



City of Westminster

Committee Agenda

Title: **Licensing Committee**

Meeting Date: **Wednesday 21st September, 2016**

Time: **10.00 am**

Venue: **Rooms 1A, 1B & 1C - 17th Floor, Westminster City Hall, 64 Victoria Street, London, SW1E 6 QP**

Members: **Councillors:**

Nickie Aiken (Chairman)	Murad Gassanly
Heather Acton	Angela Harvey
Rita Begum	Louise Hyams
Susie Burbridge	Tim Mitchell
Melvyn Caplan	Jan Prendergast
Nick Evans	Shamim Talukder
Jean Paul Floru	Aziz Toki
Peter Freeman	

Members of the public are welcome to attend the meeting and listen to the discussion Part 1 of the Agenda

Admission to the public gallery is by ticket, issued from the ground floor reception at City Hall from 6.00pm. If you have a disability and require any special assistance please contact the Committee Officer (details listed below) in advance of the meeting.



An Induction loop operates to enhance sound for anyone wearing a hearing aid or using a transmitter. If you require any further information, please contact the Committee Officer, Jonathan Deacon.

**Email: jdeacon@westminster.gov.uk Tel: 020 7641 2783
Corporate Website: www.westminster.gov.uk**

Note for Members: Members are reminded that Officer contacts are shown at the end of each report and Members are welcome to raise questions in advance of the meeting. With regard to item 1, guidance on declarations of interests is included in the Code of Governance; if Members and Officers have any particular questions they should contact the Director of Law in advance of the meeting please.

AGENDA

PART 1 (IN PUBLIC)

1. DECLARATIONS OF INTEREST

To receive any declarations by Members and Officers of any personal or prejudicial interests in Matters on this agenda.

2. MINUTES

To approve the minutes of the meeting held on Wednesday 9 March 2016.

(Pages 1 - 10)

3. NIGHT TUBE - IMPACT MONITORING

Report of the Director of Policy, Performance and Communications

(Pages 11 - 20)

4. REVISION OF STANDARD CONDITIONS FOR STREET TRADING LICENCES AND PENALTY POINT SCHEME

Report of the Director of Public Protection and Licensing

(Pages 21 - 84)

5. LICENSING ENFORCEMENT BRIEFING REPORT

Report of the Director of Public Protection and Licensing

(Pages 85 - 104)

6. LICENSING APPEALS

Report of the Director of Law.

(Pages 105 - 110)

7. PAPERS FOR INFORMATION

7a) Update on Gambling Act 2005 work.

7b) Premises Licensing Team Post Restructure Performance Review

7c) Council response to House of Lords Select Committee On the Licensing Act 2003. The Select Committee called for evidence prior to their deadline of 2 September 2016.

(Pages 111 - 142)

**8. ANY OTHER BUSINESS WHICH THE CHAIRMAN
CONSIDERS URGENT**

9. FUTURE LICENSING COMMITTEE MEETING DATES

30 November 2016 and 22 March 2017

**Charlie Parker
Chief Executive
16 September 2016**

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City of Westminster

Minutes

Meeting:

Licensing Committee

Time and date of meeting:

11:30 hours on Wednesday 9 March 2016 at City Hall, 64 Victoria Street, London, SW1E 6QP

Attendees:

Councillors:

- Nickie Aiken (Chairman)**
- Heather Acton**
- Rita Begum**
- Melvyn Caplan**
- Louise Hyams**
- Nick Evans**
- Peter Freeman**
- Murad Gassanly**
- Angela Harvey**
- Tim Mitchell**
- Jan Prendergast**
- Aziz Toki**
- Shamim Talukder**

Apologies:

Councillors Susie Burbridge and Jean-Paul Floru.

Contact:

**Jonathan Deacon
Senior Committee and Governance Officer**

Details:

**Tel: 020 7641 2783
Email: jdeacon@westminster.gov.uk**

1. MEMBERSHIP

- 1.1 Apologies for absence were received from Councillors Susie Burbridge and Jean-Paul Floru.

2. DECLARATIONS OF INTEREST

- 2.1 There were no declarations of interest.

3. MINUTES AND MATTERS ARISING

- 3.1 The minutes of the Licensing Committee meeting held on 18 November 2015 were agreed as a correct record and were signed by the Chairman.
- 3.2 The current meeting had been preceded by a refresher licensing training session for Members of the Committee provided by Chris Wroe, Licensing Policy & Strategy Manager and Barry Panto, Senior Assistant Solicitor. This had been agreed at the Licensing Committee meeting in November 2015. The Chairman stated that the training session had been useful and it was important that it was scheduled on an annual basis. It gave Members the opportunity to share their experiences and raise matters in relation to Licensing Sub-Committee applications which they had considered.

4. WESTMINSTER CITIZENS ADVICE BUREAU LICENSING PROJECT ACTIVITY REPORT 2015

- 4.1 The Chairman introduced Mr Richard Brown, a solicitor specialising in licensing law, who manages the Citizens Advice Bureau Licensing Advice Project. She referred to the excellent service he was able to provide to local residents, including representing them at Licensing Sub-Committee meetings. This service was subsidised by the Council. Applicants often had experienced legal teams to represent them and that without Mr Brown's assistance residents had the burden of putting forward their own cases in response. His involvement was also of benefit to the Committee in terms of concisely setting out the case of interested parties.
- 4.2 Mr Brown explained to Members of the Committee the work of the Project, including the activities undertaken during 2015 as set out in his report. The Project provided advice, assistance, information and representation to residents and businesses in respect of their rights and responsibilities under a range of licensing legislation, principally Licensing Act 2003, Gambling Act 2005 and Local Government (Miscellaneous Provisions) Act 1982. His advice reflected the increased role given to residents in relation to the three licensing regimes. Mr Brown stated that a major part of his casework was to represent residents (including associations and amenity societies) and also businesses at Licensing Sub-Committee hearings. It was important that residents were

kept informed of the process prior to the hearing, including any proposed conditions. He expressed the view that it was very rare for residents to leave the hearings less content with the process than when they arrived. They were able to observe the matters that the Sub-Committee took into consideration and why a decision was made. If a decision did not go the way of the resident or business Mr Brown was representing, they appreciated that it was not necessarily the end of the matter. Should the licensing objectives be undermined following the granting of an application, there was the potential for a review of the premises licence.

- 4.3 Mr Brown stated that he was available to advise clients at a location which was convenient for them. Residents and businesses were able to access the Project website containing information and advice. He had included a table in the report with the website statistics of the documents which had been downloaded during 2015. The document downloaded most frequently had been a Guide to the Licensing Act 2003. Other aspects of the Project's work included responding to local and national consultations, writing articles for residents' magazines, maintaining close links with residents' associations and amenity societies and contributing to surveys. The Project aimed to contribute to the wider Social Policy aims of Citizens Advice, improving the policies and practices which affect people's lives.
- 4.4 Mr Brown commented that in addition to ensuring that the interested parties' points were communicated to the Sub-Committee, he encouraged his clients to speak at hearings as they were often able to give powerful evidence. An example of this had been the William Hill review application in Harrow Road in November 2015. He also briefly referred to the current issues that were concerning residents, including the later permitted hours for the Night Tube on Friday and Saturday evenings being likely to result in an increase in people entering, and remaining in, the West End late at night.
- 4.5 Members of the Committee echoed the Chairman's view that Mr Brown's attendance at Sub-Committee meetings benefited those present. They asked Mr Brown a number of questions, including the following:
- Approximately how many cases had he dealt with during 2015 and how did that compare with previous years? Mr Brown replied that he received at least 100 to 110 enquiries per year. Some of the enquiries related to residents seeking his advice on applications and others residents' concerns relating to noise from premises. The split was approximately 70% to 30% in favour of advice being sought on applications.
 - Were there areas in which Sub-Committee meetings could be improved? Mr Brown stated that he appreciated the way Members tended to take the time to listen to what local residents had to say at the meetings. He believed it would always lead to a better decision if Members listened to the residents' case in its totality.
 - Mr Brown was asked about his priorities in terms of his workload and whether there was anyone who could cover for him in the event he was not present at a Sub-Committee meeting. He replied that his workload was varied depending on the client. For instance some local residents

might be quite capable of drafting their own representations whilst others needed assistance. Mr Brown added that he aimed not to take leave on Thursdays but on the few occasions when he was not present at hearings he had provided Members with a written version of the points he would have made had he been in attendance and advised local residents accordingly. Leo Charalambides, a barrister, had offered to do some pro bono work and at the request of Mr Brown, had previously represented residents at Sub-Committee meetings.

- Did he have any thoughts about decision making at recent Sub-Committee meetings? Mr Brown expressed the view that the vast majority of decisions were fair decisions. He was able to explain the reasons for the decisions to the residents who had made representations. There did not appear to be a large number of appeals and when appeals were submitted, they often appeared to be by premises licence holders in response to review decisions because of the impact on the businesses and not because the decisions were unreasonable. He did not recall a Sub-Committee hearing where he felt that he had not been adequately heard.

4.6 The Chairman thanked Mr Brown for submitting the report and providing additional information regarding the Westminster Citizens' Advice Bureau Licensing Project at the meeting. She requested that Mr Brown update the Committee on an annual basis.

4.7 **RESOLVED:** That the Committee receive an update on the work of the Westminster Citizens' Advice Bureau Licensing Project on an annual basis.

5. POLICING AND CRIME BILL 2015-16

5.1 Mr Simpkin introduced the report. He explained the amendments to the Licensing Act 2003 that were proposed in the Policing and Crime Bill and had potential implications for the Council and other local authorities. There were two that he believed had the most significant implications. Firstly it was proposed that in addition to the courts retaining existing powers to order the forfeiture or suspension of a personal licence if a personal licence holder is charged with a relevant offence, the Licensing Authority would also have new powers to suspend a personal licence for a period of up to six months or revoke it. This decision could only be taken by the Licensing Sub-Committee and could not be delegated to officers and the personal licence holder would have a right of appeal to the magistrates' court. Evidence had suggested that the courts were not routinely exercising their powers and the Licensing Authority would be able to take any appropriate action sooner under the proposals.

5.2 Mr Simpkin stated in respect of the second amendment that currently when the Police submitted an application for an expedited review, the Licensing Authority considered within 48 hours of its receipt whether to impose interim steps such as suspending the premises licence. The interim steps remained in effect until a full review hearing is conducted within 28 days of the expedited

review being received. Premises licence holders were able to exercise their right to make a representation following the interim steps decision and there were currently no limits on the number of times a licensee could exercise this right. One aspect of the proposed amendment to the Act limited the licence holder to only make further representations if there had been a material change in circumstances since the previous representations had been considered by the local authority at an interim steps hearing. Another aspect of the proposed amendment to the Act would make it a requirement that the Licensing Sub-Committee would take two decisions at the full review hearing stage. The first would be to take such steps (if any) as it considers necessary for the promotion of the licensing objectives which was the decision on the full review itself. The second would be to determine what interim steps should be in place pending the outcome of any appeal, or the expiry of the time limit for making the appeal. Mr Simpkin advised that the Bill introduced a new appeal right for the Police and premises licence holder against the interim steps imposed at the full review hearing. There was the potential for an increased workload for officers as this power required an appeal to be heard within 28 days from the date it is lodged with the court.

5.3 Other amendments to the Licensing Act 2003 proposed in the Bill included the definition of alcohol being amended to enable the Act to take into account powdered and vaporised alcohol. Powdered alcohol was currently only authorised to be sold by the medical profession in the United States of America. It was not yet available to buy by other means in the U.S.A. Officers had identified that powdered alcohol products were being advertised in the UK in the event it becomes legal. The powdered alcohol being advertised for sale in the UK once legal was priced from £2.99 per sachet and had an alcohol volume of 10% when mixed with 170ml of water. Mr Simpkin added that there were concerns that should the powder be consumed without the water being added, this amounted to an alcohol volume of 55%. Mr Members were informed that vaporised alcohol is available in the UK and whilst officers were not aware of any premises offering their customers the opportunity to inhale alcohol pumped into a room in Westminster, it had been used in an arts style event in a London Borough of Southwark premises. Those experiencing the vaporised alcohol had been in the room for 40 minutes before moving on. Mr Simpkin also referred to the fact that there were also proposals within the Bill to expand the list of relevant offences for personal licence holders and to enable the Secretary of State to publish revised Guidance to Licensing Authorities. Mr Simpkin stated that Members would be kept informed on the progress of the Bill.

5.4 **RESOLVED:** That the Committee be kept informed on the progress of the Policing and Crime Bill 2015-16.

6. **GAMBLING RISK ASSESSMENTS, THE RESULTS FROM THE COUNCIL'S RESEARCH INTO AREA BASED VULNERABILITY TO GAMBLING AND THE PROPOSALS FOR THE REVISION OF THE COUNCIL'S STATEMENT OF LICENSING PRINCIPLES FOR GAMBLING**

- 6.1 The Committee received a report setting out the new risk assessment requirements for gambling premises that will come into effect on the 6th April 2016, the recent results from the Council's commissioned research on area based vulnerability to gambling related harm and the proposals for the revision of the Council's Statement of Licensing Principles for Gambling to encompass these developments. The Chairman stated that she was delighted to be at the event launching the report which set out the Council's commissioned research on area based vulnerability to gambling related harm. This work had been commissioned in partnership with Manchester City Council and the Local Government Association and had been carried out by Geofutures. She added that the work had been inspired by Audrey Lewis, the former Chairman of the Committee, who had urged her in her capacity as Cabinet Member, and also officers, to ensure that there was sufficient evidence to make informed decisions in respect of applications involving gambling premises. The Chairman wished to emphasise that Westminster was not against the gambling industry. It would be of benefit that the Sub-Committee would have additional information to make good quality decisions in relation to gambling applications. The Gambling Commission had understood this need on the part of local authorities having introduced the new risk assessment requirements for gambling premises that will come into effect on the 6th April 2016. It would be useful for the gambling operators to assess the local risks to the licensing objectives posed by the provision of gambling facilities at each of their premises.
- 6.2 Mr Simpkin made the point that Westminster is currently leading the way across the country on gambling regulation at a local level. He welcomed the fact that the Gambling Commission had introduced the local gambling risk assessment process which was in keeping with the Council's work including the commissioned research on area based vulnerability to gambling related harm. Mr Simpkin referred to the nature of the commissioned research which had been included in the report to the Committee. This had identified that there were four distinct areas where individuals or groups were particularly vulnerable to gambling related harm. These were the north west of the borough / Harrow Road, Paddington / Edgware Road, Soho / West End and Victoria / Pimlico. He informed Members that this was the first time in the UK that a vulnerability index had been produced with a location map showing the density of the risk or vulnerability. He recommended that gambling operators take this information into account when undertaking their risk assessments as required by the Gambling Commission.
- 6.3 Mr Simpkin added that there were different reasons as to why these four areas had a higher density of risk or vulnerability. He drew Members' attention to Harrow Road which was identified as the primary hotspot. The risk profile in this area was particularly driven both by the characteristics of the resident population and by the facilities and services that exist in this area. This was in keeping with the previous work and findings of officers. A Betfred application in 2015 had been refused by the Sub-Committee based on the evidence received and this had been the first such decision which had been upheld in the country. There had also been a review of William Hill's premises licence when conditions had been attached to the licence that were having a

beneficial impact on how the establishment was being operated.

6.4 Mr Simpkin informed Members that having received the commissioned area based vulnerability research and also the Gambling Commission's guidance on local risk assessments, officers were in the process now of creating a local area profile within a revised Council's Statement of Licensing Principles for Gambling. These would set out the key issues that the Council deems as relevant for gambling operators to consider as part of their risk assessment. He stated this was a first in the UK and it was likely that the Council would be closely scrutinised as a result. The current timetable for the draft revised Statement included undertaking a public consultation for a twelve week period from April. Taking account of the responses received, it was intended that the revised Statement was introduced in late 2016. He added that the Council had produced a guide on risk assessments for operators to consider and it had been adopted by the industry and a number of other local authorities.

6.5 Members of the Committee welcomed the extensive work undertaken by Mr Simpkin and the Licensing Team to date in this area. They asked a number of questions on this topic, including the following:

- Would officers be working with the Business Improvement Districts ('BIDs') and residents? Mr Simpkin replied that officers would be holding pre-consultation workshops to obtain opinion on some of the proposed changes within the revised Statement and residents and BIDs were likely to be part of this process in addition to care providers. There was an intention to develop links between the gambling industry and local groups such as care providers and charities.
- There are particular concerns regarding customers of betting shops being addicted to using fixed odds betting terminals ('FOBTs'). Would the work being undertaken by officers be able to address these concerns in any way? Mr Simpkin responded that in terms of the commissioned research on area based vulnerability to gambling related harm, this had specifically avoided focusing on causality. There was a limited budget. He was aware that there was a study on FOBTs being carried out by the Responsible Gambling Trust which was scheduled to be published in April 2016 and was due to include gambling industry data. Mr Panto wished to clarify that the betting shops if given a licence to do so, had the right to operate FOBTs. They had been given this concession when the National Lottery had been introduced.
- Mr Simpkin was asked about the commissioned research's findings in relation to West End and Soho. He stated that one of the key reasons for it being a hotspot was that there are three support services in this area which treat gambling addiction.
- Mr Simpkin advised Members that City Inspectors were communicating with premises in Church Street and Harrow Road regarding their responsibilities. The Police were content to challenge operators who were not effectively meeting the prevention of crime objective, including in the event there was inadequate CCTV coverage.

6.6 **RESOLVED:** That the contents of the report be noted.

7. LICENSING APPEALS

- 7.1 Hayley Davies, Litigation Appeals Manager, provided the Committee with an update in respect of current and recent appeals which had been submitted in response to decisions taken by the Licensing Sub-Committee. She stated that a few weeks after the previous Licensing Committee meeting in November, the Appellant for the Press, 32-34 Panton Street appeal hearing, had advised of the withdrawal of the appeal on the grounds that the Appellant was insolvent. A costs hearing was held on 9 February 2016 where the Court ordered that the Appellant pay £39,746.20 to the City Council. The District Judge had also agreed to list the matter for a further Case Management Hearing in May 2016 to enable the Council to go back to Court if the costs are not paid. There was evidence to suggest that individual directors were aware that the Appellant was insolvent but had still decided to proceed with the appeal.
- 7.2 Two other matters had been listed for appeal. The full hearing for the appeal by the Licensee at The London Edition, 10 Berners Street was scheduled to begin on 6 June 2016. A street trader had appealed against the decision by the Licensing Officer Panel to revoke his licences for Pitch 545 and 546 Church Street Market and this was scheduled for 24 March 2016. Ms Davies stated that in respect of the Sex Establishment Licensing fees case, copies of all submissions made to the European Court of Justice from Hemming, the European Commission and the Netherlands had now been received and on the basis of Counsel's advice, an application for an oral hearing had been submitted by the Council.
- 7.3 **RESOLVED:** That the contents of the report be noted.

8. ANY OTHER BUSINESS WHICH THE CHAIRMAN CONSIDERS URGENT

- 8.1 There were no urgent items of business for the Committee to consider.

9. FUTURE LICENSING COMMITTEE MEETING DATES

- 9.1 It was noted that the next meetings of the Licensing Committee would be held on Wednesday 6 July 2016 and Wednesday 30 November 2016. All meetings are scheduled for 10.00am. The Chairman asked Members to contact her in the event they wished to put forward agenda items for future meetings of the Committee.

10. CLOSE OF MEETING

- 10.1 The meeting ended at 12.23am.

Chairman

Date

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City of Westminster

Licensing Committee Report

Meeting:	<i>Licensing Committee</i>
Date:	<i>Wednesday 21st September 2016</i>
Classification:	<i>For General Release</i>
Title:	<i>Night Tube – Impact Monitoring</i>
Wards Affected:	<i>All</i>
Financial Summary:	<i>N/A</i>
Report of:	<i>Director of Policy, Performance and Communications</i> <i>Dominic Baker, Business Intelligence Team</i>

1. Executive Summary

- 1.1 This report summarises how data is being used to monitor the impact of the Night Tube in Westminster.
 - 1.1.1 The Victoria and Central lines started running a Night Tube service on 19 August. The Jubilee line service commences on 7 October and the Northern and Piccadilly lines will operate a service by the end of the year.
 - 1.1.2 This work has been prompted from concerns that local residents and Council resources might be adversely impacted by the running of night tubes – and this work is a basis for providing a clear evaluation of those impacts.
 - 1.1.3 The Council has identified and collected data that can be used to measure the impact of the Night Tube service. This includes footfall sensor data, service data (including noise complaints, Fixed Penalty Notices, abandoned waste, graffiti) and crime data released by the Metropolitan Police.
 - 1.1.4 It is only 5 weeks since the beginning of the night tube which is not a long enough period from which to draw any firm conclusions about the impact of the service.
 - 1.1.5 At this stage the principle message is that data is being collected and outputs are being developed that enable officers to monitor changes across the borough and at a local scale.

2. Recommendation

- 2.1 That the Committee validate the approach, the data being used, the areas likely to be affected and the style of the outputs. The Committee should also define future analysis requirements and make suggestions for any alternative approaches.

3. Background

- 3.1 The Central and Victoria lines started running on 19 August 2016. The Jubilee line will commence on 7 October and the Northern and Piccadilly lines will follow in the autumn. This will affect a total of 18 stations (see *appendix 1*). Transport for London plan to expand the service to parts of the Metropolitan, Circle, District and Hammersmith & City Lines in the future.
- 3.2 Data from a range of sources has been gathered with the aim of measuring the impact of the Night Tube service and enabling evidence based decision making. A hybrid approach has been taken with a combination of open, commercial and service data being incorporated into the solution to give as complete a picture as possible.

4. Initial Analysis

- 4.1 Before the Night Tube went live a piece of analysis was run to try to identify areas that would be most impacted by the service.

Figure 1 summarises the results of the network analysis. The map shows the most direct route from late night licensed premises to a tube station on the Central or Victoria line. The map illustrates how many of these routes overlap (i.e. lie on the same road/path).

These findings can be validated by the various datasets (discussed in section 5) that will be used to monitor the impact.

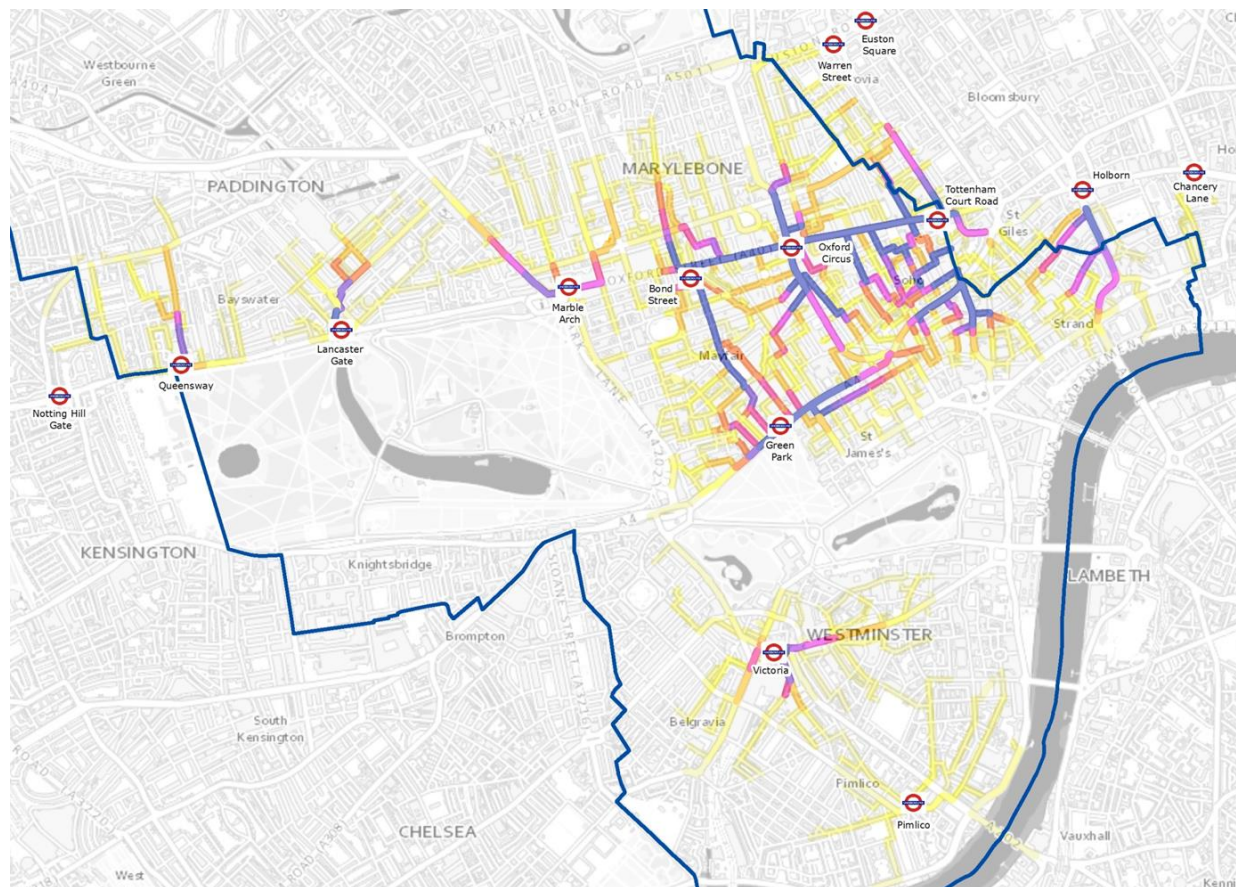
Details:

Starting Point – A licensed premise open past 1am

End Point – A tube station on the Central or Victoria line

If this analysis is validated it will be used to predict the impact of the next phases of the planned expansion of the Night Tube Network

Figure 1. Predicting where the impact of Night Tube will be greatest.



5. Measuring the impact of Night Tube

5.1 The following datasets were chosen because they are from trusted sources, are updated on a regularly and can be analysed to small geographical areas. Historic data has been captured where it is available. There is scope to include additional datasets.

5.1.1 **Footfall data** - The Business Improvement Districts (BIDs) have granted the Council access to detailed footfall data from sensors that are distributed at retail sites across the borough (see figure 2). The sensors provide hourly counts of the number of people passing by and run continuously. Below are the sensor start dates for each BID.

- New West End Company – data since 27/07/2015
- Heart of London – data since 01/04/2016
- Marble Arch – data since 30/05/2016
- Northbank - data since 18/12/2015

Footfall data is likely to be the best dataset to empirically measure the impact of Night Tube on the streets of Westminster.

Figure 2. Footfall sensor locations.



5.1.2 **Service data** - Fixed Penalty Notices (FPNs), Street Cleansing Incidents, Noise Complaints, Abandoned Waste etc. This data benefits from having detailed time data so can be easily filtered to Night Tube operation times.

5.1.3 **Crime data** - The Police release crime data at street level in monthly batches. Currently the most recent extract available is for June 2016.

6. Outputs

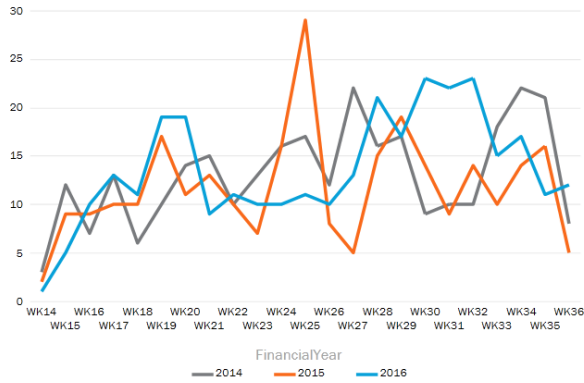
6.1 Outputs will be interactive dashboards that present the data clearly and allow users to spot trends and make recommendations around service response.

Figure 3. Example of dashboard output – Noise complaints.

'Noise in the street' incidents by Week*

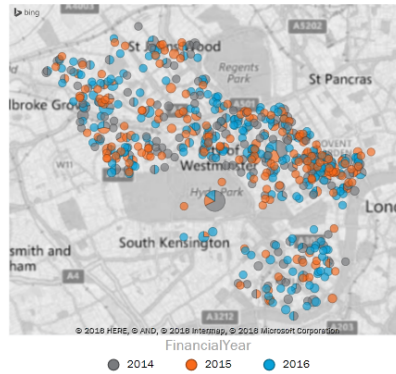
This slide compares the number of 'Noise in the street' incidents between 00:00 and 07:00 on Friday and Saturday night. These are broken down by week for the last 3 financial years.

Use slicers 1 & 2 to filter the data in the graph and table by a specific type of incident.



Slicer 1. Ward

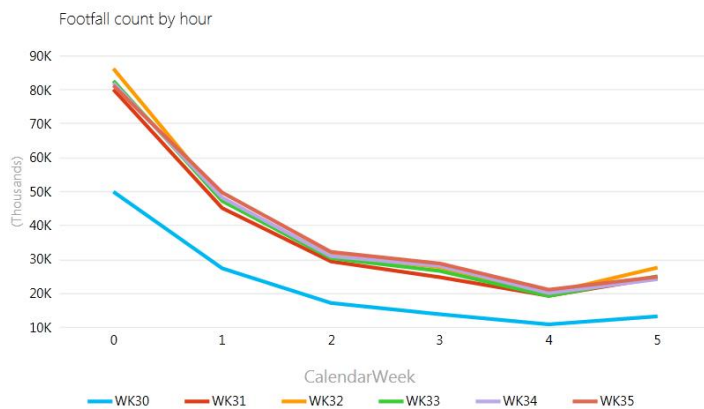
- Ward
- Abbey Road
 - Bayswater
 - Bryanston and Dorset Sque
 - Church Street
 - Churchill
 - Harrow Road



*Week number: is a standard the first week of the year always starts on a Monday. The graph below filters data from between midnight and 7am on Friday and Saturday. It is important to remember that across financial years events (e.g. the Notting Hill Carnival) will not necessarily occur with the same week number.

Figure 4. Example of dashboard output – Footfall data.

Footfall Data Locations



Slicer 1.

- BID
- London New West End
 - Marble Arch BID
 - Northbank BID

Slicer 2.

- Location
- Duke St at Allans
 - Duke St at Cathedral
 - Duke St at Spaghetti
 - Heddon St at Piccolino
 - Lancashire Court
 - Market Place
 - Mount St at Balenciaga
 - Mount St at Rubinacci
 - New Bond St East at Fenwick
 - New Bond St East at Geneu
 - New Bond St West at Emergildo Ze
 - New Bond St West at Victorinox
 - North Audley at Lees Place
 - North Audley at NAC
 - Old Bond East St at Royal Arcade
 - Old Bond West St at Max Mara



7. Analysis of data since Night Tube Service commenced

Table 2 takes a total count of people passing all sensors and is broken down by BID area. At this stage it is difficult to see a clear trend, though there are some indication that footfall counts have increased in the NWE and Marble Arch BID areas.

Appendix 2 breaks this data by each sensor and indicates that some areas are more likely to have seen higher volumes of footfall data than others, notably sensors in the Marble Arch BID.

Figure 5 shows no increase in service requests since the start of Night Tube.

Figure 6 focuses on Noise in the Street complaints received by the Council, and so far it is difficult to discern a clear pattern.

