

Members are reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting

BIRMINGHAM CITY COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE

WEDNESDAY, 15 JULY 2015 AT 10:00 HOURS
IN COMMITTEE ROOMS 3 & 4, COUNCIL HOUSE, VICTORIA
SQUARE, BIRMINGHAM, B1 1BB

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

The Chairman to advise the meeting to note that this meeting will be webcast for live and subsequent broadcast via the Council's Internet site (www.birminghamnewsroom.com) and that members of the press/public may record and take photographs. The whole of the meeting will be filmed except where there are confidential or exempt items.

2 APOLOGIES

To receive any apologies.

3 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant pecuniary interests and non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

5 - 14

4 MINUTES

To confirm and sign the minutes of the meeting held on 17 June 2015.

15 - 54

5 LICENSING AUTHORITY POLICIES, PROCEDURES AND DELEGATIONS

Report of the Service Director of Regulation and Enforcement

55 - 76

6 LICENSING FEES AND CHARGES, INCLUDING OBJECTION TO HACKNEY CARRIAGE AND PRIVATE HIRE FEES AND CHARGES

Report of the Service Director of Regulation and Enforcement

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| <u>77 - 82</u> | 7 | <u>REPORT ON THE CURRENT POSITION REGARDING REGISTRATIONS UNDER THE SCRAP METAL DEALERS ACT 2013</u> | Report of the Service Director of Regulation and Enforcement |
| <u>83 - 98</u> | 8 | <u>LICENSING OF ADDITIONAL PRIVATE HIRE OPERATOR SUB OFFICES</u> | Report of the Service Director of Regulation and Enforcement |
| <u>99 - 116</u> | 9 | <u>FOOD LAW ENFORCEMENT PLAN 2015/2016</u> | Report of the Service Director of Regulation and Enforcement |
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| <u>127 - 136</u> | 11 | <u>LICENSING AND PUBLIC PROTECTION COMMITTEE REVENUE BUDGET MONITORING 2015/16 (MONTH 2)</u> | Report of the Service Director of Regulation and Enforcement and Director of Finance |
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| <u>157 - 170</u> | 14 | <u>FIXED PENALTY NOTICES ISSUED MAY 2015</u> | Report of the Service Director of Regulation and Enforcement |
| <u>171 - 172</u> | 15 | <u>ACTION TAKEN BY CHAIR OF LPPC</u> | Actions taken by the Chair of LPPC between Committee meetings in June and July 2015. Report of the Service Director of Regulation and Enforcement |
| <u>173 - 174</u> | 16 | <u>SCHEDULE OF OUTSTANDING MINUTES</u> | To note and discharge outstanding minutes. |
| | 17 | <u>OTHER URGENT BUSINESS</u> | To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency. |

18 **AUTHORITY TO CHAIRMAN AND OFFICERS**

Chairman to move:-

'In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee'.

BIRMINGHAM CITY COUNCIL

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| LICENSING AND PUBLIC PROTECTION COMMITTEE 17 JUNE 2015 |
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**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON WEDNESDAY, 17 JUNE 2015 AT 1000
HOURS IN COMMITTEE ROOMS 3 AND 4,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair;

Councillors Bob Beauchamp, Alex Buchanan, Lynda Clinton, Basharat Dad, Neil Eustace, Mahmood Hussain, Nagina Kauser, Tony Kennedy, Mike Leddy, Bruce Lines (part way through the meeting), Gareth Moore, Rob Sealey and Anita Ward.

NOTICE OF RECORDING

- 506 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.birminghamnewsroom.com) and that members of the press/public may record and take photographs. The whole of the meeting would be filmed except where there were confidential or exempt items.

APOLOGIES

- 507 Apologies were received from Councillors Nawaz Ali and Bruce Lines

DECLARATIONS OF INTEREST

- 508 There were no declarations of interest submitted by Members

APPOINTMENT OF LICENSING AND PUBLIC PROTECTION COMMITTEE

- 509 The appointment by the City Council of the Licensing and Public Protection Committee (LPPC) for the Municipal Year 2015/16 was noted and agreed.

ELECTION OF DEPUTY CHAIR

Nominations were put forward for Councillor Alex Buchanan proposed by Councillor Anita Ward, seconded by Councillor Mike Leddy and for Councillor Gareth Moore proposed by Councillor Bob Beauchamp and seconded by Councillor Rob Sealey.

With 9 votes Councillor Buchanan was elected as Deputy Chair – to act on behalf of the Chair in her absence.

FUNCTIONS, POWERS AND DUTIES

- 510 The Functions, Powers and Duties of the LPPC Committee as agreed by the City Council were noted.

(See attached document No.1)

DATES OF MEETINGS OF LICENSING AND PUBLIC PROTECTION (LPPC) COMMITTEE

- 511 The dates of meetings of the LPPC Committee were noted.

LICENSING SUB-COMMITTEES 2015/16

- 512 The membership, chairs and meeting times of Sub-Committees A, B and C appointed by the City Council for the Municipal year 2015/16 were noted.

MINUTES

15 April 2015

Councillor Moore pointed out an error on Minute no. 339 regarding Councillor Ali's first name which was amended accordingly.

- 513 The Minutes of the meeting held on 15 April, having been previously circulated and amended as agreed at the meeting, were confirmed as a correct record and signed by the Chairman.

SCHEDULE OF NOMINATIONS TO SERVE ON OUTSIDE BODIES

- 514 The nomination of representatives for 3 Advisory Groups to Aston Villa, and Birmingham City Football Clubs and Warwickshire County Ground were appointed and approved by the Sub-Committee:

Aston Villa Football Club

Councillors Robert Alden, Bob Beauchamp, Roger Harmer, Tony Kennedy (Chairman), Mike Leddy and Mike Sharpe.

Birmingham City Football Club

Councillors Randal Brew, Andy Cartwright, Lynda Clinton (Chairman), Zafar Iqbal, Ron Storer and Mike Ward.

Warwickshire County Cricket Club

Councillors Vivienne Barton, Neil Eustace, Mahmood Hussain, Nagina Kauser, Majid Mahmood (Chairman) and Habib Rehman.

NATIONAL SCAMS HUBS PROJECT

The following report of the Service Director of Regulation and Enforcement was submitted:-

(See document No.2)

Donna Bensley, Operations Manager Trading Standards and Chief Inspector of Weights and Measures, made introductory comments relating to the report and highlighted the work carried out in conjunction with Trading Standards and Adults Safeguarding to protect vulnerable adults who had been victims of scams costing them thousands of pounds over lengthy periods.

Members questioned the budget and resources for this work and were advised that the work was undertaken within current budgets and in response to information provided by Councillor Kennedy regarding work with Experian and other public sector agencies on the 'Healthy Villages' project and the integrated data sharing protocols within this group, which would be meeting the following day. Ms Bensley stated that she would be keen to meet with them.

Councillor Moore questioned why the national scams project had not been accessed earlier, given that it had been in operation since 2012 and there were no associated costs, and was advised that while the scheme had commenced in 2012 a lot of work had been carried out locally prior to this with vulnerable residents and the service had dealt with 35 referrals since 2012.

The Chair put the recommendations contained in the report at agenda item No 11 and these were agreed unanimously.

515

RESOLVED:-

- (i) That Committee welcomes the report and recommends that Birmingham City Council Trading Standards Service signs the Service Level Agreement with the National Scams Hub after ensuring that compliance with the Data Protection Act has been confirmed.
- (ii) That the report be shared with the Strategic Director for People to ensure closer collaboration with colleagues working in Adults Social

Care. Additionally the report should be shared with the Cabinet Member for Health and Social Care.

UPDATE ON ACTIONS/INTERVENTIONS TAKEN TO CONTROL ILLEGAL ADVERTISING – FLY-POSTING AND PLACARDING

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No. 3)

Mark Croxford, Head of Environmental Health introduced this report and informed Members of the work undertaken by Regulatory Services in partnership with other public agencies with regard to 'illegal advertising' via placards and fly-posting with regard to enforcement work undertaken to both prevent and penalise offenders.

Members welcomed this report and the enforcement action undertaken but felt that this was an area which needed to be maintained to prevent escalation of illegal advertising. Questions were raised regarding future action, the status of cautions regarding these offences, the status of religiously and politically offensive stickers, the level of work carried out in each ward and the source of the figures for wards with regard to fly-posting and placarding.

Mr Croxford advised Members that cautions were kept on record and taken into account should a further offence be committed and that a large amount of the stickers – that had been mainly put up in the lead to the elections had been removed and the service were attempting to remove any outstanding ones. Members were informed that in terms of removal the team were more active in areas of higher levels of problems with fly-posting and placarding and were provided with these figures for each ward by Fleet and Waste Management. With regard to future action regular would be brought to the Committee with information regarding percentages for each ward and regarding any interventions, including injunctions that had been undertaken.

The Chair put the recommendation contained in the report at agenda item No 5 to the meeting as amended at 2.2 to include other areas of the city and with 10 votes for, declared them carried.

516

RESOLVED:-

- (i) That the report be noted and outstanding minute number 405 (ii) be discharged.
- (ii) That Committee approve the attached Flyposting Enforcement Approach.

REVISED HEARING PROCEDURAL RULES – LICENSING ACT 2003

Licensing and Public Protection Committee – 17 June 2015

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No. 4)

Parminder Bhomra, Committee Lawyer made introductory comments relating to the report advising Members of the revised hearing procedural rules for applications made under the Licensing Act 2003.

In response to questions Ms Bhomra advised Members that currently additional documentation for hearings in the day before a hearing was accepted by Licensing Services but documents presented on the day or lost in transit accepted at the discretion of the Chair. With regard to expedited reviews members were advised that these hearings had to be held within 48 hours of the request, but ideally on the same day of the request.

The Chair put the recommendation contained in the report at agenda item No 14 and this was agreed unanimously.

517

RESOLVED:-

That Committee notes and agrees the attached set of hearing Procedural Rules for applications heard under the Licensing Act 2003.

ACTION TAKEN BY THE CHAIR OF LPPC – MARCH, APRIL & JUNE 2015

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No.5)

Chris Neville, Head of Licensing introduced the report and informed Members of action taken by the Chair under authority from Licensing and Public Protection Committee and why this authority was used.

Councillor Moore queried the possibility of a taxi driver case being sent to Licensing Sub-Committee in the event of an accusation of sexual assault without any further action taken by the Police. Mr Neville stated that if the licensing services felt there was sufficient evidence to cause doubt about their actions within the role as a result of an accusation the case would be directed to a Sub-Committee hearing – however each case would be dealt with on an individual basis,

518

RESOLVED:-

That the report be noted.

PROSECUTIONS AND CAUTIONS – MARCH & APRIL 2015

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No. 6)

Jacqui Kennedy, Director of Regulation and Enforcement, made introductory comments relating to the report,

Members stressed their appreciation regarding the work being undertaken by Regulatory Services regarding unhallmarked jewellery as this was an industry that was critical to the prosperity of the City and expressed their hope that the efforts being made by the service would be reflected in the prosecutions undertaken as a result. Councillors also welcomed the work identified within the report regarding Hajj Packages and the sales of meat falsely represented as halal.

519

RESOLVED:-

That the report be noted.

FIXED PENALTY NOTICES ISSUED – APRIL 2014 – MARCH 2015

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No.7)

Mark Croxford, Head of Environmental Health informed Members that 4095 fixed penalty notices had been issued in 2014-2015.

520

RESOLVED:-

That the report be noted.

FIXED PENALTY NOTICES ISSUED – APRIL 2015

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No.8)

Mark Croxford, Head of Environmental Health informed Members that 605 fixed penalty notices (FPN) had been issued in April 2015 and that these were now also identified areas of residents issued with an FPN who were outside of the Birmingham area.

Councillor Lines expressed his concern that of the FPNs issued in this month, only 17 were issued in areas on the outskirts of Birmingham and felt there should be a dispersed resource of patrols across the City. Furthermore, for the

year 2014-2015 no FPNs had been issued in Bartley Green, parts of which had littering problems. He was assured by Mr Croxford that resources were deployed in areas which were identified as having littering problems and that he would take details of the areas concerned from Councillor Lines and deploy patrol teams as required.

521

RESOLVED:-

That the report be noted.

LPPC PROVISIONAL OUTTURN 2014/2015

The following report of the Director of Regulation and Enforcement and Director of Finance was submitted:-

(See document No.9)

David Jones, Finance Manager, made introductory comments relating to the report advising Members of the provisional outturn overspend of £0.620m, the delivery of the savings programme for 2014/15 and the balances and reserves.

The Chair sought clarification to the transfer of the Service Birmingham Budgets from Regulatory Services to a central budget as to whether the service had been transferred with the budget and was advised that although the budget had been transferred the services continued to be provided.

Councillor Kennedy queried the breakdown of services provided by Service Birmingham for the costs incurred, the Pest Control income increases, the pressures on the Registrars Service budget and the source of the Place Directorate savings to balance the budget.

Ms Kennedy advised Members that Bereavement Services had overachieved on their income targets which would help towards the budget pressures.

With regard to Pest Control, income had increased as a result of reduced expenditure on transport and increased income and the service were currently looking at methods of increasing income in partnership with other directorates.

Members were also informed of the high income target that had been set for the Registrars Service; the effects of changes in legislation and immigration upon the income for the service an point of delivery services which were provided for the registration of births and deaths which was free of charge.

Ms Kennedy felt that it would be useful for her to provide an Information Report to a meeting of the Committee on the challenges facing the Pest Control and Registrar Services.

Mr Jones stressed that the detail regarding the Service Birmingham costs would also benefit from a further note to the Committee.

The Chair put the recommendations contained in the report at agenda item No 19 and these were agreed unanimously.

522

RESOLVED:-

- (i) To note the provisional revenue outturn overspend of £0.620m as detailed in the report.
 - (ii) To note the delivery of the savings programme for 2015/15 as detailed in the report.
 - (iii) To note the balances and reserves as detailed in the report.
-

REGULATION & ENFORCEMENT – ENFORCEMENT POLICY REVIEW

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No.10)

Jacqui Kennedy, Director of Regulation and Enforcement made introductory comments relating to the report advising Members of the revised enforcement policy, the risk assessment framework in the policy to improve standardisation of approach and to assure the potential for inconsistency of enforcement decision making was minimised.

Councillor Moore asked if the section of the enforcement policy regarding the suspension and revocation of a licence had been adopted and was advised by Ms Kennedy that this was case.

The Chair put the recommendation contained in the report at agenda item No 20 to the meeting and this was agreed unanimously.

523

RESOLVED:-

- (i) That Committee consider the revised Enforcement Policy attached to the report.
-

REGULATION & ENFORCEMENT – ANNUAL REPORT 2014/2015

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No. 11)

Jacqui Kennedy, Director of Regulation and Enforcement, made introductory comments relating to the report on the work undertaken during the year April 2014 to March 2015 by the Regulation and Enforcement sections reporting to the Licensing and Public Protection Committee.

Members thanked Ms Kennedy for a very comprehensive report on the work of the Regulation and Enforcement Service and for the amount and variety of work undertaken given the financial difficulties faced by the service – including surveillance of faith healers and spiritualists who preyed on vulnerable people.

Councillor Moore questioned the low take up of pest control service by internal council departments and the low speed of service for Trading Standards (TS) and Environmental Health (EH) identified in the Customer Satisfaction survey and was advised by Ms Kennedy that the reduction in the number of council buildings had led to a reduced internal service and that the slower speed of service for the TS and EH services was due to a reduction of staff and service requests were batched together on a geographical basis for efficiency and this sometimes led to a slower service. However, both these services were working hard led by a pro-active management.

In response to questions from Councillor Lines regarding notice of test purchasing and responsibility for dumped rubbish on private land Ms Kennedy responded that no advance notice was given regarding test purchase by Trading Standards and that rubbish on private land was the responsibility of the land owner.

524

RESOLVED:-

That the report be noted.

OFFICER DELEGATIONS FOR HACKNEY CARRIAGE AND PRIVATE HIRE SUB-COMMITTEE HEARINGS

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No.12)

Jacqui Kennedy, Director of Regulation and Enforcement, made introductory comments relating to the report consulting the Committee on a proposal to change the delegations associated to determining licenses for the taxi and private hire trade with a view to: increasing the delegations to officers enabling more matters to be determined by them and to reduce the number of sub-committees held.

Members discussed this matter in detail and felt that they agreed with the proposal in theory although there was a need to proceed with caution in delegating authority to officers and it would be more beneficial for these proposals to be looked at via a working group who would then report back to the Committee. It was therefore agreed that 3 meetings would be set up for a working group open to all of the Committee – with the requirement to attend all 3 meetings – which would discuss these proposal and put together a briefing note for the Committee.

The Chair put the recommendations contained in the report at agenda item No 22 to the meeting and these were agreed unanimously.

525

RESOLVED:-

- (i) That the Committee approve in principle the proposal to research further the opportunity to increase officer delegations and consequently reduce the number of sub-committees held.
 - (ii) That the Committee establish a short life working group of officers and elected members to develop detailed proposals for presentation to the September Licensing and Public Protection Committee.
-

SCHEDULE OF OUTSTANDING MINUTES

The following scheduled of Outstanding Minutes was submitted:-

(See document No. 13)

526

RESOLVED:-

That Outstanding Minute No. 405 (ii) be discharged and all other Outstanding Minutes be continued.

OTHER URGENT BUSINESS

527

There was no other urgent business.

AUTHORITY TO CHAIRMAN AND OFFICERS

505

RESOLVED:-

That the Chairman is hereby authorised to act until the next meeting of the Committee except that, in respect of the exercise of the Council's non-Executive functions, the appropriate Chief Officers are hereby authorised to act in consultation with the Chairman and that the Director of Legal and Democratic Services is authorised to affix the Corporate Seal to any document necessary to give effect to a decision of the said officers acting in pursuance of the power hereby delegated to them; further that a report of all action taken under this authority be submitted to the next meeting and that such report shall explain why this authority was used.

The meeting ended at 1225 hours.

.....
CHAIRMAN

BIRMINGHAM CITY COUNCIL

**REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015
ALL WARDS

LICENSING AUTHORITY POLICIES, PROCEDURES AND DELEGATIONS

1. Summary

- 1.1 This report outlines the policies, procedures and delegations, which have been built up over a number of years in relation to licensing and registration issues, allowing the Licensing Authority to delegate the bulk of the administration associated with the licensing regime to be carried out by Officers.
- 1.2 It also ensures that the Committee itself acts in a manner which is as open and consistent as circumstances allow.
- 1.3 The report consolidates existing policy, procedures and delegations and updates those policies in line with current working practices.

2. Recommendation

- 2.1 That the Committee notes the policies approved by City Council:
 - relating to the Gambling Act 2005 and approved in 2013;
 - regarding Sexual Entertainment Venues and approved in 2014;
 - relating to the Licensing Act 2003 and approved in 2015;
- 2.2 That the Committee note the changes to the Poisons Act as detailed in paragraph 17 of Appendix 1 to this report.
- 2.3 That the amendment to Paragraph 3.16.1 of Appendix 1, as detailed in Paragraph 4.7 be agreed.
- 2.4 That the Committee approves the policies and procedures contained in Appendix 1 related to all other matters.

Contact Officer: Chris Neville, Head of Licensing
Telephone: 0121 303 6103
E-mail: chris.neville@birmingham.gov.uk

3. Background

- 3.1 The City Council has a number of licensing, regulatory and registration powers and duties and the exercise of these powers and duties are delegated to the Licensing and Public Protection Committee. The granting and issuing of specific licences, permits and registrations is delegated to the Director of Regulation and Enforcement on the understanding that any applications giving rise to concern or difficulty may be referred to the Licensing and Public Protection Committee or its sub-committees for determination where appropriate.
- 3.2 The Licensing Service is responsible for the administration of grants, renewals and transfers as appropriate of hackney carriage and private hire vehicles, drivers and operators licences and for issuing licences under the Licensing Act 2003 and Gambling Act 2005, sex establishment and animal welfare legislation, and issuing permits for charitable collections and massage and special treatments etc. as well as the associated variations, amendments and transfers, which are carried out under policies delegated by your Committee.
- 3.3 The public office of the Licensing Service is situated at Crystal Court, Aston Cross Business Village, Rocky Lane, Birmingham, B6 5RQ.

4. Licensing and Public Protection Committee

- 4.1 The licensing function of the City Council is disposed of through the processes and procedures of the Licensing and Public Protection Committee, sub-committees and officers by virtue of the Local Government Acts and other relevant statutory provisions.
- 4.2 The Court of Appeal stated in the “Hope and Glory” case (2011) that the licensing function of the licensing authority is an administrative function, by contrast with the function of the magistrates, which is a judicial function. The Court of Appeal said this:

“The licensing authority has a duty, in accordance with the rule of law, to behave fairly in the decision-making procedure, but the decision itself is not a judicial or quasi-judicial act. It is the exercise of power delegated by the people as a whole to decide what the public interest requires.”

This means that it must act in accordance with the two rules of natural justice. These are firstly that everyone has a right to be heard and secondly the rule against bias.

- 4.3 The right to be heard requires that a person directly affected by the matter under consideration must be given a fair opportunity both to state his/her case and to know of and to respond to any objections.

- 4.4 The rule against bias prohibits members participating in any decision if they have a financial or other interest in the outcome. Members will be familiar with this requirement from their general duties as Councillors.
- 4.5 Further guidance on the determination of matters concerning licensing appears at Annexe 1.
- 4.6 The provisions as set out in the appendix to this report summarise your Committee's policies in respect of the activities it licences.
- 4.7 Paragraph 3.16.1 of the Appendix has been amended to reinstate a sentence which had been erroneously omitted from the previous version of the report. The requirement to present an MOT certificate dated no less than 10 weeks prior to the licensing or relicensing of a vehicle is a long established one. It is clearly detailed within the application form and doesn't represent any change of policy. The amendment is purely to correct an omission.

5. Consultation

- 5.1 This report seeks to reproduce in one document a number of policies which have been implemented over a number of years.

6. Implications for Resources

- 6.1 It is the responsibility of the Committee Chairman and the Director of Regulation and Enforcement to ensure the services provided by the Committee are contained within the approved budget.
- 6.2 In relation to Village Greens there is an annual budget allocation of £50,000 associated with this function.
- 6.3 In relation to the Poisons Act 1972, the legislative changes will have a detrimental impact on the budget of approximately £650 per annum.

7. Implications for Policy Priorities

- 7.1 The issues addressed in this report relate to the City Council priorities associated with creating a cleaner, greener and safer city and providing excellent services.

8. Implications for Equality and Diversity

- 8.1 The matters identified in this report are in accordance with Regulation and Enforcement's enforcement policies which ensure that equality issues have been addressed.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: nil

1. Hackney Carriage and Private Hire Licensing

- 1.1 Although both hackney carriages and private hire vehicles are licensed to carry passengers, there is a distinct difference in the way vehicles can be made available for hire.
- 1.2 Hackney carriages (“black cabs”) are the only vehicles licensed to ply for hire, which means that they may stand on taxi ranks, respond to a flag down in the street, and are generally available for immediate hiring.
- 1.3 Private hire vehicles must be pre-booked in advance, through a licensed private hire operator and may not use taxi ranks, respond to a flag down in the street, or be offered for immediate hiring.
- 1.4 Hackney carriage vehicles must be fitted with a taximeter which calculates the fare according to time and distance travelled. The meter is tested and sealed to ensure accuracy and compliance with the fare structure agreed by the Licensing and Public Protection Committee. The current table of fares must be displayed in the vehicle.
- 1.5 There is no power for the licensing authority to control the fares charged for private hire journeys, the fare structure for each company being set by the licensed operator. However, conditions of licence require the operator’s table of fares to be displayed inside each private hire vehicle.
- 1.6 Although both hackney carriages and private hire vehicles are commonly referred to as taxis, the word “taxi” has a statutory definition, by virtue of the Transport Act 1985, and may only be applied to a licensed hackney carriage.
- 1.7 For this reason Birmingham’s licensing conditions prevent private hire operators, vehicles or drivers from using the words “taxi” or “cab” in relation to their business.
- 1.8 The hackney carriage fleet is made up exclusively of purpose-built cabs, all of which are equipped for wheelchair accessibility.
- 1.9 At present there is a moratorium on the issue of new hackney carriage vehicle licences which was agreed by the former Licensing Committee in September 2008. This moratorium was reviewed in September 2010 and again in September 2014 whereupon it was extended for a further three years. The Committee has the authority to revert to the previous arrangements, whereby no limits were imposed, if that is considered appropriate.
- 1.10 In addition to the requirements for an annual vehicle inspection and meter test, vehicle owners must also produce insurance for the vehicle, covering its use for public or private hire as appropriate before a licence can be issued.

Further, the insurance for licensed vehicles must be maintained continuously throughout the duration of the licence.

- 1.11 The legislation impacting on hackney carriage and private hire vehicles is the Town Police Clauses Act 1847, Birmingham City Council Hackney Carriage Byelaws 2008, the Local Government (Miscellaneous Provisions) Act 1976, Transport Act 1985, and the Equalities Act 2010.

2. **Licensing Hackney Carriage and Private Hire Drivers**

Individuals must satisfy the authority that they are fit and proper to be licensed drivers. The following application process is designed to ensure services delivered within the City are of a good standard and is subject to the appropriate fees being paid:

1. application received
2. entitlement to drive in the UK checked
3. entitlement to work in the UK checked
4. knowledge test
5. criminal record check
6. medical
7. driving test
8. disability awareness course
9. licence fee
10. licence issued

(It may be necessary for an application to be referred to Committee at any stage of this process.)

2.1 **Application Received:**

The application form will be checked and details entered onto the Licensing Service computer system.

2.2 **Entitlement to drive in the UK Checked:**

An EU or EEA licence is acceptable as long as the counterpart licence issued by DVLA (for EU and EEA drivers) accompanies it. However, vocational drivers may not drive indefinitely on an EU or EEA licence and must produce a United Kingdom DVLA driving licence if they have been resident in the UK for five years or more. An applicant for a hackney carriage or private hire driver's licence must have held a full DVLA driver's licence for at least two years.

2.3 **Entitlement to work in the UK checked**

The Asylum and Immigration Act 1996 places an obligation on employers to check the status of job applicants in order to establish a legal right to work. Employing a person who does not have the right to work in the United Kingdom is a criminal offence under Section 8 of The Asylum and Immigration Act 1996 and employers can and do face prosecution for breaches of the Act. As a Licensing Authority, Birmingham City Council does not employ the

drivers who are the recipients of hackney carriage and private hire licences although licensing authorities are recommended in the Department for Transport Best Practice Guidance (March 2010) to establish the right to work, as part of the process of determining whether an applicant is a 'fit and proper person'. Members of the hackney carriage and private hire trade are almost exclusively self-employed, so if a Licensing Authority does not check on an applicant's right to work, it is unlikely that anybody else will. Officers carry out the checks in accordance with the established procedure used by Birmingham City Council when recruiting employees.

2.4 Knowledge Tests

2.4.1 Knowledge folders are prepared annually for hackney carriage, private hire and for a 12 month trial period starting 1 April 2013, restricted private hire licences and should remain current for two years (in exceptional circumstances it may become necessary to amend this duration). An applicant may take the test associated with a knowledge folder at any time after issue, up to and including the expiry date subject to test appointment availability.

2.4.2 Candidates making a third test cancellation without an adequate and evidenced reason should be required to wait twelve months before being allowed to take the test.

2.4.3 Candidates absent or cancelling, within five clear working days, without an adequate and evidenced reason will forfeit their test fees.

2.4.4 Knowledge folders contain a combination of legal, licence condition, route and two point location questions applicable to the licence type. Candidates must identify and memorise the answers to those questions and answer a selection of questions as detailed below.

2.4.5 Hackney Carriage

- The hackney carriage knowledge test is conducted in-house and under normal test conditions (no communication with another person except the examiner, no reference to any material during the test except the test paper).
- The test must be completed within two hours if conducted verbally, and three hours if written. (If a candidate wishes to take a written knowledge test, they must also complete the verbal communications test (VCT).)
- The test consists of 106 questions (6 legal, 80 two-point locations and 20 routes) selected at random from the relevant knowledge folder.
- All six legal questions must be answered fully and correctly.
- The applicant must answer **90%** of the remaining routes and two point location questions correctly in order to pass the test.
- The applicant must pass this test to progress their application and is allowed three attempts.
- The application process is terminated if the applicant fails the third test. The applicant can re-apply after a period of twelve months from the date of the last failed knowledge test.

2.4.6 Private Hire

- The private hire knowledge test is conducted in-house and under normal test conditions (no communication with another person except the examiner, no reference to any material during the test except the test paper).
- The test is designed to mirror the hackney carriage test in style and presentation, but is based on well-known cross city routes and familiar locations and the bank of questions in the private hire knowledge folder is considerably smaller than that found in the corresponding hackney carriage folder.
- The test must be completed within one hour and must be taken verbally.
- The test consists of 90 questions (7 legal and 7 conditions based multiple choice questions, 6 A to Z based tasks, 50 two-point locations and 20 routes) selected at random from the relevant knowledge folder.
- The legal, conditions and A to Z based questions must all be answered correctly.
- An applicant must answer **80%** of the remaining routes and two point location questions correctly in order to pass the test.
- An applicant is allowed three attempts at a test.
- The application process is terminated if the applicant fails the third test. The applicant can re-apply after a period of twelve months from the date of the last failed knowledge test.

2.4.7 Restricted Private Hire

In April 2013 a Restricted Private Hire badge was introduced on a trial basis. This facility is subject to an annual review, and could be withdrawn thereafter. An applicant wishing to work as a chauffeur/executive driver may be eligible to apply for a one year restricted private hire licence. Applicants wishing to obtain a restricted private hire licence must be sponsored by a Birmingham based licensed operator running a recognised executive, or limousine hire business which does not undertake any regular private hire work. A candidate for a restricted private hire driver's licence is required to provide a letter of introduction from the licensed operator indicating their intention to employ the applicant as a chauffeur, confirming the type of work to be undertaken and stating explicitly no cash work will be undertaken.

- The knowledge test for restricted private hire drivers is based on the standard private hire knowledge test and consists of 20 questions (7 legal and 7 conditions based multiple choice questions and 6 A to Z based tasks) selected at random from the relevant knowledge folder.
- The legal, conditions and A to Z based questions must all be answered correctly.
- There are no two-point locations, or routes.
- An applicant is allowed three attempts at a test.
- The application process is terminated if the applicant fails the third test.
- The applicant can re-apply after a period of twelve months from the date of the last failed knowledge test.

2.5 Criminal Record Check

2.5.1 All applicants and drivers are required to undertake an enhanced Disclosure and Barring Service (DBS) check. Hackney carriage and private hire drivers are exempt from the provisions of the Rehabilitation of Offenders Act 1974 by virtue of the Rehabilitation of Offenders Act 1974 (Exemptions) (Amendment) Order 2002 and convictions are, therefore, never spent. On initial application, and every three years thereafter, where a licence is granted a driver will be subject to a criminal record check facilitated by the DBS. Where the DBS check reveals cautions or convictions relating to drugs, dishonesty, violence, or offences of a sexual nature, or reveals any information giving cause for concern, the applicant, or licensed driver will be referred to the Licensing Sub-Committee where the individual's fitness to hold a licence will be considered, unless those matters have already been taken into consideration and passed by Committee.

2.5.2 All new applicants who have been resident abroad as adults must produce evidence of good conduct in that country or the equivalent of a DBS disclosure before their application can be considered. Any matters revealed will be dealt with in the same way as any revealed by the DBS check.

2.5.3 An applicant who has fled an oppressive regime or has other reasonable grounds to believe that obtaining such documentation would be impossible or dangerous may apply to the Licensing Sub-Committee for an exemption and should support that application with a Statutory Declaration and a verifiable character reference from an individual employed in a Prominent 'Regulated Occupation'. Further details in this respect are available on request.

2.5.4 Drivers' licences are currently renewed at the choice of the licensee for one, two or three years, to coincide with the DBS check. Restricted private hire licences will only be granted, or renewed on a one year basis. On renewal, applicants are required to show their current DVLA driving licence for any possible endorsements. The licence must be in good condition, easily read, and relate to the particulars of the applicant. Where a DVLA driving licence reveals matters or information that gives cause for concern the application can be referred to the Licensing Sub Committee for determination (unless previously considered and passed by Committee).

2.6 Medical

All applicants for the grant of a driver's licence are required to undertake and pass a Group II medical examination for vocational drivers before a licence can be issued. The medical is conducted at Birmingham City Council's Occupational Health Service. Once licensed, drivers remain subject to further medical checks as follows:

- Drivers aged 45 and under - every 5 years
- Drivers between 45 and 60 - every 3 years
- Drivers over 60 - every year.

2.7 Driving Test

Qualified examiners based within the City Council's Driver Training Service conduct the driving test.

- The applicant must pass the test in order to progress their application and is allowed **three** attempts.
- The application process is terminated if the applicant fails the third test.
- The applicant is eligible to re-apply after a period of twelve months from the date of the last driving test.

2.8 **Disability Awareness Training**

All new applicants for the grant of a driver's licence must undergo the Birmingham City Council approved disability awareness training. The course is mandatory and subject to a fee, payable by the applicant.

2.9 **Fee Paid and Licence Issued**

An application will not be considered complete until such time as all fees have been paid and a licence issued. A licence is issued with attached conditions and the licensee is considered to have accepted those conditions unless appealed to Magistrate's Court within 21 days of issue, or granted exemption by Licensing Sub-Committee.

2.10 Whilst an application for the grant of a licence is pending the applicant will undertake such tests and checks as the Licensing and Public Protection Committee deem appropriate and this may include new tests introduced whilst the application is in progress.

2.11 An incomplete application on which there has been no activity for a period of twelve months or more, will be deemed abandoned and treated as withdrawn. Where an applicant returns to the Licensing Service to pursue an application deemed abandoned they will be required to submit new forms and undertake all tests with the exception of the disability awareness course if already taken.

2.12 **Driver Licence- Renewal**

A driver's licence is eligible for renewal from a date ten weeks prior to the expiry of the licence. The renewal of a licence will be subject to the policies relating to medicals, DBS checks, outstanding enforcement issues, and DVLA licence checks. An expired driver's licence may be renewed up to one calendar month after the expiry date.

