

Subject:	Alcohol Licensing Enforcement Report		
Date of Meeting:	28 November 2019		
Report of:	Executive Director of Housing, Neighbourhoods & Communities		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1. This report sets out the licensing and gambling enforcement functions and approximate annual figures carried out by Brighton & Hove Licensing Authority. The figures quoted look at the previous year (September 2018 – September 2019)
- 1.2. The report will specifically look at the enforcement procedures and options available to the Licensing Authority taking into account our Licensing Enforcement Policy.
- 1.3. The type of complaints we receive and follow up investigation measures used will be explained and reactive & proactive inspections including our Risk Rating programme will be outlined. Examples of enforcement work will be provided but all premises and individuals will remain anonymous.
- 1.4. Enforcement and investigation work that the Licensing Authority undertakes under the Licensing Act 2003 and the Gambling Act 2005 includes:
 - Enforcement procedure and options
 - Licensing Risk rate inspections and reactive licensing inspections
 - Joint Intelligence Meetings (JIM)
 - Test Purchase exercises (TP)
 - Sensible on Strength Scheme (SoS)
- 1.5. Legislation and guidance:
 - Licensing Act 2003 and subsequent regulations (LA03) – including reference to the four licensing objectives: The prevention of crime & disorder, the prevention of public nuisance, public safety and the protection of children from harm)
 - Home Office Guidance issued under Section 182 of the Licensing Act 2003
 - Statement of Licensing Policy 2016 (as revised 2019) (SoLP)
 - Brighton & Hove Licensing Enforcement Policy (LEP)

- Gambling Act 2005 and subsequent regulations (GA05)
- Gambling Commission Guidance to licensing authorities 5th edition (Sept 2015)
- Gambling Commission licence conditions and codes of practice (January 2018)
- Gambling Policy (Statement of Principles) 2019-2021

2. RECOMMENDATIONS:

- 2.1. That the contents of the report be noted.
- 2.2. That it be agreed that Licensing Enforcement Officers (LO) should continue to investigate complaints of non-compliance in line with legislation, policy and procedures and take appropriate enforcement action accordingly and LOs continue to carry out proactive work as well as reactive work.

3. CONTEXT/ BACKGROUND INFORMATION

3.1. LICENSING ACT 2003

Enforcement procedure and options

- 3.1.1 LOs will take into account the Licensing Enforcement Policy (LEP) in making enforcement decisions in accordance with Brighton & Hove City Council's Statement of Licensing Policy (LEP can be found at Appendix 1). In order to better target enforcement resources, some inspections will be undertaken outside of normal office hours and the sharing of information between all enforcement agencies will be encouraged through joint meetings or similar arrangements.

A stepped approach to investigations and enforcement is required in line with our LEP. LOs are encouraged to educate rather than enforce in the first instance for less serious matters and if education does not work or is not appropriate then enforcement action will be taken. Enforcement actions are:

- Informal warning
- Formal warning letter
- Licence Review
- Simple Caution
- Prosecution

Licensing Risk rate inspections and reactive licensing inspections

- 3.1.2 The purpose of a risk rate inspection is to determine when we next need to carry out another inspection on a risk-based scoring system. By talking to staff about the premises licence and checking that each premises is complying with the conditions attached to the licence and their responsibilities under the LA03, we can determine when the next programmed inspection visit will need to be carried out. Answers from an inspection form are inputted against the specific premises licensing record on our database and a score is provided. Examples of the type of questions include, the type of premises (nightclub, pub, restaurant, off licence etc), capacity of the venue, terminal hour, whether they have CCTV, Mobile support unit, BCRP membership, confidence of

management, breaches witnessed to name a few). The scoring system will rate the premises into a very low, low, medium, high or very high risk category and this will determine when the next inspection should take place. For a very high score the next visit should be in 6m, for high 12m, for medium 18m etc. The proforma form for a licensing inspection/risk rate is attached at Appendix 2.

- 3.1.3 We also routinely carry out a licensing inspection for a change in operator (for either a Transfer of Premises Licence Holder and/or a DPS Variation) and for all new licences that are granted and major variations.
- 3.1.4 Attached at Appendix 3 are some tables showing figures for the last year; the first table is for types of service requests, these are jobs that are allocated to Licensing Officers to respond to and investigate if necessary (codes for these are: LICCON & LICPRM). This table also includes the risk rating inspections referred to above (LICRSK) and the second table is for types of visits that are undertaken.
- 3.1.5 Following a service request various actions will be undertaken, these include verbal advice by phone or in person, written advice (via email or letter). For letters, our computer system breaks these down to letter sent with action required, letter sent with action not required and warning letter sent. Within the last year 19 warning letters have been sent, 45 letters with follow up action requested have been sent. One notice has been served (this would have been a Section 19 Closure Order Notice). 622 emails have been sent and 275 have been received following our contact.
- 3.1.6 The third table is for Wards broken down by Service Request type (which gives the total number of complaints, enquiries and risk rate inspections for each Ward) – the results show that both Regency and St Peters & North Laine Wards have had the most service requests which is not surprising given that they are in the city centre.

