI VOUCHERS

10 BHCC operates a discretionary taxi voucher scheme which provides £65 per year or £35 for applications made in the last 6 months of the financial year.

10.1 Taxi vouchers are only issued to those people who are unable to use the buses and, therefore, do not have a County Card. Whilst people can apply for vouchers at any time, the council send renewal letters in Jan/Feb asking voucher holders to confirm they still wish to receive vouchers and that they are still eligible.

10.2 This year the council have provided 1,411 people with taxi vouchers worth in the region of £90k. However, we anticipate that less than £60k will be redeemed, and this has been the pattern for several years.

10.3 Vouchers can be used to pay the 3 main operators in the city plus a couple of other operators based in Shoreham and Saltdean. For people living near the borders of the city, key destinations may be in one of the neighbouring authority areas and it may be more practical for disabled people to use operators based there.

10.4 Although concern was expressed by one operator that the council were in effect 'shrinking the city' by allowing out-of-town operators, only 6% of the vouchers redeemed go to companies outside Brighton & Hove. Any change to this system may disadvantage disabled people living on the outskirts of the city.

10.5 Officers managing taxi vouchers have offered to send promotional material to all voucher holders raising awareness of taxi/PHV services, and welcome the opportunity of working with the Federation of Disabled People on the content.

**Recommendation 11:** That the Committee support the promotion of accessible taxi/PHV services targeted at taxi voucher recipients in January 2011.

10.6 Officers would also like to raise awareness of what is available in terms of vouchers and vehicles, and let disabled people and professionals with an interest in disability, try things out. A suggestion has been made that in support of Customer Service week (4.10.10) a fully-equipped WAV is available in Barts Square. As this is an annual event, publicity in City News etc is already arranged.

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**Recommendation 12:** That the Committee, in support of National Customer Service week , encourage the taxi/PHV trade to make a WAV available in Barts Square to demonstrate access features - step, ramps, induction loop, high-viz handles etc.

### Star Rating for Operators

11 In order to recognise quality service provided by operators, the council in partnership with the Federation of Disabled People could award up to 3 'stars' to operators (of all sizes) who fulfil approximately 12 criteria agreed by the Licensing Committee. Operators could then display/advertise their star status following assessments from the HCO and the Federation.

11.1 The detail of the scheme and the criteria would need to be developed by the taxi forum including the Federation but it is envisaged that the criteria would focus on disability-related issues, customer service and complaints handling, and written in such a way that all operators licensed in the city could take part. Operators that fulfil all 12 criteria would be awarded 3 stars, 8 criteria would attract 2 stars, and so on.

11.2 Once the star ratings are awarded, these could be promoted on the Federation's website (which provides access information to disabled people visiting the city), and all the other locations disabled people use to obtain access information.

11.3 There may be economic benefits attached to this scheme as disabled people, their friends and families, increasingly take their business to disability-friendly organisations.

**Recommendation 13:** That the committee supports in principle a Star Rating for operators, the detail to be developed by the HCO in partnership with the Federation of Disabled People.

### Mystery Shopping

12 In their joint document, the GMB and the Federation have suggested that the licensing team carry out 'mystery shopping' in order to identify breaches of the DDA in particular those concerning wheelchair users.

12.1 Whilst this is an excellent idea, it may be more appropriate for disabled people themselves to undertake this task as they are better equipped to identify the problem areas. It could form part of the activity to support the Star Rating for Operators recommendation.

12.2 The licensing team already work under pressure and by involving them directly, it might be seen as 'stick' rather than 'carrot!' The council are always looking for ways to work collaboratively and in a positive way in order to promote equality and inclusion.

**Recommendation 14:** That the Committee ask the Federation of Disabled People to make a detailed proposal as to how they would envisage undertaking 'mystery shopping' setting out any costs that might be incurred.



## BHCC Policy on Taxi/PHV Licensing (The Blue Book)

The Licensing Committee have asked the Hackney Carriage Office to review and update the Blue Book. It would seem sensible to do this when the provisions of the Equality Act are clarified and the Secretary of State's guidance is published. (October 2010)

The following observations should be read in conjunction with the Blue Book:

The Book needs to include the Road Safety Act 2006, the most relevant section being 52 which enables BHCC to suspend/revoke a taxi/PHV driver's licence with immediate effect on safety grounds. (For example - when a wheelchair user is not carried safely.) This was adopted by the Licensing Committee in April 2007.

The Book should also include a paragraph to indicate that disabled people are not precluded from working as drivers. (eg "A disabled driver or somebody with a long-term health condition may become a licensed taxi driver (subject to our medical requirements) but may need to have their driving ability assessed independently. This may be in a suitably modified vehicle.")

Safeguarding Vulnerable Groups Act – It may be that taxi/PHV drivers will be subject to the new Vetting and Barring Scheme and will need to register with the Independent Safeguarding Authority at a cost of £65. Once known to the ISA, any information received on a driver will be passed immediately to the HCO. Full details and guidance will be available from the ISA website in July 2010.

1.2 Conditions of Fitness are now prescribed by the PCO, Transport for London. The current Conditions only allow nearside-loading WAVs and state that it is 'desirable' that there is also wheelchair access to the offside, but not essential.

29 "Wheelchair Bound" Passengers – would be regarded as offensive. Wheelchair-user is the preferred expression.

30/72/122.3 Assistance Dogs – will need to be re-written in accordance with the Equality Act.

91.3 & 130 The requirement to convert an EEC licence to a UK licence before application is made – possibly unlawful discrimination. The Community

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Driving Licence Regs 1996 allows full EEA licences to count towards qualification requirements for taxi/PHV drivers' licences. Similar provision now applies to N. Ireland drivers' licences. Courts in the EEA are now legally required to notify DVLA of endorsable offences and penalties.

The trade may want to encourage drivers to obtain the UK counterpart document, which creates a driver record at DVLA, as there are *advantages* for EEA licence holders. (Example: foreign licence holders cannot accept FPNs and have to attend court, thereby paying increased fines. Neither courts nor DVLA have the power to endorse a foreign driver's licence, so very harsh penalties may be awarded.)

92 Annual re-licensing of drivers - DfT claim not good practice. They quote undue burden on drivers and licensing authorities and recommend renewal at the legal maximum - 3 years. If drivers cannot afford the larger fee, they recommend the option of paying annually.

By removing the requirement to re-license every year for hundreds of drivers, it may free-up time for the HCO.

111 Appearance - "skirts and dresses of at least knee length" - needs updating.

138 Discrimination offences - clarify. Does this mean hate crime or offences aggravated by race, disability or sexual orientation? Convictions under Protection from Harassment Act?

145 Operators' premises - should be accessible as reasonably practicable.

151.1 Operators required to notify the council in writing of complaints against drivers. (See complaints.)

#### Guidance Notes for New Applicants

Suitability - update para 1 re UK driver's licence.

"Ethnic Monitoring" - update in accordance with City Inclusion Partnership guidance and include reason for monitoring. (One operator noted that a significant number of his drivers were dyslexic, autistic, diabetic etc - mostly hidden disabilities.) Monitoring for disability can raise awareness of the numbers of people who are DDA disabled but do not label themselves as such. Disability could be included when the HCO reports to the Licensing Committee on ethnicity.

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## Other Equality Issues

### Issue of taxi plates

Manchester City Council limited the issue of Plates and kept a list of applicants over a period of years, the main criterion being length of service as a driver. This was challenged in 2009 and the ET concluded that, given the male dominated profession, there was an intrinsic risk that length of service would put women at a particular disadvantage when compared with men. The ET found that length of service was not of inherent value to do the job and that the justification put forward by the council appeared to be purely a question of administrative ease. (*Brookes v Manchester City Council*)

The issue of women taxi drivers and plates was raised by a member of the public at one of the Federation's consultation events, Halcrow and previously at Licensing Committee. If the Equality Act proceeds as expected, the HCO may not have a waiting list for plates. The position should be monitored by the HCO, in particular to identify whether there is an increase in women drivers when the Equality Act is in force. This could be linked in with the annual reporting of BME drivers.

### Immigration

The DfT considers it appropriate for licensing authorities to check on an applicant's right to work and any work restrictions, before granting a taxi/PHV driver's licence. Individual applicants should be made aware that these checks are carried out.

Case specific information can be obtained from the Evidence and Enquiry Unit, Floor 12, Lunar House, Wellesley Road, Croydon CR9 2BY. (0208 196 3011)

Currently the HCO only asks for a National Insurance number. Some other licensing authorities have started checking established drivers and have identified somebody in the country illegally. (*Gosport*)

The Licensing Committee may want a policy on background checks for applicants elsewhere in the EU and overseas countries. An approach recommended by the DfT is to require a certificate of good conduct authenticated by the relevant embassy. The CRB gives information about obtaining certificates of good conduct, or similar documents, from a number of countries. [www.crb.gov.uk](http://www.crb.gov.uk)

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**Recommendation 15:** That the Committee require 'Right to Work' checks carried out on application for drivers' licences.