2.13 **Late renewal**

The period of one month after the licence has expired is referred to as a "late renewal period" and will be subject to a higher fee, namely the fee associated with a grant of a licence. Any application made more than a month after expiry will be considered a new application, subject to all the requirements for the grant of a licence and the applicant will be required to undertake all applicable tests and checks. Where there are exceptional circumstances which may warrant an exemption from that requirement, Officers may refer the matter to the Licensing Sub Committee for determination to agree a later renewal.

Whilst an application for the grant of a licence is pending the applicant will undertake such tests and checks as the Licensing and Public Protection

Committee deem appropriate and this may include new tests introduced whilst the application is in progress.

2.14 Multiple Driver Licence Types

If a driver already holds one type of licence and applies for another type of licence they must undergo all the relevant tests that were either not applicable or not in force at the time the first licence was granted. In any case where a medical or DBS check on the original licence is more than 12 months old, an applicant will be required to undertake another, the new check becoming current for both licences. Driving test and Disability Awareness course passes can be carried over to the new application. Knowledge test passes will not be carried over or exempted except where agreed by Committee.

- 2.15 Any person may request their application be referred to the Licensing Sub Committee for determination, however, the Head of Licensing or his nominated deputies, in consultation with the Chair of the Licensing and Public Protection Committee, may refuse such a request where the request is considered to be frivolous, vexatious or repetitious.

2.16 Lost or Stolen Driver Licence (Badge)

In the event a badge is lost or stolen this information must be reported to the Licensing office within three working days (not including Saturday and Sunday). If the badge has been stolen the Police must be informed and a Police report number obtained. If the badge has been lost a declaration to this effect must be made to the Licensing Offices. A replacement badge will be issued on payment of a fee and production of a current DVLA driving licence. A person may not legally work as a hackney carriage or private hire driver without being in possession of a current badge.

3. Licensing Hackney Carriage and Private Hire Vehicles

- 3.1 The Law states no-one can drive a hackney carriage or private hire vehicle licensed by Birmingham City Council unless they are licensed to do so i.e. they hold a current valid hackney carriage or private hire driver's licence, as appropriate, issued by Birmingham City Council.

3.2 Insurance

Vehicle proprietors must produce current, valid, insurance covering the use of the vehicle for public or private hire as applicable, before a licence can be issued.

3.3 Transfer of vehicle licence

- 3.3.1 Transfer of interest in a licence shall be completed only when the old identity plate(s) and licence are returned to the Licensing Office.
- 3.3.2 If this cannot be done, the previous owner must sign a declaration informing the Licensing Office of the whereabouts of the vehicle identity plates or the reason the identity plates cannot be produced. This declaration will be used to assist in progressing with the transfer application.

3.3.3 The transfer fee will be charged where interest in a vehicle licence is transferred to another proprietor. Where a renewal or replacement is conducted simultaneously both fees will be due.

3.4 **Vehicle Replacement**

The replacement fee will be charged when a vehicle is replaced during the life of a licence. Where a renewal or transfer is conducted simultaneously both fees will be due. If transfer, replacement and renewal transactions are conducted simultaneously the replacement fee will be waived.

3.5 **Lost or Stolen Vehicle Licence (Plate)**

In the event a vehicle identity plate is stolen the Police must be informed and a Police report number obtained. If the identity plate is lost a signed declaration must be made to this effect. This information must be reported to the Licensing Office within three working days. A replacement plate will be issued on payment of a fee and production of a valid insurance document and DVLA driving licence.

3.6 **Licensing a vehicle registered to another keeper:**

3.6.1 Where an applicant for a vehicle licence provides a registration document indicating that the registered keeper is another individual, or legal entity, the applicant will be required to provide a letter from the registered keeper indicating that use of the vehicle as a hackney carriage or private hire vehicle by the applicant, is done with their full knowledge and consent.

3.6.2 Where an applicant for a vehicle licence provides a registration document indicating that the registered keeper is another individual, or legal entity, the applicant will be required to provide a letter from the insurers indicating that they are aware of the arrangement and content to provide appropriate insurance cover in those circumstances.

3.7 **Expired Hackney Carriage Vehicle Licence**

When a hackney carriage vehicle licence has expired and more than one calendar month has elapsed any attempt to re-licence the vehicle must be referred to the Licensing Sub Committee for determination.

3.8 **Approved Vehicle Types – Hackney Carriage**

The Licensing Authority has set down a series of specifications that a vehicle will need to comply with prior to it being accepted as a licensed vehicle:

- Vehicles specifically adapted for wheelchair carriage which meet the M1 European standard.
- Any M1 vehicle adapted to be a hackney carriage where the adaptations are approved by the Vehicle Certification Agency (VCA) and the adaptations have VCA certification to European Whole Vehicle Type Approval (EWVTA) or G/B/ Low Volume (Small Series) Type Approval.

The front seat of a hackney carriage vehicle will not be included in the seating capacity indicated on the vehicle licence.

Any MPV or van derived M1 class vehicle to be licensed as a hackney carriage must be black in colour and must not be fitted with full-body advertising livery.

Purpose built Hackney Carriage vehicles cannot be licensed for the purposes of private hire.

3.9 Approved Vehicle Types – Private Hire

3.9.1 The private hire licensing provisions apply to a variety of vehicles ranging from four-door saloon vehicles to people carriers, however, those vehicles should be:

- built to M1 specification.
- have a minimum engine size of 1600cc (1500cc for second-generation Toyota Prius.)
- be capable of carrying a minimum of four average sized adults in comfort.
- All vehicles must be right hand drive and must not have fewer than four road wheels.
- Cars must have a minimum of four doors giving adequate access to and egress from the vehicle. The design of the car can be saloon, hatchback or estate.
- Larger vehicles (MPV, minibus, or people mover types) must have sufficient doors of sufficient size to allow passengers to get in and out quickly and safely.
- Where exit from the rear seats in vehicles equipped with three rows of seats requires operation of a tip seat mechanism, passengers must be able to exit from either side of the vehicle and the tip seats at either end of the middle row must be capable of independent operation.
- Where a vehicle is equipped with pop-up, or auxiliary seats intended for occasional use only, those seats must not be included in the licensed capacity of the vehicle.
- Where the vehicle configuration requires a whole bench seat to slide and/or tip for access/egress to the rear seats, the rear seats should not be included in the seating capacity and should be removed to avoid pressure from passengers to carry numbers in excess of the licensed capacity.
- All vehicles must have a wheelbase (when measured from the centre of the front wheel to the centre of the rear wheel) of at least 2540mm (100 inches).
- Cars must have a back seat width (when measured in a continuous line from edge to edge) of at least 1220mm (48 inches).
- Larger capacity vehicles (MPV, minibus, or people mover types) which are fitted with individual seats, or which do not have full width bench seats, must have a minimum 407mm (16 inches) of seat space per passenger across the width of the seat.
- Seat belts must be provided for all passengers according to the licensed capacity of the vehicle.
- Vehicles equipped with soft tops, removable hard tops and people carriers (MPV types) described as black on the log book, will not be licensed for the purpose of private hire.

- Vehicles fitted with darker tints and privacy glass can be licensed where the glass is to factory standard and vehicles are presented to licensing in an unmodified state, vehicles fitted with films, foils, or any other aftermarket tinting will be refused a licence, unless the tinting is removed and the vehicle returned to the manufacturer's standard specification.
- 3.9.2 Vehicles identified as stretched limousines, or novelty vehicles will be considered outside the scope of this definition, in line with current practice.
- 3.10 Transfer of Hackney Carriage Vehicle Licence**
A proprietor of a hackney carriage vehicle may replace, swap or change their vehicle with another licensed hackney carriage vehicle of any age. In this policy it is understood that the licence and its related vehicle will remain together and not be separated.
- 3.11 Transfer of Private Hire Vehicle Licence**
- 3.11.1 Private hire vehicle licences may only be transferred to a vehicle that is less than 8 years old.
- 3.11.2 The licence to be transferred into the proprietor's name must relate to a vehicle, that is less than 8 years old. Failure to comply with this policy will result in the private hire vehicle licence being transferred for the duration of the life of the licence; however, the Council will refuse to renew that licence when it expires.
- 3.12 Replacement of Hackney Carriage Vehicle Licence**
A hackney carriage vehicle licence may only be transferred to another vehicle (that is to say separated from its related vehicle and moved to another vehicle) that is younger/newer than the age of the vehicle currently licensed.
- 3.13 Replacement of Private Hire Vehicle Licence**
- 3.13.1 A licensed private hire vehicle can only be replaced, swapped or changed with a vehicle that is less than 8 years old.
- 3.13.2 Failure to comply with this policy will result in the vehicle or the private hire vehicle licence being transferred for the duration of the life of the licence, however, the Licensing Service will then refuse to renew this.
- 3.14 Age Limit – Hackney Carriage Vehicles**
No vehicle over the age of 14 years will have its licence renewed unless the vehicle is able to pass the Supplementary Test Plus, in which case the vehicle licence may be renewed on a year by year basis, subject to passing the Supplementary Test Plus on each occasion.
- 3.15 Age Limit - Private Hire Vehicles**
No vehicle over the age of 8 years will have its licence renewed unless the vehicle is able to pass the Supplementary Test Plus, in which case the vehicle licence may be renewed on a year by year basis, subject to passing the Supplementary Test Plus on each occasion.

3.16 **Vehicle Testing – ALL Vehicles**

3.16.1 All vehicles are subject to a standard MOT test to determine its mechanical fitness and a more stringent supplementary test dealing with the vehicle's condition, appearance and suitability prior to licensing. An MOT certificate presented for the purpose of replacement of a vehicle or the renewal or granting of a licence must be less than ten weeks old at the time of the transaction, that time period to be calculated from the date of inspection.

3.16.2 The law provides that a private hire vehicle cannot, in its type, design or identification, lead anyone to believe that it is a hackney carriage.

4. **Private Hire Operators**

4.1 All Birmingham licensed operators **must** operate from premises within the City boundaries. Operators' fares are not regulated but each operator is required to ensure that their particular charges are displayed or available on request to each person travelling in a private hire vehicle.

4.2 Drivers pay a weekly rental to a licensed operator for the hire of a radio, or data communication unit. The operator then passes the details of bookings assigned to each driver by voice over a radio network or as text delivered via an electronic data link.

4.3 An applicant for the grant of or renewal of an operator's licence will be asked to disclose details of any previous convictions and also an applicant for the grant of an operator's licence will be asked for details of any previous experience of working within the private hire industry.

4.4 Planning permission must be obtained for the premises where the operation is to be based, unless the applicant can provide confirmation from the Planning Department that such permission is not required.

4.5 The conditions of licence imposed on operators are strictly enforced, particularly those relating to the keeping of records. Failure by a licensed operator to comply with their conditions is a criminal offence under the Local Government (Miscellaneous Provisions) Act 1976. The records to be maintained include records of all journeys undertaken, and information and documentation relating to the vehicles and drivers operated, together with their "call signs".

4.6 The fee payable for an operator's licence is based on the structure of the operation and the number of drivers and vehicles managed. This fee is payable at the time the application is submitted.

4.7 Renewal applications for operator licences must be submitted to the Licensing Office at least 14 days before expiry, fully completed and with all necessary accompanying paperwork. Failure to comply with this requirement may prevent a new licence from being issued on or before the expiry of the old licence.

5. **Committee Policies Relating to Hackney Carriage and Private Hire Drivers**

5.1 An applicant for a hackney carriage or private hire driver's licence must have held a full DVLA driver's licence for at least two years.

5.2 **Disqualification from Driving**

The Licensing Sub Committee will not be disposed to grant new applications or applications for renewal of hackney carriage or private hire driver's licences from persons who have been disqualified from driving until such time that such applicants have gained sufficient recent driving experience and become re-acquainted with driving conditions following reinstatement of DVLA licences; further that the period of further driving experience should be at least equivalent to the period of disqualification. For example, a driving disqualification of six months will mean a rehabilitation period of six months from the date the DVLA licence is reinstated. However, a rehabilitation period may be reduced at the discretion of the Committee where an applicant has successfully completed an approved driving course as part of the sentence.

5.3 **Driving Offences Associated with Drink or Drugs**

The Licensing Sub Committee will not be disposed to grant or renew applications for licences to drive hackney carriage or private hire vehicles where the applicant has been convicted of a driving offence associated with drink or drugs under the Road Traffic Acts for the following periods, following reinstatement of the DVLA driving licence:

- In the case of disqualification a minimum of two years or refer to paragraph 5.2 if the period of disqualification is longer.
- two years where there is no disqualification.

5.4 **Plying For Hire: First and Any Subsequent Offences**

Drivers convicted of a first offence of plying for hire, and driving with no insurance should be revoked. Drivers convicted only of plying for hire should be subject to suspension for a minimum period of six months for the first offence. For any subsequent offence, consideration should be given to the ultimate penalty of revocation of a drivers licence. Each individual case should be considered on its own merits.

5.5 **Refusal of Applicants with a Conviction for any Sexual Offence**

An applicant with a conviction for any sexual offence should normally be refused.

5.6 **An Applicant Refused or Revoked by another Authority**

Where an applicant has had a licence refused or revoked by another local authority, that application shall be referred to and determined by the Licensing Sub-Committee.

5.7 Further Applications from Applicants or Drivers Refused or Revoked

5.7.1 An application for the grant of a hackney carriage or private hire driver's licence must be referred to the Licensing Sub-Committee for determination under any of the following circumstances:

- application previously refused;
- licence previously revoked or refused upon renewal;

5.7.2 Further, an application will not be considered within 12 months of the date of refusal, revocation or unsuccessful appeal, whichever is the later.

5.8 Refusal of Applicants with a Conviction for a Drugs Related Offence

An applicant with a conviction for a drug-related offence should normally be refused.

5.9 Failure of Three or More Knowledge Tests per Application

5.9.1 Where an applicant has failed three knowledge of the city tests in connection with an application for a hackney carriage or private hire driver's licence, that application will be refused on the grounds that the person is not considered to be a fit and proper person to hold such a licence.

5.9.2 An applicant may re-submit an application for the grant of a driver's licence one year after the date of the third knowledge test. This application will be treated as a new application and the applicant must undertake and pass the appropriate tests.

5.10 Failure of Three Driving Tests per Application

5.10.1 Where an applicant has failed three driving tests in connection with an application for a driver's licence that application will be refused on the grounds that the applicant is not considered to be a fit and proper person to hold such a licence.

5.10.2 An applicant may re-submit an application for the grant of a driver's licence one year after the date of the third driving test, however, should a further failure occur this application will be presented to the Licensing Sub Committee for determination.

5.11 Working Dogs

Since March 2001 licensed hackney carriage and private hire drivers in England are under a duty to carry guide, hearing and other prescribed assistance dogs in their vehicles without additional charge. Drivers can apply for an exemption from the duty on medical grounds if they have a condition that is aggravated by contact with dogs to allow them to continue in the trade. Drivers must comply with the requirements of the exemption.

6. **Suspension, Revocation and Refusal to Renew Licences**

6.1 A hackney carriage or private hire vehicle licence may be subject to suspension, revocation or refusal, or renewal, by the Licensing Sub-Committee, on the following grounds:

- The vehicle is unfit for use as a hackney carriage or private hire vehicle.
- Any offence or non-conformity with the legislative provisions by either the operator or the driver.
- Any other reasonable cause.

6.2 A hackney carriage or private hire driver's licence may be suspended, revoked or refused on renewal by the Committee on the following grounds:

- Since the grant of the licence the driver has been cautioned or convicted of an offence involving drugs, dishonesty, indecency or violence.
- Any offence or non-compliance with the legislative provisions by the driver.
- Any other reasonable cause.

6.3 A private hire operator's licence may be subject to suspension, revocation or refusal on renewal by the Committee on the following grounds:

- Any offence or non-compliance with the legislative provisions by the operator.
- Any conduct on the part of the operator which renders him unfit to hold a licence.
- Any material change in any of the circumstances of the operator, based on which the licence was granted.
- Any other reasonable cause.

6.4 In all the above cases, and where applicants for the grant of a licence have been refused, there is a right of appeal against the Committee's decision to the Magistrates' Court. The outcome of all appeals is reported to the Licensing and Public Protection Committee on a regular basis.

7. **Enforcement**

7.1 Licensing Enforcement Officers and Licensing Compliance Officers are issued with an identity card and authorisation. They enforce the provisions of the legislation for which they are authorised. This includes but is not limited to:

Birmingham City Council Act 1990
Equalities Act 2010
Gambling Act 2005
House to House Collections Act 1939
Licensing Act 2003
Local Government Act 1972 (Section 222)
Local Government Act 2003

Local Government (Miscellaneous Provisions) Act 1976 Part II
Local Government (Miscellaneous Provisions) Act 1982 Part I, II, VII
Police Factories, etc. (Miscellaneous Provisions) Act 1916 (Street Collections)
Private Hire Vehicles (Carriage of Guide Dogs etc.) Act 2002
Private Security Industry Act 2001
Town Police Clauses Act 1847 and 1889
Hackney Carriage Byelaw, 26 June 2008

- 7.2 Officers undertake inspections, offer advice, deal with requests for assistance, investigate complaints and take part in planned exercises including operations with other enforcement agencies.
- 7.3 The premises and individuals licensed under the above Acts will be risk rated and inspected as and when appropriate in line with that rating, to ensure compliance with the legislation and any conditions attached to their licences. Inspections may also take place upon the grant, renewal or transfer of a licence or upon the receipt of a complaint.
- 7.4 Private hire operators will be risk rated and inspected an appropriate number of times during the year. Officers will check that the documents and records relating to drivers, vehicles and bookings are as prescribed by their conditions of licence. All operators will receive at least one inspection during the course of the operational year.
- 7.5 Stop check exercises are regularly undertaken with the assistance of the Police. Licensed vehicles are stopped and inspected to ensure that they and their drivers are complying with conditions of licence and are safe to carry members of the public. If defects on the vehicle are noted such as loose radios, bald tyres or defective lights, the plate licence may be suspended until the issues are rectified.
- 7.6 As well as routine inspections and high visibility exercises, Officers undertake exercises, where they pose as members of the public and make test purchases. Again this is to check licensees are complying with the legislation and their conditions of licence.
- 7.7 Officers also work jointly with agencies such as the Police and DVSA (formerly VOSA).

8. **General Licensing**

- 8.1 The General Licensing Team at Crystal Court is responsible for a wide range of licensing functions, which include sales of alcohol, late night refreshment, regulated entertainment, sex establishments, charitable collections, scrap metal and gambling premises.
- 8.2 Administration of the Animal Welfare licensing function as detailed in paragraph 9 below, was transferred from the General Licensing Team to the Environmental Health Section on 1st September 2008. The Senior Animal

Welfare Officer and the administration team are located at 581 Tyburn Road, Erdington, Birmingham B24 9RF. Inspection and enforcement is carried out by the Senior Animal Welfare Officer.

9. Animal Welfare Licences

9.1 Animal Boarding

9.1.1 The relevant legislation is the Animal Boarding Establishments Act 1963. It requires anyone involved in the business of providing accommodation for other peoples animals (being cats or dogs), to obtain a licence form the local authority.

9.1.2 Inspections are undertaken by the Senior Animal Welfare Officer, prior to licence approval.

9.1.3 Licensed premises now include home dog boarders, where individuals board dogs in their own home and also dog day care centres.

9.2 Dog Breeding

9.2.1 The relevant legislation is the Breeding of Dogs Acts 1973 and 1991 which prescribe standards of management and accommodation in relation to the business of breeding dogs.

9.2.2 In addition to the inspection by the Senior Animal Welfare Officer the Act requires that the services of an independent veterinary surgeon or practitioner is used for inspecting prospective establishments in respect of applications for the grant of a new licence

9.3 Pet Shops

9.3.1 The relevant legislation is the Pet Animals Act 1951.

9.3.2 The Act regulates the sale of pet animals which includes a provision that a pet animal cannot be sold to a person under the age of 16. Conditions which are applied to premises promote animal health and welfare.

9.4 Performing Animals

The Performing Animals (Regulations) Act 1925 covers the use of animals in film and stage performances, at circuses, and as part of exhibitions etc. More recently these provisions are applied to persons who use animals during educational talks and demonstrations at children's parties. It is an offence for anyone to train or exhibit a performing animal unless they are registered.

9.5 Dangerous Wild Animals

9.5.1 The Dangerous Wild Animals Act 1976 (as amended) contains a schedule detailing a variety of animals for the purposes of the Act e.g. venomous snakes and certain monkeys etc.

9.5.2 Zoos, pet shops and circuses are exempt from the provisions of the Act. There are no current licences, however, the Act provides powers to the Council to seize any animal being kept on premises which are unlicensed.

9.5.3 There is a requirement for an independent report to be obtained from a veterinary surgeon or practitioner before a licence can be granted.

9.6 Riding Establishments

9.6.1 Stables which hire out horses or ponies for riding or instruction must be licensed under the provisions of the Riding Establishments Act 1964 and 1970. When considering applications there is a requirement for an independent report to be obtained from a veterinary surgeon or practitioner.

9.6.2 An applicant for the grant or renewal of a licence must undergo or present an enhanced criminal record check (not more than 3 months old) with the submission of an application form.

9.6.3 Once licensed, a licence holder must ensure that an enhanced criminal record check is conducted for any person in their employ that may come into contact with any persons under the age of 17 years that will be using the services of the riding establishment.

9.7 Zoos

9.7.1 Under the provisions of the Zoo Licensing Act 1981 a zoo is classed as any establishment, other than a circus or pet shop, where animals are kept for public exhibition.

9.7.2 Licences are initially granted for four years and then renewable every six years. Zoos must observe standards of modern zoo practice which have been specified by the Secretary of State.

9.7.3 Inspections are carried out annually by the Senior Animal Welfare Officer, however, at least twice during the term of the licence; a formal inspection must be carried out by a veterinary surgeon or practitioner in addition to an inspector appointed by the Secretary of State.

10. Licensing Act 2003

10.1 Premises providing alcohol, regulated entertainment or the provision of late night refreshment (after 11pm) require a “premises licence” which is of an unlimited duration, and will only cease to have effect if it is surrendered by the holder of the licence, revoked by the Licensing Authority, or lapses due to the death, incapacity or insolvency of the licence-holder.

10.2 In some cases where the licence lapses there is a mechanism to restore the licence as an interim measure while arrangements are made with regards the longer-term operation of the premises.

10.3 A “club premises certificate” is required for private members clubs.

- 10.4 Alcohol may only be provided at licensed premises if it is under the supervision of a personal licence holder who is declared as the Designated Premises Supervisor (DPS). A personal licence remains in force for ten years. This requirement does not apply to a “club premises certificate” as a personal licence holder is not required for the supply of alcohol at a club premises nor where a board or management committee of a community premises has applied to remove the mandatory condition requiring a DPS to be declared.
- 10.5 Local authorities are required to produce a “statement of licensing policy” which underpins how they will administer and consider applications under the Licensing Act 2003. Birmingham’s statement of licensing policy including the scheme of delegations underwent the statutory review during 2014. The revised policy was approved by the City Council and comes into effect in 2015. Within the policy there are special policies for three areas of the City based on the cumulative impact of a concentration of licensed premises. The three areas are Broad Street, Hurst Street/Arcadian and Central Moseley.
- 10.6 The functions of the Licensing Authority must be carried out with regard to the four licensing objectives stipulated in the Act:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance;
 - the protection of children from harm.
- 10.7 Premises licences and club certificates remain in force indefinitely subject to conditions unless they are revoked or lapse. During the term of those licences the Licensing Service deals with amendments, transfers, variations. In addition, on the anniversary of the grant of those licences/certificates an annual fee has to be collected. Officers also process applications for personal licences and administer Temporary Event Notices.
- 10.8 Hearings must be held whenever relevant representations are received or whenever there is an application for the review of Premises Licences / Club Premises Certificates.

11. **Gambling Act 2005**

- 11.1 The Gambling Act 2005 provides for the regulation, by Local Authorities, of different classes of gambling premises (e.g. casinos, bingo halls, betting shops, tracks and amusement centres).
- 11.2 In addition the Act provides for the registration of small society lotteries, also the granting of permits for machines in alcohol licensed premises, clubs and unlicensed family entertainment centres.

- 11.3 Officers have delegated authority to grant and renew permits for up to four machines in alcohol licensed premises; applications for the grant of more than four machines are referred to Licensing Sub-Committee for consideration. A full scheme of delegations is included within the current Gambling Act Statement of Principles.
- 11.4 The legislation requires Local Authorities to produce a “statement of licensing principles” which underpins how they will administer and consider applications under the Gambling Act 2005. There is a statutory requirement to review the policy every three years. Birmingham’s current statement of licensing principles was approved by the City Council on 4th December 2012 and came into effect on 31st January 2013. The review is due to be completed in 2015.
- 11.5 The functions of the Licensing Authority must be carried out with regard to the three licensing objectives stipulated in the Act:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
 - ensuring that gambling is conducted in a fair and open way;
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 11.6 Premises licences are of unlimited duration and during the term of those licences the Licensing Service deals with amendments, transfers, variations. In addition, on the anniversary of the grant of those licences an annual fee has to be collected. There is also the requirement to administer Temporary Use Notices and Occasional Use Notices.
- 11.7 Hearings are held whenever relevant representations are received or whenever there is an application for the review of premises licences.

12. **Massage and Special Treatment Establishments**

- 12.1 The relevant legislation in this area is the Birmingham City Council Act 1990.
- 12.2 Only a very small number of local authorities in the country have similar powers. The legislation was originally aimed at controlling massage and various treatments which could carry a health and safety risk to the public, e.g. water borne disease and exposure to UV rays. The Act has led to a whole range of premises being included, from health and fitness centres to hairdressing salons.
- 12.3 Anyone conducting an establishment for treatment by way of massage is required to be licensed; other forms of treatment also include Solaria, Therapeutic Spa Baths, Sauna, Turkish Baths, Aromatherapy massage and Herbal Baths.
- 12.4 Each licensed premises is subject to an annual visit by a Licensing Enforcement Officer.

12.5 When considering applications for licences consultation is carried out with West Midlands Police. There are also statutory requirements placed on applicants to post notices on the premises giving passers-by opportunity to comment or object.

12.6 All licences are subject to a set of conditions which regulate the manner in which the premises must be operated.

13. **Sex Establishments**

13.1 The primary legislation is Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 (the “Act”).

13.2 The Act gives local authorities the adoptive powers to control sex establishments which are defined as a sex shop, a sex cinema or a sexual entertainment venue (SEV). This last category was introduced following an amendment by the Policing and Crime Act 2009 (see paragraph 13.9 below).

13.3 A sex shop is a premises used for a business, which consists, to a significant degree, of selling what are termed sex articles. These commonly include magazines, DVDs and different forms of sex aids.

13.4 A sex cinema is any premises used to a significant degree for showing of films, which are concerned primarily with, or relate to, or are intended to stimulate or encourage sexual activity.

13.5 The key words in the statutory definition are the words “to a significant degree”. This is not defined by the Act but case law suggests ‘significant’ implies a higher standard than ‘more than trifling’. In almost all cases the ratio between the sexual and other aspects of the business would be material: the absolute quantity of sales, the character of the remainder of the business, the nature of the display and the nature of the articles themselves are all considerations. No single factor is decisive and the Committee must decide which considerations are material and what weight to attach to them.

13.6 When considering applications for licences consultation is carried out with West Midlands Police, Ward Councillors and the Licensing Enforcement Team. There are also statutory requirements placed on applicants to advertise in the local press and post notices on the premises giving passers-by opportunity to comment or object.

13.7 The criteria for consideration are:

- the suitability of the applicant;
 - whether the person applying will actually be responsible for operating the business
 - the location and suitability of the premises;
- and

- whether the number of sex establishments within that locality is equal to or exceeds the number which the Council considers appropriate for the area.

13.8 Other than where the suitability of the applicant is concerned, there is no automatic right of appeal against a decision to refuse a licence and, therefore, an applicant's only remedy would normally be by way of judicial review.

13.9 Sexual Entertainment Venues

13.9.1 A Sexual Entertainment Venue (SEV) is defined as "any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or the entertainer".

13.9.2 The meaning of 'relevant entertainment' is "any live performance or live display of nudity which is of such nature that it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means)".

13.9.3 These definitions would apply to the following forms of entertainment as they are commonly known: lap dancing; pole dancing; strip shows; peep shows; and live sex shows.

13.9.4 The legislation provides exemptions from the definitions of SEVs as follows:

- Sex shops and sex cinemas (these are separately defined in Schedule 3 to the 1982 Act).
- Premises which provide relevant entertainment on an infrequent basis.

These are detailed as premises where:

- (a) no relevant entertainment has been provided on more than 11 occasions within a 12 month period
- (b) no such occasion has begun within a period of one month beginning with the end of the previous occasion; and
- (c) no such occasion has lasted longer than 24 hours.

13.9.5 On 12th October 2010, Birmingham City Council resolved to adopt the provisions to control SEVs. A separate Sexual Entertainment Venue Policy, to apply to the whole of Birmingham, was published and became effective from 3 January 2011. This Policy was revised in October 2014 and was effective since 1 November 2014. .

13.9.6 The Sexual Entertainment Venue Policy document contains full details of the licensing regime applicable to Birmingham including application procedures, standard conditions and delegations. The Standard conditions were revised with effect from 1st November 2014 (on all licences granted or renewed after that date).

14. **Charitable Street Collections**

- 14.1 The relevant legislation is the Police, Factories etc., (Miscellaneous Provisions) Act 1916.
- 14.2 The Act prescribes Regulations, which govern the conduct of collections being made for charitable or other purposes in any street or public place.
- 14.3 This could include a collecting box or tin, or even the sale of any articles or magazines where there is a representation at the point of sale that part of the proceeds are being applied to charitable or other purposes.
- 14.4 Organisations do not have to be a registered charity but checks are made to ascertain that the organisation is genuine, and for new organisations or charities, copies of the latest accounts may be requested. Details of the promoter are forwarded to the West Midlands Police to afford them the opportunity to comment on the suitability of the applicant. The promoter of the collection or permit holder is also required to submit a return within one month of the collection taking place to show the amount collected and details of how the proceeds have been applied particularly on expenses.
- 14.5 In September each year, an advertisement is placed on the Birmingham City Council website inviting applications to be lodged by 1 November for the following year. In order to allow for a fair opportunity of collection dates for all prospective charitable organisations, applications are restricted to either one collection that covers the “whole city” or two separate dates for a selection of districts.
- 14.6 All applications received by 1 November each year are given priority for dates and areas and efforts are made to allocate preferred dates to each of the individual organisations. To avoid any clash of interest permits are not granted to two separate organisations to collect in the same place on the same day. For those organisations applying later than 1 November, applications are allocated on a first come first served basis provided that the requested date and area is still available.
- 14.7 “Face to face” fundraising usually relates to the collection of direct debits / standing orders from shoppers/pedestrians. Such appeals are normally conducted by professional fundraising companies that are remunerated by charities. Where a professional fundraiser is involved in a charitable street collection on behalf of a charity, our procedures require that a copy of the statutory fundraising agreement is submitted with the application as this gives details of the costs of the fundraising.
- 14.8 Under the Model Street Collection Regulations, “no payment shall be made out of the proceeds of a collection, directly or indirectly, to any other person connected with the promotion or conduct of the collection other than payments which have been specifically approved by the Council.”

- 14.9 All such face-to-face street collection applications are, therefore, referred to Committee for consideration with the expectation that an applicant demonstrates how any potential donors are made fully aware of the remuneration costs involved and the relationship between the company and the charity.
- 14.10 There is no right of appeal against the refusal to grant a street collection permit.
- 14.11 The Charities Act 2006 was introduced to change the way in which charitable collections were regulated, however, the Act was implemented in phases and to date the provisions relating to public charitable collections have still not been introduced.
- 14.12 It should be noted that a part of the Charities Act 2006 that was introduced, amended the Charities Act 1992 in relation to the statement required to be made by professional fundraisers when raising money for particular charitable institutions. The statement must give the method by which the fundraiser's remuneration in connection of the appeal is determined and the notifiable amount of that remuneration.

15. **House to House Collections**

- 15.1 The relevant legislation is the House to House Collections Act 1939.
- 15.2 Whereas street collection permits are normally issued to cover a period of one or two days, a house to house collection licence can be granted for any period up to one year. With regard to vetting and checking to ascertain whether the organisation applying is genuine or not, the same procedures apply as for street collections. (see 14.4)
- 15.3 There is a requirement for the promoter of the collection to make a return following the collection.
- 15.4 Collections generally take place from door to door or from one public house to another.
- 15.5 Some of the larger well-known charities such as British Red Cross, Christian Aid, Shelter, RNLI etc., have a Government exemption from having to apply for a licence, but most of the smaller, and particularly local groups and organisations need a licence before they can collect money (or articles which they intend to give away or sell later), from door to door.
- 15.6 As with the procedure for street collections, where a charitable organisation is utilising the services of a professional fundraising company, our procedures require that a copy of the statutory fundraising agreement is submitted with the application.

- 15.7 Unlike street collections, there is a statutory right of appeal against the refusal to grant a house to house collection licence. In this case, the right of appeal is to the Secretary of State, and the grounds for refusal are set out in the Act.

16. **Skin Piercers**

- 16.1 The relevant legislation is the Local Government (Miscellaneous Provisions) Act 1982 Part VIII which applies to the registration of persons operating at premises to provide the following types of skin piercing: Acupuncture, Tattooing and Electrolysis. In Birmingham, byelaws were introduced in 1985 to regulate these activities.
- 16.2 The Local Government Act 2003 came into effect on 1 April 2004 and introduced the registration and inspection of all businesses which carry out cosmetic skin piercing and semi-permanent skin colouring. Byelaws were introduced in 2006 to regulate these activities.
- 16.3 Inspection and enforcement is carried out by officers of Birmingham's Environmental Health Service.
- 16.4 This is purely a registration function, with no provision for objection or refusal. Registration Certificates are issued by Senior Licensing Officers or above.

