

Licensing Committee

13 July 2016

Time 10.00 am **Public Meeting?** YES **Type of meeting** Regulatory
Venue Committee Room 1 - 3rd Floor - Civic Centre

Membership

Chair Cllr Alan Bolshaw (Lab)
Vice-chair Cllr John Rowley (Lab)

Labour

Cllr Greg Brackenridge
Cllr Ian Claymore
Cllr Rita Potter
Cllr Keith Inston
Cllr Daniel Warren
Cllr Hazel Malcolm
Cllr Anwen Muston
Cllr Zee Russell

Conservative

Cllr Patricia Patten
Cllr Arun Photay

Quorum for this meeting is three Councillors.

Information for the Public

If you have any queries about this meeting, please contact the democratic support team:

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Wolverhampton WV1 1RL

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Some items are discussed in private because of their confidential or commercial nature. These reports are not available to the public.

Agenda

Part 1 – items open to the press and public

Item No. *Title*

BUSINESS ITEMS

- 1 **Apologies for absence**
- 2 **Declarations of interest**
- 3 **Minutes of previous meetings** (Pages 3 - 48)
The minutes of the previous meeting of the Licensing Committee will be sent to follow.

Minutes of the Licensing Sub Committee meetings held on:

- 13th January 2016
- 20th January 2016
- 22nd January 2016
- 17th February 2016
- 9th March 2016
- 31st March 2016

- 4 **Matters arising**

DECISION ITEMS

- 5 **Health & Safety Statutory Plan for 2016/2017** (Pages 49 - 76)
(To approve the proposed Health & Safety Statutory Plan for 2016/17)
- 6 **Presentation in Relation to Online Taxi Applications**
(To receive a presentation from Colin Parr, Head of Governance.)

Licensing Sub-Committee

Agenda Item No: 3

Minutes - 13 January 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Bishan Dass

Conservative

Cllr Patricia Patten

Employees

Linda Banbury
Rob Edge
Sarah Hardwick

Democratic Support Officer
Section Leader - Licensing
Solicitor

Item No. Title

1 Apologies for absence

There were no apologies for absence.

2 Declarations of interest

There were no declarations of interest.

3 Licensing Act 2003 - Application to vary a premises licence to specify an individual as Designated Premises Supervisor for Malones Bar (10 am)

In Attendance

For the Premises

P Adams – Premises Licence Holder
D Craig – Legal Advisor
M A Madani – Applicant
T Madani – Brother of Applicant

Responsible Authority

PC M Harvey – West Midlands Police

The meeting was opened at 10 am and adjourned for six minutes to enable the Legal Advisor to consult with his client.

The Chair introduced the parties and outlined the procedure to be followed at the hearing.

The Section Leader (Licensing) outlined the report circulated to all parties in advance of the meeting. In addition to the report, the following was circulated:

- On behalf of West Midlands Police – information request to Home Office Immigration Command and Control Unit and follow up email
- On behalf of applicant – correspondence received from the Home Office via Kingswood Solicitors

At this juncture, Mr Craig outlined the application to vary the premises licence to specify Mr M A Madani as the Designated Premises Supervisor (DPS) for Malones Bar and, in so doing, drew attention to Sections 4.26 to 4.28 of the Section 182 guidance whereby the Police may only object to a person proposed as a DPS where, in exceptional circumstances, it is believed granting will undermine the crime prevention objective. He advised that Mr Madani had legally resided in the UK since 2004, was a Personal Licence Holder and was currently awaiting confirmation from the Home office of a legal right to remain pending the outcome of an on-going application. He further stated that there was no evidence of criminality in respect of the applicant.

Responding to questions, Mr Craig stated that the definition of working related to a person receiving remuneration, i.e. cash changing hands. Mr T Madani advised that his brother had come into the country to assist him when he had been diagnosed with Cancer and had three businesses at the time. Mr M Madani had applied to the Home Office to leave the UK in order to attend his daughter's wedding. Mr Craig advised that the applicant's immigration status was currently pending and therefore not allowed to work. Should he be granted DPS status, there would be little change to the time he would spend at the premises (approximately three times per week), although his responsibilities in regard to compliance with the licence conditions would be onerous, but did not necessitate him being on the premises at all times.

At this juncture PC Harvey outlined the objection to the application on behalf of the West Midlands Police and, in so doing, advised that Home Office guidance defined a DPS as the person with day to day responsibility for a licensed premises. He had liaised with the UK Border Agency and the applicant had been served papers as an 'over stayer' and was not allowed to work in the UK. He stated that the Home Office definition of employment was 'any work that could be paid or unpaid which can only be undertaken by express permission of the Secretary of State'. He drew attention to evidence of serious criminal activity at the premises and reiterated that the Police, as a responsible Authority, had a duty to ensure that the prevention of crime and disorder licensing objective was upheld.

Responding to questions, PC Harvey advised that guidance from the UK Border Agency had been introduced to tackle the issue of voluntary work. The previous DPS, Mr McDonald, had indicated in his statement to the Police that Mr M Madani had been employed at Malones pre 2013, and if employed contrary to his status this would be classed as serious crime and that exceptional circumstances existed in this case meaning that the granting of the licence would undermine the prevention of crime and disorder licensing objective. The statement had not been produced in regard to these proceedings however. He confirmed that Mr M Madani had been viewed by the Police working behind the bar at Malones. PC Harvey accepted that

the application for a Personal Licence made to Sandwell Council had been correctly made.

All parties were afforded the opportunity to make a closing statement.

4 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involves the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of particular persons.

5 Deliberations and decision

The Sub-Committee discussed the issues which had been raised during the hearing and the Solicitor advised them of the options open to them in determining the matter.

6 Re-admission of press and public

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows:

7 Announcement of decision

The Sub-Committee has taken note of all the written concerns in respect of the application to vary a premises licence to specify an individual as Designated Premises Supervisor for Malones Bar, 35a Lichfield Street, Bilston and has listened to the arguments of those who have spoken at this hearing, both for and against the application.

Section 39 of the Licensing Act 2003 provides that applications to vary a person specified as a Designated Premises Supervisor may only be rejected if it is considered appropriate for the promotion of the prevention of crime and disorder licensing objective.

The Sub-Committee has heard from the applicant, via his legal representative, that:

1. at Sections 4.26 to 4.28 of the Section 182 guidance, the Police may only object to a person proposed as a Designated Premises Supervisor where, in exceptional circumstances, it is believed granting will undermine the crime prevention objective. 'Exceptional circumstances' is given its ordinary meaning and the applicant's representative went on to summarise why the applicant was suitable. This included confirmation that there was no evidence of criminality relating to this individual and Home Office papers confirm he had a legal right to remain in the UK pending the outcome of an on-going application.
2. he concedes that the immigration reporting restrictions include a restriction preventing him from working in the UK. It is also confirmed that the proposed Designated Premises Supervisor already undertakes unpaid duties at the

premises and it is not envisaged these will increase considerably if this application is granted, even though the applicant will then be required to undertake the role of Designated Premises Supervisor.

The Sub-Committee has heard from the West Midlands Police that:

1. a Designated Premises Supervisor has day to day responsibility for running the business;
2. the applicant has no permission to work in the UK;
3. the Home Office has confirmed verbally to them that the Border Agency guidance provides that employment is any work paid or unpaid undertaken without permission of the Secretary of State;
4. Section 182 guidance provides that to knowingly employ persons who should not be employed in the UK is an offence, and
5. Therefore, to grant this application would allow the applicant to work in the UK undermining the prevention of crime and disorder licensing objective.

In the absence of any statutory definition, the dictionary definition of work is – ‘activity involving mental or physical effort, done in order to achieve a result’.

The Licensing Sub-Committee is satisfied that the applicant undertakes work at the premises and will do so if this application is granted.

The Sub-Committee is further satisfied that Home Office guidance provides that work can be paid or unpaid and therefore exceptional circumstances exist which mean the granting would undermine the prevention of crime and disorder licensing objective. The application is therefore refused.

All parties have a right of appeal to the Magistrates’ Court within 21 days of receipt of this decision.

