

**Sandwell**  
Metropolitan Borough Council

# **Licensing Committee and Licensing Panel Annual Report 2016/17**

## **Foreword – Chair of the Licensing Committee for the 2016/17 Municipal Year**

My role involved chairing, leading and co-ordinating the activities of the Licensing Committee. The Committee added value to the Council by ensuring the effective and efficient discharge of the Licensing functions and by assisting the Executive with the development of any policies and procedures.

Amongst other things this involved ensuring that:-

- i) Licensing functions were undertaken in a positive, constructive and non-partisan manner which enhances the reputation of the Council;
- ii) that performance was monitored;
- iii) that functions were carried out within budget and that the regulatory processes which underpinned the Committee's work were promoted.

The former Licensing Committee was responsible for exercising the powers and duties of the Council with regard to licensing matters under relevant legislation conferring powers and duties relating to the same upon the Council.

The Licensing Committee was also authorised, to appoint such sub-committees as it considered necessary to discharge powers and duties specified by the Committee. Four Licensing Panels supported the work of the main Licensing Committee in 2016/17 in order to deal with issues related to the Licensing Act 2003 and the Gambling Act 2005.

To enable the Licensing Committee to undertake all of its functions, a continual programme of training and informing was undertaken at every full Licensing Committee meeting every three months. This was provided by our own officers or partners and enabled the Licensing Committee members to respond appropriately to the work the Licensing Panels undertake when dealing with licensing reviews.

**Councillor Peter Allen**

Chair – Licensing Committee 2016/17

## **The Licensing Committee**

Each year the Council establishes the Licensing Committee to:

- i) deal with all matters relating to the discharge of the functions of the Licensing Authority under the Licensing Act 2003 and any regulations made under that Act, together with any related functions, with the exception of any function conferred on the Licensing Authority by Section 5 of the Licensing Act 2003 (Statement of Licensing Policy) and any function discharged under Section 7(5)(a) of that Act by a committee other than the Licensing Committee;
- ii) deal with all matters relating to the discharge of the functions of the Licensing Authority under the Gambling Act 2005 and any regulations made under the 2005 Act, together with any related functions, with the exception of any function conferred on the Licensing Authority by Section 166 of the 2005 Act (Casino Resolution) and Section 349 of the 2005 Act (Statement of Principles).

In 2016/17, the Committee established four Licensing Panels which predominantly met to determine applications under the Licensing Act 2003 and the Gambling Act 2005. Further detail on the work of the Licensing Panels is set out below.

The Authority's Fees and Charges are reviewed every year. Fees and charges for 2017/18 have been approved.

### **Licensing Panels**

The Licensing Committee established four Licensing Panels to exercise its functions under the Licensing Act 2003 and Gambling Act 2005 and any regulations made under these Acts.

## General

In 2014 the Home Office consulted on amending the Licensing Act 2003 to deregulate the licensing requirements where Community groups and small businesses that want to sell small amounts of alcohol as part of a wider service. For example, small bed and breakfasts wishing to provide a welcome drink to guests must be at present licensed in the same way as a large hotel with a public bar. These plans did not get introduced as part of the Deregulation Act 2015 because the Government ran out of Parliamentary time. These proposals have been further delayed due to Brexit and the election; as the shape of any future government is unknown the future of these proposals remains unclear.

In the long-running case of Hemming (Simply Pleasure Ltd) and Others v Westminster City Council, the Court of Justice of the European Union (CJEU) has ruled a requirement to pay a licensing fee exceeding the cost of processing an application is unlawful.

The case challenged the annual licence fee of £29,102 on sex shops levied by Westminster City Council.

Under the European Services Directive, which came into force in 2009, licence fees must not exceed the cost of the authorisation procedures which, the retailers argued, could not possibly include the cost of enforcement against and prosecution of unlicensed operators.

In 2015, the Supreme Court referred the case to the Court of Justice of the EU (CJEU) to consider the lawfulness of licence fees paid on application comprised of two parts, namely the costs of processing the application and the costs of enforcement against third parties.

It also asked whether the second part of the fee was a 'charge' if it was refundable to unsuccessful applicants.

In its ruling on 16th November 2016, it said that 'the fact that a fee must be paid constitutes a financial obligation, and therefore a charge' regardless of whether anything over and above this may be refunded to unsuccessful applicants.

