

# LICENSING COMMITTEE

## (LICENSING ACT 2003 FUNCTIONS)

## Agenda Item 29

Brighton & Hove City Council

**Subject:** *Work of the Licensing Authority during 2009/10*

**Date of Meeting:** **4 March 2010**

**Report of:** *Director of Environment*

**Contact Officer:** Name: Tim Nichols Tel: 29-2163  
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**Wards Affected:** All

### FOR GENERAL RELEASE

#### 1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report sets out the licensing functions carried out during 2009/10, and informs members of important changes in the law relating to licensing and councillors roles.

#### 2. RECOMMENDATIONS:

- 2.1 That the committee notes the contents of this report.
- 2.2 That Members endorse guidance at appendix 4.

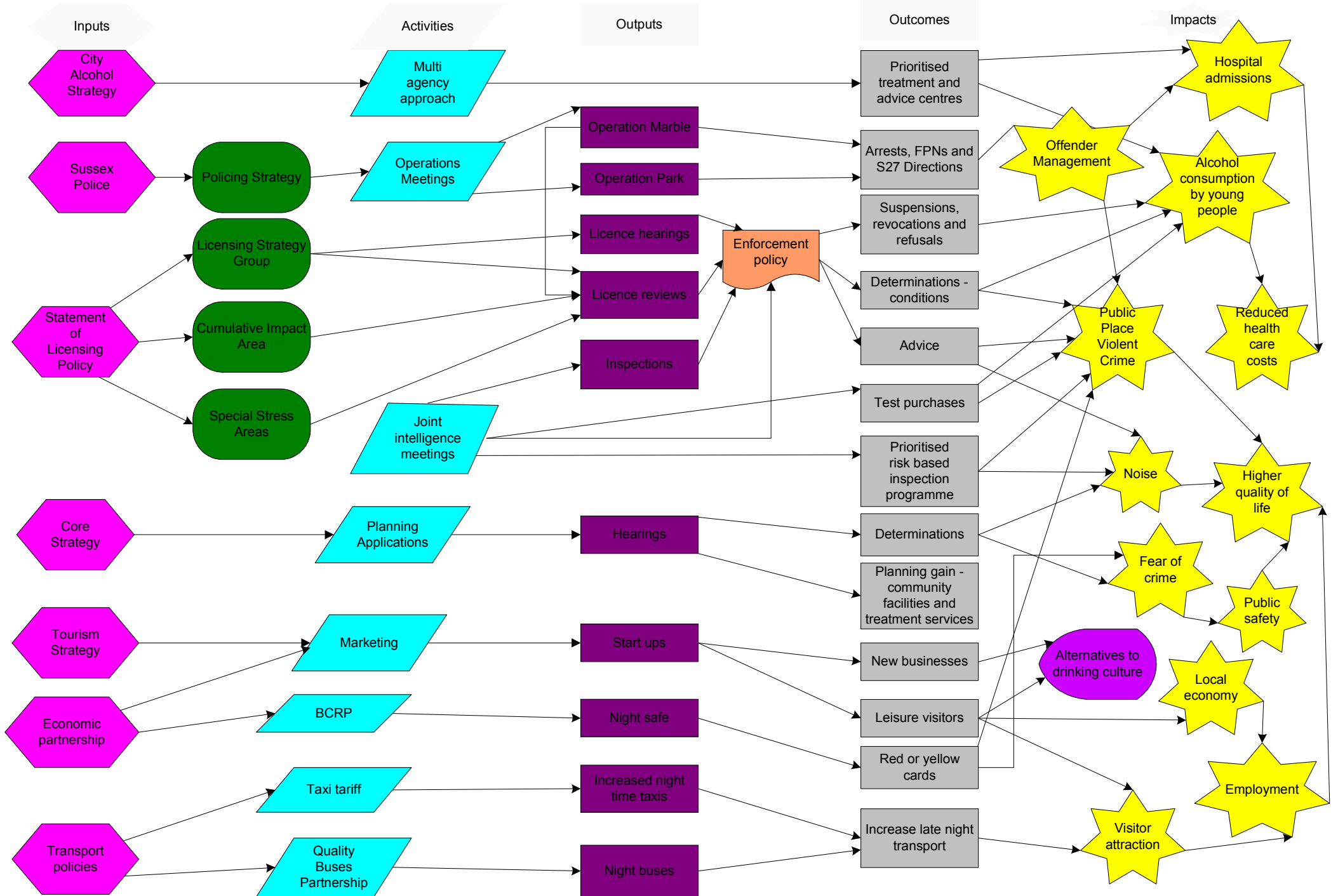
#### 3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The number of premises in Brighton & Hove during 2008/09 (latest figures reported to DCMS) is 1362 made up of 1313 premises licences and 49 club premises certificates. Included in that figure are 55 applications for new licences with 50 applications for new licences being granted (5 refused).
- 3.2 Since 1 April 2009, the council has received 70 applications for new premises licences and 56 applications for variations to premises licences. 67 premises went to panel hearings. 686 Temporary Event Notices have been processed and 489 personal licences have been issued to 03/02/10.
- 3.3 A list of all reviews and appeals carried out during 2009/10 to date can be found at appendix 1 and 2. In addition, details of the number of Licensing Panels and the level of Member involvement in these panels has been included in appendix 3. With the number of panels remaining constant and their make-up only permitted from the Members of the Licensing Committee