8 Licensing Act 2003 - Application for a review of a premises licence in respect of Malones Bar, 35a Lichfield Street, Bilston (10.45 am)

In Attendance

For the Premises

P Adams – Premises Licence Holder

D Craig – Legal Advisor

M A Madani – Applicant

T Madani – Brother of Applicant

Responsible Authorities

PC M Harvey – West Midlands Police

E Moreton – Licensing Authority

The Section Leader (Licensing) outlined the report circulated to all parties in advance and, in so doing, drew attention to the hearing held on 17 December 2015 at which the Sub-Committee had resolved to suspend the premises licence as an interim step.

At this juncture, PC Harvey outlined the review application attached as Appendix 3 to the report. He advised that he intended to show CCTV footage obtained from the premises. However, the Legal Advisor to the Premises Licence Holder expressed

concern that the footage had not been provided in advance of the hearing. The meeting was adjourned to enable the Sub-Committee to consider the matter and the Solicitor advised them of the courses of action available in moving the matter forward. The parties returned to the meeting and Mr Craig, having consulted with his clients, agreed to proceed with the hearing subject to being allowed to view the footage prior to continuing with the hearing. The meeting was therefore adjourned for approximately 30 minutes and re-convened at 1.22 pm.

PC Harvey continued with his submission and played the CCTV footage relating to the early hours of 7 November 2015, showing people being allowed into the premises by Mr T Madani outside the licensed hours. Mr M Madani is seen serving behind the bar, customers are smoking and there are ashtrays on all the tables. The footage shows the assault inside the premises, the victim being let out closely followed by the offender and two others. The victim is assaulted again and the offender is let back into the premises appearing very animated, goes behind the bar and is given a pint. PC Harvey continues to show snapshots of footage within the busy venue, showing people entering and exiting via the rear entrance and what he believes to be the taking of Class A Drugs. PC Harvey advised that this was the only CCTV footage he had seen, the assault would have been clearly viewed from behind the bar, there was no evidence of the use of Class A drugs other than what was viewed on the CCTV footage and that he had been advised that on the night of the private party (7 November 2015) Mr Garfield McDonald was registered as the Designated Premises Supervisor. PC Harvey indicated that it was clear that none of the staff had any regard for the licensing objectives and no Temporary Event Notice had been submitted for the private party. He added that no attempt had been made to contact the emergency services following the unprovoked assault. PC Harvey stated that an application to transfer the premises licence had been refused in 2013 due to incidents of crime and disorder and trading outside the licensed hours. The Police interview statement attached to the review application confirmed that Mr T Madani and Mr M Madani were both on the payroll. Mr Garfield McDonald had indicated that he was not at the premises on the night of the private party and had subsequently resigned from his position as Designated Premises Supervisor. Mr T Madani was unable to quote the licensing objectives and Mr M Madani's current permission to remain in the UK does not allow him to work. A serious assault and robbery had taken place, which could lead to a long term prison sentence and, in view of the above PC Harvey requested that the Sub-Committee consider revocation of the premises licence.

Responding to questions, PC Harvey stated that he would have been unlikely to object to the TEN application as there had been no evidence of recent problems with the premises. He was unable to comment on an operation set up to tackle the premises which had not in the event gone ahead and was not aware that there had been any previous review proceedings against the premises. With regard to the witness statement at page 27 of the papers circulated in advance of the hearing, no CCTV footage had been sought but the Police Officer had witnessed people walking into the rear of the premises. He accepted that there had been no clear evidence of drug dealing, but there was clear evidence of an assault, with the injuries listed by the victim carrying a maximum prison sentence of five years.

At this juncture, Mr Craig requested that the CCTV footage be replayed in order for him to question his clients about it. Responding to Mr Craig's questions, Mr T

Madani stated that he did not know the victim or his father, but he did know the girl accompanying them, but was unable to provide her surname. He had not viewed the assault inside the premises or outside the premises as it had taken place outside the post office. He did question the assailant when he returned to the premises. He stated that the incident of suspected drug exchange viewed on the CCTV footage was actually peanuts which he had sold to the customer. He stated that he was not aware of any drug taking on the premises, but accepted customers were smoking cigarettes.

Responding to questions, Mr T Madani advised that there were seven screens linked to the CCTV system which were located behind the bar. Mr M Madani confirmed that he routinely viewed the screens, quoting approximately fifty times per day. Mr T Madani stated that Mr Garfield McDonald had not been at the premises for three years and had resigned because he had been threatened by PC Harvey. He stated that the private party had commenced between 10 and 11 pm following a request from a friend, who worked at the Greyhound, earlier in the evening. Ashtrays had been put out after midnight and the doors closed at 0030 hours. He added that the party ceased at approximately 3 am. Mr T Madani stated that private parties took place approximately once per month, or once every three months. He stated that there was no private party on 28 November, although Police had viewed people entering the premises after the licensed hours. He stated that the incorrect time on the CCTV footage was his fault as he had failed to change the time when the clocks changed. He stated that he had not called the police as the incident inside the premises was minor and related to just one punch and had let the attacker back into the premises as he knew him and he called he and Mr M Madani 'Unc'. He had been unable to apply for a Temporary Event Notice as the Council Offices would have been closed at the time of the request and it was a mistake to allow the event to go ahead. Responding to a question regarding the licensing objectives, Mr T Madani stated they were crime and disorder, public nuisance, and protection of children from harmony and more. Mr M Madani confirmed there were many more objectives. Mr T Madani stated that if the premises were allowed to continue, he would consult the authorities regarding private parties and would not allow customers to smoke.

Responding to questions, Mr P Adams confirmed he was the Premises Licence Holder but, due to his medical condition having suffered a stroke, could not remember what detail was included on the licence in respect of Temporary Event Notices.

Mr T Madani, responding to further questions, indicated that he felt he would have more control over customers if he allowed them to smoke inside rather than outside the premises. He indicated that attendees at the private party had been made aware of the event via word of mouth and that in Bilston everyone knew each other. He did not ask people already on the premises to leave when the private party commenced. Mr M Madani confirmed he had seen the incident inside the premises and had passed the victim's hat to the assailant. Mr T Madani confirmed that the incident had not been recorded in the premises log book, contrary to the conditions of the premises licence.

Mr Craig pointed out that whilst one might speculate that after hours drinking had taken place on a regular basis, there was only evidence of one occurrence.

All parties were afforded the opportunity to make a closing statement.

9 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involves the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of particular persons.

10 Deliberations and decision

The Sub-Committee discussed the issues which had been raised during the hearing and the Solicitor advised them of the options open to them in determining the matter.

11 Re-admission of press and public

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows:

12 Announcement of decision

An application has been made by the West Midlands Police for a review of the premises licence in respect of Malones Bar, 35a Lichfield Street, Bilston.

At this hearing to review the Premises Licence, the Licensing Sub-Committee has listened carefully to all representations made by the persons who have spoken at this hearing, has considered all the evidence presented and has found the following facts:

The Sub-Committee has heard from the West Midlands Police that:

1. following a serious crime relating to a serious incident which began inside and then moved outside the premises on 7 November 2015, the West Midlands Police applied to the Licensing Authority for an expedited summary review of the premises licence. The hearing took place on 17 December 2015. Due to the serious nature of the incident, the Licensing Sub-Committee determined to suspend the premises licence pending a full review of the licence, in accordance with Section 53 of the Licensing Act 2003. This is the reason the Sub-Committee has been convened today;
2. CCTV footage was shown of the incident on 7 November 2015. This related to the assault which began on the premises, when a man was punched twice. He then ran from the premises. PC Harvey confirmed that, whilst it was not evident from the CCTV footage outside the premises, the victim of the assault was attacked again outside the bank a short distance from the premises and

was also robbed. Outside the premises the victim was attacked and robbed by the same person who assaulted him inside the premises moments before:

3. the CCTV footage also shows that the premises were selling alcohol on this occasion outside the hours permitted on the licence. Staff at the premises would have witnessed the incident, but chose to ignore it and did not call the emergency services. There is also a suggestion from the footage that drugs are used on the premises. Also, patrons are allowed to smoke on the premises and ashtrays are provided. The West Midlands Police have also confirmed that, on 7 November 2015, the premises had not applied for a Temporary Event Notice (TEN) in order to sell alcohol outside the hours permitted on their licence;
4. there have been several licence breaches and wounding on the premises. This and the offence of robbery could attract a custodial sentence, and
5. there is no confidence in the management structure at the premises and, in the circumstances, it is only a matter of time before a similar or worse incident occurs. Therefore, revocation of the licence is appropriate.