The ECJ identified two different approaches to charging fees;

- Whereby a council charged a fee upon application (covering costs of authorisation procedures and a subsequent fee to successful applicants (covering the cost of administration and enforcement) – known as ‘Type A’.
- Where a council charged a single fee on application covering all costs, on the basis that a proportion of the fee would be refunded to unsuccessful applicants – ‘Type B’

With effect from the 6<sup>th</sup> April 2017, immigration safeguards were introduced to the licensing regime for alcohol and late night refreshment in England and Wales. The changes to the Licensing Act 2003 by Section 36 of and Schedule 4 to the Immigration Act 2016 means that

- Licensing Authorities are prohibited from issuing premises and personal licences for the sale of alcohol or provision of late night refreshment to anyone who is illegally present in the UK or not permitted to carry out work in a licensable activity.
- Immigration offences become ‘relevant offences’ as defined by the 2003 Act. Therefore the Licensing Authority are not obliged to give consideration to Personal licence holders subject to ‘relevant convictions’ as well as having the power to suspend or revoke existing licence holders.
- The Home Office (Immigration Enforcement) is added to the list of responsible authorities in the licensing regime. This means premises licence applications (except regulated entertainment only licences) and in some limited circumstances personal licence applications will need to be sent to the Home office to make appropriate representations and objections to the grant of a licence. Under Section 179 of the 2003 Act it gives them power to enter premises for investigation of illegal working in premises; this will involve working closely with licensing enforcement and the police.

For applications made on or after this date, applicants are required to provide their date of birth, their nationality and address where they reside. They must also provide evidence of their entitlement to work in the UK. The application forms have been amended to contain a list of

documents that applicants must provide. It is then the responsibility of the Licensing Authority to be satisfied that an individual meets the Immigration criteria to hold a premises or personal licence.

### **Applications considered by the Committee**

Detailed in the table below is a breakdown of the type of applications considered by the Licensing Panels together with further information on the responsible authority requesting the review for the period 1 April 2016 – 31 March 2017. The main cause of reviews through the year was the finding of illicit or non-duty paid goods on licensed premises:-

#### **Reviews**

Trading Standards	2
Police	2
<b>Total Reviews</b>	<b>4</b>

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#### **Reason for review**

Serious Crime and Disorder	2
Crime, disorder and Public Safety	2
<b>Total</b>	<b>4</b>

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#### **Other Hearings**

Grant application	3
Vary premises licence application	1
Sex Establishment applications	5
<b>Total other hearings</b>	<b>9</b>

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## **Temporary Event Notices**

Temporary Event Notices permit licensable activities on unlicensed premises, or outside the hours of a licence, for short periods of time and subject to restrictions on the number that can be given for premises or by an individual.

A notice given more than ten working days before the event is a standard notice, when given between nine and five working days before the event it is a late notice.

Only the Police or Environmental Health may object. Objections to a standard notice may result in a hearing, for a late notice a counter notice is given and the event cannot go ahead.

The limit on the number of temporary events that can be held at a premise increased from 12 to 15 per year with effect from 1st January 2016.

During the course of this year there were 169 such notice given. 3 Counter notices were issued and 2 applications void as submitted out of time and/or the fee was not paid.

## **The Role of Trading Standards**

Trading Standards and Licensing through its regulatory, business advice and educational activities, supports the health and wellbeing priorities of the authority.

The Trading Standards team is responsible for ensuring that the law relating to underage sales of alcohol and tobacco products is complied with by those businesses who normally supply those goods in the course of a trade or business.

Trading Standards' work on reducing the availability of alcohol to young people from off-licences has two main strands; business advice and enforcement.

## Business Advice

Trading Standards recognise that most businesses want to comply with the law, but that they help and assistance to enable them to meet their legal obligations. In order to assist and empower retailers to prevent underage sales Sandwell Trading Standards has introduced the Responsible Retailer Scheme. At the heart of the scheme is recognition that retailers, working together with Trading Standards, are part of the solution in preventing young people from accessing age restricted products such as tobacco and alcohol.

As part of the scheme members will be provided with a comprehensive due diligence package devised by Trading Standards - the very people who enforce the law. This will also include an accredited online training course for staff and an annual onsite compliance audit.