17. **Poisons Act 1972**

- 17.1 On 26th May the Deregulation Act 2015 (Poisons and Explosives Precursors) (Consequential Amendments, Revocations and Transitional Provisions) Order 2015 comes into effect. This Order removed the requirement for the Local Authority to keep a list of persons selling non-medicinal poisons.
- 17.2 Previously, the list was maintained by the Licensing Service.
- 17.3 In 2014-15 your officers dealt with 20 renewal and 9 new applications, at a cost of £20 and £35 respectively.

18. **Alcohol Restricted Areas (Designated Public Place Orders (DPPO))**

- 18.1 The legislation which effected Alcohol Restricted Areas was the Criminal Justice and Police Act 2001 (as amended). This included a number of powers to combat crime and disorder, including measures to deal with alcohol related problems. The Act gives local authorities the power to designate areas 'Alcohol Restricted Areas' where it will become an offence for any person to drink alcohol after being requested not to do so by a Police Officer.
- 18.2 In October 2014 this legislation was revoked, meaning extant DPPOs would remain in effect for three years from that date, but no further DPPOs can be granted.

- 18.3 The provisions have been replaced by Public Space Protection Orders which are not within the scope of the Licensing Service.

19 **Village Greens**

- 19.1 The relevant legislation is the Commons Act 2006 and the Local Authority is the 'Registration Authority' for the purposes of the legislation.
- 19.2 Applications can seek the inclusion in the register of town and village greens of land which is claimed to have qualified for registration by virtue of continuous usage by inhabitants of the locality for lawful sports and pastimes as of right over a period of 20 years. In order for an application to succeed it must satisfy all parts of the statutory test.
- 19.3 Applications are reported to the Licensing and Public Protection Committee. In cases where objections give rise to a serious dispute of fact between the applicant and the objectors, a public inquiry may be held before an independent inspector, who will then put forward a recommendation to the Registration Authority. The final decision will be taken by the Licensing and Public Protection Committee, or a Licensing Sub-committee if so delegated.

20. **Scrap Metal Licences**

- 20.1 The General Licensing Team administers applications made for Scrap Metal Dealers and Collectors under the Scrap Metal Dealers Act 2014. This is an executive function of the City Council, and as such is delegated to officers from the Executive, rather than by the Licensing and Public Protection Committee

21. **Notices**

- 21.1 Where applications carry a requirement to advertise in the local press, it is recommended advertisements are placed in The Birmingham Mail, The Birmingham Post, or, for applications relating to premises in Sutton Coldfield, the Sutton Observer.
- 21.2 Should applicants wish to use an alternative publication they are advised to consult with officers at the Licensing Service.
- 21.3 In circumstances where Birmingham City Council Licensing Service is required to publish notices in the local press such notices will be placed in the Birmingham Mail or the Birmingham Post.

GOOD PRACTICE AND PROCEDURE

The following are points that your Committee should bear in mind when making decisions concerning individual licences and should be read in conjunction with the Members' Code of Conduct and the Member/Officer Protocol. They are based on the large number of legal cases in which the courts, including the European Courts, have considered different aspects of a local authority's licensing functions. However, your Committee should be aware that in certain cases there are additional requirements resulting from specific legislation.

1. Political/Party Group Meetings

Group meetings should be concerned with policy reports, not the discussion of individual licence applications etc. The use of a party political whip is inconsistent with the rules of natural justice and should be avoided by Councillors sitting on the Licensing Committee.

2. Members

Members should be mindful of the requirements concerning the disclosure of interests and when it is necessary for a member to vacate a meeting. In cases of doubt the Director of Legal Services, or his representative, should be consulted. Details are set out in the Council Constitution.

3. Social Media

What are social media?

Social media is the term to describe websites and online tools which allow people to interact with each other by creating their own content. The content could, for example, be blogs, videos or short messages, known as tweets, via twitter.

On social media sites users share information, discuss opinions and may create interest groups or pages. Ultimately people use these sites and tools to build online communities and networks which encourage participation and engagement.

Types of Social Media:

- Blogging and microblogging – online journals – Twitter is an example of microblogging, where entries are limited to 140 characters

- Online Forums – people with similar interests sharing information and opinions – AccyWeb is an example
- Social networking sites – these facilitate connections between people who already know each other, often in a social context, but are increasingly used by businesses to promote their products or services- Facebook is an example
- Video and photo publishing – sharing videos and photographs worldwide – Flickr is an example

Some general legal issues:

- **Libel** – If you publish an untrue statement about a person which is damaging to their reputation, they may take a libel action against you. The same thing may happen if, for example, someone else publishes something libellous on your website, you know about it and don't take swift action to remove it. A successful libel claim could result in the award of damages against you,
- **Copyright** – Placing images or text on your site from a copyrighted source (for example extracts from publications or photos), without obtaining permission, is likely to breach copyright laws. Therefore don't publish anything you are unsure about, or obtain prior permission. A successful claim for breach of copyright would be likely to lead to an award of damages against you.
- **Data Protection** – Do not publish the personal data of individuals unless you have their express permission.
- **Bias and Predetermination** – if you are involved in making licensing decisions, do not say anything through social media (or indeed anywhere) that suggests you have completely and irrevocably made your mind up on an issue that is due to be formally decided upon. While your likely view on a particular application may be well known, you need to be able to show that you attended the committee or hearing prepared to take on board and weigh all the evidence and arguments, and were genuinely persuadable to a different view. If you weren't, the decision may be later challenged as invalid. If a person has suffered some sort of detriment as a result of such an invalid decision, they may have a claim against the council for damages.
- **Wednesbury Unreasonableness** – members must also always been seen to acting reasonably in relation to the Committee process and consideration of all applications; if detriment arises a Third Party may commence Judicial Review proceedings.

Use of Social Media by Members of Committee

- Although the use of Social Media can be an invaluable tool for a Member of the Council/Committee Member it is important that such usage is properly managed at all times and that particularly a clear distinction is maintained between Private usage and Member usage. It is important that Social Media is not perceived by any Third Party to interfere with the proper decision making process. Members are advised to exercise extreme caution before commenting on social media, or in the conventional press, on any licensing decisions which they are, or are likely to be involved in making. This is to ensure that their comments may not be interpreted to mean that members have already determined a licence application, which could be used against the local authority.
- The same applies to Council Members who are not members of the Licensing & Public Protection Committee, but whose comments or actions on social media could be misinterpreted. If elected Members make any comments when representing residents who are objecting to licence applications they must not link their comments in any way to members of the Committee.
- During Committee hearings it is particularly important that mobile communication devices, including telephones and tablet computers or Social Media are not used, whether for research or communication purposes. The use of any form of Social Media or mobile telephones at Committee may lead to an inference of bias, pre-determination or Wednesbury Unreasonableness.

4. The Applicant

Ordinarily the applicant should be given the opportunity of being heard by your Committee before the application is determined, even if this is not an express requirement of the relevant statute. The applicant should also be allowed to be accompanied by a legal or other representative if they so desire.

5. Third Parties to a Hearing

Any person or body wishing to make representations or objections in respect of an application or notice should be given the opportunity to do so. Subject to any statutory restriction the nature of the representations or objections should be disclosed to the applicant in advance of the meeting so that they may consider their response. The identity of an objector should not be disclosed to the applicant without their consent, unless any statutory provision state otherwise.

6. Disclosure of Information

The applicant should be given prior knowledge of the nature of the Council's concerns, and of those of any objectors.

The extent of the disclosure should also be sufficient to avoid the applicant having to request an adjournment to allow time for proper consideration of the matters they are obliged to address.

7. Evidence

Each member of your Committee should be supplied with copies of every document that has been supplied both by and to the applicant and any third parties to the hearing. If any new documents are produced at the meeting, each party should have the opportunity to inspect them. In certain cases there may be statutory provisions which require another party's consent, if applicable, to new documentation being introduced at the meeting.

8. Adjournments

Any request for an adjournment should not be refused if to do so would effectively deny the applicant a fair hearing.

9. The Hearing

The procedure is intended as a general framework to ensure the rules of natural justice apply and that a fair hearing is presided over by an "independent and impartial tribunal". The conduct of individual hearings may vary slightly according to circumstances and the discretion of the Chairman. In all cases, however, this general framework will be followed:

- a. Members present should identify themselves so that the applicant may be satisfied that there has been no breach of the rule against bias.
- b. A licensing officer will outline the relevant details of the application or matter under consideration.
- c. Usually the applicant will present his or her case first, at the conclusion of which members may ask questions. A similar opportunity will then be afforded to any third party to a hearing making representations or objections to the application.
- d. The applicant should be given the opportunity to ask questions of those third parties.

- e. Once the licensing officer, the applicant and any third party to the hearing have given evidence and answered any questions, the third party shall first be given an opportunity to make brief closing remarks, and then the applicant to make their final closing remarks on the application under question. All parties should leave the room, so that only the Committee, the Committee Manager and the Director of Legal Services' representative remain.

During the hearing members must not discuss the merits of the case. This should be left until the applicant, any objectors and officers involved in the case have left the room.

The only members who may participate in the decision making are those who have seen and heard all the evidence and have been present for the subsequent discussion.

Once the applicant, any third party and officers have left the meeting they may be recalled to provide further information or clarification but all of them must return, not just the person from whom further information is required.

10. The Decision

Once the Committee has reached its decision the parties must be recalled and informed verbally of the decision with the exception of applicants and drivers for a hackney carriage or private hire licence or personal licence who only receive the decision later in writing. If reasons for the decision are to be given, which will usually be the case, this will be done in writing at a later date. Notice of any right of appeal should also be given to the parties.

DELEGATION OF AUTHORITY**Table 1**

| Hackney Carriage / Private Hire | Decision to be made by: | | |
|---|--------------------------------|---|---|
| Matter to be dealt with: | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Setting of Fees and charges | All Cases | | |
| Approval of Hackney Carriage Fares | All Cases | | |
| Agree standard conditions i.e. vehicle / driver/operator etc. | All Cases | Requests for exemption may be considered by sub committee | |
| When a hackney carriage vehicle licence has expired and more than one calendar month has elapsed | | any attempt to re-license the vehicle | |
| AUTHORITY TO SUSPEND, REVOKE OR REFUSE TO RENEW OR REFUSE TO GRANT ANY LICENCE OR APPLICATION: | | | |
| in the case of a licensed vehicle being found to be in contravention of legislation, | | | Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 |
| if the officer is not satisfied as to the fitness of the vehicle, or | | | Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 |
| if the officer is not satisfied as to the accuracy of the taximeter, or | | | Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 |
| if the vehicle does not have adequate insurance cover, or | | | Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 |
| if the vehicle is unroadworthy or in a dangerous condition. | | | Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 |
| if an officer is not satisfied as to the fitness of a driver following a medical report from the Occupational Health Service. | | | Officers delegated this authority are those authorised for the purpose of the Local Government (Miscellaneous Provisions) Act 1976 and the Town Police Clauses Act 1847 |
| Where the applicant has 11 points on their DVLA licence or a conviction or caution for an offence that does not fall within the category of drugs, violence, dishonesty or of a sexual nature. | | | All Cases |
| Where an applicant has cautions over two years old, such application will be granted. | | | All Cases |
| Where an applicant has a conviction(s) for dishonesty, whatever the sentence, including a prison sentence, then such application will be granted provided at least ten years has lapsed since the last conviction for dishonesty. | | | All Cases |
| Where an applicant has an absolute discharge for any offence, with no other offences, such application will be granted. | | | All Cases |
| Where an applicant has failed 3 verbal communication tests, or 3 Knowledge tests, or 3 driving tests, then such application will be refused. | | | All Cases |

Table 1 continued

| Hackney Carriage / Private Hire | Decision to be made by: | | |
|--|--------------------------------|----------------------|---|
| | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Where an applicant has previously been refused or his/her licence revoked, whether by Birmingham City Council or another Local Authority, any further application will be refused within a 12 month period starting from the date of the refusal/revocation of the previous licence. | | All Cases | |
| Where a private hire driver is convicted for plying for hire (first offence), then their private hire driver's licence will normally be suspended for a minimum period of 6 months. | | All Cases | |
| Where a private hire driver is convicted for plying for hire and no insurance, then their private hire driver's licence will normally be revoked. | | All Cases | |
| Grant/renewal of a licence where a driver is convicted of a drink/drug related driving offence or has been subject to a driving ban | | All Cases | |
| Renewal of a drivers licence after the late renewal period where the circumstances for the lateness are on medical grounds only. (late renewal fee applies) | | Over 12 months | Discretionary up to 12 months from expiry of licence |
| Where a driver pays any fee by cheque and that cheque is not honoured and following chasing letters to be sent to the driver at his/her last known address, the drivers licence or vehicle licence will be suspended until such time as the requisite fee is received. | | | All Cases |
| When confirmation is received to the effect that the holder of the licence has been banned from driving by a Court of Law and is no longer in possession of a valid DVLA driving licence. | | | All Cases |
| Approval of the installation of safety screens in private hire vehicles, where MIRA testing and approval, or an equivalent European test certificate can be produced for the proposed screen | | | All Cases |
| Approval of certain standard exemptions to the current licence conditions for private hire operators and vehicles, where the applicant can demonstrate that the exemption is justified (limousines, stretched and special event vehicles carrying out private hire work within the city) | | | All Cases |
| Grant of licence where the applicant has 6 points on their DVLA licence or a conviction or caution for an offence that does not fall within the category of drugs, violence, dishonesty or of a sexual nature. | | | Licensing officer and above |
| Consideration of suitability of evidence as to good character where applicant is from a failed state and cannot comply with requirement to provide a DBS. | | All cases | |

Table 2

| Table reproduced from Statement of Gambling Principles 2013 | | | |
|---|-------------------------|---|--|
| Gambling Act 2005 | Decision to be made by: | | |
| Matter to be dealt with: | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Three year licensing policy | FULL COUNCIL | | |
| Policy to permit casino | FULL COUNCIL | | |
| Fee setting (when appropriate) | All Cases | | |
| Application for premises licences | | Where representations have been received and not withdrawn | Where no representations received or representations have been withdrawn |
| Applications for a variation to a licence | | Where representations have been received and not withdrawn | Where no representations received or representations have been withdrawn |
| Application for a transfer of a licence | | Where representations have been received from the Gambling Commission | Where no representations received or representations have been withdrawn |
| Application for a provisional statement | | Where representations have been received and not withdrawn | Where no representations received or representations have been withdrawn |
| Review of a premises licence | | All cases | |
| Application for club gaming/ club machine permits | | Where representations have been received and not withdrawn | Where no objections made or objections have been withdrawn |
| Cancellation of club gaming/ club machine permits | | All cases | |
| Application for other permits | | Where an application is received to operate more than 4 gaming machines on an alcohol licensed premises | All other cases |
| Cancellation of licensed premises gaming machine permits | | | All cases |
| Consideration of temporary use notice | | | All cases |
| Decision to give a counter notice to a temporary use notice | | All cases | |
| Decision to attach / exclude a premises licence condition | | Where any of the relevant parties withhold their agreement to the proposed attachment / exclusion | Where all the relevant parties agree. |

Table 3

| Table reproduced from Statement of Licensing Policy 2015 | | | |
|--|---------------------|---------------------------------------|--|
| Matter to be dealt with: | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Statement of Licensing Policy | FULL COUNCIL | | |
| Application for personal licence. | | If a Police objection is made. | If no objection made. |
| Application for personal licence with relevant unspent convictions. | | If a Police objection is made. | |
| Application for premises licence/ club premises certificate. | | If a relevant representation is made. | If no relevant representations made. |
| Application for provisional statement. | | If a relevant representation is made. | If no relevant representations made. |
| Application to vary premises licence/club premises certificate. | | If a relevant representation is made. | If no relevant representations made. |
| Request to vary designated premises supervisor. | | If a Police objection is made. | All other cases. |
| Request to be removed as designated premises supervisor. | | | All cases. |
| Application for transfer of premises licence. | | If a Police objection is made. | All other cases. |
| Application for interim authorities. | | If a Police objection is made. | All other cases. |
| Application to review premises licence/club premises certificate. | | All cases. | |
| Decision on whether a complaint is irrelevant, frivolous, vexatious, etc. | | | All cases. |
| Decision to object when Local Authority is a consultee and not the relevant authority considering the application. | | | All cases. |
| Determination of application to vary premises licence at community premises to include and alternative licence condition | | If a Police objection is made. | All other cases. |
| Determination of a Police objection to a STANDARD temporary event notice. | | All cases. | |

Table 3 Continued

| Table reproduced from Statement of Licensing Policy 2015 - continued | | | |
|---|----------------|--|---|
| Matter to be dealt with: | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Application for minor variation of premises licence/club premises certificate | | | All cases (for decision whether to consult other Responsible authorities and for Determination) |
| Determination of a Police / EH objection to a temporary event notice. | | All cases except where objection requires inclusion of conditions from existing premises licence and applicant is in agreement | Where objection requires inclusion of conditions from existing premises licence and applicant is in agreement |
| Attachment of Conditions from existing premises licence to TEN | | Where applicant objects to conditions | If applicant is in agreement |
| Issuing of Counter notice for STANDARD TEN | | Following determination hearing | Where limits are exceeded |
| Issuing of counter notice for Late TEN | | | All cases |
| Suspension of licence for non-payment of fees | | | All cases |
| Requests for a change to the film classification awarded by the BBFC | | All cases | |
| Requests for classification of films where there is no BBFC classification | | Where there is concern about the content of any film submitted or the proposed exhibition of the film | Where appropriate procedure is followed and no concerns as to content |
| Request for implementation of Early Morning Restriction Order | All cases | | |
| Request for imposition of Late Night Levy | FULL COUNCIL | | |

Table 4

| Table reproduced from Sexual Entertainment Venue Policy 2014 | | | |
|--|----------------------------|---------------|--|
| Matter to be dealt with: | Decision to be made by: | | |
| | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Application for grant or transfer | All cases | | |
| Application for renewal or variation | If relevant objection made | | If no relevant objection made |
| Minor variation application | If relevant objection made | | If no relevant objection made |
| Revocation of Licence | All cases | | |
| Cancellation of Licence | | | All cases |
| Make/amend regulations prescribing standard conditions, terms and restrictions | All cases | | |
| Setting of fees | All cases | | |
| Waiver | All cases | | |
| To make and amend policy relating to the licensing of sex establishments | All cases | | |
| To enforce the provisions of Part II and Schedule 3 of the Local Government Miscellaneous Provisions Ac 1982 | | | All cases |

Table 5

| Sex Shop/Sex Cinemas | | | |
|--|-------------------------|---------------|--|
| Matter to be dealt with: | Decision to be made by: | | |
| | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Application for grant / transfer / variation | All cases | | |
| Renewal | If objections received | | If no objections received |

Table 6

| Miscellaneous | | | |
|--|---|---------------|--|
| Matter to be dealt with: | Decision to be made by: | | |
| | Full Committee | Sub-Committee | Officers (Senior Licensing Officer or above) |
| Massage & Special Treatment Licence | If objection received | | If no objection received |
| Skin piercing Registration | | | All Cases |
| face-to-face street collection applications | All cases where collectors are paid, or where fundraisers are paid directly or indirectly from proceeds of collection | | All other cases |
| House to House collections applications | Cases referred by Licensing Officers for determination | | All cases (unless application raises concerns i.e. allocation of proceeds) |
| Village Green Consideration of application | All cases | | |
| Village Green – instruction of independent inspector | All cases | | |
| Village Green – determination of application | All Cases | | |

BIRMINGHAM CITY COUNCIL

REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

15 JULY 2015

ALL WARDS

LICENSING FEES AND CHARGES, INCLUDING OBJECTION TO HACKNEY CARRIAGE AND PRIVATE HIRE FEES AND CHARGES

1. Summary

- 1.1 At a meeting of the Licensing and Public Protection Committee on 18 March 2015, the Committee resolved to adjust the fees for all relevant licensing functions, including hackney carriage and private hire vehicles and drivers by varying degrees.
- 1.2 Under Section 70 of the Local Government (Miscellaneous Provisions) Act 1976, a Local Authority is required to advertise changes to its fees and charges in respect of hackney carriage and private hire vehicles for 28 days before it can apply the new fees and it must consider any objections. A number of objections have been received.
- 1.3 The Licensing and Public Protection Committee must consider these objections before deciding whether to implement the fee structure that it approved on 18 February 2015.
- 1.4 This report also contains a proposal to reduce the Hackney Carriage and Private Hire carry forward balance over a period of three years along with a proposed revised fee structure.

2. Recommendations

- 2.1 Members are asked to consider the objections appended to this report.
- 2.2 Members are asked to consider the proposal detailed in 4.9 and either:
 - 2.2(i) agree the revised fee structure as detailed in Appendix 1, to be effective from 1st September 2015 (subject to the statutory notice period)
 - Or
 - 2.2(ii) retain the fee structure as approved on 18 February 2015, to be effective from 1st August 2015.

Contact officer: Chris Neville, Head of Licensing
Telephone: 0121 303 6103
Email: chris.neville@birmingham.gov.uk

3. Background

- 3.1 In accordance with the Corporate Charging Policy and Financial Regulations the fees and charges for the various licensing functions are reviewed on an annual basis. A report was presented to the Licensing and Public Protection Committee on 18 March 2015, which detailed the proposed variations to the fees.
- 3.2 The fees and charges that were approved by the Committee are detailed within Appendix 1.
- 3.3 Members will note a blanket percentage change has not been applied, but that each fee has been adjusted to take into account changes in overhead costs, processing times and also the cost of physical items such as badges/plates. Keeping figures in round pounds reduces the cost and time associated to staff in the Licensing office dealing with small amounts of change.
- 3.4 The fees proposed for 2015/2016 were originally calculated during 2014/2015. In order to ensure the fees accurately reflect the true cost of administering and processing the licences these calculations are based on the finalised accounts from 2013/2014. This is more reliable than trusting in projections and estimates.
- 3.5 The time taken to process and administer each licence type is verified each year to ensure the calculations are accurate. Costs for peripheral items such as vehicle plates, badges, semi-permanent door signs, meter testing etc. are added in after the time is calculated. This accounts for the variance in cost between the different types of vehicle licence.
- 3.6 Under Section 70(2) of the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA 76), a Local Authority is required to advertise changes to its fees and charges in respect of hackney carriage and private hire vehicles by placing an advert in a local newspaper for 28 days before it can apply the new fees and it must consider any objections. Although it must consider them it does not have to vary the proposal as a result of them. There is no requirement upon the Local Authority to advertise an alteration to driver fees, although all applicable fees were included in the advertisement. An advert was placed in the Birmingham Post on 5th March 2015. A copy of the advertisement is attached as Appendix 2.

4. Response to Objections to the Hackney Carriage and Private Hire Fees

- 4.1 The Licensing Service has received 21 written objections to the proposed fees and charges, one of which is in the form of a petition with 117 signatures. These objections are attached at Appendix 3(a) to (d).
- 4.2 The report presented to the Committee in March proposed using surplus fees to implement service improvements, such as channel shift, new IT equipment

for the Licensing Service and improved computer systems on the understanding that investing in service improvements now will be likely to produce greater efficiencies in the future that should result in lower fees over the longer term.

- 4.3 Appendix 3c which is a letter from a2z Licensing Ltd refers to an objection made by the objector in 2013 to the Council's accounts for 2012/2013. The objection was based on the fact that the Licensing Service had charged fees to operators to amend their licences during the currency of the licence and charging drivers for replacement licences or to transfer their vehicle licence. The objector alleged that this practice was unlawful and that the Licensing Service may only make a charge for the grant of a licence, and may not charge a fee during the currency of a licence. The challenge to the Licensing Service accounts also included an objection to the practice of the Licensing Service charging for Data Protection enquiries for information, whether from drivers concerning their own records or from third parties (often insurance companies).
- 4.4 The Licensing Service obtained advice from counsel. That advice concluded that the Service was not acting unlawfully by applying charges within the currency of the licences in question. In respect of the charges that were applied to data protection requests the advice concluded that whilst the Licensing Service was compliant with the Data Protection Act, it was acting in contradiction to the Council's overarching data protection policy which is that charges should not be levied for the provision of information under the Data Protection Act. As a consequence, the Service made refunds to any individual or third party that has paid a fee of either £10 (for individuals) or £30 (for third parties) since the fees were introduced in 2011. Nineteen third parties were refunded (totaling £570) and twenty-two individuals (totaling (£220)).
- 4.5 The Licensing Service has stopped charging for all data protection requests. It will only make a charge in future subject to the City Council's Data Protection Act policy changing.
- 4.6 The District Auditor's conclusions did not support the objection and consequently the Licensing Service did not alter its charging arrangements in this respect. The matter has been closed by the District Auditor and does not require revisiting.
- 4.7 Having regard to the case law referred to within the objection: R (on the application of Cummings) v Cardiff City Council, [2014] EWHC 2544 (Admin) it should be noted that, in that case it was held that the Licensing Authority had not had regard to or accounted for any surplus or deficit in their carry forward balances.
- 4.8 Whilst it is not accepted that this same accusation could be levelled at this Committee, a set of revised fees have been calculated utilising a proportion of the existing carry forward surplus.

- 4.9 The amount of carry forward balance available in respect of hackney carriage and private hire fees was £341,000 at the end of 2013/14. Having regard to the legal advice and best practice advice, it is proposed that the carry forward reserves be 'run down' over a three year period. To this end, the calculations have been made utilising a third of this figure (£113,667). This has a positive impact on the fees by either reducing them, or lowering the proposed increase. A table detailing the proposed revised fees, the previous year's fees, and those already agreed by your Committee is attached at Appendix 1.
- 4.10 By not utilising the entire carry forward balance, the service is able to maintain a degree of protection from sharp increases to the licence fees in the event of anticipated expenditure such as the replacement licensing software package which will be required in 2015/2016.

5 Legal Framework

- 5.1 The Council has control over hackney carriage and private hire licence fees but only on a cost recovery basis. The fees proposed in this report are calculated to recover the full cost of carrying out the service. This includes all direct costs and overheads, any recharge of officers' time in appropriate cases when carrying out inspections of premises and other compliance duties (where applicable).
- 5.2 The fees proposed fulfil the main requirement of assuring that full costs are recovered from the income generated in a reasonable and proportionate manner.
- 5.3 The legal requirement for a Licensing Service to recover only "reasonable costs" takes precedence over the City Council's Corporate Charging Policy and the requirement to maximise income. Licence fees prescribed by statute also take precedence over the Corporate Charging Policy. In setting the fees we have also taken account of the Court of Appeal decision of 24th May 2013 in the case of Hemming v Westminster City Council. Brief details of the case are provided below.
- 5.4 The case of R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25 focused on whether the local authority's scheme of charging fees for licensing sex shops (under Schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982) in Soho was permitted by European Services Directive 206/123/EC as implemented by The Provision of Services Regulations 2009 which became law on 28 December 2009.
- 5.5 Westminster's fee was calculated so as to cover the cost of: enforcing the licensing regime against unlicensed operators and monitoring compliance by licensed operators (accounting for around 90% of the fee); and administering the application.

- 5.6 The sex shop owners brought a judicial review in 2011 claiming that Westminster's setting of the fee was unlawful. They argued, inter alia, that since the Provision of Services Regulations 2009 had come into effect the council was disentitled from including in the fee the cost of enforcing the licensing system against unlicensed operators.
- 5.7 The High Court and Court of Appeal had held that Westminster's fees for sex establishment licences were contrary to the European Services Directive because the fee charged included the costs of enforcing against unlicensed operators.
- 5.8 At the beginning of this year, Westminster took the case to the Supreme Court which in April allowed part of Westminster's appeal i.e. that licensing authorities can fund enforcement activities against unlicensed operators through licensing fees but referred a relatively narrow issue about the precise way in which the fee was charged and collected to the European Court of Justice.
- 5.9 Despite the fact that the European Services Directive does not have direct applicability to the fees under consideration (Taxi and Gambling are exempt) and the Hemming case will now continue in Europe, it is considered that local authorities need to review their licensing charge arrangements in the light of this decision and determine whether there is a need to make changes at this stage.
- 5.10 It must be noted that irrespective of the above ruling the Council's fees and charges may be challenged through a number of routes, e.g. service complaints to the Local Government Ombudsman, complaints to the External Auditor by way of an objection to the Council's annual account and judicial review.

6. Implications for Resources

- 6.1 If the Committee agrees to vary the fees and charges from those that were approved on 18 March 2015, there will be a further requirement to advertise the new fees and charges for a period of 28 days before they could be charged.
- 6.2 If the Committee is minded to agree to the proposal detailed in paragraph 4.9 and the subsequent proposed revised fees in Appendix 1, this will reduce the amount of ring fenced carry forward reserve by £113,667 this year, and will impact on the way future fees are calculated.
- 6.3 This report does not affect fees and charges in relation to other areas of the Licensing Service.

7. Implications for Policy Priorities

- 7.1 The Licensing and Public Protection Committee has a stated public priority to improve the standard of all licensed persons, premises and vehicles in the City; this can only be achieved with an effective, efficient and appropriately resourced Licensing Service.

8. Implications for Equality and Diversity

- 8.1 No specific equality factors have been identified in this report.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: nil

APPENDIX 1

| | | 2014/15 (current) | Agreed 2015/16 | Proposed Revised 15/16 |
|----------------------------------|--|----------------------|-------------------|------------------------------|
| Hackney Carriage | Vehicle | £253 | £245 | £230 |
| | Vehicle renewal | £129 | £135 | £125 |
| | Driver grant 1 year | £239 | £280 | £265 |
| | Driver grant 2 year | £299 | £335 | £315 |
| | Driver grant 3 year | £358 | £395 | £370 |
| | Driver renewal 1 year | £117 | £150 | £140 |
| | Driver renewal 2 years | £218 | £225 | £210 |
| | Driver renewal 3 years | £262 | £280 | £265 |
| Private Hire | Vehicle | £239 | £270 | £250 |
| | Vehicle renewal | £117 | £155 | £145 |
| | Vehicle (with meter) | £262 | £270 | £253 |
| | Vehicle (with meter) renewal | £154 | £158 | £148 |
| | Driver* grant 1 year | £239 | £280 | £265 |
| | Driver* grant 2 years | £299 | £335 | £315 |
| | Driver* grant 3 years | £358 | £395 | £370 |
| | Driver* renewal 1 year | £117 | £150 | £140 |
| | Driver* renewal 2 years | £217 | £225 | £210 |
| | Driver* renewal 3 years | £262 | £280 | £265 |
| | Operator | £1,430 | £1,345 | £1,260 |
| | Operator renewal | £805 | £895 | £840 |
| | Operator 1-5 Vehicles only | £805 | £1,120 | £1,050 |
| | Operator 1-5 Vehicles only renewal | £447 | £670 | £630 |
| Other / Additional Charges | Amendments to Private Hire Operator Trading Name/Address | £447 | £170 | £160 |
| | Replace/Lost/Stolen Vehicle Identity Plate/Door Plates | £36 | £60 | £50 |
| | Replacement/Lost/Stolen Driver Identity Badge | £30 | £35 | £35 |
| | Replacement/Copy Paper Licence | £30 | £35 | £35 |
| | Administration fee for DBS check | £10 | £35 | £35 |
| | Replacement/Transfer of Vehicle Licence | £75 | £90 | £85 |
| | Hackney Carriage Knowledge Test Folder | £20 | £30 | £30 |
| | Hackney Carriage Knowledge Test | £70 | £85 | £85 |
| | Private Hire Knowledge Test Folder | £15 | £25 | £25 |
| | Private Hire Knowledge Test | £40 | £50 | £50 |
| | Verbal Communication Test | £28 | £42 | £42 |
| | Photocopying | £0.20 | £0.20 | £0.20 |

*includes restricted private hire

Copy of Press Advertisement from 5th March 2015

| Public Notices | | | |
|--|--|---------|------------------|
| BIRMINGHAM CITY COUNCIL | | | |
| LOCAL GOVERNMENT (MISCELLANEOUS PROVISION) ACT 1976. | | | |
| HACKNEY CARRIAGE AND PRIVATE HIRE VARIATION OF LICENCE FEES | | | |
| Notice is hereby given that the Licensing Committee at its meeting on 18th February 2015 determined that the fees charged by the council, for Vehicle, Driver and Operator Licences granted under Part 2 of the Act, shall be varied in accordance with the provisions of section 70 (3) of the said Act as follows:- These changes are in line with the City Council's Corporate Charging Policy and have been calculated to ensure full cost recovery for the delivery of the service. | | | |
| | | 2014/15 | Proposed 2015/16 |
| Hackney Carriage | Vehicle | £253 | £245 |
| | Vehicle renewal | £129 | £135 |
| | Driver grant 1 year | £239 | £280 |
| | Driver grant 2 year | £299 | £335 |
| | Driver grant 3 years | £358 | £395 |
| | Driver renewal 1 year | £117 | £150 |
| | Driver renewal 2 years | £218 | £225 |
| | Driver renewal 3 years | £262 | £280 |
| Private Hire * Includes restricted private hire | Vehicle | £239 | £270 |
| | Vehicle renewal | £117 | £155 |
| | Vehicle (with meter) | £262 | £270 |
| | Vehicle (with meter) renewal | £154 | £158 |
| | Driver* grant 1 year | £239 | £280 |
| | Driver* grant 2 years | £299 | £335 |
| | Driver* grant 3 years | £358 | £395 |
| | Driver* renewal 1 year | £117 | £150 |
| | Driver* renewal 2 years | £217 | £225 |
| | Driver* renewal 3 years | £262 | £280 |
| | Operator | £1,430 | £1,345 |
| | Operator renewal | £805 | £895 |
| | Operator 1-5 Vehicles only | £805 | £1,120 |
| | Operator 1-5 Vehicles only renewal | £447 | £670 |
| Other / Additional Charges | Amendments to Private Hire Operator Trading Name/Address | £447 | £170 |
| | Replace/Lost/Stolen Vehicle Identity Plate/Door Plates | £36 | £60 |
| | Replacement/Lost/Stolen Driver Identity Badge | £30 | £35 |
| | Administration fee for DBS check | £10 | £35 |
| | Replacement/Transfer of Vehicle Licence | £75 | £90 |
| | Hackney Carriage Knowledge Test Folder | £20 | £30 |
| | Hackney Carriage Knowledge test | £70 | £85 |
| | Private Hire Knowledge Test folder | £15 | £25 |
| | Private Hire Knowledge Test | £40 | £50 |
| | Verbal communication Test | £28 | £42 |
| | Photocopying | £0.20 | £0.20 |

A copy of this notice will be available for inspection by members of the public during normal office hours. Monday to Friday at the address below for a period of 28 days from the date of this notice. Any objections should be made in writing to that address or to licensing@birmingham.gov.uk before the end of the 28 day period.