The Sub-Committee has heard from Elaine Moreton, Licensing Authority (as Responsible Authority), that she has attended this hearing to support the application made by the West Midlands Police.

The Sub-Committee has heard from the Premises Licence Holder, via his partner and legal representative, that suspension of the licence is appropriate and have confirmed that:

1. staff did not witness the incident on 7 November 2015 or notify the Police or other emergency services;
2. the reason for operating outside the hours of the licence was to facilitate a private party which had been arranged at short notice and therefore the premises had failed to serve a Temporary Event Notice (TEN) and at the time had not appreciated the significance of this. Private parties occur approximately once a month and TENs are not applied for;
3. patrons were smoking at the premises, and
4. they would struggle to name all four licensing objectives.

The Licensing Sub-Committee is satisfied on the evidence that:

1. there have been significant breaches of licence conditions and failure to comply with provisions of the Licensing Act in relation to temporary events;
2. there has been serious crime on and related to the premises (robbery and wounding), and
3. it is likely other criminal activity has occurred on the premises to include allowing patrons to smoke and use drugs.

Further, these actions do not promote the licensing objectives.

Therefore, based upon the above and having regard to the application and relevant representations made, the Sub-Committee has decided to revoke the licence in accordance with Section 53C of the Licensing Act 2003.

In accordance with Section 53C (2) (c) of the Licensing Act 2003, the interim steps put in place following the hearing on 17 December 2015 will cease to have effect from the coming into effect of the decision on review today.

The above action is considered appropriate and proportionate action for the promotion of the prevention of crime and disorder and public safety licensing objectives.

An appeal may be made by the Magistrates' Court against the decision, by the applicant, the holder of the premises licence, or any other person who made a relevant representation, within 21 days from the date of receipt of written notice of this decision.

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Licensing Sub-Committee

Minutes - 20 January 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Conservative

Cllr Mark Evans
Cllr Patricia Patten

Employees

Linda Banbury
Sarah Hardwick
Elaine Moreton

Democratic Support Officer
Solicitor
Section Leader - Licensing

Item No. Title

1 Apologies for absence

There were no apologies for absence. The meeting opened at 10 am and was adjourned for a period of five minutes as the applicant had not arrived. The meeting re-commenced at 10.05 am in the absence of the applicant.

2 Declarations of interest

There were no declarations of interest.

3 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involves the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of a particular person.

4 Application for a Private Hire Vehicle Driver's Licence

Elaine Moreton, Section Leader (Licensing), outlined the report which had been circulated to all parties in advance of the meeting. The Sub-Committee viewed CCTV footage of when the applicant (ARFM) attended Licensing Services on 7 December 2015, demanding either his badge or his money back. The footage showed him acting very impatiently and thumping the Licensing Services reception desk. The Licensing Manager's report referred to the fact that he was also verbally

aggressive. Members of the Keeping Staff were called in order to attempt calm the person down and remain in the area to keep an eye on the situation. The Police were also contacted but did not arrive until after the applicant had left the building.

The Solicitor advised the Sub-Committee of the options open to them in determining the application, including the power to depart from guidelines relating to relevance if convictions and breaches of licence conditions.

Resolved:

That, having considered all the evidence, both written and oral, together with the viewing of CCTV footage relating ARFM's visit to Licensing Services, the Sub-Committee do not believe that the applicant is a fit and proper person. Therefore, in accordance with Section 51 of the Local Government (Miscellaneous Provisions) Act 1976, the Sub-Committee have decided not to grant a Private Hire Vehicle Driver's Licence to ARFM.

This decision is made in accordance with paragraph 5.1.25(a) of the guidelines relating to relevance of convictions and breaches of licence conditions agreed by the Licensing Committee on 25 July 2012.

Licensing Sub-Committee

Minutes - 22 January 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Ian Claymore
Cllr Rita Potter

Conservative

Employees

Carl Craney
Sarah Hardwick

Democratic Support Officer
Solicitor

Item No. *Title*

1 Apologies for absence

No apologies for absence had been received. The meeting was opened but immediately adjourned until 10:40 hours due to technical difficulties with the ICTS equipment and also to allow additional time for the Premises Licence Holder to arrive as he had failed to arrive at the appointed time.

2 No Declarations of interest

No declarations of interest were made relative to items under consideration at the meeting.

3 Licensing Act 2003 - Application for an Expedited Summary Review of a Premises Licence in respect of The Harp Inn, Walsall Street, Eastfield, Wolverhampton

In Attendance

For the Premises

Garnett McClean – Premises Licence Holder
Asata Dalila – Employee

Responsible Authority

Sgt Jake Flannigan – West Midlands Police
PC Mitch Harvey – West Midlands Police
ADS Lee Price – West Midlands Police

The Chair, Cllr Alan Bolshaw, explained the reasons for the adjournment, the purpose of and the procedure to be followed at the meeting and introduced the parties.

The Section Leader (Licensing) outlined the report submitted to the meeting which had been circulated to all parties in advance.

Sgt Flannigan outlined the application for an expedited summary review of the premises licence due to the opinion of the West Midlands Police that the Premises Licence Holder and Designated Premises Supervisor, Mr Garnett McClean had demonstrated an obvious and deliberate failure to uphold the conditions on the premises licence or sufficiently uphold the licensing objectives and cited a serious incident of crime and disorder that had taken place at the premises during the early hours of Saturday 16 January 2016. Mr Garnett McClean advised that he had no knowledge of weapons being on the premises on the day in question. The Chair, Cllr Alan Bolshaw reminded Mr McClean of the procedure to be followed at the meeting and that there would be opportunities for him to present his case and make rebuttals later in the meeting. The Sub Committee then viewed CCTV footage of part of the incident.

4 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act, 1972 the press and public be excluded from the meeting during the following item of business as it involves the likely disclosure of exempt information falling within paragraph 7 of Schedule 12A to the Act relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.

5 Licensing Act 2003 - Application for an Expedited Summary Review of a premises licence

The Sub Committee viewed further CCTV footage of the incident which had occurred at The Harp Inn in the early hours of Saturday 16 January 2016. ADS Lee Price indicated various known gang members and nominal who were present at the premises during the incident. He drew to the attention of the Sub Committee that the incident and subsequent actions had been viewed by the Bar and Security Staff and reported that no attempt had been made by the Staff to alert the emergency services.

The Chair, Cllr Alan Bolshaw invited those present to indicate if they wished to re-view any of the CCTV footage. Asata Delila requested that the footage from 03:25 to 03:29 hours from Camera 9 be replayed. The CCTV footage for this time period was replayed. Asata Delila drew to the attention of the Sub Committee that a further Security Guard had entered the room during this period. The Chair, Cllr Alan Bolshaw, reminded Ms Delila of the procedures to be followed at the meeting and that she and the Premises Licence Holder would have an opportunity to make a presentation in due course.

The Chair, Cllr Alan Bolshaw, enquired as to the age profiles of the various gangs. ADS Lee Price and Sgt Jake Flannigan explained the composition of the various gangs and the gang “elders” were not necessarily older in age terms but may have been members of the gang longer than others. Referring to the CCTV footage ADS Lee Price indicated that Mr McClean, the Premises Licence Holder, had encouraged one of those present to step down from the covered Pool table on which he was standing. He also drew attention to the apparent tension in the room from the various body movements and gesticulations which were made. The Chair, Cllr Alan Bolshaw, commented that those present who were understood to be members of gangs from Birmingham appeared to be drinking but not causing trouble. ADS Price advised that in his experience any incident involving two gangs was likely to escalate with revenge or retribution involved.

The Chair, Cllr Alan Bolshaw enquired whether it was a matter of grave concern to the West Midlands Police if there was an argument or incident between two gangs. ADS Price advised that gang violence and violence in a public place was treated very seriously by West Midlands Police as it often resulted in injuries being suffered by innocent members of the public who were not associated with the perpetrators. He commented that no action had been taken by the Bar or Security Staff to protect members of the public who were present at the time of the incident.