**GMB Professional Drivers Branch (PDB) and the Brighton and Hove Federation of Disabled People's proposals/recommendations to address the substandard service, and unlawful breaches of the DDA, by the Brighton and Hove Taxi and Private Hire trade, in relation to the supply of suitable vehicles to transport customers sitting in their wheelchairs.**

The GMB PDB having considered the current level of service, offered to customers needing suitable wheelchair accessible vehicles (WAVs), are recommending a number of proposals that we believe will finally address the on-going problem of insufficient suitable vehicles for customers requiring WAVs. The GMB PDB are also offering recommendations that will help all those working in the Taxi and Private Hire trade become more disabled friendly, thus helping all those in the trade adhere to the duties placed on them by the DDA.

Our proposals are three stranded, immediate action required, short term action required, and longer term action required. However if all our proposals are excepted we believe the current lack of available WAVs will be no-more, and in time the level of service received by customers requiring WAVs, will be on a par with the service provided to the general customer base.

**Long term action (up to seven years from adoption)**

In line with the current amendment going through parliament (Equality Bill), the GMB PDB believe that a council, such as Brighton and Hove, that restricts the number of taxis licensed will have to move to a 100% WAV taxi fleet. Other options that the Equality Bill offers, such as 100s of more taxis licensed, or total deregulation of the taxi fleet, are not options the GMB PDB would support locally or nationally. Having a 100% WAV taxi fleet is by far the best long term option, and the PDB and the FED fully support this option. This will take up to seven years to allow those existing saloon taxis to operate until they have to change vehicles.

**Short term action (from three to five years)**

There are a number of short term options the PDB and FED believe will address the way the Brighton and Hove Taxi and Private Hire trade interact with all disabled customers.

- Disability awareness training to take place for all licensed Taxi and Private Hire drivers (existing and new). This training will have to meet a required standard.
- All drivers of Taxi and Private Hire WAVs to be fully trained to operate such vehicles. This training will have to meet a required standard.
- All drivers of Taxi and Private Hire WAV vehicles will have to produce a certificate to the operator, or the vehicle proprietor, or both, to confirm that they are fully trained in the assistance of wheelchair users including ramps, specific to said vehicle.
- All Taxi and Private Hire operators will be responsible for keeping up to date records of drivers correct vehicle type disabled training certificates.
- All Taxi and Private Hire operating staff to have full disability awareness training. This training will have to meet a required standard.

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- A comprehensive Taxi and Private Hire complaints procedure be implemented, which will provide a full audit trail between the council's licensing team, and Taxi and Private Hire operators. All complaints to be filled out on carbon copy 'Licensing Complaints' headed form. Copies to given to the licensing team, the driver, and the operator. The licensing team will then enforce where and when it sees fit.
- All Brighton and Hove Taxi and Private Hire operators to comply with all current DDA legislation. (An equal service has to be provided to all customers)
- To help make enforcement of the licensing objectives easier, and help clear up any complaints made by customers, CCTV (approved by licensing team) should become compulsory in all newly licensed vehicles.
- The licensing team should undertake 'Mystery Shops', including regular wheelchair jobs, to see that the procedures recommended, and DDA law, are being adhered to.
- The licensing team should make it clear that they will seek prosecutions, and/or revoke any license, including Taxi and Private Hire operators', if the DDA is not adhered to.
- All licensed Brighton and Hove Taxi and Private Hire operators to have a minimum of one third of its' total fleet WAVs (to be implemented in reasonable time frame).

### **Immediate action**

Whilst our proposals above will, in time, address the shortfall in suitable WAVs, and the way the trade interacts with disabled customers, the PDB and the FED also proposes a small number of recommendations that will help out almost immediately, until such time as our other proposals kick in. These proposals should be implemented without delay by the licensing committee.

- A website providing direct telephone numbers to Taxi and Private Hire drivers of WAV vehicles.
- Brighton and Hove City Council to reinstate five new taxi WAV plates a year, managed growth policy.
- Brighton and Hove City Council to issue twenty new taxi WAV plates; with a condition they join a Taxi or Private Hire circuit with over 50 cars.
- Brighton and Hove City Council to reduce the annual license fees for all Taxi and Private Hire WAVs.
- Brighton and Hove City Council to increase the age limit on Taxi and Private Hire WAVs, from a maximum of ten years to a maximum of twelve years. All WAVs over the age of ten years to be subject to two council tests per year.
- Any licensed Taxi and Private Hire operator providing a service to Brighton and Hove City Council must adhere to all the new requirements outlined in these proposals, and current driver and vehicle standards including any duties made on them by the DDA.
- That recommendations from the Taxi Review are implemented.

FINAL DRAFT

**LICENSING COMMITTEE  
(NON LICENSING ACT 2003  
FUNCTIONS)**

**Agenda item 8**  
Brighton & Hove City Council

**Subject:** Response to the report of the Overview & Scrutiny Committee Scrutiny Panel on 'Street Access Issues'

**Date of Meeting:**

**Report of:** Jenny Rowlands, Director of Environment

**Contact Officer:** Name: Christina Liassides Tel: 29-2036  
E-mail: Christina.liassides@brighton-hove.gov.uk

**Wards Affected:** All

**FOR GENERAL RELEASE**

**1. SUMMARY AND POLICY CONTEXT:**

1.1 The Scrutiny review was established following concern over how accessible the city's public highways are. A review and impact assessment of the council's operational policy "Traders' Objects on the Highway" highlighted the issues regarding accessibility on the highway and the council responded to requests for further debate from organisations, individuals and businesses by setting up a Scrutiny Panel to examine the competing needs of different highway users. The scope included:

- Gaining an understanding of the issues relating to street accessibility within Brighton & Hove
- Reviewing current Council policy relating to items placed on public walkways
- Seeking a balanced range of views as to the impact of current policy and practice
- Developing recommendations for the future development of council policy on these issues

1.2 The full report (Appendix 2) which describes the scrutiny process and summarises evidence, findings and recommendations has been considered by officers with lead roles in highway placements. The Scrutiny Panel's examination has been welcomed and this report sums up the response to the Scrutiny Panel's recommendations.

**2. RECOMMENDATIONS:**

- 2.1 (1) That Licensing Committee notes the evidence, findings and recommendations of the Overview & Scrutiny Committee and its scrutiny panel in relation to Street Access Issues.
- (2) That Licensing Committee agrees the actions in the responses to Recommendations 1, 2, 3, 5 and 6 (Appendix 1).

- (3) That Licensing Committee notes the responses to Recommendations 4 and 13 (Appendix 1). Recommendation 13 is subject to the council's corporate enforcement policy.

### **3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:**

- 3.1 The council established a Scrutiny Panel following debate raised by a review of the existing operational policy for 'Traders' Objects on the Highway.' The Panel sought to take into account and balance the competing needs of highway users.
- 3.2 In terms of the operational policy, the Panel has set forth recommendations that support the principles and operation of the existing policy but seek to improve the enforcement regime.
- 3.3 The Panel also looked at other placements on the highway, and particularly sought to make recommendations with regard to communal bins and bicycle parking.
- 3.4 Several of the recommendations are in progress following agreement of the revised operational policy for 'Traders' Objects on the Highway' in April 2009 or - for example, with bicycle parking spaces - have already been trialled around the city. Lead officers are broadly in agreement with all the recommendations; however, there are some practical queries that have been raised on certain points.
- 3.5 In terms of the council's constitution any recommendations and approvals regarding the policy on traders' objects must be considered by Licensing Committee because it is a licensing function. (Recommendations 1, 2, 3,4,5,6 & 13)
- 3.6 Any recommendations and approvals regarding other highway placements (e.g. bicycle parking, communal bins) must be considered by Environment Cabinet Member as these are a highway function. (Recommendations 1, 7, 8, 9, 10, 11, 12, 14, 15, 16).

### **4. CONSULTATION**

- 4.1 The Panel issued a general public invitation to submit evidence. Over 40 responses were received. The Scrutiny Panel then held 3 public meetings during 2009. During the sessions, individuals and representatives of various organisations or businesses were invited to give evidence and to respond to questions from panel members.
- 4.2 Lead officers within the relevant council services have been consulted regarding the recommendations. Other agencies have also been consulted where appropriate e.g. the police regarding monitoring and enforcement activities by PCSOs.



## 5. FINANCIAL & OTHER IMPLICATIONS:

### Financial Implications:

- 5.1 There may be financial ramifications associated with implementing some of the measures quoted. The budget for 2010-11 assumes a certain level of income based on traders objects on the highway. A boards, hoardings, tables and chairs and skips and scaffolds are expected to yield £243,320 over the forthcoming year, which will be used to cover the monitoring costs of the Highway Enforcement Team. Any reduction in the level of traders items on the highway, could affect the revenue budget. Similarly, if the council decides to introduce new standard advertising boards a budget will have to be found for this initial expenditure and any ongoing maintenance costs.

*Finance Officer Consulted: Karen Brookshaw Date: 04/06/2010*

### Legal Implications:

- 5.2 Section 130 of the Highways Act 1980 imposes a duty on the Council as highway authority to assert and protect the rights of the public to the use and enjoyment of any highway within its area and so far as possible to prevent the obstruction of the highway. However, the highway authority is empowered to licence the placing of certain objects on the highway, eg A boards under the provisions of Part VII A of the 1980, although in doing so it must have regard to the provisions, including the Council's duties, of the Disability Discrimination Act 1995.

