



**AGENDA ITEM: 9.**

**LICENSING & GAMBLING  
COMMITTEE: 8 DECEMBER 2009**

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**Report of: Council Executive Manager Community Services**

**Relevant Portfolio Holder: Councillor A Fowler**

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**SUBJECT: LICENSING ACT 2003 – ‘YELLOW AND RED CARD’ APPROACH TO  
REVIEWS OF PREMISES LICENCES AND CLUB PREMISES CERTIFICATES**

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Wards affected: Borough wide

**1.0 PURPOSE OF THE REPORT**

1.1 To seek approval of a ‘yellow and red card’ approach to reviews of premises licences and club premises certificates heard under the Licensing Act 2003 (the Act).

**2.0 RECOMMENDATIONS TO COMMITTEE**

2.1 That the Committee approve the use of a ‘yellow and red card’ approach to reviews of premises licences and club premises certificates heard under the Licensing Act 2003.

2.2 If the Committee approve the recommendation at paragraph 2.1, that the Committee approve that the Council’s Statement of Licensing Policy be amended to reflect the use of a ‘yellow and red card’ approach to reviews of premises licences and club premises certificates heard under the Licensing Act 2003.

2.3 If the Committee approve the recommendation at paragraph 2.1, that the Council’s pool of standard conditions be amended to include the conditions contained in appendix 1 attached to this report.

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**3.0 BACKGROUND**

- 3.1 Members will recall that the Department of Culture, Media and Sport (DCMS) had previously advocated the use of a 'yellow and red card' approach to reviews of premises licences and club premises certificates (CPC) heard under the Act, but that the available guidance at that time was limited.
- 3.2 The DCMS has again written to the Council with additional information to support the use of the extensive powers available under the Act. In particular, the DCMS has observed that there appeared to be some reluctance among responsible authorities to review premises licences/CPC and seek revocations without very strong evidence.
- 3.3 The DCMS advocates the use of 'yellow and red cards' as a tough approach to be taken by Licensing Committees where it is found that the premises are failing to promote one or more of the licensing objectives. At the same time, the approach provides the premises licence/CPC holder an opportunity to reform, as a 'yellow card' would involve the imposition of tough new conditions (if proportionate to the identified problems) together with the warning that if a further review is necessary and matters are found to have not improved, the premises licence/CPC would be revoked – a 'red card'.

#### **4.0 CURRENT POSITION**

- 4.1 When required to determine reviews of premises licences/CPC in the past, the action taken by the Sub Committee has always been proportionate to the problems identified. However, the use of this proposed approach would further emphasise the punitive nature of the review process by sending a clear message to premises licence/CPC holders, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.
- 4.2 Members will be more than aware that the revocation of a premises licence can often effectively kill the business, particularly if it is focused on retailing alcohol. This means that not only does the business suffer, but most people working there will lose their livelihoods, many of whom would be entirely innocent of any wrongdoing. There is also an impact on those who indirectly rely on income from the premises, such as food suppliers and cleaning contractors. Furthermore, the closure of a premises could deprive some sections of the community of their local shop and/or restrict local consumer choice. Responsible authorities, as well as Members, are well aware of this impact, which in turn can lead to a reticence to revoke a licence instantly for any failure to promote the licensing objectives.
- 4.3 Accordingly, responsible authorities have preferred to negotiate additional voluntary conditions with problem premises against the threat of review as an immediate, pragmatic and less bureaucratic solution. Whilst this may be a reasonable approach, this can lead to the risk that some premises may not be dealt with as firmly as necessary. Such voluntary agreements are not visible to the public, lessening the deterrent effect on other premises.

#### **5.0 ISSUES**

- 5.1 The DCMS supports, and wants to encourage, the Police, Trading Standards and Environmental Health Officers to seek more reviews in the knowledge of the 'yellow and red card' system.
- 5.2 *First intervention*  
Through the Council's Multi Agency Licensing Team (MALT) responsible authorities will be encouraged to propose tougher suggested conditions which are designed to combat the identified problem. However, any specific condition(s) applied by Members would need to be tailored to the nature of the problem and the type of premises. The DCMS has suggested several conditions that could be used in conjunction with this approach which are attached at Appendix 1. (If this approach is approved the conditions will be incorporated into the Council's pool of standard conditions).
- 5.3 Such action could be supplemented by:
- Removal of designated premises supervisor
  - Suspension of the licence for between 1 day and 3 months
  - Restriction of trading hours and/or licensable activities
  - A clear warning that a further appearance before the Committee will give rise to a presumption of revocation.
- 5.4 The aim therefore is to effectively put the premises on probation and is thereby given a 'yellow card'. The premises are put on notice that the next offence and/or breach would mean an automatic second intervention – a 'red card'.
- 5.5 This approach does not necessarily mean the physical use of 'cards', however the DCMS believe that any 'yellow card' should be highly visible in the community. Therefore, as part of the Committee's decision on first review, it should consider the imposition of a licence condition requiring the premises to display a visible notice at the premises detailing the outcome of that review and the warning it has been given.
- 5.6 *Second intervention*  
In the absence of improvement, responsible authorities should seek another review. Therefore, if the Committee is satisfied that there has been a lack of improvement, the Committee should look to revoke the licence. This action could then be publicised as a deterrent to other premises.
- 5.7 *Licensing Policy changes*  
If the Committee approves the 'yellow and red card' approach, the Council's Licensing Policy would have to be amended to reflect this change. This would require the submission of the amended Policy to this Committee, as well as full Council, for approval and authorisation to conduct a 12 week period of public consultation. Following consultation, the Policy would return to this Committee and full Council for final approval and implementation.
- 6.0 PROPOSALS**
- 6.1 That the Committee approve the recommendations contained in this report.