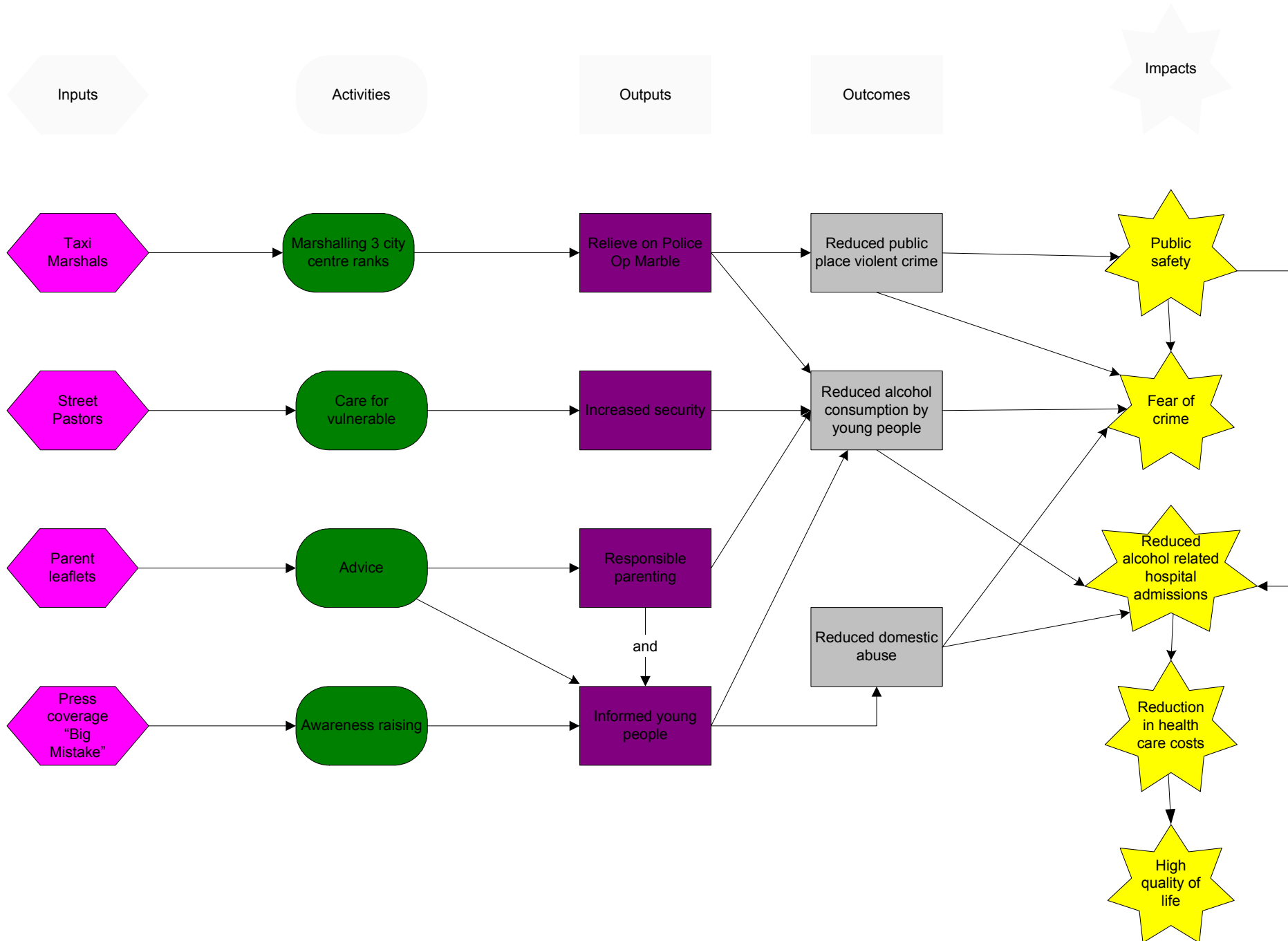
there is a need to be mindful of the impact they can have on a councillor's time when choosing to sit on the Committee.

