

BIRMINGHAM CITY COUNCIL

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

21 NOVEMBER 2018
ALL WARDS

PROSECUTIONS AND CAUTIONS – SEPTEMBER 2018

1. Summary
 - 1.1 This report summarises the outcome of legal proceedings taken by Regulation and Enforcement during the month of September 2018.
2. Recommendation
 - 2.1 That the report be noted.

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3. Results

3.1 During the month of September 2018 the following cases were heard at Birmingham Magistrates Court, unless otherwise stated:

- Two Licensing cases were finalised resulting in fines of £630 and prosecution costs of £1,822. 12 penalty points were issued. Eight simple cautions were administered as set out in Appendix 1.
- 74 Environmental Health cases resulted in fines of £188,247 and prosecution costs of £22,932 were awarded. Two simple cautions were administered as set out in Appendix 2.
- One Trading Standards case was finalised resulting in a seven month custodial sentence. No prosecution costs were awarded. No simple cautions were administered as set out in Appendix 3.
- Appendix 4 lists cases finalised by district in September 2018 and cases finalised by district April – September 2018.
- Appendix 5 lists the enforcement activity undertaken by the Waste Enforcement Team in April - August 2018.

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 2018 to September 2018 the following costs have been requested and awarded:

Licensing

£12,928 has been requested with £10,785 being awarded (77%).

Environmental Health

£198,110 has been requested with £153,643 being awarded (76%).

Trading Standards

£33,000 has been requested with £10,275 being awarded (31%).

- 5.3 For the month of September 2018 the following costs have been requested and awarded:

Licensing

£2,358 has been requested with £1,822 being awarded (77%).

Environmental Health

£26,398 has been requested with £22,932 being awarded (87%).

Trading Standards

£16,607 has been requested with none being awarded (0%).

- 5.4 Since the start of the financial year the following income has been received from the courts.

Licensing

£9,601 has been received

Environmental Health

£111,059 has been received including Waste Enforcement cases.

Trading Standards

£50,788 has been received

(Total £171,448)

- 5.5 This will not directly correlate to the values awarded as individual cases are often cleared in instalments with the associated fines and court costs taking precedence over the settling of BCC legal costs. Therefore, income received may relate to cases from the previous financial year or earlier.

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.

DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers: Nil

LICENSING CASES**APPENDIX 1**

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	19/9/18	Rashad Mahmood Birmingham	Town Police Clauses Act 1847 & Road Traffic Act 1988 Pleaded <u>not guilty</u> to two offences: one of plying for hire in King Edwards Road, Birmingham and one of consequently having invalid insurance. Found guilty after trial.	£370 – Plying + 6 penalty points No separate penalty for no insurance. £600 costs (£1,136 requested)	South Yardley	Ladywood
2	24/9/18	Rakib Ali Birmingham	Town Police Clauses Act 1847 & Road Traffic Act 1988 Pleaded <u>not guilty</u> to two offences: one of plying for hire in Bennetts Hill, Birmingham and one of consequently having invalid insurance. Found guilty after trial	£60 – Plying £200 - No insurance. + 6 penalty points £1,222 costs (£1,222 requested)	Lozells	Ladywood

LICENSING SIMPLE CAUTIONS

During the period of September 2018, eight simple cautions have been administered

Local Government (Miscellaneous Provisions) Act 1976

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

Section 54(2) Two cautions were issued for failing to wear the drivers badge in a position and manner as to be plainly and distinctly visible

Section 64(3) One caution was issued for waiting on a Hackney Carriage stand without being licensed as Hackney Carriage

Licensing Act 2003

Section 136(1)(a) One caution was issued for carrying on a licensable activity otherwise than in accordance with an authorisation and failing to display in a prominent place, the premises summary licence or certified copy

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 One caution was issued for failing to produce upon request, by an authorised officer, a copy of the Hackney Carriage Byelaws for perusal and inspection.

Fraud Act 2006

Section 3 One caution was issued for dishonestly failing to disclose to officers information with the intention to obtain a private hire drivers licence.