## **7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

7.1 This legislation has the potential to impact upon many areas within the Community, particularly upon the leisure time of the public of West Lancashire. The Licensing Objectives, therefore, fit closely with many aspects of the Community Strategy. The proposal has the following links with the Community Strategy: Community Safety (issues A and E); Economy and Employment (issue D); Health and Social Care (issue A); Culture, Leisure and Sport (issue B).

## **8.0 FINANCIAL AND RESOURCE IMPLICATIONS**

8.1 It is anticipated that the changes outlined in this report will be met from within existing resources.

## **9.0 RISK ASSESSMENT**

9.1 The Council has a legal duty to carry out the functions of the Act and therefore failure to do so is a breach under the Act. However, this approach is recommended as good practice by Government and is not mandatory. A decision not to implement this approach would not result in any direct action being taken against the Council, but could lead to significant criticism as the Council has the opportunity to further develop its measured and consistent approach to reviews, whilst increasing the deterrent effect on other licensed premises.

## **10.0 CONCLUSIONS**

10.1 This approach builds upon the Council's current robust, yet proportionate, regime toward the review of premises licences and CPC. The 'yellow and red card' regime would reaffirm the importance of the licensing objectives and help responsible authorities seek more frequent reviews as a result of any breaches. At the same time, it provides licence holders an opportunity to reform, whilst acting as an open deterrent to other premises.

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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

### **Appendices**

Appendix 1 – DCMS suggested conditions to be used in conjunction with a ‘yellow and red card’ approach

## **Appendix 1**

### **DCMS suggested conditions to be used in conjunction with a 'yellow and red card' approach**

#### ***Greater control over sale***

- 1 To provide designated checkout(s) for alcohol sales.  
[Need to consider the impact on protection of children from harm, but also impact on sales and goodwill (probably loss of trade to competitors.)]
- 2 Personal licence holder/DPS to be on site at all times during sales of alcohol.  
[Need to consider impact on protection of children from harm and new costs if additional staff have to qualify as a personal licence holder.]
- 3 Personal licence holder/DPS to supervise and authorise every individual sale of alcohol.  
[Need to consider impact on protection of children from harm and new costs if additional staff have to qualify as a personal licence holder.]
- 4 SIA registered security staff to be present at points of sale to support staff during refusing sales to under persons 18s and those believed to be drunk.
- 5 Alcohol sales only to be made by person aged not less than 25 years.  
[Need to consider the impact on protection of children from harm, but also impact on sales and goodwill (probably loss of trade to competitors.)]
- 6 CCTV to be installed at points of sale and suitably recorded to an evidential standard. Recordings to be made available to authorised officers to determine sales to minors and drunks.

#### ***Training***

- 1 All staff to read and sign a declaration that they understand the law every time they start a shift.
- 2 Train all staff engaged in selling alcohol on alcohol awareness. All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and be made available authorised officers.

#### ***Alcohol banned during certain hours and/or certain days***

- 1 No alcohol sales Monday – Friday between 4pm and 8:30pm.  
[Need to consider impact of protection of children from harm and/or target the hours to reflect the times when local intelligence indicate under 18s may be purchasing alcohol).]

#### ***Alcohol displays***

- 1 No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.

- 2 No alcohol stocks promoted alongside goods likely to appeal to children (for example, confectionary, toys etc.)

### ***Control of shop lifting***

- 1 SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.
- 2 Location of alcohol stocks/displays not to be sited near the entrance/exit of the premises
- 3 No direct public access to alcohol products.

### ***Naming and shaming***

- 1 Where premises has been issued a 'yellow card', to display an external sign in a prominent position on the premises that clearly and legible states which of the licensing objectives have been breached and what action has been taken against them.

### ***Others***

- 1 Maintain a log of all attempted purchases from those who appear to be under 18 or drunk.
- 2 To provide an adhesive label to all alcohol products to clearly show the details of the shop from which it was purchased.
- 3 Not to sell [name of designated item] to any person.
- 4 Not to sell [name of designated item] in quantities of more than [name quantity].