The Officer Response to the Scrutiny Panel's recommendations set out in Appendix 1 of this Report will assist in ensuring that the Council is in a position to comply with its statutory duties regarding the public's right of access to the highway.

*Lawyer Consulted: Hilary Woodward*

*Date: 04/06/2010*

### Equalities Implications:

- 5.3 The council seeks to ensure that public highways are used in a manner that maximises the benefit to the most number of users. However in the busiest areas of the city competing interests can come into conflict. It is the council's responsibility to manage these interests and to ensure equality of access particularly for those with mobility issues.

### Sustainability Implications:

- 5.4 There are no sustainability issues identified.

### Crime & Disorder Implications:

- 5.5 There are no direct crime and disorder implications arising from this report.

Risk and Opportunity Management Implications:

- 5.6 The council needs to take into account economic factors for the city whilst ensuring that accessibility is safeguarded. This is an opportunity to ensure clarity of policy and enforcement to the benefit of all users.

Corporate / Citywide Implications:

- 5.7 This report seeks to respond to recommendations in the Scrutiny report that are aimed at balancing the various needs and requirements within the city's public highway.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Recommendations
2. Scrutiny Report

**Documents In Members' Rooms**

None.

**Background Documents**

*[List any background / supporting documents referred to or used in the compilation of the report. The documents must be made available to the public upon request for four years after the decision has been taken]*

1. Licensing Committee April 2009
2. OSC Street Access Issues March 2010
3. Volume 2 of the Scrutiny Review in to Street Access Issues

	A	B	C	D
1	Rec #	Recommendation	Response	Date
2	1	In regulating and licensing the use of public highways the council should seek to strike a balance between the needs of competing interests. However this should be based on the premise that there should be free, unfettered access for all to public highways in Brighton and Hove.	Agreed	Ongoing
3	2	The panel supports the use of licensing zones for traders' items in specific areas of the city. Subject to its other recommendations, the panel endorses the policy regarding traders' items that was agreed at the meeting of Licensing Committee (Non Licensing Act 2003 Functions), Friday, 24 April, 2009 (Agenda Item 33).	Agreed	Already in place
4	3	In addition to the licensing criteria above businesses seeking to place an A Board on public land should be required to: a) Evidence that there is insufficient private curtilage for A board to be kept off the public highway b) Commit to ensure the A board will be placed on an agreed area on the pavement marked by the council.	Agreed	Undertaken during new licensing period for April 2010 - Mar 2011. Each licensed area is currently shown on shop display diagram/photo rather than marked on ground. Will need to explore best type of markings for licensing year 2011-12
5	4	Clusters of A boards should be combined into a single standard advertising board. The council should provide these in a single City-wide design livery that can be added to by individual retailers.	Recognise the issue the recommendation seeks to address. In taking this forward however the cost of the board should be met by traders. Legal advice is that the design/wording of the board would need to be carefully thought out as the council cannot be seen to be promoting any particular business. Suggest that this is progressed with recommendation 15. Practicalities of this need to be explored further including what can be reasonably accommodated in narrow streets, regular maintenance, etc. Planning comments: A single standard board advertising businesses in a street or block may be acceptable, subject to their number, size and location and approval of advertisement consent. A single hanging sign to each business premises, rather than an A board, may also be acceptable, subject to their size, appearance and location, the detailed policy guidance in Supplementary Planning Document SPD07 Advertisements and, where necessary, approval of advertisement consent.	Will explore possibilities for new licensing year 2011-2012

	A	B	C	D
6	5	Businesses with tables and chairs on the public highway should be required to partition their external seating from the footway. Areas licensed for tables and chairs should be marked	Agreed with the addition that this should not apply in exceptional circumstances. Exceptional circumstances would apply to small single operators with less than 4m2 licensed area. This is because of the concerns for very small businesses on smaller streets such as little single shop-front cafes where just 2 chairs or one table may be placed outside. Officers believe this will add to street clutter rather than contain or reduce it in some circumstances particularly for smaller placements. In order to be safe, barriers need a large base and therefore a large footprint. Where there are small placements on quite narrow pavements, the addition of barriers may narrow down the width to less than 1.3 metres and therefore mean that some businesses will be refused a licence. Whilst appreciating that this is a means of controlling overspill, it may disproportionately affect small local traders who have never posed a problem. An alternative is agreeing to barriers being fixed to the highway but this is not a route recommended by officers because of the problems this causes.	For new licensing year April 2011 subject to final operational policy decisions regarding officer/Scrutiny recommendations
7	6	The council should provide compulsory guidance on the most appropriate design of partition to prevent them from causing an obstruction	Agreed	For new licensing year April 2011
8	7	Bicycles secured to inappropriate street furniture present a challenge to many people moving around the city. Investment in more on-street cycle storage should be prioritised.	Agreed. Pedal Cycle Parking Places (on-carriageway cycle parking) provision in the city is increasing following significant public demand. 14 sites (140 cycle parking spaces) having been delivered across the city in 2009/10. Another 10 PCPPs are due for implementation during 2010/11 following discussions with local residents and councillors.	Ongoing
9	8	Commercial bin storage on the highway should in general not be tolerated: a) No new planning permissions should be granted that do not include on-site waste storage b) Business that fail to utilise on-site storage facilities should be prosecuted quickly c) Council officers should investigate alternative arrangements where businesses are already trading and do not currently have on-site waste storage facilities	City Clean comments - with regards to enforcement of bins on the pavement this can be done under city clean enforcement but consideration will need to be given to retrospective action. Fixed penalties can be issued to those not complying with Duty of Care legislation prior to full enforcement action. Planning comments: The provision of adequate refuse and recycling storage facilities on site would be required when considering planning applications for new development. Brighton & Hove Local Plan policies TR7, SU2 and QD27 require such facilities for reasons of safety to highway users, sustainability and the protection of amenity. Such facilities should be provided for new business uses in existing properties that require planning permission for change of use, however this could not be insisted on if it was not practical to provide facilities on-site and there was no material harm resulting from increased refuse/recycling generation.	

	A	B	C	D
10	9	Communal bins should not be permitted to obstruct public highway to less than 1.3 meters (as per the minimum agreed in recommendation 2). Where this is the case communal bins should be relocated. Accessibility of the public highway should be of greater importance when deciding where to locate a communal bin.	City Clean comments - Communal bins are sited with a minimum of 1.3 m gap on the highway. Consideration is given to visibility of road users and access when sites for communal bins are considered.	Ongoing
11	10	Whilst parking was raised a number of times throughout the review members felt that this was too big an issue for this panel to look at. It is however recommended that where changes are made to parking regulations accessibility issues are considered as part of consultations	Agreed. Accessibility and safety issues are always considered when parking regulations are changed or introduced. However, there must be a period of consultation when introducing any sort of parking controls (from a double yellow line to a residents' parking scheme) so it cannot be guaranteed that the controls will always be accepted.	Ongoing
12	11	The panel considers a robust, consistent enforcement regime of street access issues vital. Consideration should be given to utilising additional staff resource in monitoring and enforcing the streetscape. There should be given increased cross directorate/team working with officers able to undertake multiple enforcement regimes. This could include consideration of the use of civil enforcement officers, cityclean officers and PCSOs.	Agreed. Initial contact with the police has been positive and this will be followed up as soon as possible. Timescales for cross directorate/team working may take longer as may be affected by outcome of intelligent commissioning and new council structure before this can be fully put in place. However, discussions will take place with in-house teams and the police over the next 6 months. For enforcement, relevant delegated authority, correct training and good communication between teams are essential. Please note that teams already work in partnership e.g Environmental Health, Civil Enforcement Officers, and Highway Enforcement with problematic or complex sites. Highway Enforcement has not been at full team complement over past 12 months so will make a difference to enforcement activity with properly resourced team.	Initial meetings to take place soon in-house and with the police
13	12	Communication and coordination between officers undertaking work that affects the street-scene needs to improve. There appears to be a lack of coordination between different parts of the council that place items on the highway, license items to be placed on the highway and use items placed upon the highway. Overall responsibility for highway accessibility should be given to a named officer.	Council officers across various sections have been working together on a Street Design Manual which sets out principles and practices for good urban design and accessible streets so some of this recommendation has already been progressed through this route, and through "Public Space Public Life" meetings. With regard to a overall responsibility to a named officer, the council needs to identify who this is and where this best sits. May not work if simply "added on" to existing work without correct mandate (e.g. over other teams' work) and capacity to do this. Will need to be progressed properly over the longer term especially given current restructure.	