Trading Standards have also produced a short film based on true life stories which can be used as part of staff training. It is a hard-hitting film which talks about the potential harms of underage drinking and smoking. The film features local people who have been effected by underage smoking or drinking and they talk about how much they lost because it. The film highlights the impact that being prosecuted for selling age restricted products can have on the business involved. These films can be viewed here;

- Smoking - Trading Standards <https://youtu.be/zeAJutvx2Kw>
- Alcohol - Trading Standards <https://youtu.be/PFMKZoOacYI>

Two of the volunteers who participated in the films were nominated for the Chartered Trading Standards Institute 'Hero Awards', and they were successful. The award ceremony will take place on the 28<sup>th</sup> June at the institute's annual conference in Harrogate.

There will be a small minority of businesses who will knowingly flout the law and Trading Standards will continue to take robust enforcement against these individual businesses.

Membership for the scheme is an annual fee charged on a cost recovery basis. So far we have signed up 13 businesses, and are targeting a formal launch in July 2017.





Trading Standards is part of the Community Alcohol Partnerships (CAP). This is a national initiative which is delivered in local communities by bringing together local retailers, trading standards, police, public health, education providers and a range of other community groups and service providers to tackle the problem of underage drinking and associated anti-social behaviour.

In 2016/17, CAP carried out the following:

- Groundwork commissioned through the CAP provided sessions for parents/carers on talking to your child about alcohol/drugs.
- CAP granted ACE Students with £500 to help set-up a roller night on Fridays for students that were not engaging in physical activity within school and at risk of ASB after school. Numbers of young people engaged has increased from 6 up to 30 regular attendees.
- CAP was granted money to purchase a Go-Kart, beer goggles and obstacles to help raise awareness of the risks associated with drink driving.
- The CAP has developed an interactive school programme working with local agencies to raise awareness of the risks associated with alcohol misuse.
- Tipton CAP along with Tipton Police were awarded a National CAP Champion award for the Restorative Justice Programme engaging with young people at risk, or already involved in low level ASB, and encouraging them to get involved in more positive activities.

- CAP is currently consulting with both students and retailers in Tipton, Smethwick and Oldbury to identify current, changing trends and will be bringing stakeholders together to identify how to tackle any alcohol related issues within these areas.
- The CAP attends a number of the local Sandwell Local Community Operational Groups (SLCOGs) to help provide and develop interventions to help reduce young people's alcohol related issues.

### **Enforcement work**

Trading Standards are committed to promoting responsible sales of alcohol and to stop sales to those who are underage. Whilst maintaining a robust and fair enforcement policy against those traders who disregard their responsibilities.

The levels of businesses compliance is tested by a test purchase programme consensually using young volunteers to test purchase age restricted products.

Only Weights and Measures Inspectors (Trading Standards Officers) and Police Officers are able to legally ask a person under the age of 18 years to purchase alcohol.

### **Alcohol**

The risks of drinking to excess are well established. Long term alcohol abuse can lead to numerous health problems, including liver and kidney disease, acute and chronic pancreatitis, heart disease, high blood pressure, depression, stroke, foetal alcohol syndrome and several cancers.

The effects of alcohol on young people are not the same as they are on adults. While alcohol misuse can present health risks and cause careless behaviour in all age groups, it is even more dangerous for young people. As young people's bodies are still growing alcohol can interfere with their development. This makes young people particularly vulnerable to the long-term damage caused by alcohol.

Young people who drink are also much more likely to be involved in unsafe sex, unwanted pregnancies, antisocial behaviour, criminal behaviour, failing to meet their potential in education and they are more vulnerable to child sexual exploitation (CSE).

The Department of Health estimated that alcohol misuse costs the health service around £2.7 billion per year. However it does not stop there; it also imposes wider costs on society such as crime and disorder, social and family breakdown and sickness absence. Therefore the true cost is estimated to be up to £25 billion.

### **Alcohol the local picture.**

The Local Alcohol Profile England (LAPE) 2014 shows that Sandwell is statistically worse than the national average across a range of alcohol related harms.

The alcohol mortality rate for Sandwell is 20.1 per 100,000 population whereas the rate in England is only 14.3 per 100,000 population. The alcohol hospital admission for under 18s is 43.1 per 100,000 population, slightly worse than the overall rate for England which is 40.1 per 100,000 population.

Alcohol related healthcare costs for Sandwell (A&E attendances, inpatient admissions and outpatient attendances) are estimated to cost £18.1m per annum. This equates to a cost of £74 per adult in Sandwell- higher than the regional average cost of £63 per adult.