ENVIRONMENTAL HEALTH CASES**WASTE OFFENCES**

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	13/09/18	Fazlula Sapi Birmingham	Environmental Protection Act 1990 Pleaded guilty to two offences; one offence of knowingly causing or permitting controlled waste, namely bags of waste including food packaging and documents relating to Village Kebab House, to be deposited on land on Westley Road, Birmingham and one offence of failing to comply with a notice requiring written information of how waste from the business was disposed of within 7 days.	£700 (£400 - offence 1 £300 – offence 2) £500 costs (£1,022 requested)	Aston	Acocks Green
2	19/09/18	Cheu Daramé Birmingham	Environmental Protection Act 1990 Pleaded guilty to one offence of depositing controlled waste, namely a toilet and bath, on Aldi Car Park in College Road, Kingstanding, Birmingham.	£320 £500 costs (£1,528 requested)	Stockland Green	Kingstanding
3	27/9/18	Maninder Kaur Birmingham	Environmental Protection Act 1990 Pleaded guilty to two offences; one offence of failing to ensure that employees had been properly instructed as to the disposal of waste from Pearl Hair & Beauty, 169 Somerset Road, Birmingham and one offence of failing to comply with a notice requiring written information of how waste from the business was disposed of within 7 days.	£200 – offence 1 No separate penalty for offence 2 £350 costs (£706 requested)	Handsworth Wood	Handsworth Wood

4	27/9/18	Mahmood Zafar Birmingham	Environmental Protection Act 1990 Pleaded guilty to one offence of depositing controlled waste, namely a cupboard, onto land on Midland Street, Nechells, Birmingham.	£800 £500 costs (£922 requested)	Bordesley Green	Bordesley & Highgate
5	27/9/18	Sidan White Birmingham	Environmental Protection Act 1990 Pleaded guilty to one offence of failing to comply with a notice requiring written information of how waste from One Cut Barbers, 298 Slade Road, Birmingham was disposed of within 7 days.	£300 £70 costs (£350 requested)	Stockland Green	Stockland Green

ANIMAL WELFARE OFFENCES

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	27/9/18	Christopher James Taylor Bridgenorth Shropshire	Welfare of Animals (Transport)(England) Order 2006 made under the Animal Health Act 1981 Pleaded guilty to one offence of transporting a sheep from Exeter Livestock Centre to AJ Meats Ltd, 33-48 Charles Henry Street, Birmingham, in a way likely to cause undue suffering as the animal was not fit for the journey due to a fracture to the metatarsal bone of the right hind leg.	£165 £300 costs (£618 requested)	Out of area	Bordesley & Highgate

HEALTH & SAFETY OFFENCES

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	5/9/18	Mas Bazar Birmingham Ltd 299a Bethnal Green Road London E2 6AH	Health and Safety at Work Act 1974 Pleaded guilty to one offence of failing to ensure the health and safety of an employee at Fish Bazar, 67-69 Lozells Road, Birmingham in relation to the use of a Butcher Boy meat mincer. A guard was not in place preventing access to dangerous moving parts, employees were not provided with health & safety information in a language they could read and understand, employees were not made aware of how to operate the machine in accordance with the manufacturer's operating instructions and did not receive adequate training in the use of the machine and a suitable and sufficient risk assessment had not been carried out in relation to the use of the machine. An employee's hand had been entrapped in the machine when he tried to clear a blockage. Four of his fingers had to be amputated.	£36,000 £3,268 costs (£3,268 requested)	Out of area	Lozells

FOOD HYGIENE OFFENCES

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	13/9/18	Atiq Shabir Birmingham Mujahid Hussain Smethwick	Food Safety and Hygiene (England) Regulations 2013 Both pleaded guilty to five offences relating to conditions at Karahi King, 1154 Stratford Road, Hall Green, Birmingham; one offence of failing to comply with a Food Hygiene Improvement Notice requiring cleaning work to be carried out at the premises and four offences following a further visit to the premises. Wall surfaces were not maintained in a sound condition, in the front and rear preparation areas there were areas of bare plaster and damaged wall. Food service equipment was stored in dirty conditions, outdoor clothing was stored amongst serving dishes, prepared food was stored in dirty bowls and prepared food was found beyond its shelf life and was stale and mouldy. There were no procedures based on HACCP.	Shabir £320 £200 costs Hussain £376 £415 costs (£830 requested)	Bromford & Hodge Hill	Hall Green North