Table 2. Total number counted by sensors Friday and Saturday night (between 00:00 and 7am)

CalendarWeek	London New West End	Marble Arch BID	Northbank BID	Total
WK33	53329	18942	6260	78531
WK34	55804	12565	4941	73310
WK35	59911	4824	6287	71022
WK36	59417	33347	5440	98204
Total	228461	69678	22928	321067

Figure 5. Combined service data between midnight and 7am on Friday and Saturday by week number.

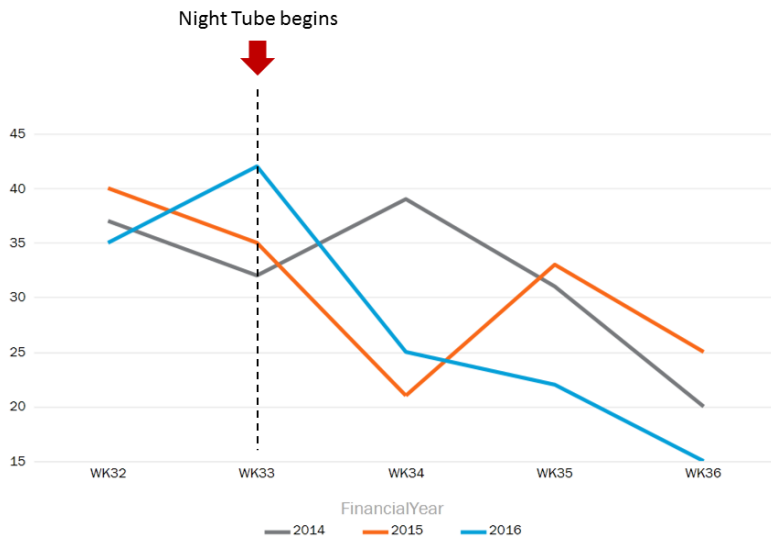
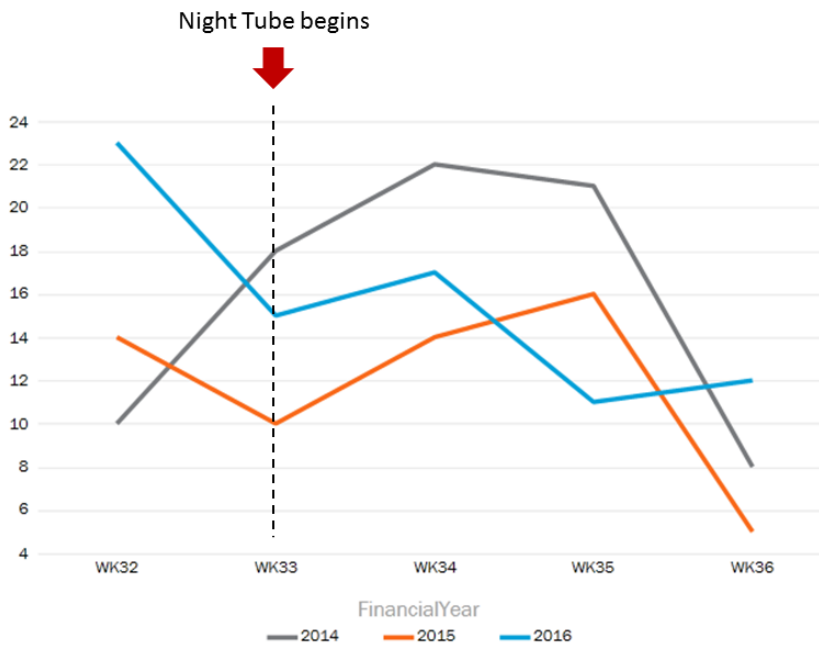


Figure 6. 'Noise in the Street complaints' between midnight and 7am on Friday and Saturday by week number.



8. Next steps

- 8.1 The outputs will be made available to Heads of Service and Team Leaders in City Management.
- 8.2 Look for emerging trends and measure impact as additional lines go live.
- 8.3 Assess other potential datasets – e.g. TfL entry and exit data.
- 8.4 Present more detailed findings to the Licensing Committee, propose that this takes place in Dec 2016

9. Financial Implications

9.1 There are no financial implications as a result of this report.

10. Legal Implications

10.1 There are no legal implications as a result of this report.

11. Staffing Implications

11.1 There are no staffing implications as a result of this report.

12. Reason for Decision

12.1 The report is provided for information purposes only. It sets out the proposals on how the Council can use data to monitor the impact of Night Tube.

If you have any queries about this report or wish to inspect one of the background papers please contact Dominic Baker on 020 7641 6046 or via email dbaker@westminster.gov.uk.

Appendix 1. WCC underground stations due to operate a Night Tube service in 2016

Station Name	Night Tube line/s
Baker Street	Jubilee
Bond Street	Central, Jubilee
Charing Cross	Northern
Covent Garden	Piccadilly
Embankment	Northern, Victoria, Jubilee
Green Park	Piccadilly
Hyde Park Corner	Piccadilly
Lancaster Gate	Central
Leicester Square	Piccadilly, Northern
Marble Arch	Central
Oxford Circus	Central, Victoria
Piccadilly Circus	Piccadilly
Pimlico	Victoria
Queensway	Central
St. John's Wood	Jubilee
Tottenham Court Road	Central, Northern
Victoria	Victoria
Westminster	Jubilee

Appendix 2. Illustrative table – showing number of people counted by sensors for the first four weeks of night tube. A red column indicates the week with the highest number of people passing a sensor (the Night Tube service commenced in Week 33).

BID	Sensor Location	Wk 33-36
London New West End	Duke St at Allans	
London New West End	Duke St at Cathedral	
London New West End	Duke St at Spaghetti	— ■ — ■ —
London New West End	Heddon St at Piccolino	— ■ — ■ —
London New West End	Lancashire Court	— — ■ — ■
London New West End	Market Place	■ — — ■ —
London New West End	Mount St at Balenciaga	— — ■ — ■
London New West End	Mount St at Rubinacci	■ — — ■ —
London New West End	New Bond St East at Fenwick	■ — ■ — —
London New West End	New Bond St East at Geneu	■ — ■ — ■
London New West End	New Bond St West at Emeregildo Zegna	■ — ■ — —
London New West End	New Bond St West at Victorinox	■ — — — ■
London New West End	North Audley at Lees Place	■ — — — ■
London New West End	North Audley at NAC	■ — — — —
London New West End	Old Bond East St at Royal Arcade	— ■ — — ■
London New West End	Old Bond West St at Max Mara	■ — ■ — —
London New West End	Oxford St North East at Topshop	■ — ■ — —
London New West End	Oxford St North West at FCUK	— ■ — — ■
London New West End	Oxford St North West at House of Fraser	— — — — ■
London New West End	Oxford St North West at Wardour Street	■ — ■ — —
London New West End	Oxford St South East at Barratt House	■ — — — ■
London New West End	Oxford St South East at Harmony	— — — — ■
London New West End	Oxford St South East at New Look	■ — ■ — —
London New West End	Oxford St South East at West London College	— — ■ — —
London New West End	Oxford St South West at Carphone Warehouse	— ■ — ■ —
London New West End	Oxford Street North West at M&S	■ — ■ — —
London New West End	Regent St Mid East at Guess	■ — ■ — —
London New West End	Regent St Mid West at Godiva	■ — ■ — ■
London New West End	Regent St North East at Cafe Royal	— ■ — ■ —
London New West End	Regent St North East at Boots	— ■ — ■ —
London New West End	Regent St North West at All Bar One	■ — — — ■
London New West End	Regent St North West at FCUK	■ — — — ■
London New West End	Regent St South East at Omega	■ — — — ■
London New West End	Regent St South West at Vilebrequin	— — ■ — ■
London New West End	Savile Row at Gieves & Hawkes	— ■ — ■ —
London New West End	South Molton St at Closed Starbucks	■ — — — ■
London New West End	St. Christopher's Place	— — ■ — ■
Marble Arch BID	108-110 Edgware Road, London, W2 2EA (Costa)	■ — ■ — —
Marble Arch BID	13 New Quebec Street, London, W1H 7RR (Nigel Rayment)	— — — — ■
Marble Arch BID	140-141 Park Lane, London, W1K 7AA (Marble Arch Park)	— ■ — — ■
Marble Arch BID	15 Great Cumberland Place, London, W1H 7AS (Patisserie Valerie)	■ — ■ — ■
Marble Arch BID	156-158 Edgware Road, London, W2 2DS (Games At The Vic)	■ — ■ — ■
Marble Arch BID	16 Seymour Place, London, W1H 7NQ (iBrows etc)	■ — ■ — ■
Marble Arch BID	21 Edgware Road, London, W2 2JE (Maroush)	■ — ■ — ■
Marble Arch BID	225 Edgware Road, London, W2 1JU (Hilton)	■ — ■ — —
Marble Arch BID	256 Edgware Road, London, W2 1DS (Patisserie Valerie)	■ — ■ — ■
Marble Arch BID	258 Edgware Road, London, W2 1DU (Marks & Spencer)	■ — ■ — ■
Marble Arch BID	36-40 Edgware Road, London, W2 2EH (As Nature Intended)	■ — ■ — ■
Marble Arch BID	45-47 Edgware Road, London, W2 2EG (Maroush Bakehouse)	■ — ■ — ■
Marble Arch BID	55-57 Connaught Street, London, W2 2BB (Abasto)	■ — ■ — ■
Marble Arch BID	95 Edgware Road, London, W2 2HX (William Hill)	■ — ■ — ■
Northbank BID	Arundel Street	— ■ — ■ —
Northbank BID	Kingsway East	■ — ■ — ■
Northbank BID	Kingsway West	■ — ■ — ■
Northbank BID	Strand	— ■ — ■ —
Northbank BID	Wellington Street	■ — ■ — ■



City of Westminster Licensing Committee

Date:	21 September 2016
Classification:	For General Release
Title:	Revision of Standard Conditions for Street Trading Licences and Penalty Point Scheme
Report of:	Director of Public Protection and Licensing
Wards Involved:	All
Policy Context:	City of Westminster Act 1999
Financial Summary:	Any costs associated with the decision will be covered by existing street trading licence fees.
Report Author and Contact Details:	Robin Grey Senior Licensing Officer (Street Trading) Public Protection and Licensing Tel: 020 7641 4605 Email: rgrey@westminster.gov.uk

1. Executive Summary

- 1.1 This report seeks approval to undertake statutory consultation on a revised set of standard conditions that, if prescribed, will apply to all street trading licences. The report also seeks approval to consult with street traders and their associations on an amended schedule to the street trading penalty point scheme to reflect the proposed changes to the standard conditions.

2. Recommendation

2.1 That:

2.1.1 The Committee give their approval for notice to be given to all holders of street trading licences of the proposed standard conditions set out in **Annex B** of the report and of the right for representations to be made in accordance with the statutory procedure set out in the City of Westminster Act 1999; and

2.1.2 The Committee give their approval for consultation to be undertaken with relevant stakeholders on the amended schedule to the street trading penalty point scheme, set out in the first three columns of the table in **Annex E**, to reflect the proposed changes to the standard conditions.

3. Standard Conditions

- 3.1 Street trading activities in the City of Westminster are regulated under the City of Westminster Act 1999 ('the Act'). A street trading licence may be granted to an individual to enable them to engage in street trading, which is defined in the Act as the carrying-on of the following activities in a street:
- 3.1.1 the selling, offering for sale, display or exposing for sale of any article (including a living thing);
 - 3.1.2 the purchasing or offering to purchase any ticket for gain or reward; and
 - 3.1.3 the supplying or offering to supply a service for gain or reward (whether or not the gain or reward accrues to the person actually carrying out the trading).
- 3.2 A street trading licence may be subject to such reasonable terms and conditions relevant to street trading as the Council specifies. These usually include the trading location, the commodities or services that may be sold or supplied at the trading location and the days and times during which street trading may be carried on.
- 3.3 In addition to those conditions that are specific to an individual licence, section 10 of the Act provides that the Council may prescribe standard conditions that are applicable to all street trading licences. The current standard conditions that have applied since 15 March 1999 are attached to the report as **Annex A**.
- 3.4 In 2013, the Council adopted its street trading policy ('the policy') that applies to all street trading licensing regimes, save for portrait artists and services/sale of goods associated with tables & chairs on the street. Some of the policies contained therein are currently applied when considering new street trading opportunities or changes to existing street trading activities (e.g. the filling of vacant pitches and the approval of new stall designs). However, the following policies have an immediate impact on existing, as well as future, activities:
- 3.4.1 The use of barriers and advertisements on a licensed pitch (POLICY ST2);
 - 3.4.2 Attendance and use of licensed pitches by licence holders (POLICY ST10); and
 - 3.4.3 The use of electricity and other services by licence holders on licensed pitches (POLICY ST11).
- 3.5 The above policies can only be applied to existing activities if they are converted in to conditions of the licence. As the policy applies to all street trading licences, it seems appropriate to incorporate these policies in to the standard conditions. To this end, a proposed set of revised standard conditions has been drafted and is attached to the report as **Annex B**.

- 3.6 In drafting the revised conditions, consultation was undertaken with Environmental Health, Trading Standards, the City Inspectors and the Fire Service. The recommendations from our partner agencies have been incorporated in to the draft conditions (**Annex B**) to ensure that street trading activities on the markets, isolated pitches and exhibition sites are adequately controlled.
- 3.7 The conditions also have been reorganised and renumbered to guide licence holders through their responsibilities whilst away from the market and then from arrival at their pitch through to the end of their trading activities. They are considered appropriate, proportionate and enforceable.
- 3.8 For ease of reference, a table comparing the existing and proposed conditions and the reasons for any additional, varied or deleted condition is included as **Annex C** to the report.
- 3.9 Prior to prescribing any standard conditions or changing any condition, the Act requires that notice in writing is first given to all holders of street trading licences who could reasonably be expected to be affected by the proposed conditions or changes to the conditions, and also to any body which appears to the Council to represent such licence holders. The notice must give details of the proposed conditions or changes to the conditions and advise that any representations may be made by a specified date which may be no less than 28 days after the notice has been given.
- 3.10 It is proposed that notice will be given to all current holders of street trading licences, any individual to whom a street trading licence is granted prior to the deadline for the submission of representations and also the West End Street Trading Association (WESTA).
- 3.11 It is proposed that the notices will be sent out no later than 29 September 2016 and the specified date by which representations may be made will be 13 November 2016. It is considered that 6 weeks will be a sufficient amount of time to allow consideration of the proposed conditions and for the submission of any representations by those who will be consulted.
- 3.12 The outcome of the consultation process will be reported at a future Licensing Committee meeting and any person who made a representation will be invited to make oral representations to the Committee in accordance with section 10(5) of the Act. If, following the consideration of any representations, the Committee are minded to prescribe any new or varied standard conditions, they will become effective 35 days after the date on which they were prescribed.

4. Street Trading Penalty Point Scheme

- 4.1 On 01 August 1996, following agreement with all street trading associations, the Council introduced a penalty point scheme to deal with breaches of street trading and temporary licence conditions. It sets out the Council's staged approach to enforcement in an open and transparent way and is applied where other engagement activities to achieve compliance have failed.

- 4.2 The parameters of the current scheme, that became effective on 19 April 2005, are set out in **Annex D** to the report. Each licence condition has a prescribed number of points that will be allocated to a licence holder by the City Inspectors (Markets) if they breach that condition. The number of points that may be allocated is not discretionary so if a trader breaches a condition, only the prescribed number of points may be given. The process for allocating points and the appeal provisions are also set out in the scheme (**Annex D**) and this is reflected in Part III of the Council's street trading policy.
- 4.3 Where a licence holder receives 15 penalty points in a 6 month period, they will be given a written warning. Where a licence holder receives 25 points in a 6 month period, they will be required to attend a hearing before a Licensing Sub-Committee or Licensing Officer Panel where the revocation of their licence will be considered. All relevant matters will be taken in to consideration by the Sub-Committee or Panel when reaching their decision on the appropriate course of action and the mere fact that a licence holder has received 25 points does not fetter their discretion in any way.
- 4.4 The scheme has proved an effective enforcement tool and provides for a consistent approach to enforcement. It is therefore not proposed to change the principle of the scheme but any changes to the standard conditions will require that the scheme is modified accordingly and consultation with those that will be affected is required before doing so.
- 4.5 The table attached to the report as **Annex E** sets out the number of points that will be allocated to each of the proposed conditions and provides a comparison with the existing scheme. Instead of the number of penalty points ranging from 1 to 5 points as is currently the case, either 3 or 5 penalty points have been allocated to each condition depending on its seriousness.
- 4.6 The current scheme allows a trader to breach a "1 point" condition 15 times before a written warning is given but the modified allocation of points means that only three "5 point" conditions or five "3 point" conditions could be breached before the trader receives the written warning. Non-compliance can therefore be dealt with faster whilst still taking a staged approach to enforcement and giving sufficient opportunity for a trader to modify their operation and comply with their conditions.
- 4.7 It is proposed that the first three columns of the table attached as **Annex E** will form the new schedule to the penalty point scheme shown in **Annex D**. It is further proposed that in future, the scheme will be reviewed on a 5-yearly basis and revised as necessary. Consultation on the revised scheme will be undertaken at the same time as the consultation on the revised standard conditions and the outcome of the consultation will be reported at a future Licensing Committee meeting. The decision to modify the penalty point scheme will be decision for the Cabinet Member for Housing, Regeneration, Business and Economic Development however.

5. Financial Implications

- 5.1 Any costs associated with the consultation process will be covered by the existing licence fees.

6. Legal Implications

- 6.1 The City of Westminster Act 1999 sets out the statutory process that must be followed if the Council wishes to prescribe standard conditions. This is set out in paragraphs 3.9 and 3.12 above. The statutory process will be followed and full and proper consideration will be given to any representations received to avoid any judicial challenges.
- 6.2 Similarly, consultation with street traders will be undertaken on the revised penalty point scheme and any comments received will be taken in to consideration before the revised scheme is finalised to avoid any individual challenges where points are allocated.

7. Staffing Implications

- 7.1 The consultation processes will be undertaken by existing staff members. There are no further staffing implications resulting from this report.

8. Reason for Decision

- 8.1 The Council adopted its street trading policy in 2013. Certain provisions of the policy cannot be applied to street trading activities unless they are incorporated in to the conditions of the licence. The decision will allow the statutory consultation process to commence which is required prior to the existing conditions being changed.
- 8.2 The penalty point scheme will need to be updated to reflect any changes to the standard conditions but consultation with the trade will first be required. The decision will allow the consultation process to commence.

If you have any queries about this report or wish to inspect one of the background papers please contact Mr Robin Grey on 020 7641 4605 or via email rgrey@westminster.gov.uk.

Annexes

- Annex A - Standard Conditions that have applied to street trading licences since 15 March 1999
- Annex B - Proposed street trading standard conditions
- Annex C - Table comparing existing standard conditions with proposed standard conditions
- Annex D - Currently Penalty Point Scheme (Effective 19 April 2005.)
- Annex E - Comparison of existing Schedule to the Penalty Point Scheme with the Proposed Schedule to the Penalty Point Scheme

Background Papers

- City of Westminster Act 1999
- Westminster City Council's Street Trading Policy 2013



City of Westminster

REGULATIONS MADE BY THE WESTMINSTER CITY COUNCIL PURSUANT TO SECTION 27(3) OF THE LONDON LOCAL AUTHORITIES ACT 1990 PRESCRIBING STANDARD CONDITIONS APPLICABLE TO STREET TRADING LICENCES EFFECTIVE FROM 15 MARCH 1999

(These Standard Conditions remain in force and, with effect from 26 May 1999, apply to all street trading licences by virtue of the provisions of section 32(1) of the City of Westminster Act 1999).

Definitions

- 1 In the Regulations unless the context otherwise requires the following expressions shall have the following meanings:
- (i) "Street Trading" shall have the meaning ascribed in Section 21(1) of the London Local Authorities Act 1990.
 - (ii) "The Council" means the Westminster City Council.
 - (iii) "Licensed Street Trader" means any person who is licensed for street trading under Part III of the London Local Authorities Act 1990.
 - (iv) "Advertisement" means any word, letter, model, sign, placard, board, notice, whether illuminated or not, in the nature, and employed wholly or partly for the purposes of advertisement, announcement or direction and includes any hoarding or similar structure or any balloon used, or adapted for use for the display of advertisements, and references to the display of advertisement shall be constructed accordingly.
 - (v) "Assistant" means a person employed by and acting under the directions of a trader to assist him/her about the business of the stall and whose name and address has been notified to the City Council.
 - (vi) "Awning" means a sheet of canvas or other material, used as a protection against the weather, which projects as an extension of the roof beyond the structure of the stall.
 - (vii) "Goods" means any goods, wares or merchandise for sale at a stall.

- (viii) “Licensed street trading pitch” means a pitch in any street authorised as a place at which street trading may be engaged in by a street trader, and includes any temporary alternative place approved by the Council or a duly authorised officer of the Council.
- (ix) “Pitch Limits” means the authorised ground markings defining the area within which a street trading stall is to be contained.
- (x) “Refuse” includes any waste material.
- (xi) “Stall” means any structure used by a trader for the display of goods, or in connection with his or her business, and which occupies a licensed street trading pitch; and includes all goods offered or to be offered for sale and any additional structure or equipment used as part of the stall or business. On “isolated pitches” this also includes all rubbish created as a result of the business.
- (xii) “Premises” means any shop, house or block of flats immediately behind the licensed pitch.
- (xiii) “Trader” means a person in whose name a current licence is held authorising street trading from a licensed street trading pitch.

General

- 2 The grant of a street trading licence shall not be deemed to give any approval or consent which may be needed under any By-law, enactment or regulation other than Part III of the London Local Authorities Act 1990.

For the avoidance of doubt this includes the requirement to seek and obtain planning permission and/or advertisement consent.
- 3 The marginal notes inserted in these Regulations are inserted for the purpose of convenience only and shall not in any way affect the meaning or construction thereof.
- 4 (a) These conditions may be dispensed with or modified by the Council in any individual case by means of a licence variation in accordance with the statutory requirements.

		(b)	Where in these conditions there is reference to the consent or agreement of the Council such consent or agreement may be given on such terms and conditions and subject to such restrictions as may be so specified.
		(c)	If a trader wishes any of the terms of a licence to be varied or the Council's agreement under these rules application must be made in writing to the Council in accordance with the statutory requirements.
Change of Address	5		Traders shall notify, in writing, the Council of any permanent change of address as soon as it occurs.
Position	6		The trader shall trade only from the position which is indicated on the licence.
Size	7		The trading area shall not exceed the dimensions specified on the licence and any pitch limits marked on the ground during trading hours except during immediate re-stocking. The width of the pitch at the Bayswater Road and Green Park Exhibition shall be eighteen inches from the back edge of the footway.
Commodities	8		Only those goods specified on the licence may be sold on the licensed street trading pitch.
Days and Times	9		Trading may only take place on the days and during the times specified on the licence.
Nature and Type of Receptacle	10		Only those receptacles approved by an authorised officer of the Licensing Service shall be used by the trader.
Conduct	11		Traders and any assistants employed by them shall ensure the public and Council officers are treated fairly and with courtesy.
	12		Traders shall ensure that their staff are competent, courteous and helpful.
Display of Licence Plate etc.	13		Traders shall at all times display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently and permanently exhibited on the stall together with the name, or business name of the trader.

- 14 No advertisement shall be displayed on the licensed pitch which relates to any goods, commodities or services other than those offered for sale or provided on that pitch.
- Refuse**
- 15 The trader shall ensure that all refuse arising as a result of the activities of the trader shall be placed in suitable covered containers approved by the Council and provided by the trader, unless otherwise provided by the Council, and shall be kept exclusively for that purpose. Such refuse containers shall be kept as clean as is reasonably possible.
- NOTE:** This condition shall not apply to licence holders at the Bayswater Road Exhibition and Green Park Exhibition unless the Council requires it in any particular case.
- 16 Refuse containers shall be emptied whenever necessary into any vehicle, container or compactor provided by the Council for that purpose.
- Sale of Food**
- 17 All traders operating stalls on which food is sold shall comply with the Food Safety Act 1990 and the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966.
- Safety of Equipment**
- 18 Heat producing equipment (e.g. braziers) shall be so placed within the trading area as to offer maximum safety to the public. The position of such equipment in relation to other goods or materials shall be agreed with the Council's officers.
- Services and Amenities**
- 19 The only connection between stalls on the footway and other stalls or premises shall be for the purposes of electric lighting or other agreed services; and any such electrical or other connections shall be readily detachable and the detailed arrangements agreed with the Council.
- 20 All electric power supplies shall have the appropriate consent from the Council before seeking installation from the LEB.
- 21 All electrical cables that are suspended over the public footway shall have a minimum clearance of 2.6m (8'6") from the footway surface, and 5.1m (18'6") from the surface of the carriageway.

- 22 Where mobile electrical generators are employed they shall be so positioned that:
- (a) they do not present a danger to the passing public;
 - (b) they do not present a fire or similar hazard risk to the stall or goods displayed thereon;
 - (c) they do not cause any noise or fume nuisance;
 - (d) any inflammable fuel is stored away from the stall in a London Fire Brigade approved container.
- 23 All electrical wiring and components shall comply with the basic LEB specification and be earthed and insulated accordingly. Electrical power shall only be used for the purposes of lighting and the operation of electrical scales and tills and the testing of electrical goods.
- Head Room** 24 The distance above ground level of any part of any roof, awning, or supports of the stall or goods suspended from any of these, shall (unless a dispensation has been granted by the Council) be at least 2.6m (8'6"). The roof awning or any other projection shall be contained within the pitch area unless agreed by the Council.
- At the Bayswater Road and Green Park Exhibitions awnings with a minimum height of 6 feet 6 inches and a maximum height of 9 feet will be permitted provided they are made of soft materials. The maximum forward projection of such awnings over the footway shall be 3 feet 6 inches at the Green Park Exhibition and 3 feet at the Bayswater Road Exhibition and no awning shall come within 3 feet of the kerb.
- Limits of Display etc** 25 All goods, containers (except refuse containers used solely for the purpose) or other articles shall be contained within the licensed pitch area and height and shall not project beyond.
- Removal** 26 Stalls shall be easily and immediately removable.
- 27 Traders or their assistants shall remove the stall and goods for so long as may be necessary in the event of an emergency or in exercise of the Council's powers and duties, if reasonably required to do so by a police officer or a duly authorised officer of the Council.

	28	Stalls and goods shall be removed from the public highway to the place of storage, as stated on the application form, or such other alternative place subsequently agreed by the Council in writing, within one and a half hours of either the time prescribed on the licence for the end of trading on that day or the time trading actually ceases (unless consent has been granted for a later removal time) whichever is the earlier provided that all stalls and goods shall be removed from Rupert Street Market by 6.30pm.																					
Traders' Vehicle	29	A licensed trader shall not leave his vehicle in the street in which he trades, apart from in approved parking spaces such as meter bays, except for the purpose of loading and unloading goods. Such loading and unloading shall be carried out as quickly as possible and the vehicle removed immediately on completion. This condition shall not apply when waiting restrictions are not in force.																					
Damage	30	Traders must not intentionally permit stalls or accessories to cause damage to the carriageway or footway.																					
Assistance to Council Officers	31	Traders shall give every assistance to Council officers in carrying out their duties.																					
Storage	32	Traders shall notify the Council in writing of any change of address or addresses at which the stall and perishable goods are stored. Such notice shall be given within 7 days of the change.																					
Change of Assistant	33	Traders shall, if required, notify the Council in writing of the name of any assistant which they employ on the stall; details of any change of assistant or any other relevant information regarding assistants.																					
Commencement Times	34	<p>Bayswater Road and Green Park Exhibitions Licensed exhibitors shall not begin setting up their pitches before 7am but shall have their exhibits in place by 10.30am.</p> <p>All Other Pitches Permanent traders shall have arrived at their pitches, put their stalls in position and started setting up by the following times:</p> <table border="0"> <tr> <td>Bell Street</td> <td>:</td> <td>9.00am</td> </tr> <tr> <td>Church Street</td> <td>:</td> <td>9.00am</td> </tr> <tr> <td></td> <td></td> <td>(10.00 am Sunday)</td> </tr> <tr> <td>Berwick Street</td> <td>:</td> <td>10.00am</td> </tr> <tr> <td>Rupert Street</td> <td>:</td> <td>10.00am</td> </tr> <tr> <td>Strutton Ground</td> <td>:</td> <td>11.00am</td> </tr> <tr> <td>Tachbrook Street</td> <td>:</td> <td>10.00am</td> </tr> </table>	Bell Street	:	9.00am	Church Street	:	9.00am			(10.00 am Sunday)	Berwick Street	:	10.00am	Rupert Street	:	10.00am	Strutton Ground	:	11.00am	Tachbrook Street	:	10.00am
Bell Street	:	9.00am																					
Church Street	:	9.00am																					
		(10.00 am Sunday)																					
Berwick Street	:	10.00am																					
Rupert Street	:	10.00am																					
Strutton Ground	:	11.00am																					
Tachbrook Street	:	10.00am																					

If the pitch is not utilised by the licensed trader by the above time without the prior approval of the Council or its representative, the Council may at its discretion re-let the pitch for that day.

Note: It is the Council's policy normally to only re-let pitches in its street markets.

All traders shall have commenced trading, with all goods contained within the pitch area within one hour of the time shown above and in the case of Strutton Ground all traders vehicles shall be out of the market by 11.30am.

Traders shall not commence setting up their pitches before 7am on weekdays and 8am on Sundays.

Radios, Etc. 35 Traders shall not use or permit to be used on the licensed area or within the immediate vicinity any radio, cassette player or other equipment or apparatus to produce music or other sound except within a closed vehicle and at a reasonable volume.

Insurance 36 Traders shall take out third party insurance cover with a minimum liability of at least £2,000,000 or to the cover mutually agreed between the Council and the relevant street traders or exhibitors' Association.

Own Work 37 **Bayswater Road Exhibition only**
Subject to any personal dispensation which may have been granted to individual traders, all exhibitors must display in a prominent position so that it may easily be read by potential customers a notice indicating that all works of art and craft on display or for sale are entirely the original works of the trader licensed for that pitch.

For avoidance of doubt, the reference to original work shall not include copies or prints or reproductions of any kind.

NOTES:

- (i) Licensees should also be aware that the display of such a notice would constitute an offence contrary to Section 1 of the Trade Descriptions Act 1968 if the indication given is false. Such a notice must not be displayed unless the works on display or for sale conform to the indication given in the notice.

- (ii) A failure to display the notice as required by the condition will be taken into account by the Council if allegations are made to the effect that the works on display or for sale are not the original works of the trader concerned.

- (iii) Inspection will be carried out on a regular basis by consumer protection officers so as to ensure compliance with the Trade Descriptions Act 1968. The display of a notice in breach of the terms of that Act is likely to result in the institution of prosecution proceedings and may lead to revocation of the licence.