	A	B	C	D
13		Where traders' items are in breach of licence condition two written warnings should be issued. Upon the third occasion of breach of licence immediate confiscation by council officers should be undertaken.	Agreed for majority of A-boards but magistrates' court & rescinding of licensing is also an option and may be a better route for certain placements. Legal advice is needed around the removal of perishable goods. Storage and removal costs will be an issue for larger placements - the council does not have the facilities to remove or store numerous tables and chairs. Any enforcement actions are subject to the council's corporate enforcement policy which provides for a range of sanctions in order that officers can use the most appropriate enforcement for the circumstance.	In place where practical to do so
14				
15		14 The panel welcomes the willingness of Openreach to work with the council on the siting of utility boxes and supports the idea of creating a list of 'hotspots' where the re-siting of an existing box would be beneficial. The panel believes this could be usefully extended to other utility providers that locate items on the pavement.	Agreed. Highways & Planning are currently working with Openreach regarding the siting of new cabinets.	In progress
16		15 Considerable good will and a desire to work together was evident from traders and disability group representatives. The panel believes this should be acted upon and the council should facilitate on-going dialogue between different groups to review: a) Alternative forms of advertising that will reduce the impact on street accessibility and could become part of the city's culture b) How the city's café culture can meet the needs of mobility impaired residents and visitors	Agreed. The Communities & Equalities Team have agreed to facilitate this work.	Within next 12 months
17		16 Implementation of recommendations arising from the scrutiny review should be monitored by OSC after six and twelve months with an invitation extended to those involved in this review to comment upon any impact.	Agreed	6 - 12 months



**Report of the Street Access Issues  
Scrutiny Panel**

**March 2010**

**Street Access Issues**

**Volume One**

**Panel Members**

**Councillor Sven Rufus (Chair)  
Councillor Jayne Bennett  
Councillor Pat Hawkes  
Councillor Brian Pidgeon  
Councillor David Watkins**

## **CHAIR'S FOREWORD**

This scrutiny review was established following concern over how accessible public highways within the city are. We have sought to take into account and balance the competing needs of different groups of highway users. We have heard evidence from disability advocacy groups, residents associations, business associations and private residents. Members also have undertaken site visits to areas identified as hotspots around the city.

It was immediately obvious that the issue of traders' items placed upon the highway is the most controversial and pressing for the majority of those giving evidence. It is clearly an issue that stirs emotion and divides opinion.

A boards, tables and chairs and displays of goods are all placed upon the pavement by businesses and depending on your point of view are either an important part of our city's culture and vital to business success or a menace to residents and visitors trying to live their lives and move around the city.

The panel has listened, questioned and contended with what is a difficult issue. We have I think come to a reasonable compromise solution that builds upon current council policy but seeks a more consistent and slightly tougher enforcement regime.

Other issues that were highlighted as areas of concern included flyparking of bicycles and the location of commercial and communal bins. We also made recommendations in these areas consistent with those relating to traders' items.

I would like to express my thanks to my fellow panel members and to the witnesses whom gave their time and expertise to the panel; I hope they think it has been useful exercise and that our recommendations will have a positive impact upon the city.



Councillor Sven Rufus  
(Chair, Scrutiny Panel on Street Access Issues)



## **CONTENTS**

### **Executive Summary**

- 1. Introduction**
- 2. Methodology**
- 3. General Principles & Traders' Items**
- 4. Bikes, Bins and Parking**
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- 7. Alternative Advertising and Moving Forward**
- 8. Monitoring**
- 9. Conclusion**

**Volume Two contains all of the evidence and appendices**

## **EXECUTIVE SUMMARY**

Public highways allow people to move around the Brighton and Hove, they also however are used to display goods, provide external seating, and advertise products and services; the council and other public bodies place signs and other infrastructure on the highway, and residents use the highway to store waste, park and secure bicycles.

The council seeks to ensure that public highways are used in a manner that maximises the benefit to the most number of users. However in the busiest areas of the city competing interests can come into conflict. It is the council's responsibility to manage these interests to prevent this from happening.

This review has focused on traders' items especially advertising boards (A boards), tables and chairs, bicycles and bins. Chaired by Councillor Sven Rufus the panel consisted of Councillors Jayne Bennett, Pat Hawkes, Brian Pidgeon and David Watkins.

Evidence was received from business representatives, disability charities, local resident groups and private residents. The panel has developed 16 recommendations, outlined below to improve accessibility around the city.

### **General Principles**

1. In regulating and licensing the use of public highways the council should seek to strike a balance between the needs of competing interests. However this should be based on the premise that there should be free, unfettered access for all to public highways in Brighton and Hove.

### **Traders' Items**

2. The panel supports the use of licensing zones for traders' items in specific areas of the city. Subject to its other recommendations, the panel endorses the policy regarding traders' items that was agreed at the meeting of Licensing Committee (Non Licensing Act 2003 Functions), Friday, 24 April, 2009 (Agenda Item 33), namely:
  - A. That no licensed traders' items should be permitted to reduce the width of a footway to less than 1.3 meters except where:
    - i) A formal pedestrian zone has been established in a road by Traffic Order and the whole of the carriageway is kept clear for pedestrian use;
    - ii) A road is closed to vehicular traffic by virtue of a temporary Traffic Order and the whole of the carriageway is kept clear for pedestrian use;
    - iii) A road is considered to be shared space and the whole carriageway is generally available for pedestrian use.

- B. That where a footway is reduced to a width of 1.3 meters (or less) by objects (whether these objects be traders' items of fixed street furniture such as lamp posts, bins etc.) 'turning areas' for manual wheelchair users and guide dogs must be established at regular intervals. These turning areas shall not be less than two meters in length and shall be the full width of the footway. Such areas must be maintained at intervals of no more than six meters along the length of any restricted footway.
- C. That, except in the case of items within large, waiter-serviced sitting-out areas, no traders' item shall be permitted to be placed more than 5 meters from the licensed premises. All objects must be within sight from a window or door of said premises or in clear visual range of CCTV camera(s) monitored from within the licensed premises. This provision will mainly affect advertising boards.
- D. That where an application is refused by Officers, an applicant may appeal to the Licensing Sub-Committee (the Licensing Panel).
- E. That applications for A-Boards shall be restricted to 1 per premises (excluding those situated on private land), but that:
  - i) Special consideration will be given to those premises situated in twittens and alleyways regarding this policy.
- 3. In addition to the licensing criteria above businesses seeking to place an A Board on public land should be required to:
  - a. Evidence that there is insufficient private curtilage for A board to be kept off the public highway
  - b. Commit to ensure the A board will be placed on an agreed area on the pavement marked by the council.
- 4. Clusters of A boards should be combined into a single standard advertising board. The council should provide these in a single City-wide design livery that can be added to by individual retailers.
- 5. Businesses with tables and chairs on the public highway should be required to partition their external seating from the footway. Areas licensed for tables and chairs should be marked.
- 6. The council should provide compulsory guidance on the most appropriate design of partition to prevent them from causing an obstruction.

### **Bikes, Bins and Parking**

- 7. Bicycles secured to inappropriate street furniture present a challenge to many people moving around the city. Investment in more on-street cycle storage should be prioritised.

8. Commercial bin storage on the highway should in general not be tolerated:
  - a. No new planning permissions should be granted that do not include on-site waste storage
  - b. Business that fail to utilise on-site storage facilities should be prosecuted quickly
  - c. Council officers should investigate alternative arrangements where businesses are already trading and do not currently have on-site waste storage facilities
9. Communal bins should not be permitted to obstruct public highway to less than 1.3 meters (as per the minimum agreed in recommendation 2). Where this is the case communal bins should be relocated. Accessibility of the public highway should be of greater importance when deciding where to locate a communal bin.
10. Whilst parking was raised a number of times throughout the review members felt that this was too big an issue for this panel to look at. It is however recommended that where changes are made to parking regulations accessibility issues are considered as part of consultations.

### **Enforcement**

11. The panel considers a robust, consistent enforcement regime of street access issues vital. Consideration should be given to utilising additional staff resource in monitoring and enforcing the streetscape. There should be given increased cross directorate/team working with officers able to undertake multiple enforcement regimes. This could include consideration of the use of civil enforcement officers, cityclean officers and PCSOs.
12. Communication and coordination between officers undertaking work that affects the street-scene needs to improve. There appears to be a lack of coordination between different parts of the council that place items on the highway, license items to be placed on the highway and use items placed upon the highway. Overall responsibility for highway accessibility should be given to a named officer.
13. Where traders' items are in breach of license condition two written warnings should be issued. Upon the third occasion of breach of license immediate confiscation by council officers should be undertaken.
14. The panel welcomes the willingness of Openreach to work with the council on the siting of utility boxes and supports the idea of creating a list of 'hotspots' where the re-siting of an existing box would be beneficial. The panel believes this could be usefully extended to other utility providers that locate items on the pavement.
15. Considerable good will and a desire to work together was evident from traders and disability group representatives. The panel believes this

should be acted upon and the council should facilitate on-going dialogue between different groups to review:

- a. Alternative forms of advertising that will reduce the impact on street accessibility and could become part of the city's culture
- b. How the city's café culture can meet the needs of mobility impaired residents and visitors

16. Implementation of recommendations arising from the scrutiny review should be monitored by OSC after six and twelve months with an invitation extended to those involved in this review to comment upon any impact.