2	13/09/18	Paromster Ltd Victoria House 18 Dalston Gardens Stanmore HA17 1BU	Food Safety and Hygiene (England) Regulations 2013 Pleaded guilty to 10 offences of placing 55 packets of food, including bacon and salami, on the market at Extra Supermarket, 187 High Street, Erdington, Birmingham which were past their "use by" dates.	£8,000 – offence 1 No separate penalty for remaining offences £751 costs (£751 requested)	Out of area	Harborne
3	13/9/18	Tablecloth Ltd 21 Frederick Street Birmingham B1 3HE Erkan Oksuzoglu Birmingham	Food Safety and Hygiene (England) Regulations 2013 The Company and Director pleaded guilty to three offences relating to conditions at Locante, 31 Ludgate Hill, Birmingham. The premises was not kept clean, the floor was in a dirty condition as were fridges, freezers and equipment. Stale and mouldy lettuce and cucumber was found in the kitchen. Out of date Soya milk was found. Cooked mackerel was stored adjacent to raw seabass. Raw mussel and bacon were stored next to salad and orange juice. There were no procedures based on HACCP.	Company £4,000 – offence 1 No separate penalty for remaining offences £600 costs Director £4,000 – offence 1 No separate penalty for remaining offences £600 costs (£1,200 requested)	Soho & Jewellery Quarter	Soho & Jewellery Quarter

4	13/9/18	Tablecloth Ltd 21 Frederick Street Birmingham B1 3HE	<p>Food Safety and Hygiene (England) Regulations 2013</p> <p>Pleaded guilty to 21 offences relating to conditions found at Portofino, 21 Frederick Street, Birmingham during two separate inspections. The premise was found in a dirty condition. There was no soap or hand drying materials to the hand wash basin in the kitchen. There was a missing section of cladding to the wall behind the ovens in the kitchen which could not be effectively cleaned. There were gaps around electrical sockets behind the sink unit. The oven door was dirty, pizza paddles were dirty, the microwave and can opener were dirty. There were no food safe cleaning chemicals on the premises. Holes had been pierced in lids to sauces and the glass panel to the pizza oven was cracked. Shell eggs were being stored on the same shelf as ready to eat gateaux; cooked food was stored on top of an uncovered container of raw squid. Unfit vegetables, mussels and food passed its use by date were in the fridge and there was mouldy ciabatta on a food preparation surface. There were no procedures based on HACCP.</p>	<p>£30,000 (£15,000 x 2)</p> <p>No separate penalty on remaining offences</p> <p>£1,600 costs (£1,600 requested)</p>	Soho & Jewellery Quarter	Soho & Jewellery Quarter
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5	13/9/18	Red N Hot Ltd 48 George Street Manchester M1 4HF	Food Safety and Hygiene (England) Regulations 2013 Found guilty in their absence of 11 offences; seven offences relating to conditions at Red N Hot, 35 Hurst Street, Birmingham during an inspection in 2017 and four offences following an inspection in 2018. There was evidence of mouse activity, mouse droppings were found throughout the premises. There were a number of missing and broken floor tiles which inhibited effective cleaning. Chopping boards were dirty and the food mixer was dirty with a build-up of mouse droppings. There were potential entry points in the structure of the premises; there was a hole in the corner of the kitchen and behind the drinks chiller. There was extensive pest damage to the walls and large pest entry holes in the bar. The staff toilet opened directly into the kitchen.	£90,000 (£40,000 - offences in 2017 & £50,000 - offences in 2018) £2,753 costs (£2,753 requested)	Out of area	Bordesley & Highgate
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LITTERING OFFENCES – SINGLE JUSTICE PROCEDURE

Date Cases Heard	Total Number of Cases	Total Fines imposed	Total Costs awarded	Total Costs requested
28.9.18	62	£13,066	£10,525	£10,850

ENVIRONMENTAL HEALTH SIMPLE CAUTIONS

Two simple cautions were administered during September 2018.

