

# **Licensing Committee and Licensing Panel Annual Report 2012/13**

## **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  
Chair – 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 2012/13 Municipal Year the following members were appointed to the Licensing Committee:-

Councillor Allen (Chair);  
Councillor Silvester (Vice Chair);  
Councillors Cherrington, Dr Crumpton, Dhallu, Eaves, E A Giles, Hadley, Piper, Tranter, A Underhill and Wilkinson.

### **Meeting Schedule**

During 2012/13 the Licensing Committee met on the following occasions:-

- i) 30 May, 2012;
- ii) 14 September, 2012;
- iii) 25 January, 2013;
- iv) 8 March, 2013.

At its meeting on 30 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 2011/12 on 25 January 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 8 March, at which the Committee approved the fees and charges for 2013/14.

## **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.

### **Membership**

#### Panel 1

Councillor Allen (Chair);  
Councillors Dr Crumpton and Piper.

#### Panel 2

Councillor Allen (Chair);  
Councillors Tranter and Wilkinson.

#### Panel 3

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

#### Panel 4

Councillor Silvester (Chair);  
Councillors Hadley and A Underhill.

## 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 2012/13 there were 25 meetings of the Licensing Panels which covered over 59 hours in actual meeting time and considered 51 applications. The Panels met on the following dates:-

Panel 1	Panel 2	Panel 3	Panel 4
5 July, 2012	19 July, 2012	24 July, 2012	2 August, 2012
16 August, 2012	17 August, 2012	5 October, 2012	
11 September, 2012	24 September, 2012	8 November, 2012	
21 January, 2013	1 October, 2012	29 November, 2012	
11 March, 2013	15 October, 2012		
	13 December, 2012		
	17 December 2012		
	29 January, 2013		
	4 March, 2013		
	21 March 2013		
	15 April, 2013		
	22 April, 2013		
	24 April, 2013		
	29 April, 2013		
	13 May, 2013		

## Applications considered

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

### Reviews

Police	1
Police summary first review	1
Police summary full review	1
Trading Standards	17
Interested party	1
<b>Total Reviews</b>	<b>21</b>

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### Reason for review

Protect children from harm	12
Public nuisance	1
Serious crime or disorder	2
Crime and disorder	3
Protect children/crime and disorder	2
Crime disorder/public safety	1
<b>Total</b>	<b>21</b>

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### Other Hearings

Grant application	7
Variation application	1
Police objection to a Temporary Event Notice	3
Personal licence application Police objection	1
Lottery Registration ineligible society	1
<b>Total other hearings</b>	<b>12</b>
<b>Total All Hearings</b>	<b>33</b>

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## **The role of Trading Standards**

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

Only Trading Standards Officers and Police Officers are able to legally ask a person under the age of 18 years to purchase alcohol. It is therefore necessary for Trading Standards working in partnership with the police to lead on this area of work.

The Chief Medical Officer advises that young people should not drink any alcohol at all under the age of 15 and that if 15-17 years old drink, it should be with parental supervision, not more than once a week and never more than recommended levels for adults.

The Chief Medical Officer's guidance that young people under 15 should not drink alcohol at all is based on the fact that young people who start drinking alcohol at an early age drink more frequently and more than those who start drinking later; as a result, they are more likely to develop alcohol problems in adolescence and adulthood.

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

The willingness of businesses within Sandwell to supply alcohol to underage persons is tested by Trading Standards who consensually use young persons to attempt the test purchase of alcohol. The young persons are fully protected, briefed and instructed to tell the truth if challenged, except in exceptional circumstances.

## **Under age sales of alcohol**

Trading Standards are committed to promote responsible sales of alcohol and stop sales to those who are underage. Whilst maintaining a robust and fair enforcement policy against those traders who disregard their responsibilities, the service works closely with local businesses by offering advice and assistance to ensure compliance with the law. This is done for the benefit of Sandwell consumers and businesses and the protection of children.

During the municipal year of 2012/2013, Trading Standards provided free legal advice to 246 businesses concerning age restricted products. 40 undercover test purchasing operations were conducted; visiting 125 shops in the process of which, 18 premises were caught selling alcohol to a young person. 13 sellers were issued with a £80 fixed penalty notice (FPN) by the police. 14 offending businesses were subjected to a review hearing by the Council's Licensing Panels leading to stricter conditions on their licences.

Two shops in Sandwell have had their licences suspended for one month by the Licensing panel. Sandwell Trading Standards requested a review of the licences of Mr Convenience, St Marks Road, Smethwick and Ocker Hill Store, Ocker Hill Road, Tipton, after both premises failed a test purchase operation by trading standards and West Midlands Police.