Examples of reactive complaint investigations:

- 2018-2019 - A new garden was created at a public house in Brighton which caused a lot of concern by local residents. Lots of complaints were received by licensing which resulted in a lot of advice and visits to complainants and the premises. This involved not only Licensing but also working closely with Environmental Protection (EP) and our legal team. A meeting was held with residents, a Councillor, Legal, and Licensing to discuss these issues. After much advice and mediation the residents are now working with the premises & having meetings and a noise management plan has been created by the premises licence holder. No further complaints have been received to this date.
- In 2018, following a failed test purchase, breach of conditions and concerns over bad management with a convenience store & off licence (outside of CIZ & SSA) a number of visits took place from licensing, trading standards and police licensing. The premises licence was revoked by the Panel after a Review was submitted by the police, which sent a very strong statement to other premises that if they behave irresponsibly their licence could be revoked.

- Since then two separate applicants have applied for a premises licence, both of which were refused by our licensing panel. One applicant appealed the decision, but this was dismissed by the Magistrates Court.

Joint Intelligence Meetings (JIM)

3.1.7 The fortnightly Joint Intelligence Meeting (JIM) has been running since the Licensing Act 2003 came in to force in 2005 and it has always been a very worthwhile meeting. The purpose of the meeting is to bring together the Relevant Authorities to share intelligence relating to licensed premises in Brighton & Hove. The information brought is deemed necessary and appropriate to share with all authorities. It helps to avoid duplication and to better target enforcement resources. Premises added to the minutes of the meeting are of interest to more than one authority.

3.1.8 The core members of the JIM are Brighton & Hove City Council Licensing Authority (LA), the Environmental Protection team (EP), Health and Safety, Trading Standards team, Food Safety team, Sussex Police Licensing Unit and East Sussex Fire & Rescue Service. Other attendees include the Home Office Immigration Enforcement Team and minutes are copied to our Highways enforcement team and Planning.

3.1.9 The officers that attend the JIM consist of persons with sufficient knowledge in the authority they represent to deal with cases raised at the JIM and to contribute information and update cases.

Some examples of notable joint work so far this year include:

- The Police had concerns over DPS/no BCRP membership of a CIZ bar/cafe. It was visited at night by the Police Licensing Unit and served a Section 19 Closure Order for multiple breaches of the licence. Long history of breaches at the Premises in the past that led to two Reviews. The premises is under new management with another rebranding but they continue to breach. Police and LA joint inspection carried out with a lot of follow up work and discussions with the licence holder. Subsequent night visit by the Police uncovered further breaches, heading for joint Review/Prosecution.
- A one-day festival in the city was raised by LA at JIM. Police attended the event with EP where they witnessed a nearby Club Premises breaching its Club premises certificate. Subsequent joint meeting held on site with Police & LA to follow this up. Club not a bona fide club anymore so now enforcement action taken to stop carrying out licensable activities and they will now apply for a premises licence.
- A complaint was referred to us by Police Licensing regarding a serious incident on Easter Bank Holiday Sunday afternoon at a large city centre hotel (within the Cumulative Impact Area (CIZ)). On checking the history the LO could see that the premises was recently visited and a licensing inspection undertaken and due to the seriousness of the incident it was deemed appropriate to call the premises in for a joint meeting at the Police Station with the LA. The Premises Licence was a very old licence from 2005 that had been converted straight over from the old Licensing Act 1964 (issued by

the Magistrates Court), it had no updated conditions on that are seen on Premises Licences issued since 2005. In light of the serious crime & disorder, public nuisance, public safety and protection of children from harm concerns the police and ourselves had, the premises has since put in a Minor Variation to update and amend the conditions on their licence. These include things such as CCTV, Business Crime Reduction Partnership (BCRP) membership, SIA door supervisors to be risk assessed, Challenge 25 policy and staff training. This is an example of a successful outcome using a joint stepped and measured approach to a premises not upholding the licensing objectives without the need to Review the licence. The premises remain as one that is monitored to ensure compliance.