- 3.4 During 2009/10, Brighton and Hove City Council were successful in achieving a Beacon Award for Managing the Night Time Economy. It also won the Best Partnership Award for managing the night time economy in the Brighton & Hove Public Service Awards. As a result of winning the Beacon Award, Brighton & Hove City Council, along with partners, have hosted 18 visits from other local authorities and responsible authorities including Southampton, Gravesham, Cornwall, Nottingham, Reading and Dorset Police. DCMS/Lacors held their annual away day here in Brighton & Hove when officers gave presentations on licensing and partnership working, and delegates from Abu Dhabi visited Brighton & Hove to view best practice in relation to licensing. Home Office and DCMS officials are due to visit in March 2010. The figures below show pathways of interventions to tackle alcohol related harm arising from the Beacon work to manage the night time economy and the Crime and Disorder Reduction Partnership's work on the Alcohol Support Programme. These causal chains aim to illustrate an intervention logic for alcohol harm reduction.

# Beacon pathway



# Alcohol Support Programme pathway



### 3.5 **Press interest:**

Licensing issues in Brighton and Hove have been at the forefront of the media during 2009/10. Press interest includes six articles in City News, 32 articles in the Argus, appearances on the TV Shows "Brighton Beach Patrol", GMTV This Morning and BBC TV South Breakfast, articles in the Daily Express, Daily Mail and Metro, a feature on Meridian Tonight, two articles in "The Publican" magazine, write ups in the Leader, radio feature on Heart FM, an article in the Local Government Chronicle and Regeneration and Renewal magazine, as well as items on Twitter and YouTube.

### 3.6 **Licensing regulation will be amended by the Policing and Crime Act 2009 (PCA) the Mandatory Code as follows:**

1. Banning irresponsible promotions.
2. Banning "dentist chairs" where drink is poured directly into the mouths of customers making it impossible for them to control the amount they are drinking.
3. Ensuring free tap water is available for customers - allowing people to space out their drinks and reduce the risks of becoming dangerously drunk.
4. Ensuring all those who sell alcohol have an age verification policy in place requiring them to check ID of anyone who looks under 18 to prevent underage drinking which can lead to anti-social behaviour and put young people at risk of harm.
5. Ensuring that all on trade premises make available small measures of beers, wine and spirits to customers so customers have the choice between a single or double measure of spirits and a large or small glass of wine.

### 3.7 **Implementation timetable.**

The Home Office is aiming to implement the various provisions in the PCA, however various steps have to be taken before the planned dates.

- (a) S33 - Individual members of licensing authorities to be interested parties – 29 January 2010.
- (b) Lap dancing – April 2010 (Home Office needs to draft and consult on guidance as well as resolve the transitional arrangements before implementation).
- (c) S32 Mandatory conditions – April 2010 (again Home Office will need to draw up secondary legislation for the conditions, and S182 guidance will also need to be amended before implementation).
- (d) S28 of the PCA, changing the offence from 3 to 2 or more different occasions (of selling alcohol to children) - 29 January 2010.
- (d) S29 (confiscation of alcohol from under 18's).

