

Licensing Committee and Licensing Panel Annual Report 2011/12

Foreword – Chair of the Licensing Committee

My role involves chairing, leading and co-ordinating the activities of the Licensing Committee. The Committee seeks to add 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 involves ensuring that:-

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

The Licensing Committee is 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 is also authorised, to appoint such sub-committees as it considers necessary to discharge powers and duties specified by the Committee. Four sub-committees, or Licensing Panels, have supported the work of the main Licensing Committee primarily in order to deal with issues related to the Licensing Act 2003 and the Gambling Act 2005.

Councillor Peter Allen
Chairman – Licensing Committee

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).

The full terms of reference for the Licensing Committee are attached at Appendix 1.

Membership

During the 2011/12 Municipal Year the following members were appointed to the Licensing Committee:-

Councillor Allen (Chair);
Councillor E A Giles (Vice Chair);
Councillors P Davies, Dhallu, Grainger, Hinton, A Hughes, Piper, Randhawa, Silvester, Tagger and Tranter.

Meeting Schedule

During 2011/12 the Licensing Committee met on the following occasions:-

- i) 27 May, 2011;
- ii) 25 November, 2011;
- iii) 27 January, 2012.

At its meeting on 27 May the Committee met to establish four Licensing Panels which predominantly meet 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.

Members considered the proposed Licensing Committee and Licensing Panel Annual Report 2010/11 on 25 November and agreed to submit the report to Council for ratification.

A review of the Authority's Fees and Charges under the Gambling Act 2005 was discussed at the meeting on 27 January, at which the Committee approved the fees and charges for 2011/12.

Licensing Panels

The Licensing Committee establishes four Licensing Panels to exercise its functions under the Licensing Act 2003 and Gambling Act 2005 and any regulations made under these Acts. The terms of reference for Licensing Panels can be found at Appendix 2. Essentially Licensing Panels deal with the following applications under the Licensing Act 2003:-

Application for personal licence.	If a police objection has been made.
Application for personal licence with unspent convictions.	All cases.
Application for premises licence / club premises certificate.	If a relevant representation is made.
Application for provisional statement.	If a relevant representation is made.
Application to vary premises licence / club premises certificate.	If a relevant representation is made.
Application to vary designated premises supervisor.	If a police objection has been made.
Application for transfer of premises licence.	If a police objection has been made.
Applications for interim authorities.	If a police objection has been made.
Application to review premises licence / club premises certificate.	All cases.

Under the Gambling Act 2005 the following types of application are considered:-

Application for premises licence.	If a relevant representation is made
Application for a variation to a licence.	If a relevant representation is made
Application for a transfer of a licence.	If a relevant representation is made
Application for provisional statement.	If a relevant representation is made
Application for club gaming/club machine permits.	If a relevant representation is made
Cancellation of club gaming/club machine permits.	
Review of premises licence.	
Decision to give a counter notice to a temporary use notice.	

Membership

Panel 1

Councillor Allen (Chair);
Councillors A Hughes and Silvester.

Panel 2

Councillor Allen (Chair);
Councillors P Davies and Piper.

Panel 3

Councillor Allen (Chair);
Councillors Hinton and Tranter.

Panel 4

Councillor E A Giles (Chair);
Councillors Dhallu and Grainger.

Reserve Members

Councillors Randhawa and Tagger.

Meeting Schedule

Given the specific time frame in which applications under both the Licensing Act 2003 and the Gambling Act 2005 have to be considered meetings of Licensing Panels are not specified in the Council Yearbook but are convened as necessary during the year.

