

**REPORT TO:** LICENSING COMMITTEE

**DATE:** 6 JULY 2021

**TITLE:** LICENSING TEAM ENFORCEMENT ACTIVITY & SERVICE DELIVERY UPDATE

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**RECOMMENDED that** the Licensing Committee:

- A** Notes the enforcement activity from 1 April 2020 to 31 March 2021 carried out by the Licensing Team.
- B** Notes the service delivery update for 2020/21, which has been included to provide information outlining the impact of the pandemic.

## **BACKGROUND**

1. It is important that the Licensing Team ensure that licence holders comply with licence conditions and take enforcement action in line with its enforcement policy, when non-compliance is noted. In order to support this, in addition to the routine work of the team, a number of specific compliance and enforcement activities take place throughout the year.
2. This report sets out the activity undertaken for Hackney Carriage and Private Hire licences, Licensing Act 2003 premises and other activity within the remit of the Licensing Team.

## **ENFORCEMENT ACTIVITIES**

### **Hackney Carriage and Private Hire Vehicle Compliance**

Annual report - Hackney Carriage and Private Hire Vehicle Compliance

3. This is undertaken by either asking drivers to attend unannounced vehicle inspections at the Council's appointed testing station, or by carrying out roadside vehicle checks. This enforcement has not taken place during 2020/21 largely due to government restrictions and minimising social interactions. It is expected that the enforcement programme for 2021-2022 will be formalised in line with Step 4 of the government roadmap out of lockdown. Therefore, the annual statistics provision from these enforcement shifts has been replaced with a breakdown of how the taxi and private hire licensing service was delivered during this pandemic.

## Other Vehicle Matters and Enforcement

4. The Council's nominated garage was closed between 3 April 2020 and 1 June 2020. Therefore, from 3 April 2020 to 30 June 2020 the Licensing Team arranged for a vehicle licence to be granted if the vehicle was tested at any VOSA approved garage and able to produce a valid MOT. Any compliance test due whether for the issue of a licence or as a mid-term compliance test was exempt during this short period. The decision to require as normal 12 monthly MOT, though the government gave six month MOT extension for privately used vehicles at that time was made in the interests of safety of the travelling public. Some 16 vehicles took this option to provide an MOT from another garage.
5. Throughout the pandemic, the Licensing Team have continued to carry out enforcement of matters such as signage requirements in responding to any reports received or issues noted by members of staff.

## Driver, Vehicle and Operator Renewals

6. Historically, driver, vehicle and operator licence applicants have attended face to face appointments for the issue of any licence.
7. To accommodate the requirement to work from home where practicable, and minimise contact while keeping drivers, vehicles and operators licensed, the Licensing Team have switched as far as is practicable to accepting applications electronically. Service provision has been maintained, ensuring all in-time applications are processed within the renewal timescales.
8. A postal service has been put in place for the distribution of the driver badges, vehicle licence plates, window badges, and door stickers. Where necessary a notice of 14 day exemption from displaying and in-date licence/badge/plate has been issued to allow time for the new badges/plate to arrive.
9. Hard copy licences historically received by the applicant through the post around one week after the grant of a licence have been replaced by immediate electronic documents issued on determination. Receiving the licence almost instantly can have benefits for the applicant, making it far easier for licence holders to send their licence to other organisations such as their licensed operator or insurance company, who may require to see it.

## Driver Standards

10. Emphasis on driver licencing standards has been maintained throughout the pandemic. The requirement to provide a DBS check has not been affected, with officers continuing to assist drivers making DBS applications, albeit remotely. While applications are currently taking longer than pre-pandemic timescales, applicants continue to receive a high level of guidance and service throughout the process. During the last year, signing up to the DBS Update Service with their Enhanced DBS with Barring List Checks has proved to be more beneficial than ever applicants.
11. To ensure oversight of driver medical fitness, a Group 2 Medical Certificate has continued to be required throughout. While many medical certificate providers were closed to business to assist the NHS with the pandemic, Harlow Occupational Health Service continued to offer a limited service to licensed drivers, providing a socially distanced medical appointment with appropriate PPE for all persons in attendance. For

any driver not wishing to attend face to face; a temporary one-year medical assessment was also offered over the phone where appropriate.