City of Westminster

STANDARD CONDITIONS PRESCRIBED BY THE WESTMINSTER CITY COUNCIL PURSUANT TO SECTION 10(1) OF THE CITY OF WESTMINSTER ACT 1999 THAT ARE APPLICABLE TO STREET TRADING LICENCES AS AND FROM *****

Definitions

In the conditions unless the context otherwise requires the following expressions shall have the following meanings:

- (i) “Street Trading” shall have the meaning ascribed in Section 2 of the City of Westminster Act 1999
- (ii) “The Council” means the Westminster City Council.
- (iii) “Licensed Street Trader” or “Trader” means the person who is licensed under Section 21 of the City of Westminster Act 1999 to carry-on street trading.
- (iv) “Advertisement” means any word, letter, model, sign, placard, board, notice, whether illuminated or not, in the nature, and employed wholly or partly for the purposes of advertisement, announcement or direction and includes any hoarding or similar structure or any balloon used, or adapted for use for the display of advertisements, and references to the display of advertisement shall be constructed accordingly.
- (v) “Awning” means a sheet of canvas or other material, used as a protection against the weather, which projects as an extension of the roof beyond the structure of the stall.
- (vi) “Counterfeit” means any goods bearing a mark identical to or likely to be mistaken for a registered name, mark or logo which has been produced without the authorisation of the registered trade mark holder.
- (vii) “Electrical Supply” means either an electrical supply in the vicinity of a licensed pitch that is accessible through an electricity supply point provided by the Council or an electrical supply of a nearby premises.
- (viii) “Goods” means any goods, wares, merchandise or other articles that are offered, displayed or exposed or possessed for sale or supply on a stall.

- (ix) “Licensed street trading pitch” means a pitch in any street authorised as a place at which a street trader may engage in street trading, and includes any temporary alternative place approved by the Council or a duly authorised officer of the Council.
- (x) “Pitch Limits” means the authorised ground markings defining the area within which a street trading stall is to be contained.
- (xi) “Premises” means any business, residential or vacant premises immediately behind the licensed pitch.
- (xii) “Receptacle” or “Stall” means any structure occupying a licensed street trading pitch that is used by the trader for the display of goods or in connection with his or her business and includes all goods offered or to be offered for sale and any additional structure or equipment used as part of the stall or business. On “isolated pitches” this also includes all rubbish created as a result of the business.
- (xiii) “Refuse” includes any waste material.
- (xiv) “Registered Assistant” or “Assistant” means a person who the trader has registered with the Council as an assistant to assist them in the business of the stall.
- (xv) “Service” means a service offered for gain or reward.

Change of Details

- 1 The trader shall notify the Council in writing of any permanent change of their name, address, telephone number and/or e-mail address within 7 days of the change occurring.

Storage

- 2 The trader shall provide suitable and adequate premises for the storage of their receptacle when trading is not taking place.

The trader shall provide suitable and adequate provision for the storage of any perishable goods whilst at the licensed pitch, transporting the goods to/from the licensed pitch and away from the licensed pitch when trading is not taking place.

The trader shall notify the Council in writing of any change of address or addresses at which the stall and perishable goods are stored when trading is not taking place within 7 days of the change occurring.

Registered Assistants

- 3 At any one time, the licence holder shall have no more than three assistants registered with the Council per licensed pitch.
- 4 The trader shall provide the Council with written notification of any change in the name, address and/or telephone number of any of their registered assistants within 7 days of the change occurring.
- 5 The trader shall notify the Council in writing if a registered assistant ceases to work for them within 7 days of them ceasing.

Attendance

- 6 No trading shall take place unless the trader or a registered assistant is present on the stall.

NOTE:

It is the obligation of the trader to make full personal use of the street trading licence which means that the licensed trader must personally attend at the stall during the hours and on the days that the licence authorises street trading to be carried on. A registered assistant can be present when the trader is temporarily unable to attend at the stall or if the trader can provide exceptional reasons as to why he or she was unable to be present for a longer period but a failure to make full personal use of the licence is a ground for revoking the street trading licence in its own right.

- 7 All registered assistants shall carry photographic identification, such as their Passport, Photo-card Driving Licence or National Identity Card, when working under this licence. The assistant shall produce their photographic identification for inspection by a Council Officer on request.

Days and Times

- 8 Trading shall only take place on the days and during the times specified on the licence.

Trading Location

- 9 Trading shall only take place at the location stated on the licence or other such temporary location agreed with the Council.

Commodities

- 10 Only those goods specified on the licence shall be sold, offered for sale, displayed or exposed for sale, and only those services specified on the licence shall be supplied or offered for supply on the licensed street trading pitch.

- 11 The trader shall ensure that there are no counterfeit goods present on the pitch or in any associated storage facilities.
- 12 The trader shall keep a record of the name, address and contact number of the suppliers of their goods, such that the supplier of any item on the pitch can be contacted if required. The suppliers' contact details shall be provided to a Council Officer on request.
- Nature and Type of Receptacle**
- 13 The trader shall only trade from a receptacle that has been approved by an authorised officer of the Licensing Service and that is set-up in accordance with the approved design and layout. The trader shall maintain their receptacle to minimise any deterioration in its appearance following the approval by the Licensing Service and shall remove any defacement from their receptacle as soon as is reasonably practicable.
- 14 Receptacles used for the sale of food shall be maintained and regularly cleaned to ensure that food is protected from risk of contamination.
- Insurance**
- 15 The trader shall have third party public liability insurance cover that is effective throughout the time that the licence is in effect that covers the trader and all registered assistants whilst working on the stall. The insurance cover shall have a minimum liability of £2,000,000 or to the cover mutually agreed between the Council and the relevant street traders' or exhibitors' Association.
- 16 No trading shall take place unless a copy of the current public liability insurance certificate or other similar evidence that proves the existence of the effective policy is available on the stall. The copy of the insurance policy certificate, or similar evidence, shall be made immediately available for inspection by a Council Officer on request.
- Commencement Times**
- 17 **Bayswater Road and Green Park Exhibitions**
Licensed exhibitors shall not begin setting up their pitches before 7am but shall have their exhibits in place no later than 10.30am on the days that they are licensed to trade.

All Other Pitches

The trader shall not commence setting up their pitch before 7am on weekdays & Saturdays or before 8am on Sundays.

When trading at the following location, the trader shall have arrived at their pitch, put their stall in position and started setting up by the following times:

Bell Street : 09.00am
Church Street : 09.00am
Berwick Street : 10.00am
Maida Hill : 10.00am
Rupert Street : 10.00am
Strutton Ground : 11.00am
Tachbrook Street : 10.00am

The trader shall have commenced trading with all goods contained within the pitch area within one hour of the times set out above.

Size and Set-up of Stall

18 The trading area shall not exceed the dimensions specified on the licence and where applicable, any pitch limits marked on the ground, except during immediate re-stocking of the stall. The width of the pitch at the Bayswater Road and Green Park Exhibition shall be eighteen inches from the back edge of the footway.

All goods, containers (except refuse containers used solely for the purpose) and other articles shall be contained within the licensed pitch area and height and shall not project beyond.

19 The trader shall not connect any part of their stall, advertisements or goods for sale to any other stall or to any electricity bollard, socket pillar, lamp post or other street furniture, except for an electric cable connected to an electrical supply point.

20 No barriers shall be used on or around a licensed pitch unless specific consent for their use has been obtained from the Council

Head Room

21 **At the Bayswater Road and Green Park Exhibitions** awnings with a minimum height of 6 feet 6 inches and a maximum height of 9 feet shall be permitted provided they are made of soft materials. The maximum forward projection of such awnings over the footway shall be 3 feet 6 inches at the Green Park Exhibition and 3 feet at the Bayswater Road Exhibition. No awning shall come within 3 feet of the kerb.

- Display of Licence Plate etc.**
- 22 The trader shall keep the licence and a copy of the conditions on the stall at all times that they are trading. Where the trader leaves a registered assistant in charge of the stall, the assistant shall keep the licence and a copy of the conditions on the stall whilst trading. The licence and conditions shall be made available for inspection by a Council Officer on request.
- 23 The trader shall, at all times that they are trading, display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently exhibited on the stall together with the name or business name of the trader.
- Pricing**
- 24 The trader shall ensure that all goods displayed on the pitch or services offered on the pitch are priced in such a manner that customers can determine their price without assistance from the trader.
- Notices & Advertisements**
- 25 All advertisements shall be located within the licensed pitch and shall occupy no more than 10% of the surface area of each side of the stall. Advertisements on low screens, aprons or valances below table top level shall occupy no more than 10% of each panel.
- 26 The name of the stall and goods or services on offer shall only be displayed:
- (i) In the case of a kiosk or mobile stall, on a frieze or similar designed high-level place that is equivalent to a fascia sign on a shop front.
 - (ii) In the case of a gazebo, tensioned stall roof or umbrella with a valance, on the valance or on a board inside the stall.
- 27 No advertisement shall be displayed on the licensed pitch that relates to any goods, commodities or services other than those offered for sale or provided on that pitch.
- 28 No advertisements comprising of three-dimensional representations of products (such as, but not limited to, replica ice cream cones, coffee cups or chocolate bars), shall be displayed on the stall.
- 29 No free-standing advertisements shall be located outside of the pitch area.
- 30 No A-board or other free-standing advertisement shall be located within the licensed pitch unless it is part of the stall design that has been approved by the Council.

31 No notices shall be displayed in the licensed pitch that would restrict a consumer's statutory rights, such as "No refunds" or "No returns".

32 **Bayswater Road Exhibition only – Own Work**
Subject to any personal dispensation which may have been granted to individual traders, the exhibitor shall display a notice indicating that all works of art and craft on display or for sale are entirely the original works of the trader licensed for that pitch. This notice shall be displayed in a prominent position so that it may easily be read by potential customers at all times that the trader is trading.

For avoidance of doubt, the reference to original work shall not include copies or prints or reproductions of any kind.

Traders' Vehicle

33 **Markets**
When trading on the Berwick Street, Maida Hill, Rupert Street, Strutton Ground and Tachbrook Street markets, the trader shall remove their vehicles, unless they are the licensed receptacles, and all other items used for the setup of the stall by the time prescribed in any relevant traffic management order for the pedestrianisation of the street.

When trading on the Church Street market, the trader shall remove their vehicles, unless they are the licensed receptacles, and all other items used for the setup of the stall by 10 am.

Prior to the time prescribed in the relevant traffic management order for the pedestrianisation of the street or 10am in the case of the Church Street market, the trader shall not leave their vehicle in the street in which they trade unless the vehicle is:

- i) the licensed receptacle;
- ii) parked in approved parking spaces such as meter bays; or
- iii) temporarily parked for the purpose of loading and unloading goods during the set-up of the stall.

Loading and unloading shall be carried out as quickly as possible and the vehicle shall be removed immediately on completion.

The trader shall not return their vehicle to the market until 4pm or the time period prescribed in the relevant traffic management order for the pedestrianisation of the street has ended, whichever is later.

Other traders

The trader shall not leave his vehicle in the street in which he trades unless the vehicle is:

- (i) the licensed receptacle;
- (ii) temporarily parked for the purpose of loading and unloading goods during the set-up of the stall; or
- (iii) parked in approved parking spaces such as meter bays.

Loading and unloading shall be carried out as quickly as possible and the vehicle shall be removed immediately on completion.

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| Sale of Food | 34 | No trading shall take place that involves the sale of food unless the trader is complying with all current food safety and food standards legislation. |
| | 35 | If authorised to sell food, the trader shall provide a First Aid box on their stall that is readily available for use at all times that they are trading. |
| Health & Safety | 36 | The trader must ensure the safety of themselves and other users of the market and must comply with all relevant and current legal requirements for health and safety (including, but not limited to, those relating to electrical, gas and fire safety). |
| Safety of Equipment | 37 | Heat producing equipment (e.g. braziers) shall be so placed within the trading area as to offer maximum safety to the public. The position of such equipment in relation to other goods or materials shall be agreed with the Council's officers. |
| Services and Amenities | 38 | Where an electrical supply has been provided by the Council for use by the trader: <ul style="list-style-type: none">(i) No electrical supply other than that provided by the Council shall be used by the trader on the stall;(ii) The trader shall ensure that all electrical equipment in use on the stall is compatible with the electrical supply and does not either individually or in combination, exceed the rating (maximum amperage) of the supply;(iii) The trader shall be liable for the fees incurred in their use of the electrical supply and shall pay all such fees within 4 weeks of them becoming due;(iv) The trader and their assistant(s) shall take care when using or working nearby any electrical supply point. The trader shall be liable for any costs incurred in repairing electrical supply points due to their or their assistants' reckless behaviour or deliberate misuse of the electrical supply. |

- 39 The trader shall only use the electrical supply of a premises where no electrical supply point is provided by the Council. In such cases:
- (i) the trader shall obtain the written consent of the bill payer and the Council in advance of connecting to the supply;
 - (ii) all supply lines shall be overhead with clearance of at least 2.6m and no cables shall be trailed along the ground;
 - (iii) the trader shall ensure that their supply lines are securely installed and suitably protected from damage and water ingress.

40 A generator shall only be used where no electricity supply has been provided by the Council and the Council has given consent for the use of a generator by the trader. In such cases, only a diesel-powered generator shall be used. The generator shall be located within the licensed pitch and so positioned that:

- (i) it is not accessible by the public and does not present a danger to the passing public;
- (ii) It is kept away from combustible materials and is provided with adequate ventilation;
- (iii) it does not present a fire or similar hazard risk to the stall or goods displayed thereon; and
- (iv) it does not cause any noise or fume nuisance.

When refuelling fuel tanks, the generator shall be switched off, all persons shall be moved away from the generator and a fire extinguisher shall be positioned near to the generator.

Only one fuel-can with a capacity of no more than 5 litres shall be stored in the licensed pitch at any one time. It shall be of an approved type for carrying fuel oil. The can shall be stored away from any possible heat source.

Electrical Safety

41 All electrical connections shall comply with the current edition of the Institute of Engineering & Technology (IET) Wiring Regulations. The equipment shall be constructed and maintained to prevent danger in compliance with the Electricity at Work Regulations 1989, or any Act/Regulations amending or replacing the same. Appropriate safety devices such as 30mA Residual Current Devices shall be used where necessary, particularly where the electrical equipment will be exposed to adverse conditions or will be used in association with hand held devices.

The trader shall arrange for all electrical equipment to be inspected by a competent person at appropriate intervals and shall retain the most recent certificate of inspection on the stall at all times that they are trading. The certificate shall be made available for inspection by a Council Officer on request.

Gas Safety

- 42 The trader shall ensure through a system of checks and testing that all gas appliances, flues, pipe work and safety devices are maintained in a safe condition and shall make a visual inspection of these prior to them commencing trading on any day.

The trader shall arrange for all gas appliances, flues, pipe work and safety devices to be inspected by a competent person at appropriate intervals and shall retain the most recent certificate of inspection on the stall at all times that they are trading. The certificate shall be made available for inspection by a Council Officer on request.

- 43 All LPG cylinders, regulators and change-over devices shall be located in the open air or housed in a separate well ventilated, fire-resistance compartment. Any such compartment shall be ventilated at low level to the external air and shall have an exclusive access from outside the receptacle to enable safe access to shut off the cylinders in case of fire. The compartment shall be clearly marked "LPG – Highly Flammable – No Smoking".

Cylinders shall be stored well away from drains, waste water pits and soak-a-ways and shall be protected from tampering and/or accidental damage. Pipes, fittings and fixtures shall be provided with appropriate compression crimped joints. No slip-on rubber hosing shall be used without means of securing them and no hosing secured by work-drive "jubilee clip" type fittings shall be used.

Fire Safety

- 44 No trading shall take place unless adequate fire fighting equipment is provided on the stall that is appropriate for the goods on sale, equipment in use and size of the stall. The trader shall provide as a minimum:
- (i) a Class A fire extinguisher of at least 4.5ltrs if they are authorised to sell non-food commodities;
 - (ii) a fire blanket and a Class B extinguisher (Foam or Dry Powder, as appropriate) of at least 4kg/4lt size if they are authorised to use cooking facilities;

- (iii) a class F type fire extinguisher if they are authorised to use a deep fat fryer;
- (iv) a dry powder or carbon dioxide fire extinguisher with a capacity of 4kg if they have received consent from the Council to use a generator.

The trader shall ensure that all fire fighting equipment has been adequately tested by a competent person and is in good working order.

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| 45 | The trader shall be familiar with the operation of their fire safety equipment and shall position it on the stall so that it is readily available for use at all times that they are trading. |
| 46 | The trader shall ensure that their assistants are all aware of what to do in the event of a fire. |
| 47 | The trader shall keep the pitch clean and tidy and shall avoid a build-up of combustible materials. |
| Conduct | 48 The trader and their assistants shall treat the public and Council Officers fairly and with courtesy. |
| 49 | The trader and their assistants shall not engage in any criminal activity or anti-social behaviour and, in particular, shall ensure that the following do not take place at the pitch: <ul style="list-style-type: none"> (i) Indecent behaviour towards the public or other traders; (ii) Acts of violence against any person (including other traders) or property and/or the attempt or threat of such acts; (iii) Verbal abuse and/or aggression displayed towards any person; (iv) Intimidation of any other trader; (v) Touching, moving or interfering with another trader's stall. |
| Assistance to Council Officers | 50 The trader and their assistants shall give every assistance to Council Officers in carrying out their duties. |
| Radios, Etc. | 51 The trader shall not use or permit to be used on the licensed area or within the immediate vicinity any radio or other equipment or apparatus to produce music or other amplified sound except within a closed vehicle and at a reasonable level. |
| Damage | 52 The trader shall not intentionally permit their stall or accessories to cause damage to the carriageway or footway and shall leave the trading pitch in a clean condition at the end of each trading period. |

Refuse

- 53 The trader shall ensure that all refuse arising as a result of their activities, including waste water and oil, is placed in suitable covered containers that are kept exclusively for that purpose and that approved by the Council. Such refuse containers shall be provided by the trader, unless otherwise provided by the Council, and shall be kept as clean as is reasonably possible.

NOTE: This condition shall not apply to licence holders at the Bayswater Road Exhibition and Green Park Exhibition unless the Council requires it in any particular case.

- 54 Refuse containers for any non-liquid waste shall be emptied whenever necessary into any vehicle, container or compactor provided by the Council for that purpose. Refuse containers for waste water and oil shall be removed by the trader at the end of their trading period for disposal.

Removal

- 55 The trader or their assistants shall remove the stall and goods for so long as may be necessary in the event of an emergency or in exercise of the Council's powers and duties when reasonably required to do so by a duly authorised officer of the Council, a police officer or an officer of any other emergency service.

- 56 When trading on the Church Street, Berwick Street, Maida Hill, Rupert Street, Strutton Ground or Tachbrook Street markets, the trader shall not remove their receptacle from the licensed pitch until 4pm on any day that they are trading, unless they are required to do so by a Council Officer or an Officer of an emergency service.

- 57 Unless trading on Rupert Street, the trader shall remove their stall and goods from the public highway to the place of storage, as stated on the application form or such other alternative place subsequently agreed by the Council in writing, within one and a half hours of either the time prescribed on the licence for the end of trading on that day or the time trading actually ceases (whichever is the earlier) unless prior consent has been granted by the Council for a later removal time or for the receptacle to remain in situ between consecutive trading periods.

If trading on Rupert Street, the trader shall remove their stall and goods from the public highway to the place of storage, as stated on the application form or such other alternative place subsequently agreed by the Council in writing, no later than 6.30pm.

Informatives

General

- 1 The grant of a temporary street trading licence shall not be deemed to give any approval or consent which may be needed under any By-law, enactment or regulation other than Section 21 of the City of Westminster Act 1999.

For the avoidance of doubt this includes the requirement to seek and obtain planning permission and/or advertisement consent.

- 2 The marginal subtitles inserted in these conditions are for the purpose of convenience only and shall not in any way affect the meaning or construction thereof.

- 3 These conditions may be dispensed with or modified by the Council in any individual case by means of a licence variation in accordance with the statutory requirements.

- 4 Where in these conditions there is reference to the consent or agreement of the Council such consent or agreement may be given on such terms and conditions and subject to such restrictions as may be so specified.

- 5 If a trader wishes any of the terms of a licence to be varied or the Council's agreement under these rules application must be made in writing to the Council in accordance with the statutory requirements.

Advertisements

- 6 No illuminated advertisement shall be displayed on the outside of the stall or kiosk without an express consent under the Town and Country Planning (Control of Advertisements)(England) Regulations 2007

Re-letting of Pitches

- 7 If the pitch is not utilised by the licensed trader by the times set out in the standard conditions without the prior approval of the Council or its representative, the Council may at its discretion re-let the pitch for that day.

Note: It is the Council's policy normally to only re-let pitches in its street markets.

Services and Amenities

- 8 All electrical supply points provided by the Council for use by the trader shall remain the property and responsibility of the Council or its representatives.

Annex C

	Existing Condition No.	Existing Condition	Proposed Condition No.	Proposed Condition	Reason for Amendment/Insertion
Definitions		In the Regulations unless the context otherwise requires the following expressions shall have the following meanings:		In the conditions unless the context otherwise requires the following expressions shall have the following meanings:	
	(i)	"Street Trading" shall have the meaning ascribed in Section 21(1) of the London Local Authorities Act 1990.	(i)	"Street Trading" shall have the meaning ascribed in Section 2 of the City of Westminster Act 1999	Part III of the London Local Authorities Act 1990 ceased to have effect in the City of Westminster on commencement of the City of Westminster Act 1999. All licences granted under the 1990 Act are now deemed to be granted under the 1999 Act by virtue of section 32(1) of the City of Westminster Act 1999.
Page 48	(ii)	"The Council" means the Westminster City Council.	(ii)	"The Council" means the Westminster City Council.	
	(iii)	"Licensed Street Trader" means any person who is licensed for street trading under Part III of the London Local Authorities Act 1990.	(iii)	"Licensed Street Trader" or "Trader" means the person who is licensed under Section 21 of the City of Westminster Act 1999 to carry-on street trading.	All traders are now deemed to be licensed under the City of Westminster Act 1999.
	(xiii)	"Trader" means a person in whose name a current licence is held authorising street trading from a licensed street trading pitch.			
	(iv)	"Advertisement" means any word, letter, model, sign, placard, board, notice, whether illuminated or not, in the nature, and employed wholly or partly for the purposes of advertisement, announcement or direction and includes any hoarding or similar structure or any balloon used, or adapted for use for the display of advertisements, and references to the display of advertisement shall be constructed accordingly.	(iv)	"Advertisement" means any word, letter, model, sign, placard, board, notice, whether illuminated or not, in the nature, and employed wholly or partly for the purposes of advertisement, announcement or direction and includes any hoarding or similar structure or any balloon used, or adapted for use for the display of advertisements, and references to the display of advertisement shall be constructed accordingly.	

	(vi)	“Awning” means a sheet of canvas or other material, used as a protection against the weather, which projects as an extension of the roof beyond the structure of the stall.	(v)	“Awning” means a sheet of canvas or other material, used as a protection against the weather, which projects as an extension of the roof beyond the structure of the stall.	
			(vi)	“Counterfeit” means any goods bearing a mark identical to or likely to be mistaken for a registered name, mark or logo which has been produced without the authorisation of the registered trade mark holder.	The conditions now make reference to counterfeit goods on the advice of Environmental Health.
	-	-	(vii)	“Electrical Supply” means either an electrical supply in the vicinity of a licensed pitch that is accessible through an electricity supply point provided by the Council or an electrical supply of a nearby premises.	The proposed conditions cover the use of electricity by licence holders as set out in Policy ST11 of the Street Trading Policy.
Page 49	(vii)	“Goods” means any goods, wares or merchandise for sale at a stall.	(viii)	“Goods” means any goods, wares, merchandise or other articles that are offered, displayed or exposed for sale on a stall.	The statutory definition of street trading includes goods that are “ <i>offered, displayed or exposed for sale on a stall</i> ”
	(viii)	“Licensed street trading pitch” means a pitch in any street authorised as a place at which street trading may be engaged in by a street trader, and includes any temporary alternative place approved by the Council or a duly authorised officer of the Council.	(ix)	“Licensed street trading pitch” means a pitch in any street authorised as a place at which a street trader may engage in street trading, and includes any temporary alternative place approved by the Council or a duly authorised officer of the Council.	
	(ix)	“Pitch Limits” means the authorised ground markings defining the area within which a street trading stall is to be contained.	(x)	“Pitch Limits” means the authorised ground markings defining the area within which a street trading stall is to be contained.	
	(xii)	“Premises” means any shop, house or block of flats immediately behind the licensed pitch.	(xi)	“Premises” means any business, residential or vacant premises immediately behind the licensed pitch.	The type of premises that a trader may make a connection to in order to access an electrical supply may not be limited to a shop house or block of flats.

	(xi)	“Stall” means any structure used by a trader for the display of goods, or in connection with his or her business, and which occupies a licensed street trading pitch; and includes all goods offered or to be offered for sale and any additional structure or equipment used as part of the stall or business. On “isolated pitches” this also includes all rubbish created as a result of the business.	(xii)	“Receptacle” or “Stall” means any structure occupying a licensed street trading pitch that is used by the trader for the display of goods or in connection with his or her business and includes all goods offered or to be offered for sale and any additional structure or equipment used as part of the stall or business. On “isolated pitches” this also includes all rubbish created as a result of the business.	The conditions refer to “receptacle” which has the same meaning as “stall”.
	(x)	“Refuse” includes any waste material.	(xiii)	“Refuse” includes any waste material.	
Page 50	(v)	“Assistant” means a person employed by and acting under the directions of a trader to assist him/her about the business of the stall and whose name and address has been notified to the City Council.	(xiv)	“Registered Assistant” or “Assistant” means a person who the trader has registered with the Council as an assistant to assist them in the business of the stall.	The proposed conditions require that assistants are registered with the Council in accordance with policy ST10.
	-	-	(xv)	“Service” means a service offered for gain or reward.	The conditions now refer to services as the statutory definition of street trading includes these.
Change of Details	5	Traders shall notify, in writing, the Council of any permanent change of address as soon as it occurs.	1	The trader shall notify the Council in writing of any permanent change of their name, address, telephone number and/or e-mail address within 7 days of the change occurring.	The Council needs to be able to contact and communicate with traders so correct contact details are essential. Allowing 7 days to notify the Council seems a more realistic expectation.
Storage	32	Traders shall notify the Council in writing of any change of address or addresses at which the stall and perishable goods are stored. Such notice shall be given within 7 days of the change.	2	The trader shall provide suitable and adequate premises for the storage of their receptacle when trading is not taking place. The trader shall provide suitable and adequate provision for the storage of any perishable goods whilst at the licensed pitch, transporting the goods to/from the licensed pitch and away from the licensed pitch when trading is not taking place.	The requirement to provided suitable and adequate storage has been inserted on the advice of Environmental Health.

				The trader shall notify the Council in writing of any change of address or addresses at which the stall and perishable goods are stored when trading is not taking place within 7 days of the change occurring.	
Registered Assistants	-	-	3	At any one time, the licence holder shall have no more than three assistants registered with the Council per licensed pitch.	This is prescribed in the criteria under Policy ST10.
	33	Traders shall, if required, notify the Council in writing of the name of any assistant which they employ on the stall; details of any change of assistant or any other relevant information regarding assistants.	4	The trader shall provide the Council with written notification of any change in the name, address and/or telephone number of any of their registered assistants within 7 days of the change occurring.	Contact details for assistants are required as part of the registration process. These should be updated when changes occur so that assistants can be contacted when necessary.
Attendance	-	-	5	The trader shall notify the Council in writing if a registered assistant ceases to work for them within 7 days of them ceasing.	This will prevent assistants who no longer work for a trader attempting to engage in unlawful street trading.
	-	-	6	No trading shall take place unless the trader or a registered assistant is present on the stall.	This is prescribed in Policy ST10(ii)
	-	-	7	All registered assistants shall carry photographic identification, such as their Passport, Photo-card Driving Licence or National Identity Card, when working under this licence. The assistant shall produce their photographic identification for inspection by a Council Officer on request.	The criteria under Policy ST10 require that assistants show registration cards when trading. Such cards are not currently issued and therefore alternative identification is required to prove their identity when trading.
Days and Times	9	Trading may only take place on the days and during the times specified on the licence.	8	Trading shall only take place on the days and during the times specified on the licence.	
Trading Location	6	The trader shall trade only from the position which is indicated on the licence.	9	Trading shall only take place at the location stated on the licence or other such temporary location agreed with the Council.	This gives scope for a temporary move of trading location where pitches are obstructed, without the trader breaching the condition of their licence.