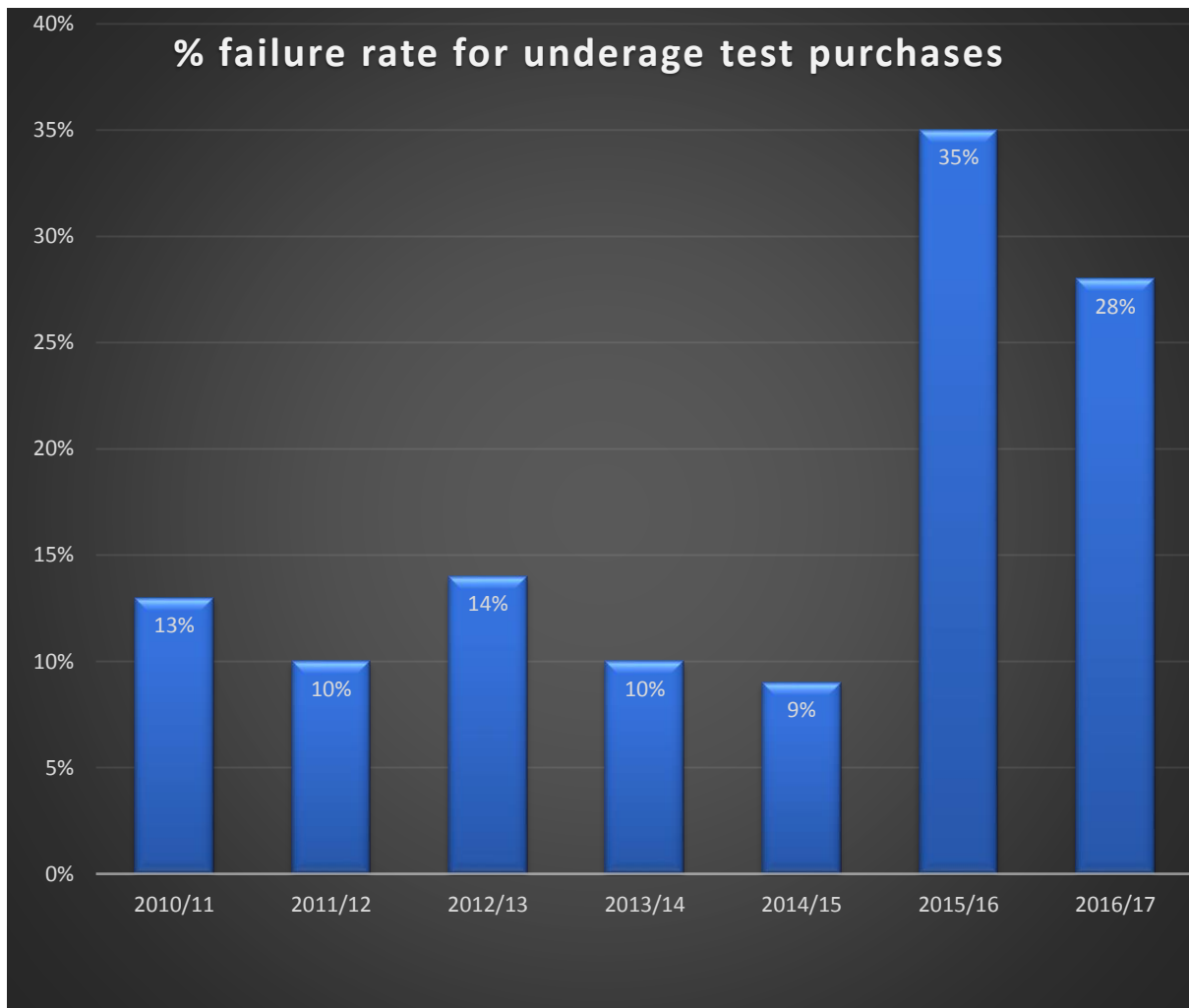
The impact of alcohol is not only health related. Alcohol misuse also has a detrimental effect on families and society as well as accounting for over 40% of violent crimes locally.

### **What have we done in 2016/2017?**

- We carried out a series of undercover operations against the illegal selling alcohol to persons under 18 years old.
- We monitor our progress in this area of work, so we can keep track of how we are performing.
- For **alcohol**, we conducted four undercover test purchase operations, visiting 35 different shops and 12 shops sold alcohol to a young person. All offending traders were issued with a failed test purchase letter warning them a further test purchase will be carried out in the near future.