- (f) S30 (new offence of persistently possessing alcohol in a public place by under 18's).
  - (g) S31 (extending Directions to Leave to those aged 10 or over) – 29 January 2010.
- 3.8 The European Services Directive came into effect on 28 December 2009. The Council has acted as a “champion”, working alongside other local authorities and in conjunction with DBIS, Lacors and DCMS regarding implementation. The EU Services Directive will mean that anyone within the EU (including the UK) will be able to make fully electronic applications on-line, including making payment.
- 3.9 As a result of the EU Services Directive, some legislation has had to change, including Section 182 Guidance. Basic changes include inclusion of electronic signatures on electronically submitted applications; applicants no longer being responsible for sending applications to responsible authorities for electronic applications (this now falls to local authorities), minor variations and a new process for community premises to apply to remove the requirement for a designated premises supervisor
- 3.10 DCMS has recently consulted on further changes including:
- (a) Proposals to amend the Licensing Act 2003: relevant offences. This is amending the offences which have to be declared by anyone applying for a personal licence under the Licensing Act 2003. Closing date 12 March 2010.
  - (b) Consultation on a proposal to exempt small live music events from the requirements of the Licensing Act 2003 (the Act)  
This consultation seeks views on a proposal to exempt live music events for audiences of not more than 100 people from the requirements of the Licensing Act 2003. Closing date 26 March 2010
  - (c) Consultation on a proposal to amend the Licensing Act 2003 to simplify the procedures for Licensing Statements; Interim Authority Notices; and Temporary Event Notices  
This proposes to simplify the requirements for:
    - The revision of licensing statements;
    - Interim authority notices (IAN) or applications for reinstatement on transfer (RT) following the death, incapacity or insolvency of the licence holder; and
    - The notification period for temporary event notices.
 Closing date 9 February 2010
- 3.11 The Prime Minister earlier announced the facility to make councillors ‘interested parties’. This has now become law and came into force on the 29 January 2010. Section 33 of the Policing and Crime Bill amends section 13(3) of the Licensing Act 2003 to expand the definition of “interested parties” to include all members of licensing authorities. This means that elected Councillors can now make representations or seek a review in

their own right. Further information and guidance concerning this is attached at Appendix 4.

- 3.12 The Home Office are developing transitional arrangements for the licensing of sex encounter venues (lap dancing clubs).
- 3.13 PPS4 is a recently revised planning policy document. The full title is "Planning policy statement 4: planning for sustainable economic growth", and it outlines a formal role for local authority planning departments in managing the development of the night-time economy. The link to the document is below:  
<http://www.communities.gov.uk/publications/planningandbuilding/planningpolicystatement4>
- 3.14 The Council's new Licensing Enforcement Policy was adopted during 2009/10 and includes Department of Culture Media and Sport (DCMS) and Home Office guidance on Problem Premises on Probation.
- 3.15 Reports have been submitted to Environment and Community Safety Overview and Scrutiny Committee (ECSOSC) regarding the night time economy, Children and Young People Overview and Scrutiny Committee (CYPOSC) concerning young people and alcohol related harm, and to Health Overview and Scrutiny Committee (HOSC), Planning and ECSOSC concerning Health Impact Assessment which will then progress to Full Council.
- 3.16 Following the last committee, officers wrote to the Secretary of State and DCMS. Response is appended at 5.

#### **4. CONSULTATION:**

- 4.1 Council's finance officer and legal services.

#### **5. FINANCIAL & OTHER IMPLICATIONS:**

##### **5.1 Financial Implications:**

The Licensing Act 2003 provides for fees to be payable to the licensing authority in respect of the discharge of their functions. The fee levels are set centrally at a level to allow licensing authorities to fully recover the costs of administration, inspection and enforcement of the regime. There are no additional financial implications associated with this report.

*Finance Officer Consulted: Karen Brookshaw*

*Date: 21/01/2010*

5.2 Legal Implications:

Amendments to Licensing Guidance are expected.

*Lawyer Consulted: Rebecca Sidell*

*Date:: 04/02/2010*

5.3 Equalities Implications:

There are no direct equalities implications.

5.4 Sustainability Implications:

There are no direct sustainability implications

5.5 Crime & Disorder Implications:

The Policing and Crime Act 2009 has measures to deal with alcohol related disorder; councillors to be interested parties to call reviews; mandatory conditions; power re confiscation of alcohol from young persons and strengthening persistent under-18 sales offences.