Commodities	8	Only those goods specified on the licence may be sold on the licensed street trading pitch.	10	Only those goods specified on the licence shall be sold, offered for sale, displayed or exposed for sale, and only those services specified on the licence shall be supplied or offered for supply on the licensed street trading pitch.	The statutory definition of street trading includes services so the services that may be provided should be limited to those specified on the licence in the say way as the commodities are restricted.
			11	The trader shall ensure that there are no counterfeit goods present on the pitch or in any associated storage facilities.	This condition has been included following an investigation by the Trading Standards service in to the sale of counterfeit goods on the markets which resulted in the revocation of a number of licences.
			12	The trader shall keep a record of the name, address and contact number of the suppliers of their goods, such that the supplier of any item on the pitch can be contacted if required. The suppliers' contact details shall be provided to a Council Officer on request.	This condition has been included on advice of Trading Standards to assist with any investigation in to the sale of counterfeit goods.
Nature and Type of Receptacle	10	Only those receptacles approved by an authorised officer of the Licensing Service shall be used by the trader.	13	The trader shall only trade from a receptacle that has been approved by an authorised officer of the Licensing Service and that is set-up in accordance with the approved design and layout. The trader shall maintain their receptacle to minimise any deterioration in its appearance following the approval by the Licensing Service and shall remove any defacement from their receptacle as soon as is reasonably practicable.	Stalls are required to be sturdy and weighted down to withstand poor weather conditions. As a result, most stalls are not immediately removable. The condition requiring this has therefore been removed. The requirement to maintain stalls has been included to ensure that licence holders take responsibility for the appearance of their stalls once licensed.
	26	Stalls shall be easily and immediately removable.			
			14	Receptacles used for the sale of food shall be maintained and regularly cleaned to ensure that food is protected from risk of contamination.	This condition has been included on the advice of Environmental Health

Insurance	36	Traders shall take out third party insurance cover with a minimum liability of at least £2,000,000 or to the cover mutually agreed between the Council and the relevant street traders or exhibitors' Association.	15	The trader shall have third party public liability insurance cover that is effective throughout the time that the licence is in effect that covers the trader and all registered assistants whilst working on the stall. The insurance cover shall have a minimum liability of £2,000,000 or to the cover mutually agreed between the Council and the relevant street traders' or exhibitors' Association.	The existing condition has been updated to require that the trader has public liability insurance that is effective throughout the time licence has effect. This will therefore cover all trading activities throughout the lifetime of the licence.
-	-	-	16	No trading shall take place unless a copy of the current public liability insurance certificate or other similar evidence that proves the existence of the effective policy is available on the stall. The copy of the insurance policy certificate, or similar evidence, shall be made immediately available for inspection by a Council Officer on request.	The trader should be able to prove to a City Inspector that their insurance policy is effective.
Commencement Times	34	<p>Bayswater Road and Green Park Exhibitions Licensed exhibitors shall not begin setting up their pitches before 7am but shall have their exhibits in place by 10.30am.</p> <p>All Other Pitches</p> <p>Permanent traders shall have arrived at their pitches, put their stalls in position and started setting up by the following times:</p> <p>Bell Street : 9.00am Church Street : 9.00am (10.00 am Sunday)</p> <p>Berwick Street : 10.00am Rupert Street : 10.00am</p>	17	<p>Bayswater Road and Green Park Exhibitions Licensed exhibitors shall not begin setting up their pitches before 7am but shall have their exhibits in place no later than 10.30am on the days that they are licensed to trade.</p> <p>All Other Pitches The trader shall not commence setting up their pitch before 7am on weekdays & Saturdays or before 8am on Sundays.</p> <p>When trading at the following location, the trader shall have arrived at their pitch, put their stall in position and started setting up by the following times: Bell Street : 09.00am Church Street : 09.00am</p>	<p>Sunday trading is not permitted on the Church Street Market so reference to a Sunday commencement time has been removed.</p> <p>The information on the re-letting of pitches has been removed from the condition and inserted as an informative below.</p>

		<p>Strutton Ground : 11.00am Tachbrook Street : 10.00am</p> <p>If the pitch is not utilised by the licensed trader by the above time without the prior approval of the Council or its representative, the Council may at its discretion re-let the pitch for that day. Note: It is the Council's policy normally to only re-let pitches in its street markets.</p> <p>All traders shall have commenced trading, with all goods contained within the pitch area within one hour of the time shown above and in the case of Strutton Ground all traders vehicles shall be out of the market by 11.30am.</p> <p>Traders shall not commence setting up their pitches before 7am on weekdays and 8am on Sundays.</p>		<p>Berwick Street : 10.00am Maida Hill : 10.00am Rupert Street : 10.00am Strutton Ground : 11.00am Tachbrook Street : 10.00am</p> <p>The trader shall have commenced trading with all goods contained within the pitch area within one hour of the times set out above.</p>	
Size	7	<p>The trading area shall not exceed the dimensions specified on the licence and any pitch limits marked on the ground during trading hours except during immediate re-stocking. The width of the pitch at the Bayswater Road and Green Park Exhibition shall be eighteen inches from the back edge of the footway.</p>	18	<p>The trading area shall not exceed the dimensions specified on the licence and where applicable, any pitch limits marked on the ground, except during immediate re-stocking of the stall. The width of the pitch at the Bayswater Road and Green Park Exhibition shall be eighteen inches from the back edge of the footway. All goods, containers (except refuse containers used solely for the purpose) and other articles shall be contained within the licensed pitch area and height and shall not project beyond.</p>	<p>The two existing conditions are largely the same and have therefore been combined</p>
	25	<p>All goods, containers (except refuse containers used solely for the purpose) or other articles shall be contained within the licensed pitch area and height and shall not project beyond.</p>			

	19	The only connection between stalls on the footway and other stalls or premises shall be for the purposes of electric lighting or other agreed services; and any such electrical or other connections shall be readily detachable and the detailed arrangements agreed with the Council.	19	The trader shall not connect any part of their stall, advertisements or goods for sale to any other stall or to any electricity bollard, socket pillar, lamp post or other street furniture, except for an electric cable connected to an electrical supply point.	Connections between stalls should not be necessary. Stalls should be independent and not require connection to street furniture for stabilisation or display of goods.
			20	No barriers shall be used on or around a licensed pitch unless specific consent for their use has been obtained from the Council.	This condition is specified in the criteria under Policy ST2.
Head Room	24	The distance above ground level of any part of any roof, awning, or supports of the stall or goods suspended from any of these, shall (unless a dispensation has been granted by the Council) be at least 2.6m (8'6"). The roof awning or any other projection shall be contained within the pitch area unless agreed by the Council. At the Bayswater Road and Green Park Exhibitions awnings with a minimum height of 6 feet 6 inches and a maximum height of 9 feet will be permitted provided they are made of soft materials. The maximum forward projection of such awnings over the footway shall be 3 feet 6 inches at the Green Park Exhibition and 3 feet at the Bayswater Road Exhibition and no awning shall come within 3 feet of the kerb.	21	At the Bayswater Road and Green Park Exhibitions awnings with a minimum height of 6 feet 6 inches and a maximum height of 9 feet will be permitted provided they are made of soft materials. The maximum forward projection of such awnings over the footway shall be 3 feet 6 inches at the Green Park Exhibition and 3 feet at the Bayswater Road Exhibition and no awning shall come within 3 feet of the kerb.	The minimum height requirement has been removed as this forms part of the stall design approval for market and isolated pitch traders under Policy ST1. Traders are only permitted to use an approved receptacle by virtue of proposed condition 13.

Display of Licence Plate etc.	-	-	22	The trader shall keep the licence and a copy of the conditions on the stall at all times that they are trading. Where the trader leaves a registered assistant in charge of the stall, the assistant shall keep the licence and a copy of the conditions on the stall whilst trading. The licence and conditions shall be made available for inspection by a Council Officer on request.	The Act requires that, at all times that they are engaging in street trading, a licence holder carries the licence or an approved form of identity issued by the council and that they produce this on request. This condition specifies that it is the licence that they shall produce.
Pricing Page 56	13	Traders shall at all times display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently and permanently exhibited on the stall together with the name, or business name of the trader.	23	The trader shall, at all times that they are trading, display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently exhibited on the stall together with the name or business name of the trader.	
	-	-	24	The trader shall ensure that all goods displayed on the pitch or services offered on the pitch are priced in such a manner that customers can determine their price without assistance from the trader.	This has been included on the advice of Trading Standards.
Notices & Advertisements	14	No advertisement shall be displayed on the licensed pitch which relates to any goods, commodities or services other than those offered for sale or provided on that pitch.	25	All advertisements shall be located within the licensed pitch and shall occupy no more than 10% of the surface area of each side of the stall. Advertisements on low screens, aprons or valances below table top level shall occupy no more than 10% of each panel.	These conditions are specified in the criteria under Policy ST2.
			26	The name of the stall and goods or services on offer shall only be displayed: (i) In the case of a kiosk or mobile stall, on a frieze or similar designed high-level place that is equivalent to a fascia sign on a shop front.	

				(ii) In the case of a gazebo, tensioned stall roof or umbrella with a valance, on the valance or on a board inside the stall.	
			27	No advertisement shall be displayed on the licensed pitch that relates to any goods, commodities or services other than those offered for sale or provided on that pitch.	
			28	No advertisements comprising of three-dimensional representations of products (such as, but not limited to, replica ice cream cones, coffee cups or chocolate bars), shall be displayed on the stall.	
			29	No free-standing advertisements shall be located outside of the pitch area.	
Page 57			30	No A-board or other free-standing advertisement shall be located within the licensed pitch unless it is part of the stall design that has been approved by the Council.	
			31	No notices shall be displayed in the licensed pitch that would restrict a consumer's statutory rights, such as "No refunds" or "No returns".	This has been included on the advice of Trading Standards.
	37	Bayswater Road Exhibition only Subject to any personal dispensation which may have been granted to individual traders, all exhibitors must display in a prominent position so that it may easily be read by potential customers a notice indicating that all works of art and craft on display or for sale are entirely the original works of the trader licensed for that pitch. For avoidance of doubt, the reference to original work shall not include copies or prints or reproductions of any kind.	32	Bayswater Road Exhibition only Subject to any personal dispensation which may have been granted to individual traders, all exhibitors must display in a prominent position so that it may easily be read by potential customers a notice indicating that all works of art and craft on display or for sale are entirely the original works of the trader licensed for that pitch. For avoidance of doubt, the reference to original work shall not include copies or prints or reproductions of any kind.	

<p>Traders' Vehicle</p>	<p>29</p>	<p>A licensed trader shall not leave his vehicle in the street in which he trades, apart from in approved parking spaces such as meter bays, except for the purpose of loading and unloading goods. Such loading and unloading shall be carried out as quickly as possible and the vehicle removed immediately on completion. This condition shall not apply when waiting restrictions are not in force.</p>	<p>33</p>	<p>Markets</p> <p>When trading on the Berwick Street, Maida Hill, Rupert Street, Strutton Ground and Tachbrook Street markets, the trader shall remove their vehicles, unless they are the licensed receptacles, and all other items used for the setup of the stall by the time prescribed in any relevant traffic management order for the pedestrianisation of the street.</p> <p>When trading on the Church Street market, the trader shall remove their vehicles, unless they are the licensed receptacles, and all other items used for the setup of the stall by 10 am.</p> <p>Prior to the time prescribed in the relevant traffic management order for the pedestrianisation of the street or 10am in the case of the Church Street market, the trader shall not leave their vehicle in the street in which they trade unless the vehicle is:</p> <ul style="list-style-type: none"> i) the licensed receptacle; ii) parked in approved parking spaces such as meter bays; or iii) temporarily parked for the purpose of loading and unloading goods during the set-up of the stall. <p>Loading and unloading shall be carried out as quickly as possible and the vehicle shall be removed immediately on completion.</p> <p>The trader shall not return their vehicle to the market until 4pm or the time period prescribed in the relevant traffic management order for the</p>	<p>Traders who leave their vehicles and other items used in the setting up of stalls can interfere with other traders who are setting up and also members of the public wishing to use the market/street.</p> <p>The proposed condition is more prescriptive to enable the set-up of the stalls to be managed more effectively.</p>
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				<p>pedestrianisation of the street has ended, whichever is later.</p> <p>Other traders The trader shall not leave his vehicle in the street in which he trades unless the vehicle is:</p> <ul style="list-style-type: none"> i) the licensed receptacle; ii) temporarily parked for the purpose of loading and unloading goods during the set-up of the stall; or iii) parked in approved parking spaces such as meter bays. <p>Loading and unloading shall be carried out as quickly as possible and the vehicle shall be removed immediately on completion.</p>	
Sale of Food	17	All traders operating stalls on which food is sold shall comply with the Food Safety Act 1990 and the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966.	34	No trading shall take place that involves the sale of food unless the trader is complying with all current food safety and food standards legislation.	This condition has been updated on the advice of Environmental Health.
			35	If authorised to sell food, the trader shall provide a First Aid box on their stall that is readily available for use at all times that they are trading.	This condition has been inserted on the advice of Environmental Health.
Health & Safety	-	-	36	The trader must ensure the safety of themselves and other users of the market and must comply with all relevant and current legal requirements for health and safety (including, but not limited to, those relating to electrical, gas and fire safety).	This condition has been inserted on the advice of Environmental Health.

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Safety of Equipment	18	Heat producing equipment (e.g. braziers) shall be so placed within the trading area as to offer maximum safety to the public. The position of such equipment in relation to other goods or materials shall be agreed with the Council's officers.	37	Heat producing equipment (e.g. braziers) shall be so placed within the trading area as to offer maximum safety to the public. The position of such equipment in relation to other goods or materials shall be agreed with the Council's officers.	
Services and Amenities	20	All electric power supplies shall have the appropriate consent from the Council before seeking installation from the LEB.	38	<p>Where an electrical supply has been provided by the Council for use by the trader:</p> <ul style="list-style-type: none"> (i) No electrical supply other than that provided by the Council shall be used by the trader on the stall; (ii) The trader shall ensure that all electrical equipment in use on the stall is compatible with the electrical supply and does not either individually or in combination, exceed the rating (maximum amperage) of the supply; (iii) The trader shall be liable for the fees incurred in their use of the electrical supply and shall pay all such fees within 4 weeks of them becoming due; (iv) The trader and their assistant(s) shall take care when using or working nearby any electrical supply point. The trader shall be liable for any costs incurred in repairing electrical supply points due to their or their assistants' reckless behaviour or deliberate misuse of the electrical supply. 	These conditions are specified in the criteria under Policy ST11.

	21	All electrical cables that are suspended over the public footway shall have a minimum clearance of 2.6m (8'6") from the footway surface, and 5.1m (18'6") from the surface of the carriageway.	39	<p>The trader shall only connect to the electrical supply of a premises where no electrical supply point is provided by the Council. In such cases:</p> <ul style="list-style-type: none"> (iv) the trader shall obtain the written consent of the bill payer and the Council in advance of connecting to the supply; (v) all supply lines shall be overhead with clearance of at least 2.6m and no cables shall be trailed along the ground; (vi) the trader shall ensure that their supply lines are securely installed and suitably protected from damage and water ingress. 	
Page 61	22	<p>Where mobile electrical generators are employed they shall be so positioned that:</p> <ul style="list-style-type: none"> (a) they do not present a danger to the passing public; (b) they do not present a fire or similar hazard risk to the stall or goods displayed thereon; (c) they do not cause any noise or fume nuisance; (d) any inflammable fuel is stored away from the stall in a London Fire Brigade approved container. 	40	<p>A generator shall only be used where no electricity supply has been provided by the Council and the Council has given consent for the use of a generator by the trader. In such cases, only a diesel-powered generator shall be used. The generator shall be located within the licensed pitch and so positioned that:</p> <ul style="list-style-type: none"> (i) it is not accessible by the public and does not present a danger to the passing public; (ii) It is kept away from combustible materials and is provided with adequate ventilation; (iii) it does not present a fire or similar hazard risk to the stall or goods displayed thereon; and (iv) it does not cause any noise or fume nuisance. 	<p>The criteria under Policy ST11 specify that generators shall only be used where no electricity supply has been provided by the Council.</p> <p>The restrictions on the refuelling of generators have been included on the advice of the Fire Service.</p>

				<p>When refuelling fuel tanks, the generator shall be switched off, all persons shall be moved away from the generator and a fire extinguisher shall be positioned near to the generator.</p> <p>Only one fuel-can with a capacity of no more than 5 litres shall be stored in the licensed pitch at any one time. It shall be of an approved type for carrying fuel oil. The can shall be stored away from any possible heat source.</p>	
<p>Electrical Safety</p> <p>Page 62</p>	23	All electrical wiring and components shall comply with the basic LEB specification and be earthed and insulated accordingly. Electrical power shall only be used for the purposes of lighting and the operation of electrical scales and tills and the testing of electrical goods.	41	<p>All electrical connections shall comply with the current edition of the Institute of Engineering & Technology (IET) Wiring Regulations. The equipment shall be constructed and maintained to prevent danger in compliance with the Electricity at Work Regulations 1989, or any Act/Regulations amending or replacing the same. Appropriate safety devices such as 30mA Residual Current Devices shall be used where necessary, particularly where the electrical equipment will be exposed to adverse conditions or will be used in association with hand held devices.</p> <p>The trader shall arrange for all electrical equipment to be inspected by a competent person at appropriate intervals and shall retain the most recent certificate of inspection on the stall at all times that they are trading. The certificate shall be made available for inspection by a Council Officer on request.</p>	This condition is specified in the criteria under Policy ST11 and additional information has been included on the advice of Environmental Health.

<p>Gas Safety</p>	-	-	42	<p>The trader shall ensure through a system of checks and testing that all gas appliances, flues, pipe work and safety devices are maintained in a safe condition and shall make a visual inspection of these prior to them commencing trading on any day.</p> <p>The trader shall arrange for all gas appliances, flues, pipe work and safety devices to be inspected by a competent person at appropriate intervals and shall retain the most recent certificate of inspection on the stall at all times that they are trading. The certificate shall be made available for inspection by a Council Officer on request.</p>	<p>These conditions have been inserted on the advice of the Fire Service and Environmental Health.</p>
<p>Page 63</p>	-	-	43	<p>All LPG cylinders, regulators and change-over devices shall be located in the open air or housed in a separate well ventilated, fire-resistance compartment. Any such compartment shall be ventilated at low level to the external air and shall have an exclusive access from outside the receptacle to enable safe access to shut off the cylinders in case of fire. The compartment shall be clearly marked "LPG – Highly Flammable – No Smoking".</p> <p>Cylinders shall be stored well away from drains, waste water pits and soak-aways and shall be protected from tampering and/or accidental damage. Pipes, fittings and fixtures shall be provided with appropriate compression crimped joints. No slip-on rubber hosing shall be used without means of securing them and no hosing secured by work-drive "jubilee clip" type fittings shall be used.</p>	

Fire Safety	-	-	44	<p>No trading shall take place unless adequate fire fighting equipment is provided on the stall that is appropriate for the goods on sale, equipment in use and size of the stall. The trader shall provide as a minimum:</p> <ul style="list-style-type: none"> • a Class A fire extinguisher of at least 4.5ltrs if they are authorised to sell non-food commodities; • a fire blanket and a Class B extinguisher (Foam or Dry Powder, as appropriate) of at least 4kg/4lt size if they are authorised to use cooking facilities; • a class F type fire extinguisher if they are authorised to use a deep fat fryer; • a dry powder or carbon dioxide fire extinguisher with a capacity of 4kg if they have received consent from the Council to use a generator. <p>The trader shall ensure that all fire fighting equipment has been adequately tested by a competent person and is in good working order.</p>	These conditions have been inserted on the advice of the Fire Service and Environmental Health.
	-	-	45	The trader shall be familiar with the operation of their fire safety equipment and shall position it on the stall so that it is readily available for use at all times that they are trading.	
	-	-	46	The trader shall ensure that their assistants are all aware of what to do in the event of a fire.	

	-	-	47	The trader shall keep the pitch clean and tidy and shall avoid a build-up of combustible materials.	
Conduct	11	Traders and any assistants employed by them shall ensure the public and Council officers are treated fairly and with courtesy.	48	The trader and their assistants shall treat the public and Council Officers fairly and with courtesy.	The two former conditions are largely the same but it is considered that it would be inappropriate for the Council to control the competency or helpfulness of a trader's members of staff.
	12	Traders shall ensure that their staff are competent, courteous and helpful.			
Page 65	-	-	49	<p>The trader and their assistants must not engage in any criminal activity or anti-social behaviour and, in particular, shall ensure that the following do not take place at the pitch:</p> <ul style="list-style-type: none"> (i) Indecent behaviour towards the public or other traders; (ii) Acts of violence against any person (including other traders) or property and/or the attempt or threat of such acts; (iii) Verbal abuse and/or aggression displayed towards any person; (iv) Intimidation of any other trader; (v) Touching, moving or interfering with another trader's stall. 	This condition has been inserted to set out the behaviours that would not be tolerated the Council.
	Assistance to Council Officers	31	Traders shall give every assistance to Council officers in carrying out their duties.	50	The trader and their assistants shall give every assistance to Council Officers in carrying out their duties.

Radios, Etc.	35	Traders shall not use or permit to be used on the licensed area or within the immediate vicinity any radio, cassette player or other equipment or apparatus to produce music or other sound except within a closed vehicle and at a reasonable volume.	51	The trader shall not use or permit to be used on the licensed area or within the immediate vicinity any radio or other equipment or apparatus to produce music or other amplified sound except within a closed vehicle and at a reasonable level.	
Damage	30	Traders must not intentionally permit stalls or accessories to cause damage to the carriageway or footway.	52	The trader shall not intentionally permit their stall or accessories to cause damage to the carriageway or footway and shall leave the trading pitch in a clean condition at the end of each trading period.	
Refuse	15	The trader shall ensure that all refuse arising as a result of the activities of the trader shall be placed in suitable covered containers approved by the Council and provided by the trader, unless otherwise provided by the Council, and shall be kept exclusively for that purpose. Such refuse containers shall be kept as clean as is reasonably possible. NOTE: This condition shall not apply to licence holders at the Bayswater Road Exhibition and Green Park Exhibition unless the Council requires it in any particular case.	53	The trader shall ensure that all refuse arising as a result of their activities, including waste water and oil, is placed in suitable covered containers that are kept exclusively for that purpose and that approved by the Council. Such refuse containers shall be provided by the trader, unless otherwise provided by the Council, and shall be kept as clean as is reasonably possible. NOTE: This condition shall not apply to licence holders at the Bayswater Road Exhibition and Green Park Exhibition unless the Council requires it in any particular case.	The condition has been modified to include the storage of waste water and oil to prevent traders disposing of such waste in nearby drains.
	16	Refuse containers shall be emptied whenever necessary into any vehicle, container or compactor provided by the Council for that purpose.	54	Refuse containers for any non-liquid waste shall be emptied whenever necessary into any vehicle, container or compactor provided by the Council for that purpose. Refuse containers for waste water and oil shall be removed by the trader at the end of their trading period for disposal.	The condition has been modified to include the removal of waste water and oil to prevent traders disposing of such waste in nearby drains.
Removal	27	Traders or their assistants shall remove the stall and goods for so long as may be necessary in the event of an emergency or in exercise of the	55	The trader or their assistants shall remove the stall and goods for so long as may be necessary in the event of an emergency or in exercise of the	It is considered that traders should remove their stalls on the reasonable request of an officer of any emergency service, not just a police officer.

		Council's powers and duties, if reasonably required to do so by a police officer or a duly authorised officer of the Council.		Council's powers and duties when reasonably required to do so by a duly authorised officer of the Council, a police officer or an officer of any other emergency service.	
			56	When trading on the Church Street, Berwick Street, Maida Hill, Rupert Street, Strutton Ground or Tachbrook Street markets, the trader shall not remove their receptacle from the licensed pitch until 4pm on any day that they are trading, unless they are required to do so by a Council Officer or an Officer of an emergency service.	This condition has been included to assist in the management of the market and to prevent traders disrupting neighbouring traders and the public when breaking down stalls mid-way through the trading day.
Page 67	28	Stalls and goods shall be removed from the public highway to the place of storage, as stated on the application form, or such other alternative place subsequently agreed by the Council in writing, within one and a half hours of either the time prescribed on the licence for the end of trading on that day or the time trading actually ceases (unless consent has been granted for a later removal time) whichever is the earlier provided that all stalls and goods shall be removed from Rupert Street Market by 6.30pm.	57	Unless trading on Rupert Street, the trader shall remove their stall and goods from the public highway to the place of storage, as stated on the application form or such other alternative place subsequently agreed by the Council in writing, within one and a half hours of either the time prescribed on the licence for the end of trading on that day or the time trading actually ceases (whichever is the earlier) unless prior consent has been granted by the Council for a later removal time or for the receptacle to remain in situ between consecutive trading periods. If trading on Rupert Street, the trader shall remove their stall and goods from the public highway to the place of storage, as stated on the application form or such other alternative place subsequently agreed by the Council in writing, no later than 6.30pm.	This condition has been reworded but the meaning has not been changed.

Existing Condition			Proposed New Informative		Reason	
Page 68	General	2	<p>The grant of a street trading licence shall not be deemed to give any approval or consent which may be needed under any By-law, enactment or regulation other than Part III of the London Local Authorities Act 1990.</p> <p>For the avoidance of doubt this includes the requirement to seek and obtain planning permission and/or advertisement consent.</p>	1	<p>The grant of a temporary street trading licence shall not be deemed to give any approval or consent which may be needed under any By-law, enactment or regulation other than Section 21 of the City of Westminster Act 1999.</p> <p>For the avoidance of doubt this includes the requirement to seek and obtain planning permission and/or advertisement consent.</p>	The information in the existing conditions is not an enforceable condition but has been included as informatives.
		3	The marginal notes inserted in these Regulations are inserted for the purpose of convenience only and shall not in any way affect the meaning or construction thereof.	2	The marginal subtitles inserted in these conditions are for the purpose of convenience only and shall not in any way affect the meaning or construction thereof.	
		4 (a)	These conditions may be dispensed with or modified by the Council in any individual case by means of a licence variation in accordance with the statutory requirements.	3	These conditions may be dispensed with or modified by the Council in any individual case by means of a licence variation in accordance with the statutory requirements.	
		(b)	Where in these conditions there is reference to the consent or agreement of the Council such consent or agreement may be given on such terms and conditions and subject to such restrictions as may be so specified.	4	Where in these conditions there is reference to the consent or agreement of the Council such consent or agreement may be given on such terms and conditions and subject to such restrictions as may be so specified.	
		(c)	If a trader wishes any of the terms of a licence to be varied or the Council's agreement under these rules application must be made in writing to the Council in accordance with the statutory requirements.	5	If a trader wishes any of the terms of a licence to be varied or the Council's agreement under these rules application must be made in writing to the Council in accordance with the statutory requirements.	

Advertisements	-		6	No illuminated advertisement shall be displayed on the outside of the stall or kiosk without an express consent under the Town and Country Planning (Control of Advertisements)(England) Regulations 2007	This is specified in criterion 2(5) under Policy ST2
Re-letting of Pitches	34	If the pitch is not utilised by the licensed trader by the above time without the prior approval of the Council or its representative, the Council may at its discretion re-let the pitch for that day. Note: It is the Council's policy normally to only re-let pitches in its street markets.	7	If the pitch is not utilised by the licensed trader by the times set out in condition 15 without the prior approval of the Council or its representative, the Council may at its discretion re-let the pitch for that day. Note: It is the Council's policy normally to only re-let pitches in its street markets.	This information in the existing condition is not an enforceable condition but has been provided as an informative.
Services and Amenities			8	All electrical supply points provided by the Council for use by the trader shall remain the property and responsibility of the Council or its representatives.	This is specified in Criterion 11(1) under Policy ST11



City of Westminster

PENALTY POINT SCHEME – (Effective From 19. April 2005)

On 1 August 1996, following agreement by all the Street Trading Associations, the City Council introduced a penalty point system for breach of conditions relating to street trading licences. Under this scheme, penalty points are awarded for each offence on a sliding scale between 1 (for minor breaches) and 5 (for more serious offences).

The Market Manager will issue “Licensed Pitch Inspection Reports” for breaches of licence conditions. The way in which these reports will be issued is as follows.

Licensee or Worker is present at the pitch at the time of the inspection

If the licensee or worker breach any of the Standard Conditions, the market manager will issue a “Licensed Pitch Inspection Report” indicating the nature of the breach and the number of points awarded. The licensee or the worker will be given a copy of this report and will be asked to sign as an acknowledgement that it has been issued. This does not imply that the offence has been accepted.

If the licensee or worker signs the Licensed Pitch Inspection Report the licensee will have 7 days to either:

- (1) submit a letter of mitigation; or
- (2) ask in writing for the alleged offence to be reviewed by a senior officer not directly connected with enforcement in the market.

If the licensee or worker declines to sign or refuses to take receipt of the report, an additional offence may be recorded against the licensee for a breach of SC31 “*Traders shall give every assistance to Council officers in carrying out their duties*” and additional penalty points will be awarded against the licensee. A copy of the report detailing the offences and the penalty points awarded will then be sent to the licensee’s home address and the licensee will be advised that they have 9 days to exercise their right to have the matter reviewed.

Neither the licensee nor a worker is present at the pitch at the time of the inspection

If a stall is not trading at the time of the inspection and the Market Manager is unable to serve a copy of the Licensed Pitch Inspection Report on the licensee, a copy of the Report will be sent to the licensee. The licensee will be advised that they have 9 days to exercise their right to have the matter reviewed.

Appeals Process

If a letter of mitigation or a request to have the alleged offence reviewed by a senior officer not directly connected with enforcement in the market is received, a senior officer of the Council’s Street Management Service will decide whether or not the points should be awarded.

Consequences of non-compliance

If a licensee reaches a threshold of 25 points or over within a period of six months, the matter may be referred to the Council's Licensing Sub-Committee or Licensing Officer Panel which will then consider if additional conditions should be attached to the licence or if the licence should be revoked, or if the licensee is a casual trader, their name removed from the list of approved temporary traders.

Where the Council considers that the licensee has committed a serious breach of any street trading licence condition the licensee may be required to attend the Council's Licensing Sub-Committee or Licensing Officer Panel notwithstanding the above penalty point system. Alternatively the council may consider instigating legal proceedings whereby the licensee may be prosecuted for breach of conditions.