## IL0 Not Protectively Marked

- The 12 offending shops were re-visited and only one shop sold again. This business will be subjected to enforcement action in accordance with the department's enforcement policy including a criminal prosecution and/or a licencing review where the alcohol licence could be suspended up to three months or even revoked.
- In total 47 undercover visits were made to local shops, resulting in 13 sales (28%), including one repeat offender.
- We issued a significant number of press releases regarding the work on underage sales and illicit tobacco, including naming and shaming offenders. Most of our press releases were featured in the local and national media such as the Express and Star, Halesowen News, Daily Mail and The Sun.



## IL0 Not Protectively Marked

- The 28% and 35% failure rates for 2016/17 and 2015/16 respectively represent a significant increase compared to previous years. This is likely due to Trading Standards altering how operations are carried out. In previous years test purchase operations were carried out in the early evenings and during the day in school holidays. This year operations were carried out late in the evenings, particularly Friday evenings and weekends.

### **Illicit Tobacco**

Tobacco smuggling remains a significant threat both to UK tax revenues and to public health. HM Revenue & Customs (HMRC) estimates that in 2012-13 over £2 billion was lost through illegal and illicit tobacco. The availability of illegal tobacco products undermines efforts by the government and Public Health to reduce smoking prevalence by making it more affordable and accessible, especially to young children. A recent report by The Royal United Services Institute (RUSI) for defence and security studies found that the impact of illicit trade in the UK is much more serious than the Government or the public recognise.

As a result of the global economic recession the illegal trade in goods and services has become socially acceptable amongst the British public making the UK an attractive market for organised criminal gangs (OCG) in the illicit trade, especially tobacco. The high profit margins associated with the illicit trade are used to fund other criminal and terrorist activities. It has been recognised that OCGs are more likely to engage in the illicit trade in tobacco and alcohol than drug trafficking as it is a lower risk and higher value activity.

The public expects and deserves to know the products they buy at licensed premises are genuine and sourced from reputable suppliers. Illicit tobacco and alcohol products present a real and substantial risk to public health due to their low price and the risk of toxins. To support the objectives of the Licensing Act 2003, the Trading Standards fulfils the statutory duty for local weights and measures authorities to enforce the following provisions;

- Trade Marks Act 1994 in relation to counterfeit cigarettes and illicit Alcohol
- General Product Safety Regulations 2005 in particular in relation to fire safety cigarettes

## ILO Not Protectively Marked

- Consumer Protection from Unfair Trading Regulations 2008 in relation to misleading and unfair business practices, including the placing on sale of illegal goods
- Tobacco and Related Products Regulations 2016 in relation to Non UK labelled/ standard tobacco products

It is an offence under section 144 of the Licensing Act 2003 for a license holder, designated premises supervisor, or any person who works at licensed premises, to allow the presence of smuggled goods on the premises. In addition, statutory guidance makes clear that where licensed premises are being used for the storage of smuggled tobacco and/or alcohol, review procedures should be used with revocation of the licence seriously considered. It is the responsibility of the licence holder and designated premises supervisor to ensure illicit products are not present.

In 2016/17, Sandwell Trading Standards carried out a number of operations using specialist tobacco dogs where around 33750 cigarettes and 2 kg of hand rolling tobacco were seized from shops worth more than £16,000. Some shops were caught selling single cigarettes which make smoking more affordable and accessible to people on a low income including children.

As a result of these operations Trading Standards successfully prosecuted three businesses including one trader who received a suspended prison sentence, 200 hours of community service and ordered to pay £2000 in prosecution costs. As illicit tobacco was found on off-licenced premises Trading Standards requested two licencing reviews where one premises volunteered to replace the Designated Premises Supervisor along with additional conditions on the licence while the other shop had their alcohol licence revoked.