Licensing Section, Crystal Court, Aston Cross Business Village, 50 Rocky Lane, Aston, Birmingham, B6 5RQ.

Should no objections be received, these changes will have effect from 6th April 2015

APPENDIX 3(a)

| Objection | Details |
|---|--------------------------------|
| I'm a Private Hire driver for almost twenty years, I am emailing to object to the proposed Private Hire License fees, i along with numerous licensed Private Hire drivers cannot see any justification in such a high increase in Private Hire License and renewal fees. I along with hundreds of Private Hire drivers would like to request to the Birmingham City Council Licensing to review the increase and freeze the fees as we feel we already pay high rates for private Hire License fees. Thank you | Name and Badge Number supplied |
| To whom it may concern,My name is xxx, and i am self-employed with xx as a private hire driver, badge number xx.This email is regarding the rise in fees which have suddenly come about and i, along with my colleagues, feel very strongly against this. It is especially unfair that the cost is higher than black cab fees! It is very difficult to keep up with expenses and living costs as it is, and this is a plea to the council to keep the fees as they are or many people will soon be out of jobs.I hope to hear from you very soon.kind regards, | Name and Badge Number supplied |
| To who it may concern,.I xx, holder of Private Hire driver badge no.x and Private Hire vehicle plate no.x hereby object to the proposed increase in licensing fees.There is no justification for such a huge increase. | Name and Badge Number supplied |
| As a private hire driver for the last 24 years I have seen many changes within birmingham city licensing come and go. Some good, some ridiculous (roof signs that made the cars non aerodynamic and visual to customers only for black cab drivers to object then have then removed as well as plate stickers in the windows).With this came increases in license fees and decreases when it was proven that certain expensive alternatives (roof signs) weren't the way forward but this now seems to have changed. After re-licensing my car last I noticed an A3 sign not so visually placed explaining an ibrar an increase so far above and beyond the rate of inflation and consumer price index that it was and kmo st stratospheric.WHY as a licensed private hire driver,was I not informed of this proposal?WHY was it advertised in such a sneaky and underhanded way?WHAT justification do licensing believe they have to justify such a price hike (22% + 25%)?WHY with such a stupidly high increase has private hire been deemed to be more expensive to re-plate or license compared to a hackney carriage vehicle ?, does licensing fear them that much that we are picked on like the raindeer jumper given by grandma at Christmas or could it be a preference to Hackney drivers that continually manifests itself year on year as private hire cars are continuously unfairly penalised on vehicle quality yet hackney carriage vehicles are rust buckets being held together by the car wrap placed on them to hide such rust but at no point even though I personally supplied video evidence of rust eaten doors on a 2 week prior licensed hackney carriage vehicle I was told that i have to make a statement and fill in all sorts of time consuming forms.No doubt had this been reversed and I had been in the wrong then I'm sure licensing would have been dragging me kicking and screaming.To this day even though I've pointed out this flaw NO stipulation has been put in place to ensure all black cabs are submitted for MOT free from car wrap.THIS with statement multitude of other reasons and the fact toy have statement surplus of almost £400,000 from licensing nor being used which means we should be getting a decrease not increase.MY VOTE IS NO TO THE INCREASE AND I'LL BE LETTING ALL OF MY FRIENDS AND COLLEAGUES KNOW THIS AND WILL FLIGHT THIS WITH MY MP AND COUNCILLORS OF NEED BE SINCERELY | Name and Badge Number supplied |

| Objection | Details |
|--|--------------------------------|
| would like to register my objection to the plan to raise licence fees by well above the rate of inflation. You have a ring fence around our licence fees and a healthy bank balance. So how can you justify raising the fee. You have not consulted any operators or drivers before making this decision which I find alarming. I would wish to lodge a complaint against this action. | Name and Badge Number supplied |
| 30th March 2015 Licence number: xI am strongly against the proposed 22% licence fee increase. | Name and Address Supplied |
| I strongly object to proposed licensing fee increases currently being considered as there is no justification whatsoever particularly in view of the service level provided currently by Licensing. | Name supplied |
| I am sending this email to inform you that I am objecting to the price increase of private hire badge fees that you are thinking of proposing how can you justify a 20% price increase i think its outrageous im also speaking on behalf of over 500 drivers | Name Supplied |
| Dear Sir/Madam,I object to the proposed increase in license fees. Yours faithfully, | Name supplied |
| There is talk of the license fees going up by 22% this is ridiculous as the inflation rate is running at less than 2% this is totally unjustified there will be many complaints sent to governmrnt about this -- birmingham city council did similar to this a few years ago and were ordered by the government to bring increases in line with inflation | Name Supplied |
| Object fee increases a private hire badge | Name Supplied |
| Don't increase the badge fee | Name supplied |
| Hello there I am a p.h.d. And I would like to reject the increase in the fee which you want to make it more then what it is, You should think of making it cheaper and make your drivers save money. I sure if you look at the others council there fee are less then Birmingham Licening fee. And the other council give them the right to work anywhere thats why you got less drivers coming to Birmingham, You people should look in to this matter and think why and how we can make it better then the others. | Name Supplied |
| Hi i object to the fee increase | No details given |
| i think its outrages the thinking of increasing the BADGE FEES AND OTHER FEES | No details given |
| I strongly object to this price rise ,can you please tell me what is the justification for this licence price rise,I will be very grateful. But knowing birmingham council you won't. | No details given |
| I've just read about the price increase for a private hire badge and I would like to say that I am very dissatisfied with licensing. There is no justification for this price increase and I shall be discussing this with my local councillor. | No details given |
| No to any increase. | No details given |

PETITION WITH 117 SIGNATORIES (redacted personal data)

C/O CHRIS NEVILLE

LICENCING SECTION

CRYSTAL COURT

ASTON CROSS BUSINESS VILLAGE

57 ROCKY LANE ASTON BIRMINGHAM B65RQ

DEAR SIR we the Birmingham hackney carriage drivers object strongly to Birmingham city councils licensing departments proposal to increase the licensing fees on the grounds that the fees are already too high and with the current financial climate we the hackney carriage drivers feel this proposal to be inappropriate and unjustified also we feel the rise in fees is discriminating the drivers who are ill and disabled through no-fault of their own who have to renew their licences annually. We strongly recommend that the committee does not approve this proposal. We are also forwarding a signed petition by hackney carriage drivers who are against the increase in licensing fees thank you we await in anticipation for your reply.

REGARDS RMT MEMBERS AND NON MEMBERS

Licensing Section
Birmingham City Council
Crystal Court
Aston Cross Business Village
50 Rocky Lane
Aston
Birmingham
B6 5RQ

Our Ref: DBW / SC&C
Your Ref:
Date: 31 March 2015
Please ask for: David Wilson

**By First Class post and email to:
licensing@birmingham.gov.uk**

Dear Sir / Madam,

**Local Government (Miscellaneous Provisions) Act 1976, section 70
Objection by Star Cars to hackney carriage and private hire licensing fees**

I act on behalf of Star Cars, a well-respected and long-standing licensed private hire operator within the City.

Please accept this letter as my client's objection to the changes to the various fees relating to hackney carriage and private hire licensing, as determined at the Meeting of the Licensing and Public Protection Committee on 18 February 2015, subject to the statutory objection process and publication of the statutory notice in the Birmingham Post on 5 March 2015.

Before addressing the substantive issues, the Council may care to consider whether it is satisfied the published statutory notice is correct in that it fails to refer to section 53(2) and does not specify the duration for which operator licences shall be granted or renewed.

The Council might also care to have regard to section 55(2) of the said Act, especially as it will, from 1 October 2015, be amended to require the Council to grant and renew such licences for the current maximum duration of five years.

In that regard, the Council should refer to the Deregulation Act 2015, which only received Royal Assent on 26 March 2015. Section 10 of the Act requires councils to grant driver licences for three years and operator licences for five years. That section and the one concerning private hire operator subcontracting are included in the Deregulation Act 2015 (Commencement No 1 and Transitional and Saving Provisions) Order 2015 (SI 2015 No 994), which was only made on 27 March 2015 and published 30 March 2015. Article 11 brings section 10 into force on 1 October 2015.

Despite previous requests that the Council prove it adopted Part II of the Local Government (Miscellaneous Provisions) Act 1976, the Council has failed to do so.

Indeed, the Council only managed to produce one of the two statutory notices it was required to publish and did not prove timely service of notice on parish and community councils.

As the Council could neither administer private hire licensing nor charge fees for hackney carriage or private hire licensing under the Act, if it has not adopted it, the Council is asked to present all evidence of or relating to an adoption or attempted adoption of the Act when this objection is to be determined by the Licensing and Public Protection Committee.

Whilst my client understands the Council's desire to set fees for the forthcoming financial year, it is disappointing to note that:

- The officer report fails to make clear that the principles in the sex establishment licensing fee case of *R (on the application of Hemming and others) v Westminster City Council* that was heard in the High Court in 2012 and then appealed to the Court of Appeal and heard in 2013 before being heard recently by the Supreme Court (formerly the House of Lords) on 13 January 2015 applies to all licence type fees and not just to sex establishment licence fees. Their Lordships' judgments are expected imminently.
- The officer report does not mention, let alone produce a copy of the inconclusive decision of the External Auditor in relation to an objection made to the Council's annual accounts for the year ending 31 March 2013, which prevents Members of the Licensing and Public protection Committee from making their own judgement on those matters.
- The officer report does not mention the High Court judgment and declaration made in *R (on the application of Cummings) v Cardiff City Council* on 18 June 2014. I attach a copy of the court's order and declaration for your information, although the judgment itself is available under the neutral case citation [2014] EWHC 2544 (Admin).

In this case, the court quashed the fees set by Cardiff City Council because: (i) the level of fees set failed to have regard to and / or account for any surplus or deficit generated in previous years (dating back to 2009); and (ii) the level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under which they have been accrued: both between each regime and in respect of each licence within those regimes.

In this regard, the court declared that:

- (i) A local authority when determining hackney carriage and private hire licence fees under section 53 and 70 of the Local Government

(Miscellaneous Provisions) Act 1976 must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees as provided by section 53 and 70.

- (ii) A local authority must keep separate accounts for and ensure when determining hackney carriage and private hire licensing fees under sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 that any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes, and between each licence within those regimes, are only accrued and a surplus from one licensing regime shall not be used to subsidise a deficit in another.
- Overall, the officer report presented to the Licensing and Public Protection Committee on 18 February 2015 did not make the Committee sufficiently aware of all relevant financial information concerning surpluses and deficits in respect of each licence type and the processes for time recording and fee calculation as required by *R (Georgiou) v London Borough of Enfield* [2004] EWHC 779 (Admin) and *R v South Glamorgan County Council, ex parte Harding* [1998] COD 243.

In view of the foregoing, the Licensing and Public Protection Committee is asked to defer considering hackney carriage and private hire licensing fees until:

- (i) the Supreme Court gives its judgment and officers have an opportunity to consider its impact, if any, on the setting of fees in the future;
- (ii) officers have quantified the officer time and cost of a five year operator licence; and
- (iii) officers have prepared a more comprehensive report setting out the law, dealing with five year operator licences and address the deficiencies in relation to the presentation of financial information, the absence of which both prevents anyone from making intelligent objection and the Committee from making a well-informed decision.

As the Council did not comply with the requirements set out by the High Court in *Cummings v Cardiff* when the Licensing and Public Protection Committee set the fees on 18 February 2015, the process is fundamentally legally flawed and will, if necessary, be challenged by my client, as other clients have already begun the process of judicially reviewing Shropshire Council for precisely this reason.

Should the Council consider that the fees will only be determined when this objection (and any others) are considered at a Meeting of the Licensing and Public Protection Committee, may I respectfully draw your attention to the fact that the fees were set on 18 February 2015 and would, according to the Council's statutory notice, take effect on 1 April 2015 unless objection is made and not withdrawn.

Contrary to popular belief, the statutory process is an objection process and not a conventional consultative process.

Despite the statutory period for objection having not closed at the time of writing, at <http://www.birmingham.gov.uk/cs/Satellite?c=Page&childpagename=SystemAdmin%2FCFPageLayout&cid=1223092597491&packedargs=website%3D4&pagename=BCC%2FCommon%2FWrapper%2FCFWrapper&rendermode=live> the Council proclaims, before having determined objections, “Licence fees are subject to change from 1 April 2015. The new fees valid from this date for the year 2015/16 can be found in the attachment below.”

The attachment 292249HC&PH_Fees_&_Charges_2015.16.pdf details the fees currently under consideration.

Together, this statement and the attached document gives a very clear impression that the Council has already pre-determined this matter and will, no matter how valid any objections might be, proceed to uphold the decision made by the Licensing and Public Protection Committee on 18 February 2015.

If, despite the foregoing, the Council proceeds to consider the substantive objections to the detail of the proposed fees, my client raises the following specific issues:

- As referred to above, officers have failed to present the information referred to at paragraph 1.8 of the officer report presented to the Meeting of the Licensing and Public Protection Committee on 18 February 2015.
- At paragraph 1.9 it is stated that: “The costs of delivering the service as a whole have increased as a consequence of higher corporate recharges for centrally delivered services.” Following many years of austerity, it is difficult to understand how any costs should have increased, let alone those relating to corporate recharges when one would have expected centrally delivered services to have been cut more than frontline services. In any event, no explanation of information has been provided to explain this assertion.
- Whilst any reduction in operator fees is welcome, surely officers are not seriously suggesting that it costs £170 to change a name on an operator licence, although it is acknowledged that the proposed fee is not as unrealistic as the previously charged fee of £447.
- Inexplicably, the proposed fees for hackney carriages are lower than those for private hire vehicles. In the absence of any explanation for this, it is difficult to understand what the difference is in the licensing process that could account for such an anomaly.
- Ignoring the fact that driver licence fees are probably amongst the highest in the country, there is no explanation as to why a two-year licence costs £55 more than a one-year licence and that a three-year licence costs £60 more than a two-year

licence. As section 53(2) does not permit the recovery of compliance and enforcement costs in relation to driver licence fees it is difficult to appreciate what it is the Council thinks it does in years two and three to justify any additional charge.

- The Council could avoid making a loss on the driver knowledge test folder by making them freely available on its website and charging the full costs of production, if a person opts not to avail themselves of the freely available online version. It is understood that copyright has been relied upon to justify not making this available online, but as this is the Council's material there is no reason why it should not make the material freely available, especially when the Council makes most information freely available on its website under the OGL (Open Government Licence).
- Since the Council made it more difficult for a person to become licensed in order to reduce the number of licensed drivers and vehicles, annually more people are awarded doctorates by the University of Birmingham than pass the Council's driver knowledge tests! Whilst the Council might be pleased that it has achieved its objective, the unintended consequences are that the public opt to use unlicensed people advertising their 'taxi services' on social media (Facebook Taxis), which places them in great danger, and reduces the Council's fee income, which undermines its ability to police the licensed and illegal unlicensed trades. For specific details of the reduction in numbers, please refer to the table on page 8 of the CTS Hackney Carriage Unmet Demand Survey Report (July 2014).

In all the circumstances, the Licensing and Public Protection Committee is asked to resolve not to implement the fee increases it agreed at its meeting on 18 February 2015 or any such increases (but to implement the fee reductions) and to direct officers to present a further report when all matters raised herein can be properly addressed by them in a further report.

If, however, the Council wishes to proceed to determine the objections to the fees, please also accept this letter as my formal request to address the Licensing and Public Protection Committee in relation to this matter on behalf of my aforementioned client, Star Cars.

Yours faithfully,



David B Wilson

Licensing Consultant, Mediator and Trainer
Consulting Editor, Paterson's Licensing Acts 2015

Email: david.wilson@a2zlicensing.co.uk
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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN WALES
BEFORE THE HON MR JUSTICE HICKINBOTTOM

Claim No CO/12090/2013

BETWEEN:



THE QUEEN ON THE APPLICATION OF

(1) CARL CUMMINGS
 (2) SUPATAX 2000 LIMITED
 (3) PRIMEOUTLET LIMITED
 (4) STEPHEN MEARS
 (5) FARZAND ALI

Claimants

-v-

THE COUNCIL OF THE CITY AND COUNTY OF CARDIFF

Defendant

ORDER

UPON the Claimants' application to amend their claim and the final hearing of the claim for judicial review

AND UPON HEARING Leading and Junior Counsel for the Claimants and Leading and Junior Counsel for the Defendant

IT IS ORDERED THAT:

1. The Claimants' application to amend is refused.
2. The claim for judicial review be granted.
3. The decisions of the Defendant made on 3 June 2013 as they relate to hackney carriage and private hire vehicle and respective drivers' licence fees be quashed on the basis that they are unlawful for the following reasons:
 - 3.1 the level of fees set failed to have regard to and/or account for any surplus or deficit generated in previous years dating back to 1 May 2009;
 - 3.2 the level of fees set failed to account for any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes within the regime under

which they have accrued: both between each regime and in respect of each licence within those regimes; and

3.3 the level of fee set for hackney carriage licences in 2013 included part of the cost of funding taxi marshals for the Council's administrative area.

4. It be declared that:

4.1 A local authority when determining hackney carriage and private hire licence fees under section 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 must take into account any surplus or deficit generated from fees levied in previous years in respect of meeting the reasonable costs of administering the licence fees as provided by section 53 and 70.

4.2 A local authority must keep separate accounts for and ensure when determining hackney carriage and private hire licence fees under sections 53 and 70 of the Local Government (Miscellaneous Provisions) Act 1976 that any surplus or deficit accrued under each of the hackney carriage and private hire licensing regimes, and between each licence within those regimes, are only accounted for and taken into account within the regime under which they have accrued and a surplus from one licensing regime shall not be used to subsidise a deficit in another.

5. The Defendant do pay the Claimants the following sums by way of restitution in respect of sums unlawfully obtained from the Claimants in respect of hackney carriage and private hire license fees from 1 May 2009 (but on the footing and basis that this order and subsequent payment shall not of itself prevent the Claimants from pursuing any claim that (i) the Defendant is obliged to make restitution in respect of such payments prior to 1 May 2009 and (ii) the Defendant is under an obligation to make restitution in respect of any greater sum should the Defendant's decisions of March 2014 re-calculating the sums that should have been claimed for the period after 1 May 2009 be set aside):

5.1 The Defendant shall pay the First, Second and Third Claimant £84,314 and £7,861 interest within 21 days of the provision by the First, Second and Third Claimant to the Defendant of details of a bank account into which the payment is to be made;

5.2 The Defendant shall pay the Fourth Claimant £77 and £10 interest; and

5.3 The Defendant shall pay the Fifth Claimant £343 and £36 interest.

6. The following costs order be made:

6.1 The Claimants to pay the Defendant's costs of the application to amend the claim.

6.2 The Defendant do pay the Claimants' costs of the claim up to 5 May 2014.

6.3 The Claimants do pay the Defendant's costs of the claim from 5 May 2014.

In each case, in default of agreement the costs shall be assessed on the standard basis, and the costs of the Claimants and the Defendant shall be set-off against each other.

7. The Claimants' application for permission to appeal is refused.

DATED this 18th day of June 2014



CITADEL
CHAMBERS

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Birmingham, B4 6QD.

Tel: 0121 233 8500
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DX 23503 Birmingham 3

Jacqui Kennedy OBE
Director of Regulation and Enforcement
Birmingham City Council
N12
Second Floor
Lancaster Circus
Birmingham
B2 2UD

30th March 2015

Dear Ms Kennedy,

I am writing to you following our meeting on 18th March at the Council House, Victoria Square.

I am writing once again on behalf of the Birmingham and Solihull Taxi Alliance and the Birmingham drivers and operators they represent.

There is a formal objection by those drivers and operators to the proposed increase in fees which was advertised by Birmingham City Council on 5th March 2014, as it is required to by the Local Government (Miscellaneous Provisions) Act 1976.

At the meeting on 18th March we were told that this increase was due to costs associated with running the licensing department, not previously being identified and charged by BCC, in respect of support services such as human resources. It was also flagged up that there may be extra costs associated with moving licensing headquarters.

Those who instruct me currently have no means to challenge the assertion in relation in costs, but assuming it is correct, it is felt that it is wholly unfair and disproportionate that the entirety of this increase has to be absorbed by the drivers and operators, especially given a licensing surplus of £400,000 that currently subsists. It is also right to say that the move to Woodcock Street hasn't been effectuated yet and should therefore not enter into any equation. Further, it is felt that enforcement should be self-financing, which doesn't appear to currently be the case. Moreover, it is expected that the move towards online applications would also provide an area of saving going forward.

At our meeting you expressed a desire to engage with the trade in a more constructive fashion. If this remains the case we would ask that you defer any decision until proper and full consultation with the trade and its representatives is carried out, in order that the trade can be fully consulted about this proposed increase, as is entirely proper.

I know from speaking to those in the trade there are a number of matters they would like to discuss in relation to the fees, other than this proposed increase. This includes a greater discount for drivers and operators who renew their licence for three years, given the lower administration charge involved and, further, a greater discount for medium size operators who currently pay the same fees as the biggest operators in the city.

Yours sincerely,



Duncan Craig
Barrister

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015
ALL WARDS

**REPORT ON THE CURRENT POSITION REGARDING REGISTRATIONS
UNDER THE SCRAP METAL DEALERS ACT 2013**

1. Summary

- 1.1 In response to a request from the Licensing and Public Protection Committee, this report provides an update on the current position regarding registrations under the Scrap Metal Dealers Act 2013.
- 1.2 Since the Act's enactment on 1 October 2013 officers have granted 243 collector's licences and 66 site licences.
- 1.3 A recent decision of the Supreme Court in respect of Sex Shop licence fees has helped to clarify that scrap metal licence fees may not be used to fund enforcement against unlicensed collectors. This report proposes the limited use of assets recovered under the Proceeds of Crime Act 2002, and held in reserve by this committee, to fund enforcement activity against unlicensed scrap metal dealers.

2. Recommendations

- 2.1 That the report be noted.
- 2.2 That outstanding minute 448(ii) be discharged.
- 2.3 That the funding arrangements detailed in paragraph 8.3 be agreed.

Contact Officer: Chris Neville, Head of Licensing
Telephone: 0121 303 6103
E-mail: chris.neville@birmingham.gov.uk

3. Background Information

- 3.1 Local authorities have been required since 1 October 2013 to implement a licensing scheme under the Scrap Metal Dealers Act 2013 (SMDA). This new Act replaces the previous registration system for scrap metal dealers under the 1964 Scrap Metal Dealers Act. The new Act also incorporates the existing registration requirements for motor salvage operators which are currently set out in the Vehicles (Crime) Act 2001 and Motor Salvage Operators Regulations 2002.
- 3.2 A SMDA licence must be in the form of a 'site licence' or a 'collectors licence' and a site licence can authorise the licensee to carry on a business at any site (or sites) within a local authority's area identified in the licence.
- 3.3 The Home Office set out transitional arrangements that relate to scrap metal dealers, scrap metal collectors and motor salvage operators that held registrations under the 1964 SMDA on 1 October 2013. The transitional arrangements were as follows:
- I. All relevant operators can apply for a scrap metal dealer's licence from 1 October 2013.
 - II. A scrap metal operator who is currently registered under the SMDA 1964 or Vehicles (Crime) Act 2001 needs to submit an application on or by 15 October 2013 and will be deemed to have a temporary licence which is valid until a licence 'decision' is issued. The decision is based upon whether the applicant satisfies the 'suitable person' test. While their application is being considered by the local authority, these operators will be able to operate as if they had a licence so as to maintain business continuity.
 - III. If a scrap metal dealer or motor salvage operator who is currently registered does not submit an application under the transitional arrangements on or by 15 October 2013 their deemed licence will lapse on 16 October 2013. A deemed temporary licence which has lapsed does not give rise to a right to appeal. The dealer must submit an application and wait for a licence to be issued before they can trade legally.
 - IV. A Local Authority can impose conditions on a deemed temporary licence pending an appeal for the refusal of a licence.
 - V. Scrap metal dealers/collectors or motor salvage operators who are not registered under the SMDA 1964 or the Vehicles (Crime) Act 2001, can apply for a scrap metal dealers licence from 1 October 2013 but must wait for a licence to be issued before they can operate.
- 3.4 The following table details the number of applications/determinations to date.

| Type of Applicant | Applications | Transitional Applications | New Applications | Withdrawn Applications | Licences Issued | Pending Determination |
|-------------------|--------------|---------------------------|------------------|------------------------|-----------------|-----------------------|
| Collectors | 328 | 81 | 247 | 64 | 243 | 21 |
| Sites | 73 | 48 | 174 | 2 | 66 | 5 |

- 3.5 The Licensing Service has invested considerable resources into ensuring that each applicant has been carefully vetted, so far as the legislation permits, to ensure that applicants pass the 'suitable person test' before being granted a licence. The Local Authority is required to consider applicants against a prescribed list of relevant criminal offences. In Birmingham every applicant has been asked to attend a face to face interview with an enforcement officer to make an assessment before we agree to grant a licence.

4. E-CINS

- 4.1 Birmingham has signed a data sharing agreement with British Transport Police, Staffordshire Police, West Midlands Police, the Environment Agency and 15 other local licensing authorities to enable each signatory to share scrap metal dealer information with each other. The result is a web based computer system called E-CINS which enables scrap metal dealer licence application information and licence details to be shared. This assists local authorities when dealing with new applications to establish whether the applicant holds licences elsewhere. It is also helpful to the police to support roadside enforcement, enabling them to verify the licence details of anyone who is stopped.

5. Scrap Metal Licence Fees

- 5.1 Fees for scrap metal licences are governed by a range of common law principles, however, the overriding determinant is Article 13(2) of the European Services Directive 2006. The philosophy of the Directive is to remove unnecessarily complex administrative barriers to the expansion or creation of service based businesses. One of the barriers can be disproportionate licence fees.
- 5.2 Article 13(2) of the Directive states: "Authorisation procedures and formalities shall not be dissuasive and shall not unduly complicate or delay the provision of the service. They shall be easily accessible and any charges which the applicants may incur from their application shall be reasonable and proportionate to the cost of the authorisation procedures in question and shall not exceed the cost of the procedures."
- 5.3 The meaning of Article 13(2) was considered in the case R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) v Westminster City Council [2015] UKSC 25 (commonly referred to as 'Hemming v Westminster'), which began in 2011 in which a group of licensed sex shop owners challenged by way of Judicial Review the lawfulness of the fee charged by Westminster City Council for sex shop licences (which were £29,000 each). It was argued by those acting for Hemming that a licence fee could cover the cost of the authorisation procedure (as described by Article 13(2) of the Directive), which would include the process by which Westminster City Council considered each application and determined whether to grant a licence; but that it could not include the cost of carrying out enforcement against unlicensed sex shops. Westminster acknowledged that the cost of authorising a licence was

£2,000 and that the remaining £27,000 was allocated to enforcement against unlicensed premises.

- 5.4 Westminster City Council argued that enforcement against unlicensed businesses was an authorisation procedure and, therefore, it could include the cost in its licence fees. The High Court rejected this argument, as did the Court of Appeal. On 29 April 2015 the Supreme Court supported the decisions of the lower courts. However, it concluded that it would be permissible for a licensing authority to charge a licence fee in two parts: one would be an up-front fee to cover the cost of processing an application, and a second fee for managing the licensing system payable upon the grant of the licence. This second fee could include the cost of enforcement against unlicensed sex shop owners and that it would not be covered by Article 13(2).
- 5.5 However, any such fee would still need to demonstrate reasonableness and proportionality. In this case, 'proportionality' is defined by the Treaty of Rome and is called the Gebhard Test. There are four elements to the test. The fees must:
- i. be applied in a non-discriminatory manner,
 - ii. be justified by imperative requirements in the general interest,
 - iii. be suitable for securing the attainment of the objective which they pursue,
 - iv. not go beyond what is necessary to attain it.
- 5.6 Elements of the Supreme Court decision will be considered by the European Court of Justice next year, including whether the practice of charging an up-front fee for both elements of a licence on the basis of an agreement to refund the second element if the licence is not granted falls within the meaning of Article 13(2). It will also consider whether an applicant must demonstrate evidence of it having incurred a cost (such as loss of interest) before a fee can be considered a cost and thereby fall within the meaning of Article 13(2).
- 5.7 The case of Hemming was based on sex shop licences granted under the Local Government (Miscellaneous Provisions) Act 1982. The consequence of the Hemming case for scrap metal licence fees is that authorities may not include in their fee a charge for enforcement against unlicensed scrap metal collectors or sites. Section 6 of the Scrap Metal Dealers Act 2013 says that an application must be accompanied by the fee. It does not offer provision for a fee to be collected in two parts to distinguish between processing an application and managing the licensing system. Therefore, any fee which we collect as a licensing authority may only include the cost of the application process. This may change depending on the outcome of the referral to the European Court of Justice next year.

6. Enforcement

- 6.1 Due to our inability to charge for enforcement against unlicensed scrap metal dealers or collectors it has only been possible to check whether licence holders are compliant with their licence conditions. Enforcement action against unlicensed scrap metal dealers can only be taken by the Police.

- 6.2 Licensing officers work closely with West Midlands Police to support its enforcement activity. The Police have organised a series of seven 'scrap metal action days' in Birmingham between May 2015 and June 2015. These have included joint visits between police and licensing officers to domestic properties being used as scrap metal collection sites. Since the Act was introduced there has been a noticeable reduction in the number of mobile collectors on the streets of Birmingham. West Midlands Police report a reduction of 40% in scrap metal theft in the year to March 2015 and a 77% reduction since 2012.
- 6.3 To enable more concerted action and to cover the cost of enforcement against unlicensed collectors, officers propose to use reserves from Proceeds of Crime Act investigations conducted by the Trading Standards Service to fund the cost of enforcement exercises against any unlicensed traders that are discovered.

7. Consultation

- 7.1 The authority to approve the use of Proceeds of Crime reserves for scrap metal dealer enforcement rests with the Committee. Consequently no external consultation has taken place.

8. Implications for Resources

- 8.1 Fee setting under the Scrap Metal dealers Act 2013 is a function of the Executive of the City Council, not the regulatory committee. The fees levied for applications have been calculated to ensure full cost recovery for the entire process of administering licences and checking compliance.
- 8.2 The cost of enforcement against unlicensed collectors may not be funded from licences granted under the Scrap Metal Dealers Act 2013.
- 8.3 It is proposed to utilise £10,000 of funds from the Licensing and Public Protection Proceeds of Crime budget to fund a number of enforcement exercise during 2015/2016.

9. Implications for Policy Priorities

- 9.1 The contents of this report contribute to the priority action of ensuring business compliance with legislation to protect the economic interests of consumers and businesses as contained in the Council Business Plan 2015+.
- 9.2 The Licensing Service has a key role to play with regard to the continued reduction in metal theft and the City Council's commitment to community safety and crime reduction.

10. Implications for Equality and Diversity

- 10.1 A large number of Birmingham's current holders of registrations under the SMDA 1964, particularly mobile collectors, reside within the City, but emanate from other European Union countries. In discharging its requirement to assess the 'suitability of applicants' it has been necessary for the City Council to require applicants to provide criminal records disclosure certificates from both their country of origin and from Disclosure Scotland. This has provided greater difficulties for none UK nationals in producing the necessary paperwork to secure a licence to operate.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: nil

BIRMINGHAM CITY COUNCIL

REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

15 JULY 2015
ALL WARDS

LICENSING OF ADDITIONAL PRIVATE HIRE OPERATOR SUB-OFFICES

1. **Summary**

- 1.1 Star Cars & Coaches Ltd, trading as Star Cars have submitted a request via A2Z Licensing (see Appendices 1 and 2), seeking permission to nominate any domestic premises within the Birmingham City Council boundaries as a sub-office, subject to advanced notification to the Licensing Service, in addition to the two addresses currently detailed on their licence.
- 1.2 Star Cars are a private hire operator licensed to operate from 718 Chester Road, Erdington, B23 5TE and from a domestic address in Castle Vale (the existing sub-office).
- 1.3 This is the second request, to add domestic premises to the Star Cars operating licence the first having been agreed on 15 January 2014.

2. **Recommendation**

- 2.1 It is recommended that the request to allow Star Cars to nominate any or all addresses for employees living within the Birmingham City Council boundary, for inclusion on their operator's licence subject to 1 month notice to the Licensing Service be refused, on the understanding Star Cars may apply to have specific individual addresses added to their licence, subject to approval by your Committee.

Contact Officer: Chris Arundel, Principal Licensing Officer
Telephone: 0121 464 8994
Email: chris.arundel@birmingham.gov.uk

3. Background

- 3.1 The Local Government (Miscellaneous Provisions) Act 1976, provides a definition for “operate”, which is:

“in the course of business to make provision for the invitation or acceptance of bookings for a private hire vehicle”.

- 3.2 The issuing of licences for private hire operators falls under Section 55 of the Act, which includes a provision allowing conditions to be attached to the grant of such licences:

“A district council may attach to the grant of a licence under this section such conditions as they may consider reasonably necessary”.

Conditions can only be attached to a licence upon its grant; they cannot be added to a current licence or changed during the term of the licence.

- 3.3 An application form in support of this request has been submitted by Star Cars and no issues have been identified that would present difficulties in processing that application. In order to facilitate consideration of Star Cars request for a mechanism allowing them to introduce additional premises to their licence as required, processing of the renewal application has been delayed and an extension to the existing licence agreed.
- 3.4 If your Committee approves exemptions or the attachment of additional conditions, Star Cars application will be processed and the new licence will be issued with the amended conditions attached.
- 3.5 Star Cars & Coaches Ltd request this matter be dealt with in private (as detailed in the second letter, Appendix 2). However, as the request relates to the principal of allowing additional addresses to be added to the operator’s licence and is not at this point considering individual private residences, legal advice suggests this matter should be heard in public.