Penalty Points Schedule

Note: The "Breach of Condition" field is provided for readability purposes only. For a full list of the standard conditions applicable to street trading in Westminster refer to **"Regulations made by the Westminster City Council pursuant to section 27(3) of the London Local Authorities Act 1990 prescribing standard conditions applicable to street trading licences effective 15 March 1999"**

<u>Condition</u>	<u>Breach of Condition</u>	<u>Points</u>
SC5	Trader fails to notify council of change of address	2
SC6	Trader trades from a position other than that indicated on licence	4
SC7	Trader operates stall outside dimension indicated on licence	5
SC8	Trader selling commodities not listed on licence	4
SC9	Trader operating on days & times not indicated on licence	5
SC10	Trader using a receptacle not approved by Council	2
SC11	Trader or assistant treating the public unfairly or discourteously	5
SC12	Staff incompetent or unhelpful	5
SC13	Licence plate not displayed prominently on the stall	1
SC14	Advertising goods etc. other than those offered for sale on pitch	1
SC15	Refuse not placed in containers and/or not kept as clean as possible	4
SC16	Refuse containers not emptied when necessary	3
SC17	Trader not complying with food Acts	5
SC18	Heat producing equipment not placed safely within trading area	5
SC19	Electrical connections between stalls not readily detachable and/or used for purposes other than electrical lighting or other agreed services	4
SC20	Trader using electric power supplies not consented to by Council	5
SC21	Electrical cables suspended do not have a minimum clearance of 8'6" or 18'6"	5
SC22	Mobile electrical generators are positioned in a way that; is dangerous to the public, presents a fire hazard, or causes noise or fume nuisance and/or fuel is not stored in a London Fire Brigade approved container	5
SC23	Electrical wiring and components do not comply with LEB	5
SC24	Head room of stall is lower than 8'6"	2
SC25	All goods, containers etc. are not contained within licensed area	5
SC26	Stall is not easily and immediately removable	5
SC27	Stall is not removed in the event of an emergency	5
SC28	Stalls and goods are not removed after trading	5
SC29	Traders' vehicle is not removed from market after loading/unloading	5
SC30	Trader intentionally permit stalls to cause damage to footway	4
SC31	Trader does not give every assistance to council officers	5
SC32	Trader does not notify the council of a change in storage address details	5
SC33	Trader does not, when required notify the council of any assistants that they employ	2

SC34	Trader begins setting up their pitches before their specified start time.	3
SC35	Trader uses equipment to produce music or other sound on their pitch	4
SC36	Trader has not taken out third party insurance	5
SC37	Trader at Bayswater Road does not have "Own work notice" displayed	2

BREACH OF CITY OF WESTMINSTER ACT 1999

Sect 9 ⁽⁹⁾	Trader cannot produce licence document when requested.	1
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Annex E

New Condition No.	Breach of Condition	Proposed Points	Current Condition No.	Current Standard Condition	Current Points
1	Trader fails to notify Council of change of name, address, telephone number or e-mail address within 7 days.	3	5	Traders shall notify, in writing, the Council of any permanent change of address as soon as it occurs.	2
2	Trader fails to provide adequate storage and/or fails to notify the Council of change in storage address within 7 days of the change.	5	32	Traders shall notify the Council in writing of any change of address or addresses at which the stall and perishable goods are stored. Such notice shall be given within 7 days of the change.	5
4	Trader fails to notify Council of change of name or contact details of their assistant(s).	3	33	Traders shall, if required, notify the Council in writing of the name of any assistant which they employ on the stall; details of any change of assistant or any other relevant information regarding assistants.	2
5	Trader fails to notify Council that assistant has ceased working for them.	3	-	-	-
6	Licence holder allows trading without licence holder or registered assistant on stall.	5	-	-	-
7	Registered assistant not carrying photographic ID	5	-	-	-
8	Trading takes place outside times authorised by the licence.	5	9	Trading may only take place on the days and during the times specified on the licence.	5
9	Trading takes place other than on the licensed pitch or other location agreed by WCC.	5	6	The trader shall trade only from the position which is indicated on the licence.	4
10	Trader selling commodities or providing services not listed on licence.	5	8	Only those goods specified on the licence may be sold on the licensed street trading pitch.	4
11	Trader selling or in possession of counterfeit goods.	5	-	-	-

12	No record of suppliers kept and/or made available to Council Officer.	5	-	-	-
13	Trader using a receptacle not approved by the Council or appropriately maintained.	5	10	Only those receptacles approved by an authorised officer of the Licensing Service shall be used by the trader.	2
14	Receptacle for sale of food is not maintained or regularly cleaned.	5	-	-	-
15	Trader does not have public liability insurance covering them and assistants.	5	36	Traders shall take out third party insurance cover with a minimum liability of at least £2,000,000 or to the cover mutually agreed between the Council and the relevant street traders or exhibitors' Association.	5
16	Copy of public liability insurance or similar evidence not available on stall.	5	-	-	

17	Trader sets up pitch before their specified start time, does not have stall in position by the prescribed time or doesn't commence trading within one hour of the prescribed set-up time.	5	34	<p>Bayswater Road and Green Park Exhibitions Licensed exhibitors shall not begin setting up their pitches before 7am but shall have their exhibits in place by 10.30am.</p> <p>All Other Pitches Permanent traders shall have arrived at their pitches, put their stalls in position and started setting up by the following times: Bell Street : 9.00am Church Street : 9.00am (10.00 am Sunday) Berwick Street : 10.00am Rupert Street : 10.00am Strutton Ground : 11.00am Tachbrook Street : 10.00am</p> <p>If the pitch is not utilised by the licensed trader by the above time without the prior approval of the Council or its representative, the Council may at its discretion re-let the pitch for that day.</p> <p>Note: It is the Council's policy normally to only re-let pitches in its street markets. All traders shall have commenced trading, with all goods contained within the pitch area within one hour of the time shown above and in the case of Strutton Ground all traders vehicles shall be out of the market by 11.30am. Traders shall not commence setting up their pitches before 7am on weekdays and 8am on Sundays.</p>	3
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18	Trader operates stall outside dimensions indicated on licence and/or goods are not contained in the licensed area.	5	7	The trading area shall not exceed the dimensions specified on the licence and any pitch limits marked on the ground during trading hours except during immediate re-stocking. The width of the pitch at the Bayswater Road and Green Park Exhibition shall be eighteen inches from the back edge of the footway.	5
			25	All goods, containers (except refuse containers used solely for the purpose) or other articles shall be contained within the licensed pitch area and height and shall not project beyond.	5
19	Trader connects to the electrical supply of a premises without consent of bill payer & Council. Supply lines lower than 2.6m and/or cables trailed along the ground. Supply lines not securely installed or suitably protected from damage and water ingress.	5	20	All electric power supplies shall have the appropriate consent from the Council before seeking installation from the LEB.	5
			21	All electrical cables that are suspended over the public footway shall have a minimum clearance of 2.6m (8'6") from the footway surface, and 5.1m (18'6") from the surface of the carriageway.	5
20	Barriers used without consent from Council	3	-	-	

21	Bayswater Road & Green Park awning exceeds permitted dimensions.	3	24	<p>The distance above ground level of any part of any roof, awning, or supports of the stall or goods suspended from any of these, shall (unless a dispensation has been granted by the Council) be at least 2.6m (8'6"). The roof awning or any other projection shall be contained within the pitch area unless agreed by the Council.</p> <p>At the Bayswater Road and Green Park Exhibitions awnings with a minimum height of 6 feet 6 inches and a maximum height of 9 feet will be permitted provided they are made of soft materials. The maximum forward projection of such awnings over the footway shall be 3 feet 6 inches at the Green Park Exhibition and 3 feet at the Bayswater Road Exhibition and no awning shall come within 3 feet of the kerb.</p>	2
22	Licence and conditions not available on stall.	5	-	s.9(9) City of Westminster Act 1999 - Trader <i>"shall at all times while engaged in street trading carry with him, and produce on request by an authorised officer or a constable, either the licence or an approved form of identity issued by the council for the purposes of this Act."</i>	1
23	Licence plate not on display	5	13	Traders shall at all times display a plate supplied by the Council indicating the licensed pitch number of the stall. This plate shall be kept prominently and permanently exhibited on the stall together with the name, or business name of the trader.	1
24	Goods/services not appropriately priced such that the price can be determined without assistance from the trader.	3	-	-	-

25	Advertisements not in pitch and/or exceed 10% of surface area of stall/panel.	3	-	-	
26	Name of the stall & goods or services on offer displayed other than: (i) Kiosks or mobile stall - on a frieze or similar designed high-level place equivalent to a shop front. (ii) Gazebo, tensioned stall roof or umbrella with a valance - on the valance or board inside the stall.	3	-	-	
27	Advertising goods etc. other than those offered for sale on pitch.	3	14	No advertisement shall be displayed on the licensed pitch which relates to any goods, commodities or services other than those offered for sale or provided on that pitch.	1
28	Advertisements comprising of 3D representations of products on stall.	3	-	-	
29	Free-standing advertisements outside pitch area	3	-	-	
30	A-board or other free-standing advertisement in pitch that does not have Council approval.	3	-	-	
31	Notices displayed that restrict a customer's statutory rights, e.g. "no refund" or "no returns"	5	-	-	

32	Trader at Bayswater Road does not have "Own work notice" displayed	3	37	<p>Bayswater Road Exhibition only Subject to any personal dispensation which may have been granted to individual traders, all exhibitors must display in a prominent position so that it may easily be read by potential customers a notice indicating that all works of art and craft on display or for sale are entirely the original works of the trader licensed for that pitch. For avoidance of doubt, the reference to original work shall not include copies or prints or reproductions of any kind.</p>	2
33	Vehicles left in market after permitted time, whilst not being used as the licensed receptacle, not in approved parking spaces or for loading/unloading. Vehicle returned to the market after the permitted time.	5	29	<p>A licensed trader shall not leave his vehicle in the street in which he trades, apart from in approved parking spaces such as meter bays, except for the purpose of loading and unloading goods. Such loading and unloading shall be carried out as quickly as possible and the vehicle removed immediately on completion. This condition shall not apply when waiting restrictions are not in force.</p>	5
34	Trader not complying with all current food safety and food standards legislation.	5	17	<p>All traders operating stalls on which food is sold shall comply with the Food Safety Act 1990 and the Food Hygiene (Markets, Stalls and Delivery Vehicles) Regulations 1966.</p>	5
35	No first aid box	3	-	-	-
36	Trader not complying with all relevant and current legal requirements for health and safety (including, but not limited to, those relating to electrical, gas and fire safety).	5	-	-	-

37	Heat producing equipment not placed safely within trading area.	5	18	Heat producing equipment (e.g. braziers) shall be so placed within the trading area as to offer maximum safety to the public. The position of such equipment in relation to other goods or materials shall be agreed with the Council's officers.	5
38	Electrical supply provided by the Council but other electrical supply used by trader. Electrical equipment not compatible with the electrical supply or exceeds the supply's rating.	5	-	-	
39	Trader using electrical supply of premises without consent of bill payer and Council, supply lines less than 2.6m above ground and/or supply line not securely protected from damage and water ingress.	5	-	-	-
40	Generator used without consent of Council. Generator is (i) accessible by the public and presents a danger to the passing public; (ii) a fire or similar hazard risk (iii) causes noise or fume nuisance. Petroleum powered generators incorrectly refuelled or with inappropriate fuel cans.	5	22	Where mobile electrical generators are employed they shall be so positioned that: (a) they do not present a danger to the passing public; (b) they do not present a fire or similar hazard risk to the stall or goods displayed thereon; (c) they do not cause any noise or fume nuisance; (d) any inflammable fuel is stored away from the stall in a London Fire Brigade approved container.	5

41	Electrical connections do not comply with the current edition of the IET Wiring Regulations and/or equipment is not safe. Certificate of testing by a competent person not available on stall and/or made available for inspection.	5	23	All electrical wiring and components shall comply with the basic LEB specification and be earthed and insulated accordingly. Electrical power shall only be used for the purposes of lighting and the operation of electrical scales and tills and the testing of electrical goods.	5
42	Gas appliances, flues, pipe work and safety devices not maintained. Certificate of testing by a competent person not available on stall and/or made available for inspection.	5	-	-	-
43	LPG cylinders, regulators and change-over devices not appropriately positioned, ventilated and secured. Pipework etc. used without appropriate joints.	5	-	-	-
44	Trading without adequate fire safety equipment. Equipment not tested or in good working order.	5	-	-	-
45	Trader not familiar with the operation of their fire safety equipment and/or equipment not readily available for use on the stall.	5	-	-	-
46	Trader's assistants not aware of what to do in the event of a fire.	5	-	-	-
47	Pitch not clean and tidy. Build-up of combustible materials on stall.	5	-	-	-
48	Trader and/or assistants do not treat the public and Council Officers fairly and with courtesy.	5	11	Traders and any assistants employed by them shall ensure the public and Council officers are treated fairly and with courtesy.	5

49	Trader and/or assistants engage in criminal activity or anti-social behaviour at the pitch.	5	-	-	-
50	Trader and assistants not assisting Council Officers in carrying out their duties.	5	31	Traders shall give every assistance to Council officers in carrying out their duties.	5
51	Trader uses equipment to produce music/sound on their pitch.	5	35	Traders shall not use or permit to be used on the licensed area or within the immediate vicinity any radio, cassette player or other equipment or apparatus to produce music or other sound except within a closed vehicle and at a reasonable volume.	4
52	The trader intentionally causes damage to the carriageway/footway or pitch left in unclean condition.	5	30	Traders must not intentionally permit stalls or accessories to cause damage to the carriageway or footway.	4
53	Refuse not placed in containers or not kept as clean as possible	5	15	The trader shall ensure that all refuse arising as a result of the activities of the trader shall be placed in suitable covered containers approved by the Council and provided by the trader, unless otherwise provided by the Council, and shall be kept exclusively for that purpose. Such refuse containers shall be kept as clean as is reasonably possible. NOTE: This condition shall not apply to licence holders at the Bayswater Road Exhibition and Green Park Exhibition unless the Council requires it in any particular case.	4

54	Refuse containers not emptied when necessary. Waste water and oil not removed by the trader.	5	16	Refuse containers shall be emptied whenever necessary into any vehicle, container or compactor provided by the Council for that purpose.	3
55	Stall not removed in event of an emergency.	5	27	Traders or their assistants shall remove the stall and goods for so long as may be necessary in the event of an emergency or in exercise of the Council's powers and duties, if reasonably required to do so by a police officer or a duly authorised officer of the Council.	5
56	Receptacle on Church Street, Berwick Street, Maida Hill, Rupert Street, Strutton Ground or Tachbrook Street Markets removed before 4pm	5	-	-	-
57	Stall and goods not removed to place of storage after trading	5	28	Stalls and goods shall be removed from the public highway to the place of storage, as stated on the application form, or such other alternative place subsequently agreed by the Council in writing, within one and a half hours of either the time prescribed on the licence for the end of trading on that day or the time trading actually ceases (unless consent has been granted for a later removal time) whichever is the earlier provided that all stalls and goods shall be removed from Rupert Street Market by 6.30pm.	5



City of Westminster

Licensing Committee

Date:	21 September 2016
Classification:	For General Release
Title:	Licensing Enforcement Briefing Report
Report of:	Director of Public Protection and Licensing
Wards Involved:	All
Policy Context:	Licensing Act 2003
Financial Summary:	There are no financial implications arising from the proposals in this report
Report Author and Contact Details:	Andrew Ralph Head of Service, West End and City Operations – Public Protection and Licensing Tel: 020 7641 2706 Email: aralph@westminster.gov.uk

1. Executive Summary

- 1.1 This report is produced to update the Members of the Licensing Committee with information on the licencing enforcement work being carried out within the City of Westminster.

2. Recommendations

- 2.1 The Committee is asked to note the report.

3. Background

- 3.1 Licensing enforcement work is the responsibility of City Inspectors within the West End and City Operations team, which is part of the Public Protection and Licensing Department. The new role of City Inspector, and the West End and City Operations team, began on 01 April 2015 following the City Management Transformation. The West End and City Operations City Inspectors took on the responsibilities previously carried out by the Premises Licensing Inspectorate and the Street Management Team. The City Inspectors within the Residential Services team also provide support to the West End and City

Operations team.

- 3.2 The City Inspectors provide the monitoring and enforcement of the provisions contained in the Licensing Act 2003. This includes a programmed inspection regime, dealing with unlicensed activity, taking a problem solving approach to prominent premises, and responding to complaints from the public.
- 3.3 As well as being responsible for the enforcement of the provisions contained in the Licensing Act 2003, City Inspectors also have primary responsibility for carrying out the enforcement provisions of the following legislation relating to licensing:
 - City of Westminster Act 1999 (Tables and Chairs)
 - Gambling Act 2005
 - Health Act 2006 (smoke-free regulations)
 - Local Government (Miscellaneous Provisions) Act as amended 1982 (The Control of Sex Establishments)
 - London Local Authorities Act 1991 (Special Treatment Premises)
 - Scrap Metal Dealers Act 2013
- 3.4 There are 43 City Inspectors within West End and City Operations, split into five teams providing a 24/7 service across all wards in the City. In addition, there are 19 City Inspectors in Residential Services. As well as having licensing responsibilities, the City Inspectors play an important role in tackling anti-social behaviour, investigating environmental offences, and addressing street based issues.

4. Joint Working (Tasking)

- 4.1 Premises come to the attention of City Inspectors through a variety of different methods, including proactive inspections of high risk premises, complaints from the public, self-generated visits, and referrals from other agencies. Premises that are found to be problematic and require the involvement of more than one agency to find a resolution are brought to a weekly joint tasking meeting where the City Inspectors, Environmental Health, Licensing Service, Police Licensing, and London Fire consider what information each agency holds on the premises and how best to deal with them.
- 4.2 Joint tasking also considers the actions and interventions made by the police and the council each week in order to identify any trends or premises that are of interest to both the council and the police
- 4.3 Each month a report is produced for the joint tasking that highlights the crime reports at licensed premises across Westminster. The data analyst that produces this report is also working with the Business Intelligence Team to see what other information is held in council databases that could be incorporated into the monthly report and provide further insight into premises operating within Westminster.

5. Enforcement

- 5.1 As with all forms of enforcement undertaken by the City Council it is governed by an enforcement policy, which outlines how officers will approach enforcement in a consistent, fair and open way. We continue to use a Licensing Enforcement Protocol with the police, see Appendix 1. The City Councils “umbrella” enforcement policy is at Appendix 2.
- 5.2 We also have to adhere to the Enforcement Concordat, the Regulators Code of Compliance and government guidance issued under various legislation documents, including the Licensing Act 2003. The Enforcement Concordat is at Appendix 3.
- 5.3 The City Inspectors make many visits to premises to encourage good business practices, including compliance with relevant legislation and the promotion of relevant licensing objectives. In situations where premises are unwilling or unable to comply with these requirements, there are two formal enforcement options available, Reviews, under the Licensing Act 2003 ('LA03') and prosecution for offences under the various other pieces of legislation we enforce.

6. Reviews under LA03

- 6.1 At any stage, following the grant of a premises licence, a Responsible Authority may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 6.2 Responsible Authorities include the Police, Environmental Health, Licensing Authority, Fire authority, and Planning.
- 6.3 City Inspectors may apply for a review of a premises licence as a responsible authority, namely the Westminster Licensing Authority.
- 6.4 Government guidance suggests that licence holders should be provided with early warning of concerns about problems identified at the premises, and this is consistent with the Enforcement policy. If officers identify issues with licensed premises they will initially work with premises in order to help them promote the licensing objectives. However, if the premises fail to achieve a resolution to the problem identified then it may result in a review.
- 6.5 Since 01 April 2015 there have been 11 applications for review submitted to the Licensing Authority under the Licensing Act 2003. A further 2 applications for review were submitted to the Licensing Authority under the Gambling Act

2005.

6.6 The applications for review were submitted in relation to the prevention of crime and disorder, prevention of public nuisance, and public safety. The review applications that have been determined have resulted in the following outcomes:

- a) Revocation of the licence (x 4)
- b) Modification of the premises licence to reduce the hours (x 1)
- c) Modification of the premises licence by adding new conditions (x 6)

6.7 Other outcomes that can be considered by the Licensing Authority when determining a review application include removing the designated premises supervisor, excluding a licensable activity, and suspending the licence for a period not exceeding three months.

7. Prosecutions

7.1 City Inspectors can prosecute for offences under the LA03. Although there are a number of potential offences, the outcome of previous prosecutions can mean they are not much of a deterrent. As one of the outcomes of a review application is the revocation of licence, the review process is considered to be a much better way of encouraging problematic premises to comply with relevant conditions and promote the licensing objectives.

7.2 In some cases it may be appropriate for a responsible authority to apply for a review at the same time as taking a prosecution. Such decisions are made on a case by case basis e.g. prosecutions have been undertaken under LA03 where shops have sold to alcohol to children in addition to calling a review.

7.3 The designated premises supervisor for 7 Seas Grocery Store, 332 Kilburn Lane, W9, was prosecuted by City Inspectors under Section 136 of the Licensing Act for persistently selling alcohol outside permitted hours. He was fined a total of £2500 (£500 for each offence). He was also ordered to pay costs of £2933 and a victim surcharge of £50. The City Inspectors also applied for a review of the premises licence, which resulted in revocation of the licence. The full set of documents can be found on the Licensing Register at: <http://idoxpa.westminster.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

7.4 City Inspectors have taken forward more prosecutions under other legislation, most notably the Health Act 2006. Since 01 April 2015 City Inspectors have brought the following prosecutions for offences under the Health Act (failure to prevent smoking) including:

Palms Palace, 84 Edgware Rd W2	£1200 Fine & £1378.67 Costs
Al Deewan, 11 Sale Place W2	£1000 Fine & £1989 Costs

7.5 Due to the ongoing offences at Al Deewan, 11 Sale Place, the City Inspectors

also applied for a review of the premises licence in relation to crime and disorder and public safety. This resulted in revocation of the licence. The full set of documents can be found on the Licensing Register at:

<http://idoxpa.westminster.gov.uk/online-applications/advancedSearchResults.do?action=firstPage>



LICENSING ENFORCEMENT PROTOCOL

LICENSING ACT 2003

BETWEEN:

1. The Licensing Authority for the Westminster City Council
2. The Metropolitan Police

Introduction

This protocol has been established in furtherance of the Government's recommendation contained in Guidance issued by the Department of Culture, Media and Sport under section 182 of the Licensing Act 2003.

The terms of this protocol are not intended to be restrictive or binding and it is recognised that departure from its terms may be appropriate and necessary in the individual circumstances.

This protocol will be subject to continuous review.

The Act integrated six separate licensing regimes into a single system. The new regime deals with the sale or supply of alcohol, provision of regulated entertainment and the provision of late night refreshment.

The Act requires the promotion of four statutory objectives, which must be addressed when licensing functions are undertaken. These are —

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance; and
- The protection of children from harm

Each objective is of equal importance.

Government guidance promotes delivery of the objectives by working in partnership between licensing authorities, the police, the fire authority, Crime and Disorder

Reduction Partnerships, town centre managers, local business, performers and their representatives, local people, local transport authorities, transport operators and those involved in child protection.

Purpose and aims

The purpose of this Protocol is to clarify the roles and responsibilities of the signatory services in enforcing the provisions of the Act.

The principle aims of the protocol are to:

- promote the Licensing Objectives
- promote partnership working
- clarify the lines of responsibility
- clarify the procedure for calling for reviews of licences

Sharing Information

Information will be shared in accordance with the existing Data Sharing Protocol, to which the signatories to this protocol are a party.

Licensing Tasking Meeting

A weekly licensing tasking meeting will be held to identify issues associated with premises contravening one or more of the licensing objectives and/or contravening licence conditions and to agree upon the most effective enforcement.

Joint inspections will be undertaken whenever an objective reason for such an inspection is identified at the licensing tasking meeting.

Inspections

Government guidance states that, “the police remain key enforcers of licensing law”. The signatories to this Protocol support this view.

The Act does not require inspections to be undertaken, though government guidance suggests that a light touch should be applied to compliant premises and that resources should be targeted towards problem premises. Therefore, routine inspections will not be undertaken, save as part of targeted project work.

City Inspectors – West End and City Operations

Following the issue of a ‘Premises Licence’ by the Licensing Service, a ‘desktop’ risk rating exercise will be undertaken by the West End and City Operations team (Public Protection and Licensing department) to identify licensed premises which are at a higher risk of not promoting the licensing objectives. Higher risk premises will be inspected for the purpose of ensuring operation in accordance with the licence conditions and to provide advice, assistance and guidance to the management of these premises so that they may promote the licensing objectives.

There are four categories, which will be used to determine the level of risk for each licensed premises and the risk level will determine the need for a licensing inspection.

The four 'desktop risk factors are -

- a) the primary use to which the premises will be used;
- b) the overall permitted capacity;
- c) the terminal hour, and
- d) whether the premises is located within a stress area

Following the licensing inspection an assessment will be made taking into account following additional factors namely -

- e) compliance with the licence conditions;
- f) promotion of the licensing objectives, and
- g) confidence in the management of the premises

The outcome will determine the length of time or frequency of future inspection of the premises.

In addition to the 'risk rated' inspections outlined above, premises will also receive licensing visits as a result of information / intelligence provided by other responsible authorities or by way of complaints received from other interested parties with regard to non-compliance with a licence condition or one or more of the four licensing objectives. These 'reactive' visits are intended to quickly resolve the issues of concern in co-operation with the management of the premises and, at the same time, provide long-term solutions designed to prevent re-occurrence in the future.

Environmental Health Consultation Team

The Environmental Health Consultation Team is the Responsible Authority for the Environmental Health Service under the Licensing Act.

Any applications for a new premises licence or variation to a premises licence will be assessed to ensure the licensing objectives are promoted, as well as assessing applications in line with the Council's Licensing Policy. This will normally result in a visit to the premises to assess the general arrangements of the premises and suitability for the proposed licensable activities. Regard will be had to the location of the premises in relation to stress areas, residential properties, or other noise sensitive buildings.

The Environmental Health Consultation Team may carry out reviews of premises licenses where evidence has been obtained that the licensing objectives have been breached.

Westminster Police Licensing Team

The primary role of the Police Licensing team is to ensure that premises within Westminster are properly managed. Where serious criminal offences are committed

the team will investigate the circumstances surrounding the offence to ensure that the licensing objectives and any conditions on the premises license are being adhered to. This investigation will commence within 48 hours of the offence coming to the attention of the officers on the Police Licensing team. The Police Licensing team will also undertake to investigate the impact on the licensing objectives of any criminal offence which takes place within licensed premises in Westminster. These investigations may take longer to implement and should be discussed at the tasking meeting unless this would, in the opinion of the officer involved, be unnecessary or inappropriate.

The secondary role of the unit is to facilitate the work of the other enforcement agencies, where appropriate. This will involve joint visits and the use of Police powers to facilitate the investigations of other partner agencies.

Prosecution

Section 186 of the Act provides that proceedings for offences under the Act may be instituted by:

- the Licensing Authority
- the Director of Public Prosecutions
- Trading Standards (for offences under Sections 146 and 147)

The signatories to this Protocol will, wherever reasonably practicable, make their officers available to give evidence on behalf of the relevant prosecuting authority.

Prosecution action will be considered in line with the Code for Crown Prosecutors. In addition, enforcement action and prosecutions by Westminster City Council will be undertaken in line with its Corporate Enforcement Policy and the Enforcement Concordat.

A list of the offences under the Licensing Act 2003 and the authorities that can take prosecution action is attached as Appendix 1A.

A copy of the Corporate Enforcement Policy is attached as Appendix 2.

A copy of the Enforcement Concordat is attached as Appendix 3.

Prosecutions Instituted by the DPP

Prosecutions undertaken by the Police are at the behest of the Director of Public Prosecutions (DPP) under s 186 of the Act.

Reviews

At any stage, following the grant of a premises licence, a Responsible Authority may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the

magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.

The following are Responsible Authorities —

- the licensing authority
- the police
- the fire authority
- the health and safety authority
- the environmental health authority
- the planning authority
- the social services authority (child protection committee)
- Trading Standards

Government guidance suggests that licence holders should be provided with early warning of concerns about problems identified at premises. Save in exceptional circumstances early warning will be given before those parties who are a signatory to this Protocol request a review.

In some cases it may be appropriate for a responsible authority to apply for a review at the same time as taking formal enforcement action. Such a decision will be made on a case by case basis.

A local resident, residents' association, and local business or trade association may also make a request to the Local Authority, for a review. Upon receipt of such a request the Council will notify the Metropolitan Police.

Temporary Event Notices

The police and Environmental Health may serve an objection notice to a temporary event notice, where they are of the opinion that any of the 4 licensing objectives would be undermined.

The supervision of TEN's falls jointly on Police and the Local Authority to ensure compliance with the legislation.

Underage Sales

Test purchases of alcohol by children will be undertaken with due regard to the Guidance issued by LACORS and endorsed by The Home Office.

Signed

Date.....

[NAME]

Licensing Authority

Signed

Date.....

[NAME]

Appendix 1A - A list of the offences under the Act and the authorities that can take prosecution action

Key:

LA = Licensing Authority

CPC = Club Premises Certificate

DPS = Designated Premises Supervisor

PLH = Premises Licence Holder

AO = Authorised Officer

Section	Offence	Authority
33 (6)	Failure to notify LA of change of name or address PLH or DPS	LA
40 (2)	Failure to notify existing DPS of variation to premises licence to exclude them	LA
41(5)	Failure to provide premises licence to LA upon removal of DPS	LA
46 (4)	Failure to notify DPS of application for transfer of premises licence	LA
49 (5)	Failure to notify DPS of grant of interim authority notice	LA
56 (3)	Failure to provide premises licence at request of LA for amendment	LA
57 (4)	Failure to keep or display premises licence on premises	LA
57 (7)	Failure to produce premises licence to an AO for examination	LA
59 (5)	Obstruction of an AO entering premises to inspect before grant of a licence, review or a statement	LA
82 (6)	Failure to notify of change of name or alteration of rules of a club	LA
83 (6)	Failure to notify of a change of registered address of club	LA
93 (3)	Failure to produce CPC for amendment within 14 days of LA request	LA:
94 (5, 6, 9)	Duty to keep, display and produce club premises certificate at premises	Police or LA
96 (6)	Inspection of premises before grant etc of club premises certificate	LA
108 (3)	Obstruction of an AO in inspecting temporary event premises	LA or Police
109 (4)	Failure to keep or display temporary event notice on premises	Police or LA

109 (8)	Failure to produce temporary event notice to an AO	Police or LA
123 (2)	Failure to notify LA of conviction for relevant offence during application or renewal period	LA
127 (4)	Failure to notify LA of change of name or address of personal licence holder	LA
128 (6)	Fail to notify court of personal licence or “notifiable event” when being dealt with for a relevant offence	Police or LA
132 (4)	Failure to notify LA of conviction for relevant or foreign offence	LA
134 (5)	Failure to produce personal licence within 14 days to LA for updating	LA
135 (4)	Failure to produce personal licence to an AO whilst on premises to sell or authorise sale of alcohol	LA or Police
136 (1)	Allowing licensable activities otherwise than in accordance with an authorisation	LA or Police
137 (1)	Unauthorised exposure for retail sale of alcohol	LA or Police
138 (1)	Unauthorised possession of alcohol with intent to sell or supply	LA or Police
140 (1)	Allowing disorderly conduct on licensed premises	Police or LA
141 (1)	Sale or supply of alcohol to person who is drunk	Police or LA
142 (1)	Obtaining alcohol for a person who is drunk	Police or LA
143 (1)	Failure to leave licensed premises following a request from a PC or AO	Police
144 (1)	Keeping unlawfully imported goods on relevant premises	Police or Customs and Excise
145 (1)	Allowing unaccompanied children under 16 on relevant premises when alcohol is being supplied	LA or Police
146 (1, 2, 3)	Sale or supply of alcohol to children under 18	Trading Standards, LA or Police
147 (1, 3)	Allowing sale or supply of alcohol to children under 18	Trading Standards, LA or Police
147A (1)*	Persistently selling alcohol to children under 18	Trading Standards, LA or Police
148 (1, 2)	Sale or supply of liqueur confectionery to children under 16	LA or Police
149(1,3,4)	Purchase or supply of alcohol by or on behalf of children under 18	LA or Police

150 (1, 2)	Consumption on relevant premises of alcohol by children under 18,~ or knowingly allowing it to occur	LA or Police
151 (1, 2,4)	Delivering or permitting others to deliver alcohol to children under 18	LA or Police
152 (1)	Sending a child under 18 to obtain alcohol for consumption	LA or Police
153 (1)	Permitting children under 18 to sell or supply alcohol children	LA or Police
156 (1)	Sale of alcohol in or from a moving vehicle	Police
158 (1)	False statement in connection with a licensing application	LA
160 (4)	Keeping premises open in contravention of an area closure order	Police or LA
161 (6)	Permitting premises to be open in contravention of a premises closure order	Police or LA
165 (7)	Permitting premises to be open in contravention of a Magistrates' closure order	Police or LA
179 (4)	Obstructing entry by a PC or an AO to premises to check on the carrying out of licensable activity	Relevant responsible authority

Appendix 2

ENFORCEMENT POLICY

Introduction

Local Councils enforce legislation to protect the individual and the community as a whole. Council Enforcement Services carry out a range of activities with the aim of achieving this and to achieve compliance with legislation by individuals and businesses. The purpose of this policy is to publicly summarise the Council's enforcement policies adopted to seek such compliance. It is ultimately the responsibility of individuals and businesses to comply with the law.

The policy is an "Umbrella" policy intended to apply to all service areas, though it should be noted that various additional service-specific requirements apply to specific enforcement activities in certain services, i.e. health & safety, food safety, trading standards.

Detailed service-specific policies and procedures, where needed, are held, updated, audited and reviewed by the service departments. Information on these may be obtained from the Director's office of the relevant department.

Council aims and objectives

Westminster City Council has set out its strategic aims and objectives and the enforcement services of the Council carry out their duties in support of these aims. The specific aims and objectives that relate to enforcement services are found in:

- Council and Cabinet Policy and Strategy decisions
- The City Plan, that reflects the partnership approach and activities to improve quality of life and wellbeing in Westminster
- Relevant Council initiatives that apply from time to time, e.g. at the present time the City Council is pursuing the Civic Renewal Programme, which is currently up-dated each year in the Leader's Speech.
- The Departmental Service Plans, which reflect the above priorities and the core enforcement activities of the services.

