



Walsall Council

Agenda item 4

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

TO A MEETING OF THE LICENSING AND SAFETY COMMITTEE 28 APRIL 2021

UPDATE ON CERTAIN ASPECTS OF LICENSING AND RELATED ACTIVITY

1. The chair of the Licensing and Safety Committee has asked for a report to be presented to the committee on certain aspects of licensing and other related activity, in particular on:
 - How many applicable premises haven't currently paid their licensing fees (12 months)
 - Detailed procedure breakdown of the process of revoking the licence due to unpaid fees and the associated timescales. (I understand that the LGA has released guidance on this so it might be useful to provide this information also)
 - How many premises raids have we carried out in the last 12 months?
 - Detailed procedure breakdown of bringing applications into for review – we've had two Licensing Sub-Committee already for review applications. Councillor Samra wants to understand why we haven't had more applications.
 - Briefing on the requirement to sell tobacco in shops. There seems to be some confusion on whether shops need a licence or not. I think Members need greater clarity on this.
 - New Cumulative Impact Policy – I understand this is coming to Committee sometime in March 2021?
 - How is the Council safeguarding families from underage alcohol sales and illegal tobacco?
 - When carrying out premises raids for illegal tobacco, do we carry out additional checks with alcohol vice versa?

2. There are a total of 876 premises with a Premises Licence or Club Premises Certificate, of which 219 have not paid their annual fee.

3. Invoices are sent to premises a month before their annual fee due date. A report is received every month from finance of unpaid invoices. This data is checked and a reminder letter sent out to those are verified as unpaid. Once the statutory time period of 21 days has elapsed then the premises licence is suspended. Those that remain unpaid are then referred to Community Protection for follow up action.
4. As part of the response to the Covid-19 pandemic, the Local Government Association issued guidance to local authorities in April 2020 in relation to non-payment of annual fees. The guidance states:

Councils should consider how to respond to non-payment or late payment of an annual premises licence fee. Whilst legislation requires licences to be suspended (LA 2003) or revoked in the case of the Gambling Act 2005 (GA 2005), it is possible to delay when that suspension takes effect. The Home Office has encouraged councils to consider this approach, councils may want to consider whether to adopt a similar approach for gambling premises too.

Some councils have suggested they will not be actively chasing annual fees that have not been paid. A related approach that has been used is to offer LA 2003 licence holders the option to defer their annual licence fee payment for six months. Although fee due dates will remain unchanged and original invoices issued, no reminders will be sent.
5. Appendix One summarises the number of invoices issued in 2019 and 2020.
6. Once referred to Community Protection team, all enforcement activities across the full range of Community Protection functions are conducted in line with the Authority's enforcement policy¹. This has been designed and adopted to ensure that due regard is always given to a number of key considerations embodying 'The Principles of Good Regulation' by ensuring that our regulatory activities are exercised in a way which is proportionate; consistent; accountable; transparent and targeted.

¹ [Decision Sheet \(walsall.gov.uk\)](https://www.walsall.gov.uk/decision-sheet)

7. As is the case with many breaches of legislation, with regards to the non-payment of annual fees, the Community Protection team will initially focus on using targeted advice, guidance and support in an attempt to bring offending premises to compliance. Prior to commencing formal action against any business, the investigating officers will take appropriate steps to ensure that the responsible parties have been correctly notified of the situation and that all of the requisite documentation has been issued and received appropriately. This is a critical aspect of the enforcement process as it often enables identification and subsequent resolution of simple errors and oversights as is often the case with changes of ownership or correspondence addresses etc.
8. This assistance is provided in a number of formats but will often be by way of direct verbal communication with relevant parties associated with the respective premise or via a warning letter/advisory notice. In either instance, officers will endeavour to ensure that the recipients are left fully cognisant of the nature and potential consequences of any breaches and exactly what action will be required to rectify the situation.
9. In cases where additional support and guidance is not sufficient to bring about compliance the team will seek to gather evidence of a breach of relevant legislation. This evidence may be obtained in a variety of ways and will often involve the arrangement of specific targeted exercises which might include but are not exclusive to test purchases.
10. Events over the last 12 months with the Covid19 pandemic have meant that the process for following up on suspended premises licences has been somewhat different to the norm. The vast majority of the businesses referred to Community Protection for further action during this period have been largely closed or operating at significantly reduced capacity with many of the pubs and clubs closed. In addition, takeaway food premises have also been operating in line with government guidance by closing earlier than normal and as such not operating during the times when a Late Night Refreshment Licence would be required (ie between 23.00-05.00).

11. All of the premises whose licences have been suspended and referred to Community Protection have been contacted and reminded of their obligations under the Licensing Act 2003. However, in recognition of the very obvious difficulties that local businesses are currently facing and in line with the Local Government Association Guidance issued early on in the pandemic, the decision was taken not to actively pursue enforcement action in respect of outstanding annual fees.
12. Instead, the Community Protection team have put in place a number of measures to ensure that the situation does not go unchecked and that provisions are in place so that as soon as the business landscape changes sufficiently we are in a position to both continue to support the trade but also seek to bring any identified premises to compliance.
13. In order to help facilitate proceedings, an officer from Community Protection has been seconded to work within a specialist multi-service Covid19 team and has been given a remit to monitor and report back on activities or potential issues relating to the licensing trade. This step has served to ensure that any advice and support that is being offered to the trade has been given due consideration in relation to subsequent potential enforcement around non-payment of requisite fees as well as other licensing breaches.
14. As the government moves forward with its roadmap out of lockdown communications are being sent out to all licensed premises via the Covid19 team. As the sector re-opens the Community Protection Team will look to step up the level of direct engagement in order to increase the level of compliance and a range of targeted enforcement activities will follow as and when deemed appropriate.
15. There have been 28 illicit tobacco raids on premises in the previous 12 months, only two of which were licensed. Premises are relinquishing alcohol licences in

order to stay under the radar and continue their illicit sales with minimal interference.