4 Licensing Additional Sub-Offices

- 4.1 The case for a mechanism which would allow nomination of any domestic address in Birmingham for inclusion as a sub-office on the Star Cars licence is laid out in the letter attached at appendix 2. The argument hinges on the requirements of the Employment Rights Act 1996 and subsequent amendments which allow employees to request flexible work arrangements, including the right to ask to work from home. Star Cars supplied two ACAS documents in support of their application with appendix 2. Copies of these two documents can be viewed on line as follows:

The Right to Request Flexible Working: An ACAS Guide:

<http://www.acas.org.uk/media/pdf/1/a/The-right-to-request-flexible-working-the-Acas-guide.pdf>

Homeworking – A Guide for Employers and Employees:

<http://www.acas.org.uk/media/pdf/o/3/Homeworking-a-guide-for-employers-and-employees.pdf>

- 4.2 Star Cars contend the decision to allow one employee to work from home leaves them in a position where they could face legal action if they are not able to offer the same arrangement to all employees requesting home working.
- 4.3 Officers have sought legal advice and accept the principle Star Cars must consider applications for flexible and home working, but do not accept that the responsibilities placed on the employer to do so places a similar responsibility on Birmingham City Council in the role of Licensing Authority. The very fact an address does not have the appropriate licence would prevent home working in a context where a licence was required, unless and until such time as a licence was granted for the address in question.

- 4.4 The proposal submitted on behalf of Star Cars is as follows:

Mrs Jackie Markham (the licensed operator) be permitted to operate from any domestic premises in the city, subject to giving at least one calendar months' notice to Hackney Carriage & Private Hire Licensing of her intention to permit a member of her staff to operate (invite and accept bookings for a private hire vehicle) from any such domestic address.

A list of all such domestic addresses notified to Hackney Carriage & Private Hire Licensing from which staff may operate (invite and accept bookings for a private hire vehicle) shall be kept at the main office (718 Chester Road, Erdington, Birmingham B23 5TE) and made available to a constable or an authorised officer on request.

Within 24 hours of ceasing to operate from any such domestic address, the operator shall advise Hackney carriage and Private Hire Licensing of this in writing and update the list maintained at the main office.

- 4.5 The proposal detailed above would serve to allow additional addresses to be added to or removed from the licence without the necessity of issuing a new licence after each amendment. This would also have the effect of allowing the operator to make adjustments at will without incurring any additional costs, subject to compliance with the notification requirements.
- 4.6 Ultimately the Licensing Service and this Committee are responsible for looking after the interests of the public and in particular the passengers using hackney carriage and private hire vehicles. It should be noted adoption of the proposal would remove any formal process of approval of sub-offices by the Licensing Service, or your Committee and leave responsibility for deciding if premises were suitable in the hands of the operator. Ultimate responsibility for licences issued would still lie with Birmingham City Council and the decision to allow an operator to nominate sub-offices at will, could be difficult

to justify in the event complaints were received about a sub-office, especially if those complaints called into question the suitability of the premises, or the individual operating there.

- 4.7 A list of addresses was provided for inclusion with the original application, however, no individual case was made in respect of any of the addresses, or individuals concerned. Officers have clarified the request with Star Cars representative and confirmed Star Cars wish their request to allow licensing of any domestic address in Birmingham to be considered by your Committee, in preference to the list of individual addresses as referred to in the original letter (appendix 1).
- 4.8 The decision to allow licensing of the original sub-office was made after application to Committee and took into account a specific set of circumstances put forward in support of that request. Addition of the sub-office address to the licence was also subject to the imposition of additional conditions as detailed below:

Sub Office

The Private Hire Operators Licence will stipulate a Principal Office and the details of any Sub Office(s) from where private hire vehicles may be operated.

58. Except for any matters referred to within this section (conditions 58-65), the standard Private Hire Operators Conditions of Licence will be applicable to and must be complied with, at all licensed premises specified on the licence.

59. All records referred to in the standard Private Hire Operators Conditions of Licence, with the exception of those pertaining to Records of Bookings (see conditions 38-43), must be retained and made available for inspection at the Principal Office. Records of Bookings will be maintained in compliance with conditions 38-43 at all licensed premises specified on the licence.

60. You must ensure that at all times, the Principal Office is able to identify and immediately disclose when the Sub Office is open and/or operating.

61. You must ensure that at all times when the Sub Office is open for business there is an appropriate and permanent communication system at that office to communicate directly with the Principal Office.

62. You must ensure that all bookings taken at the Sub Office shall be recorded upon the same computerised record system as that maintained and used at the Principal Office and in accordance with conditions 38-43.

63. Any authorised officer of the Council shall be afforded access to the Sub Office at all times whilst the office is open and/or operating or within 15 minutes of it ceasing to take bookings.

64. You must notify the Licensing Office in writing and within 3 days of any change in the nature of the operation at the Sub Office.

65. The Sub Office may only operate whilst and when the Principal Office is open and operating.

66. You must not promote the location of the sub-office in any advertising or promotional material.

67. You must not permit any Star Cars licensed private hire vehicles to park at or in the vicinity of the Sub Office.

4.9 The principle of allowing remote operation from a domestic address was established when Star Cars' application to licence such a premises in Castle Vale was approved. Officers have sought legal advice and consulted with the licensing Enforcement Team. Reservations were expressed about the difficulties which may arise should there be a need to inspect or visit what is essentially a domestic dwelling. However, the fundamental issue remains the risk associated with delegating responsibility for decisions as to which premises are suitable for licensing to an operator, when responsibility for regulating that operator and any associated sub-offices lies with the Licensing Service and your Committee.

4.10 It is suggested further requests to add additional domestic addresses to the operator's licence issued to Star Cars should be subject to the same process and considered individually and according to the merits of each case. This would allow members to ask questions about the individual premises and ascertain the employee understands the implications of the additional conditions where applicable and is willing to comply with them. It would also allow members the opportunity to impose further conditions if considered necessary.

5. Consultation

5.1 No external consultation has been carried out as this is a specific request from an individual applicant.

6. Implications for Resources

6.1 This work will be undertaken within the resources available to your Committee.

7. Implications for Policy Priorities

7.1 No specific implications have been identified.

8. Implications for Equality and Diversity

8.1 No specific implications have been identified.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: Nil



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Licensing Department
Birmingham City Council
1 Lancaster Circus
Queensway
Birmingham
B4 7DJ

Our Ref: KJR
Your Ref:
Date: 5 March 2015
Please ask for: Kevin Rowland

Dear Sir/Madam,

Local Government (Miscellaneous Provisions) Act 1976
Star Cars and Coaches Ltd
Private hire operator licence application

Please accept this letter, the attached application form and associated documentation as a formal application to renew private hire operator licence for Star Cars.

In the early part of 2014 the Licensing Committee approved a private hire operator licence for Star Cars with an additional 'satellite' office, [REDACTED] Castle Vale, so as to enable a member of their staff to work from home.

It is now almost twelve months since the member of staff commenced working from home, where she accepts telephone bookings for private hire vehicles. During that time, no licensed vehicles have visited her premises, all the records have been maintained in real-time at the companies Erdington office through the use of computerised recording systems and have been available for inspection by authorised officers of the council and the Police. As far as Star Cars are aware there have been no issues or difficulties with the member of staff working from home, indeed, the increased flexibility has allowed the member of staff to voluntarily work increased hours and has reduced her travel costs and times to almost zero – which has benefitted all parties.

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Registered in England and Wales Company No: 07583816

Directors:
David B Wilson Cert HELL, MLoL, MBII,tp
Kevin Rowland BSc (Hons), MCIEH, MLoL, MBII,tp

As you will be aware under provisions set out in the Employment Rights Act 1996 and regulations made under it, all employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly provided they have worked for their employer for 26 weeks continuously at the date the application is made. Since June 2014 all eligible employees have been able to request flexible working.

Since June 2014 and following the introduction of their flexible working policy Star Cars have now received a number of such requests from their operations staff, who see the benefits of being able to work from home. At the present time the company are unable to deal with these requests because the home addresses of the members of staff concerned are not licensed under section 55 of the Local Government (Miscellaneous Provisions) Act 1976.

As there have been no issues with homeworking to date and both the member of staff and company have seen significant benefits, it would seem prudent for Star Cars when renewing their private hire operator licence to include the addresses of those members of staff who live within the controlled district of Birmingham and whom, within their job description, facilitate the taking of bookings for private hire vehicles. Such a move will then enable the company to fully consider the flexible working requests already received and any other requests that may be received in the future.

A copy of the full list of addresses that Star Cars would like licensing is attached to the application.

In addition to the above, you will be aware that condition 42 of the standard private hire operator conditions requires the Operator to record specified information in relation to each booking and condition 42(e) specifically requires a destination to be recorded prior to the dispatch of the booking to the driver and also before the commencement of the journey.

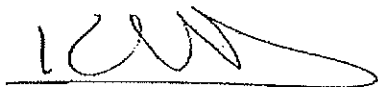
With the advancement of technology and the use of GPS data it has been possible for a number of years for the destination of a vehicle to be post populated into the booking system through the use of such data and this provides an exact record of the location of the termination of the journey, which cannot be changed by the operator, driver or customer.

At least one private hire operator using this type of technology has already been granted an exemption from condition 42(e) and we would therefore ask for a similar exemption in respect of Star Cars. Such an exemption will improve the ease by which bookings can be by their customers, especially customers who are disabled.

However, to ensure that public safety is maintained and improved, Star Cars will only offer such a service to customers where they have pre-registered with the company and the company have the persons details recorded on their system.

I shall look forward to receiving the licence in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'KJ Rowland', written over a horizontal line.

Kevin J Rowland
a2z Licensing Ltd

Email: kevin.rowland@a2zlicensing.co.uk
Mobile: 07795 035007

Mr Chris Arundel
Principal Licensing Officer
Hackney Carriage & Private Hire Licensing
Place Directorate
Birmingham City Council
Crystal Court
50 Rocky Lane
Aston
Birmingham
B6 5RQ

Our Ref: DBW / Star Cars
Your Ref:
Date: 12 May 2015
Please ask for: David Wilson

Sent by email only to:
chris.arundel@birmingham.gov.uk

Dear Mr Arundel,

Star Cars and Coaches Ltd
Application for renewal of private hire operator's licence
Request to permit call-taking staff to work from home

With regards to the above, I refer to my former colleague's letter, dated 5 March 2015.

By way of clarification, I should like to make it clear that prior to the change in the law on 30 June 2014 only parents of children under the age of 17 (or 18 if the child was disabled) and certain carers were entitled to ask their employer for flexible working.

On 30 June 2014 the Flexible Working Regulations 2014 extended the right to request flexible working to all employees who had been employed for a minimum period of 26 weeks and an employer is only able to refuse if the reason for doing so is one on a list of business reasons.

ACAS (Advisory, Conciliation and Arbitration Service) have produced two guides, copies of which I enclose herewith, namely:

- The right to request flexible working: an Acas guide (06/14)
- Homeworking – a guide for employers and employees (05/14)

Despite the definitive nature of the aforementioned guides, I also attach a copy of the Directors' Briefing written by Jim Grieves of HR Management Solutions and John

Blackwell of John Blackwell Associates and published by Atom Content Marketing Ltd, which very helpfully and clearly summarises the position in only four pages.

Having already facilitated flexible working for an employee returning to work after maternity leave under the previous regulations, Star Cars knows that it cannot necessarily rely upon any of the valid reasons, because they have already found homeworking to work and to benefit the company and the employee.

If Star Cars were to refuse a request for flexible working / homeworking an employee may make an application to the Employment Tribunal, which could result in Star Cars having to pay up to eight weeks pay (limited to £464 per week) in compensation.

In the event that the Licensing and Public Protection Committee grants this permission, we have reconsidered how such permission might be expressed as conditions of a licence. On behalf of Star Cars I would like to respectfully suggest that:

- Mrs Jackie Markham (the licensed operator) be permitted to operate from any domestic premises in the city, subject to giving at least one calendar month's notice to Hackney Carriage & Private Hire Licensing of her intention to permit a member of her staff to operate (invite and accept bookings for a private hire vehicle) from any such domestic address.
- A list of all such domestic addresses notified to Hackney Carriage & Private Hire Licensing from which staff may operate (invite and accept bookings for a private hire vehicle) shall be kept at the main office (718 Chester Road, Erdington, Birmingham B23 5TE) and made available to a constable or an authorised officer on request.
- Within 24 hours of ceasing to operate from any such domestic address, the operator shall advise Hackney carriage and Private Hire Licensing of this in writing and update the list maintained at the main office.

If you or your lawyer colleagues would like to discuss the wording of potential conditions before this request is considered by the Licensing and Public Protection Committee, my client and I would be pleased to do so and acknowledge and appreciate that any such discussions would be entirely without prejudice as, of course, it is only Committee that could agree to the requested departure from the standard conditions of licence.

Yours sincerely,



David B Wilson

Licensing Consultant, Mediator and Trainer
Consulting Editor, Paterson's Licensing Acts 2015

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The law on flexible working

As an employer, you need to know about flexible working. The law says you must 'consider seriously' requests to work flexibly from employees with a child aged 16 or under, a child with disabilities under 18 and employees looking after an adult dependant. This will be extended to all employees with at least 26 weeks' service on 30 June 2014.

This briefing covers:

- The different types of flexible working.
- Who qualifies to apply for flexible working.
- The procedures you must follow if you receive a request to work flexibly.
- What you need to do to introduce new working arrangements.
- Other legislation to be aware of.

1 What is flexible working?

Flexible working is any working pattern other than the normal working pattern — it can involve changes to the hours an employee works, the times they are required to work or their place of work.

1.1 There are a number of working practices that involve changes to the **hours and times** worked:

- A flexitime arrangement requires employees to be at work during a specified core period, but lets them otherwise arrange their hours to suit themselves.
- With compressed hours, employees work the same hours over fewer days.
- With annual hours contracts, employers and employees agree they will work a given

number of hours during the year, but the pattern of work can vary from week to week.

- Staggered hours contracts let employees start and finish work at different times.
- Employees may also wish to take time off in lieu, unpaid sabbaticals or career breaks.
- You may be asked to consider time off for eligible employees to undertake training.

1.2 Employees may request a **job-sharing arrangement**.

- This is where one job is shared between two people, who might work alternate days, half weeks, or alternate weeks, or one person working in the morning and one in the afternoon.

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1.3 Shift work, part-time and term-time work also count as flexible work, in that they involve variations to the normal pattern of working hours.

1.4 Flexible working may also involve changes in the location of the **workplace**, such as working from home.

- Employees may request to do some or all of their work from home. You will need to consider your health and safety obligations (see **4.3**).

2 Who qualifies?

Currently parents or carers requesting flexible working under the statutory right must fulfil certain criteria.

2.1 The employee must:

- Be the mother, father, adopter, guardian or foster parent of the child in question.
- Be the spouse, partner, civil partner or relative, or live at the same address.
- Have responsibility, or expect to have responsibility, for bringing up or caring for the adult or child.
- Make the application as a means of enabling them to care for the child.
- Have worked for you continuously for at least 26 weeks before making the application.

Business benefits

Flexible working can have a number of business benefits.

A Flexible working patterns may **attract employees** to your company.

- Having a flexible approach will also help you retain existing staff.

B It can help to reduce **employee turnover**.

C It may boost **employee morale** and commitment.

D The introduction of more flexible working arrangements can also reduce **absenteeism**.

E It has also been proven that flexible working provisions can lead to noticeable improvements in **employee productivity**.

- Have made no other application in the preceding 12 months.
- Be willing to agree a change in their working pattern, with a corresponding drop in pay if necessary.
You can agree that it should only be a temporary or transitional change.

2.2 If the employee is requesting **flexible working** in order to look after a child, the child must be 16 or under, or under 18 in the case of a child with disabilities.

The right to request flexible working will be extended to all employees with at least 26 weeks' service on 30 June 2014.

Note: Employees who have adopted 'employee-owner' or 'employee-shareholder' status under The Growth and Infrastructure Act 2013 do not have the right to request flexible working. See margin note.

3 Implementation procedure

Under the law on flexible working, both sides are required to follow the correct procedure.

3.1 It is up to the employee to prepare a **detailed application** well in advance of when they want to change their working pattern.

- The application must be in writing and clearly state what the application is for and when it will be effective from.
- The employee should be able to come up with a clear plan of how the new pattern would work and must show that the changes will not harm your business.
- It must also explain how the employee feels he or she meets the relationship criteria.

3.2 It is **good practice** to acknowledge an application to work flexibly in writing. Once you have received an application from an employee you must:

- Arrange a meeting with the employee within 28 days of receiving it.
This is to decide a start date (if you agree), or to consider alternatives (if you do not).
The employee has the right to be accompanied at the meeting. The companion must be a worker also employed by you.
- If you agree, write to the employee within 14 days of the meeting detailing the new working pattern and confirming the start date.

➔ Employees adopting 'employee-owner' or 'employee-shareholder' status give up some of their employment rights in return for shares in the business. This includes the statutory rights to request flexible working or in relation to training or study. They will not be protected against dismissal for making either of these requests, except to request to work flexibly on return from parental leave. Nor will they benefit from ordinary unfair dismissal protection after two years' continuous employment.

“The most common problem employers have with requests to work from home concern trust. This is best achieved by good communication and effective monitoring — task completion rather than time management.”
Jim Givens,
HR Management Solutions

- If you do not agree, you must write to the employee within 14 days with business reasons why the proposed arrangement will not work.
You must date your refusal and set out your appeals procedure.

3.3 You can **refuse an application** to work flexibly only if there is a clear business reason.

Valid reasons as set out in the legislation are:

- The burden of additional costs.
- A detrimental effect on the ability to meet customer demand.
- An inability to reorganise work among other employees.
- An inability to recruit additional employees.
- A detrimental effect on quality.
- A detrimental effect on performance.
- Insufficient work when the employee proposes to work.
- Planned structural changes.

3.4 If you refuse an application to work flexibly, the employee may **appeal**.

- They must write to do so within 14 days of you sending your letter of refusal.
- You must have an appeal meeting within 14 days of receiving this letter.
You must write, accepting or refusing the appeal, within 14 days of this meeting.

Individual cases

The requests you receive from individuals will often involve forms of flexible working tailored to their specific circumstances. For example:

- A** Parents (or those with responsibility for bringing up children) may wish to **work hours** that allow them to drop off a child at school in the morning.
- B** A person who is caring for a disabled relative may need some sort of **flexitime arrangement** to take the relative to medical appointments.
- C** The mother of a young baby may need the flexibility to **work from home** at short notice.

Individual requests for flexible working don't necessarily entail a reduction in the total hours worked.

3.5 If you still refuse the application, and the employee feels that their application has not been considered seriously, they may want to take **further steps**.

- Try to deal with the problem internally at this stage. An informal discussion between you and the employee may clear up any misunderstandings.

Or, encourage them to use a formal grievance procedure. It will also be much quicker than involving external parties.

- If it is still not possible to resolve the dispute, the employee may decide to involve an external third party.
This might be someone from Acas or some other mediator or conciliator.
They will try to resolve the problem in an informal manner by mediating discussions between you and the employee.

3.6 In some circumstances, the employee may decide to make a **formal complaint** to an employment tribunal or to the Acas arbitration scheme.

- The employee can only do this if you have failed to follow the correct procedures, if your decision was based on incorrect facts, or, perhaps, if the employee is caring for a disabled relative, and the employee claims the refusal amounts to disability discrimination.
- If it is shown that you have not followed the correct procedure, you will have to reconsider the application.
- You may also have to pay compensation to the employee.

The amount payable will be decided by the employment tribunal or the Acas arbitrator and will be limited to a maximum of eight weeks' pay. Each week's pay is currently limited to £464. If a discrimination claim succeeds, compensation is not capped.

3.7 The **timescales** may be extended by mutual (written) agreement. If the employee fails to attend two or more meetings (without a reasonable explanation), you may treat the application as withdrawn.

3.8 The current statutory procedure will be removed when the right to flexible working is extended to all employees on 30 June 2014.

- Employers will have a duty to consider all requests in a reasonable manner.
- They will retain the right to refuse requests on business grounds.

“Employees must be able to request changes to their working patterns without fear of dismissal, detriment, or other disadvantage to their career opportunities.”
John Blackwell, John Blackwell Associates

4 Moving into flexible working

Once you have accepted a request for flexible working you may need to make some changes.

4.1 You will need to amend the employee's **contract of employment**.

- You may want to agree a trial period.

4.2 If the new arrangement changes the number of hours worked, you will need to amend the employee's **pay** and **holiday entitlement**.

4.3 If the employee will be working from home, **health and safety** requirements will still apply.

An initial risk assessment must be carried out although this can be done by the employee. Areas to consider are:

- The seating and layout of the employee's computer workstation.
- Electrical equipment. Has it been tested and certified?
- Make sure there are no trailing extension leads.
- Adequate lighting levels, ventilation and room temperature.

Give employees simple, specific health and safety advice and record what has been done.

4.4 Consider the impact of the changes on **other employees**.

- If an employee will be working fewer hours, make sure you have adequate cover in place. Other employees may become resentful if their workload increases.
- You should inform other employees as early as possible.
- You also need to make sure work is allocated fairly. For example, in a job share you need to make sure that both parties have equal responsibilities.

4.5 Make sure you are **consistent** in your approach. Keep records of who has applied to work flexibly, and what your response was. Monitor and evaluate how the new arrangements are working so you can put changes in place if necessary.

5 Other legislation

In general, the same legislation applies to employers offering flexible working patterns as to those adopting more conventional arrangements.

You should also take account of some specific protection for employees working flexibly.

5.1 The employee is protected against **dismissal** or constructive dismissal under the flexible working rights. It is unlawful to dismiss an employee because:

- They have applied to work flexibly and it has been granted.
- They have made or intend to make a complaint to an employment tribunal.
- In such a case, the qualifying period of employment is waived and dismissal will be classed as automatically unfair.

5.2 If you are making employees **redundant**, make sure this has nothing to do with their right to work flexibly.

- Employees are protected from dismissal on these grounds.

5.3 When implementing flexible working arrangements you will need to make sure you are not **discriminating** against the employees concerned.

- Fixed-term and part-time employees are legally entitled to be treated 'no less favourably' than their permanent, full-time colleagues.
- If you place a requirement on an employee to work full time, the employee may be able to make a claim against you for indirect discrimination under the Equality Act 2010. If the employee is caring for a disabled relative, the refusal may amount to disability discrimination. There is no ceiling on the amount of compensation that can be awarded in such cases.

5.4 People who work on annual hours or term-time contracts are protected by the **working time** and **minimum wage** regulations, just like full-time employees.

6 Further help

6.1 **Acas** has a good guide to forms of flexible working, plus an advice leaflet and various forms on its website at www.acas.org.uk or for further advice call 08457 47 47 47.

6.2 Visit www.gov.uk/flexible-working for an **interactive guide** to flexible working rights.

Expert contributors

Thanks to **Jim Givens** (HR Management Solutions, 01268 565 007, www.humanresourcesclick.net) and **John Blackwell** (John Blackwell Associates, 01491 628654).

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BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION & ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015
ALL WARDS

FOOD LAW ENFORCEMENT PLAN 2015/2016

1. Summary

- 1.1 The Local Government Act 2000 requires each Food Authority to identify its strategy and the resources required to fulfil its Food Safety function each year in the form of a Food Law Enforcement Plan.
- 1.2 The Food Law Enforcement Plan for 2015/2016 which is attached to this covering report includes a review of the food safety activity carried out in 2014/2015.

2. Recommendation

- 2.1 That the Food Law Enforcement Plan be agreed.

Contact Officer: Nick Lowe, Operations Manager (Food Lead)
Telephone: 0121 303 2491
Email: nick.lowe@birmingham.gov.uk

3. Background

- 3.1 The Food Law Enforcement Plan sets out the City's commitment to Food Safety Enforcement for the year ahead.
- 3.2 The plan shows the number of food hygiene and food standards interventions which will be required and identifies those areas of work which are considered essential to protecting food safety in Birmingham.
- 3.3 The plan includes the targets that were set for last year (2014/2015) and reviews performance against them.

4. Consultation

- 4.1 The work outlined in this report involves consultation with interested parties such as the Food Standards Agency, DEFRA and Public Health England.

5. Implications for Resources

- 5.1 Whilst the exact costs are difficult to forecast we estimate that the plan will be delivered within the resources available to your Committee at a ratio of 14 full time equivalent officers.

6. Implications for Policy Priorities

- 6.1 Safe food is not only crucial to the health and safety of citizens and visitors to the City but the work which is referred to in the Food Law Enforcement Plan is also consistent with other policy priorities including economic success, staying safe and being healthy.
- 6.2 It is important that all groups within Birmingham, as well as visitors to the city, are offered suitable standards of food quality and hygiene to allow them the healthy lifestyle opportunities to which they are entitled. By targeting food safety interventions according to business risk ratings every effort is made to ensure safe food for all.
- 6.3 It is a statutory duty on the Local Authority to provide a competent workforce to undertake food hygiene interventions and carry out the inspection programme.

7. Public Sector Equality Duty

- 7.1 Equality issues are accounted for during food safety activities carried out by officers.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:

Local Authority Framework Agreement - Food Standards Agency 2001

FOOD LAW ENFORCEMENT PLAN 2015/2016

1. Background

- 1.1 All local authorities are required by the Local Government Act 2000 to produce a Food Law Enforcement Plan which sets out the measures the authority will take to safeguard food safety during the forthcoming financial year and reviews the targets set for the previous year.
- 1.2 Birmingham has approximately 7,330 food premises including manufacturers, wholesalers, retailers and caterers, ranging from small and medium sized businesses to major concerns and this includes 76 food businesses which need specific approval. In addition many other businesses change hands throughout the course of a twelve month period, and currently there are 758 unrated food businesses requiring inspection and rating. This provides a constant challenge to ensure that all food businesses are included in the regular food inspection programme.
- 1.3 As well as carrying out food hygiene and food standards inspections, food complaints relating to adulteration, composition, labelling, fitness and quality are investigated. An annual food and water sampling programme is carried out to ensure that microbiological, chemical and compositional standards are met, including nationally co-ordinated surveys. All reported outbreaks and sporadic cases of suspected food poisoning are also investigated.
- 1.4 Food safety activities are undertaken in line with the 'Better Regulation Agenda' brought in by the Regulatory Enforcement and Sanctions Act 2008, i.e. being proportionate, accountable, consistent, transparent and targeted. The Act, therefore, places greater emphasis on providing advice and guidance to food businesses in addition to firm but fair enforcement.

2. Demands on the Food Service

- 2.1 Each Local Authority has different demands which impact on the delivery of the food safety service and within Birmingham these include:
 - Ensuring that the statutory inspection targets are met in respect of such a large number of food premises in the largest Local Authority in England and Wales.
 - Ensuring that an equitable service is delivered in a multi-cultural City so that information on food hygiene training and advice is accessible to all food traders.
 - Dealing with a high turnover of food businesses and proprietors within the City and maintaining an accurate database to ensure that all food premises are inspected.

- 2.2 The reduction in officer numbers within Environmental Health has been accounted for within this report to give an accurate plan which can be delivered within the existing resource base.

3. Introduction to The Food Law Enforcement Plan for 2015/2016

- 3.1 The priorities for ensuring food safety in Birmingham for 2015/2016 are to:
- Carry out a programme of food hygiene interventions for the year.
 - Investigate all requests for assistance in relation to food hygiene, food standards and food complaints, including sporadic cases and outbreaks of infectious disease.
 - Carry out a comprehensive food and water sampling programme.
- 3.2 The work plan to safeguard food in Birmingham during the forthcoming year is detailed in Appendix 1.
- 3.3 Some of the figures, such as those for requests for assistance, infection control cases and food alerts given in Appendix 1 are not targets, as these will depend on the number of complaints and requests made which can obviously vary, but are the expected numbers based on the figures for 2014/2015.
- 3.4 The aim is to achieve a level of food safety in Birmingham that is consistent with the City Councils vision of a safer and healthier city.

4. Food Premises Interventions

- 4.1 Under the Statutory Food Law Code of Practice, all food premises are categorised according to an intervention rating score. This determines the frequency of primary food hygiene interventions, from 6 months to 3 years, and depends on the type of food business, the type of food processing or handling undertaken, hygiene and structure of the premises and how well risks are controlled.
- 4.2 These criteria are assessed and scored in Birmingham to give food businesses a rating under the 'National Food Hygiene Rating Scheme' (visit www.ratings.food.gov.uk). The scores for 6,177 premises are available via the ratings website and since the launch officers have also been issuing window stickers for display in food premises for all businesses. The ratings range from 0 (urgent improvement necessary) to 5 (very good).
- 4.3 Currently, 86.47% of rated food businesses in Birmingham are classed as 'broadly compliant', which leaves approximately 992 which are not, this figure includes 800 0-1 rated premises. Officers will be concentrating on those worst premises i.e. those in the 0-1 range by carrying out additional interventions and taking enforcement action where necessary in order to raise standards to 'broadly compliant'.

- 4.4 The Local Authority will continue to utilize a range of interventions depending on the previous history of the food business. These interventions include inspections, audits, monitoring, surveillance, verification visits, advice and guidance and information/intelligence gathering. The intervention programme will be as indicated below.

The higher risk category A to D premises will be subjected to full inspections. This includes inspections of premises requiring approval. This will include manufacturers and larger more complex food businesses. These 76 businesses add an additional 30 officer days per month demand on resources.

In relation to Category E rated premises, we will critically review the nature of the businesses and base our interventions as follows:

- those businesses with no inspectable risk (vending only, bookmakers retailing drinks only, chemists) will be removed from the programme;
- full inspection of low risk child care establishments following referral from Ofsted;
- full inspections of any premises subject to a food hygiene complaint;
- full inspection of 10% of category E premises where open food is handled.
- the remaining premises will be subject to a self-assessment questionnaire by correspondence

758 Unrated food businesses will be inspected – these are new registration businesses and those discovered operating that have not yet been inspected.

An identified backlog of 466 A-D inspections will be undertaken. These have arisen following a changeover in our computer system.

An identified backlog of 4305 category E interventions, these will be analysed to remove any with no inspectable risk. The remaining will then be completed over the next 3 years, with 10% being subject to full inspections with the remaining to be self-assessment.

Approx. 500 new registrations expected this year.

- 4.5 Food standards inspections which cover the quality, labelling and composition of food are rated differently but, where possible, these will be carried out at the same time as food hygiene inspections. Particular emphasis will be placed on food standards during inspections of manufacturers. Officers will also check on the traceability of products and their authenticity during inspections, to detect and reduce food fraud.
- 4.6 The food hygiene and food standards interventions which are required during 2015/2016 are given in Appendix 1.

5. Food Related Complaints and Requests for Assistance

- 5.1 Investigations are carried out into complaints about poor hygiene in food premises and in response to requests for assistance from food proprietors who need additional advice about their business.
- 5.2 In addition, an average of 1,719 complaints are received each year from members of the public who are concerned about the food they have bought or eaten. These are investigated on health risk basis and are often complex investigations involving other Local Authorities, national companies and importers where food has originated from outside Birmingham or the UK. The main aim of these investigations is to find out whether the complaint is indicative of a general problem which could have serious implications for public health at a local, regional or national level and to take steps to control any further risk. Where the issue is low risk, investigations will be delayed until the next programmed inspection.
- 5.3 The FSA operates a system to alert the public and food authorities to problems concerning food which does not meet food safety requirements or which is inadequately labelled and where a product recall has been issued. Many of these are for information only where the company concerned has been able to trace and recall most of the product, but some require local authority involvement to contact retailers or caterers to ensure the food is removed from sale. With such a large number of caterers and retailers in the City, this can prove a challenging and time consuming exercise. Where a large scale response is required this will impact on other demands of this plan.

6. Home/Primary Authority Principle

- 6.1 The Service supports the Home Authority Principle set up by LGR (Local Government Regulation) and the Primary Authority Principle set up by BRDO (Better Regulation Delivery Office). This means that a formal partnership arrangement is set up so that one local authority becomes the main point of contact to give the business advice on food policy matters and to advise other local authorities on any complaints they may be investigating within their area.
- 6.2 Regulatory Services has formal partnerships for food safety and food standards matters with:
- Mondelez - chocolate and confectionery manufacturer
 - Wing Yip - Chinese importer and wholesaler
 - Walter Smith (Birmingham) Ltd - retail butcher
 - Valerie Patisserie - Bakery
 - Hand Made Burger Co. - Restaurant chain
 - Virgin/ Cross Country Trains - Catering outlets on train services
 - Greggs - Bakery (informal partnership at present)
 - Thai Leisure Group - restaurant chain
 - Interstate Hotels - restaurant chain

- 6.3 This is a resource intensive exercise as additional meetings and inspections are required in order to properly advise both the business and other local authorities. It also ensures that we have competent staff with good knowledge of all aspects of food standards. Where Primary Authority Partnerships have been agreed, we operate a cost recovery system from the company, with approximately £28,000 recovered this year. For this reason we are looking at converting our existing Home Authority arrangements to Primary Authority Partnerships. We are not able to make a profit on these arrangements, they are purely cost recovery. The principle is supported through our contact with businesses involved in the Greater Birmingham & Solihull Local Enterprise Partnership.
- 6.4 In addition, Birmingham is the originating authority for approximately 150 food manufacturers, whereby the Home Authority principles are applied, although formal partnerships have not been established with these companies. We have a statutory duty to deal with referrals from other Local Authorities where products manufactured in Birmingham are sold in other areas, and problems are identified. There is no requirement for these businesses to enter into a formal partnership arrangement.

- 7.1 A food and water sampling programme will be developed during the year in conjunction with Public Health England (PHE) and the Public Analyst.
- 7.2 The sampling programme will be restricted to national and regional surveys co-ordinated by PHE and CENTSA, comprising 40 microbiological samples and 21 compositional samples. This represents a further reduction in sampling, from 589 in 2013/2014, 163 in 2014/2015 to 61 planned samples this year. The aim of the programme is to ensure that food and drink supplied, manufactured and sold within Birmingham meets regulatory standards in terms of microbiological safety, labelling, composition and quality, and are accurately described, giving consumers accurate information when purchasing food products.