Council aims and objectives have been drawn up in consultation with the public. Details of the consultation is available from the Policy and Communications Department and on the City Council's website www.westminster.gov.uk

Compliance

A range of activity is used to ensure compliance with legislation. Enforcement services carry out inspections of premises on a routine, programmed basis and as a response to complaints and enquiries from the public about businesses and individuals. They also carry out education and intelligence-based activities. Some

enforcement services have officers patrolling the streets. Where non-compliance is discovered, options to seek/promote compliance include:

- Explaining legal requirements and, where appropriate, the means to achieve compliance
- Providing an opportunity to discuss points in issue where appropriate
- consideration of reasonable timescales to achieve compliance
- Service of advisory letters, warnings, statutory notices or prohibitions detailing non-compliance
- Enforcement actions including, but not limited to, seizure of documents or goods, closure of premises, caution, prosecution or injunction.

Enforcement actions

The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies which may be relevant. The action taken, which may be immediate, will be proportionate to the gravity of the non-compliance. Factors that will be taken into consideration include, but are not limited to:

- The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals
- Evidence that suggests that there was pre-meditation in the commission of an offence
- The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice or order
- There is a history of previous warnings/cautions, or the commission of similar offences
- Aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public
- The offence, although not serious itself, is widespread in the area where it is committed
- There has been reckless disregard of health and safety requirements
- False information has been supplied wilfully, or there has been an intent to deceive

Legal and Policy context

Enforcement actions are taken within the context of a legal and policy framework. Council enforcement services will carry out their enforcement-related work with due regard to the Enforcement Concordat. This Concordat arises from a central government initiative and was adopted by the City Council in December 1998. The Concordat lays out the principles of good enforcement. These are:

- Publishing clear standards, setting out the level of service and performance that the public and businesses can expect to receive
- Dealing with the public and the business in an open and honest way
- Providing a courteous, efficient and helpful service
- Responding promptly and positively to complaints about the service
- Ensuring that enforcement action is proportionate to the risks to the public
- Carrying out duties in a fair, equitable and consistent manner

A full version of the Enforcement Concordat is available by visiting the Cabinet Office Web site at <http://www.cabinetoffice.gov.uk/reputation/Dstlenforce/index.asp>.

Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details considerations to be taken into account before commencing prosecution proceedings. A full copy of the code is available from

The Crown Prosecution Service London
50 Ludgate Hill
London EC4M 7EX
Tel: 020 7796 8000
Web: <http://www.cps.gov.uk/Home/CodeForCrownProsecutors>

Enforcement decisions and actions will be made with due regard to the provisions of:

- The Human Rights Act
- The Crime and Disorder Act
- Equal rights and anti-discrimination legislation
- Service specific legislation
- All other relevant legislation applicable from time to time

If it is in the public interest, matters concerning non-compliance may be shared, where appropriate, with other enforcement agencies. Any such action will be undertaken in compliance with the Data Protection Act 1998.

Authorisation of Officers

Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of this enforcement policy to ensure a consistent approach to their duties. Officers are required to show their authorisations on demand.

Status and Review

This policy was endorsed and adopted by the City Council's Cabinet on 17th March 2008.

Complaints concerning the application of this enforcement policy are dealt with in accordance with the Council's customer complaints procedure.

Appendix 3

ENFORCEMENT CONCORDAT

The Principles of Good Enforcement:

Policy and Procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits us to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. We are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice and safety.

We have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat we commit ourselves to the following policies and procedures, which contribute to best value, and will provide information to show that we are observing them.

Principles of Good Enforcement: Policy

STANDARDS

In consultation with business and other relevant interested parties, including technical experts where appropriate, we will draw up clear standards setting out the level of service and performance the public and businesses can expect to receive. We will publish these standards and our annual performance against them. The standards will be available to businesses and others who are regulated.

OPENNESS

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary

organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

HELPFULNESS

We believe that prevention is better than cure and that our role therefore involves actively working with business, especially small and medium sized businesses, to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

COMPLAINTS ABOUT SERVICE

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained with details of the process and the likely time-scales involved.

PROPORTIONALITY

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

CONSISTENCY

We will carry out our duties in a fair, equitable and consistent manner. While inspectors exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on (LACOTS) and the Local Authority National Type Approval Confederation (LANTAC).

PRINCIPLES OF GOOD ENFORCEMENT: PROCEDURES

Advice from an officer will be put clearly and simply. and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale and making sure that legal requirements are distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide circumstances of the points of difference, unless immediate action is required (for example, in the interests of health and safety or prevent evidence being destroyed).

Where immediate action is considered necessary, an explanation of why such action will be given at the time and confirmed in writing in most cases within 5 working days and, in all cases, within 10 working days.

Where there are on rights of appeal against formal action, advice the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

If you have any queries about this report, please contact Andrew Ralph on 0207 641 2706, email address aralph@westminster.gov.uk



City of Westminster

Licensing

Item No:	6
Date:	21 September 2016
Classification:	For General Release
Title of Report:	Licensing Appeals
Report of:	Director of Law
Wards involved:	Not applicable
Policy context:	A business like approach
Financial summary:	None
Report Author:	Hayley Davies, Legal Services
Contact details	Tel: 020 7641 5984 Email: hdavies@westminster.gov.uk

1. Summary

1.1 This report provides a summary of recent appeal results.

2. Recommendation

2.1 That the report be noted.

3. Background

3.1 To date, 466 appeals have been heard / settled / withdrawn:

- 16 allowed
- 13 allowed only in part
- 56 dismissed
- 216 withdrawn
- 165 settled

4. Licensing Act 2003 Appeals

4.1 Press, 32-34 Panton Street, London

By application dated 4 June 2015, the Metropolitan Police Service applied for an Summary Review of the premises licence of Press Nightclub, 32-34 Panton Street, SW1.

The application was made on the grounds of the prevention of crime and disorder, public safety and the prevention of public nuisance. The review followed an incident within and outside of the premises on Sunday 31st May 2015 at approximately 02.35am, when a large scale disorder took place inside Press Nightclub. Several people were seriously assaulted and one male was stabbed in the neck. Numerous weapons were used during the incident including bottles, metal poles and tables. The disorder took place throughout the entire premises, with persons chased and attacked in staff areas. The disorder lasted approximately 10 minutes inside the venue before it spilled out onto the streets. 20-30 persons continued to fight outside the premises.

A Licensing Sub-Committee was held on 8 June 2015 to consider whether it was necessary to impose any interim steps pending the hearing of the full Review. Having watched the CCTV and considered the papers before it, as well as hearing representations from the Police and the licence holder, the Licensing Sub-Committee decided that it was necessary to suspend the primary premises licence due to the seriousness of the incident on 31 May 2015.

The full hearing of the Review was held on 29 June 2015. The Licensing Sub-Committee again heard submissions from the Police and Licensee with regards the operation of the premises and the incident on 31 May 2015. Mr Rankin on behalf of the Police advised that the licensee had denied that the stabbing had taken place inside the premises. The victim had suggested it had taken place outside and had not wished to take matters further. Mr Rankin added that the victim was known to the son of the licensee (who was also present at the time of the incident) and it may have been convenient for both parties to claim the stabbing had occurred outside. He added that the police were 99% certain that the stabbing took place within the premises. The Sub-Committee were of the view that there was a wholesale failure to manage the licensed premises and the proposals submitted on behalf of the licensee were not considered to be sufficient in the circumstances. The Sub-Committee therefore considered it was clearly appropriate to revoke the premises licence.

Notice of appeal was lodged by the Appellant's on 17 July 2015. The full hearing of the appeal is scheduled to commence on 12 January 2016 and continue on 13, 14, 15, 19 and 20 January 2016. Evidence and Rebuttal was exchanged in preparation for the full hearing with the Appellant proceeding on the basis that the decision of the Licensing Sub-Committee was correct, but that a new operator was proposed who would run the premises in a competent manner. In late November 2015, the Appellant advised of the withdrawal of their appeal as '*...it became apparent over the past few weeks from around the end of October that the appellant is insolvent.*'

A costs hearing was held on 9 February 2016 where the Court ordered that the Appellant, Paper Club London Limited, pay £39,746.20 to the City Council. The District Judge also agreed to list the matter for a further Case Management Hearing in May to enable the City Council to go back to Court if the costs are not paid. It is intended to seek costs against individual Directors who knew that the Appellant was insolvent and yet pursued with the appeal proceedings nevertheless.

4.2 Chutney Mary, 72-73 St James's Street, London, SW1

The matter concerns an application by an Indian restaurant in St James known as Chutney Mary. The premises applied to vary their licence so as to permit the sale of alcohol until 20.00 without food on the premises. The proposed variation concerned condition 19 on the premises which provides that:

Alcohol may be supplied to customers without food provided that:

- a) Such supply shall only be to persons seated and served by waiter / waitress service
- b) Such supply shall cease at 20.00
- c) Such supply shall be limited to 30 customers to be seated in the area hatched black and shown on plan number 3346/LIC2.22

The availability of alcohol without food shall not be promoted or advertised otherwise than on menus and price lists within the premises.

Relevant representations were received from Environmental Health, 11 local residents and the St James' Conservation Trust. Environmental Health and one of the residents, Mr Turner, were present at the Licensing Sub-Committee hearing and made oral representations.

The main issue in the appeal will be whether this restaurant should be permitted to operate a bar area where customers are permitted to purchase alcohol without food until 20.00 hours. Having considered the papers and heard representations, the Licensing Sub-Committee decided that that it did not have confidence in the operator upholding the licence objectives and complying with licence conditions, in view of admitted breaches in licence conditions in the past, and credible evidence from residents of noise and odour nuisance in the past. The Licensing Sub-Committee therefore refused the variation application. Notice of appeal was lodged by MW Eat Ltd against the decision of the Sub-Committee. A date for the full hearing has not yet been set.

5. JUDICIAL REVIEWS / CASE STATED

5.1 Sex Establishment Licensing - Fees

The challenge took the form of a judicial review brought by Mr Timothy Hemming, trading as Simply Pleasure Ltd, and six other long standing licensees of sex establishments in Westminster, challenging the legality of the fee charged by the City Council for a sex establishment licence in 2011/12 (£29,102). The claim was made on two grounds. Firstly it was said that the Council had never lawfully set a fee for 2011/12. Secondly it was said that the amount of the fee was unlawful because it contained an element reflecting the cost of enforcing the sex establishment licensing regime.

The case was heard in the High Court over two days in March, both sides being represented by Leading Counsel. The Court gave judgment on 16 May, upholding the claim on both grounds.

An application for permission to appeal on the Services Directive issue, and costs, was filed with the Court of Appeal, following refusal of permission by the High Court. The Court of Appeal granted permission to appeal and the matter was heard on 14 January 2013.

Following the hearing, the parties were invited by the Court to make further written submissions on several issues, including whether it would be appropriate for the Court to refer the case to the European Court of Justice. Both parties made further written submissions

The Court handed down judgment on 24 May. The City Council's appeal on both the Services Directive issue and on costs was dismissed. An appeal on a third point, relating to the way in which fees for past years should be calculated, was allowed. The Council was ordered to pay 90% of the claimants costs of the appeal, and the claimants were ordered to pay 10% of the Council's costs. The Council's application for permission to appeal to the Supreme Court was refused.

An application was lodged to the Supreme Court itself for permission to appeal. Submissions in support of the Council's application for permission to appeal were filed by the Architects Registration Board, the Bar Standards Board, the Solicitors Regulation Authority, the Law Society, the Farriers Registration Council, the Care Quality Commission and the General Council of the Bar. An Order was received from the Supreme Court granting permission to Appeal. Applications to intervene were submitted on behalf of the Bar Council, the Law Society, the Architects Registration Board, the Solicitors Regulation Authority, the Bar Standards Board, the Care Quality Commission and the Farriers Registration Council. A conference with Counsel was held to discuss procedural issues and how best to deal with intervenors. The LGA had been invited, and attended, the conference part way through to discuss the possible role of the LGA. It was agreed that WCC would instruct a Licensing Counsel to assist those already instructed to deal with any licensing issues and research regimes that may be impacted.

The LGA subsequently advised us that they have been advised by Counsel to apply to intervene by making written submissions.

A date for the hearing in the Supreme Court was set for 13 January 2015.

The case was heard in Supreme Court on 13 January 2015 before Lord Justices Neuberger, Clarke, Toulson, Reed and Mance. The parties are the City Council as appellant, Mr Hemming and the other sex shop proprietors as respondent, and the intervenors. Seven regulatory bodies and the Local Government Association were

given permission to intervene and were represented. There was also a ninth intervener at the hearing, the Treasury.

The hearing itself took place over one day. After the hearing, the Court wrote to all parties inviting further submissions on matters which, they considered, may not have been dealt with fully at the hearing because of shortness of time. These issues revolved around whether it is open to a licensing authority to charge, at application stage, a fee which is returnable if the application is unsuccessful, or whether such a fee may only be charged later, when the application is granted or at a later stage than that.

Judgment was delivered on 29 April, and, subject to one point which the Court has referred to the European Court of Justice, the City Council was successful.

The hearing on the reference to the CJEU took place on xx.xx in Luxembourg.

The issue referred by the Supreme Court related to whether making a charge “up front” to all applicants, with an element of the fee being refunded to unsuccessful applicants, was a lawful method of charging. However the Court appeared to be interested in wider issues which have not been referred and which had already been determined by the Supreme Court.

The CJEU has now published the Opinion of the Advocate General in this case. The Opinion is not the Judgment of the Court. The role of the Advocate General is to give an ‘independent opinion’ on any given case, before the judges deliberate and deliver their judgment.

However, the Opinion is not helpful to the Council. It strays into areas that are not only irrelevant to the issues that are properly before the Court, but which played absolutely no part in the proceedings before the English courts and were never raised by the Advocate General in the proceedings before the Court in Luxembourg. For example, the Advocate General opines that Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (which governs the control of sex establishments under domestic legislation) is arguably incompatible with the EU Services Directive 2006/123/EC for reasons never before mentioned in the proceedings by any party, and not suggested by the Advocate General during the proceedings in Luxembourg. The Advocate General also expresses views on the “reasonableness” of the fees charged by Westminster, also an issue entirely outwith the ambit of the matters actually before the Court.

The Advocate General’s Opinion also, in our Counsel’s view, fails to grapple properly with either of the arguments presented to the Court on behalf of Westminster on the issue that actually was before the Court. Despite that, he comes down against us on both those arguments.

However, it does not appear that the Opinion directly contradicts or undermines the reasoning of the Supreme Court which led it to conclude that fees including an element designed to recover enforcement costs may legitimately be charged to licence holders.

The procedures of the CJEU do not allow us in practice to challenge, comment upon or criticise the Advocate General’s Opinion. We will therefore have to wait and see the extent to which it influences the Court, and whether the Court will limit itself to determining the issues actually before it. We understand that it is most unlikely that the Judgment of the Court will appear before November 2016 at the earliest, and the outcome remains uncertain.

6. Legal implications

6.1 There are no legal implications for the City Council arising directly from this report.

7. Staffing implications

7.1 There are no staffing implications for the City Council arising directly from this report.

8. Business plan implications

8.1 There are no business plan implications arising from this report.

9. Ward member comments

9.1 As this report covers all wards, comments were not sought.

10. Reason for decision

10.1 The report is for noting.

If you have any queries about this report or wish to inspect any of the background papers please contact Hayley Davies on 020 7641 5984; email: hdavies@westminster.gov.uk

Background Papers

- None



City of Westminster

Briefing Note – item 7a)

To: Licensing Committee

From: Kerry Simpkin, Licensing Team Manager, Public Protection & Licensing

RE: Update on Gambling Act 2005 work

Office Location: 4th Floor, Westminster City Hall

Date: 21st September 2016

1. Introduction

- 1.1 The Licensing Authority is responsible for licensing premises for the provision of gambling facilities. The Licensing Team have been continuing its work in this area and has provided this update on that work and its progress.

2. Local Area Risk Assessments

- 2.1 Since the publication of the revised Gambling Policy in January the new requirements for Gambling Operators has come into place. From the 6th April 2016 every licensed gambling premises had to have a local area risk assessment that considered the impact that their operation may have on the local community. This requirement has been imposed by the Gambling Commission through their Operating Licence conditions and Codes of Practice.
- 2.2 The Council's Licensing Team have been actively engaging with gambling operators through this period to assist them in this process. The Licensing Team has also been proactive in providing information to operator's on local issues and risks to enable them to develop their risk assessments effectively. The risk assessment process is new and will develop over time but officers are keen to keep engaging with the gambling industry to ensure that these assessments develop to be an effective tool.

3. Development of the new Gambling Policy

- 3.1 Work has been continuing on developing a new Gambling Policy to take into account the research on gambling vulnerability that Westminster City Council commissioned jointly with Manchester City Council and the Local Government Association and the new local risk assessment requirements.

- 3.2 The data analysis process has now concluded and officers are currently drafting the new policy which will be substantially different from the current version. Officers have also met with representatives from the Casino sector to seek their views on specific issues that they have and how the Council's policy could be developed. Informal meetings with the Betting, Bingo and Amusement gambling sector representatives are planned for late September and early October.
- 3.3 Officers intend to complete the drafting process in October and put the draft version before the Cabinet Member for Public Protection later this year. Once the draft has been agreed a formal 12 week public consultation period will begin. Some of the gambling industry may be resistant to the approach that we may take so it is planned to have a number of workshops with the relevant gambling sectors during this process to ensure that we gather their views. Due to some of the proposed policy developments that may be contained within the final version of the gambling policy it will be important to enable sufficient time to consider the points of views and comments made during this process.

4. Fixed Odds Betting Terminals (FOBT's)

- 4.1 The FOBT gaming machines in betting shops continue receive attention in the press and within local government. The machines have a maximum stake of £100 which can be paid into the machines in multiples of £10. The stake can also be lost very quickly with each play lasting 20 seconds. The concerns associated with this harder form of gambling and the effects that these and other machines within that specific category¹ have on vulnerable people is ongoing. Further research has been produced relating to industry data that has shown a correlation between the accumulation of FOBT machines in an area (a cluster) and the increased number of at risk/problem gamblers. These research findings are being considered as part of the new Gambling Policy.
- 4.2 There have been two private members bills (Lord Clement-Jones and the Lord Bishop of St Alban) within the last year which have sought to either reduce the maximum stake for the FOBT machines or have sought powers for Licensing Authorities to enable them to limit the maximum stake or the number of machines permitted on betting premises. Both of these private members Bills did not move forward beyond the initial stages within Parliament.
- 4.3 However, Officers were approached by the Lord Bishop of St Albans following the submission of his Private Members Bill to seek technical advice and guidance. Following those discussions the Lord Bishop of St Albans has been given permission to submit an amendment to the Policing and Crime Bill which is currently moving through Parliament. The proposed amendment will add elements to the Gambling Act 2005 to enable Licensing Authority the power to impose conditions associated with gaming machines. The Licensing Authority is currently prohibited from adding conditions relating to the number, stake, prize or the way the machines operate.

¹ Category B gaming machines

- 4.4 The amendment would allow the Licensing Authority to add conditions to a gambling premises licence that can:
1. reduce the maximum stake for gaming machines to £10,
 2. reduce the number of gaming machines permitted on the premises
 3. require that an individual who wants to use a machine must prove their identity to the shop staff, and
 4. that the payment for the use of the gaming machine must be made in a manner set out within the condition.
- 4.5 The third and fourth element of the proposed amendment would enable a Licensing Authority to condition the licence so that a customer may not play a gaming machine unless they hold an account with the gambling operator. This would remove the anonymous play element of the current use of these machines and would enable monitoring and intervention. It would also reduce the risk associated with crime on the premises as the offender would be easily identified due to their account details and requirement to provide their proof of identity.
- 4.6 The amendment to the Policing and Crime Bill introduced by the Lord Bishop of St Albans will be debated in the Committee stage within the Lords later this month.

If there are any questions relating to this briefing note then please contact Kerry Simpkin, Licensing Team Manager on 020 7641 1840 or email ksimpkin@westminster.gov.uk

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Briefing Note - item 7b)

To: Licensing Committee

From: Kerry Simpkin, Licensing Team Manager, Public Protection & Licensing

RE: Premises Licensing Team Post Restructure Performance Review

Office Location: 4th Floor, Westminster City Hall

Date: 21st September 2016

1. Introduction

1.1 The Premises Licensing Team is responsible for considering, determining and issuing licences for over 60 licensing regimes. Public Protection and Licensing underwent a restructure in 2015. This report is a summary of the Licensing Team's performance from the commencement of the new structure for Public Protection and Licensing in April 2015 through to 15th August 2016. It compares the current performance measures that the team has introduced to the licensing Team's performance prior to the restructure.

2. Background

2.1 Prior to the restructure in 2015 the Council had two teams that predominantly dealt with premises based licensing. The LA03 Premises Licensing Team dealt with Licensing Act 2003 (LA03) applications that sought the authorisation of premises for alcohol, entertainment or late night refreshment. The General Licensing Team were responsible for all other premises related licensing regimes. The 2015 restructure proposed maintaining these two teams whilst reducing some of the staffing levels within both teams. However, following that restructure both teams were merged into one Premises Licensing Team with one Team Manager (originally the structure had two Team Managers).

2.2 The Licensing Team, following the restructure was made up of 1 Team Manager, 1 Senior Licensing Practitioner, 11 Senior Licensing Officers (originally 10 in the restructure model but the vacant second Licensing Team Managers post was deleted and a further Senior Licensing Officer post was created).

2.3 The Licensing Teams post opening, scanning of applications and correspondence was originally included in the functions that were to be carried out by the newly created Business and Performance Team. However, after the first four months it was found that it would be more efficient as an end to end process if these functions were included within the licensing Team. As a result of this a post was

moved from that team into the Licensing Team to carry out those functions for the Street Trading Team, Road Management and the Premises Licensing Team.

2.4 The financial year following the restructure was a period of change for the Licensing Team. The first two quarters of that year was a difficult period with vacancies and then training new staff. There was also a significant amount of process re-engineering as a result of the restructure and deletion of dedicated processing staff and the merger of the two teams. The final two quarters were specifically focused on issuing the backlog of licences and settling into a standard operating model in preparation for 2016/17 financial year.

3. Performance Measures

3.1 To measure performance the Licensing Team Manager implemented key indicators of performance for the team. The indicators were based on major elements of the process of considering and determining applications. These key points were the receipt, validation, processing and acknowledgement of applications, issuing licences and closing open Temporary Event Notice application records.

3.2 The new performance indicators were implemented for 2016/17 financial year. To compare performance the performance indicators have been set against the performance in 2014/15, when there are two Premises Licensing Teams prior to the restructure and 2015/16 following the restructure. The figures for 2016/17 are based on the current amounts for this financial year to date (Monday 15th August 2016).

Performance indicator 1 - Acknowledging applications

1. Applications processed and acknowledged within 2 working days of receipt

Financial Year	Total number of applications received	Percentage of applications that were processed within target	Number of applications that were processed within target
2014/15	5934	55.97%	3321
2015/16	6411	76.45%	4901
2016/17	2439	83.19%	2029

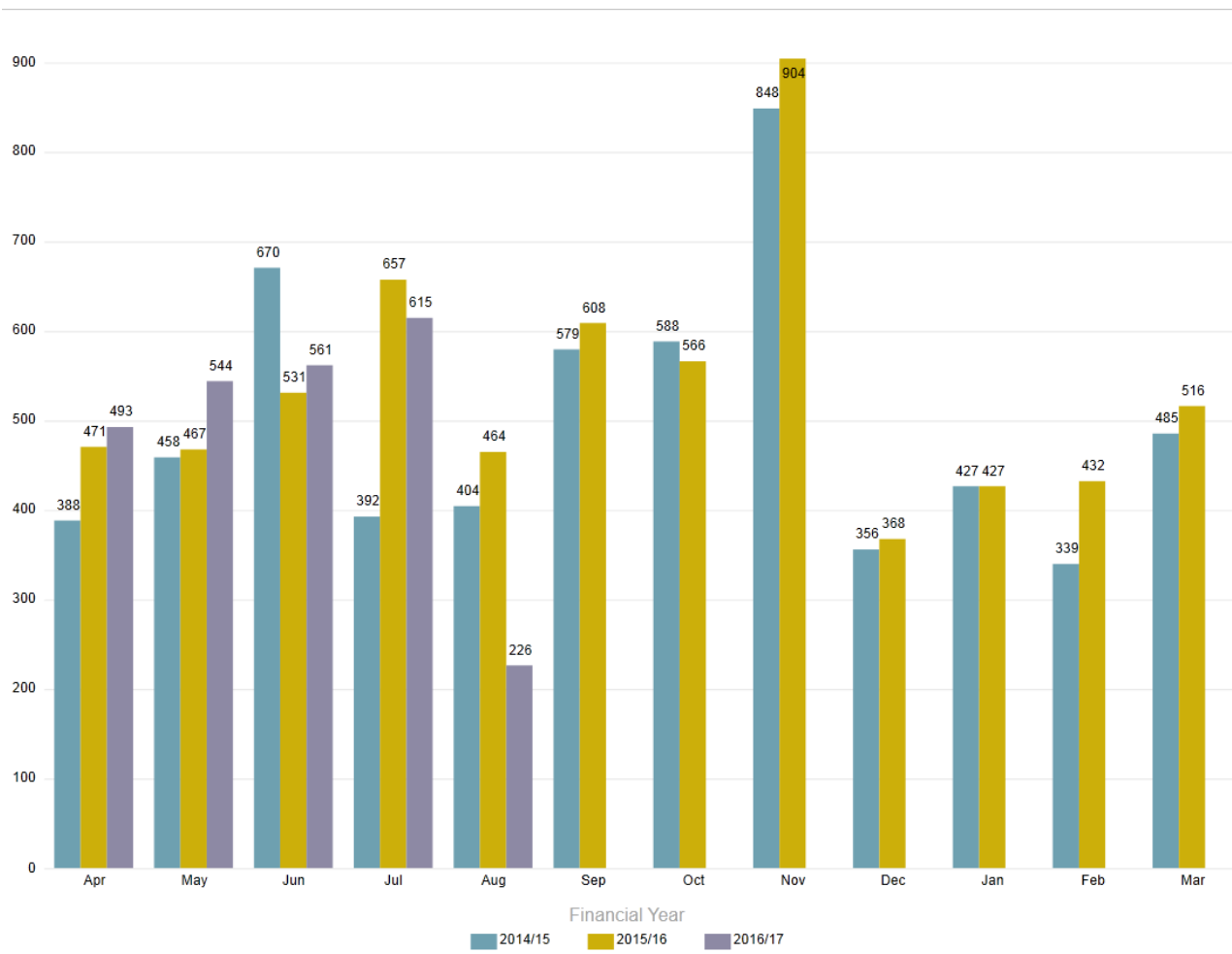


Figure 1 – Total number of applications received by month

Performance indicators 2 to 5 - Issuing licences

3.3 Following the restructure the Licensing Team had a number of Senior Licensing Officer vacancies and had a large backlog of licences that were waiting to be produced and issued. Due to these vacancies and backlog the team concentrated on considering and determining applications. That meant that the production and issuing of licences was substantially reduced. Once the team were up to full staffing there was a substantial push to issue licences and clear the 800 plus backlog of licences. This can be seen between September and December 2015 in 2015/16 compared to 2014/15 issued licences bar graph in figure 2 below.

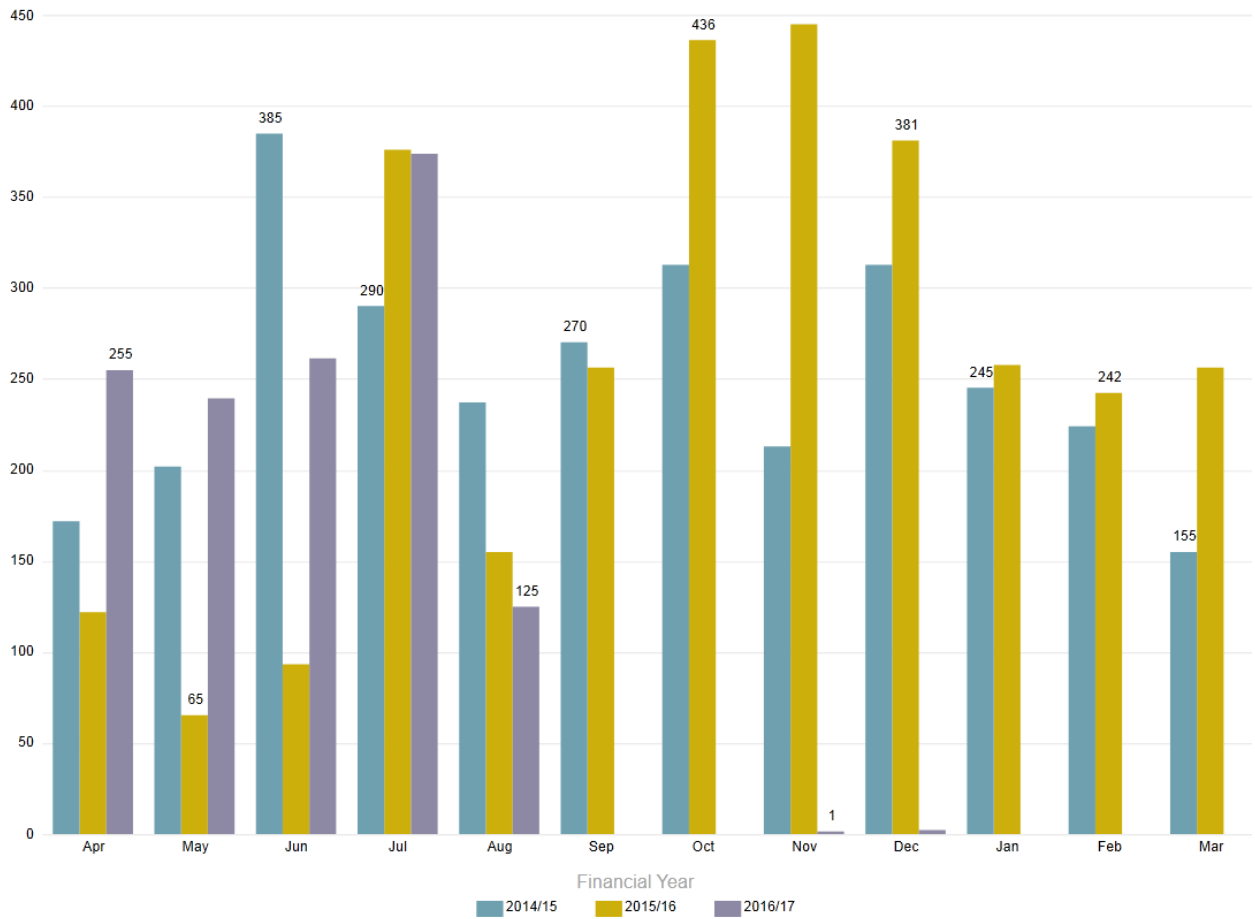


Figure 2 – Total number of issued licences per month

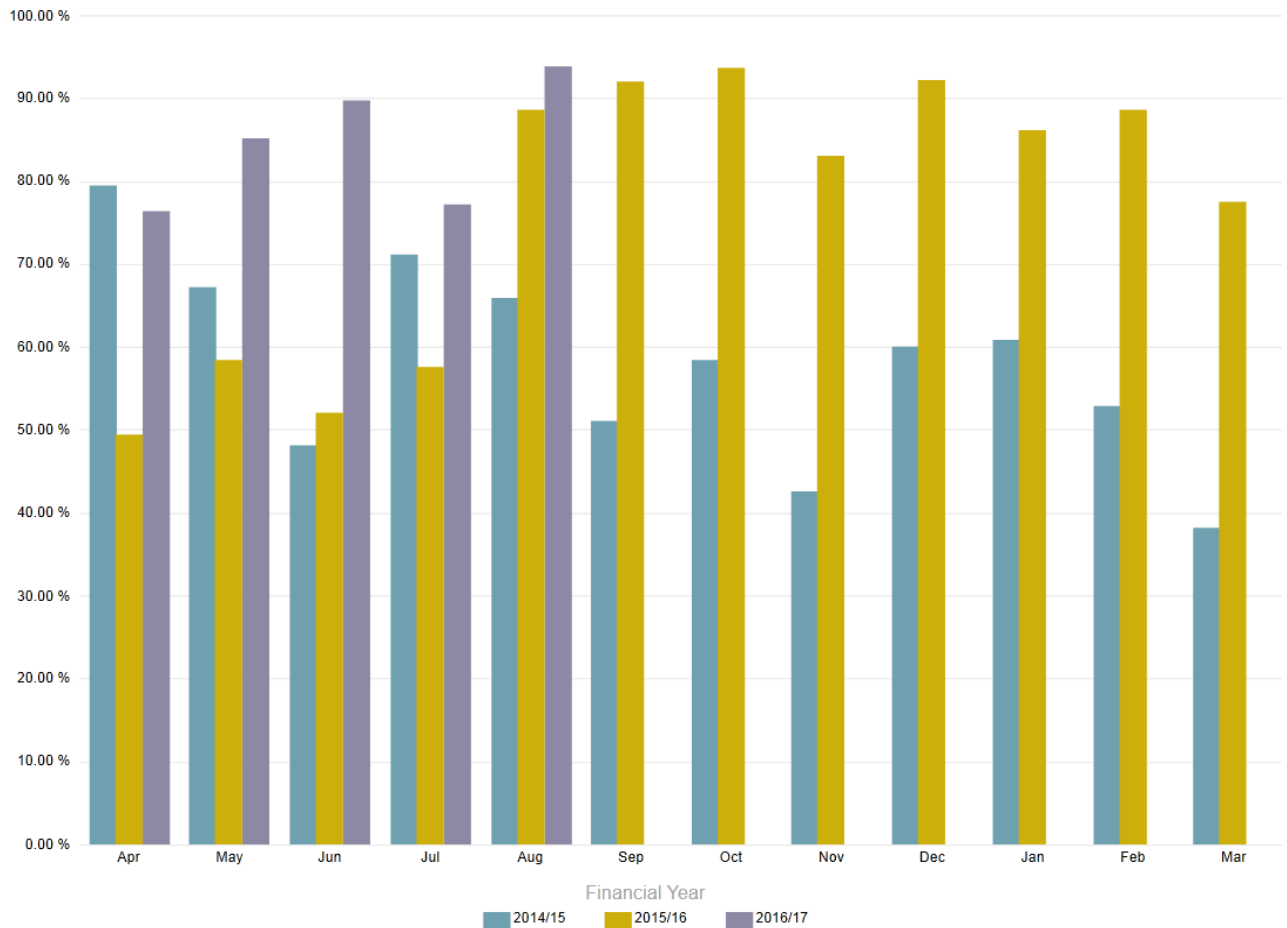


Figure 3 – Performance indicator 1 bar graph

- Issuing unopposed major applications (applications with between 21 and 28 day public consultation period) within 28 days from determination.