Mr McClean commented that, as far as he was concerned, this was not a gang fight but two individuals having a confrontation. Sgt Flannigan opined that gang related stabbings often resulted often led to revenge attacks. ADS Price advised that what had started out as a one on one incident was likely to lead to a gang versus gang confrontation. Mr McClean commented that from his perspective all those present at the premises were customers and he had no way of knowing whether the customers were members of a gang(s). Asata Delila enquired why statements had not been taken from the staff present during the incident. Sgt Flannigan advised that the relevant CCTV footage had only been received on 21 January 2016. Ms Delila enquired why statements had not been taken in connection with the expedited Hearing. ADS Price reminded the Sub Committee that it was for the Premises Licence Holder to respond to the allegations and not for the Police to assist him in that regard.

Ms Delila referred to comments made by West Midlands Police during the viewing of the CCTV footage and in particular to “Bottles being in hands”. She advised that the lights had been turned on at approximately 03:25 hours when it was considered that there was an air of tension in the premises and to enable the Security Staff to check on what was happening. At 03:27 hours she advised that the Door Supervisor was not in a position to intervene as he would be unaware as to whether those present were carrying knives or similar weapons. She advised that she had not seen the alleged knife but she had attempted to see what was being passed about and which had subsequently dropped to the floor. The Security Officer had made similar attempts but to no avail. She and the Security Officer were assessing the situation.

Mr McClean drew to the attention of the Sub Committee his actions on the CCTV footage when the customer who had committed the offence was leaving the premises. He had stood at the door until such time as the offender was clear of the premises. He had also manned the door to prevent customers leaving or entering the premises. He reiterated his earlier comment that he was unaware as to whether the

customers were gang members. He advised that he had only been the Premises Licence Holder for a month at the time of the incident and was now potentially faced with losing his licence. The Police had not been called to the incident as only one punch had been thrown and the two customers involved had left the premises separately.

Cllr Rita Potter enquired whether Mr McClean was aware that gang members patronised the premises. Mr McClean responded that they were all customers as far as he was concerned. Sgt Flannigan asked Ms Dalila if had had been looking actively for a weapon. She responded that she had been attempting to see what the customer had in his pocket. Sgt Flannigan asked her if she had considered contacting the Police with regard to her suspicions. She replied that, at the time, she had not thought about contacting the Police. Sgt Flannigan enquired how long she had been employed at the premises. She advised that she had been employed at the premises for a period of approximately 18 months. Sgt Flannigan enquired whether during that time she had any experience of fights and/ or use of weapons such as knives at the premises. She responded in the affirmative. Sgt Flannigan enquired whether she was aware that the many of the customers on the night in question were members of gangs. She responded in the affirmative. Sgt Flannigan enquired of Mr McClean how long he had been employed at the premises. Mr McClean advised that prior to being the Premises Licence Holder he had been employed at the premises for about one year as a Door Supervisor. Sgt Flannigan referred to the motif on the leather jacket of one of the customers “NWB – Ride or Die” and asked if either Ms Delila or Mr McClean knew what this term meant. Both replied that they had no knowledge of the term.

6 Re-admission of public and press

Resolved:

That the public and press be re-admitted to the meeting.

7 Licensing Act 2003 - Application for an Expedited Summary Review of a Premises Licence

Sgt Flannigan reported that the investigation into the assault was on-going and was being treated as a serious crime incident. He referred to the separate breach of the conditions of the Premises Licence i.e. allowing Isaac Green and Afiyah Delila on the premises and drew to the attention of the Sub Committee the CCTV footage which indicated clearly both being present.

At this juncture Mr McClean asked whether it was possible for the meeting to be adjourned in view of the health condition of his wife. The Chair, Cllr Alan Bolshaw explained that this would not be possible as this was an Expedited Summary Review and needed to be concluded that day. Sarah Hardwick, Senior Solicitor advised that it was not necessary for the Premises Licence Holder to be present. The Chair, Cllr Alan Bolshaw, advised Mr McClean that he could leave the meeting if he so wished. Mr McClean enquired whether it would be permissible for Ms Delila to make representations on his behalf. The Chair, Cllr Alan Bolshaw, confirmed that this

would be acceptable if it was Mr McClean's wish. Mr McClean confirmed this to be the case and left the meeting advising that he would return as soon as possible.

Sgt Flannigan referred to an interview which had taken place on 20 January 2016 with Mr McClean when it had been claimed by Mr McClean that he did not know the names of the bar staff employed at the premises. Furthermore, he had confirmed that he was aware of the breach of licence conditions and was complicit in the breach. He had referred to the incident as a "one off event" this was not accurate as two persons who were not allowed on the premises were present. Sgt Flannigan suggested that the history with the previous Premises Licence Holder was all still relevant. The Chair, Cllr Alan Bolshaw, enquired whether the premises were receiving undue attention from West Midlands Police. ADS Price advised that the Police would concentrate on any premises where breaches of the law were likely to occur. He reminded the Sub Committee that the history of incidents at the premises had been confirmed by Ms Delila.

Ms Delila commented that it was inappropriate to refer to incidents which had occurred when the premises had been under the jurisdiction of a previous Premises Licence Holder. The Chair, Cllr Alan Bolshaw asked whether the Police agreed that Mr McClean was in a difficult position as he was only trying to please his employer who was the previous Premises Licence Holder. Sgt Flannigan acknowledged the position in which Mr McClean found himself but reminded the Sub Committee that public safety was paramount and took primacy over other considerations.

Ms Delila referred to previous presentations and confirmed that Mr McClean would not necessarily be aware of the names of the bar staff. Furthermore, her mother, Afiyah Delila, had only been present at the premises on the evening in question because there was a staff shortage. She advised that the Consent Order had not been explained properly to Mr McClean by his Solicitor and he did not have a copy. During his time as Premises Licence Holder there had not been any negative presence of Police at the premises. She informed the Sub Committee of the efforts which were being made by Mr McClean to improve the premises including the installation of a knife arch and the provision of staff training. She opined that it was not possible to discriminate which customers were permitted to use the premises and bar staff would not know all gang members. On the night in question the customers all appeared to be well behaved and Mr McClean had dealt with the incident to the best of his ability.

The Chair, Cllr Alan Bolshaw questioned whether in the opinion of Ms Delila, Mr McClean was up to the task of being the Premises Licence Holder given that he had not had due regard to the conditions on the licence. Ms Delila responded that Mr McClean had only been the Premises Licence Holder for a month. She advised that whilst Friday and Saturday nights were often busy the premises were frequented by regular customers throughout the week. The Chair, Cllr Alan Bolshaw repeated his question as to whether Mr McClean was up to the task of being the Premises Licence Holder. Ms Delila confirmed that, in her opinion he was and that the incident had been unfortunate. Cllr Ian Claymore commented that Mr McClean was not new to the premises. Ms Delila confirmed that he had been employed previously at the premises for approximately 12 months as a Security Guard. Cllr Rita Potter referred to Mr McClean's previous experience and asked Ms Delila whether it was possible that he could change the premises or whether he would continue to run it as it had

been operated previously. Ms Delila commented that she believed that he could change it as he had a closer relationship with the customers.

The Chair, Cllr Alan Bolshaw referred to the Consent Order and the suggestion that it had not been properly explained to Mr McClean. He reminded the Sub Committee that the Order contained three specific conditions which were not unduly difficult to comprehend. Ms Delila responded that it was a four page document.

At this juncture Mr McClean returned to the meeting.

The Chair, Cllr Alan Bolshaw commented that it was not an unreasonable expectation that the Premises Licence Holder would understand the terms of the Consent Order. ADS Price advised the Sub Committee that there had been no changes in the style of management at the premises and on the familial links between Ms Delila and the persons named in the Consent Order. He commented that it had been suggested that there had been no negative Police presence at the premises during the time that Mr McClean had been the Premises Licence Holder. He suggested that as the Police had not been called to this incident similar incidents could have occurred during the previous month. Ms Delila acknowledged the point being made but commented that this incident was between two individuals and the actions of Mr McClean had prevented the incident escalating. ADS Lee sought clarification as to whether Ms Delila thought that the night in question was an example of acceptable behaviour with only one incident occurring and a knife being present on the premises. Ms Delila commented that the CCTV footage only showed the actions and procedures but was not comprehensive.