In 2011/12 there were 20 meetings of the Licensing Panels which covered over 52 hours in actual meeting time and considered 42 applications. The Panels met on the following dates:-

Panel 1	Panel 2	Panel 3	Panel 4
5 July, 2011	3 June, 2011	5 September, 2011	
9 August, 2011	13 July, 2011	17 October, 2011	
5 September, 2011	8 February, 2012	1 November, 2011	
24 November, 2011		19 December, 2011	
28 November, 2011		21 May 2012	
5 December, 2011			
9 January, 2012			
11 January, 2012			
28 February, 2012			
9 March, 2012			
29 March, 2012			
10 May, 2012			

Applications considered

Detailed in the table below is a breakdown of the type of applications considered by the Panels, under the Licensing Act 2003, together with further information on the responsible authority requesting the review:-

Reviews

Police	2
Police closure	0
Police summary first review	2
Police summary full review	2
Trading Standards	19
Environmental Health	0
Interested party	1
Total Reviews	26

Reason for review

protect children from harm	19
public nuisance	1
serious crime or disorder	2
crime disorder/public safety/protect children	1
public nuisance/crime disorder	1
Crime and disorder	1
TOTAL	36

Other Hearings

Grant application	7
Variation application	1
Police objection to a Temporary Event Notice	3
Total other hearings	12
Total All Hearings	38

Reviews

The Licensing Panels determined a number of reviews following joint operations by Trading Standards alongside other agencies.

In particular, a project involving multi agency teams including the Police, the International Federation of Spirits Producers (ISP) and Her Majesty's Revenue and Customs (HMRC) found that over a quarter of alcohol-licensed premises have been caught selling counterfeit, illicit or non-duty paid alcohol.

As a result of this project, two shops that were caught selling potentially dangerous illegal alcohol had their licences revoked. Another shop had its licence suspended for 3 months. More information is given below

The role of Trading Standards

A project lead by Sandwell Council Trading Standards involving multi agency teams involving the Police, the International Federation of Spirits Producers (IFSP) and Her Majesty's Revenue and Customs (HMRC) and 13 other local councils across the Midlands found that over a quarter of licensed premises have been caught selling counterfeit, illicit or non-duty paid alcohol. In total 879 business premises were visited by the Central England Trading Standards Authorities (CenTSA) and around £150,000 worth of illegal alcohol was seized. In Sandwell 32% of the 74 business premises visited were caught selling illegal alcohol. The total value of illegal alcohol seized during the project was in excess of £40,000.

Alcohol fraud is not confined to the CenTSA region but is fast becoming a national issue costing the UK around £1 billion a year in lost revenue. A survey by Trading Standards South East (TSSE) found that 20% of retail premises were selling spirits or wines that were either counterfeit, had no duty paid or incorrect origin labelling.

Not only the sale of illegal alcohol is a crime but it also poses a serious health risk to the public. Analysis found that some spirit drinks were contaminated with such a high level of methanol that they were 'unfit for human consumption'. Other drinks were found

to contain chloroform, a banned chemical which can cause damage to the liver and kidneys.

The project proved successful in removing illegal and dangerous alcohol off the market. In the process it also disrupted businesses who were engaging in the illegal trade, thus ensuring a fair and equitable trading environment for legitimate businesses.

The success of the project has attracted huge media attention as it was heavily featured in local newspapers; radio stations, local television news programmes and even made it onto BBC prime time show namely 'Inside Out'. The high publicity has certainly helped in getting the message across to the public about the dangers of 'fake' spirits.

As a result of the project 23 shops were issued with a caution and two shops had their licences revoked by the Licensing Panel.

This followed a request by Trading Standards that the licences at Great Barr News in Great Barr and Costcutter in Old Hill, be reviewed.

A joint operation with police and Revenue and Customs in October last year, which was led by Trading Standards, found both shops selling illegal spirits.

Costcutter had 183 bottles (25.5 gallons) of illegal spirits, consisting of non-duty paid whisky and fake vodka in stock. Great Barr News was found to have 90 bottles of illegal whisky and vodka on their shelves.

In addition, the Licensing Panel also heard that Great Barr News had sold alcohol to a 16 year old volunteer the previous evening, prior to the raid by trading standards.