Financial Year	Total number of licences issued	Percentage of licences issued that met target	Number of licences issued that met target
2014/15	568	27.99%	159
2015/16	607	20.92%	127
2016/17	274	61.68%	169

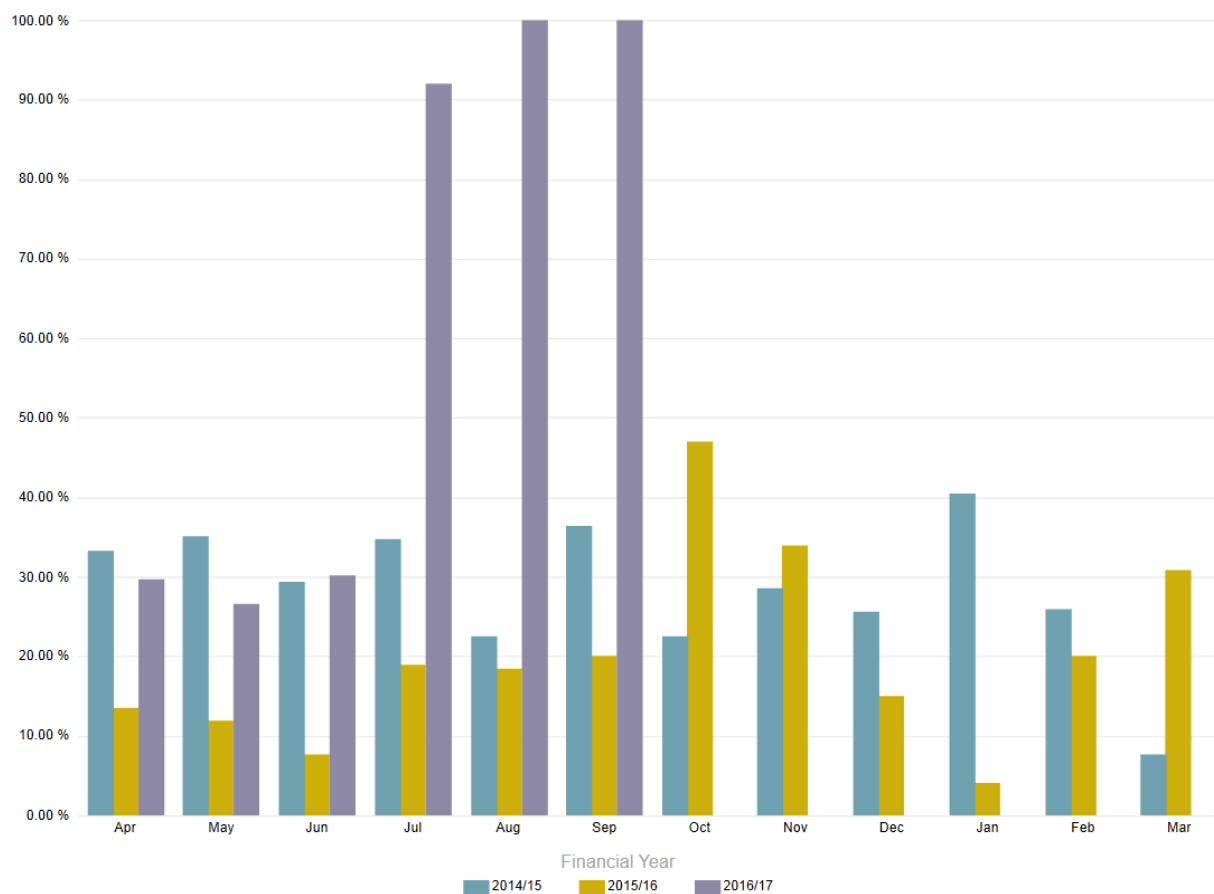


Figure 4 – Performance Indicator 2 bar graph

- Issuing unopposed minor applications (applications with a maximum of 14 day consultation period) within 14 days of determination.

Financial Year	Total number of licences issued	Percentage of licences issued that met target	Number of licences issued that met target
2014/15	1605	30.59%	491
2015/16	1414	21.85%	309
2016/17	688	61.19%	421

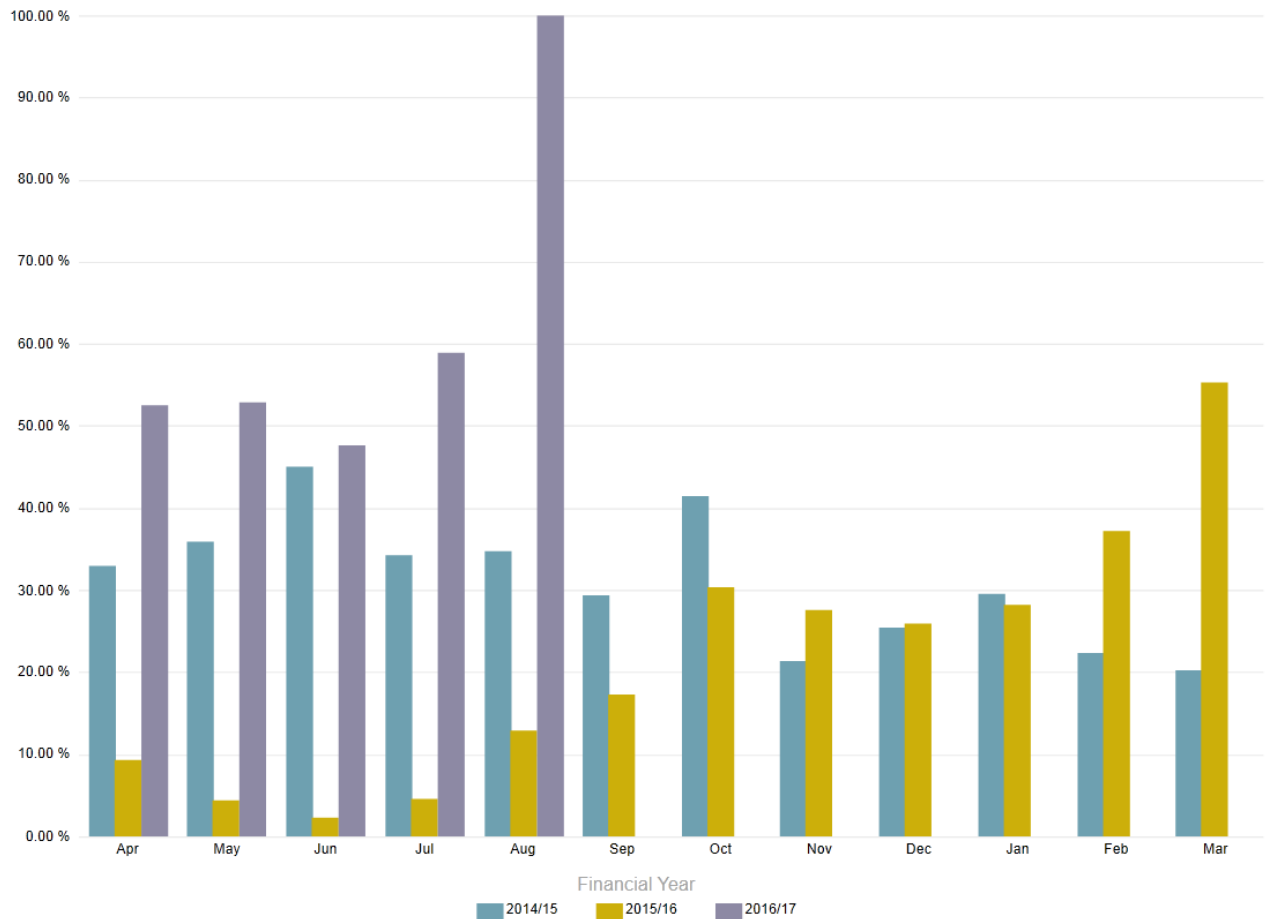


Figure 5 – Performance indicator 3 bar graph

4. Issuing administrative changes to licences within 7 days from determination.

Financial Year	Total number of licences issued	Percentage of licences issued that met target	Number of licences issued that met target
2014/15	Previously not recorded		
2015/16	709	68.83%	488
2016/17	381	86.61%	330

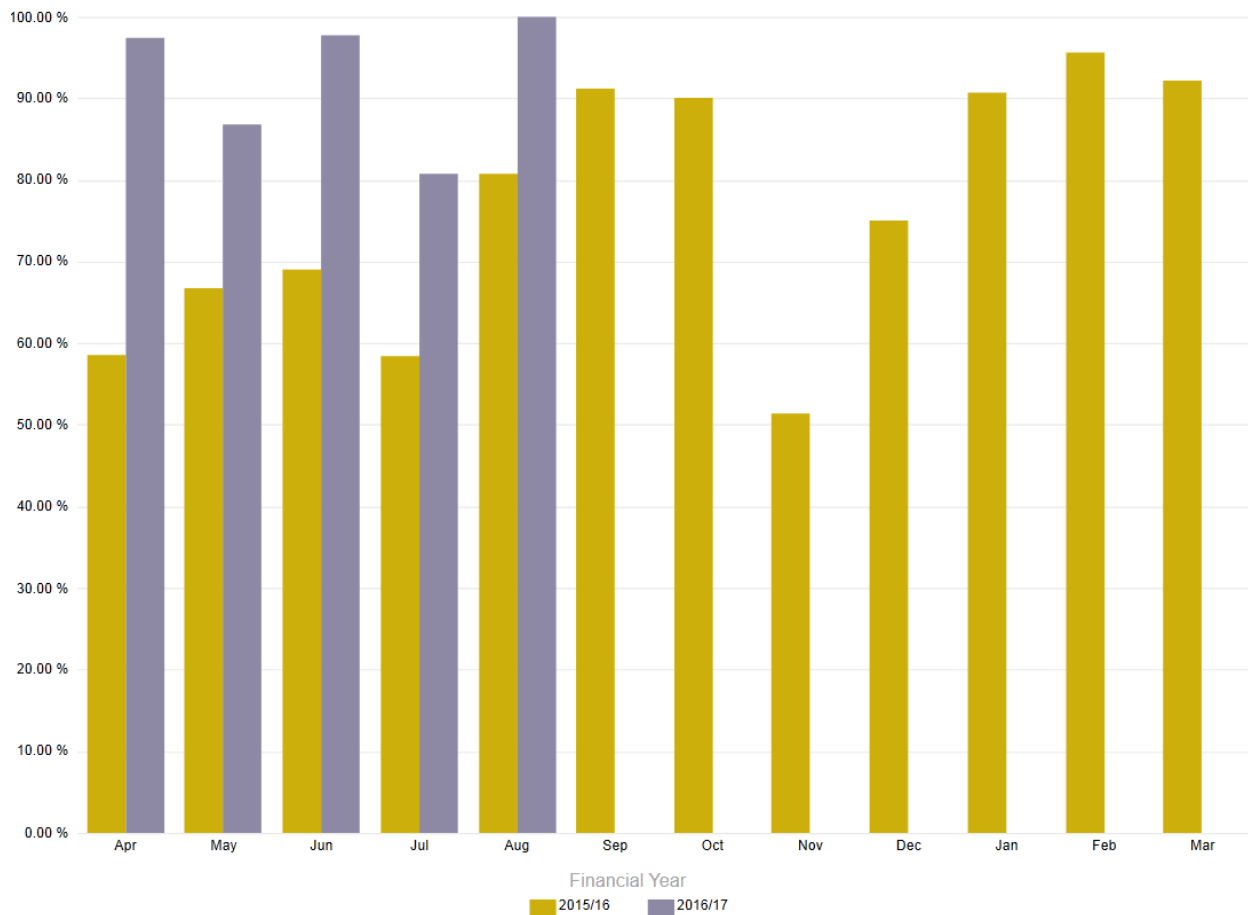


Figure 6 – Performance indicator 4 bar graph

- Issuing licences within 28 days following the publication of the Licensing Sub-Committee decision.

Financial Year	Total number of licences issued	Percentage of licences issued that met target	Number of licences issued that met target
2014/15	Not previously recorded		
2015/16*	62	45.16%	28
2016/17	58	86.21%	50

*The date in which the decision was received from Committee Services was not recorded prior to November 2016.

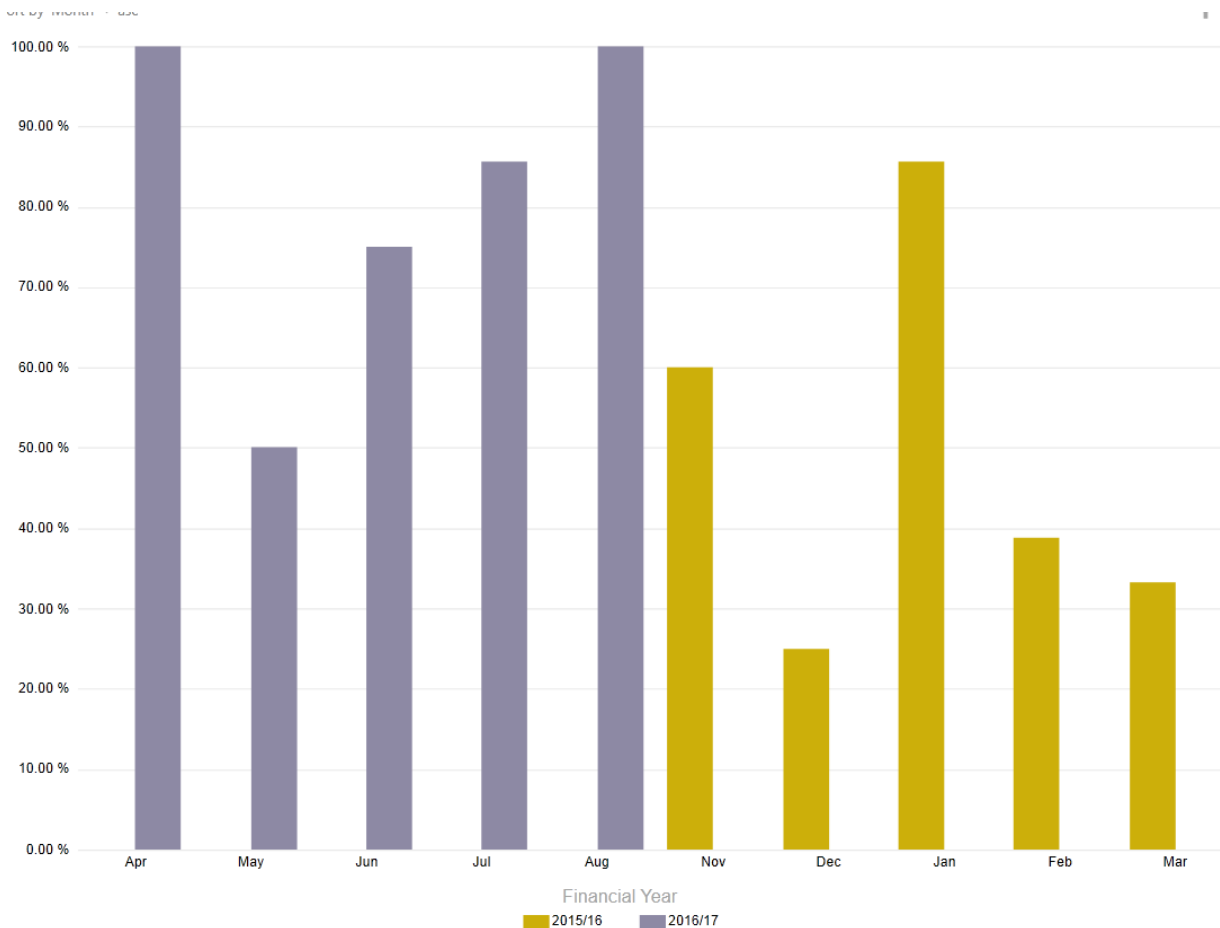


Figure 7 – Performance indicator 6 bar graph

3.4 The Council receives on average 2974 Temporary Event Notices per calendar year. The notices require the Council to acknowledge the notice and then consider whether they will impact one or more of the Licensing Objectives¹ under the Licensing Act 2003. Figure 8 below shows the number of Temporary Event Notices received per calendar month for 2014, 2015 and up to the 15th August 2016. There has been an increasing trend in Temporary Event Notices year on year and it is expected that the Council will receive in excess of 3200 notices in 2016.

	2014	2015	2016*
Temporary Event Notice Received	2821	3127	1552

* Up until the 15th August 2016

3.5 There is a Temporary Event Notices peak between September and November every year due to the holiday period. This 3 month period represents nearly 2 thirds of the total number of Temporary Event Notices received by the Council per year. This can clearly be seen in Figure 8 below. Between January 2014 and March 2014 the Council recorded Temporary Event Notices differently so the bar graph in Figure 8 doesn't show the data for those months.

¹ Licensing Objectives are Prevention of Public Nuisance, Protection of Children from Harm, Prevention of Crime and Disorder and public Safety.

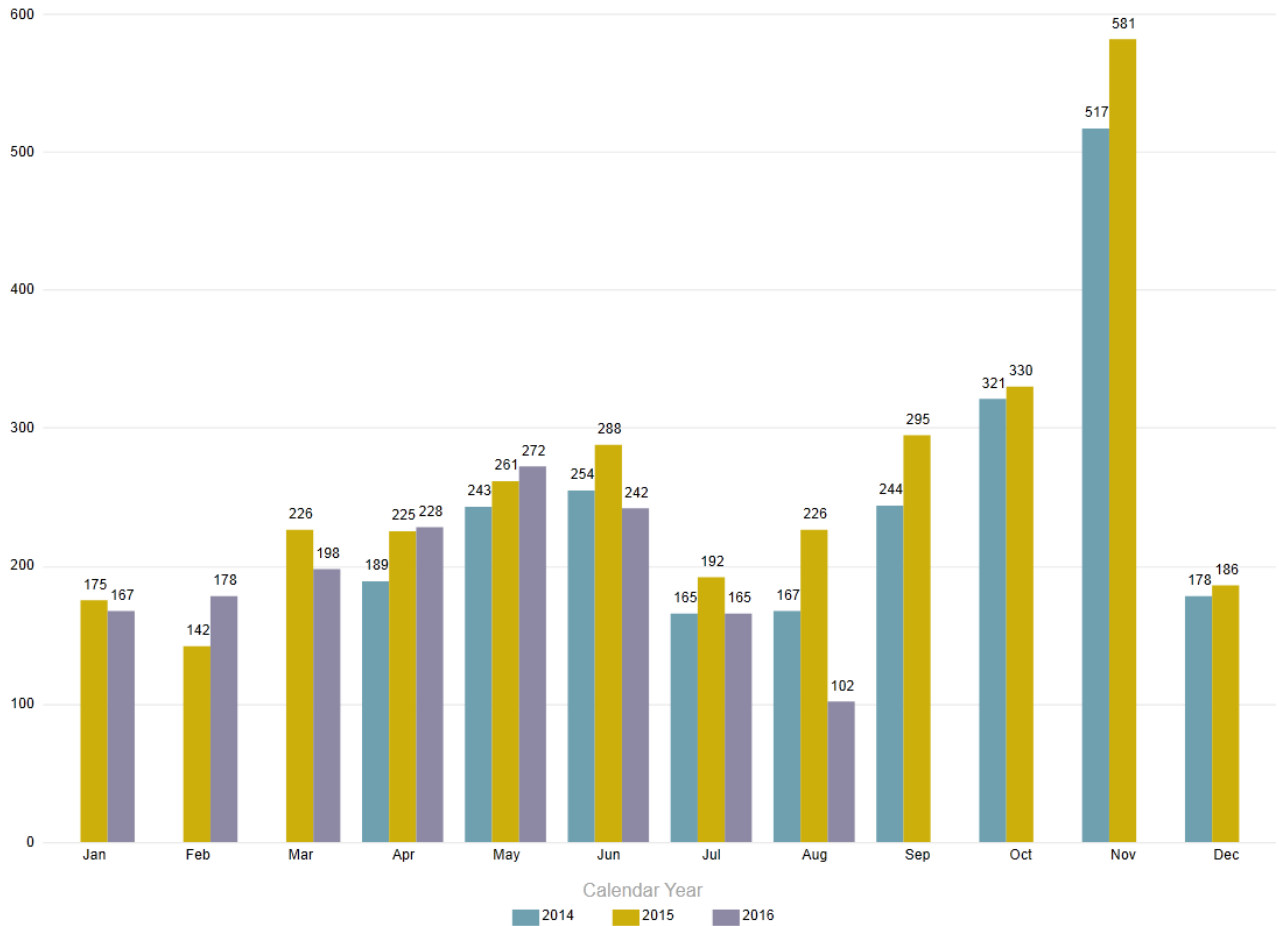


Figure 8 – Temporary Event Notices received per month

Performance indicator 6 - Closing Temporary Event Notices Records

- Closing an open Temporary Event Notice record within 7 days following the last date for objection notices.

Financial Year	Total Temporary Event Notices	Percentage of Temporary Event Notice records closed within target	Number of Temporary Event Notices closed within target
2014/15	2775	26.31%	730
2015/16*	2975	37.51%	1116
2016/17	990	64.55%	639

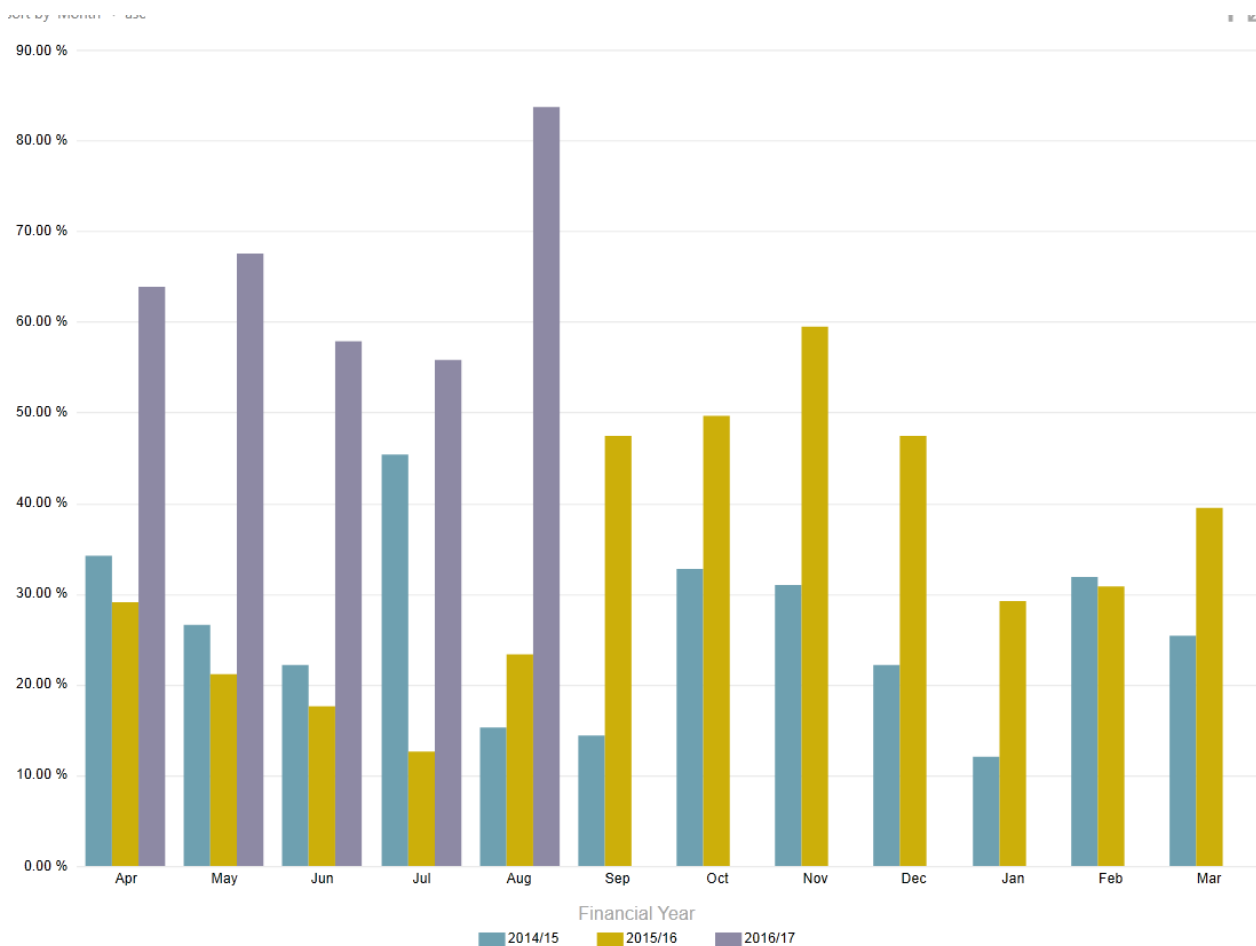


Figure 9 – Performance indicator 6 bar graph

4. Licensing Sub-Committee Reports

4.1 The Licensing Team attended 68 Licensing Sub-Committee hearings in 2015/16. Officers of the team produced 176 Licensing Sub-Committee reports for applications that were opposed and required determination by members.

4.2 The Licensing Sub-Committee granted 146 licences, refused 19 applications, determined 11 reviews and acknowledged 3 opposed Temporary Event Notices.

5. Road Management Processing

5.1 In September 2015 the Licensing Team took on the function of processing Road Managements applications for Temporary Traffic Orders and approvals for the siting of a crane on the Highway. The team has received an addition member of staff to manage the Road Management applications. The addition of these Road Management applications (approximately 2500 applications per financial year) will mean that the Licensing Team now deals with in excess of 8500 applications per financial year.

6. Key Projects and Work Streams

- 6.1 As well as the day to day consideration and determination of licence applications that Licensing Team undertook a large amount of other work throughout 2015/16. The Team carried out a complete review of all processes and procedures to improve the service to its customers remove inefficiencies and streamline processes in line with the new one team structure.
- 6.2 The Licensing Team undertook a review of the Sub-Committee reports to implement a more streamlined report process and document. The Team also reviewed the way it listed applications for Sub-Committees which resulted in a more even spread of applications to each of the Sub-Committees.
- 6.3 A comprehensive fee review was undertaken through June and August 2015 which resulted in a significant change to the fees. This fee review implemented a new process of calculating the fee levels for the licensing regimes that the team are responsible for. These fees were implemented from the 1st January 2016. The 2016/17 fee review is currently in progress which will be determined in November 2016 by the Licensing Committee.
- 6.4 The Licensing Team also undertook the Council's first review of William Hill's betting shop in Harrow Road. The result of that review was a series of strong conditions that has benefitted the local community by reducing the problems associated with that premises.
- 6.5 The Council's Gambling Policy was reviewed by the Licensing Team and consulted upon in late 2016. The final Policy was agreed and formally published in January 2016. The Team continue to work on the new revision to this policy which they intend to release for public consultation in late 2016.
- 6.6 The team have supported to Council's Digital Transformation project. It has been working closely on the implementation of new online application forms for a large number of licensing regimes. These forms will have the benefit of automatically completing the Council's database and reducing the need for significant data entry. There have been significant delays in the online form project due to technical problems associated with the connection between the web forms and the Council's databases and the payment system. The team will continue to work with the project team on this project to implement these new online forms once they are working properly.

7. Conclusion

- 7.1 The Licensing Team has been improving the time that it takes to validate and acknowledge applications. The target that the team are working to is to acknowledge applications within 2 working days. The improvement since the 2015 restructure has gone from acknowledging applications within this timeframe just over 50% of the time in 2014/15 to 86% in 2016/17 (to date).
- 7.2 Although there was a drop in issuing licences immediately prior to the 2015 restructure to September 2015 due to staff shortages all of the performance indicators relating to the issuing of licences show a significant increase in average

performance from September 2015 to August 2016 over the pre-restructure performance.