PC Harvey commented that on the night in question three Security Staff were on duty. He enquired how many had valid Security Industry Association (SIA) registration. Mr McClean commented that four security staff were on duty on the evening with three having SIA registration with the remaining being an internal employee who was not registered. In response to a further question Mr McClean explained that the internal employee was not remunerated. Sgt Flannigan drew to the attention of the Sub Committee the requirement of the Premises Licence that after 22:00 hours SIA registered door supervisors, one of which should be female should be employed at the premises. On the night in question there were no female door supervisors on duty. He suggested to Mr McClean that he was being selective as to which licensing conditions he complied with.

ADS Lee referred to an earlier comment made on behalf of Mr McClean that "it was not possible to discriminate between customers". He suggested that this was an integral part of the role of a Premises Licence Holder and cited the use of dress codes in some establishments to assist with this. Ms Delila responded that it was not possible to classify customers by way of their dress. She enquired whether it was being alleged that the premises attracted gangs. ADS Lee confirmed that to be his opinion and also that it was the responsibility of the Premises Licence Holder to determine who was permitted to enter the premises.

Mr McClean advised that he had put his trust in Ms Delila and that she was an excellent member of the Bar Staff. With regard to the contents of the Consent Order, his Solicitor had been in a rush and not in a position to explain the contents or implications. He accepted that the two persons named in the Order as being

prohibited from the premises he was aware that the terms of the Order had been breached as could be demonstrated by the evidence shown to the Sub Committee. He explained that Mr Green collected his mail from the premises and also assisted with cleaning duties. Ms Delila explained that the staff door that had used by Mr Green was also a means of access to his living premises with the other means of access being locked during opening hours.

The Chair, Cllr Alan Bolshaw, enquired of Mr McClean whether he was a fit and proper person to be the Premises Licence Holder or whether he was contemptuous of the conditions on the Licence. Mr McClean responded that he was a fit and proper person and possessed an SIA registration, he had succeeded in not allowing the offending individual to re-enter the premises, that he had no knowledge of a weapon being on the premises. The Police had attended the premises, had been allowed full access and he had co-operated with the enquiries. He opined that he was doing the job to the best of his abilities.

The Chair, Cllr Alan Bolshaw, sought clarification as to whether Mr McClean was employed by Mr Green and whether he had sufficient strength of character to comply with the Licence conditions rather than the wishes of Mr Green. Mr McClean confirmed that he did have sufficient strength of character to comply with the License conditions albeit that, on the night in question, he had requested Afayah Delila to work at the premises due to staff shortages.

Cllr Ian Claymore questioned Mr McClean as to why he had not taken the Consent Order away to consider before signing up to its contents. Mr McClean explained that he had been informed that it needed to be submitted, duly signed, that night. Furthermore, he had not had a copy of the Order until 20 January 2016 when a copy had been provided to him by the Police. The Chair, Cllr Alan Bolshaw, enquired whether, given his previous service at the premises, his new role had been explained to him. Mr McClean advised that he had been supposed to meet PC Mitchell Hewitt at Wednesfield Police Station prior to commencing his new role but had not received any form of briefing before taking over responsibility.

The Chair, Cllr Alan Bolshaw enquired whether any form of induction had been offered. Mr McClean advised that he had just been handed the keys to the premises by Mr Green. Ms Delila advised that a meeting had also been held with the Security Staff when details of those former customers who were no longer allowed on the premises had been outlined. The Chair, Cllr Alan Bolshaw, challenged this statement inasmuch that it previously been stated that all customers were treated equitably. Mr McClean explained that this did not apply to known gang members.

The Chair, Cllr Alan Bolshaw, enquired if Mr McClean was merely operating the premises on behalf of Mr Green. Mr McClean suggested that the previous history of the premises still appeared to be relevant in the view of the Police. The Chair, Cllr Alan Bolshaw, enquired whether Mr McClean was aware of the previous history of the premises. Mr McClean responded that he was aware of some parts only of the previous history. The Chair, Cllr Alan Bolshaw, enquired whether Mr McClean had been offered the position of Premises Licence Holder. Mr McClean advised that he had been interested previously in acquiring the premises. The Chair, Cllr Alan Bolshaw, asked if he had approached Mr Green following the suspension of the Licence with a view to taking over the premises. Mr McClean explained that he had

been willing to take over responsibility for the premises without the involvement of Mr Green.

Sgt Flannigan enquired of Mr McClean whether he was familiar with the conditions on the Premises Licence and whether, in fact, had seen it prior to this meeting. Mr McClean replied that had he had not. Sgt Flannigan enquired whether Mr McClean believed that the conditions on the Premises Licence were flexible in implementation. Mr McClean advised that all conditions needed to be complied with. Sgt Flannigan asked why, in that case, Mr McClean had requested Afiyah Delila had been asked to work on the night in question. Also, why no female Security Staff were employed on the night in question. Mr McClean advised that he was unaware of that particular requirement of the Licence. ADS Lee enquired whether Mr McClean had sufficient knowledge in order to satisfy the conditions of the Licence. Mr McClean advised that he had sufficient knowledge in some but not all respects.

Sgt Flannigan sought confirmation that Mr Green lived at the premises and whether he had any other residences. Mr McClean advised that he was not aware of any other residences occupied by Mr Green. Sgt Flannigan enquired whether the premises were still in the ownership of Mr Green. Mr McClean responded that he paid rent for the premises to Mr Green. Sgt Flannigan enquired as to the responsibility for the payment of Council Tax, Utility Bills etc. Mr McClean advised that he was seeking to make arrangements to take over responsibility for such bills.

The Senior Solicitor sought confirmation that the staff door was a means of access to the living premises and whether or not this was the only means of access to the living premises. Ms Delila confirmed that there was an alternative means of access albeit that it was kept secured during opening hours.

The Chair, Cllr Alan Bolshaw, enquired of Mr McClean whether or not he had a full understanding of the conditions of the Licence of which he was the Premises Licence Holder. Mr McClean responded that he had misunderstood or misinterpreted the terms of the Consent Order.

Ms Delila, in summing up on behalf of the Premises Licence Holder, reminded the Sub Committee that Mr McClean had only been the Premises Licence Holder for a relatively short time and that given his personal circumstances he had made best endeavours to improve the reputation of the premises. Mr McClean commented that the incident in question was an isolated occurrence. He was unaware that gangs were present and had no way of knowing who were in such gangs. He advised that he did the job to the best of his ability and accepted that he had allowed Afiyah Dalila to work at the premises on the night in question owing to staffing shortages.

Sgt Flannigan commented that Mr McClean was a polite, respectable gentleman of good character but in an impossible position in the middle of a family affair. He was not aware of the Licence conditions and, it could be argued that there was no need for him to be given that he was not responsible for management of the premises. He opined that the premises was frequented regularly by gangs, a fact which had been acknowledged by Ms Delila who had also accepted that the premises had a bad reputation and that a weapon had been in circulation on the night in question. He suggested that Mr McClean was either unable or not competent to be the Premises

Licence Holder and if permitted to continue in that position it would be likely to result in the death of a person.

At this juncture the meeting was adjourned.

8 Exclusion of the public and press

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act, 1972 the press and public be excluded from the meeting during the following item of business as it involves the likely disclosure of exempt information falling within paragraph 7 of Schedule 12A to the Act relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.

9 Deliberations and decision

The meeting re-convened with all parties with the exception of the Senior Solicitor and Democratic Support Officer having withdrawn. The Senior Solicitor advised the Sub Committee of the options available in determining the application.

10 Re-admission of press and public

Resolved:

That the public and press be re-admitted to the meeting.

11 Announcement of decision

The parties returned to the meeting and the Senior Solicitor read out the decision of the Sub Committee as follows:

An application was received from the West Midlands Police on 21 January 2016 for an Expedited Summary Review of The Harp Inn, Walsall Street, Eastfield, Wolverhampton. The review application cited serious crime and disorder associated with the premises.

The Chief of Police has provided a certificate under Section 53A (1) (b) of the Licensing Act 2003, stating that, in his opinion, the premises are associated with serious crime and disorder and requesting that interim steps be applied to the premises licence pending a full review hearing. This premises were subject to a review of the Licence in September 2015. Additional conditions were agreed by way of Consent Order following an appeal to the Magistrates Court.