#### Option to Pause a Licence

12. Flexibility has been offered to those licence holders not wishing to work during the pandemic or having to shield or isolate to keep themselves or others safe. The Council offered the option to 'pause' a driver, vehicle, or operator licence at the point of renewal rather than requiring licensees to renew a licence that would not be used, or fall out of the licensing system with the potential additional cost of re-joining later as a "new" applicant. Those taking this option have made a declaration that they will renew at a later date or within 28 days at the Licensing Team's request. "Paused" licences are kept under review and drivers may be asked to renew or leave the system once remaining social restrictions can be lifted.
13. The benefits to the applicant can include:
  - a) A paused driver licence may renew for the renewal fee of £124, not £240 for a new applicant.
  - b) A paused driver licence removes the additional requirements on a new applicant to sit a knowledge test, or pass a driving test.
  - c) A paused vehicle licence can help to make other financial savings such as temporarily removing the requirement for private or public hire insurance, as well as no extra council vehicle compliance tests and maintenance during the licence period.
  - d) A paused hackney carriage vehicle licence allows for a Euro 4 vehicle to be licensed on renewal when a "new" licence application would trigger the requirement for a Euro 6 compliant vehicle.

#### Grant Payments

14. The Licensing Team have liaised with the trades and assisted the Revenues and Benefits Team with the necessary information so that all taxi and private hire drivers could apply for the Additional Restrictions Grant (ARG) from Harlow Council. From 19 March 2021, all licensed drivers were emailed or written to, along with further telephone calls to explain the available funding. Drivers received £1,000 per driver licence held. From 6 May 2021, a further payment of £1,000 per driver licence was made available from the ARG fund for licensed drivers. Drivers who remained on pause and wished to take advantage of the further grant payment were given the option of re-licencing to qualify. Currently 95 per cent of the trade have received the grant funding. This figure will rise slightly as some drivers return from their paused licence. The remaining few have made a decision not to claim for individual reasons.

#### Face Coverings

15. On 7 May 2021, the two main private hire operators in Harlow and the Hackney carriage trade received an order placed by the Licensing Team for face coverings. These face coverings were made available to local authorities by the Department for Transport (DfT) free of charge on a first come first served basis to be made available to passengers of taxi and private hire vehicles when they want to travel in a licensed vehicle but not brought a face covering for the journey. A total of 104,000 face coverings were ordered to distribute amongst both trades to assist the public of Harlow to travel safely in a taxi or private hire vehicle.

## Sustainability of Taxi and Private Hire Licensing

16. With all taxi and private hire applications being received electronically there has been a substantial increase in demand for data storage. To address this, the Licensing Team have implemented a document management system (DMS) which links directly into the taxi software in use.
17. Funding has also been secured to develop online applications for taxi and private hire Licenses, which will reduce manual tasks and thus enable better service. This project has required significant work by the Licensing team supported by ICT colleagues and the system supplier. Work has been progressing during the year and it is expected to be operational before the end of this financial year, subject to an ongoing Council-wide internet capacity upgrade project.
18. Complaints and enforcement enquiries relating to drivers have been acted upon as in normal years. These are difficult to categorise and range from a taxi and private hire regulation matter, through a complaint about a driver or operator's behaviour or conduct, perceived unsafe driving, to more serious criminal investigations that involve the police or other enforcement agencies. Such investigations can result in sanctions ranging from a verbal warning, through written warnings which lie on record, to suspension or revocation of licence.
19. The Licensing Team continue to progress a number of strands of work with regard to the Department for Transport (DfT) guidance: "Statutory Taxi & Private Hire Vehicle Standards (issued July 2020)". Policy changes in view within the year ahead include six monthly DBS checks; Basic DBS's for vehicle proprietors and Operator's office staff; the NR3 national register of licence refusals and revocations; and further safeguarding training.