Food Safety and Hygiene (England) Regulations 2013

Two cautions were issued for failing to comply with Food Hygiene Regulations

APPENDIX 3**TRADING STANDARDS CASES**

	Date Case Heard	Name & Address	Offence details (including Legislation)	Fine/Penalty & Costs	Ward of defendant	Ward - Offence committed
1	3/9/18	Raja Shafqat Naeem Janjua Birmingham	<p>Consumer Protection from Unfair Trading Regulations 2008 European Communities Act 1972</p> <p>Pleaded guilty to two offences as a Director of Geotrips Limited, also trading as Geo Trips and Cloud Travels and Tours. One offence of engaging in an unfair commercial practice by claiming on the business website, www.geotrips.co.uk, that packages being supplied by the company were ATOL and ABTA protected and one offence of displaying the ATOL and ABTA logos on a signage board at the premises at 61 Alcester Road South, Kings Heath, Birmingham representing that Geotrips Limited were ATOL licensed and members of ABTA when they were not.</p>	<p>7 months imprisonment</p> <p>No costs awarded (£16,607 requested)</p>	Hall Green North	Brandwood & Kings Heath

TRADING STANDARDS SIMPLE CAUTIONS

No simple cautions were administered during September 2018

APPENDIX 4

CASES FINALISED BY DISTRICT (PLACE OF OFFENCE) – SEPTEMBER 2018

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	0	0	2	0	0	0	0	0	0	2
Environmental Health (FPNs) Not paid and prosecuted	0	0	0	0	62	0	0	0	0	0	0	62
Environmental Health (non FPNs)	1	2	1	0	5	0	2	0	0	1	0	12
Trading Standards	0	0	1	0	0	0	0	0	0	0	0	1

CASES FINALISED BY DISTRICT (DEFENDANT'S HOME ADDRESS/REGISTERED OFFICE) – SEPTEMBER 2018

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	0	0	0	0	1	0	0	1	0	2
Environmental Health (FPNs) Not paid and prosecuted	4	3	2	4	6	3	5	0	0	5	30	62
Environmental Health (non FPNs)	0	2	0	2	3	0	1	0	0	0	4	12
Trading Standards	0	0	1	0	0	0	0	0	0	0	0	1

CASES FINALISED BY DISTRICT (PLACE OF OFFENCE) – APRIL-SEPTEMBER 2018

	Edgbaston	Erdington	Hall	Hodge	Ladywood	Northfield	Perry	Selly	Sutton	Yardley	Out of	Total
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			Green	Hill			Barr	Oak	Coldfield		Area	
Licensing	0	0	0	0	16	0	0	4	1	0	0	21
Environmental Health (FPNs) Not paid and prosecuted	0	0	0	0	381	0	0	0	0	0	0	381
Environmental Health (non FPNs)	3	9	14	12	36	1	5	3	2	16	1	102
Trading Standards	1	1	2	1	2	0	0	1	0	0	0	8

CASES FINALISED BY DISTRICT (DEFENDANT'S HOME ADDRESS/REGISTERED OFFICE) – APRIL-SEPTEMBER 2018

	Edgbaston	Erdington	Hall Green	Hodge Hill	Ladywood	Northfield	Perry Barr	Selly Oak	Sutton Coldfield	Yardley	Out of Area	Total
Licensing	0	0	2	5	2	0	3	0	0	2	7	21
Environmental Health (FPNs) Not paid and prosecuted	14	12	20	30	58	19	29	7	3	18	171	381
Environmental Health (non FPNs)	3	9	12	15	26	3	3	6	1	9	15	102
Trading Standards	0	1	4	1	1	0	0	1	0	0	0	8

WASTE ENFORCEMENT UNIT – ENFORCEMENT ACTIVITY
APRIL 2018 – MARCH 2019

	Apr-18	May-18	Jun-18	Jul-18	Aug-18	Total 2018/2019
Waste Investigation Outcomes						
Duty of Care inspections into the waste disposal arrangements of commercial premises	125	120	156	82	112	595
<u>Section 34 Environmental Protection Act</u> demand notices issued: (trade waste statutory information demands)	105	102	122	71	111	511
<u>Section 34 Environmental Protection Act</u> fixed penalty notices issued to businesses (£300)	30	41	50	35	62	218
<u>Section 87 Environmental Protection Act.</u> Fixed Penalty notices issued for commercial and residential litter offences (£80)	0	2	0	0	0	2
<u>Section 33 Environmental Protection Act</u> fixed penalty notices issued for fly tipping (£400)	4	5	3	7	6	25
Prosecutions						
Number of prosecution files submitted to legal services (number produced quarterly)			43	43		