In both cases, the fake vodka was found to be contaminated with high level of methanol, a chemical used to make anti-freeze and some fuels. Drinking it can be dangerous, causing blindness and even death in extreme cases.

Great Barr News later applied for a new premises license claiming that the business was under new ownership. Trading Standards working in partnership with the Licensing team found evidence linking the previous owner to the new business.

Based on the evidence Trading Standards made a representation, objecting to a new license being granted to the premises as there was strong evidence connecting the previous to the new business and that the application was an attempt to circumvent the committee original decision to revoke the license. The committee heard evidence from both sides and accepted Trading Standards representation and refused to grant a new license to the premises.

Trading Standards has also won a special award from the International Federation of Spirits Producers in recognition of the outstanding work in leading the fight against counterfeit spirits.

Under age sales of alcohol

Each year, with the support of the Police, Trading Standards carry out a number of test purchase exercises on off-licence premises with volunteers under the age of 18 (usually 15 to 17 years of age). The aim is to check compliance with the law that states that alcohol cannot be sold to persons under the age of 18. The exercises involve an underage volunteer being sent into a premises and attempting to buy alcohol. An undercover Trading Standards Officer is present to witness any sale. If a sale takes place, the volunteer and officer will leave the shop before two officers return to the premises to disclose the fact a sale took place.

During the year 137 premises were test purchased by Trading Standards. Of these, 14 premises sold alcohol and were dealt with by way of an £80 Fixed Penalty Notice, a Simple Caution or Legal Proceedings. In nearly all circumstances a Review hearing was applied for and heard.

Prior to being test purchased, off licence premises receive advice visits. This is to ensure that they are aware of, and are complying with, the law in preventing under-age sales by asking young customers for proof of age. An Age-Restricted Products Information pack containing Traders Information leaflets, Posters and a Refusals Book is given to the Premises Licence Holder/Designated Premises Supervisor.

Appeals

A decision of the Licensing Panel can be appealed to a Magistrates' Court in the first instance. During 2011/12 there were seven appeals;

1. Grosvenor Casino-appeal to the Magistrates' Court by Clockfair Limited who are an interested party. Please see separate paragraph below for a summary of this matter.
2. Star Night, 151 Rolfe Street- appeal to the Magistrates' Court. The appeal was withdrawn on the 8.7.11 before the matter was heard before the court.
3. T.S. Midlands Ltd T/A Costcutter, 51 Blackberry Lane- This matter was listed before the court on the 25th of July 2011. The appeal was upheld and the court ordered Sandwell Metropolitan Borough Council to pay costs to the appellant, the agreed sum was £1518.00
4. Manor Wines, 117A Manor House Road, Wednesbury- appeal to the Magistrates' Court. This matter was listed before the court on the 9th of September 2011. The appeal was dismissed and the court ordered the appellant to pay the costs of Sandwell Metropolitan Borough Council in the sum of £504.00.
5. Rounds Green Convenience, 87 Brades Road, Oldbury- appeal to the Magistrates' Court. This matter was listed before the court on the 19th of September 2011. The appeal was dismissed and the court ordered the appellant to pay costs to the Council in the sum of £500. Due to the non-attendance of the appellant's representatives on a previous date, Counsel for Sandwell Metropolitan Borough Council applied to the court for a wasted costs order. This was granted on the 24.10.11 and the court ordered £542 to be paid by the appellant's Solicitors and £542 to be paid by the appellant's Barrister to Sandwell Metropolitan Borough Council. (The decision as to wasted costs was appealed to the Crown Court but was upheld on the 28th of May 2012)
6. Bargain Booze, 119-121 Hill Top, West Bromwich- appeal to the Magistrates' Court. This matter was listed before the court on the 14th of November 2011. The appeal was

7. The Old Crown, 56 Sandwell Road, West Bromwich- appeal to the Magistrates' Court. This matter was listed before the court on the 5th of March 2012 and Judgement was handed down on the 19th of March 2012. The court upheld part of the appeal in relation to two conditions. There was no order as to costs.