## Licensing Act

20. The Committee will be aware of the reactive and changing nature of the national restrictions during the pandemic; the Council and regulated businesses have had to understand and work to implement successive waves of guidance and legislation.
21. On 20 March 2020 the Government advised that all cafes, bars, pubs and restaurants were to close that evening and remain closed. With the exception of takeaway services they remained closed until 4 July 2020 when restrictions were eased. Businesses were under an obligation to ensure they complied with 'COVID-secure' guidance if they wished to re-open.
22. From 5 November 2020 the country moved in to a four week lock down that ordered the closure of non-essential businesses including licensed pubs, restaurants and cafes. Restrictions prohibited consumption of food or drink, in or adjacent to a business and with food and non-alcoholic drink sold for take away from a premise up to 10pm.
23. From 2 December 2020, new national tier restrictions meant that pubs could only remain open where alcohol was served as part of a table meal presenting new challenges around interpretation. That was particularly for traditional drinks-led (wet) pubs that wanted to remain open with consideration of what was a 'substantial meal' together with how long alcohol could be served with a substantial table meal.
24. On 20 December 2020, the "All Tiers Regulations" came into force; the Christmas period was reduced to 1 day for gatherings before all of England then moved to Tier 4

on 6 January 2021, with what has been described as the third national lockdown. Hospitality businesses including licensed premises were required to close. Selling food and non-alcoholic drinks for takeaway between the hours of 05:00 and 23:00 is permitted. Alcohol can be provided through pre-ordered delivery by suitably licensed businesses.

25. The Coronavirus pandemic is a public health issue. The Licensing Act 2003 s.182 Guidance advises that “Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act. This concerns the safety of people using the relevant premises rather than public health which is addressed in other legislation.”
26. Therefore, licensing powers are limited in respect of dealing with alleged or real Coronavirus related failings at licensed premises through the licensing process and action must be taken through COVID specific regulations and Health and Safety powers. The Local Government Association has called on the government to extend licensing powers to take action where premises are not protecting the public during the pandemic.
27. All business premises are required to operate in a “COVID-secure” manner by carrying out an appropriate COVID-19 risk assessment, just as they would for other health and safety related hazards. Additional guidance (to that issued by the government) has been provided by the Licensing team to businesses to outline our expectations and how officers will engage with them to support and guide them through their responsibilities, but also take action where necessary where there is non-compliance. Our approach has been to outline expectations with agreed action plans or warnings in the first instance. However, more immediate and escalated action has been required where the public health risk presented is either too high (e.g. the premises has lost control of its clientele and mass non-compliance is occurring) or advice and warnings have not been adhered to. An example case to highlight would be the application for review of the premises licence in respect of The Chequers PH, Old Harlow. The Police have also utilised enforcement powers in respect of the Pink Spice in Commonside Road. <https://www.yourharlow.com/2021/06/01/man-charged-with-allowing-wedding-reception-at-the-pink-spice-restaurant/>. Our records indicate that this restaurant ceased trading last November 2020 when a new tenant took control of the premises. The premises is due to start trading in June 2021 as a convenience store and food takeaway.
28. In response to the pandemic and changes set out by the new regulations the licensing team have worked closely with colleagues in Environmental Health to respond to complaints, proactively monitor premises, share evidence and utilise COVID specific regulations and Health and Safety powers where necessary to ensure our licensed premises are operating according to requirements and in line with the guidance we have set out. Both teams have maintained ongoing liaison with Essex Police with the aim of ensuring consistent and proportionate enforcement.
29. The key challenges since the reopening of the hospitality industry have centred around ensuring social distancing within venues, and ensuring recording and maintenance of customer and visitor details to support the NHS ‘Test and Trace’ system;  
<https://www.gov.uk/guidance/maintaining-records-of-staff-customers-and-visitors-to-support-nhs-test-and-trace>
30. Despite the national lockdown, an increased level enquiries and applications are being received by the licensing team for various licences which include Personal Alcohol Licences submitted to allow supervision of licensed premises, changes for premises

supervisors and changes to existing premises licences to accommodate changes business have made as a result of the pandemic and also for newly licensed businesses.

31. More recently, in respect of the Euro Football games we have received a number of TEN's to extend existing premises licences, of which a set of 4 applications were subject to objections, which required the licensing team to act quickly to ensure the authority was able to facilitate the appropriate subcommittee hearing in accordance with regulations. This was the first hearing Harlow has dealt with in respect of contentious TEN applications.