5.6 Risk and Opportunity Management Implications:

The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence and so it is crucial for licensing authorities to execute this duty professionally.

5.7 Corporate / Citywide Implications:

The Licensing Act 2003 should provide a better system of regulation for businesses, greater choice for consumers and, where possible, help areas in need of economic regeneration.



## **SUPPORTING DOCUMENTATION**

### **Appendices:**

Appendix 1 – Reviews and expedited reviews

Appendix 2 – Appeals.

Appendix 3 – Member involvement in Licensing Panels 2009/10

Appendix 4 – Advice note

Appendix 5 – DCMS response

### **Documents in Members' Rooms:**

None

### **Background Documents:**

None

**Item 29: Appendix 1**

**Reviews 1/4/09 – to date**

<b>NAME AND ADDRESS OF PREMISES</b>	<b>Date consideration of closure order received from Magistrates or review received</b>	<b>DATE OF HEARING</b>	<b>DETERMINATION</b>
The Winner, 291 Elm Grove	17.02.09 - Police	16.04.09	Modified hours and added conditions
Three 2 Four 3 - 4 Western Rd	06.04.09 - Police	01.06.09	6 weeks suspension plus modified conditions
Mesopotamia 17 York Place St Peter's & North Laine	06.04.09 - Police	01.06.09	3 months suspension plus modified conditions
One Step 59A London Road St Peter's & North Laine	11.06.09 Police	16.09.09	Suspension of licence for 1 month and additional conditions
One Step 59A London Road Brighton	21.07.09	16.09.09	Suspension of licence for 1 month and additional conditions
Whelan's Lion & Lobster 24 Sillwood Street Brighton BN1 2PS	23.07.09	16.09.09	Adopt conditions agreed between the Environmental Protection officer and the licence holders
Tom's 13 Prince Albert Street Brighton BN1 1HE	23.07.09	18.09.09	Conditions
The New Bush 1 Arundel Road Brighton BN2 5TE	06.08.09	01.10.09	Conditions
The West Hill Buckingham Place Brighton, BN1 3PQ	20.08.09	15.10.09	Advice

Entourage 1 Middle Street Brighton	03.09.09	26.10.09	Suspended Trading hours restricted and conditions
White Horse Camelford Street Brighton BN2 1TQ	14.10.09	07.12.09	Revoked and appealed
Ocean Rooms 1-2 Morley Street Brighton	29.01.10	05.02.10	Revoked

**Expedited Review**

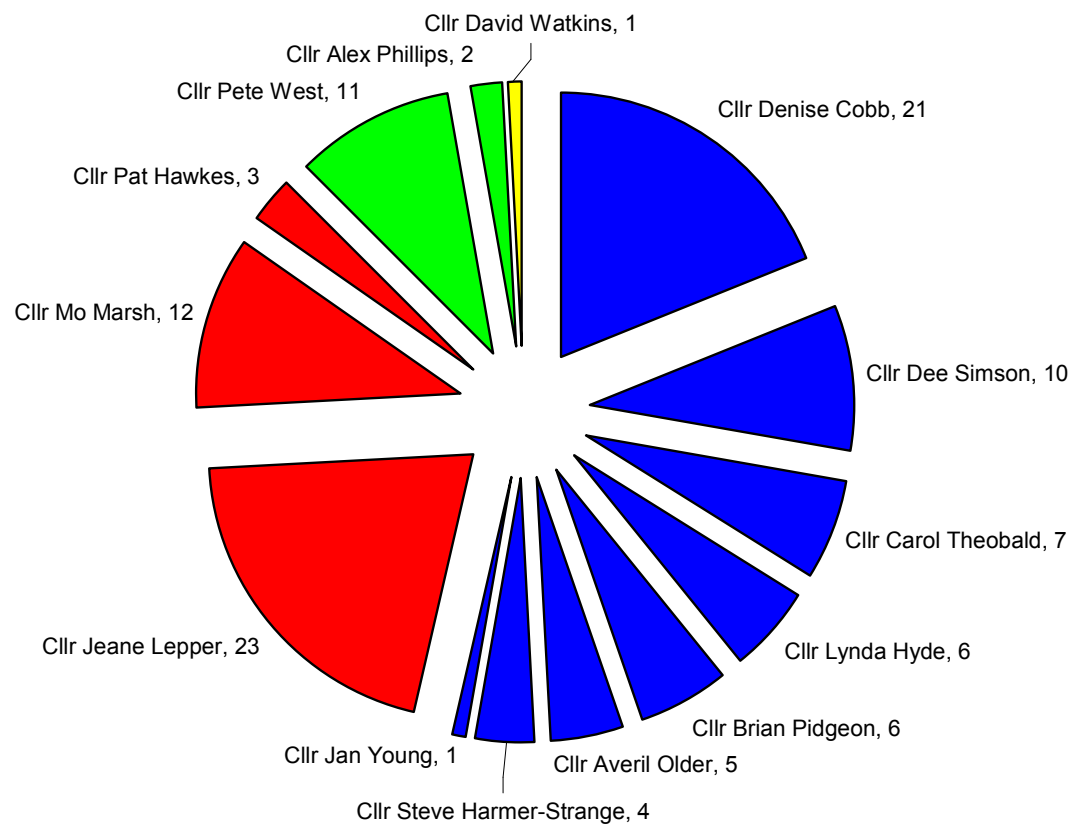
The Ocean Rooms	13.01.10	14.01.10	09.02.10	5 February 10am BTH Council Chamber	Suspended pending full review (see above)
Queens Park	Interim Hearing 15.01.10	9.45a.m.			