- A 24-hour convenience store and off-licence within the CIZ has received a number of complaints from local residents, businesses and PCSO's, regarding antisocial behaviour (ASB), crime and disorder and public nuisance, often linked to alcohol in and around a notoriously bad area. This antisocial behaviour is predominantly caused by the street drinking community who are purchasing cheap super strength alcohol from this premises on a daily basis.
- A number of visits have been made to these premises reminding them of the problems in the area and not to sell to intoxicated customers, but these warnings have been ignored so a Review has been submitted by a member of the licensing team which will be supported by the police.
- In 2016 - An example of excellent joint working originated at the JIM where police, licensing and trading standards conducted a joint operation regarding an action against an organised crime group operating across a range of licensed premises. Joint visits were carried out and evidence gathered of counterfeit alcohol, money laundering and drug dealing. Criminal charges were brought, and review proceedings initiated resulting in the license holders/occupants being evicted from the premises and the licences being updated with robust conditions.
- This was a huge victory for the Licensing and Trading Standards teams as the JIM helped to facilitate the joint working that led to this remarkable outcome with a real benefit to the residents of Brighton and Hove. Ensuring that relevant intelligence was shared with the right agencies resulting in enforcement action that stopped persons involved in organised crime from running a business with day to day contact with the public on one of our busiest streets in the city, stopping them being exposed to illegal alcohol.

Test Purchase Exercises (TP)

- 3.1.10 Sussex Police and Trading Standards continue to have a concern that, despite free staff training in age-restricted sales being provided by Trading Standards, under age individuals are still being served alcohol in some of the city's licensed premises. As such, regular intelligence-led 'test-purchase' operations are conducted.

Date	TPO Op	No of Premises Test Purchased	No of Sales to Underage Volunteers	Type of Licence
31.05.2018	Alcohol	9 Premises	1 Failure 1 x Off-Licence	7 x Off-Licence / 2 x On-Licence
06.12.2018	Alcohol	9 Premises	2 Failures 1 x Off-Licence 1 x On-Licence	8 x Off-Licence / 1 x On-Licence
14.03.2019	Alcohol	9 Premises	2 Failures 2 x Off-Licence	7 x Off-Licence / 2 x On-Licence
21/08/2019	Alcohol	8 Premises	4 Failures 3 x Off-Licence 1 x On-Licence	7 x Off-Licence / 1 x On-Licence

- 3.1.11 If a premises fails a test purchase, the individual will be given a £90 penalty notice for disorder (PND) which is down to themselves to pay.
- 3.1.12 The Premises Licence Holder (PLH) and DPS is summoned to meeting with police licensing following the failure. Signed official warning letter is issued and advised that they will be tested a second time, and if fails an immediate review application and matter will be put in front of a council licensing panel hearing in accordance with Home Office S.182 Guidance.
- 3.1.13 The PLH may put in a minor variation to update their existing licence conditions to current modern standards.
- 3.1.14 It is anticipated that initiatives, including the introduction of identification scanning machines at premises throughout the city, will go some way to mitigate this risk. Sussex Police also continue to work alongside the BCRP to tackle the problem of those who use false identification to enter licensed premises and purchase alcohol. Free Trading Standards age restricted sales training is delivered to at least 100 premises/300 staff on an annual basis.

Sensible on Strength Scheme (SoS)

- 3.1.15 In November 2013 the Licensing Authority launched the ‘Sensible on Strength’ scheme to reduce the availability of cheap super-strength beers and ciders. Off licences voluntarily sign up not to sell cheap super-strength beers and ciders over 6% ABV and operate good practice measures, for which they receive an accreditation as a responsible retailer. This has been a considerable success and we have received positive feedback including from businesses, alcohol treatment centres and health professionals, where 80% of the high-profile street drinkers have moved to lower ABV and more clients are engaging with rehab treatment centres, as well as breaking up hot spot drinking areas. This is an ongoing scheme that will be reviewed regularly.
- 3.1.16 Through achieving this change, the ultimate aim is to reduce alcohol related harm and anti-social behaviour, and to move vulnerable drinkers onto weaker alcohol as experience shows that if this can be achieved, the level of deterioration in health is dramatically slowed and there is more likelihood that they will take the step to abstinence and long-term sobriety. Public health is not

a licensing objective but reducing high alcohol by volume drinks from the off-licence trade should benefit alcohol related morbidity and mortality.

- 2013-14 79 premises joined the scheme
 - 2014-15 119 premises are members
 - 2015-16 131 premises / 23 stopped selling but not joined
 - 2016-17 159 premises / 39 stopped selling but not joined
 - 2018-19 178 premises / 48 stopped selling but not joined
 - 2019-20 192 premises / 49 stopped selling but not joined
- There are 286 off licences in Brighton & Hove. This figure is made up of off-licences/convenience stores, supermarkets and petrol stations.
 - Premises re-visited to confirm still members: 105
 - Dr Worthley, Lead GP at Brighton Homeless Healthcare, “continues to be one of the most significant public health measures in Brighton & Hove”
 - We have very recently received this from a Doctor at the Royal County hospital who wanted some advice on the SoS scheme: - “We've been doing some research work looking at whether the sensible on strength initiative had an impact on admissions with alcohol related liver disease in our hospital. We will let you know once our results get published. Keep up with the great work!”
 - The SoS scheme continues to generate a lot of interest from other authorities who have visited B&H to find out how we run the scheme.