Ocker Hill Store employed an illegal immigrant who sold a bottle of 'Holsten Pils' to a teenager without checking their age.

Mr Convenience sold a bottle of 'Kopparberg cider' to a 15 year volunteer despite the store having a 'challenge 21 policy' as part of their licence condition.

Both shops will now have to trade under strict new conditions imposed on them.

In addition, the seller at Mr Convenience was prosecuted for selling alcohol to an underage person and not packaging the alcohol in accordance with the appropriate condition. She was ordered to pay fines and prosecution costs totalling £919.87 payable within 14 days.

### **Illegal alcohol**

A growing concern for Sandwell Trading Standards is the prevalence of counterfeit, non duty paid and illicit alcohol. A project lead by Sandwell Council Trading Standards back in 2011 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.

Sandwell 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.

The project was repeated again during 2012/2013 and the non-compliance level in Sandwell was reduced from 32% to 15%, a massive improvement from the previous year. To assist in this area of work an officer has recently been appointed within Trading Standards on a 12-month fixed term contract to drive down the levels of illicit, non-duty paid and counterfeit alcohol.

## Appeals

A decision of the Licensing Panel can be appealed to a Magistrates' Court in the first instance. During 2012/13 there were three appeals:-

1. Grosvenor Casino-appeal to the Magistrates' Court. The decision of the Magistrates Court in November 2011 to dismiss Clockfair Ltd's appeal was subsequently appealed to the High Court in the summer of 2012.

The High Court allowed the appeal and remitted the review and transfer applications back to the licensing panel for reconsideration. In practice no order for costs was made against the Council as all costs were borne by Grosvenor Casino.

The review application was reheard by the panel on the 8<sup>th</sup> November 2012. The same decision was made, ie to take no action against the licence. The transfer application was not heard and was withdrawn in January 2013. A further appeal was made to the Magistrates Court against the decision of the panel made on the 8<sup>th</sup> November 2012. It was listed to be heard on 29<sup>th</sup> July 2013 but withdrawn on terms agreed between the rival Casinos.

The appellant was ordered to pay £3000 towards the Council's costs.

2. Victoria Suite, Windmill Lane, Smethwick- appeal to the Magistrates' Court. The appeal was listed for the 16.7.12 at Sandwell Magistrates Court. The appellant failed to attend, therefore, the appeal was dismissed and costs in the sum of £3172.00 were awarded to the Council.
3. Costcutter, 182 Halesowen Road, Old Hill-appeal to the Magistrates' Court. This appeal was listed for the 21.9.12. The appeal was withdrawn by the appellant on the 14.9.12 and costs in the sum of £561.00 were awarded to the Council.

## **Sandwell Licensing Task Group**

This group consists of representatives from Police Licensing Officers, Fire (Safety and Licensing), Air Pollution and Noise Control, Trading Standards and Licensing. 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.

Premises that cause concern to any of the responsible authorities for any reason related to the licensable activities and licensing objectives can be proposed for a visit. The majority of referrals are from the Police. The visits vary according to need but there is a commitment, as far as possible, for up to six outings in 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. Elected 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.

During this year re-organisation in the Police Force and Fire Service impacted upon both those authorities ability to participate and reduced the opportunities for visits. This is still having some impact but all participant authorities are keen to see the visits continue as part of the promotion of the night time economy.

In the period April 2012 to April 2013, there were 2 outings and 22 premises were visited.

As intended the majority of those visits carried out led to advice, but one late night refreshment establishment was found to have an illegal gaming machine, that was taken out of use immediately. Advice given to one premises that was causing local concern was ignored. The Police later referred that premises to the Licensing Panel for review. The premises did not open thereafter and is no longer used as a public house. One premises was found to be in

breach of conditions; of greater concern to the Fire Service was that all fire doors were locked. A later meeting of the Police, Licensing Team and the premises licence holder led to a variation of conditions of the licence and action by the Fire Service for the fire safety breaches.

### **Visits to Gambling premises**

During the year a number of visits have been carried out to premises licensed under the Gambling Act 2005. These visits have mostly been undertaken as joint operations with the Gambling Commission, specifically looking at the supply and siting of gaming machines in alcohol licensed premises.

4 separate exercises were carried out during the year. In total, 38 premises were visited. In the case of premises which were found to be using gaming machines without the necessary permission, advice was given to the licensee in each case and all premises are now properly licensed.

### **General**

During the year, the Council entered into a contract for the supply of 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 the latter part of 2013.

### **Training**

During the year, the Licensing Committee received specific training in relation to changes to licensing legislation, late night levy, early morning restriction orders, changes to regulated entertainment and the Government's consultation on implementing its alcohol strategy.

## 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.	