We have heard from West Midlands Police that:

1. There is a history of issues at this premises;
2. The Chief Officer believes that there has been a deliberate failure to uphold licence conditions, more particularly, in relation to a condition agreed in the said Consent Order which states:

- Isaac Green and Afiya Dalila be excluded from the premises at all times including outside licensable hours, unless by prior agreement with West Midlands Police. CCTV footage from 16 January 2016 shows clearly the presence of Isaac Green and Afiya Dalila on the premises whilst it is operating under the licence. Afiya Dalila is seen clearly working behind the bar.

3. A serious incident occurred at the premises in the early hours of the morning on 16 January 2016. The Licensing Sub Committee was shown CCTV footage of the incident. In brief, a man was punched inside the premises. General unrest followed and the victim appeared to produce a weapon.. Staff at the premises witnessed the altercation but failed to call any of the emergency services. An investigation into the assault is on-going.

4. Those individuals involved in the altercation are known to be rival gang members. There were a number of known gang members in the premises. The Police take gang violence very seriously as innocent members of the public often get caught up in this.

5. Police have confirmed that the assault is likely to fall within Section 47 of the Offences Against the Persons Act and, if convicted of this offence it attracts a penalty of up to five years imprisonment and is, therefore, a serious offence.

6. New management is linked clearly to the old management regime. Mr McClean is not familiar with his licence conditions and has not seen the licence – but why would he when the previous management are clearly running the premises which could result in further violence.

Home office guidance relating to Section 53A of the Licensing Act 2003, summary reviews, states that a serious crime constitutes an offence for which a person could reasonably be expected to be sentenced to imprisonment for three years or more and it involves the use of violence. We have heard from the West Midlands that the relevant offence for this assault would attract a sentence of up to five years imprisonment.

Therefore, the Sub-Committee is satisfied that a serious crime has occurred on the premises. Serious Disorder is to be given its plain ordinary meaning and as such the Licensing Sub-Committee is satisfied that serious disorder has occurred on the premises.

The Sub-Committee has heard from and on behalf of the Premises Licence Holder that:

1.) staff had observed tensions at the premises on 16 January 2016 but believed that Security Staff on site had the matter under control and so did not call the emergency services. Staff did not recognise patrons in the premises as gang members and said it would not be easy to identify them;

2.) Afiah Dalila had been working behind the bar on 16 January 2016 as she had been passing through the premises and other staff needed assistance but it is accepted that this is a breach of Premises Licence conditions;

3. The premises Licence Holder admitted that he had not seen the Premises Licence and was not familiar with the conditions upon it. Even though he had only been the Premises Licence Holder since December 2015 he had been at the premises on and off for a period of 12 months.

Based on the evidence presented, consideration has been given to whether it is appropriate to take interim steps pending determination of the review and, in accordance with Section 53 (B) (3) (d) of the Licensing Act 2003, the decision of the Licensing Sub-Committee is to suspend the premises licence pending the full review hearing.

Licensing Sub-Committee

Minutes - 17 February 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Ian Claymore
Cllr Rita Potter

Conservative

Employees

Linda Banbury
Paul Fantom
Sarah Hardwick
Elaine Moreton

Democratic Support Officer
Interim Democratic Support Officer
Solicitor
Section Leader - Licensing

Item No. *Title*

1 Apologies for absence

There were no apologies for absence.

2 Declarations of interest

There were no declarations of interest.

3 Exclusion of Press and Public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involved the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of a particular person.

4 Application for a Private Hire Vehicle Driver's Licence (10 am)

Mr LP attended the meeting in connection with his application for a private hire vehicle driver's licence.

The Chair made introductions and outlined the procedure to be followed during the meeting.

Elaine Moreton, Section Leader (Licensing), outlined the report which had been circulated to all parties in advance of the meeting and, in doing so, indicated the reason for referring this matter to the Sub-Committee with reference to Guidelines relating to Relevance of Convictions and Breaches of Licence Conditions and more particularly guideline 5.1.12 (b). This guideline relates to violence and provides that the applicant would not normally be granted a licence in the circumstances before 25 October 2018. The Sub-Committee was informed that with reference to guideline 5.1.4 (a), there had been an error and that this related to two offences, namely drink driving and failure to provide a specimen. The relevant part of the guideline is therefore 5.1.4 (b) and the date after which a licence would be granted under this guideline was therefore 13 December 2014.

Mr P confirmed that he had been a driver previously and had enjoyed the work. In response to questions from the Sub-Committee, in each case he provided explanations having regard to the previous convictions, as set out in the report. He emphasised his contrition, stating that he had performed voluntary work for St. Matthew's Church during the last six months, and that he was undertaking work as a van driver which he had gained through an agency. He had also recently received two offers of employment as a driver from taxi companies and stated that he wanted to work rather than being reliant on state benefits.

Resolved

That, having considered all the information presented to the meeting, the Licensing Sub-Committee was satisfied that Mr LP was a fit and proper person to hold a private hire vehicle driver's licence and accordingly have agreed to grant him a licence for a period of twelve months, subject to a satisfactory medical report and his passing the knowledge test. This decision was also subject to review by the Licensing Manager in six months' time.

5 Application for a new premises licence in respect of Polish Taste, 30 Church Street, Bilston (11 am)

In attendance for the premises

Mr Patrick Burke – PMB Licensing

Mr Wojcieh Misiewicz – applicant

Responsible Authorities

Mrs Elaine Moreton – Licensing Authority

The Chair introduced the parties and outlined the procedure to be followed at the hearing. It was noted that apologies for absence had been received from PC M Harvey (West Midlands Police) and Mr P Patel (Other person)

Elizabeth Gregg, Licensing Officer, outlined the report submitted to all parties in advance and advised that the premises were located in a Community Impact Zone.

At this juncture, Mr Burke submitted the application for a premise licence on behalf of the applicant. He advised that the applicant had a similar premise in Hill Top, West Bromwich, which had been managed successfully for four years, and that if this application was successful, the premises at 30 Church Street, Bilston, would also

specialise in the sale of merchandise sourced from Poland. Reference was made to representations made by the Licensing Authority and the Police, who had agreed conditions with the applicant on 27 January 2016 and 8 January 2016 respectively.. A letter had also been received from Mr B Patel citing objections in relation to crime and disorder, the trading of illicit goods and the encouragement of price wars, and this had been circulated with the agenda papers. It was confirmed that he was also the proprietor of premises that sold alcohol and food and Mr Burke queried the motivation for raising these objections.

Responding to further questions, Mr Misiewicz demonstrated his understanding of the requirements concerning the sale of alcohol and the Challenge 25 scheme. Photographs indicating the proposed storage facilities for beers and spirits at the premises had been provided by Mr Burke and circulated to all the parties at the meeting. Mr Misiewicz also highlighted that although concentrating on the sale of Polish produce, if the application was successful it would be beneficial to the wider community.

Elaine Moreton, Section Leader (Licensing), confirmed that following a meeting with the applicant the proposed opening hours of the premises had been revised and that the objections of the Responsible Authorities had now been met.

All parties were afforded the opportunity to make a closing statement.

6 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involved the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of a particular person.

7 Deliberations and decision

The Sub-Committee discussed the issues which had been raised during consideration of the new premises licence application.

8 Re-admission of press and public

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows:

9 Announcement of decision

The Sub-Committee has taken note of all the written concerns raised in respect of Polish Taste, 30 Church Street, Bilston, Wolverhampton and has listened to the arguments of those who have spoken at this hearing, in relation to the application.

The Sub-Committee was satisfied that the Cumulative Impact Policy applied to these premises. The Sub-Committee was further satisfied that sufficient evidence had

been provided by the applicant to illustrate that the premises would not add to the cumulative impact already experienced and that the presumption of non-grant had been rebutted.

Having considered the views of all concerned, the Sub-Committee decided that the application for a Premises Licence should be granted as applied for, subject to the following conditions:

Agreed between the applicant and the Licensing Authority on 27 January 2016

1. The sale/supply of alcohol off the premises reduced by one hour to – Monday to Sunday 0900 to 2045 hours inclusive.
2. No sale of single cans/bottles of beer, lager or cider with an ABV of 6.5 or above.
3. Designated Public Place Order (DPPO) notice, provided by the Licensing Authority, shall be displayed prominently on the premises visible from outside the store advising that Police have powers to seize alcohol.