8.1 All outbreaks and sporadic cases of food poisoning and suspected food poisoning are investigated, including potentially serious infections such as typhoid, paratyphoid, dysentery and E. coli 0157. Officers work in close liaison with the Consultants in Communicable Disease Control, Public Health doctors and nurses of the Health Protection Agency to protect the public health of people who live and work in or visit the City. Joint guidelines have been produced to ensure that all cases of infectious disease are investigated

thoroughly. Reciprocal training is carried out to train professionals for both Regulation & Enforcement and the Health Protection Agency.

9. Food Premises Database

- 9.1 It is important that the food premises database is kept as up to date as possible so that all food premises are inspected regularly. To achieve this a range of initiatives are carried out including the registration process, area surveys and officer's working proactively to identify new food premises in their districts. This additional surveillance ensures that new food businesses which have not registered are identified so that they can be included in the food inspection programme.
- 9.2 A number of issues were highlighted relating to the recording of premises on the database, and the ratings applied. A management report has been developed that identifies anomalies in relation to the information held about food businesses, including the ratings applied. This report will be run quarterly and any such anomalies will be corrected. This will ensure that the database is up to date and returns to the FSA are accurate.
- 9.3 There are 758 unrated food businesses have been identified on the database. These are being included in the inspection programme which will improve the integrity of the database and the returns to the FSA. A regular report will be run to identify unrated premises, to ensure that steps are taken to manage this situation in future.

10. Advice to Businesses

- 10.1 In accordance with the Enforcement Policy, advice is offered wherever possible to food businesses, to assist them in complying with relevant law and the principles of good practice. This advice may be given during inspections or when requests for assistance are received directly from established food traders or from those considering setting up new food businesses.
- 10.2 A special starter pack to help new or proposed food businesses has been developed which is available on the City Council's website (www.birmingham.gov.uk/foodsafety). A wide range of other leaflets in community languages is also available. The pack is also provided to new businesses at initial inspections when appropriate.
- 10.3 In addition, the food safety web pages on BCC's website provide more information and advice to food businesses and consumers and where to find additional support, such as from the Food Standards Agency.
- 10.4 Officers also work closely with the Events Division to ensure that food and health and safety at large outdoor events in Birmingham are assured. An information pack has been developed for traders to receive in advance and on-the-day inspections will be carried out at events such as Vasaikhi, Eid

Mela, Frankfurt Christmas Market and Taste of Birmingham. The demand in this area of work has increased and the trend continues this year with very high profile events in the city such as the Rugby World Cup. This will be inspected to ensure that the event passes without problem. The additional inspections are not accounted for within this plan.

- 10.5 During August 2013 Environmental Health embarked upon an alternative enforcement initiative for some of the poorest performing food premises within 12 wards of the City, those with a 0-1 rating. The wards are:

- Aston
- Bordesley Green
- Hodge Hill
- Handsworth and East Lozells
- Moseley and King's Heath
- Ladywood
- Nechells
- Sparkbrook
- Springfield
- Soho
- South Yardley
- Washwood Heath

The initiative is to provide a tailored advisory, educational and supportive approach that will encourage businesses to improve their standards in a range of different areas including food safety, health and safety, waste and energy efficiency. This has been driven by a partnership with Enterprise Catalyst Zone and part funding from the European Regional Development Fund and is aimed at improving overall business performance, productivity and environmental sustainability. Due to the success of the project it is proposed that the project will continue beyond the 2015 timescale previously anticipated when external funding ceases. A full time officer will be assigned to carry out this role city wide.

11. Food Safety and Standards Promotion

- 11.1 Queries from the public will be responded to on food safety matters as part of the overall request for assistance service.
- 11.2 In partnership with the National Health Service the authority will extend the range and number of food businesses in Birmingham which obtain the Healthy Choices Award. This is an award that encourages food outlets to provide healthier choices on their menus.
- 11.3 Due to changes in labelling regulations all food business will be required to provide greater information to consumers about allergenic ingredients. An on-going education programme is being delivered in the city to educate businesses about this change, prior to any enforcement. This will include providing documents during inspections and discussions with food business

operators on compliance. It is not expected that enforcement will commence until 2016, unless the public's health is put at risk.

12. Review of work undertaken in 2014/2015

Inspections and legal action

- 12.1 Appendices 1 and 2 give detailed information on the food safety work carried out during 2014/2015.
- 12.2 Some 2,947 food hygiene inspections were carried out in 2014/2015 and 2320 food standards inspections. This represents over 100% of the programmed inspection target and also included a number of low risk inspections to premises not included in the programme but where complaints had been received. Due to not programming interventions at very low risk category E premises the total inspections carried out was 74% of the actual target.
- 12.3 Officers though concentrated on ensuring that the genuine low scoring premises were improved, by carrying out additional inspections and taking enforcement action where necessary. Although these premises are not automatically re-rated the current rate of improvement after officer action stands at 71%.
- 12.4 Birmingham has 76 food businesses which require specific EC approval. These are premises which produce or store high risk meat, fish or dairy products on a wholesale basis. This is a slight reduction compared to last year's figure of 82, however, a rise in applications has been noted. This process usually involves a number of inspections, a review of the company's food safety management system and an assessment of other conditions before approval can be granted and requires a more in-depth knowledge of assessing food safety systems. These types of premises were responsible for E.Coli outbreaks, in other areas of the country, and were investigated by Professor Pennington and represent the highest risk to food safety
- 12.5 During 2014/2015, 46 premises were found to present an imminent risk to health and were closed immediately until all necessary works were carried out. This is significantly above the average number of closures which are normally carried out in Birmingham and a large increase on last year. Although this could be considered a large number, compared to the total number of inspections carried out, (3,449) it only represents 1.33% of premises which seriously failed to meet basic hygiene requirements and put their customers at risk.
- 12.6 21 premises were prosecuted for food hygiene and food labelling related offences, with total fines amounting to £81,540 and costs recovered of over £32,000. In addition 6 businesses received a simple caution. This is a slight increase in the number of prosecutions compared to previous years.

Food and water sampling

- 12.7 A range of surveys have been carried out to investigate the microbiological safety of food products as well as composition and labelling. The sampling programme has included surveys of food manufactured in Birmingham as well as a number of surveys on healthy eating claims
- 12.8 As part of the sampling programme, 17 food and water surveys were carried out comprising 162 samples in total. Of these, 28 were unsatisfactory i.e. 17.28% due to high bacterial counts or adulteration. This is a slightly higher failure rate than in previous years but at a rate that demonstrates the improved targeted and intelligence led programme. All of the issues identified were raised with the companies concerned and their home authorities and follow up action taken to ensure that problems were rectified and where necessary food products removed from sale.

Food Hygiene Rating Scheme

- 12.9 The ratings website where hygiene scores for businesses are displayed features over 6,000 food businesses. As part of the scheme officers issued window stickers for all businesses in the scheme. Currently it is not a mandatory requirement for a business to display their hygiene score. We continue to support the introduction of legislation requiring the mandatory display of ratings stickers.

Healthy Choices

- 12.10 In 2011 Environmental Health launched the Birmingham Healthy Choices Award called 'Food Fit 4 Life'. The Birmingham Healthy Choices Award Scheme was created as a partnership between the Food Lead Team and NHS Birmingham East and North, Heart of Birmingham Teaching Primary Care Trust and South Birmingham Primary Care Trust. The scheme has been introduced to caterers across the city and it is intended to encourage businesses to consider the nutritional content of the meals that they offer to the public. The scheme will run along side the Food Hygiene Ratings scheme, so that customers in Birmingham will have the opportunity to make an informed decision into where they eat not just in relation to hygiene standards, but healthy food choices too. The number of premises with an award now stands at 347. Audits are funded directly by the Public Health section.

Training

- 12.11 All officers who carry out food inspections have received the minimum of 10 hours compulsory professional development training in food safety. The ever popular Birmingham Practical Food Inspection courses were held in June 2014 in conjunction with Birmingham University and Wolverhampton University to train primarily new student EHOs.

Project Work

- 12.12 Officers have worked in partnership with the Council's events division, an officer was appointed to offer specialist advice concerning food safety at the major outdoor events which took place in the City including, the Christmas German Market, the Vaisakhi celebrations and the Birmingham Carnival. Over 60 inspections were carried out of food businesses at the German Market to ensure the event was a success.
- 12.13 In addition officers from The Food Lead Team have been working with Severn Trent and the Council's events team to address the issues of water supply at outdoor events. Where potable water is supplied it is required to meet drinking quality standards, even where it is not supplied for drinking purposes.
- 12.14 Officers have worked with traders on the Bull Ring Indoor Market to improve the efficiency and effectiveness of temperature control equipment to ensure that products sold remain safe. Further work has been undertaken to improve the hygiene ratings of businesses at the Bull Ring Indoor Market. This is funded by the markets service. Currently this has resulted in a 60% increase in businesses on the indoor market with a 5 rating, with 65% of the businesses achieving a 4 or 5 rating.

13. Trends

- 13.1 Appendix 3 gives statistical information showing the trends in a number of areas of food safety since 2009. The number of food premises in Birmingham and the interventions required has been fairly steady. The number of interventions carried out in 2014/2015, due to excluding the very low risk inspections, was 74% of the actual target.
- 13.2 The number of Emergency Prohibition Notices served has fluctuated over the past 6 years, with an average of 38.5 served per year. The number served in 2014/2015 was above this average, see appendix 2.
- 13.3 The number of Food Hygiene requests for assistance has nearly doubled in comparison to the previous year. The numbers remain almost double that received in the early 2000's, perhaps showing an increased public awareness of food hygiene and a demand for higher quality. The number of complaints about food has stabilised this year to the six year average.
- 13.4 The number of sporadic cases of infectious disease has increased last year, after a big rise in 2010/2011 the numbers had been declining. This highlights the need to continue to direct resources at poor performing food businesses and the importance of food safety in the Service Plan in reducing food borne infection. The number of reported outbreaks of infectious disease has dropped again this year, this is due to most community outbreaks being investigated by Public Health England.

14. **Resources**

- 14.1 The food safety work during 2014/2015 was carried out within existing budgets.

Essential food related work carried out in 2014/2015 and planned for 2015/2016

APPENDIX 1

| Activity | No. planned/ expected 2014/2015 | No. achieved 2014/2015 | | Comments | No. planned or expected in 2015/2016 |
|--|---------------------------------------|---------------------------|--|---|--|
| Food hygiene primary inspections, category | | | | <p>The interventions planned for 2014/2015 include all of the category A-D premises. The category E premises are subject to interventions as detailed in the report..</p> <p>The programme will also include the overdue A-D premises, new registrations and unrated premises. The remaining overdue E premises will be subject to interventions as detailed in the report.</p> | |
| A (High risk) | 66 | 145 | | | 86 |
| B | 446 | 572 | | | 455 |
| C (Medium risk) | 1384 | 1551 | | | 1176 |
| D | 400 | 602 | | | 516 |
| E (Low risk) | 0 | 0 | | | 334 |
| | | 2947 | | | |
| Overdue A-C | | | | | 109 |
| Overdue D | | | | | 357 |
| Overdue E | | | | | 4305 |
| Unrated | | | | | 758 |
| New Registrations | | | | | 500 (est) |
| TOTAL | | | | | |
| Food standards primary inspections | 2169 | 2320 | | Food standards inspections are carried out at the same time as food hygiene inspections. As the number of food hygiene inspections was in excess of the target for food standards inspections, the number of food standards inspections was therefore increased. All premises classed as high risk for food standards such as food manufacturers were inspected. | 2320 |

| | | | | |
|---------------------------------|---|---------------------|--|--|
| Requests for assistance | | | These are not targets but expected figures – the numbers depend on the demand made by consumers and traders | |
| Food hygiene/ standards | 1210 | 2030 | | 2030 |
| Food complaints | 440 | 450 | | 450 |
| TOTAL | 1650 | 2480 | | 2480 |
| Infection control | | | Most outbreaks of gastro-intestinal disease are caused by person-to-person spread of viruses which may not be food borne. However, the initial symptoms are the same as for food borne bacterial causes and so all outbreaks are investigated. | |
| Sporadic cases | 1058 | 1211 | | 1211 |
| Outbreaks | 19 | 11 | | 11 |
| National food alerts | | | The numbers depend on alerts issued by the Food Standards Agency | |
| For action | 8 | 3 | | 3 |
| For information | 26 | 31 | | 31 |
| TOTAL | | | | |
| Food and water sampling | Programme of sampling to be carried out | samples carried out | More details are given in section 12. | The programme will be developed during the year in consultation with the HPA and BCL |
| Food related training for EHP's | 10 hours for each officer | 10 hours | All officers involved in food safety enforcement are required by the Code of Practice to complete 10 hours relevant training per year | 10 hours per officer |

Additional food related work carried out in 2014/2015 and planned for 2015/2016

APPENDIX 2

| Topic | Activity in 2014/2015 | Planned for 2015/2016 including resources implication (officers days per month) |
|---|--|--|
| Healthy Tums in Brum | Competition has been delayed due to PCT funding ending. | No funding anticipated at this stage. |
| Hygiene scores on the web | There are now 6329 food premises featured on the website, and officers are giving out stickers to all food premises following a programmed inspection | Investigation into charging for revisits. We are awaiting confirmation from the Food Standards Agency. May launch a fee service in conjunction with other West Mids. Authorities |
| Practical food inspection course | Two courses were provided on the identification and inspection of primary food | 2 courses (depending on demand) in conjunction with B'ham and Wolverhampton Universities. (2 days) |
| Outdoor events | A lead officer has been assigned to liaise with Leisure Services on events such as Vaisakhi, the German Market and the Lord Mayor's show, Taste of Birmingham and to provide advice to mobile traders attending. | As for 2014/2015, additional resources to be directed at ensuring compliance during the German Market. (7 days) |
| Home/Primary Authorities | Additional work required – liaison with the company, advice given on policy matters and liaison with other local authorities. | Further development of Primary Authority partnerships with additional companies. (12 days) |
| Meetings at national level and consultation documents: FSA, LGA | Meetings have been attended as required, and consultation documents commented on. | As for 2014/2015 (0.5 days) |
| Liaison meetings: Water Authorities & CCDC's | Meetings have been attended as required. | As for 2014/2015 (2 days) |
| Food Fraud | Investigation of complaints. | To investigate the traceability of fresh meat at retail sale, and the labelling and marketing of fresh meat. (3 days) |
| Private Water Supplies | Monitoring and sampling of private water supplies. | To carry out risk assessments of private water supplies and private distribution networks. (1 day) |
| Markets business support. | Provide advice and guidance to markets section and market traders to improve compliance | As for 2014/15 (4 days) |

Food Safety related statistics 2009/2015
APPENDIX 3

| Activity | 2009/2010 | 2010/2011 | 2011/2012 | 2012/2013 | 2013/2014 | 2014/2015 | 6 year average |
|--|------------------|------------------|------------------|------------------|------------------|------------------|-----------------------|
| Total number of food premises in Birmingham | 7958 | 7790 | 7158 | 7379 | 7505 | 7330 | 7520 |
| Programmed/ Primary Food hygiene inspections carried out | 6135 | 4233 | 4032 | 3284 | 3104 | 2947 | 3955 |
| Food Standards inspections carried out | 2767 | 2430 | 2524 | 3071 | 2169 | 2320 | 2546 |
| Emergency Prohibition Notices served | 41 | 27 | 45 | 38 | 34 | 46 | 38.5 |
| Food safety prosecutions completed at court | 22 | 31 | 22 | 30 | 19 | 21 | 24 |
| Food hygiene RFA's dealt with | 1758 | 1752 | 1758 | 1807 | 1210 | 2030 | 1719 |
| Food complaints RFA's dealt with | 433 | 366 | 482 | 532 | 440 | 450 | 450 |
| Sporadic infectious disease cases investigated | 1610 | 2109 | 1225 | 1190 | 1058 | 1211 | 1400 |
| Outbreaks investigated | 68 | 35 | 32 | 23 | 19 | 11 | 31 |
| Food alerts received | 36 | 44 | 40 | 44 | 34 | 34 | 38 |

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015
ALL WARDS

HEALTH AND SAFETY LAW ENFORCEMENT PLAN 2015/2016

1. Summary

- 1.1 Local authorities are required, by the Health and Safety Executive's (HSE) National Local Authority Enforcement Code (May 2013), to produce an annual Health and Safety Law Enforcement Plan (HSLEP).
- 1.2 This requirement is part of section 18(4) of the Health and Safety at Work etc. Act 1974 (HASWA), and requires all enforcing authorities to comply with requirements in the Code.
- 1.3 This document which is Birmingham's HSLEP sets out the health and safety work programme for 2015/2016.

2. Recommendation

- 2.1 That the report be noted and the Health and Safety Law Enforcement Plan for 2015/2016 be approved.

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3. Background

3.1 To meet the HSE's *National Local Authority Enforcement Code*, Birmingham City Council as a local authority enforcing health and safety law is required to:

- make a commitment to improving health and safety outcomes;
- set out our priorities and plan of interventions for the current year taking into account local and national priorities; and
- target our interventions to maximise their impact.

3.2 To meet these requirements of the current *National Local Authority Enforcement Code*, the City Council should:

- make a formal corporate commitment to improving health and safety outcomes;
- implement a written intervention plan which is agreed by senior management including Members, and:
 - a. include a range of risk-based interventions such as planned inspections, planned enforcement initiatives, investigation of accidents and complaints,
 - b. link health and safety interventions with national, regional and local objectives such as national campaigns, and
 - c. include planning and delivering objectives with other partners and stakeholders.

3.3 This Health and Safety Law Enforcement Plan (HSLEP) includes proactive inspections of premises categorised as posing the highest risk identified through either national or local priorities. This enables resources to be directed to those areas where we believe we can have a positive impact in improving health and safety standards.

4. Consultation

4.1 The work outlined in this report is in response to the requirements of the HSE who direct local authorities on health and safety interventions nationally. The work has also been chosen to target high risk incidents that have been reported to the City Council in the previous financial year or are of an on-going concern.

5. Implications for Resources

5.1 The HSLEP will be delivered within existing budgets. However, priorities may have to be reviewed during the course of the year according to circumstances. For instance, a large number of major accidents may require resources to be diverted from other areas of work identified in the plan.

6. Implications for Policy Priorities

- 6.1 The promotion of health and safety in the workplace, and where required effective enforcement interventions make an essential contribution to the health and well-being of residents and visitors to the City.
- 6.2 There are also direct economic benefits to businesses that are able to manage health and safety to a high standard. These are borne out through reduced absenteeism, insurance premiums, equipment repairs, etc.
- 6.3 The activities undertaken by Environmental Health in relation to health and safety supports the City Councils Business Plan 2015+ and the Leader's 2015 policy statement of working together for a fair, prosperous and democratic Birmingham.

7. Implications for Equality and Diversity

- 7.1 The inspection and control of workplaces is essential to protect the health, safety and welfare of all people employed in or who are visitors to Birmingham. There have been no specific implications for equality and diversity identified.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: Nil

HEALTH AND SAFETY LAW ENFORCEMENT PLAN 2015/2016

1.0 Overall aim of the service

1.1 The Health & Safety Law Enforcement Plan (HSLEP) represents our commitment to improving health and safety outcomes for employers, employees and visitors to Birmingham. The HSLEP also represents our continued commitment to the Health and Safety Executive's (HSE) Strategy, *Health and Safety of Great Britain - Be Part of the Solution*¹. It also continues to support the recommendations of the Löfstedt review *Reclaiming health and safety for all: An independent review of health and safety regulation*².

1.2 Through a range of different interventions we will:

- Work in partnership with businesses to enable them to succeed economically;
- Secure justice for the victims of poor health and safety provision / management;
- Help prevent work-related death, injury and ill-health;
- Deal with serious risks (i.e. those likely to cause serious injury, ill-health, or death);
- Use risk-based and intelligence-led interventions to target our activities appropriately and proportionately. In accordance with the *National Local Authority Enforcement Code*, we will take a common-sense approach and only target the higher-risk activities and be proportionate and consistent in our enforcement.

2.0 Introduction

2.1 Section 18(4) of the *Health and Safety at Work etc. Act 1974* (HASWA) requires that enforcing authorities perform their duties in accordance with guidance from the HSE. This guidance is known as the *National Local Authority Enforcement Code* (the Code).

2.2 We will, in line with the Code, continue to reduce the burdens on business, which disproportionate enforcement of health and safety enforcement imposes. We achieve this by employing a range of different ways of dealing with businesses. These include proactive inspections, reactive visits in response to accidents and complaints, mailshots, etc. collectively, these are referred to as "interventions".

2.3 One of the key elements of the Code is that local authorities must, annually, publish their HSLEP. This HSLEP sets out the arrangements to demonstrate how we will comply with Section 18 of HASWA, and outlines the work programme for the forthcoming financial year.

¹ <http://www.hse.gov.uk/strategy/index.htm>

² <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

- 2.4 Our work programme incorporates the requirements of the Code; covers a number of the national priorities listed by the HSE within Local Authority Circular 67/2 (revision 4.1)³; and takes into account local health and safety priorities which are based on local intelligence mainly generated through incidents / accidents received.

3.0 Current Developments

- 3.1 Primary Authority Partnerships (PAP) continue both nationally and in the City Council, to grow. PAPs enable businesses to nominate a single local authority from whom they can receive assured professional advice. All other local authorities are required to adhere to this assured advice when considering taking action against the partner company. Please see section 6.0 for a list of our current “Health, safety and welfare” PAPs.

We are continuing to seek opportunities to develop further Partnerships and hope to announce more during 2015/2016.

- 3.2 As of 1 April 2015, the responsibility for investigating accidents and complaints concerning service users in 183 residential care and similar premises⁴ has been transferred from local authorities and the HSE to the Care Quality Commission (CQC). For the 12 months prior to the 1 April 2015 we received 8 accidents / incident reports, which under the new arrangements would have been the responsibility of the CQC. We are still responsible for investigating accidents or incidents that happen to employees, or incidents where specific health and safety legislation applies, e.g. asbestos or legionella.

- 3.3 This year we expect to see the new Sentencing Guidelines being published for health and safety offences. It is expected that:

- The courts will be encouraged to look at a defendant’s turnover to determine if they are a “micro” (turnover up to £2 million), “small” (turnover £2 million - £10 million), “Medium” (turnover £10 million - £50 million) or “large” company (turnover £50 million +).
- They will have to consider the actual harm caused by the failing and the defendant’s culpability concerning the failing.
- Fines, in most health and safety cases, will be higher than they currently are.

- 3.4 The *Deregulation Act 2015*, received royal assent in March 2015. This new act details the extent to which self-employed persons will be exempt from certain health and safety laws, unless they:

- poses a general risk to persons not in their employment; or
- conducts a specified high-risk activity (e.g. diving)

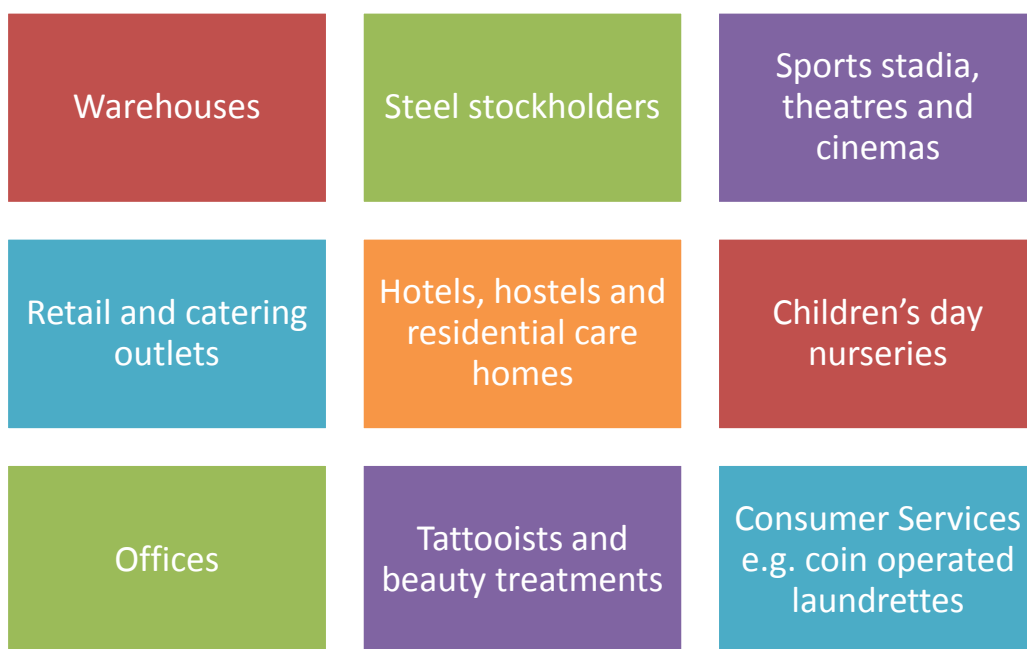
It is not envisaged that this change will impact to any great extent on the current work undertaken by Environmental Health.

³ <http://www.hse.gov.uk/lau/activities.pdf>

⁴ <http://www.cqc.org.uk/search/services/care-homes>

4.0 The Scope of the Health and Safety Service

- 4.1 Health and safety regulation within the UK is predominately undertaken by the HSE and local authorities. The *Health and Safety (Enforcing Authority) Regulations 1998* states the sectors the HSE and local authorities regulate, this is largely dependent on the premises type. The Environmental Health Section is responsible for enforcing health and safety legislation in a wide range of premises in Birmingham, these include:



- 4.2 In total there are more than 21,000 business premises in Birmingham which come under our jurisdiction for health and safety regulation. Taking a risk based approach to proactive inspections as per HSE guidance, these individual business or specific types of businesses are only inspected where national or local intelligence indicates that there may be an increased risk to the health and safety of employees and or the public. By targeting our resource in this way it ensures that we reduce the burden on compliant and low risk businesses, and focus support on those businesses that need it most.
- 4.3 Our approach to regulation is in line with both the HSE⁵ and our Enforcement Policy⁶, as well as taking into consideration the principles of Better Regulation:
- Targeted (to take a risk-based approach);
 - Proportionate (such as only intervening where necessary);
 - Accountable (to explain and justify service levels and decisions to the public and to stakeholders);
 - Consistent (to apply regulations consistently to all parties); and
 - Transparent (being open and user-friendly).

⁵ <http://www.hse.gov.uk/pubns/hse41.pdf>

⁶ <http://www.birmingham.gov.uk/regulatoryenforcementpolicy>

5.0 Priorities for this year

5.1 Our key delivery priorities are listed below:

Strategic national priorities

- Investigate notifiable incidents, dangerous occurrences and cases of work-related illness in accordance with national incident selection criteria.
- Undertake a programme of targeted inspections of cooling towers to address the risk of legionnaire's disease.
- Inspect high-volume car sales to look at the risk from being struck by vehicles.
- Inspect high-volume warehousing to monitor the risk from falls from height and from being struck by vehicles
- Investigate all notifiable incidents where work-related violence is implicated to ensure that the business has both suitable management systems in place, and adequate security measures

Local priorities

- Carry out visits to premises (e.g. hotels, gyms) that use spa pools, to check that they are managing the risk from legionella.
- In conjunction with the national priority mentioned above, we will be looking at manual handling in high-volume warehouses, and in cash and carries to reduce the risk of musculo-skeletal disorders.
- Carry out inspections of catering premises to reduce the risk of serious injury from unguarded machinery.

Partnership work

- Identify further business partners to enter into Primary Authority Partnerships, and grow existing ones.
- Continue through attendance at the West Midlands Health and Safety Liaison Group to share best practice with local colleagues.
- Work with local and multisite businesses through our business forum through our health and safety business forum.

6.0 Primary Authority Partnerships

We are continuing to develop our PAPs covering England and Wales.

Primary Authority Partnerships allow us to:

- Work closely with the business helping them to apply health and safety regulations to their specific circumstances.
- Provide robust and reliable advice which must be recognised by all local regulators.
- Introduce, where required, a national inspection plan to improve the effectiveness of inspection, avoid repeated checks, and enable better sharing of information.
- Monitor enforcement action to ensure that the business is treated consistently and that responses are proportionate to the issue.
- Recover the costs incurred by managing the partnership including officer time and travelling expenses.

The City Council cannot profit financially from PAPs. However, the Partnerships do promote the positive work of Birmingham City Council nationally.

We have four “Health, safety and welfare” Primary Authority Partnerships with

Marks and Spencer PLC

- Concentrating on their retail premises

John Lewis Partnership

- John Lewis stores
- Waitrose stores
- Associated offices, warehouses, etc

Claire's Accessories

- Concentrating on their retail premises

Gala Bingo

- Concentrating on their halls

We are continuing discussions with other high street companies to develop further Partnerships.

HEALTH AND SAFETY INTERVENTION PLAN FOR 2015/2016

| Topic | Rationale | Number (‘Expected’ figures are as for 2014/15) | Target |
|--|---|--|---|
| Health and Safety related requests for assistance (RFA) | To respond to requests for assistance in line with Regulation and Enforcement’s target of responding to all RFAs within 5 working days | 276 expected | 100% response |
| Category 1 accidents (Fatalities and serious injuries) | To investigate serious cases where health and safety management may have broken down and to prevent further injuries | 11 expected | 100% investigated |
| Category 2 accidents (Major injuries and occupational diseases) | To investigate cases where health and safety management may have broken down and to prevent further injuries | 99 expected | 100% investigated |
| Category 3 accidents (Less serious but reportable accidents) | To investigate cases where health and safety management may have broken down and to prevent further injuries | 284 expected | Not investigated unless specific reason determined (e.g. part of a pattern or work-related violence). Anticipate <10% |
| Reducing the risk of legionella | To ensure that the risk of legionella is appropriately controlled at source e.g. inspection of cooling towers. To build on last year’s work of assessing compliance in other risk areas i.e. spa pools in gyms, hotels, etc. | 10 cooling towers 20 Premises with spas | 100% inspected |
| Reduce the risk of injuries from being struck by a vehicle. | Carry out proactive inspections of high-volume car-sales premises. Check on management systems and safety measures to prevent workers and the public from being struck by vehicles. | 20 visits | 100% inspected |
| Reduce the risk of injuries from being struck by a vehicle, falling from | Carry out proactive inspections of high-volume warehouses and cash and carry’s. Check on management systems and safety measures to prevent workers and the public from being struck by | 50 visits | 100% inspected |

| | | | |
|---|--|--|--|
| height, and developing musculo-skeletal disorders (MSD) | vehicles, and to prevent workers from falling from height, and from developing MSD. | | |
| Reduce the risk of personal injury and work-related stress in connection with violent incidents. | Send advisory letters to at risk premises, including betting shops and off-licences. Investigate all notifiable accidents and RFAs where work-related violence is the causal factor. | 30 advisory letters 16 expected | 100% letters sent 100% of notifications and RFAs investigated |
| Reduce the risk of cuts, amputations, scalping's, etc. as a result of coming into contact with unguarded dangerous parts of work equipment. | Inspect work equipment (e.g. mixers, dough rollers, chippers, etc.) in catering establishments. | 200 inspections | 100% inspected. |
| Business Forum | To work with local businesses to facilitate a forum. To exchange knowledge and support local and larger businesses in their efforts to comply with health and safety legislation. To use it as a forum to discuss consultations and BCC proposals to improve service. To demonstrate partnership working with and to support local businesses. | Arrange 1 forum | 100% completed >80% satisfaction with forum |
| Reduce the risk of injury from the use of dangerous lifting equipment and pressure systems. | Review all lift and pressure systems notifications. Contact duty holder to ensure works are done to rectify dangerous faults. | 49 expected | 100% dealt with |
| Training | Provide up to 10hrs training for all staff authorised under Health and Safety at Work etc. Act 1974. Where appropriate provide and facilitate training to external organisations and local authorities to generate an income. | All health and safety authorised staff | 100% of identified training |

| | | |
|--------------------------|--|--|
| Report to: | LICENSING AND PUBLIC PROTECTION COMMITTEE | |
| Report of: | SERVICE DIRECTOR REGULATION AND ENFORCEMENT AND DIRECTOR OF FINANCE | |
| Date of Decision: | 15 JULY 2015 | |
| SUBJECT: | LICENSING AND PUBLIC PROTECTION – REVENUE BUDGET MONITORING 2015/16 (MONTH 2) | |
| | | |

| |
|--|
| 1. Purpose of Report: |
| <p>1.1 This report sets out the position on the Licensing and Public Protection Committee's Revenue Budget at the end of May 2015 and the forecast outturn position for the year end. It highlights any issues that have arisen and informs the Licensing and Public Protection Committee of any action being taken to contain spending within the approved cash limits.</p> <p>1.2 The report also details the latest performance within the Licensing and Public Protection Committee including progress against the approved Savings Programme for 2015/16.</p> <p>1.3 The report is in line with the current City Council established financial monitoring framework to ensure that expenditure is managed within cash limits.</p> |

| |
|--|
| 2. Decision(s) Recommended: |
| <p>The Licensing and Public Protection Committee is requested to :</p> <p>2.1 Note the latest Revenue budget position at the end of May 2015 (Month 2) as detailed in Appendix 1.</p> <p>2.2 Note the position with regard to the Savings Programme for 2015/16 as detailed in Appendix 2.</p> <p>2.3 Note the position on reserves and balances, as detailed in Appendix 3.</p> |

| | |
|---------------------------------|---|
| Lead Contact Officer(s): | Sukvinder Kalsi, Assistant Director of Finance |
| Telephone No: | 0121 303 3834 |
| E-mail address: | sukvinder.kalsi@birmingham.gov.uk |

| |
|--|
| 3. Consultation |
| <p data-bbox="103 190 311 235">3.1 <u>Internal</u></p> <p data-bbox="199 257 1420 380">The financial position on the revenue budget is reported on a monthly basis to the Management Team and the Director of Regulation and Enforcement is briefed on the major financial issues, as required in line with the Council's framework.</p> <p data-bbox="103 414 327 459">3.2 <u>External</u></p> <p data-bbox="199 481 1412 571">There are no additional issues beyond consultations carried out as part of the budget setting process for 2015/16.</p> |

| |
|--|
| 4. Compliance Issues: |
| <p data-bbox="103 739 1348 817">4.1 <u>Are the recommended decisions consistent with the Council's policies, plans and strategies?</u></p> <p data-bbox="199 851 1388 929">The budget is integrated with the Council Business Plan, and resource allocation is directed towards policy priorities.</p> <p data-bbox="103 963 1332 1041">4.2 <u>Financial Implications (Will decisions be carried out within existing finances and Resources?)</u></p> <p data-bbox="199 1075 1412 1153">The Licensing and Public Protection Revenue Budget Monitoring document attached gives details of monitoring of service delivery within available resources.</p> <p data-bbox="103 1187 462 1232">4.3 <u>Legal Implications</u></p> <p data-bbox="199 1265 1468 1512">Section 151 of the 1972 Local Government Act requires the Director of Finance (as the responsible officer) to ensure proper administration of the City Council's financial affairs. Budgetary control, which includes the regular monitoring of and reporting on budgets, is an essential requirement placed on directorates and members of Corporate Management Team by the City Council in discharging the statutory responsibility. This report meets the City Council's requirements on budgetary control for the specified area of the City Council's Directorate activities.</p> <p data-bbox="103 1545 590 1590">4.4 <u>Public Sector Equality Duty</u></p> <p data-bbox="199 1624 1452 1780">There are no additional specific Equality Duty or Equality Analysis issues beyond any already assessed and detailed in the budget setting process and monitoring issues that have arisen in the year to date. Any specific assessments will be made by the Directorates in the management of their services.</p> |

5. Relevant Background/Chronology of Key Events:

Revenue Budget

- 5.1 The City Council approved the overall budget on 3rd March 2015. The Licensing and Public Protection Committee noted the original net revenue budget allocation of £3.990m (as detailed in Appendix 1). The budget has been increased by £0.507m (as detailed in the table below).

| | £'m |
|---|--------------|
| Original Budget 2015/16 Reported to LPPC 18 March 2015 | 3.990 |
| Centralisation of Marketing and Communications Budgets | (0.007) |
| Repatriation of Districts SLA Budgets (Pest Control) | 0.514 |
| Current Approved Net Revenue Budget 2015/16 – Month 2 | 4.497 |

- 5.2 The City Council has well-established arrangements for monitoring spending against the cash limited budgets allocated to Directorates/Committees. Reports are presented to Cabinet monthly on the overall city-wide financial position and the Licensing and Public Protection Committee receive periodic reports during the financial year.