**Item 29: Appendix 2**

**Appeals 1/4/09 to date**

<b>Premises</b>	<b>Appellant</b>	<b>PTR</b>	<b>Hearing</b>	<b>Outcome</b>
Tesco Store Ltd, St. James Street, Brighton	Tesco Store Ltd		27/28.04.09	Appeal allowed licence granted with conditions. Council liable for own legal costs
The Black Horse, Montague Place, Brighton	Admiral Taverns		040609	Consent Order: 2 month suspension, removal of DPS, training compulsory
Shop 2 Win Ltd, Western Road, Hove	Shop 2 Win Ltd		No hearing	Appeal withdrawn, decision of the licensing panel effective from 14.9.09
Mesopotamia 17 York Place	Mr Sangoz		30.10.09	Appeal dismissed, licence suspended; may appeal to High Court.
White Horse Camelford Sreet, Brighton	Punch Taverns	28.1.10	15.04.10	
Latin Lounge, West Street Brighton	JOHN MINOR FUNKY BARS LTD	11.2.10	06/05/10	
One Step, Ovest House, West street, Brighton	One step- Arnest Andrawis Maryam Andrawis	11.2.10	26&27/04 /10	

**Panel membership by councillor May 2009 - Jan 2010**



**Licensing Committee Members**

- Cllr Cobb (Chairman)
- Cllr Lepper (Deputy Chairman)
- Cllr Harmer-Strange
- Cllr Hawkes
- Cllr Hyde
- Cllr Kitcat
- Cllr Marsh
- Cllr Older
- Cllr Pidgeon
- Cllr Simson
- Cllr C. Theobald
- Cllr Watkins
- Cllr West
- Cllr Wrighton

### **Councillors as ‘interested parties’ and the licensing function.**

By virtue of Section 33 of the Police and Crime Act, the licensing Act 2003 has been amended to expand the definition of interested parties in section 13(3) to include all elected members of a licensing authority for the area in which the premises is situated. Previously members had the right to make representations both in writing and at a licensing panel on behalf of an interested party such as a local resident if specifically requested to do so by that interested party. They can now make representations or seek a review in their own right. This took effect from the 29<sup>th</sup> January 2010. So elected councillors are not required to live in the vicinity or in the same ward as the licensed premises they are making a representation about, and are not required to have been requested to act by any other person or body.

The purpose of this change was to strengthen powers for ward councillors to deal with disorderly or problem premises and be able to call for a review. However the normal rules about reviews apply namely that the grounds must be relevant to the licensing objectives, and must not be frivolous or vexatious. Any action has to be reasonable and justified so it will be vital that there is evidence to support cases. Any problems should ideally first be reported to and then investigated by appropriate responsible authorities prior to an application for review being made. In addition, review applications must not be **repetitious**. If a review has been held recently and the circumstances at the premises remain the same, the licensing authority could reject the application for review.

The term "member of the licensing authority" refers only to elected councillors, and not officers or other employees of the authority.