Agreed between the applicant and West Midlands Police on 8 January 2016

1. A CCTV system with recording equipment shall be installed and maintained at the premises.
2. CCTV shall cover entry and exit points of the premises and all areas to which public have access and the immediate vicinity outside the premises.
3. Images/recordings to be downloaded in a suitable format and provided to any member of a Responsible Authority upon request and without undue delay.
4. Images and recordings must be of evidential quality, must indicate the correct time and date and be kept for at least 31 days.
5. All staff to be trained to use the CCTV system and at least one member of staff to be on duty who is trained to download the systems images should any member of a Responsible Authority make a request.
6. An incident log and refusals book must be maintained at the premises and a written record of any incident that occurs at the premises must be appropriately recorded. Where it is deemed appropriate the incident must be reported to the West Midlands Police. The incident log and refusals book shall be produced to as member of a Responsible Authority upon request.
7. To ensure compliance with 'Challenge 25', a refusals book shall be maintained, where any sale of alcohol is refused to persons who present themselves to be under age.
8. All staff shall be trained in 'Challenge 25' and all appropriate ID checks undertaken by all staff to ensure no sale of alcohol is made to underage persons.
9. All staff shall receive training and refresher training every 6 months on their responsibilities with regard to licensing legislation. Training shall be documented and shown to a member of a Responsible Authority upon request.

It was considered by the Sub-Committee that the above conditions shall be attached in support of the prevention of crime and disorder and protection of children from harm licensing objectives.

Finally, any mandatory conditions required by the Act would be attached to the premises licence.

All parties had a right of appeal to the Magistrates' Court within 21 days of receipt of this decision.

10 **Licensing Act 2003 - Review of a Premises Licence in respect of The Harp Inn, Walsall Street, Wolverhampton (1 pm)**

The Sub-Committee was advised that with regard to the surrender of the premises licence for The Harp Inn, Walsall Street, Wolverhampton, on 10 February 2016, in accordance with Section 50 of the Licensing Act 2003, an application to transfer the premises licence could be made within 28 days of the surrender/lapse of the licence.

The Sub-Committee agreed to adjourn the review of the premises licence until 10 March 2016 at 10.00 am. If no application to transfer had been made and the licence lapsed, in accordance with Section 28 of the Licensing Act 2003, this hearing would be cancelled.

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Licensing Sub-Committee

Minutes - 9 March 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Keith Inston

Conservative

Cllr Patricia Patten

Employees

Jacky Bramley
Paul Fantom
Rob Edge

Legal Executive/Assistant
Interim Democratic Support Officer
Section Leader - Licensing

Item No. Title

1 Apologies for absence

There were no apologies for absence.

2 Declarations of interest

There were no declarations of interest.

3 Licensing Act 2003 - Application for an Expedited Summary Review of a Premises Licence in respect of The Talisman, Wildtree Avenue, Wolverhampton WV10 8LL

In Attendance

For the premises

Mr Steve Nation – Premises Licence Holder
Mr John Coen – Partner, Weightmans LLP – Counsel on behalf of the Premises Licence Holder
Mr Peter Thacker – Designated Premises Supervisor

Responsible Authority

Sgt Jake Flanagan – West Midlands Police
PC Mitch Harvey – West Midlands Police

The Chair, Cllr Alan Bolshaw, introduced the parties and outlined the purpose of and the procedure to be followed at the meeting.

Rob Edge, Section Leader (Licensing) outlined the report submitted to the meeting, which had been circulated to the parties in advance.

Sgt Flanagan outlined the application for an expedited summary review of the premises licence due to the opinion of the West Midlands Police that the Premises Licence Holder and the Designated Premises Supervisor (DPS) had demonstrated a failure to uphold the conditions of the premises licence or sufficiently uphold the licensing objectives and cited intelligence of crime arising from the operation of an organised crime group and the sale and use of drugs at the premises and its car park. A warrant under S23 of the Misuse of Drugs Act having been granted by magistrates, on 4 March 2016 a police operation involving in excess of 40 officers and sniffer dogs had been carried out. This had led to the recovery of £800 of Class A drugs, namely cocaine, and digital weighing scales, and £600 of Class B drugs, namely cannabis. Self-seal bags containing drugs had been found on the premises and numerous discarded and empty bags were found on the floor and in the male toilets. Hydroponic equipment that could be used to cultivate drugs had been found in the cellar of the premises. Also found at the premises were non-duty cigarettes and tobacco and non-duty spirits.

Sgt Flanagan confirmed that the DPS had been arrested at the scene and had been bailed pending further investigation. He added that the DPS had not cooperated with the Police's investigation and that he had declined to answer questions under caution. Sgt Flanagan emphasised that he was not suggesting that the DPS was dealing drugs but stressed that the DPS must have known that such activity was being carried out at the licenced premises. He stated that the Chief Constable was seeking to seriously disrupt this and was therefore applying for an immediate suspension of the licence.

At this point, a video recording of the police operation on 4 March 2016, derived from the Express & Star website, was played for the benefit of the Sub-Committee and attendees.

Cllr Alan Bolshaw enquired about the steps required to eliminate the dealing of drugs from the premises car park. Sgt Flanagan responded by stating that the Police had been advised that such activity was a regular occurrence and, furthermore, that a number of deal wraps had been found in the residential area of the premises, which was used by the DPS.

Cllr Alan Bolshaw sought clarification on the recovery of the drugs, it having been confirmed that cocaine had been discovered in the pocket of a high visibility jacket found in the bar area of the premises. The digital scales were also found in this jacket. Sgt Flanagan noted that the owner of the jacket had felt sufficiently confident in leaving the jacket and its contents unattended.

Cllr Alan Bolshaw asked who had access to the hydroponic equipment, which featured provision for irrigation, lighting and heating, with it being suggested by the Police that this was used for the cultivation of cannabis.

At this juncture, Mr Coen pointed out the residential premises and the cellar were not areas covered by S53(A) of the Licensing Act 2003 and, therefore, he asserted that they should be discounted from the Sub-Committee's deliberations.

Proceedings were adjourned from 14.15 pm to 14.26 pm to enable further legal advice to be sought. Upon re-adjournment, Jacky Bramley confirmed that having considered the matter carefully, the Sub-Committee had determined that there was a sufficient link between the bar area, the residential area and the cellar at The Talisman for all the evidence to be considered.

Having heard the evidence of the Police, the Sub-Committee invited questions.

Mr Coen enquired whether the Police were aware of Mr Thacker's record as a DPS, adding that he had been the DPS for The Talisman for 21 years, during which time the Police had only been called 6 times. Mr Coen asserted that the level of Police attendance was not indicative of badly-run premises.

With regard to the Police operation on 4 March 2016, Mr Coen asked whether any of the Police officers attending The Talisman had witnessed anyone smoking cannabis at this time. Sgt Flanagan responded by pointing out that officers had noted a pungent odour consistent with cannabis having been smoked recently and discarded cannabis cigarettes had been found on the floor of the bar area.

In responding to a question from Mr Coen concerning the herbal cannabis found in the residential area of The Talisman, and whether the estimated value of £600 was indicative of a large amount of this drug, Sgt Flanagan confirmed that all of the drugs seized during the Police operation had been sent for evaluation.

Mr Coen questioned whether the high visibility jacket within which was found cocaine and digital weighing scales belonged to a customer of The Talisman. Sgt Flanagan stated that CCTV evidence was being reviewed to identify the ownership of the jacket. Mr Coen enquired whether the estimated value of the cocaine of £600 signified that this was a high value. Sgt Flanagan stated that the cocaine would be cut with other substances, thereby increasing its supply value and that the digital scales would be used during this process.

Mr Coen asked whether the Police had witnessed anyone at the premises dealing or exhibiting behaviour consistent with dealing drugs. PC Harvey responded on this point, confirming that a man believed to be in the process of dealing had been arrested and bailed. Sgt Flanagan added that the quantity of used deal bags, drugs and digital scales constituted evidence of drug dealing taking place at the premises.