Revenue

- 5.3 The Licensing and Public Protection Committee has spent £1.400m as at the end of Month 2, compared to a profiled budget of £0.841m and results in a net overspend of £0.559m.
- 5.4 The table below provides a high level summary of the Licensing and Public Protection Committee's financial performance as at the end of May 2015 and the year-end projection (the full details are set out in Appendix 1).

| Budget Head | Month End Variation £'m | Year End Projection | |
|-----------------------|----------------------------|--------------------------|------------------------------|
| | | Savings Programme £'m | Base Budget Pressures £'m |
| Employees | 0.059 | - | - |
| Premises | (0.098) | - | - |
| Transport | 0.006 | - | - |
| Supplies and Services | (0.017) | - | - |
| Third Party Payments | 0.002 | - | - |
| Asset Charges | - | - | - |
| Recharge Expenditure | 0.005 | - | - |
| Sub-Total | (0.043) | - | - |
| Income | 0.602 | 1.300 | - |
| Interest Received | - | - | - |
| Total | 0.559 | 1.300 | - |

5.5 The main factors contributing to the position at the end of Month 2 are as follows :

- there is additional expenditure on Employees of £0.059m that is due to redundancy payments (mainly Registrars). This expenditure will be funded corporately at a later point in the year.
- Premises and Supplies are underspent, however a number of regular charges have not yet been made for 2015/16 – i.e. rent charges.
- As expected, there is a significant under-recovery of income (£0.602m), particularly in Pest Control. Service Review Savings for 2015/16 total £1.300m for this service and these can only realistically be achieved through a redesign of the Pest Control which is currently being consulted on.

Savings Programme

- 5.6 The Committee had a significant Savings Programme of £2.316m for 2015/16 relating to all service areas. The full details are set out in Appendix 2 and include: £0.172m for Environmental Health, £0.100m for Registrars, £0.283m for Coroners, £1.300m for Pest Control, £0.122m for Trading Standards and £0.339m for Licensing.
- 5.7 The rigorous management action and financial control of officers has ensured that 35% of the programme will be achieved through operational efficiencies and income generation.
- 5.8 Within the savings programme there has been a significant risk to delivery identified within the Coroners Service where additional pressures are being highlighted through Deprivation of Liberty Safeguard legislation. This requires all deaths reported in care and residential homes to be afforded an inquest which will increase the cost burden for administration and Coroner's time. Also, where deaths are accidental/non-natural, then this will require the added cost of a jury to be provided at each inquest. It has been forecast that the number of additional inquests per year will increase by approximately 750 with 10% of these requiring a jury.
- 5.9 There are also risks relating to Pest Control (£1.300m requiring service remodelling) and Registrars, where a review is underway.

Year End Forecast

- 5.10 An overspend of £1.300m position is forecast for the year end (this relates to the Savings Programme and will be addressed through the service remodelling being consulted on).
- 5.11 Managers in consultation with the Service Director Regulation and Enforcement will ensure that any identified pressures are minimised and are working towards achieving the cash limited budget by continuing:
- Stringent control of discretionary expenditure.
 - New areas of service provision for the generation of income.
 - Careful management of vacancies, temporary staff and redeployment.

Capital

- 5.12 Currently there are no Capital projects for 2015/16.

Illegal Money Lending Team

- 5.13 The Illegal Money Lending Team investigates and takes action against Illegal Money Lending or Loan Shark perpetrators across the whole of England.
- 5.14 This is a national project funded through specific grant jointly from National Trading Standards Board and the Financial Conduct Authority.
- 5.15 The expenditure at the end of May was £0.445m, which is in line with the profiled budget expectations for this stage in the year.
- 5.16 This budget is strictly ring-fenced to this grant funded service.

Scambusters

- 5.17 The Scambusters team investigates and takes action against fraudsters operating across council boundaries in the central region.
- 5.18 This is a regional project funded through specific grant of £0.260m through the National Trading Standards Board.
- 5.19 The expenditure at the end of May was £0.023m, compared to a profiled budget position of £0.43m.
- 5.20 This budget is strictly ring-fenced to this grant funded service.

Proceeds of Crime Act (PoCA)

- 5.21 Regulatory Services secures funding through the Proceeds of Crime Act 2002 in response to financial investigations undertaken post sentencing by the courts.
- 5.22 This money is strictly ring-fenced and can only be utilised by the Council for community and crime prevention projects.
- 5.23 The Trading Standards Team and the Illegal Money Lending Team have so far spent £0.024m on such specific PoCA projects.

Balances and Reserves

- 5.24 The balances and reserves for the Committee are shown in Appendix 3.
- 5.25 The balances brought forward on 1st April 2015 total £1.360m and these are specific ring-fenced resources and there are no available general balances to the Committee.
- 5.26 There have been no postings to or from reserves so far this financial year, therefore the total currently held in reserves is £1.360m.

| 6. Evaluation of Alternative Option(s): | |
|--|---|
| 6.1 | During the year ahead the financial position will continue to be closely monitored and options identified to resolve budgetary pressures as necessary, and alternative savings proposals developed to meet new and emerging pressures |

| 7. Reasons for Decision(s): | |
|------------------------------------|--|
| 7.1 | The Report informs the Licensing and Public Protection Committee of the Revenue and Capital Budget position for 2015/16 at the end of May 2015. |
| 7.2 | The latest position in respect of the Licensing and Public Protection Committee's year-end projections, use of reserves, the Savings Programme and the present risks identified in its delivery. |

Signatures

Jacqui Kennedy
Service Director Regulation and Enforcement

Jon Warlow
Director of Finance

Date

| List of Background Documents used to Compile this Report: | |
|--|--|
| Licensing & Public Protection - Revenue and Capital Budget 2015/16 | |

| List of Appendices accompanying this Report (if any): | | | |
|--|--|--------------|--------------|
| 1. | Appendix 1 - Financial Performance Statement Month 2 | | |
| 2. | Appendix 2 - Savings Programme Performance 2015/16 Month 2 | | |
| 3. | Appendix 3 - Balances and Reserves at Month 2 | | |
| Report Version | 1.1 | Dated | 17 June 2015 |

Licensing and Public Protection Committee - 2015/16 Month 2 - Revenue Expenditure

Net Expenditure Across Subjective Headings

| Original | Budget 2015/16 | Subjective Categories | Approved Budget 2015/16 | Movement 2015/16 (Apr-May) |
|----------|--------------------------------|-----------------------|-------------------------|----------------------------|
| (1) | (2) | (3) | (4) | |
| £'000 | | £'000 | £'000 | |
| 9,409 | Employees | 9,409 | 185 | |
| 975 | Premises | 975 | 0 | |
| 196 | Transport and Moveable Plant | 196 | 0 | |
| 2,468 | Supplies and Service | 2,468 | (192) | |
| 1 | Third Party Payments | 1 | 0 | |
| 222 | Capital Financing | 222 | 0 | |
| 11 | Recharge Expenditure | 11 | 0 | |
| 13,282 | Gross Expenditure | 13,282 | (7) | |
| 0 | Grants | 0 | 0 | |
| (71) | Reimbursements | (71) | 0 | |
| (4,960) | Fees and Charges | (4,960) | 0 | |
| (4) | Rents etc | (4) | 0 | |
| (3,787) | Miscellaneous Income | (3,787) | 514 | |
| (470) | Recharge Income | (470) | 0 | |
| (9,292) | Income | (9,292) | 514 | |
| 0 | Interest from Previous Periods | 0 | 0 | |
| 3,990 | Net Expenditure | 3,990 | 507 | |

Net Expenditure Across Individual Service Headings

| Original | Budget 2015/16 | Service Areas | Approved Budget 2015/16 | Movement 2015/16 (Apr-May) |
|----------|---------------------------------------|---------------|-------------------------|----------------------------|
| (1) | (2) | (3) | (4) | |
| £'000 | | £'000 | £'000 | |
| 3,532 | Environmental Health | 3,532 | 0 | |
| (874) | Licensing | (874) | 0 | |
| 1,025 | Mortuary and Coroners | 1,025 | 0 | |
| (1,720) | Pest Control | (1,720) | 514 | |
| 386 | Registrars | 386 | (4) | |
| 1,593 | Trading Standards | 1,593 | (3) | |
| 3,942 | Net Expenditure - Regulatory Services | 3,942 | 507 | |
| 74 | Access and Development | 74 | 0 | |
| (88) | Highways Regulatory | (88) | 0 | |
| 62 | Surveying Services | 62 | 0 | |
| 48 | Net Expenditure - Highways Services | 48 | 0 | |
| 3,990 | LPPC - Net Expenditure | 3,990 | 507 | |

Note: figures exclude : PoCA, IMLT and Scambusters

| | | | |
|---|--------------------|---|---|
| 0 | IMLT + Scambusters | 0 | 0 |
|---|--------------------|---|---|

| | | | |
|-------|-------------------------------|-------|-----|
| 3,990 | LPPC+Grant Funded Expenditure | 3,990 | 507 |
|-------|-------------------------------|-------|-----|

APPENDIX 1

| Current Budget 2015/16 | Current Budget Year to Date | Actuals Year to Date | Variance Year to Date | Forecast Year End Variance |
|---------------------------|--------------------------------|-------------------------|--------------------------|----------------------------------|
| (5) | (6) | (7) | (8) | (9) |
| £'000 | £'000 | £'000 | £'000 | £'000 |
| 9,594 | 1,598 | 1,657 | 59 | 0 |
| 975 | 326 | 228 | (98) | 0 |
| 196 | 13 | 19 | 6 | 0 |
| 2,276 | 333 | 316 | (17) | 0 |
| 1 | 0 | 2 | 2 | 0 |
| 222 | 37 | 37 | 0 | 0 |
| 11 | 1 | 6 | 5 | 0 |
| 13,275 | 2,308 | 2,265 | (43) | 0 |
| 0 | 0 | (2) | (2) | 0 |
| (71) | (12) | 0 | 12 | 0 |
| (4,960) | (800) | (373) | 427 | 1,300 |
| (4) | 0 | 0 | 0 | 0 |
| (3,273) | (553) | (401) | 152 | 0 |
| (470) | (102) | (89) | 13 | 0 |
| (8,778) | (1,467) | (865) | 602 | 1,300 |
| 0 | 0 | 0 | 0 | 0 |
| 4,497 | 841 | 1,400 | 559 | 1,300 |

| Savings Programme at Risk | Pressures |
|---------------------------|-----------|
| (10) | (11) |
| £'000 | £'000 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 1,300 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 1,300 | 0 |
| 0 | 0 |
| 1,300 | 0 |

| Current Budget 2015/16 | Current Budget Year to Date | Actuals Year to Date | Variance Year to Date | Forecast Year End Variance |
|---------------------------|--------------------------------|-------------------------|--------------------------|----------------------------------|
| (5) | (6) | (7) | (8) | (9) |
| £'000 | £'000 | £'000 | £'000 | £'000 |
| 3,532 | 591 | 549 | (42) | 0 |
| (874) | (144) | 39 | 183 | 0 |
| 1,025 | 159 | 174 | 15 | 0 |
| (1,206) | (212) | 44 | 256 | 1,300 |
| 382 | 191 | 347 | 156 | 0 |
| 1,590 | 269 | 258 | (11) | 0 |
| 4,449 | 854 | 1,411 | 556 | 1,300 |
| 74 | 12 | 6 | (6) | 0 |
| (88) | (35) | (17) | 18 | 0 |
| 62 | 10 | 0 | (10) | 0 |
| 48 | (13) | (11) | 2 | 0 |
| 4,497 | 841 | 1,400 | 558 | 1,300 |

| Savings Programme at Risk | Pressures |
|---------------------------|-----------|
| (10) | (11) |
| £'000 | £'000 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 1,300 | 0 |
| 0 | 0 |
| 0 | 0 |
| 1,300 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 0 | 0 |
| 1,300 | 0 |

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| | |
|---|---|
| 0 | 0 |
|---|---|

| | | | | | |
|-------|-----|-------|-----|-------|---|
| 4,497 | 841 | 1,400 | 558 | 1,300 | 0 |
|-------|-----|-------|-----|-------|---|

| | |
|-------|---|
| 1,300 | 0 |
|-------|---|

Savings Programme and Tracker at Month 2 (end May) 2015/16

| | | Progress against specific Savings with Actions Required | | | | |
|--------------------------------|----------------------------|---|--|---|---|----------------|
| | Total Programme 2015/16 | Actions in place to fully achieve Savings | Actions in place to Achieve savings in year only | Actions in place but some risk to delivery | Actions not in place and solutions to be identified | TOTAL |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| | £'000 | £'000 | £'000 | £'000 | £'000 | £'000 |
| Environmental Health | (172) | (172) | 0 | 0 | 0 | (172) |
| Licensing and Enforcement | (339) | (339) | 0 | 0 | 0 | (339) |
| Mortuary and Coroners | (283) | 0 | 0 | (283) | 0 | (283) |
| Pest Control | (1,300) | 0 | 0 | 0 | (1,300) | (1,300) |
| Registrars | (100) | (100) | 0 | 0 | 0 | (100) |
| Trading Standards | (122) | (122) | 0 | 0 | 0 | (122) |
| Regulatory Services | (2,316) | (733) | 0 | (283) | (1,300) | (2,316) |
| | | | | | | |
| Highways Regulatory | 0 | 0 | 0 | 0 | 0 | 0 |
| Surveying Services | 0 | 0 | 0 | 0 | 0 | 0 |
| Access and Deveopment | 0 | 0 | 0 | 0 | 0 | 0 |
| Highways Services | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | |
| Total Savings Programme | (2,316) | (733) | 0 | (283) | (1,300) | (2,316) |

| Reserves and Balances | Entertainment Licensing | Hackney Carriage and Private Hire | Illegal Money Lending Team | PoCA Trading Standards | PoCA Illegal Money Lending | Total Ringfenced Reserves | General Balances | Total Reserves and Balances |
|---|-------------------------|-----------------------------------|----------------------------|------------------------|----------------------------|---------------------------|------------------|-----------------------------|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) |
| £'000 | £'000 | £'000 | £'000 | £'000 | £'000 | £'000 | £'000 | £'000 |
| Reserves and Balances Brought Forward 01 April 2014 | (152) | (341) | (279) | (286) | (189) | (1,247) | 0 | (1,247) |
| | | | | | | | | |
| Appropriations to Reserves during 2014/15 | 0 | 0 | 0 | (54) | (48) | (102) | 0 | (102) |
| Appropriations from Reserves on 31 March 2015 | 235 | 0 | 0 | 133 | 96 | 464 | 0 | 464 |
| Appropriations to Reserves on 31 March 2015 | 0 | (227) | (110) | (77) | (61) | (475) | 0 | (475) |
| | | | | | | | | |
| Net Movements 2014/15 | 235 | (227) | (110) | 2 | (13) | (113) | 0 | (113) |
| | | | | | | | | |
| Reserves and Balances Brought Forward 01 April 2015 | 83 | (568) | (389) | (284) | (202) | (1,360) | 0 | (1,360) |
| | | | | | | | | |
| Transactions to/from Balances 2015/16 | | | | | | | | |
| Appropriations (to) and from Reserves in 2015/16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Net Movements 2015/16 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | | | |
| Total as at 31st May 2015 | 83 | (568) | (389) | (284) | (202) | (1,360) | 0 | (1,360) |
| Each account is strictly ring fenced in accordance with legislation | | | | | | | | |

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015
ALL WARDS

PROSECUTIONS AND CAUTIONS – MAY 2015

1. Summary
 - 1.1 This report summarises the outcome of legal proceedings taken by Regulation and Enforcement during the month of May 2015.
2. Recommendation
 - 2.1 That the report be noted.

Contact Officer: Jacqui Kennedy, Service Director Regulation and Enforcement
Telephone: 0121 303 6121
E-Mail: jacqui.kennedy@birmingham.gov.uk

3. Results

3.1 During the month of May 2015:

- 5 Licensing cases resulted in fines of £2,790. Prosecution costs of £4,772 were awarded together with 41 penalty points and two drivers were disqualified for a period of 12 months. 11 simple cautions were administered as set out in Appendix 1.
- 39 Environmental Health cases resulted in fines of £9,660. Prosecution costs of £8,708 were awarded. One simple caution was administered as set out in Appendix 2.
 - Two Trading Standards cases resulted in fines of £1,450 together with an 8 month suspended prison sentence and 120 hours unpaid work. Prosecution costs of £1,150 were awarded. No simple cautions were administered as set out in Appendix 3.
- Appendix 4 lists cases finalised by district in May 2015 and cases finalized by district April-May 2015.
- Appendix 5 lists the enforcement activity undertaken by the Waste Enforcement Team April - May 2015.

4. Consultation

- 4.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and business in terms of the regulation duties of the Council. Any enforcement action[s] taken as a result of the contents of this report are subject to that Enforcement Policy.

5. Implications for Resources

- 5.1 Costs incurred in investigating and preparing prosecutions, including officers' time, the professional fees of expert witnesses etc. are recorded as prosecution costs. Arrangements have been made with the Magistrates Court for any costs awarded to be reimbursed to the City Council. Monies paid in respect of fines are paid to the Treasury.
- 5.2 For the year April 2015 to May 2015 the following costs have been requested and awarded:

Licensing

£22,155 has been requested with £12,173 being awarded (54%).

Environmental Health

£24,953 requested with £21,572 being awarded (86%).

Trading Standards

£31,609 requested with £29,834 being awarded (94%).

- 5.3 For the month of May 2015 the following costs have been requested and awarded:

Licensing

£5,740 has been requested with £4,772 being awarded (83%).

Environmental Health

£10,241 has been requested with £9,708 being awarded (94%).

Trading Standards

£1,997 has been requested with £1,150 being awarded (57%).

6. Implications for Policy Priorities

- 6.1 The contents of this report contribute to the priority action of ensuring business compliance with legislation to protect the economic interests of consumers and businesses as contained in the Council Business Plan 2015+.

7. Public Sector Equality Duty

- 7.1 The actions identified in this report were taken in accordance with the Enforcement Policy of the Licensing and Public Protection Committee which ensures that equality issues have been addressed.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: Nil

LICENSING CASES

APPENDIX 1

| | Name & Address | Date Case Heard | Court | Legislation | Fine /Penalty | Costs | Offence details |
|---|---|-----------------|------------------------------|--|--|----------------------------------|---|
| 1 | Muhammed Zubair 124 Solihull Road Sparkhill Birmingham B11 3AF | 8/5/15 | Birmingham Magistrates Court | Town Police Clauses Act 1847 & Road Traffic Act 1988 | Total £195 + 8 penalty points | £1,015 (£1,015 requested) | Pleaded guilty to two offences; one offence of plying for hire on Broad Street on 20 th May 2014 and one offence of consequently having invalid insurance. |
| 2 | Shakeel Rafiq 45 Moathouse Road Birmingham B8 3NP | 14/5/15 | Birmingham Magistrates Court | Town Police Clauses Act 1847 & Road Traffic Act 1988 | Total £1,200 (£600 x 2) No separate penalty x remaining 2 offences + 12 points Disqualified from driving for 12 months | £600 (£1,131 requested) | Pleaded guilty to four offences; two offences of plying for hire on Broad Street on 21 st May 2014 and two offences of consequently having invalid insurance. |
| 3 | Omid Hasanpour Shirazi 6 Langley Mead Crosswell Road Oldbury West Midlands B68 8HD | 14/5/15 | Birmingham Magistrates Court | Town Police Clauses Act 1847 & Road Traffic Act 1988 | £465 – Plying + 6 penalty points No separate penalty for no Insurance | £513 (£513 requested) | Pleaded guilty to two offences; one offence of plying or hire at Sutton Coldfield train station on 11 th November 2014 and one offence of consequently having invalid insurance. |

| | | | | | | | |
|---|---|---------|------------------------------------|--|---|-------------------------------------|--|
| 4 | Javaid Ahmed 75 Newbridge Road Bordesley Green Birmingham B9 5JE | 21/5/15 | Birmingham Magistrates Court | Road Traffic Act 1988 | Total £195 + 9 penalty points Disqualified from driving for 12 months. | £1,644 (£1,644 requested) | Pleaded guilty to one offence of driving without valid insurance and <u>not guilty</u> to two further offences of driving without insurance. Found guilty after trial. |
| 5 | Khalid Din Flat 11 Bucknall House 172 Alcester Road South Birmingham B14 6DE | 22/5/15 | Birmingham Magistrates Court | Town Police Clauses Act 1847 & Road Traffic Act 1988 | £735 – No Insurance + 6 penalty points No separate penalty for plying | £1,000 (£1,437 requested) | Pleaded <u>not guilty</u> to two offences; one offence of plying for hire on Broad Street on 28 th May 2014 and one offence of consequently having invalid insurance. Found guilty after trial. |

LICENSING SIMPLE CAUTIONS

During the period of May 2015, 11 simple cautions have been administered.

Local Government (Miscellaneous Provisions) Act 1976

Section 48(6) Six cautions were issued for failing to display a private hire vehicle licence plate

Section 54(2) Two cautions were issued for failing to wear a private hire driver's badge in a manner as to be plainly and distinctly visible.

Section 48(6) & 54(2) One caution was issued for failing to display a private hire vehicle licence plate and to wear a private hire driver's badge in a manner as to be plainly and distinctly visible.

Byelaw 26 of the Birmingham City Council Hackney Carriage Byelaws 2008 made under section 68 of the Town Police Clauses Act 1847 and section 171 of the Public Health Act 1875

Two cautions were issued for failing to produce upon request a copy of the Hackney Carriage Byelaws

ENVIRONMENTAL HEALTH CASES**APPENDIX 2**

| | Name & Address | Date Case Heard | Court | Legislation | Fine /Penalty | Costs | Offence details |
|---|---|------------------------|------------------------------|-----------------------------------|----------------------|------------------------------|--|
| 1 | Nazia Akhtar Flat 16 Kingswood House Kimpton Close B14 5TF | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £80 | £67 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in Bull Street, Birmingham. |
| 2 | Vincent Caines Flat 4 20 Grosvenor Road Birmingham B20 3NP | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £1,400 (£700 x 2) | £1,492 (£1,492 requested) | Found guilty in his absence of two offences of failing to comply with an abatement notice requiring him to prohibit the recurrence of a noise nuisance arising from the playing of amplified music from Flat 4, 20 Grosvenor Road, Birmingham. |
| 3 | Vincenzo Demilio 90 Lawson Avenue Peterborough PE2 8QD | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 4 | Samantha Zaman 22 Centenary Drive Handsworth Birmingham B21 9JX | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Corporation Street, Birmingham. |
| 5 | Ahmad Mohammed Flat 26 The Bar 8 Shires Lane Leicester LE1 4AN | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |

| | | | | | | | |
|----|---|---------|---------------------------------|---------------------------------------|------|-----------------------------|--|
| 6 | Thomas Evans 5 Lamb Bank Malvern WR14 4NE | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 7 | Sarah Hill 46 Valley Road Great Barr Birmingham B43 5DL | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Corporation Street, Birmingham. |
| 8 | Malwina Kubiak Flat 3 28 Frederick Road Erdington Birmingham B23 7NL | 8/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in New Street, Birmingham. |
| 9 | Natalie Griffin 5A Parsonage Drive Cofton Hackett Birmingham B45 8AS | 14/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £80 | £100 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in Edgbaston Street, Birmingham. |
| 10 | Peter Bogolebski 98 Reservoir Road Erdington Birmingham B23 6DL | 14/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £100 | £175 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 11 | Christopher Haynes 62 Gowan Road Birmingham B8 3JJ | 14/5/15 | Birmingham Magistrates Court | Town and Country Planning Act 1990 | £400 | £281 (£281 requested) | Found guilty in his absence of one offence of displaying an advertisement for "So It Goes, 1 st Birthday, Sunday 27 th September at the Rainbow" on a lamppost on Ladywell Walk, Birmingham without the consent of the City Council. |

| | | | | | | | |
|----|--|---------|---------------------------------|--------------------------------------|------|---------------------------------|---|
| 12 | Mandy Ellis 60 Oaklands Northfield Birmingham B31 1FD | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Carrs Lane, Birmingham. |
| 13 | Mohsen Kachroudi 46 George Street Balsall Heath Birmingham B12 9RG | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in New Street, Birmingham. |
| 14 | Shaun Love 22 Ash Lane Walsall WS6 6BJ | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 15 | Anna Michalak 30 Gretton Road Erdington Birmingham B23 5EG | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Victoria Square, Birmingham. |
| 16 | Susan Nelson 6 Birch Avenue Worcester WR4 9SH | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Moor Street, Birmingham. |
| 17 | Roxanne Croft Flat 18 Endwood Court Road Handsworth Wood Birmingham B20 2RY | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in New Street, Birmingham. |
| 18 | Vivek Davda 10 The Spinney Handsworth Wood Birmingham B20 1NR | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in High Street, Birmingham. |

| | | | | | | | |
|----|---|---------|---------------------------------|--------------------------------------|------|---------------------------------|--|
| 19 | Zara Albright 42 Elvetham Road Edgbaston Birmingham B15 2LY | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in High Street, Birmingham. |
| 20 | Nicola Ross 153 Gipsy Lane Erdington Birmingham B23 7SU | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £35 | £100 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Colmore Row, Birmingham. |
| 21 | Stuart D Brown 7 Berwick Street Hartlepool TS25 1BW | 22/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Corporation Street, Birmingham. |
| 22 | Kevin Zhou 190 Southside Apartments St John's Walk Birmingham B5 4TF | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 23 | Bevin Tumulty 34 Ummeracam Road Silverbridge Newry, BT53 9PB | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Navigation Street, Birmingham. |
| 24 | Stephen Tatham 17 Newland Street Wakefield West Yorkshire WF1 5AH | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham . |
| 25 | Natasha Rajput 31 Halladale Kings Norton Birmingham B38 9DX | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £35 | £50 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in High Street, Birmingham. |

| | | | | | | | |
|----|---|---------|---------------------------------|--------------------------------------|------|-----------------------------|---|
| 26 | Olga Polanski 67B Hertford Street Oxford OX4 3AL | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 27 | Ru Pietan 302 Mansion Stand House Newport Road Cardiff CF24 1RS | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in his absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 28 | Sally Nicholson Beobridge Barn Lower Beobridge Claverley Wolverhampton WV5 7AH | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £45 | £50 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in Navigation Street, Birmingham. |
| 29 | Danielle Marie Mullen 20 Exeter Drive Marston Green Solihull B37 5NG | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in New Street, Birmingham. |
| 30 | Sally Merrick 26 Wychelm House Springfield Street Birmingham B18 7AU | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in New Street, Birmingham. |
| 31 | Sanjiv Mall 7 Sefton Grove Tipton DY4 0AG | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £135 | £175 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in Broad Street, Birmingham. |
| 32 | Linzi Kirkham 14 Campbell Close Rugeley WS15 2PP | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £60 | £50 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in New Street, Birmingham. |

| | | | | | | | |
|----|---|---------|---------------------------------|--------------------------------------|------|---------------------------------|---|
| 33 | Shauna Kelly 48 William Mckee Close Coventry CV3 2NB | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £35 | £25 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 34 | Saffron Ingram 151 Holloway Birmingham B31 1TR | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Stephenson Street, Birmingham. |
| 35 | Danielle Hickman 23D Green Park Avenue Bilston WV14 6EH | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £200 | £175 (£175 requested) | Found guilty in her absence of one offence of dropping a cigarette butt on the pavement in Priory Queensway, Birmingham. |
| 36 | Abbie Gibson 15 Wilkinson Close Sutton Coldfield Birmingham B73 5QG | 28/5/15 | Birmingham Magistrates Court | Environmental Protection Act 1990 | £135 | £50 (£175 requested) | Pleaded guilty to one offence of dropping a cigarette butt on the pavement in Colmore Row, Birmingham. |

ANIMAL WELFARE OFFENCES

| | Name & Address | Date Case Heard | Court | Legislation | Fine /Penalty | Costs | Offence Details |
|---|---|--------------------------------|---------------------------------|---|--------------------------|---------------------------------|---|
| 1 | Nathan Sheppard Flat 12 Kentmere Tower Beechmont Drive Erdington Birmingham B23 5UF | 14/5/15 | Birmingham Magistrates Court | Dogs on Leads Order 2014 & The Clean Neighbourhoods and Environment Act 1995 | £500 (£250 x 2) | £250 (£250 requested) | Found guilty in his absence of two offences; one offence of failing to keep a dog on a lead around the Lyndhurst Estate, Erdington, Birmingham and one offence of failing to provide his name and address to an authorised officer for the purpose of issuing a Fixed Penalty Notice. |

FOOD HYGIENE OFFENCES

| | Name & Address | Date Case Heard | Court | Legislation | Fine/Penalty | Costs | Offence details |
|---|---|------------------------|---------------------------------|--|---------------------------------------|----------------------------------|---|
| 1 | Ibrahim Abdi Mirreh 217 Witton Road Birmingham B6 6NU | 14/5/15 | Birmingham Magistrates Court | Food Safety and Hygiene (England) Regulations 2013 | £220 (£110 x 2) | £500 (£1,125) | Pleaded guilty to two offences relating to the conditions at Info Shop Sports & Internet Café, 141B Stratford Road, Birmingham. There was evidence of cockroach activity and the premises were in a dirty condition. Cockroach carcasses had not been removed. |
| 2 | Newsflow (Bham) Ltd Desai House 9-13 Holbrook Lane Coventry CV6 4AD | 22/5/15 | Birmingham Magistrates Court | Food Labelling Regulations 1996 & Food Safety and Hygiene (England) Regulations 2013 | £1,600 (£1,000 x 1 & £600 x 1) | £1,143 (£1,143 requested) | Found guilty in their absence of two offences: one of offering five cartons of milk for sale at Spar, Masshouse Plaza, Moor Street, Birmingham which were past their use by date and one offence of failing to register the food business with Birmingham City Council. |

ENVIRONMENTAL HEALTH SIMPLE CAUTIONS

During May 2015 one simple caution was administered.

Health & Safety at Work etc. Act 1974

One caution was issued for failing to ensure, as far as is reasonable practicable, safety and absence of risks to health.

TRADING STANDARDS CASES

APPENDIX 3

| | Name & Address | Date Case Heard | Court | Legislation | Fine /Penalty | Costs | Offence details |
|---|---|-----------------|------------------------------|--|---|--|---|
| 1 | Graham Gibbs 1662 Coventry Road Birmingham B26 1BG | 22/5/15 | Birmingham Crown Court | Copyright, Designs and Patents Act 1988 & Proceeds of Crime Act 2002 | 8 months imprisonment suspended for 2 years (offences 10, 11 & 12) 6 months imprisonment suspended for 2 years (for remaining offences) - to run concurrently + 120 hours unpaid work | POCA timetable fixed | Pleaded guilty to 12 offences; 11 relating to the sale, and advertising for sale on his website, uk-memory-cards.co.uk, devices designed to circumvent the Nintendo DS, allowing the hand held console to play downloaded "counterfeit" games and 1 offence of possessing money received from the unlawful sale of these devices. |
| 2 | Midlands Solar Solutions Ltd Charter House 56 High Street Sutton Coldfield Birmingham B72 1UJ Mark Kevin Mountjoy 43 Huntingdon Close Tamworth B78 3XS | 28/5/15 | Birmingham Magistrates Court | Consumer Protection from Unfair Trading Regulations 2008 | Company £1,000 – offence 1 No separate penalty for remaining offences Director £450 – offence 1 No separate penalty for remaining offences | £1,150 (£1,000 – Company & £150 - Director) (£1,997 requested) | Both defendants pleaded guilty to 9 offences; two offences of providing documentation stating that the solar installation company was an MCS and RECC approved installer, one of stating that the complainant would be eligible to join the FITS scheme if he purchased the product and six offences of using the MCS Approved and REAL logos on the business website, midlandssolarsolutions.co.uk, without having obtained the necessary authorisation. |

TRADING STANDARDS SIMPLE CAUTIONS

During May 2015 no simple cautions were administered.