3.2 Gambling Act 2005

3.2.1 The functions of licensing authorities may be divided roughly into five: publication of Gambling Policy, regulation of premises, registration of small society lotteries, maintenance of registers and compliance.

3.2.2 Compliance is a relatively small amount of work for the Licensing Authority. Two yearly inspections are carried out for all gambling premises to ensure compliance with the GA05 and regulations. This involves going through a comprehensive inspection form which looks at all the Mandatory conditions, including gaming machine entitlements and age restrictions, Social Responsibility Code Provisions and Codes of Practice under the GA05. Any non-conformities are followed up with the premises and head offices in writing, ensuring that the Gambling Commission are kept up to date. Non-conformities are rare as all of the Betting Offices, the Bingo premises, Betting Tracks, AGC's and Casinos in Brighton & Hove are run by national companies who have stringent regulations and training in place.

Gambling Local and National Issues

3.2.3 The recently revised Gambling Policy was published in January 2019, including raising awareness of mental health issues and concerns about the use of privacy booths.

Test purchase exercise – Gaming machines in licensed premises

- 3.2.4 In June 2018 the Licensing Team worked with the Gambling Commission to conduct test purchase operations in pubs to test compliance with laws in place to protect children from the risks associated with gambling.
- 3.2.5 Children (under 18's) are not permitted to play Category C gaming machines in pubs. Staff are expected to stop children playing on the machines and there should be clear signage indicating the age restriction.
- 3.2.6 There was a 70% failure rate of the licensed premises tested in Brighton. Of the premises tested, 70% failed to prevent children accessing the age-restricted machines. This compares to a 90% failure rate nationally. The failure rate is in stark contrast to the average failure rate of between 15 and 30% for other age-restricted products, such as alcohol and tobacco.
- 3.2.7 Those premises that failed were given a written warning letter and, nationally, the Gambling Commission is calling on the pub sector to take immediate action to protect children and young people. On a recent licensing inspection by a LO to a pub of one of the national chains, the licence holder indicated that their head office were now carrying out their own test purchases on gaming machines in all of their pubs. This is just one of the national chains so hopefully this is now a more common occurrence amongst national pub companies. Brighton & Hove and the Gambling Commission are proposing to do some more TP's in the near future including to those that failed last time. Further TP's are to be carried out, including those premises that failed last year. If a premises fails again we will consider removing their entitlement to having gaming machines or review their premises licence.
- 3.2.8 The Gambling Commission has published a Code of Practice for gaming machines in clubs and premises with an alcohol licence. The Code of Practice provides detailed advice for operators as to where machines should be located and how supervision and age restrictions should be implemented.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1. Licensing Strategy Group, finance and legal services.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The costs associated to activities allowable under the Licensing Act 2003 are funded by licence fee income; any variation between expenditure and income generated from licence fees is funded from existing revenue budgets.

Where fees are not set by central government, licence fees are set at a level that it is reasonably believed will cover the costs of providing the service and in accordance with the requirements of the legislation under which they are charged. Licence fees are approved annually at Licensing Committee.

Finance Officer Consulted: Michael Bentley

Date: 16/10/19

Legal Implications:

5.2 Legal implications are contained within the body of this report.

Lawyer Consulted:

Rebecca Sidell

Date: 16/10/19

Equalities Implications:

5.3 There are no direct equalities implications.

Sustainability Implications:

5.4 There are no direct sustainability implications.

Crime & Disorder Implications:

5.5 Contained in the body of the report.

Risk and Opportunity Management Implications:

5.6 No implications

Public Health Implications:

5.7 Contained within report.

Corporate / Citywide Implications:

5.8 The local licensing delivers support improvement that help businesses comply with the law speedily, easily and economically.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

6.1 None – for information only.

7. REASONS FOR REPORT RECOMMENDATIONS

7.1 For information only.

SUPPORTING DOCUMENTATION

Appendices:

1. Appendix 1 Licensing Enforcement Policy
2. Appendix 2 Pro forma form for a licensing inspection/risk rate
3. Appendix 3 Table of figures showing type of service requests, visits undertaken for service requests and service request by Ward (all for the last year).

Background Documents

1. None.