The statutory section 182 guidance has been amended to reflect this new provision. It is set out below:-

***Local councillors play an important role in their local communities. They can make representations in writing and at a hearing on behalf of an interested party such as a resident or local business if specifically requested to do so. They can also make representations as an interested party in their own right if they live, or are involved in a business, in the vicinity of the premises in question. Local councillors can also, as elected members of the licensing authority, make representations in their own right if they have concerns about any premises, regardless of whether they live or run a business in the vicinity of those premises. For example, councillors may apply for a review of a licence if problems at specific premises which justify intervention are brought to their attention.***

***8.10 Local councillors are subject to the Local Authorities (Model Code of Conduct) Order 2007 which restricts their involvement in matters, and participation in meetings to discuss matters, in which they have a ‘prejudicial’ interest (i.e. an interest that a member of the public would reasonably regard as so significant that it is likely to prejudice the member’s judgement of the public interest). In cases where a local councillor makes a representation as an interested party, they will be considered to have a ‘prejudicial’ interest in the local authority’s decision on a***

**resulting review and in the local authority's representation to any appeal on this decision.**

**8.11 According to the Model Code of Conduct, councillors with a 'prejudicial' interest must not exercise executive functions in relation to that business and must not seek improperly to influence a decision about that business. Councillors with a prejudicial interest are allowed to attend relevant meetings to make representations, answer questions or give evidence, provided that the public are also allowed to attend for the same purpose, whether under the licensing legislation or otherwise and as long as they withdraw from the meeting immediately afterwards. It must be emphasised that councillors have a duty to act in the interests of all of their constituents. Their role as a community advocate must therefore be balanced with their ability to represent specific interests.**

**8.12 The Code applies to any elected council member whether or not they are a member of the licensing committee. A member of a licensing committee, representing others or acting in their own right, would need to consider carefully at a committee meeting whether they had a prejudicial interest in any matter affecting the licence of the premises in question which would require them to withdraw from the meeting when that matter is considered. For example, where a councillor has made representations in their capacity as an elected member of the licensing authority. In addition, a member with a prejudicial interest in a matter should not seek to influence improperly a decision on the licence in any other way.**

The Standards Board for England advises that, as regulatory matters like licensing are sensitive, so a cautious approach should be made. Clearly a member sitting on a licensing panel cannot represent an interested party or an applicant or act as an interested party in their own right. Furthermore it is essential that licensing decisions are free from the appearance of bias or predetermination. This goes beyond the code of conduct. If members of the licensing committee become known for making representations against applications this could compromise the decision making process. Licensing members should avoid making public statements regarding licensing issues and applications which may give rise to accusations of bias or pre-determination. It is thus a strong recommendation of the monitoring officer that members of the full licensing committee should not get involved as interested parties in individual applications, but should refer the matter to another councillor not on the licensing committee. This separation of roles is to ensure that licensing panels are seen to be neutral and free from bias.

Members sitting on a panel, if approached by lobbyists should refer the matter to another ward member or the licensing officer. Political meetings or whips may not be used on how members on a panel vote and clearly councillors must not be members of a licensing committee if involved on campaigning on a particular application. Ward members need to be careful discussing matters with licensing members to ensure no appearance of bias or pressure and should not contact panel members about particular applications prior to them being heard. The new Act was intended to democratise licensing; however, it is paramount to ensure that hearings are fair.

To ensure licensing members are aware of these issues training is provided prior to sitting on panels, and members may not sit on a panel without being trained. It is intended to provide regular refresher training updates for members. Where the full licensing (Licensing Act 2003 functions) committee is considering a licensing application such as Fat Boy Slim, there must be

no substitution by non-licensing members. Otherwise substitution is permitted on both the Licensing Act and non-Licensing Act function committees.

Where the full Licensing Committee conducts an investigation or review, it may ask people such as the police, the PCT or other public authorities to attend to give evidence at meetings. Those invited to speak should be treated with respect and courtesy and questioning should not be adversarial. As far as possible the process should be a positive and beneficial learning experience for all concerned.

Any questions concerning the Code of Conduct for Members and issues of predetermination or bias should be raised with the Council's lawyers.