CASES FINALISED BY DISTRICT (PLACE OF OFFENCE) – MAY 2015

| | Edgbaston | Erdington | Hall Green | Hodge Hill | Ladywood | Northfield | Perry Barr | Selly Oak | Sutton Coldfield | Yardley | Out of Area | Total |
|---|-----------|-----------|------------|------------|----------|------------|------------|-----------|------------------|---------|-------------|-----------|
| Licensing | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 0 | 1 | 0 | 0 | 5 |
| Environmental Health (FPNs) Not paid and prosecuted | 0 | 0 | 0 | 0 | 34 | 0 | 0 | 0 | 0 | 0 | 0 | 34 |
| Environmental Health (non FPNs) | 0 | 1 | 1 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 5 |
| Trading Standards | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |

CASES FINALISED BY DISTRICT (DEFENDANT'S HOME ADDRESS/REGISTERED OFFICE) – MAY 2015

| | Edgbaston | Erdington | Hall Green | Hodge Hill | Ladywood | Northfield | Perry Barr | Selly Oak | Sutton Coldfield | Yardley | Out of Area | Total |
|---|-----------|-----------|------------|------------|----------|------------|------------|-----------|------------------|---------|-------------|-----------|
| Licensing | 0 | 0 | 1 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 5 |
| Environmental Health (FPNs) Not paid and prosecuted | 2 | 4 | 1 | 0 | 2 | 2 | 3 | 1 | 1 | 0 | 18 | 34 |
| Environmental Health (non FPNs) | 0 | 1 | 0 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 5 |
| Trading Standards | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 2 |

CASES FINALISED BY DISTRICT (PLACE OF OFFENCE) – APRIL-MAY 2015

| | Edgbaston | Erdington | Hall Green | Hodge Hill | Ladywood | Northfield | Perry Barr | Selly Oak | Sutton Coldfield | Yardley | Out of Area | Total |
|---|-----------|-----------|------------|------------|----------|------------|------------|-----------|------------------|---------|-------------|-----------|
| Licensing | 1 | 0 | 2 | 0 | 10 | 0 | 0 | 1 | 1 | 0 | 1 | 16 |
| Environmental Health (FPNs) Not paid and prosecuted | 1 | 0 | 0 | 0 | 73 | 1 | 0 | 0 | 0 | 0 | 0 | 75 |
| Environmental Health (non FPNs) | 0 | 3 | 2 | 1 | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 11 |
| Trading Standards | 0 | 0 | 1 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 2 | 6 |

CASES FINALISED BY DISTRICT (DEFENDANT'S HOME ADDRESS/REGISTERED OFFICE) – APRIL-MAY 2015

| | Edgbaston | Erdington | Hall Green | Hodge Hill | Ladywood | Northfield | Perry Barr | Selly Oak | Sutton Coldfield | Yardley | Out of Area | Total |
|---|-----------|-----------|------------|------------|----------|------------|------------|-----------|------------------|---------|-------------|-----------|
| Licensing | 0 | 2 | 3 | 3 | 2 | 1 | 0 | 1 | 0 | 0 | 4 | 16 |
| Environmental Health (FPNs) Not paid and prosecuted | 4 | 5 | 4 | 2 | 7 | 4 | 3 | 2 | 1 | 2 | 41 | 75 |
| Environmental Health (non FPNs) | 0 | 2 | 1 | 2 | 3 | 0 | 1 | 0 | 0 | 0 | 2 | 11 |
| Trading Standards | 0 | 0 | 1 | 1 | 2 | 0 | 0 | 0 | 1 | 1 | 0 | 6 |

WASTE ENFORCEMENT UNIT – ENFORCEMENT ACTIVITY
APRIL- MAY 2015

| | Apr 2015 | May 2015 | Jun 2015 | Jul 2015 | Aug 2015 | Sep 2015 | TOTAL |
|---|----------|----------|----------|----------|----------|----------|-------|
| Commercial Waste Investigations | 57 | 29 | | | | | 86 |
| Section 34 (commercial waste statutory demand for trade waste details) | 40 | 22 | | | | | 62 |
| Section 34 (Non-Compliance FPN's) | 2 | 2 | | | | | 4 |
| Reg 6 FSHR13 (Food premises waste non-compliance) | 0 | 0 | | | | | 0 |
| EPA Sec 87 (Litter FPNs issued for commercial and residential waste) | 25 | 15 | | | | | 40 |
| Section 4 (PDPA 1949) (Removal of rubbish likely to cause harbourage to rodents) | 4 | 2 | | | | | 6 |

| | | | | | | | |
|---|----|----|--|--|--|--|----|
| Ongoing Investigations into dumped waste | | | | | | | |
| <i>Cumulative Live Investigations</i> | 20 | 23 | | | | | 43 |
| <i>Investigation concluded with enforcement (FPN or referred for prosecution)</i> | 29 | 8 | | | | | 37 |
| <i>Investigation concluded with no enforcement action possible</i> | 4 | 0 | | | | | 4 |
| Prosecution files at the management vetting stage | 0 | 0 | | | | | 0 |
| Prosecutions submitted to Legal Services (Total) | 0 | 0 | | | | | 0 |

| | | | | | | | |
|---|---|---|--|--|--|--|---|
| Commercial waste carrying vehicles inspected at police stop check operations | 3 | 0 | | | | | 3 |
| Commercial waste carrying vehicles (Statutory demands issued for registration details) | 1 | 0 | | | | | 1 |
| Commercial waste carrying vehicles (Drivers reported for prosecution) | 2 | 0 | | | | | 2 |

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015
ALL WARDS

OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS:
MAY 2015

1. Summary
 - 1.1 This report advises the Committee of the outcomes of an appeal against the Sub Committee's decisions which is made to the Magistrates' Court, and any subsequent appeals made to the Crown Court, and finalised in the period mentioned above.
2. Recommendation
 - 2.1 That the report be noted.

Contact Officer: Chris Neville, Head of Licensing
Telephone: 0121 303 6103
E-mail: chris.Neville@birmingham.gov.uk

3. Summary of Appeal Hearings for May 2015

| | Magistrates' | Crown |
|------------------------|--------------|-------|
| Total | 1 | |
| | | |
| Allowed | | |
| Dismissed | 1 | |
| Appeal lodged at Crown | | n/a |
| Upheld in part | | |
| Withdrawn | | |

4. Implications for Resources

- 4.1 The details of costs requested and ordered in each case are set out in the appendix below.
- 4.2 In May 2015 costs have been requested to the sum of £360 with reimbursement of £180 (50%) ordered by the Courts.
- 4.3 For the fiscal year thus far, April 2014 to May 2015, costs associated to appeal hearings have been requested to the sum of £360 with reimbursement of £180 (50%) ordered by the Courts.

5. Implications for Policy Priorities

- 5.1 The contents of this report contribute to the priority action of providing an efficient and effective Licensing service to ensure the comfort and safety of those using licensed premises and vehicles.

6. Public Sector Equality Duty

- 6.1 The actions identified in this report were taken in accordance with the Enforcement Policy of the Regulation and Enforcement Division, which ensures that equality issues have been addressed.

7. Consultation

- 7.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and the business community in terms of the regulatory duties of the Council. Any enforcement action taken as a result of the contents of this report is subject to that Enforcement Policy.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: Prosecution files and computer records in Legal Proceedings team.

APPENDIX**MAGISTRATES' COURT – PRIVATE HIRE DRIVER'S LICENCE**

| | Name | Date Case Heard | Result | Costs Requested | Costs Ordered | Comments |
|---|-------------|-----------------|-----------|-----------------|---------------|---|
| 1 | Sarwar Khan | 15.05.2015 | Dismissed | £360.00 | £180.00 | On 4 March 2015, as the result of conviction for an offence of affray, Committee considered and resolved to revoke the licence. Mr Khan has now lodged an appeal to Crown Court. |

BIRMINGHAM CITY COUNCIL

**REPORT OF THE SERVICE DIRECTOR REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JULY 2015
ALL WARDS

FIXED PENALTY NOTICES ISSUED MAY 2015

1. Summary
 - 1.1 The report sets out a breakdown, on a Constituency/Ward basis, of fixed penalty notices issued in the City during the period May 2015.
2. Recommendation
 - 2.1 That the report be noted.

Contact Officer: Mark Croxford, Head of Environmental Health
Telephone: 0121 303 6350
E-mail: mark.croxford@birmingham.gov.uk

3. Background

3.1 The issuing of fixed penalty notices [FPN] by officers from Regulation and Enforcement is one of the means by which the problems of environmental degradation such as littering and dog fouling are being tackled within the City.

3.2 The yearly total numbers of fixed penalty notices issued are indicated below.

| <u>Month</u> | <u>Fixed Penalty Notices Issued</u> |
|-----------------------|-------------------------------------|
| April 2004 – Mar 2005 | 382 |
| April 2005 – Mar 2006 | 209 |
| April 2006 – Mar 2007 | 650 |
| April 2007 – Mar 2008 | 682 |
| April 2008 – Mar 2009 | 1,147 |
| April 2009 – Mar 2010 | 1,043 |
| April 2010 – Mar 2011 | 827 |
| April 2011 – Mar 2012 | 2,053 |
| April 2012 – Mar 2013 | 1,763 |
| April 2013 – Mar 2014 | 1,984 |
| April 2014 – Mar 2015 | 4,985 |

4. Enforcement Considerations and Rationale

4.1 Set out in Appendix 1 to this report is a table showing on a ward and constituency basis where FPNs were issued during the period May 2015. Of the people who receive a FPN, Appendix 2 indicates in which Birmingham ward the person lives. As approximately one third of those receiving FPNs do not live in the city [visitors or those who work in the city], Appendix 3 identifies where those people live.

4.2 By identifying both the area where the FPN is issued and the ward/area that the litterer lives this demonstrates that the anti-litter message is being spread right across the city. By and large litter patrols are targeted to the primary and secondary retail areas of the city because there is a high level of footfall and they engage with a full cross section of the population. Targeted areas include locations where there are excessive levels of littering, smoking areas with high levels of cigarette waste that cause blight in the city and areas where there are known problems associated with groups gathering to eat outdoors.

4.3 The number of incidences of Fixed Penalty Notices being issued reflects the fact that there is still a problem with littering on our streets. Since the Health Act came into force there has been a decline in street cleanliness associated with cigarette waste. This is reflected not only in these statistics but also in the environmental quality surveys undertaken by Fleet and Waste Management that record cigarette waste being the most prevalent waste upon our streets and identify it in 98% of all samples of street cleanliness.

4.4 One of the difficulties in resolving the problem of cigarette waste being deposited on the street is that the perception of many smokers is that cigarette waste is not litter. A change in the culture and perceptions of these smokers is critical to resolving this problem.

4.5 Anyone who receives a FPN is encouraged to talk to their co-workers, friends and families to promote the anti-litter message.

5. Consultation

5.1 The Enforcement Policy that underpins the work identified in this report is approved by your Committee. The policy reflects the views of the public and the business community in terms of the regulatory duties of the Council. Any enforcement action[s] taken as a result of the contents of this report are subject to that Enforcement Policy.

6. Implications for Resources

6.1 The work identified in this report was undertaken within the resources available to your Committee.

7. Implications for Policy Priorities

7.1 The issue of fixed penalty notices has a direct impact on environmental degradation within the City and the Council's strategic outcome of staying safe in a clean, green city.

8. Public Sector Equality Duty

8.1 The actions identified in this report were taken in accordance with approved enforcement policies which ensure that equalities issues have been addressed.

SERVICE DIRECTOR REGULATION AND ENFORCEMENT

Background Papers: FPN records

WARD WHERE FIXED PENALTY NOTICES ISSUED BY CONSTITUENCY / WARD

1 APRIL 2015 to 31 March 2016 - APPENDIX 1

| CONSTITUENCY | WARD | FPN APR | FPN MAY | FPN JUNE | FPN JUL | FPN AUG | FPN SEPT | FPN OCT | FPN NOV | FPN DEC | FPN JAN | FPN FEB | FPN MAR | TOTAL FPNS |
|--------------|---------------------------|------------|------------|-------------|------------|------------|-------------|------------|------------|------------|------------|------------|------------|---------------|
| Edgbaston | Bartley Green | | | | | | | | | | | | | |
| | Edgbaston | | | | | | | | | | | | | |
| | Harborne | 7 | 1 | | | | | | | | | | | 8 |
| | Quinton | 1 | | | | | | | | | | | | 1 |
| Erdington | Erdington | 7 | 2 | | | | | | | | | | | 9 |
| | Kingstanding | | 1 | | | | | | | | | | | 1 |
| | Stockland Green | | 1 | | | | | | | | | | | 1 |
| | Tyburn | 2 | 12 | | | | | | | | | | | 14 |
| Hall Green | Sparkbrook | | 3 | | | | | | | | | | | 3 |
| | Springfield | 2 | 2 | | | | | | | | | | | 4 |
| | Moseley and Kings Heath | 1 | 5 | | | | | | | | | | | 6 |
| | Hall Green | | 2 | | | | | | | | | | | 2 |
| Hodge Hill | Bordesley Green | 2 | 2 | | | | | | | | | | | 4 |
| | Hodge Hill | 3 | | | | | | | | | | | | 3 |
| | Shard End | 3 | 1 | | | | | | | | | | | 4 |
| | Washwood Heath | 1 | 3 | | | | | | | | | | | 4 |
| Ladywood | Aston | 5 | 3 | | | | | | | | | | | 8 |
| | Ladywood | 441 | 457 | | | | | | | | | | | 898 |
| | Nechells | 64 | 51 | | | | | | | | | | | 115 |
| | Soho | 1 | 3 | | | | | | | | | | | 4 |
| Northfield | Longbridge | 1 | | | | | | | | | | | | 1 |
| | Northfield | | | | | | | | | | | | | |
| | Weoley | 1 | | | | | | | | | | | | 1 |
| | Kings Norton | 1 | 1 | | | | | | | | | | | 2 |
| Perry Barr | Handsworth Wood | 1 | | | | | | | | | | | | 1 |
| | Lozells & East Handsworth | | | | | | | | | | | | | |
| | Oscott | 1 | | | | | | | | | | | | 1 |
| | Perry Barr | 1 | | | | | | | | | | | | 1 |

WARD WHERE FIXED PENALTY NOTICES ISSUED BY CONSTITUENCY / WARD

1 APRIL 2015 to 31 March 2016 - APPENDIX 1

| CONSTITUENCY | WARD | FPN APR | FPN MAY | FPN JUNE | FPN JUL | FPN AUG | FPN SEPT | FPN OCT | FPN NOV | FPN DEC | FPN JAN | FPN FEB | FPN MAR | TOTAL FPNS |
|------------------|---------------------------|------------|------------|-------------|------------|------------|-------------|------------|------------|------------|------------|------------|------------|---------------|
| Selly Oak | Bournville | 2 | | | | | | | | | | | | 2 |
| | Brandwood | | | | | | | | | | | | | |
| | Billesley | 2 | | | | | | | | | | | | 2 |
| | Selly Oak | 3 | 1 | | | | | | | | | | | 4 |
| Sutton Coldfield | Four Oaks | | 1 | | | | | | | | | | | 1 |
| | New Hall | 1 | | | | | | | | | | | | 1 |
| | Trinity | | | | | | | | | | | | | |
| | Vesey | | | | | | | | | | | | | |
| Yardley | Sheldon | 1 | 2 | | | | | | | | | | | 3 |
| | Stechford & Yardley North | 2 | | | | | | | | | | | | 2 |
| | South Yardley | 1 | 5 | | | | | | | | | | | 6 |
| | Acocks Green | 3 | 1 | | | | | | | | | | | 4 |
| TOTALS | | 561 | 560 | | | | | | | | | | | 1165 |

WARD OF PERSON RECEIVING FIXED PENALTY NOTICES BY CONSTITUENCY / WARD

1 April 2015 to 31 March 2016 - APPENDIX 2

| CONSTITUENCY | WARD | FPN APR | FPN MAY | FPN JUNE | FPN JUL | FPN AUG | FPN SEPT | FPN OCT | FPN NOV | FPN DEC | FPN JAN | FPN FEB | FPN MAR | TOTAL |
|--------------|---------------------------|------------|------------|-------------|------------|------------|-------------|------------|------------|------------|------------|------------|------------|-------|
| Edgbaston | Bartley Green | 6 | 3 | | | | | | | | | | | 9 |
| | Edgbaston | 8 | 4 | | | | | | | | | | | 12 |
| | Harborne | 6 | 3 | | | | | | | | | | | 9 |
| | Quinton | 14 | 8 | | | | | | | | | | | 22 |
| Erdington | Erdington | 7 | 5 | | | | | | | | | | | 12 |
| | Kingstanding | 3 | 7 | | | | | | | | | | | 10 |
| | Stockland Green | 7 | 4 | | | | | | | | | | | 11 |
| | Tyburn | 7 | 3 | | | | | | | | | | | 10 |
| Hall Green | Sparkbrook | 5 | 4 | | | | | | | | | | | 9 |
| | Springfield | 7 | 7 | | | | | | | | | | | 14 |
| | Moseley and Kings Heath | 4 | 10 | | | | | | | | | | | 14 |
| | Hall Green | 5 | 4 | | | | | | | | | | | 9 |
| Hodge Hill | Bordesley Green | 6 | 10 | | | | | | | | | | | 16 |
| | Hodge Hill | 13 | 3 | | | | | | | | | | | 16 |
| | Shard End | 10 | 7 | | | | | | | | | | | 17 |
| | Washwood Heath | 4 | 6 | | | | | | | | | | | 10 |
| Ladywood | Aston | 9 | 10 | | | | | | | | | | | 19 |
| | Ladywood | 24 | 27 | | | | | | | | | | | 51 |
| | Nechells | 9 | 18 | | | | | | | | | | | 27 |
| | Soho | 8 | 5 | | | | | | | | | | | 13 |
| Northfield | Longbridge | 6 | | | | | | | | | | | | 6 |
| | Northfield | 6 | 3 | | | | | | | | | | | 9 |
| | Weoley | 6 | 8 | | | | | | | | | | | 14 |
| | Kings Norton | 5 | 3 | | | | | | | | | | | 8 |
| Perry Barr | Handsworth Wood | 6 | 2 | | | | | | | | | | | 8 |
| | Lozells & East Handsworth | 7 | 8 | | | | | | | | | | | 15 |
| | Oscott | 6 | 8 | | | | | | | | | | | 14 |
| | Perry Barr | 3 | 3 | | | | | | | | | | | 6 |

WARD OF PERSON RECEIVING FIXED PENALTY NOTICES BY CONSTITUENCY / WARD

1 April 2015 to 31 March 2016 - APPENDIX 2

| | | | | | | | | | | | | | | |
|-----------------------|---------------------------|------------|------------|--|--|--|--|--|--|--|--|--|--|-------------|
| Selly Oak | Bournville | 3 | 6 | | | | | | | | | | | 9 |
| | Brandwood | 7 | 5 | | | | | | | | | | | 12 |
| | Billesley | 4 | 4 | | | | | | | | | | | 8 |
| | Selly Oak | 7 | 1 | | | | | | | | | | | 8 |
| Sutton Coldfield | Four Oaks | 4 | 4 | | | | | | | | | | | 8 |
| | New Hall | 5 | 4 | | | | | | | | | | | 9 |
| | Trinity | 5 | 1 | | | | | | | | | | | 6 |
| | Vesey | 1 | 4 | | | | | | | | | | | 5 |
| Yardley | Sheldon | 3 | 4 | | | | | | | | | | | 7 |
| | Stechford & Yardley North | 5 | 4 | | | | | | | | | | | 9 |
| | South Yardley | 7 | 14 | | | | | | | | | | | 21 |
| | Acocks Green | 8 | 4 | | | | | | | | | | | 12 |
| Outside of Birmingham | Outside of Birmingham | 339 | 322 | | | | | | | | | | | 661 |
| TOTALS | | 605 | 560 | | | | | | | | | | | 1165 |

FIXED PENALTY NOTICES ISSUED TO PERSONS RESIDING OUTSIDE THE BIRMINGHAM AREA
FROM 1 APRIL 2015 to 31 March 2016 - APPENDIX 3

| RESIDENCE OF FPN RECIPIENT | April | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar |
|----------------------------|-------|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|
| Amber Valley | 1 | | | | | | | | | | | |
| Arun | | 1 | | | | | | | | | | |
| Aylesbury Valley | 1 | | | | | | | | | | | |
| Basildon | | 1 | | | | | | | | | | |
| Basingstoke | 1 | | | | | | | | | | | |
| Bedford | | 2 | | | | | | | | | | |
| Blackpool | | 1 | | | | | | | | | | |
| Borough of Pool | 1 | | | | | | | | | | | |
| Bournemouth | | 3 | | | | | | | | | | |
| Bradford | 1 | | | | | | | | | | | |
| Bristol | 4 | 1 | | | | | | | | | | |
| Bromsgrove | 9 | 7 | | | | | | | | | | |
| Burnley | | 1 | | | | | | | | | | |
| Bury | | 1 | | | | | | | | | | |
| Cambridge | 1 | 1 | | | | | | | | | | |
| Cannock Chase | 4 | 3 | | | | | | | | | | |
| Cardiff | 3 | | | | | | | | | | | |
| Carlisle | 1 | | | | | | | | | | | |
| Ceredigion | 1 | | | | | | | | | | | |
| Charnwood | 2 | | | | | | | | | | | |
| Chelmsford | | 2 | | | | | | | | | | |
| Cheltenham | 1 | | | | | | | | | | | |
| Cherwell | 3 | | | | | | | | | | | |
| Cheshire West and East | 2 | 1 | | | | | | | | | | |
| Chorley | 1 | | | | | | | | | | | |
| Colchester | 1 | | | | | | | | | | | |
| City of York | | 1 | | | | | | | | | | |
| Cornwall | 1 | | | | | | | | | | | |
| Coventry | 14 | 33 | | | | | | | | | | |
| Derby | 1 | 2 | | | | | | | | | | |
| Derby Dales | | 1 | | | | | | | | | | |
| Dudley | 19 | 29 | | | | | | | | | | |
| East Riding of Yorkshire | | 1 | | | | | | | | | | |
| East Staffordshire | | 1 | | | | | | | | | | |
| Elmbridge | | 1 | | | | | | | | | | |
| Falkirk | 1 | | | | | | | | | | | |
| Flintshire | | 1 | | | | | | | | | | |

FIXED PENALTY NOTICES ISSUED TO PERSONS RESIDING OUTSIDE THE BIRMINGHAM AREA
FROM 1 APRIL 2015 to 31 March 2016 - APPENDIX 3

| RESIDENCE OF FPN RECIPIENT | April | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar |
|--|-------|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|
| Gateshead | 2 | | | | | | | | | | | |
| Gedling | 2 | | | | | | | | | | | |
| Gloucester | 2 | 2 | | | | | | | | | | |
| Halton | 2 | | | | | | | | | | | |
| Hampshire | 3 | | | | | | | | | | | |
| Hartlepool | 1 | | | | | | | | | | | |
| Herefordshire | 3 | | | | | | | | | | | |
| Hertfordshire | | 5 | | | | | | | | | | |
| Hinckley and Bosworth | 1 | 2 | | | | | | | | | | |
| Horsham | | 1 | | | | | | | | | | |
| Huntingdonshire | | 1 | | | | | | | | | | |
| Isle of Wight | 1 | | | | | | | | | | | |
| Kingston Upon Thames | 1 | 1 | | | | | | | | | | |
| Lancaster | 2 | | | | | | | | | | | |
| London Borough of Barnet | 2 | 1 | | | | | | | | | | |
| London Borough of Bexley | 2 | | | | | | | | | | | |
| London Borough of Brent | 1 | 1 | | | | | | | | | | |
| London Borough of Bromley | 3 | 3 | | | | | | | | | | |
| London Borough of Camden | | 1 | | | | | | | | | | |
| London Borough of Ealing | 3 | 1 | | | | | | | | | | |
| London Borough of Hackney | 3 | 1 | | | | | | | | | | |
| London Borough of Hammersmith and Fulham | 1 | 1 | | | | | | | | | | |
| London Borough of Haringley | 1 | 1 | | | | | | | | | | |
| London Borough of Harrow | 1 | 1 | | | | | | | | | | |
| London Borough of Hillingdon | | 1 | | | | | | | | | | |
| London Borough of Hounslow | 2 | | | | | | | | | | | |
| London Borough of Islington | 2 | | | | | | | | | | | |
| London Borough of Lambeth | 1 | | | | | | | | | | | |
| London Borough of Newham | | 1 | | | | | | | | | | |
| London Borough of Redbridge | | 2 | | | | | | | | | | |
| London Borough of Tower Hamlets | | 1 | | | | | | | | | | |
| London Borough of Waltham Forest | | 1 | | | | | | | | | | |
| Leeds | 3 | 1 | | | | | | | | | | |
| Leicester | 4 | 4 | | | | | | | | | | |
| Lichfield | 6 | 1 | | | | | | | | | | |
| Lincoln | 2 | 2 | | | | | | | | | | |

FIXED PENALTY NOTICES ISSUED TO PERSONS RESIDING OUTSIDE THE BIRMINGHAM AREA
FROM 1 APRIL 2015 to 31 March 2016 - APPENDIX 3

| RESIDENCE OF FPN RECIPIENT | April | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar |
|---|-------|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|
| Liverpool | 1 | 3 | | | | | | | | | | |
| Luton | | 1 | | | | | | | | | | |
| Maidstone | 1 | | | | | | | | | | | |
| Malvern Hills | | 1 | | | | | | | | | | |
| Manchester | 6 | 1 | | | | | | | | | | |
| Mansfield | 1 | | | | | | | | | | | |
| Medway | 1 | | | | | | | | | | | |
| Melton | 1 | | | | | | | | | | | |
| Mendip | 1 | | | | | | | | | | | |
| Middlesbrough | 1 | | | | | | | | | | | |
| Milton Keynes | 2 | 3 | | | | | | | | | | |
| Mole Valley | 1 | | | | | | | | | | | |
| Monmouthshire | 1 | | | | | | | | | | | |
| Newark | 1 | | | | | | | | | | | |
| Newcastle Under Lyme | | 2 | | | | | | | | | | |
| Newcastle Upon Tyne | 1 | | | | | | | | | | | |
| Newport | 1 | | | | | | | | | | | |
| North Lincolnshire | | 2 | | | | | | | | | | |
| Northampton | 2 | 2 | | | | | | | | | | |
| Nottinghamshire | | 2 | | | | | | | | | | |
| Nuneaton and Bedworth | 1 | 1 | | | | | | | | | | |
| Outside UK | | 3 | | | | | | | | | | |
| Oxford | 5 | 3 | | | | | | | | | | |
| Pembrokeshire | 2 | | | | | | | | | | | |
| Peterborough | 2 | 1 | | | | | | | | | | |
| Royal Borough of Windsor and Maidenhead | 1 | 1 | | | | | | | | | | |
| Redcar and Cleveland | | 1 | | | | | | | | | | |
| Redditch | 4 | 7 | | | | | | | | | | |
| Richmondshire | 1 | | | | | | | | | | | |
| Rochdale | | 1 | | | | | | | | | | |
| Rotherham | 1 | | | | | | | | | | | |
| Rugby | 3 | 3 | | | | | | | | | | |
| Runnymede | 1 | | | | | | | | | | | |
| Rushcliffe | 1 | | | | | | | | | | | |
| Rushmoor | | 1 | | | | | | | | | | |
| Sandwell | 26 | 19 | | | | | | | | | | |
| Shropshire | 5 | 4 | | | | | | | | | | |

FIXED PENALTY NOTICES ISSUED TO PERSONS RESIDING OUTSIDE THE BIRMINGHAM AREA
FROM 1 APRIL 2015 to 31 March 2016 - APPENDIX 3

| RESIDENCE OF FPN RECIPIENT | April | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar |
|----------------------------|------------|------------|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|
| Slough | | 1 | | | | | | | | | | |
| Solihull | 25 | 18 | | | | | | | | | | |
| South Somerset | 2 | | | | | | | | | | | |
| South Staffordshire | 3 | 5 | | | | | | | | | | |
| Southampton | 1 | 2 | | | | | | | | | | |
| St Helens | | 2 | | | | | | | | | | |
| Stafford | 8 | 7 | | | | | | | | | | |
| Staffordshire Moorlands | | 2 | | | | | | | | | | |
| Stockport | | 2 | | | | | | | | | | |
| Stockton on Tees | | 1 | | | | | | | | | | |
| Stoke on Trent | 3 | 2 | | | | | | | | | | |
| Stratford on Avon | 3 | 2 | | | | | | | | | | |
| Sunderland | 3 | 1 | | | | | | | | | | |
| Surrey Heath | 1 | | | | | | | | | | | |
| Swale | | 1 | | | | | | | | | | |
| Tameside | 1 | | | | | | | | | | | |
| Tamworth | | 4 | | | | | | | | | | |
| Taunton Dean | 1 | | | | | | | | | | | |
| Teignbridge | 1 | | | | | | | | | | | |
| Telford and Wrekin | 5 | 4 | | | | | | | | | | |
| Torbay | 1 | | | | | | | | | | | |
| Torridge | | 1 | | | | | | | | | | |
| Vale of ???? | 1 | | | | | | | | | | | |
| Walsall | 15 | 21 | | | | | | | | | | |
| Warrington | 1 | 1 | | | | | | | | | | |
| Warwick | 12 | 2 | | | | | | | | | | |
| Watford | | 1 | | | | | | | | | | |
| Wellingborough | | 1 | | | | | | | | | | |
| Westminster | 1 | | | | | | | | | | | |
| Wigan | | 2 | | | | | | | | | | |
| Wiltshire | 2 | 1 | | | | | | | | | | |
| Wolverhampton | 30 | 21 | | | | | | | | | | |
| Worcestershire | 5 | 9 | | | | | | | | | | |
| Wrexham | 1 | | | | | | | | | | | |
| Wycombe | 1 | | | | | | | | | | | |
| Wyre | | 4 | | | | | | | | | | |
| TOTAL | 333 | 312 | | | | | | | | | | |

FIXED PENALTY NOTICES ISSUED TO PERSONS RESIDING OUTSIDE THE BIRMINGHAM AREA
FROM 1 APRIL 2015 to 31 March 2016 - APPENDIX 3

| RESIDENCE OF FPN RECIPIENT | April | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar |
|----------------------------|-------|-----|-----|-----|-----|------|-----|-----|-----|-----|-----|-----|
| CUMMULATIVE TOTAL | 333 | 645 | | | | | | | | | | |

BIRMINGHAM CITY COUNCIL

REPORT OF THE DIRECTOR OF REGULATION AND ENFORCEMENT TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE

15 July 2015
ALL WARDS

ACTION TAKEN BY THE CHAIR OF THE LICENSING AND PUBLIC PROTECTION COMMITTEE: JUNE 2015

1. Summary
 - 1.1 This report advises the Committee of action taken by the Chair under authority from the Licensing and Public Protection Committee, together with an explanation as to why this authority was used.
2. Recommendation
 - 2.1 That the report be noted.

Contact Officer: Chris Neville, Head of Licensing
Telephone: 0121 303 6103
E-mail: chris.neville@birmingham.gov.uk

3. Background Information

- 3.1 On 16 March 2007 Section 52 of the Road Safety Act 2006 came into force. This has had the effect of enabling a licensing authority to suspend or revoke a hackney carriage or private hire driver's licence with immediate effect – meaning that the suspension or revocation takes effect immediately once notice of the authority's decision has been given to the driver – where this decision is considered necessary in the interests of public safety.

4. Summary of Action Taken for June 2015

- 4.1 On 2 June 2015 the licence of driver reference 47210 was suspended under authority from the Chair of your Committee, following receipt of information from the Police that driver 47210 had been named as the offender in a stabbing incident. The suspension was to remain in force until the case was either finalised or dropped. The Notice was hand delivered to driver 47210's home address by Licensing Enforcement Officers.

5. Implications for Resources

- 5.1 No specific implications have been identified; however, drivers retain the right to appeal through a Magistrates' Court, which may result in the imposition of costs either to or against the City Council.

6. Implications for Policy Priorities

- 6.1 The contents of the report contribute to the City Council's published policy priority of improving the standards of licensed vehicles, people and premises in the City.

7. Implications for Equality and Diversity

- 7.1 The actions identified in this report were taken in accordance with the Regulatory Services enforcement policy, which ensures that equality issues have been addressed.

A handwritten signature in purple ink that reads "J. Kennedy". The signature is written in a cursive style with a large, looping 'J' and a distinct 'K'.

DIRECTOR OF REGULATION AND ENFORCEMENT

BIRMINGHAM CITY COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE

15 JULY 2015

SCHEDULE OF OUTSTANDING MINUTES

| MINUTE NO./DATE | SUBJECT MATTER | COMMENTS |
|------------------------|--|--|
| | | |
| 365(ii) 25/06/2014 | <u>Committee Policy</u> – Service Director of Regulation and Enforcement to review the policy in respect of the engine size and age of private hire vehicles and report to Committee. | Report to be submitted October 2015. |
| | | |
| 387(ii) 16/07/2014 | <u>Cost awarded in Legal Proceedings</u> – Service Director of Regulation and Enforcement be requested to report on the percentage of the costs received against those awarded in legal proceedings | Information to be submitted September 2015 |
| | | |
| 448 (ii) 21/01/2015 | <u>Registrations under the Scrap Metal Dealers Act 2013</u> – Service Director of Regulation and Enforcement to submit a report | See Agenda Item No.7 |
| | | |
| 455 21/01/2015 | <u>Smartphone Technology</u> – Service Director of Regulation and Enforcement to submit a report on the use of Smartphone Technology in the private hire sector and impact on Committee policies. | Report to be submitted September 2015. |
| | | |
| 496 (ii) | <u>Cumulative Impact Policy</u> – Service Director of Regulation and Enforcement to report on the implementation of Cumulative Impact Policies for the Digbeth Area, Erdington High Street and parts of Stratford Road and Ladypool Road (known as the Balti Triangle). | Report to be submitted October 2015 |