## 1. INTRODUCTION

- 1.1 Public highways are subject to a variety of competing uses; most obviously they allow people to move around Brighton and Hove. They are also however used by businesses to display goods, provide external seating, and advertise products and services; the council and other public bodies place signs, furniture and other infrastructure on the highway, and residents use the highway to store waste, park and secure bicycles.
- 1.2 The council has a number of policies in place that seek to ensure that public highways are used in a manner that maximises the benefit to the most number of users. However in the busiest areas of the city competing interests can come into conflict. It is the council's responsibility to manage these interests to prevent this from happening.
- 1.3 This scrutiny review was established following concern that the accessibility of public highways within the city was being reduced. Whilst established to look at street access issues in a widest context evidence received from the public and groups with an interest in access issues has meant the review has focused to large extent on traders' items placed upon the highway. Given the publicity around this issue locally this is perhaps unsurprising. However many of the principles looked at in respect of traders' items hold true for other items placed upon the highway.
- 1.4 Throughout its work the panel has sought to understand and balance the needs of competing interests with the understanding that items placed upon the public highway should improve the general streetscape for users. The recommendations from this panel aim to improve the environment within the city and accommodate the needs of everyone.
- 1.5 At the 10 March 2009 Overview and Scrutiny Commission (OSC) meeting Members discussed a letter from Councillors Elgood and Watkins regarding the implementation of recommendation 10 of the 2006 Access Scrutiny Review. The letter and minutes of this meeting are attached to this report as appendices 1 and 2. Recommendation 10 stated:
- 1.6 *'That in consultation with sensorily-impaired people, officers give priority to achieving as wide, safe and straight access as possible in planning, licensing and enforcing all forms of street/pavement furniture and obstructions for pedestrians.*

*That there be a presumption in favour of a clear straight pathways in line with Department for Transport guidance on the width of footways, footpaths and pedestrian areas.'*

- 1.7 It was therefore agreed to establish a scrutiny panel to look at the issue of street accessibility. At its 21 April meeting OSC was presented with information regarding the progress made against recommendation 10 by the council's Highway Enforcement Team.<sup>1</sup>

## **2. METHODOLOGY**

- 2.1 Chaired by Councillor Sven Rufus the panel consisted of Councillors Jayne Bennett, Pat Hawkes, Brian Pidgeon and David Watkins. The Panel met to scope the topic, agreeing the terms of reference as:

- To gain an understanding of the issues relating to street accessibility within Brighton & Hove
- To review current Council policy relating to items placed on public walkways
- To seek a balanced range of views as to the impact of current policy and practice
- To develop recommendations for the future development of council policy on these issues

- 2.2 Initially the panel issued a general invitation to give evidence. Over the course of the review over 40 responses were received. From these initial responses the panel selected a number of individuals and organisations to give oral evidence.

- 2.3 Meeting three times in public the panel heard evidence from:

- Federation of Disabled People
- RNIB
- Openreach (part of the BT Group)
- North Laine Traders Association
- Western and Church Road Traders Association
- Brighton and Hove Youth Council
- Rottingdean Parish Council
- Regency Square Area Society
- Tom Chavasse<sup>2</sup>
- Older People's Council
- Cllr Juliet McCaffery
- Christina Liassides, Head of Network Management
- Ian Denyer, Senior Highway Enforcement Officer

- 2.4 Additional evidence was received from a number of different individuals and organisations including:

- Cllr Paul Elgood
- Paula Murray - Head of Culture and Economy, Brighton and Hove City Council

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<sup>1</sup> Appendix 3, Volume 2.

<sup>2</sup> Representing the Lansdowne Area Residents Association, Friends of Brunswick Square and Terrace, Friends of Palmeira and Adelaide, East Brunswick Residents, Association, Dudley Mews/Brunswick St. West Residents Association, The Hove Civic Society and Brighton Society, Montpelier & Clifton Hill, Regency Square and Kingscliffe Society

- Unique to Brighton
  - National Federation of the Blind
  - Impetus
  - Friends of Brunswick
  - East Brunswick Residents Association
  - Brighton and Hove Low Vision Committee
  - Rottingdean Traders Association
  - Lansdowne Area Residents Association
  - Over 20 private residents of Brighton and Hove
- 2.5 Using the information provided by those giving evidence a list of site visits was developed. Each member visited a different area of the city, with the Chair visiting all areas; sites were chosen to ensure that examples of different types of obstruction were viewed and a reasonable geographic spread covered.
- 2.6 Site visits took place to Washington Street, Scotland Street, Jersey Street, St. James's Street, Wakefield Road, Lewes Road, Western Road, Little Preston Street, Regency Square, Church Rd, George Street, Blatchington Road, Goldstone Villas, Sackville Road and Boundary Road.
- 2.7 Photographic evidence was obtained during the site visits and from a number of members of the public whom send in photos of their local area. The photos obtained have been used throughout the report to illustrate access issues around the city.
- 2.8 The following council policy documents were obtained:
- Communal Container Siting Guidelines<sup>3</sup>
  - Commercial Waste – Council Policy<sup>4</sup>
  - Traders' Items Licensing Policy<sup>5</sup>
  - Draft Streetscape Design Guidelines
  - HP 4-6 Provision of Traffic Signs and Roadmarkings
  - HP 4-8 Provision of Traffic Signs – Direction Signs
  - HP 4-9 Provision of Traffic Signs – Warning Signs
  - HP 4-10 Provision of Traffic Signs – Regulatory Signs
  - HP 4-12 Provision of Traffic Signs – Private and Tourist Signs
  - HP 8-9 Charity or Event Signs on the Highway
  - HP 8-8 Transport Abandoned on the Highway
  - HP 8-7 Provision of Highway Bollards
  - HP – Pavement Parking
  - HP 4-15 Resident Parking Schemes Assessment
- 2.9 It was agreed that the panel would seek to be flexible as to the issues covered and respond to evidence received.

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<sup>3</sup> Appendix 8, Volume 2

<sup>4</sup> Appendix 9, Volume 2

<sup>5</sup> Appendix 7, Volume 2



- 2.10 The evidence received from residents and residents groups, members and interested organisations meant the focus of this review has been:
- Traders' items – most notably A boards and tables and chairs
  - Flyparked bicycles
  - Commercial and communal bins
- 2.11 This is perhaps unsurprising given publicity and interest in A boards and other traders' items including articles and letters in the Argus such as *'Brighton traders fear street furniture ban'*.<sup>6</sup>
- 2.12 A short comparative study looking at the approach taken in other local authorities towards aspects of street accessibility was undertaken.<sup>7</sup>
- 2.13 From all of the evidence obtained 16 recommendations have been produced.

### **3. GENERAL PRINCIPLES**

- 3.1 The foreword to the Legibility Study 'Public Space, Public Life' states streets should enable residents and visitors to move safely, quickly and easily around the city. It also sets out twelve key criteria common to well functioning public spaces one of which, Opportunities to Walk, includes the need for no obstacles and accessibility for everyone.<sup>8</sup> It continues that this must include children, adults, the elderly and people with special needs and highlights that at some point everyone is a pedestrian.<sup>9</sup>
- 3.2 This review has received submissions of evidence from individuals, groups and organisations for whom this is clearly an emotive and important issue. Of the wide number of possible issues that this review could have looked at A boards and other traders' item have time and time again been raised as the issue that most affects residents ability to move around the city.
- 3.3 The competing needs of the different groups of users were very apparent in the evidence received. However also apparent was a willingness to engage with the scrutiny process and seek a compromise solution to the issues. This is to be welcomed.
- 3.4 Whilst items placed upon the highway can be an obstacle to everyone those experiencing reduced mobility or sight are disproportionately disadvantaged, something clearly shown in evidence from the RNIB and Federation of Disabled People and others. In its recommendations

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<sup>6</sup> Appendix 6i, Volume 2

<sup>7</sup> Appendix 11, Volume 2

<sup>8</sup> Legibility Study. Page 9

<sup>9</sup> Legibility Study. Page 42

the panel has been aware that often these groups are already at risk of exclusion and has sought to reflect this in its approach.<sup>10</sup>

- 3.5 Evidence from charities supporting partially sighted individuals highlighted the fact the many of the objects licensed are movable in nature and therefore cause significant problems.<sup>11</sup>
- 3.6 Navigation of the highway by partially sighted people is aided by fixed landmarks which can be learnt and therefore help in the understanding of exact location. Having items on the highway that move on a day-to-day basis is therefore a double problem in that they represent a collision hazard but also distort the mental map that has been memorized.
- 3.7 Paradoxically if traders items were to be of a more fixed location they would actually aid the passage of partially sighted individuals around the city adding to the mental map of the area.
- 3.8 These basic needs however should to be balanced with the needs other users of the highway. Businesses throughout the city have indicated throughout the review that use of the highway is integral to their survival. The city has developed a vibrant out doors café culture that necessitates some encroachment onto the pavement by traders.