Grosvenor Casino

On the 12th May 2011 two applications were heard by the Licensing Panel under the Gambling Act 2005. Firstly, Clockfair Limited, a rival Casino, applied for a review of the premises licence at 50 Halesowen Road Oldbury. The review was sought on 2 grounds; firstly because it had not been used since its grant in 2008 ,which is an express ground for revocation under the Act, secondly on the ground that the licence had been illegally issued because it was legally incompatible with a bingo licence that already existed in relation to part of the premises.

On external advice the panel were told the illegality of issue of the licence was not a matter that could be taken into account by the panel so they were not referred to it and no representations on this point were entertained. The panel were advised they could consider the representations made were frivolous or vexatious representations made by a trade competitor and could dismiss them without hearing them. They resolved to hear them on the basis they might raise an issue that merited interference with the licence.

The Panel resolved to take no action against the licence. The panel decided that the non-use of the licence had been adequately explained .The non-use for 6 years was explained by the obtaining of planning permission, the temporary threat of a super regional Casino in Dudley and the protracted negotiation/agreement of heads of terms with their landlord. They therefore resolved to take no action against the licence.

They then considered a variation application by Grosvenor Casinos, i.e. to transfer the licence from 50 Halesowen Road Oldbury to Birchley Island. After hearing fresh representations, the

main new one being that the location of the premises would expose children to gambling they resolved to vary the licence on the basis that the premises were well managed and that as a matter of law in any case no one under 18 was allowed on premises used for gambling. It was also noted that no one other than Clockfair had made representations.

Both these decisions were appealed to Sandwell Magistrates' Court by Clockfair Limited. The appeal was heard in November 2011 and judgment handed down on the 14th November 2011. The appeal was based on the proposition that the original grant and issue of the premises licence was unlawful for the reason set out above and so contravened section 152 (1) (b) of the Gambling Act 2005 and that this was a material fact that should have been placed before the committee.

Grosvenor Casino said that the act of a public body was considered lawful unless challenged and overturned. Judicial Review of the decision to issue the licence should have occurred in 2008 and was now time-barred. The judge ruled that the premises licence had indeed in the first instance been issued illegally but as this was not now challengeable, it was immaterial. He therefore upheld both decisions of the panel, i.e. to take no action against the licence on review and to grant the application to vary the licence. A hearing was fixed to determine costs which never took place because of the following High Court appeal referred to below.

The decision of the District Judge was challenged by way of appeal to the High Court. The appeal was lodged in November 2011. It was not heard until June 2012. The grounds of appeal were as follows

- 1) In construing the Act as permitting 2 licenses to co-exist in respect of the same premises, when this was contrary to a direct and express prohibition in the Act.
- 2) In holding that the existence of 2 licenses, contrary to both the said prohibition and policy of the act was immaterial to an express statutory discretion to revoke one of them.

This appeal was heard on the 14th June 2012.

Licensing Task Force

This group consists of representatives from Police Licensing Officers, Fire (Safety and Licensing), Air Pollution and Noise Control, Trading Standards and Licensing. Premises that cause concern to any of the responsible authorities for any reason related to the licensable activities can be proposed for a visit. The majority of referrals are from the Police. The task force visits vary according to need but there are approximately six a year. Premises are identified for a visit by risk assessment process so not all those put forward are visited.

The visits are not primarily enforcement visits. The aim is to advise, point out non compliance and particularly to support the licence holder / DPS where that person is already working with the relevant authorities. The visits themselves are kept as low key and friendly as possible and promoted as, and intended to be, helpful as well as providing a warning system that things may be going wrong. Licensing committee members have attended as observers on occasion. Passing attention is also given to premises that do not reach the criteria for a visit but have been identified as potentially problematic.

The widespread riots in 2011 impacted upon the Police and reduced the opportunities for such visits. In the period April 2011 to April 2012, there were 4 task force outings and 38 premises were visited.