16. Retailers do not need to hold a licence to sell tobacco. However, they do need to ensure the statutory age related notice is displayed, ensure tobacco is in plain packaging, check labelling and health warnings of packets and carry out all reasonable precautions and exercise all due diligence to prevent the sale of illicit tobacco and tobacco to minors.
17. Trading Standards carry out regular advice visits to licensed premises and businesses selling tobacco to advise on the sale of age restricted products to minors. All businesses are left with an information pack that includes a refusals register, age restricted guidance and Challenge 25 information. They are also provided with appropriate signs to display in store. All new licensed premises are visited together with any other premises that are identified as selling age restricted products. If complaints are then received about sales to minors, the business will be placed on the targeted under age test purchasing programme. Due to covid-19 restrictions it has not been possible to use under age volunteers to carry out such operations over the past year. The programme will resume as soon as reasonably practicable.
18. With regard to illicit tobacco, Trading Standards use a mixture of enforcement raids and covert test purchasing to establish if a business is dealing in illicit tobacco. Where appropriate vehicles suspected of storing illicit tobacco are entered using force and search warrants are obtained for private dwellings. Regional funding has also been secured in January 2021 from HMRC for illegal tobacco disruption activity. Operations which target problem premises are carried out in conjunction with the police, HMRC, Immigration and a specialist dog search team.
19. Recently Trading Standards have worked with landlords of problem premises. The owners of a Willenhall shop were evicted in November 2020 after illegal tobacco was seized by Walsall Trading Standards and the local police team. The lease was terminated by the landlord after the tenants were caught repeatedly selling

illicit tobacco. Licensees are also being advised that selling such products breaches licensing objectives and may lead to a licence review.

20. To ensure the work on illicit tobacco is successful, co-operation with other agencies is essential. Walsall has been part of the Black Country Tobacco Control Alliance since 2003. The Alliance includes four local authorities and the strategic aims of the alliance are to co-ordinate a range of collective strategies and actions that reduce the demand for, and supply of, tobacco in communities. In 2017 the alliance wrote a briefing document for Magistrates who deal with prosecutions relating to sale and supply of illegal tobacco. The briefing was instigated by the Black Country Trading Standards representatives after a series of sentences that we didn't feel reflected the seriousness of the offending.
21. Trading Standards are also contributory to the Caldmore Green Task and Finish Group set up to tackle ASB problems in the Caldmore area. Other members include representatives from Walsall Council Localities & Partnerships, Highways, Community Safety, Community Protection, Supported Housing, Clean & Green, Community, Equality & Cohesion and West Midlands Police, Outreach YMCA and Nash Dom CIC
22. Trading Standards also work in partnership with Walsall Public Health and a private dog detection company to educate the public in relation to illicit tobacco. The mobile illegal tobacco unit has been used at various locations within the Borough providing an opportunity for stop smoking specialists to encourage smokers to quit and for Trading Standards to gather intelligence about traders who may be selling cheap tobacco. As part of the education strategy Trading Standards illicit tobacco work was highlighted on all council workers' payslips. Furthermore, Trading Standards have recently engaged with NASH DOM (Eastern European and Russian speaking Community Support and Business Development centre). They are a Community Interest Company (CIC) commissioned for various projects by Walsall Council including facilitating community projects, education and public campaigns. Their representatives have given out literature to traders and members of the public regarding illicit tobacco,

particularly in areas with a high number of complaints within multi-cultural communities.

23. Trading Standards regularly use social media to highlight the issues relating to illicit tobacco. In the last 12 months 15 tweets have been posted resulting in 29,587 views, 161 'likes' and 92 're-tweets'. There has been a positive response to information put out on Twitter. A radio interview in June 2018 on Heart FM has also been a useful tool to raise awareness of illicit tobacco health implications and links to organised crime. Key messages from the interview were included in Heart FM's hourly news bulletins throughout the day of broadcast.
24. If a licensed premises consistently sells illicit tobacco despite warnings then a review will be sought. As previously stated most illicit tobacco sellers are not licensed and this is the main reason why Trading Standards have not brought more reviews recently.
25. Officers look for illicit alcohol when carrying out tobacco raids and have in the past discovered non duty paid and counterfeit alcohol. However, over the past few years most tobacco raids have been carried out in conjunction with HMRC who follow up on alcohol issues whilst TS deal with the tobacco. HMRC have recently stopped their retail operations so in future TS will pick up any alcohol investigations arising from tobacco raids. However, due to TS remit, these investigations will be limited to the supply of counterfeit alcohol which is nowhere near as commonplace as counterfeit tobacco.

Appendix one

Below is a breakdown on the number of invoices that were issued and premises suspended in 2019 & 2020.

Due to the pandemic, local authorities have been a bit flexible towards licence holders to help and not suspend as most premises have been closed.

2019						2020					
Notices Issued	Number of Invoices Issued	Suspended	Paid	Credited	Outstanding	Notices Issued	Number of Invoices Issued	Suspended	Paid	Credited	Outstanding
January	31	18	18	0	0	February	15	5	4	0	1
February	14	13	11	2	0	September (Invoices from March - September included)	164	50	36	1	13
May	26	18	17	1	0	March (2021)					
June	27	9	7	2	0	PENDING					
July	30	11	9	2	0	Total		55	40	1	14
October	37	12	12	0	0	Due to COVID 19 licence holders were given extra time to make payment before suspension notices were issued.					
November 2019 - January (2020)	446	91	78	10	3						
Total		172	152	17	3						



In 2019 - 18 premises licences were surrendered
 In 2020 – 31 premises licences were surrendered