- 7.3 Since the Licensing Team cleared the backlog of licences (December 2015) the number of licences issued per month has remained reasonably steady. The average number of licences issued per month between January and July 2016 is 269 licences.
- 7.4 Although the closing of Temporary Event Notice records within the Council's database doesn't have an impact on the public it is a key requirement to enable the Licensing Authority to keep a track on the number of Temporary Event Notices that have been submitted for each premises or the notice giver. The Licensing Act 2003 has specific limits to the number of notices that can be submitted for premises or by an individual.
- 7.5 The Licensing team have implemented a performance target to enable them to monitor the closing of these records. Since the 2015 restructure there has been steady progress in improving the time it takes to close a Temporary Event Notice record on the Council's database. The Team are committed to improving on the current performance throughout 2016/17.
- 7.6 Overall there have been improvements in the way that the team operate since the 2015 restructure. The ability of the team to consider and take applications through to determination as an end to end process has prevented a number of the time consuming hand offs and significantly reduced the potential for errors.
- 7.7 The financial year (2015/16) following the restructure was a year of undertaking business as usual whilst reviewing and amending processes, filling vacancies and training staff. It is clear from the performance reports above that once that process had been completed in mid 2015/16 the team performance has improved significantly. This improvement in performance was undertaken whilst the team took on Road Management application processing, undertook and published the revised Gambling Policy, contributed to and completed a fundamental fee review and has worked on a number of resource intensive projects.
- 7.8 The aim for the team for 2016/17 is to continue to improve against its own performance indicators whilst working on key service plan priorities and other Council priorities, such as digital transformation.

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Item 7c - Westminster City Council response to [the House of Lords Select Committee on the Licensing Act 2003's 'Call for evidence'](#).

The Council's response was submitted prior to the 2 September deadline.

Licensing objectives

1. Are the existing four licensing objectives the right ones for licensing authorities to promote? Should the protection of health and wellbeing be an additional objective?

It is the view of Westminster City Council that the existing four licensing objectives allow for an appropriate balance to be achieved between commercial and other interests. There may however, be scope to improve the operation of the Licensing Act through the introduction of other, well thought through, objectives. Vitality, it must be possible, for the Licensing Authority to measure the impact an individual application has on the objectives on a case-by-case basis as is required by the Act.

This suggests a potential problem with the introduction of health and wellbeing as an additional objective, which requires consideration. Whilst the impact of licensable activities, particularly the sale of alcohol, on health may be demonstrable in broad terms, it is not necessarily the case that the presence or actions of individual premises can be linked to particular health issues. This does not mean that Westminster City Council opposes the introduction of a health objective, but would urge any government seeking to go down this route to carefully consider exactly how this would operate in practice.

As noted in the 2014 Alcohol Research UK report 'Using licensing to protect public health: From evidence to practice', *"public health considerations tend to concern population level indicators and long-term trends, whereas licensing operates in an environment characterised by case-by-case decision-making, negotiated settlements and complex legal argument"*. It goes on to state that:

"Policies had to be founded on a sound factual basis and fall within the legal parameters of the Act, therefore the promotion of the health objective must be linked to the effects of the sale of alcohol. The opinion acknowledged that it is difficult for a board to promote the health objective in relation to any individual license application because it is so difficult to evidence ill effects on health at individual premises level, because the evidence is generally at population or board area level".

As such, in practice, it would be extremely difficult to judge why an individual premises selling alcohol is likely to be more or less of a threat to health than another since both are selling the same product. In this scenario there may be reasonable grounds to refuse every application as a threat to health or, as is understood to be the case in Scotland, to not to reject any on health grounds because the legal basis for refusal is considered to be weak and likely subject to challenge. The report shows that, whilst the introduction of a health objective in Scotland has improved understanding and engaged of public health in the

licensing process, the extent to which health considerations have actually influenced decision making is unclear.

It would also be important to recognise that there is not always a direct geographical link between consumers and license premises, thus making it difficult to prove health impacts. For example, the West End has the highest concentrations of licensed premises in the country, and yet, the majority (exact number unknown) of the patrons of these are not Westminster residents. Similarly the impact of alcohol purchased via off-sales from a supermarket in outer-London and consumed at home before patrons visit the West End is largely unknown. It is therefore extremely difficult to show that the concentration of premises (both on and off-sales) in the West End has a significant impact on the health of the local population. It would be equally difficult to show, given the nature of the availability of health data, the West End concentration as contributing to any overall adverse effects in health throughout London or the wider UK.

It may however, be possible to apply a health objective in a concentrated area where the vulnerability to alcohol abuse is higher amongst local populations. This could be delivered in the same way as current cumulative impact policies, albeit using a different evidence base, or could operate in a similar manner to local areas risk assessments in the Gambling Commissions updated Licensing Conditions and Codes of Practice (see Westminster's recent studies for more information¹). This would bring England into line with Scotland's policy approach to 'overprovision'. Consideration may also need to be given to the difference between on and off-sales in contributing to alcohol-based health harm. It is likely for example, that a health objective would be more relevant to off-licenses in areas where street drinking is particularly prevalent and contributes, not only to anti-social behaviour, but also health concerns amongst consumers. This would not necessarily mean that a health objective should only apply to off-sales but it may influence the way in which many local areas choose to implement such a change.

It should be stressed that health authorities and professionals can, of course, already make representations under the Act should they be relevant to the existing objectives, possibly using A&E data or ambulance callout data. The fact that this may not happen particularly often should not be seen as a failure of the system (see question four below), but should instead be understood as a reflection of the reality that health authorities are generally less interested in the existing objectives as indicators of problems. As such, this question actually boils down to whether or not there should be another basis (health) on which to control licensable activities? Of course, such a move would appear to strengthen the ability and regularity with which health authorities would be able to make representations on licences and would therefore improve engagement with the process, as has been seen in Scotland, but it is not clear that it would result in a positive shift in decision making in the vast majority of cases.

In summary, Westminster would welcome the introduction of a health objective; particularly as mental health issues have become ever more apparent in conjunction with the use of alcohol. However, any objective given must be accompanied by guidance on relevant representations to the new objective and additional provisions relating to concentrations, cumulative impact or overprovision.

¹ <https://www.westminster.gov.uk/gambling-research>

2. **Should the policies of licensing authorities do more to facilitate the enjoyment by the public of all licensable activities? Should access to and enjoyment of licensable activities by the public, including community activities, be an additional licensing objective? Should there be any other additional objectives?**

The policies of licensing authorities are matters of sovereign local interest and, as such, the extent to which policy seeks to promote wider enjoyment of licensable activities should remain a local decision. It is unclear what the introduction of a new objective linked to the enjoyment of licensable activities by the public would add to the existing regime, but there is a risk that it would introduce a significant level of conflict and tension between objectives. This would be unhelpful to practitioners and may lead to heightened levels of legal dispute over the outcome of certain applications. At present, all of the objectives are designed to provide the public with a form of protection from harm. Licensing Authorities take decisions based on these objectives but are also aware of a wider set of factors, including more positive considerations around the local economy and public enjoyment.

If there were an ambition from government for the licensing regime to be further used as a tool for the promotion of economic or cultural activities, serious consideration would need to be given to how this would be implemented. As noted above, there is a risk that such a move would simply lead to more legal challenges and increased cost of decision making to the taxpayer, as a result of tension between newly competing objectives. Perhaps one method through which this could be more effectively implemented would be to introduce a second tier of licensing objectives or ambitions. These objectives or ambitions could have less weight against the existing four objectives, but place an obligation on the applicant. The Licensing Authority, to show or understand the impact on an application, may have included certain additional issues such as economic vibrancy or public enjoyment.

The balance between rights and responsibilities

3. **Has the Live Music Act 2012 done enough to relax the provisions of the Licensing Act 2003 where they imposed unnecessarily strict requirements? Are the introductions of late night levies and Early Morning Restriction Orders effective, and if not, what alternatives are there? Does the Licensing Act now achieve the right balance between the rights of those who wish to sell alcohol and provide entertainment and the rights of those who wish to object?**

Westminster City Council considers the current provisions around regulated entertainment as appropriate to create a suitable and fair balance between the competing interests. Our experience and feedback from engaging with the local entertainment industry is that the challenges facing venues, in putting on live music, are less to do with the regulatory environment and more to do with the lack of commercial viability. This is driven mainly by fewer people being willing to pay to watch live music, particularly at the smaller end of the spectrum, rather than increased costs as a result of overly burdensome regulation. It is notable however that in Soho, an area where this issue is perhaps perceived as most acute,

the number of licenses involving music rose from below 100 to over 250 between 2003 and 2013.

With specific regard to the late night levy, Westminster City Council has considered this option as a potential solution to the management issues facing the city but it has not, for a variety of reasons, deemed the late night levy suitable at this time.

If a levy were to be applied across the whole of Westminster, the total revenue generated would be £2,782,620 p.a. from 1,877 businesses. This is considered the 'best case scenario' for Westminster, because, in practice, many premises would argue that they are not liable to pay the multiplier on grounds that they are not 'alcohol-led'. Recent experience has shown that this argument can be made successfully by a surprising diversity of premises.

We believe that the levy, as currently constructed in legislation, would unfairly penalise premises which operate responsibly or have little or no systemic connection to crime and anti-social behaviour, such as individually owned pubs in residential neighbourhoods. There is a marked contrast between these types of operators and those operating in high concentrations in the West End. The revenue calculations, if it were possible to apply a levy in the West End Cumulative Impact Zone only, suggest that the total revenue generated would be £1,187,457 p.a. from 758 businesses. This suggests that, under the current legislative framework, 1,119 businesses would have to pay the levies which are not contributing to cumulative impact in the West End, and are therefore not, broadly speaking, a source of management problems. This additional £1.5m burden on the industry would, in Westminster's opinion be unfair in the vast majority of cases.

The approach to charging, the inability to target in a geographical area and the potential that funds generated in the West End could be used elsewhere in London by the Metropolitan Police were the primary reasons why Westminster chose not to introduce the levy.

The alternative may be to introduce a more flexible approach to the levy, which allows local authorities to target the levy at problem premises or groups of premises, based on particular characteristics. Such an approach could involve the ability to geographically target the levy within a borough (not currently possible), an open approach to exemptions (currently exemptions have to be picked from a long-list determined by government) and introducing a new approach to charging (away from the unsophisticated and unfair use of rateable values). Reforms like this would make the levy more effective in tackling bad behaviour, without penalising unnecessarily responsible operators. The government has promised to examine reform of the levy as part of the 2016 Modern Crime Prevention Strategy, but it remains unclear how ambitious such reforms will be. We would therefore, urge the committee to make comment on this matter.

4. Do all the responsible authorities (such as Planning, and Health & Safety), who all have other regulatory powers, engage effectively in the licensing regime, and if not, what could be done? Do other stakeholders, including local communities, engage effectively in the licensing regime, and if not, what could be done?

The main responsible authorities that regularly make representations to applications in Westminster are the Metropolitan Police and the Council's own Environmental Health Department. It is extremely rare to receive representations from other responsible authorities

for applications. The Council's Planning Department does not tend to make representations, as planning requirements cannot be taken into account when considering Licensing Act 2003 applications. If there were however, to be no compliance with planning law whereby enforcement action has been taken that constitutes a crime, then the Planning Department may make a representation to inform the Licensing Authority of the operator's non-compliance and criminal convictions.

The Fire Authority uses their own powers under the Regulatory Reform (Fire Safety) Order 2005 and rarely will make a representation to a licence, as it duplicates their own powers. Like Planning however, when there is a need to make a representation, then the Fire Authority will make a representation.

The lack of responses from some responsible authorities should not be seen as a failure of the Act, or indeed that changes are required to promote authorities to make more representations to applications. The nature of the types of responsible authorities under the Act means that some will be able to make general views and comments based on the main concerns for the operation of the premises, such as the Police and Environmental Health Departments. Other responsible authorities, such as Planning, Fire Authority, Environment Agency, etc. will make representations when there is a clear need to due to the proposed operation of the premises, any specific policies or requirements that are relevant and when they deem it necessary having regard to any concerns or issues associated with one or more of the licensing objectives.

It is our experience that local communities do come together and make representations to applications when there are significant local concerns regarding the operation of the premises. We also find that resident and amenity societies take an active role in informing their members of applications and also making representations on behalf of those members.

It is also true however, that individual local residents and small groups often feel unsure of their rights and powers under the Act. Residents often have concerns about attending a hearing, their safety if the premises they wish to make a representation about is seen to be operated by people they perceive to be violent and the view that their concerns may not be taken seriously by the Licensing Authority. Such concerns can put some residents off from making representations to applications or submitting a review application against premises that are operating badly.

Westminster City Council does engage and support local residents and communities. The Council will actively publish notifications of the application beyond that which is required by the Act. The Council will inform local communities, within the vicinity of the premises, to which applications have been submitted. This is usually done via letter and notices on street furniture, such as a lamppost outside or near the premises. These letters and notices provide a very basic description of the application, the date when representations must be received by the Council and how to submit a representation.

In addition to the letters and notices, the Council also funds a dedicated Licensing Solicitor via the Citizens Advice Bureau. The solicitor, who acts independently from the Council will advise and support local communities in submitting representations, preparing and submitting a review application and will also represent them at a Licensing Sub-Committee hearing. This service has proved to be very effective in supporting the local communities

surrounding licensed premises. It removes many of the residents' concerns referred to the above and enables them to be confident that their views are being presented to the Licensing Authority.

As far as Westminster is aware, this is the only example of such a service being provided within the United Kingdom. We believe that it is effective and is a key enabler for local communities to voice their concerns and sometimes support for licensed premises applications. This service does of course cost the Council money to fund however, and we would like to see the ability to fund such support services for local communities via a surcharge or supplementary fee on top of the application and annual licence fees that are paid by the licensed trade. Such reforms to the funding model would further enable other local authorities to implement an independent service for local communities, such as the one provided by the Citizens Advice Bureau in Westminster.

Licensing and local strategy

- 5. Licensing is only one part of the strategy that local government has to shape its communities. The Government states that the Act “is being used effectively in conjunction with other interventions as part of a coherent national and local strategy.” Do you agree?**

Yes, our experience in Westminster is that the Act can be used in conjunction with other pieces of legislation and tools to deliver a coherent local strategy for the place and communities. In order to deliver this, it is important to have a shared understanding of what all partners, including the licensing authority, the planning authority, other parts of local government, other public bodies, residents and businesses want from an area. There will of course, often be tension between partners in the construction of such a vision and the strategy to deliver it, but with effective governance it is possible.

The West End Partnership² provides a good example for a shared vision for an area which actually spans two local authorities (Westminster and Camden) and feeds into the ambitions for each in terms of the construction of local policy. Further commentary can be provided on this subject if necessary but, for the purposes of this call for evidence, we feel it is sufficient to agree that the Act is being used in conjunction with other policy tools and practices in Westminster, but it is difficult for us to comment elsewhere for obvious reasons.

- 6. Should licensing policy and planning policy be integrated more closely to shape local areas and address the proliferation of licensed premises? How could it be done?**

Yes, planning and licensing policy should be more closely aligned, but this is not something that can or should be delivered via changes to national legislation, instead local authorities should be supported, where possible, to develop complementary policies. The underpinning structures for licensing and planning are based on fundamentally different rationales and it is therefore possible, and reasonable, for inconsistencies to exist between policies at a local

² <https://westendpartnership.london/publications/>

level. This may mean that premises may have different operating hours as far as the Licensing and Planning authority are concerned, but this shouldn't be seen as a particular problem, as it is widely understood by the industry.

The aims and objectives for both regimes could, of course, be harmonised by amending the primary legislation which underpins each, namely the Licensing Act 2003 and the town and Country Planning Act 1990. It is difficult to say how such an alignment would or should look in reality, but it is likely that the positive emphasis of the Planning system, and particularly the presumption in favour of sustainable development, would influence the structure of national licensing policy which, as noted previously, is based primarily on negative objectives and protecting the public from harm. This may involve taking into account the impact of licensing decisions on economic, social and environmental outcomes, and thus changing the evidence base on which policy is formulated. As previously noted, such an approach would, under the current system, create unhelpful tension in the licensing process between objectives. To deliver such an approach, it would therefore be necessary to review the whole Licensing Act 2003 and re-think the approach to evidence, the process and the objectives which underpin it. Whilst this fundamental reform approach may be considered desirable by this or a future government, this would, in Westminster's view, be a disproportionate response to this issue at this time, especially as it would require a significant cross-government policy programme to be delivered between the Home Office and the Department for Communities and Local Government.

It may be possible however, to achieve closer alignment without fundamental reform by encouraging both licensing and planning to be aware of the circumstances with regard to premises under the other system. Whilst licensing decisions could not be taken on the basis of the planning situation, it would give sub-committees more information about the wider circumstances surrounding the premises.

Crime, disorder and public safety

- 7. Are the subsequent amendments made by policing legislation achieving their objects? Do they give the police the powers they need to prevent crime and disorder and promote the licensing objectives generally? Are police adequately trained to use their powers effectively and appropriately?**

No specific comment to make

- 8. Should sales of alcohol airside at international airports continue to be exempt from the application of the Act? Should sales on other forms of transport continue to be exempt?**

No specific comment to make

Licensing procedure

9. The Act was intended to simplify licensing procedure; instead it has become increasingly complex. What could be done to simplify the procedure?

Unfortunately, the Act has become more complex in some areas due to regulatory reform, deregulation and other amendments since it was introduced in 2005. The deregulation of certain types of licensable activities, if they do not exceed certain thresholds, does create confusion for applicants and sometimes for the enforcing bodies.

There have also been some examples of when an amendment to the Act has made a process easier. An example of one of these was the introduction of a minor variation process. This enabled licensees to amend their licences to take into account these minor changes. Previously there would have been a need to go through a full variation process which could be costly for businesses and delay the granting of the variation.

Temporary Event Notices were introduced as a system to permit temporary activities, under which licensable activities could be carried out on a temporary basis without the need for a premises licence or club premises certificate. The idea of these notices was sensible and originally, they were intended for use by small events and for communities, thus the fee was set at such a small amount, reflecting the level of work that the Government believed Licensing Authorities would have to do to administer this process. Westminster City Council will process over 3100 of these notices a year. However, since the introduction of this scheme, we have seen that the vast majority (85%) of these notices submitted each year in order to extend licensable activities in licensed premises.

The only responsible authorities that can make an objection to a Temporary Event Notice are the Police and, more recently Environmental Health. The extension of licensable activities beyond that already permitted by a licence requires consideration as to whether this would impact on one or more of the licensing objectives. This has a significant resource implication for licensing authorities and costs considerably more than the current £21 fee. There is also a considerable amount of pressure on resources, due to the limited time permitted for Responsible Authorities to submit an Objection Notice (three working days). When there are considerable volumes of these notices received, the ability to adequately assess them and their potential impact on the licensing objectives is diminished.

The other concern is that a premises licence or club premises certificate would have been properly considered by the Licensing Authority when the licence was granted. In most cases, conditions would have been put in place to ensure that the premises operation will not impact on the licensing objectives. Although there is a power to impose the licence conditions from the premises licence, if the notice is brought before the Licensing Authority, most events will operate without any conditions in place. Most good operators who are extending their licensable activities will comply with their conditions. However, there are no requirements for them to do so and they can then operate under the notice without complying with these conditions.

As stated above, only the Police and Environment Health Department can object to a notice. As there is no requirement to advertise the notice or inform local communities, local

residents will not be aware of the Temporary Event Notice proposed activities and when it is in effect. Local residents also cannot oppose these events, which then can cause frustration and problems for residents. In such cases, the only recourse for residents will be to complain to the Council if the event is causing a public nuisance relating to noise or to call the police if there are crimes being committed.

We would like to see the introduction of a scheme, for temporary extensions of permissions to premises licence and club premises certificate, which is separate from Temporary Event Notices. These temporary extensions should be dealt with in a similar way to the minor variation process. This would enable the Licensing Authority to determine who it consults and also provide sufficient time (14 days) to consider the application. This temporary extension would then, if granted, permit the premises to operate within the remit of the permitted temporary extension subject to the conditions of the licence or any new conditions attached for the purpose of that temporary extension. Such a scheme would not necessarily need to then limit the licensed premises to a specific number of extensions a year, as the extensions would only be permitted and conditions attached if it was deemed that the extension would not adversely impact one or more of the licensing objectives.

It is our view that a temporary extension process, similar to the minor variation application process, would enable responsible authorities and local residents the ability to comment and if necessary, oppose an extension. By removing the requirement on the number of permitted temporary extensions that premises can have per calendar year, it would then enable operators to have extensions when they need to and these will only be permitted if the extension will not harm one or more of the objectives. Although this would add another formal approval scheme to the process, it would enable a better approach to dealing with the need for premises to extend their operation on occasions, whilst balancing the needs of the local community.

10. What could be done to improve the appeal procedure, including listing and costs? Should appeal decisions be reported to promote consistency? Is there a case for a further appeal to the Crown Court? Is there a role for formal mediation in the appeal process?

The experience in Westminster is that the existing appeal process works well.

In relation to listing, Westminster City Council has found the local Magistrates Courts to be flexible enough to be able to list urgent hearings where necessary (e.g. in relation to appeals against Temporary Event Notices, or decisions to revoke on summary review). Costs in the Magistrates Courts should continue to be dealt with in accordance with the general principles which apply to appeals against administrative decisions taken by local authorities – there is no case for any special treatment of licensing appeals.

In relation to publication of appeal decisions, it is important to note that Magistrate Court appeal decisions are not legally binding on a Licensing sub-committee (or indeed other Magistrate Courts), and in all cases the decisions have to be made on the individual circumstances of the case (including the local licensing policy). Whilst not legally binding, Magistrate decisions can however, be relevant factors which the sub-committee can consider if they are aware of them. In the interests of transparency for all interested parties,

we feel it is important to make the default position to publish appeal decisions. We feel transparency of information is particularly important when some parties (solicitors representing licence holders) to a hearing are well placed to have access to such information and other parties (residents) are often not.

We would oppose the introduction of a further right of appeal to the Crown Court. Our concern is that such a right would enable “bad” operators to delay the coming into effect of Licensing Sub-Committee decisions by tactical appeals. We have had experience of such tactics in relation to the street trading regime in Westminster (regulated by the City of Westminster Act 1999) where an appeal to the Crown Court is provided for. In practice, appellants are more than adequately protected by the right to ask for a case to be stated to the High Court, and by the availability of Judicial Review. It is also important to note that local Magistrates Courts can acquire an experience and expertise in dealing with licensing appeals, which will not necessarily be replicated in the Crown Court.

In relation to mediation, Westminster City Council has reservations about both its practicality and its utility. We have dealt with well over 400 appeals, and mediation has been suggested by an operator only once. We rejected the proposal, because of the difficulty in ensuring that the interests of all parties (not just the licensing authority and the appellant, but also the responsible authorities and local resident objectors) were adequately protected.

Another area where we feel there may be scope for the appeals process to be amended is with regard to Section 52 (11) of the Licensing Act 2003, which states that the review decision shall not have effect before the end of the 21 day period allowed to bring an appeal or, if an appeal is lodged, until the appeal is disposed of. This is only the case for standard reviews; whereas expedited reviews, in the event of serious crime or disorder, can be invoked within 48 hours to allow the licensing authority to quickly deal with the matter by imposing “interim steps” prior to a full review hearing.

Our experience of standard review procedures is that the delay in making the licensing authority decision effective can undermine the effectiveness of the review procedure itself. It is relatively cheap and easy to lodge an appeal to the Magistrate Court. Delays in Court listing means that appeal hearings will typically not be listed for 6 to 12 months, during which none of the measures that the licensing authority considered appropriate to promote the licensing objectives are implemented. Unscrupulous licence holders can, and sometimes do, choose to abandon their appeal shortly before an appeal hearing and, although they can be liable for the council’s costs in defending the appeal to that point, this can be an insignificant amount compared with the benefits of continuing to trade unrestricted for many months. There is however, case law where the Courts have been very clear about licensees who try to extend the appeal procedure by seeking questionable adjournments. The Courts have recognised that such adjournments are to the disadvantage of residents and have refused them.

For these reasons, we would suggest that this situation be reversed, and specifically Section 52 (11) of the Licensing Act 2003 should be amended, so that the decision of the Licensing Authority takes effect immediately and are not undermined by the appeals procedure.

We do however recognise that whatever approach is adopted, either the Licensing Authority or the licensee is potentially at a disadvantage and that this is a balance between the rights

of the licensee and the rights of those seeking a review. We would therefore suggest that the Committee consider this proposal alongside the fact that the right of appeal is crucial to meeting the wider legal requirement (specifically the Human Rights Act 1998), that a party is entitled to a hearing by an independent and impartial tribunal. In certain other situations, this means that the status quo is maintained until the appeal has been heard, i.e. in this case, that the licensee gets to keep the existing licence free of any of the steps determined by the Sub-Committee. Furthermore, from a commercial point of view, it would mean that licensees could be compelled to comply with expensive requirements which may be adjudged on appeal to be unnecessary, leaving a need for greater clarity over compensation in such a situation. On balance however, our preference would be for a reversal of the current situation.

Sale of alcohol for consumption at home (the off-trade)

- 11. Given the increase in off-trade sales, including online sales, is there a case for reform of the licensing regime applying to the off-trade? How effectively does the regime control supermarkets and large retailers, under-age sales, and delivery services? Should the law be amended to allow licensing authorities more specific control over off-trade sales of “super-strength” alcohol?**

As noted above, in answer to question one, there is a significant difference between off-sales and on-sales which requires careful consideration. This is especially the case in a hyper-connected city such as London, where alcohol purchased via an off-sale in one area may not be consumed in the same area. Furthermore, the impact of that alcohol sale may also not be felt by the area in which it takes place. For example, alcohol may be drunk at home with a group, then on a train from outer-London to the West End, in order to carry on their night already having consumed a quantity of cheaper alcohol in an uncontrolled environment. This is not a situation which requires a direct solution, and indeed there may not be a simple remedy, but it does highlight the fundamental differences between on and off-sales from a licensing perspective which suggest a need to review the regime.

With regard to the specific issues highlighted in the supplementary questions, Westminster City Council considers that sales of “super-strength” alcohol may require specific controls in areas where it can be demonstrated that street-drinking is particularly prevalent. Whilst action can be taken to restrict the consumption of alcohol on street through controlled drinking zones, these could be further enhanced by limited the sale of certain types of alcohol in and around that area.

Pricing

- 12. Should alcohol pricing and taxation be used as a form of control, and if so, how? Should the Government introduce minimum unit pricing in England? Does the evidence that MUP would be effective need to be “conclusive” before MUP could be introduced, or can the effect of MUP be gauged only after its introduction?**

No, Westminster City Council does not consider pricing and taxation and appropriate or effective forms of control for alcohol.

Fees and costs associated with the Licensing Act 2003

13. Do licence fees need to be set at national level? Should London and the other major cities to which the Government proposes to devolve greater powers, have the power to set their own licence fees?

No, license fees do not need to be set at a national level and these should be set by the Licensing Authority in each area based on detailed local understanding of costs incurred as a result of administering a licensing system, but also the impact on the economic vibrancy of the area.

Going back as far as 2006, when the independent Elton Review demonstrated that existing fee levels did not result in full cost recovery, successive governments have given commitments that fees should be set at a level that permits full cost recovery. The Police Reform and Social Responsibility Act 2011 actually allows for locally set fees to fully recover costs, but the government have not brought forward proposals to implement this. The reasons previously given by government, not to implement this approach, relate to the Hemming vs. Westminster City Council case which considered the acceptable level of fees in the Services Directive. However, any such reservations should have now been laid to rest by the decision of the Supreme Court made in April 2015.

Westminster City Council has also long argued that, since the introduction of the Licensing Act in 2005, it is not possible to recover the cost of the resources that we channel into administering and managing the licensing regime. The LGA have previously estimated that the current system results in local authorities and local taxpayers subsidising the licensed trade by up to £1.5m per month as a result of the current, nationally-set system. CIPFA recently undertook a survey of participating local authorities which further suggests that the national system does not allow for cost recovery with the country-wide deficit estimated at between £9.2m and £11.4m p.a.

In Westminster, we understand that our own local deficit is approximately £1.387m per annum, based purely on the costs of administering the system without any wider consideration of costs incurred. Many of the most significant costs linked to licensed premises and incurred by the licensing authority fall outside the scope of the 2003 Licensing Act e.g. street cleansing and community protection. A full analysis of costs relating to the evening and night time economy as a whole in Westminster estimated that the local authority incurred somewhere in the region of £26m worth of costs every year when taking everything into account³. Whilst, it is not the purpose of licensing fees to recover such costs, it does highlight a wider funding issue which requires consideration, perhaps as part of analysis of late night levy provisions as suggested above, in response to question 3.

Furthermore, the current structure of licensing fees can be unfair and damaging to business. As an example, in the current fee structure we have wide ranging variances in terms of what

³ <https://www.westminster.gov.uk/evening-and-night-time-economy>

businesses pay the local authority in annual fees. A nightclub licensed until 3am with a capacity of 1,050 currently pays £350 while a local pub in Pimlico that closes at 00:00 with a capacity of less than 50 people is charged £1,050. Furthermore, we have hairdressers with occasional on sales until 21:00 paying the same as nightclubs with 3am terminal hours and capacities of greater than 1000 patrons.

Rateable value as a criterion for fee setting is not one which Westminster supports. We recognise the need to have a benchmark on which to assess premises, however the rent ability of premises should not be a factor on which to determine a fee, see the above example. There are also intensive administrative tasks in ensuring rateable values are up dated on our system and chasing the VOA for rateable values for new premises. Westminster also has the issue of parks and open Spaces which have no rateable value but do have Premises Licences.

Local conditions could be better managed and such irregularities ironed out fairly, if decisions on license fee levels were made at a local rather than national level.

Finally, it is important to note that, in London, it is the boroughs that are the Licensing Authority and not the Mayor or the GLA. As such, it would not be appropriate to devolve license fee setting powers to the Mayor as they powers should rest at the same level as the administrative costs are incurred.

International comparisons

14. Is there a correlation between the strictness of the regulatory regime in other countries and the level of alcohol abuse? Are there aspects of the licensing laws of other countries, and other UK jurisdictions, that might usefully be considered for England and Wales?

No specific comment to make

Other issues

One other area that Westminster City Council would suggest the Committee consider is the emerging issue of 'shadow' licenses. This involves a situation whereby a freeholder of a property will seek to acquire a premises license on the exact same terms as that which is held by the actual operator. When such an application is made, it can be very difficult to find grounds to refuse such an application because, as it is a direct mirror of the existing license, there are often no grounds on which to find that it would either fail to promote the licensing objectives or, where such policies apply, add to cumulative impact.

Whilst not a problem in and of itself, the reasons behind this and the issues it can cause become apparent when a premises license is reviewed and conditions apply or the license revoked only for the shadow license to then be immediately activated allowing the premises to continue operating on the same terms as was the case before the review took place. This

is clearly in the commercial interests of landlords to protect the value of their landholdings as licensed premises.

Whilst we do not currently know the exact number of shadow licenses that exist in Westminster, our experience is that this is a growing trend which clearly represents a threat to the ability of the Licensing Authority to take meaningful action to review premises licenses and uphold the licenses objectives set out in the Act. We do however have limited experience of taking action on both the 'active' and the 'shadow' license at the same time following a review, but the legislative framework has not yet caught up with this phenomenon sufficiently and we therefore consider it appropriate that the Committee give some thought to the matter.