#### **Recommendation 1**

**In regulating and licensing the use of public highways the council should seek to strike a balance between the needs of competing interests. However this should be based on the premise that there should be free, unfettered access for all to public highways in Brighton and Hove.**

#### **TRADERS ITEMS BACKGROUND**

- 3.9 Items placed upon the public highway by traders are monitored by the Highway Enforcement Team; these items include shop displays such as fruit and vegetables, advertising boards (A boards) and tables and chairs.
- 3.10 The law states that some items placed upon the highway must be licensed e.g. skips and scaffolds. Other items placed upon the highway can be tolerated; local circumstance and highway usage dictating what is acceptable.
- 3.11 Brighton and Hove is currently split into two zones, one licensed and one not. Licenses are required in the following areas.
  - The Lanes
  - The North Laines

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<sup>10</sup> Appendix 4b, Volume 2

<sup>11</sup> Appendix 4b, Volume 2

- George Street, Hove
  - Rottingdean Village Centre
  - St. James Street area of Kemptown
  - Stretches of Western Road
- 3.12 All traders wishing to place items on the highway in these areas must apply for a licence. The licence specifies where items can be placed and the maximum area to be taken up. The licence is similar in appearance to a tax disc and must be displayed in the shop window.
- 3.13 Positions licensed for objects to be placed aim to produce the best compromise possible between the competing highway users. Photos illustrating the approach taken by the Highways Enforcement Team presented to the Overview and Scrutiny Commission are attached as Appendix 3.
- 3.14 Traders may place items on the highway in areas outside the licensed zone without the need for a license. If complaints are made to the council cases are looked at on an individual basis.
- 3.15 The council's current policy regarding traders' items was agreed at the meeting of Licensing Committee on 24th April 2009. The policy states that:
- A. That no licensed traders' items should be permitted to reduce the width of a footway to less than 1.3 meters except where:
    - i) A formal pedestrian zone has been established in a road by Traffic Order and the whole of the carriageway is kept clear for pedestrian use;
    - ii) A road is closed to vehicular traffic by virtue of a temporary Traffic Order and the whole of the carriageway is kept clear for pedestrian use;
    - iii) A road is considered to be shared space and the whole carriageway is generally available for pedestrian use.
  - B. That where a footway is reduced to a width of 1.3 meters (or less) by objects (whether these objects be traders' items of fixed street furniture such as lamp posts, bins etc.) 'turning areas' for manual wheelchair users and guide dogs must be established at regular intervals. These turning areas shall not be less than two meters in length and shall be the full width of the footway. Such areas must be maintained at intervals of no more than six meters along the length of any restricted footway.
  - C. That, except in the case of items within large, waiter-serviced sitting-out areas, no traders' item shall be permitted to be placed more than 5 meters from the licensed premises. All objects must

be within sight from a window or door of said premises or in clear visual range of CCTV camera(s) monitored from within the licensed premises. This provision will mainly affect advertising boards.

- D. That where an application is refused by Officers, an applicant may appeal to the Licensing Sub-Committee (the Licensing Panel).
- E. That applications for A-Boards shall be restricted to 1 per premises (excluding those situated on private land), but that:
  - i) Special consideration will be given to those premises situated in twittens and alleyways regarding this policy.

### **Recommendation 2**

**The panel supports the use of licensing zones for trader's items in specific areas of the city. Subject to its other recommendations, the panel endorses the policy regarding traders' items that was agreed at the meeting of Licensing Committee (Non Licensing Act 2003 Functions), Friday, 24 April, 2009 (Agenda Item 33).**

### **ADVERTISING BOARDS**

- 3.16 A number of business organisations submitted written evidence to the panel and the North Laines Traders Association and the Western and Church Road Traders Association gave evidence directly to the panel. All of the businesses represented were unequivocal regarding the importance A boards to their businesses<sup>12</sup> and that they represent a cost effect manner in which to attract passing trade being relatively cheap to purchase.
- 3.17 The question was raised that during a period of economic uncertainty should the council be looking to limit the ability of businesses to attract customers. Whilst the Panel were presented with this anecdotal evidence it has not been possible to find any solid independent evidence that assesses the impact of having A boards on businesses.
- 3.18 Members were concerned that rather than A boards adding value to individual businesses there exists an advertising 'arms race' scenario where businesses only require an A boards because competing businesses have them. It is not however possible to stop the arms race as so many A boards are on private land.
- 3.19 There was also debate as to whether larger chain businesses need to advertise utilising A boards. In the case of small scale independent retailers, there is an argument to be made for an A Board advertising what exactly the retailer has on offer, or in the case of restaurants the daily specials.

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<sup>12</sup> Appendix 4c and 4d, Volume 2

- 3.20 However the question must be asked does a large major retailer need to advertise their products in the form of an A board, for example a number of supermarkets in the city centre have a boards outside their premises even though there products and services are well known. Also related to this argument is the need for businesses located in twittens to be able to advertise their presence. This is rightly reflected in current council policy.
- 3.21 The expertise of the street enforcement team was obvious throughout this enquiry and the panel were appreciative of their efforts in dealing with what is clearly a complex issue.
- 3.22 It became evident during the review the many of the items considered to be causing obstruction of the pavement are located on what is actually private land or at the very least disputed land with no clear owner. During site visits with officers from the enforcement team the complex nature of identifying what is private land and what is public land were highlighted to the Panel Chair; this issue is well highlighted in the original report to the Overview and Scrutiny Commission.<sup>13</sup>
- 3.23 Whilst in some cases differences in the appearance of the pavement indicates the boundary between private and public land in many instances this isn't the case. The council has very few powers regarding items placed on private land and therefore the recommendations and focus of this report are on the public highway.
- 3.24 The evidence put forward by those campaigning for an increase in the minimum gap required to 2meters, and a reduction in general street clutter, is fairly compelling that movable items placed upon pavement do have a detrimental impact upon the ability of people to navigate around the city. This is especially the case for those with visual impairments or mobility problems. Figure 1 below highlights how poorly placed A boards can obstruct the highway.
- 3.25 In considering a move towards a total ban, 2 meter gap, or an increase in the 1.3 meter provision, the panel were mindful of the number of areas were pavements aren't of that width to begin with and what impact such as draconian approach would have. There was also concern amongst panel members that the current policy has yet to be fully bed-down with support from a strong enforcement regime.
- 3.26 Having debated the arguments put forward the panel has decided that the current policy as agreed at the Licensing Committee is logical, represents a good balance and therefore endorses much of the approach. The Panel also took into account that the enforcement of the policy to date has been sporadic to date, through no fault of officers, rather a series of circumstances have meant a consistent enforcement

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<sup>13</sup> Appendix 3, Volume 2

regime has been difficult to implement. The Panel have however sought to make some focused changes.



**Figure 1 – Badly Placed Advertising Boards**

- 3.27 It is worth noting that the original policy was developed following consultation with a large number of groups listed under section 4 of the original report.<sup>14</sup>
- 3.28 The panel considered asking businesses to develop a short business case to explain why they require an A board, however it was felt this would be very subjective and overly bureaucratic. The panel did however agree that businesses should evidence that there is no space for the A board on their private curtilage.
- 3.29 The panel also supported the licence requirement for A boards to be of a standard size between 0.75m and 1.2m high and between 0.5m and 1.1m wide only.
- 3.30 Discussion on marking the location of items placed on the highway recognised that there may be opposition to this as it will mean occasions where the marks are visible during non-trading hours. The Panel however felt marking the pavement would make enforcement easier and that it could then be undertaken by a larger number of officers. Please see enforcement section below.
- 3.31 Having A boards in fixed positions should also make the pavements easier to navigate for the partially sighted. Evidence from the RNIB and

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<sup>14</sup> Appendix 3, Volume 2

others showed how fixed items enable mental maps of an area to be learnt to aid navigation.

- 3.32 The panel briefly investigated alternative forms of advertising some of which are attached to this report as appendix 10. Business representatives were open to exploring further the suitability of different options available to them.
- 3.33 Some of the different types of advertising available could become quite iconic in themselves and dovetail well with the reputation of the City. The panel felt this was best taken forward by the businesses themselves along with representatives from disability groups, supported by council officers. (See Recommendation 15 below).

### **Recommendation 3**

**In addition to the licensing criteria businesses seeking to place an A Board on public land should be required to:**

- a. **Evidence that there is insufficient private curtilage for A board to be kept off the public highway**
- b. **Commit to ensure the A board will be placed on an agreed area on the pavement marked by the Council.**

- 3.34 A number of witnesses highlighted the fact that it is often clusters of items placed on highway that create a problem. This can often be the case in areas such as the Lanes, at the entrance to twittens or near side streets, as shown in figure 2 below.
- 3.35 The Panel believes these hot spots can best be tackled by a joint A board for all businesses in the alley/street/twitten. These could be developed in a single city-wide livery complementing information signage.



**Figure 2 – Multiple Advertising Boards**

#### **Recommendation 4**

**Where there are 'clusters' of A boards they should be combined into a single standard advertising board. The Council should provide these in a single City-wide design livery that can be added to by individual retailers.**

#### **OTHER TRADERS' ITEMS**

- 3.36 The rationale for having tables and chairs on the highway is more obvious than A boards as the value they bring to a business can be seen in increased capacity and as a part of the vibrant 'café culture' that the city enjoys. This view was prominently reinforced by business representatives as well as the Head of Culture and Economy at the council.<sup>15</sup>
- 3.37 There is however a strong argument that a clear, clean streetscape is more attractive to customers and will therefore increase trade. A number of witnesses also pointed out the importance of attracting disabled visitors to the City and the spending power this group would bring, the Federation of Disabled People highlighted that fact that nationally spending power of disabled people is £80bn.<sup>16</sup>
- 3.38 More space for pedestrians on our pavements is desirable and would encourage greater usage and footfall. The Legibility Strategy: Public Space Public Life advocates some good principles of urban design particularly in terms of decluttering public spaces.
- 3.39 As with A boards the panel endorsed the council's agreed policy position with however only two changes as in recommendations 5 and 6 below.
- 3.40 Marking the space designated for tables, chairs and the display of goods should help to prevent these items taking over the pavement and will allow easier enforcement, will be easier for businesses to adhere to and facilitate the passage of all highway users.
- 3.41 Following some debate it was agreed to recommend that tables and chairs on the highway should be required to be partitioned as in figure 3 below. This is to clearly demarcate the area set aside and prevent customers from moving items around as they utilise them. The design of the partition's feet needs to be a low profile to ensure they do not create a trip hazard. Barriers can themselves cause a problem if the feet are badly designed and stick out across the highway and as such the council should provide guidelines for businesses.