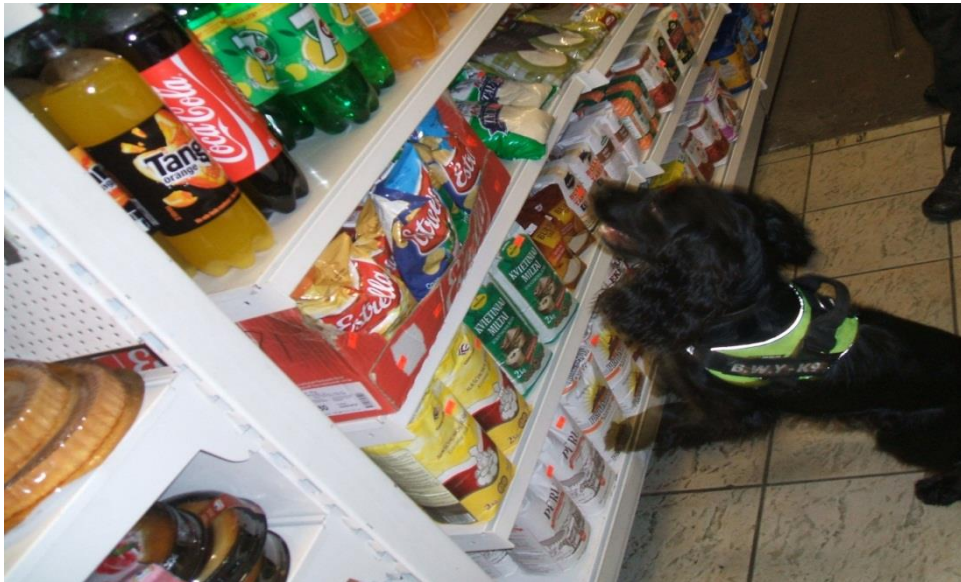
Retailers have become increasingly sophisticated in their approach i.e. adapting their methods in order to avoid detection by, for example, keeping only a small quantity on the premises or by restricting sales of illicit products to known customers or customers from a certain ethnic background. This renders traditional raids on shops ineffective so Sandwell Trading Standards have adapted in response.

Sandwell Trading Standards recently employed a private company to carry out test purchasing from local shops for illicit tobacco. The deployment of a private surveillance company using a Polish test



## ILO Not Protectively Marked

purchaser was a great success. Out of 24 shops 19 sold illicit tobacco to the test purchaser, of which 9 are licenced premises. Sandwell Trading Standards is taking the fight against illicit tobacco sellers to the next level by targeting the distribution network.



**Sniffer dog detecting illicit tobacco behind a box filled with packets of crisps**



**Illicit tobacco concealed behind packets of crisps**

## **Appeals**

A decision of the Licensing Panel can be appealed to a Magistrates' Court in the first instance. During 2016/17 there was one appeal case;

Demirtas Limited t/a Inter Food and Wine, 386-388 Bearwood Rd, Smethwick, B66 4EX. In summary, the business was caught selling illicit tobacco twice and their alcohol premises licence was subsequently revoked. At the appeal, the defendant volunteered to remove the old DPS as well as adding additional conditions on their licence and each party to bear its own costs.

## **Sandwell Licensing Group**

This group consists of representatives from Police Licensing Officers, Fire (Safety and Licensing), Air Pollution and Noise Control, Trading Standards and Licensing, and Public Health. It is additional to the arrangements with the Police for joint intervention of Police and Licensing Team where there are immediate problems, but supports those activities.

Although the visits have proved successful for some members of the group, they have been less so for others, they are resource intensive and have become more difficult to arrange due to operational commitments. In 2015 the group took the decision that in the future any visits would be intelligent lead and limited to those members of the group who could directly assist in solving the identified problem. There were no such activities in 2016/17.

## **Training**

During the year, the Licensing Committee received general update training from Legal, Licensing and Trading Standards.

Additionally members also received training from Trading Standards on the work they carry out on underage sale, and illicit tobacco and alcohol.



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Licensing Application received 2016/2017

<b>Type</b>	<b>Number</b>
Personal Licence application	195
Change of Name and Address Personal Licence Holders	134
Temporary Event Notices	169
Change of Name and Address Premises Licence Holders	42
Minor Variations	17
Vary Designated Premises Supervisor	169
Transfer Premises Licence Holder	51
Full Variation of Premises Licence	15
Grant of Premises Licence	28
New Betting Office licence	2
Lotteries	<b>15</b>
<b>Gambling Premises in Sandwell</b>	
Casino	2
Bingo	5
Adult Gaming Centre	12
Track Betting Licence	1
Betting Licence (other)	55
Licensed Premises with Gaming machines	34
Club Premises with Gaming machines	25
Lotteries	69
<b>Local Government (Miscellaneous Provisions) Act 1982 (Schedule 3)</b>	
Sex Shop	3
Sexual Entertainment Venue	2
<b>Licensing Act 2003</b>	
Premises licence (paying annual fee)	925

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Full Licence	304
Registered Club	51
Shop	434
Food Premises (restaurants takeaways)	241
Misc. (church, leisure centres parks etc.)	50
Schools	88
Suspended	99