The majority of those visits where action was needed led to advice. but at one particular premises it was found that conditions had been applied to a licence that could not be enforced. The premises in question was referred to the Licensing Panel for the condition to be reviewed. A visit to a late night refreshment establishment for operating without a licence also found illegal gaming machines at those premises. These machines were immediately taken out of use. Illegal alcohol was seized at another premises. One premises was found to be in breach a Fire enforcement notice, which resulted in a subsequent prosecution by the Fire service. Two of the premises were later the subject of a review application. One premises made voluntary changes to their licence to ensure that concerns were addressed.

General

A proposal was put forward for a new licensing database within the Licensing Team aimed at the licensing service becoming more efficient, providing more immediate access to information by members of the public and statutory bodies, as well as bringing improvements to the service identified by elected members.

The new system is expected to become operational during 2012/2013.

Training

During the year, the Licensing Committee received specific training in relation to temporary event notices, Human Rights legislation, the work of Trading Standards and changes to the Licensing Act 2003 as part of the Government's rebalancing proposals.

Licensing Committee

The Licensing Committee shall:-

1. deal with all matters relating to the discharge of the functions of the Licensing Authority under the Licensing Act 2003 (referred to as “the 2003 Act”) 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;
2. deal with all matters relating to the discharge of the functions of the Licensing Authority under the Gambling Act 2005 (referred to as the “2005 Act” 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).
3. deal with the determination of fees as they relate to gambling as provided for by Section 212 of the 2005 Act and any regulations made thereunder, subject to consultation with the appropriate Cabinet Member on the budgetary implications.
4. regulate its own procedure and that of the Licensing Panels, subject to any relevant regulations which may be issued under the 2003 Act and the 2005 Act.

Licensing Panel

The Licensing Panel shall:-

1. exercise those functions of the Licensing Committee under the Licensing Act 2003 and any regulations made under that Act, together with any related functions, with the exception of:-
 - a) any function conferred on the Licensing Authority by Section 5 of the Licensing Act 2003 (Statement of Licensing Policy);
 - b) any function discharged under Section 7(5)(a) of that Act by a committee other than the Licensing Committee;
 - c) any function specifically reserved to the Licensing Committee;

and in particular, deal with the following matters in the circumstances indicated:-

Application for personal licence.	If a police objection has been made.
Application for personal licence with unspent convictions.	All cases.
Application for premises licence / club premises certificate.	If a relevant representation is made.
Application for provisional statement.	If a relevant representation is made.
Application to vary premises licence / club premises certificate.	If a relevant representation is made.
Application to vary designated premises supervisor.	If a police objection has been made.
Application for transfer of premises licence.	If a police objection has been made.

Applications for interim authorities.	If a police objection has been made.
Application to review premises licence / club premises certificate.	All cases.
Decision to object when local authority is a consultee and not the relevant authority considering the application.	All cases.
Determination of a police objection to a temporary event notice.	All cases.

(2) exercise those functions of the Licensing Committee under the Gambling Act 2005 and any regulations made under that Act, together with any related functions, with the exception of:-

- a) any function conferred on the Licensing Authority by Section 166 of the Licensing Act 2005 (Casino Resolution);
- b) any function conferred on the Licensing Authority by Section 212 of the Licensing Act 2005 (Fees);
- c) any function conferred on the Licensing Authority by Section 349 of the Licensing Act 2005 (Statement of Principles);
- d) any function specifically reserved to the Licensing Committee;

and in particular, deal with the following matters in the circumstances indicated:-

Application for premises licence.	If a relevant representation is made
Application for a variation to a licence.	If a relevant representation is made

Application for a transfer of a licence.	If a relevant representation is made
Application for provisional statement.	If a relevant representation is made
Application for club gaming/club machine permits.	If a relevant representation is made
Cancellation of club gaming/club machine permits.	
Review of premises licence.	
Decision to give a counter notice to a temporary use notice.	