### **Business and Planning Act 2020**

32. On 22 July 2020, the Government introduced new legislation to support the economic recovery of businesses selling food and drink as lockdown restrictions were lifted with social distancing guidelines remaining in place.
33. The legislation introduced two main changes relevant to licensed premises:
  - a) Pavement Licences a lighter touch regime overlaying the Highways Act powers
  - b) Deregulation for off-sales of alcohol at premises licensed for on-sales.
34. Designed to support businesses selling food and drink, such as cafes, pubs and restaurants, a temporary fast-track process was introduced for these businesses to obtain permission (Pavement Licence) from the local council for the placement of furniture such as tables and chairs on the highway outside their premises. This enables premises to maximise their capacity whilst adhering to social distancing guidelines.
35. This Act includes temporary measures to place a cap on the application fee of £100 for businesses, enforcement and revocation powers so councils can protect public safety and amenity, and a new 14 day determination period (seven day public consultation and seven days to determine thereafter), ensuring that businesses can obtain licences in a timely and cost effective manner aiding their financial recovery.
36. The Licensing team has supported various business and undertaken comprehensive engagement with premises and coordination of partners to support businesses seeking to utilise this legislation to aid their recovery. We have received 13 pavement licence applications. Guidance has been provided to business and can be found at: <https://www.harlow.gov.uk/business/licensing/other-licences/tables-and-chairs-licence>

### **Deregulation of off-sales of alcohol**

37. The Act modifies provisions in the Licensing Act 2003 to provide automatic extensions to premises licences that only permit sales of alcohol for consumption on the premises ("on-sales") to allow sales of alcohol for consumption off the premises ("off sales"). It will be a temporary measure to boost the economy, with provisions (in draft awaiting formal extension to the regulations which end September 2021) lasting until the end of September 2022.
38. These measures make it possible for licensed premises that have only an on-sales licence to sell alcohol for consumption off the premises. This allows businesses to trade whilst keeping social distancing measures in place inside.

39. The provisions remove the need for any application to be made; therefore no fee will need to be paid. This delivers savings to businesses, as well as providing them with certainty about how they are able to trade. It will also reduce the burden on local authorities and the police, who will not need to scrutinize any applications for licence variations from the premises affected by these measures. Licensees who have had an application for an off-sales permission refused or had their off-sales permission excluded by variation or at review within the last three years, will be excluded from this licence extension. This is a safeguard to ensure that where it has recently been decided that the licensee should not have the permission, they do not receive it through this legislation.
40. The hours in which off-sales of alcohol may be made under the new permission are when the licensed premises are open for on-sales, subject to two limitations. Firstly, every off-sale must be made at a pre-cut off time. The pre-cut off time is any time between when the premises first open for the purposes of selling alcohol for consumption on the premises and 11pm. If on sales terminate earlier than 11pm, that earlier time will also apply to off-sales.
41. Secondly, there is also an exception where there is an outdoor area and the times in which the sale of alcohol is permitted differ from the times in which sales for consumption on the premises are permitted. In these circumstances, the new off-sales permission does not apply at the times when the premises licence does not allow sales of alcohol for consumption in the outdoor areas of the premises.
42. The provisions will also apply temporary conditions to licences where there is pre-existing permission for off-sales. The conditions will set the hours of off sales in the same manner as described above to match those for on-sales, allow off-sales of alcohol in open containers and allow deliveries of alcohol to residential or work buildings. Those conditions will suspend existing conditions that are more restrictive. So, for example, an existing condition that allowed off-sales only in closed containers would be suspended to allow sales in open containers.
43. If there were problems of crime and disorder, public nuisance, public safety or the protection of children arising from how the premises operated using the new permission, any responsible authority, including the police or environmental health, could apply for a new off-sales review. The off-sales review process is modelled on the existing summary review process. In the event that an off-sales review is triggered, it will only relate to off-sales authorised by virtue of these provisions, or conditions which have effect by virtue of these provisions: it cannot be used to revoke the existing licence or modify pre-existing licence conditions.
44. Compliance checks take several forms including: programmed compliance inspections based on the risk assessment of a business's previous compliance with licence conditions; proactive town-wide evening patrols; and reactive investigations in response to complaints about premises.