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<sup>15</sup> Appendix 4d, Volume 2

<sup>16</sup> Appendix 4b, Volume 2



- 3.42 The panel were of the opinion that if there is not enough room for the partitions, then there probably isn't enough room for the tables and chairs in the first place.



**Figure 3 – Partitioned Seating Area**

- 3.44 The Panel acknowledge that partitions will add additional cost to businesses but feel barriers are necessary to prevent encroachment across the whole pavement and reduce trip hazards.

#### **Recommendation 5**

**Businesses with tables and chairs on the public highway should be required to partition their external seating from the footway. Areas licensed for tables and chairs should be marked.**

#### **Recommendation 6.**

**The council should provide compulsory guidance on the most appropriate design of partition to prevent them from causing an obstruction.**

### **5. BIKES, BINS AND PARKING**

#### **Flyparked Bikes**

- 4.1 A number of witnesses highlighted that the widespread practice of chaining bicycles to items of street furniture, 'flyparking', can seriously affect the accessibility of some streets,<sup>17</sup> especially when the bicycle falls over.
- 4.2 In line with the desire to increase the number of people cycling and with the award of Cycling Town status in 2005 the panel has taken the approach of recommending increased provision for secure cycle

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<sup>17</sup> Appendix 4 , Volume 2

storage, rather than a more vigorous and heavy-handed campaign against inconsiderately secured bicycles. The highway enforcement team do have powers to remove abandoned bicycles, there is however an exhaustive process to be gone through.

4.3 The Legibility Study highlights that ‘a lack of proper cycle parking leads to bicycles parked in appropriate places.’<sup>18</sup> The council’s own website acknowledges the problem of flyparking of bicycles that can reduce accessibility. The council has embarked upon a programme of increasing the number of Pedal Cycle Parking Places (PCPPs) around the city with 13 priority sites identified as below, to be completed in early 2010. Each PCPP holds five Sheffield Stands and 10 bicycles as seen in figure 4 below.

- Beaconsfield Road
- Farm Road
- George Street
- Kemp Street
- Kensington Place
- Lansdowne Place
- Lansdowne Street
- Norfolk Road
- Norfolk Square
- North Road
- St George's Road
- Sussex Square
- Tidy Street

6.4 The panel welcomed the approach taken in prioritising PCPPs and the ability of residents to request their installation. It was felt this should be more widely publicised, both directly to the public, but also to Members.



**Figure 4 – Pedal Cycle Parking Place**

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<sup>18</sup> Page 45, Legibility Study

- 4.4 Increasing the amount of secure cycle storage available, especially in areas of high occupancy housing and in areas where residents have highlighted this as a problem should reduce the amount of flyparking.
- 4.5 The panel support increasing the amount of secure bicycle storage available across the city as a whole. Individual and multiple Sheffield Stands as shown above should be installed at more points across the city; however when selecting the location of the stands care should be taken not to impede highway accessibility.
- 4.6 Site visits to Hanover showed that it is not only central areas that suffer from flyparked bicycles and could benefit from more cycle parking.
- 4.7 The panel were of the opinion that in areas of significant pedestrian movement PCPPs should be installed in the road, rather than the pavement; the inclusion of on-road cycle parking within future controlled parking zones is a welcome development.
- 4.8 Whilst the panel would like to see an increase in the number of PCPPs there was recognition that this will require additional resources. However the cost of a PCPP is only around £5000, a modest increase in funding in this area could therefore have a significant effect.



**Figure 5 – Fallen Cycle**

- 4.9 The council is currently in the process of developing Street Design Guidelines that are relevant to much of content of this review. It is hoped that the recommendations within this report are taken forward in this guidance. The guidance relates specifically to those items placed on the highway by the council.

## Recommendation 7

**Bicycles secured to inappropriate street furniture present a challenge to many people moving around the city. Investment in more on-street cycle storage should be prioritised.**

### Commercial Bins

- 4.10 A number of members of the public highlighted commercial bin storage as an issue impacting on their ability to access certain streets, areas identified were typically city centre areas, often near food establishments.
- 4.11 The Regency Square Area Society provided photographic evidence of the issue and their dealings with the council in trying to resolve the matter.<sup>19</sup> Figure



**Figure 6 – Commercial Waste on the Pavement**

- 4.12 The Panel are supportive of current council policy in that it seeks to limit the number of businesses that are allowed to store waste on the highway.<sup>20</sup> However they would like officers to investigate those instances where currently businesses are allowed to store waste on the highway and see if other options are available.
- 4.13 There was some debate within the panel that seeking to change refuse storage could result in a return to black sacks being torn open by seagulls and the resulting mess this creates. However it was felt that asking officer to look at the issue again would provide an avenue to resolve the issue without being prescriptive as to the outcome.

<sup>19</sup> Appendix 6h, Volume 2

<sup>20</sup> Appendix 9, Volume 2

## **Recommendation 8**

**Commercial bin storage on the highway should in general not be tolerated:**

- a. No new planning permissions should be granted that do not include on-site waste storage**
- b. Business that fail to utilise on-site storage facilities should be prosecuted quickly**
- c. Council officers should investigate alternative arrangements where businesses are already trading and do not currently have on-site waste storage facilities**

### **Communal Bins**

4.14 The placement of communal bins was raised as an issue of some concern. Evidence was presented highlighting bins placed on pavements that made accessibility hard.

4.15 The siting guidelines contain within them limits to as to how the width of available pavement can be reduced as below:

***Containers may be sited on pavements.** Where it is not operationally possible to site containers directly on the highway, they may be sited on pavements providing they do not reduce the available pavement width to below the legal requirement. After seeking advice from Brighton & Hove's Walking & Cycling Officer at the start of this process back in 2004, the distances used was a recommended minimum width (after the placement of a container) of no less than 1.2m and an absolute minimum width of no less than 1.0m<sup>21</sup>*

4.16 Whilst supportive of the general thrust of the policy in terms of accessibility the panel felt the limits should be the same as those prescribed to traders in the licensing policy; namely a limit of 1.3 meters. It was felt by the panel that a standard limit on pavement width was required and having different rules for traders and the council was inequitable. Indeed if 1.3 meters is being treated as the minimum for all officer issued licenses then this should be considered as the minimum for all items the council places on the highway too.

4.17 Discussions with officers responsible for communal bin placement highlighted a number of issues that the panel considered in making this recommendation. Increasing the limit to 1.3 may actually have detrimental impact on accessibility. Forcing the removal of some communal bins which reduced the usable pavement to less than 1.3 meters may result in rubbish being left on the highway in an indiscriminate manner; this could mean that the amount of usable pavement actually decreases and the risk of needle sticks and glass injuries will increase.

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<sup>21</sup>Appendix 8, Volume 2

- 4.18 However in making their recommendation the panel felt that a consistent line was required for all items that may cause obstruction.

**Recommendation 9**

**Communal bins should not be permitted to obstruct public highway to less than 1.3 meters (as per the minimum agreed in recommendation 2). Where this is the case communal bins should be relocated. Accessibility of the public highway should be of greater importance when deciding where to locate communal bins.**

**Parking**

- 4.19 A number of residents raised parking on pavements as an issue and figure 7 below supports this view. The Panel however felt there was insufficient time to properly evaluate parking as an issue given its complexity.



**Figure 7 – Photo of Wakefield Road**

**Recommendation 10**

**Whilst parking was raised a number of times throughout the review members felt that this was too big an issue for this panel**

**to look at. It is however recommended that where changes are made to parking regulations accessibility issues are considered as part of consultations.**

## **5. ENFORCEMENT**

- 5.1 As highlighted earlier the Scrutiny Panel were generally supportive of the balance struck by the existing council policy with regard to licensing traders' items. However there is currently a gap between council policy and enforcement action taken.
- 5.2 Enforcement action on highway obstructions needs to be consistent and members of the public assured that when an issue is raised it receives sufficient attention.
- 5.3 Officers within the Highway Enforcement Team are responsible for a number of different types of licensing. Quite rightly they have prioritised limited resources to focus on those items that represent the most danger to the public such as scaffolding and abandoned cars.
- 5.4 The current Highway Enforcement Team are overstretched for the current areas of responsibility required of them. Given the number of different council officers, other public servants and enforcement officers that are patrolling the central areas of the city the panel are of the opinion there is merit in closer working between the different agencies and indeed within the council.
- 5.5 Marking the pavement for the position of items placed on the pavement with a minimal amount of paint should help businesses ensure they are locating items in the correct place. All members of staff within a business can easily identify where the items should be placed. This will have two benefits; it will allow for easier, quicker enforcement and by ensuring items are in the right place will ease passage for the visually impaired.
- 5.6 The panel would also like to build upon the manner in which these issues are coordinated across the council. There is a Public Space Public Life Strategy Group which facilitates a degree of coordination of work. The Panel however would like to go further and give named responsibility for access issues to a single officer.