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Our Ref CMS/131465



department for  
culture, media  
and sport

25 January 2010

Dear Mr Nichols

#### HEALTH IMPACT ASSESSMENT OF LICENSING

Thank you for your letter of 17 December to Gerry Sutcliffe, which enclosed a copy of the report, "Flexible Alcohol Hours In Brighton And Hove - Health Impact Assessment". I have been asked to reply.

The question of whether health should be included as a licensing objective was debated thoroughly during the passage of the Licensing Bill. The outcome was Parliament decided that it should not be included. The Government has no current plans to legislate to change that position. Any conditions attached to a licence for the promotion of public health, and which could not otherwise be justified in terms of one of the four statutory licensing objectives, would be unlawful.

This does not mean that we are not seriously concerned about the health implications of binge drinking, but licensing law is not the right mechanism to address them. The statutory licensing objectives must be capable of translation into conditions directly within the control of the licensee and failure to adhere to them will attract criminal sanction. Public health inevitably involves personal responsibility on the part of the consumer. For example, where an individual purchases a large quantity of alcohol, the retailer cannot control the pace at or manner in which such purchases are consumed. Responsible consumption of alcohol must therefore be addressed through better public education and through early medical and criminal justice interventions where problems are detected.

On 19 January, the Home Secretary made an announcement about the Government's new



mandatory code for tackling alcohol-related crime and disorder. This will ban the worst types of irresponsible price promotions, help customers to drink less, and strengthen measures for the prevention of underage drinking.

The code will be introduced in two stages. The first three conditions covering irresponsible promotions (e.g. "all you can drink for £10"), a ban on "dentist's chairs (where alcohol is poured directly into the mouths of customers, making it impossible for them to control the amount they are drinking) and the availability of free tap water for customers will come into effect on 6 April. The remaining conditions on age verification and ensuring smaller measures are available will come into effect on 1 October.

The mandatory code is being introduced primarily to address issues of crime and disorder, but may incidentally pay some dividends in terms of public health. However, even the mandatory code must only include conditions that directly relate to the promotion of one or more of the four statutory licensing objectives.

The Government carefully considered the age at which drinking should be permitted as part of its review of the current licensing laws and the decision to keep the age limit for purchase and consumption of alcohol in a public place at 18 was not taken lightly. Our reasoning was set out in the White Paper on licensing reform published in April 2000 which was subject to a full public consultation.

Most alcohol is consumed by people under 18 at private parties, in private homes and with the consent or knowledge of parents. Some is consumed in high risk places owing to the illicit nature of the activity which place young people in jeopardy and sometimes give rise to associated anti-social behaviour. An even higher age limit itself could produce patterns of illicit drinking among younger teenagers and encourage delinquency. The Government's favoured response is through better public education and, in particular, educating children in schools about the misuse of alcohol.

Alcohol duty, as you have stated, is the responsibility of Chancellor of the Exchequer and it is not appropriate for our Department to comment on the matters you raise. I understand that the structure of alcohol duty in the UK must comply with the EU legislation on alcohol duty. EU law does not allow for a distinction to be made between alcohol products packaged in casks, cans or in bottles and they must therefore be taxed at the same rate.

Alcohol duty increases announced at Budget were not designed to tackle problem drinking. In considering changes to alcohol duty rates, Treasury Ministers are primarily concerned with raising revenue to finance public services, which includes tackling child poverty.

Responsibility for what is broadcast on television and radio rests with the broadcasters and the organisations which regulate broadcasting - the Office of Communications (Ofcom), the BBC Trust and the Welsh Fourth Channel Authority (S4C). They are independent of the Government.

The BBC's governing instruments, the Royal Charter and Agreement, place broad obligations on the Corporation in respect of its television and radio services, objectives, programme content and standards. Within this framework detailed decisions on programme content and scheduling are matters for the BBC, reflecting its editorial independence. It is a long-standing principle that the Government does not interfere in programme matters, either on arrangements for scheduling or on content. It is important to maintain the principle of freedom of expression which political interference could undermine.

Public Engagement and  
Recognition Unit (PERU)

I hope my letter is helpful.

Yours sincerely

A handwritten signature in black ink that reads "Ronnie Bridgett". The signature is written in a cursive style with a large, looping initial "R" and "B".

Ronnie Bridgett  
Public Engagement and Recognition Unit (PERU)