<b>Licensing Act</b>	<b>2020-2021</b>
Pro-active inspection	12
Post inspection letter	3
Revisits	4
Out of Hours Surveillance – number of sessions	9
Out of Hours surveillance – premises observed in total	245

Notice of Suspension of licence for non-payment of fees	4
Licences suspended	4

45. Formal enforcement action has only had to be taken against 1 premises by way of application for Review of Premises Licence, with the number of visits evidencing a widespread degree of compliance within the sector.
46. Licensed premises provide a key role as an employer, in regeneration, and in attracting people to the District. The efficient processing of applications as well as effective decision making in respect of them, plays an essential role in enabling businesses to thrive and maximise contribution to the economy of the region and sub-region.

### Scrap Metal Dealers

47. Working in partnership with Essex Police, officers completed a number of compliance inspections last October. During these visits, records were checked to ensure compliance to licence conditions, relevant enquiries were made and advice given where needed. This partnership work was partly instigated in relation to the increase in car catalytic convertor thefts.

	<b>2020-2021</b>
Routine inspections	28

### Gambling Act Premises Licenses

48. The national restrictions introduced in England from 6 January 2021 also required closure of gambling premises including betting shops and amusement arcades.
49. The national update from the Gambling Commission relating to the mandatory annual return submitted by licensing authorities has not been published yet to allow details to be shared at this Committee. Harlow completed the submission within the appropriate timescales.

	<b>2020-2021</b>
Betting premises inspections	0
Track betting premises inspections	0

### Street Trading

50. New businesses enquiring about opportunities to trade in various locations across the district continues to be a growth area during the pandemic.
51. In May 2021 Harlow Council reviewed the criteria for the distribution of discretionary business grants to include Street Traders licensed to operate in Harlow by Harlow Council. The Licensing team have been supporting the Revenues and Benefits team and local traders to ensure that all eligible businesses are given the opportunity to apply for the grant payment.
52. As previously reported to Licensing Committee the licensing team has undertaken extensive work to review and combine the existing street trading arrangements. Further to Committee's approval the draft replacement Street Trading Policy has been published for consultation at <https://www.harlow.gov.uk/business/licensing/street-trading-licence> Consultation will remain open until 24 August 2021.

## Appeals

53. We have received two appeal notifications from the Courts, one against the decision of sub committee hearings for licensed premises and the other (in May 2021) in respect of a decision in respect of a street trading application. Officers are currently working on these cases to support the Council's decisions.

## Applications processed

54. In addition to the enforcement action and information provided above the following table contains data on the types and numbers of applications received in 2020/21.

Licensing Act	2020-2021
TEN Applications	17 (N.B 21 applications have already been received from 01.04.2021)
Personal Licence Applications	59
Transfer of Premises Licence	15
Vary DPS	27
Minor Variation – Premises Licence	10
Notification of Interest	3
New Premises Licence Applications	19
Premises Licence Review Applications	2
Table & Chairs	6
Pavement Licence – Business & Planning Act	13
Street Trading Applications	38
Gaming	2
Sex Establishment	2
Scrap Metal	6
Small Society New Registrations	4
Charity Collections/House to House	24

## IMPLICATIONS

### Environment and Planning (Includes Sustainability)

Progressive and proportionate enforcement of licensing requirements helps to create a level playing-field and protects compliant businesses from unfair competition from the less scrupulous.

**Author: Andrew Bramidge, Head of Environment and Planning**

### Finance (Includes ICT, Properties and Facilities)

Enforcement activity is carried out within approved service budgets.

**Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive**

### Housing

None specific.

**Author: Andrew Murray, Head of Housing**

### Community Wellbeing (Includes Equalities and Social Inclusion)

Proactive enforcement and investigation of complaints ensures better compliance with licensing requirements and so helps to protect vulnerable residents from exploitation.

**Author: Jane Greer, Head of Community Wellbeing**

**Governance (Includes HR)**

None specific.

**Author: Simon Hill, Head of Governance**

**Appendices**

None.

**Glossary of terms/abbreviations used**

ARG – Additional Restrictions Grant

DfT – Department for Transport

DMS – Document Management System

HC – Hackney Carriage

PH – Private Hire