### **Recommendation 11**

**The panel considers a robust, consistent enforcement regime of street access issues vital. Consideration should be given to utilising additional staff resource in monitoring and enforcing the streetscape. There should be given increased cross directorate/team working with officers able to undertake multiple enforcement regimes. This could include consideration of the use of civil enforcement officers, cityclean officers and PCSOs.**

### **Recommendation 12**

**Communication and coordination between officers undertaking work that affects the street-scene needs to improve. There appears to be a lack of coordination between different parts of the council the place items on the highway, license items to be placed on the highway and use items placed upon the highway. Overall responsibility for highway accessibility should be given to a named officer.**

- 5.7 The panel were happy to support existing powers with regard to the confiscation of items in breach of licensing agreements.

### **Recommendation 13**

**Where traders' items are in breach of license condition two written warnings should be issued. Upon the third occasion of breach of license immediate confiscation by council officers should be undertaken.**

## **6. UTILITIES**

- 6.1 The panel heard evidence from Openreach, part of the BT group. They are responsible for installing and upgrading communication infrastructure and do place items on the highway.
- 6.2 Whilst highlighting that the myriad of subterranean obstacles do limit where some items can be placed on the highway Openreach were happy to work with the council where access 'hotspots' are identified. This would enable the group to consider moving infrastructure as part of routine maintenance/upgrading work.

### **Recommendation 14**

**The panel welcomes the willingness of Openreach to work with the council on the siting of utility boxes and supports the idea of creating a list of 'hotspots' where the re-siting of an existing box would be beneficial. The panel believes this could be usefully extended to other utility providers that locate items on the pavement.**

## **7. ALTERNATIVE ADVERTISING AND MOVING FORWARD**

- 7.1 A number of innovative forms of advertising were shown to the panel which could be used as alternatives to A boards. In many cases these would require businesses to collaborate, however the panel believes this could be accomplished through groups such as the North Laine Traders Association.



- 7.2 The panel believes there is also a useful dialogue to begin between the city's business community and those representing disability groups. Clearly issues such as cost implications are best considered by businesses themselves.

#### **Recommendation 15**

**Considerable good will and a desire to work together was evident from traders and disability group representatives. The panel believes this should be acted upon and the Council should facilitate on-going dialogue between different groups to review:**

- a. **Alternative forms of advertising that will reduce the impact on street accessibility and could become part of the City's culture**
- b. **How the City's café culture can meet the needs of mobility impaired residents and visitors**

### **8. MONITORING**

- 8.1 As with any scrutiny review once a response to its recommendations has been received monitoring of any agreed actions will be paramount to achieving success. The Panel will be asking for OSC to monitor these recommendations after 6 and 12 months.
- 8.2 The panel did debate linking the size of accessible gap required on highways to the level of footfall in any given area. Whilst not recommending this approach they were in agreement that if these recommendations do not help alleviate the problem then this should be considered in future.

#### **Recommendation 16**

**Implementation of recommendations arising from the scrutiny review should be monitored by OSC after six and twelve months with an invitation extended to those involved in this review to comment upon any impact.**

### **9. CONCLUSIONS**

- 9.1 This review has led to the development of the 16 recommendations outlined below. Whilst these are broadly supportive of current policy they do highlight the need for an increased focus on enforcement measures.
- 9.2 The panel is asking for the various interest groups who gave evidence to be involved the monitoring of improvements to street accessibility. If it becomes apparent that the recommendations do not improve the situation further measures may have to be considered such as linking the width of gap required to footfall in an area, or a standard increase in the size of the gap from 1.3meters.
- 9.3 In conclusion therefore the Panel recommends:

## **General Principles**

1. In regulating and licensing the use of public highways the council should seek to strike a balance between the needs of competing interests. However this should be based on the premise that there should be free, unfettered access for all to public highways in Brighton and Hove.

## **Traders' Items**

2. The panel supports the use of licensing zones for traders' items in specific areas of the city. Subject to its other recommendations, the panel endorses the policy regarding traders' items that was agreed at the meeting of Licensing Committee (Non Licensing Act 2003 Functions), Friday, 24 April, 2009 (Agenda Item 33), namely:
  - A. That no licensed traders' items should be permitted to reduce the width of a footway to less than 1.3 meters except where:
    - i) A formal pedestrian zone has been established in a road by Traffic Order and the whole of the carriageway is kept clear for pedestrian use;
    - ii) A road is closed to vehicular traffic by virtue of a temporary Traffic Order and the whole of the carriageway is kept clear for pedestrian use;
    - iii) A road is considered to be shared space and the whole carriageway is generally available for pedestrian use.
  - B. That where a footway is reduced to a width of 1.3 meters (or less) by objects (whether these objects be traders' items of fixed street furniture such as lamp posts, bins etc.) 'turning areas' for manual wheelchair users and guide dogs must be established at regular intervals. These turning areas shall not be less than two meters in length and shall be the full width of the footway. Such areas must be maintained at intervals of no more than six meters along the length of any restricted footway.
  - C. That, except in the case of items within large, waiter-serviced sitting-out areas, no traders' item shall be permitted to be placed more than 5 meters from the licensed premises. All objects must be within sight from a window or door of said premises or in clear visual range of CCTV camera(s) monitored from within the licensed premises. This provision will mainly affect advertising boards.
  - D. That where an application is refused by Officers, an applicant may appeal to the Licensing Sub-Committee (the Licensing Panel).

- E. That applications for A-Boards shall be restricted to 1 per premises (excluding those situated on private land), but that:
  - i) Special consideration will be given to those premises situated in twittens and alleyways regarding this policy.
- 3. In addition to the licensing criteria above businesses seeking to place an A Board on public land should be required to:
  - a. Evidence that there is insufficient private curtilage for A board to be kept off the public highway
  - b. Commit to ensure the A board will be placed on an agreed area on the pavement marked by the council.
- 4. Clusters of A boards should be combined into a single standard advertising board. The council should provide these in a single City-wide design livery that can be added to by individual retailers.
- 5. Businesses with tables and chairs on the public highway should be required to partition their external seating from the footway. Areas licensed for tables and chairs should be marked.
- 6. The council should provide compulsory guidance on the most appropriate design of partition to prevent them from causing an obstruction.

### **Bikes, Bins and Parking**

- 7. Bicycles secured to inappropriate street furniture present a challenge to many people moving around the city. Investment in more on-street cycle storage should be prioritised.
- 8. Commercial bin storage on the highway should in general not be tolerated:
  - d. No new planning permissions should be granted that do not include on-site waste storage
  - e. Business that fail to utilise on-site storage facilities should be prosecuted quickly
  - f. Council officers should investigate alternative arrangements where businesses are already trading and do not currently have on-site waste storage facilities
- 9. Communal bins should not be permitted to obstruct public highway to less than 1.3 meters (as per the minimum agreed in recommendation 2). Where this is the case communal bins should be relocated. Accessibility of the public highway should be of greater importance when deciding where to locate a communal bin.
- 10. Whilst parking was raised a number of times throughout the review members felt that this was too big an issue for this panel to look at. It is however recommended that where changes are made to parking regulations accessibility issues are considered as part of consultations.

## Enforcement

11. The panel considers a robust, consistent enforcement regime of street access issues vital. Consideration should be given to utilising additional staff resource in monitoring and enforcing the streetscape. There should be given increased cross directorate/team working with officers able to undertake multiple enforcement regimes. This could include consideration of the use of civil enforcement officers, cityclean officers and PCSOs.
12. Communication and coordination between officers undertaking work that affects the street-scene needs to improve. There appears to be a lack of coordination between different parts of the council that place items on the highway, license items to be placed on the highway and use items placed upon the highway. Overall responsibility for highway accessibility should be given to a named officer.
13. Where traders' items are in breach of license condition two written warnings should be issued. Upon the third occasion of breach of license immediate confiscation by council officers should be undertaken.
14. The panel welcomes the willingness of Openreach to work with the council on the siting of utility boxes and supports the idea of creating a list of 'hotspots' where the re-siting of an existing box would be beneficial. The panel believes this could be usefully extended to other utility providers that locate items on the pavement.
15. Considerable good will and a desire to work together was evident from traders and disability group representatives. The panel believes this should be acted upon and the council should facilitate on-going dialogue between different groups to review:
  - c. Alternative forms of advertising that will reduce the impact on street accessibility and could become part of the city's culture
  - d. How the city's café culture can meet the needs of mobility impaired residents and visitors
16. Implementation of recommendations arising from the scrutiny review should be monitored by OSC after six and twelve months with an invitation extended to those involved in this review to comment upon any impact.