Mr Coen sought clarification regarding the storage area and cellar beneath the premises and the items of equipment stored there. He noted that the ownership of such items was not illegal. PC Harvey described the area in which the hydroponic equipment had been found. He indicated that officers from Wolverhampton City Council's Trading Standards team had been in attendance on 4 March 2016, when pouches of Golden Virginia tobacco, quantities of cigarettes and spirits, and items of clothing had been found at the premises. It was contended that these were either non-duty paid or counterfeit items, since the packaging did not bear the UK markings. In response to Mr Coen's point that these items had been purchased

during foreign holidays and were for personal use, Sgt Flanagan stated that IOU notes for their sale were attached to these items. Sgt Flanagan responded to Mr Coen's remark that it was not illegal to own counterfeit clothing by confirming that it was an offence per se to possess goods that were counterfeit. PC Harvey advised the Sub-Committee that on 4 March 2016, there had been four arrests and one street caution. Mr Thacker and another employee of The Talisman had been arrested on suspicion of possessing a controlled drug with intent to supply; one customer was arrested for possession of a Class A substance; another customer was arrested for failing to appear at Court; and the issuing of the street caution was to a customer for possession of cannabis.

Mr Nation asked the Police officers whether, given that there was a belief that there was organised crime involvement, they had been disappointed by the limited quantities of drugs recovered. Sgt Flanagan stated that Police intelligence had named organised crime groups and individuals concerned with the supply of drugs as being active at The Talisman. The name of the DPS had also been given in this intelligence.

Cllr Alan Bolshaw enquired as to the numbers of customers in the pub during the time of the Police operation on 4 March 2016. PC Harvey reported that there were 5 or 6 customers in the front bar and between 15 to 20 customers in the rear area.

Mr Coen made his representations to the Sub-Committee. He emphasised that Mr Thacker was 65 years old, was receiving treatment for prostate cancer and asserted that he did not have the profile of a drug dealer. Mr Thacker had been the tenant of The Talisman for 21 years during which time the Police had only been called to the premises on six occasions, and that a tenancy of this longevity was a rarity. Mr Thacker lived in the upstairs residential area and that this was freely accessible to the four employees and other visitors. Mr Coen argued that Mr Thacker should not be blamed for the actions of some of The Talisman's customers, and that he would not tolerate behaviour such as smoking on the premises and would ask customers doing so to leave. In regard to the alleged contraband, Mr Coen maintained that Mr Thacker had brought the cigarettes back from a holiday in Spain and that he had receipts for the bottles of alcohol, which it was stated had been purchased from Asda (not produced).

Mr Coen made reference to the Sentencing Guidelines and the probable sentence to be incurred should Mr Thacker be convicted of the offences with which he had been charged. He queried whether a sentence of over three years would be attracted given the test of whether this constituted a serious crime, and he believed that this test would not be satisfied.

Having heard the evidence from the premises, the Sub-Committee invited questions.

Cllr Alan Bolshaw enquired about the overpowering odour of cannabis and whether this would have permeated the building. Furthermore, he asked if other people in the pub have been aware of this. Mr Thacker offered his opinion that his customers would have complained and that the Police were portraying the situation as worse than it was. He added that it was possible that the smoke could have entered the premises from people smoking outside the building.

Sgt Flanagan advised the Sub-Committee that Mr Thacker had not cooperated with the Police's investigation and had not answered questions. Mr Thacker replied, stating that this was due to an impending hospital appointment in relation to his treatment for prostate cancer.

Cllr Alan Bolshaw queried why with deal bags and cannabis cigarettes littering the premises, these had not been seen or cleared away by the employees of The Talisman. Mr Coen responded by suggesting that these items had been discarded by customers when the Police arrived.

Cllr Patricia Patten asked Mr Thacker what action he would take if he encountered one of his customers who was carrying out drug dealing at The Talisman. Mr Thacker's response was that he would throw them out immediately.

Sgt Flanagan asked Mr Thacker to account for the cannabis found in the residential area of The Talisman. Mr Thacker stated that there were no keys and, due to his illness, he had left the area open. Consequently, anyone could walk up the stairs and into this area. Sgt Flanagan also questioned the use of the hydroponic equipment, with Mr Thacker stating that until brought to his attention, he had been unaware of its existence on the premises.

There was discussion of events at The Talisman on New Year's Eve when despite a fracas involving twelve people that was described as a scene from the Wild West, the Police had not been called for assistance. Mr Nation noted that The Talisman was amongst the most challenging premises managed by Punch Taverns, a factor which was attributable to the clientele, being male orientated and economically-challenged. He stressed his respect for Mr Thacker and the manner in which he had executed his responsibilities as DPS throughout the duration of his time at The Talisman.

There was a brief adjournment from 3.40 pm to 3.45 pm.

Cllr Alan Bolshaw raised the question of whether there was a policy at The Talisman of not calling the Police to respond to disturbances. Mr Nation confirmed that although Mr Thacker was self-employed as the DPS, he was required to adhere to the codes of practice operated by Punch Taverns.

At this juncture, all parties were afforded an opportunity to make a closing statement.

4 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involves the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of particular persons.

5 Deliberations and decision

The Sub-Committee discussed the issues which had been raised during consideration of the application.

6 Re-admission of press and public

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows.

7 Announcement of decision

An application was received from the West Midlands Police on 8 March 2016 for an Expedited Summary Review in respect of the Talisman, Wildtree Avenue, Wolverhampton WV10 8LL. The review application cited an incident of serious crime on the premises on 4 March 2016.

The Chief of Police had provided a certificate under Section 53A(1)(B) of the Licensing Act 2003, stating that the premises were associated with serious crime and requesting that interim steps be applied to the premises licence pending a full review hearing.

The Sub-Committee heard from the West Midlands Police that:

1. Intelligence having indicated that drug dealing activity was occurring at The Talisman, with organised crime involvement, a Police operation took place on 4 March 2016.
2. During this Police operation the following were recovered from the premises:
 - £800 of Class A drugs (cocaine) and £800 of Class B drugs (cannabis)
 - Digital weighing scales
 - Hydroponic equipment that could be used in the cultivation of cannabis
 - Quantities of Golden Virginia tobacco pouches, cigarettes, spirits and clothing, which were suspected to be either counterfeit or non-duty paid items.
 - Deal bags and wraps and discarded cannabis cigarettes.
3. Four persons had been arrested and one had been issued with a street caution during the Police operation.
4. The DPS, Mr Thacker, had not cooperated with the Police during the operation and had not replied to questions asked during caution.
5. If convicted of these offences of possessing with intent to supply a controlled Class B drug, the DPS and his staff could reasonably be expected to be sentenced to a maximum of 14 years imprisonment.

The Sub-Committee heard from and on behalf of the Premises Licence Holder that:

1. The DPS had substantial experience, being based at The Talisman for 21 years, and that during this time assistance from the Police had only been requested on six occasions.
2. The DPS was unaware of the existence of the Class A and Class B drugs recovered from the premises and that these could have been brought onto the premises by customers or other persons.
3. The DPS was unaware of the hydroponic equipment found in the cellar of The Talisman.

4. The tobacco and spirits had been brought back from foreign holidays for personal use, that the spirits had been purchased legitimately, and that the items of clothing were in the ownership of the DPS.
5. The failure to call for Police assistance, for instance at the time of the fracas on New Year's Eve, and the standing of The Talisman in its community was reflective of the clientele that used the premises.

The Sub-Committee was satisfied that a serious crime had occurred on the premises. Serious disorder was to be given its plain ordinary meaning and as such the Sub-Committee was satisfied that serious disorder had occurred on the premises.

Based on the information before the Sub-Committee, consideration was given to whether it is appropriate to take interim steps pending determination of the review and, in accordance with Section 53(B)(3)(d) of the Licensing Act 2003, in order to secure the promotion of the licensing objectives the decision of the Sub-Committee was to suspend the premises licence with immediate effect pending the full review hearing.

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Licensing Sub-Committee

Minutes - 31 March 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Ian Claymore
Cllr Keith Inston

Conservative

Employees

Rob Edge
Paul Fantom
Sarah Hardwick

Section Leader - Licensing
Interim Democratic Support Officer
Solicitor

Item No. Title

1 Apologies for absence

The Sub-Committee noted that an apology for absence had been received from Elaine Moreton of the Licensing Authority.

2 Declarations of interest

There were no declarations of interest.

3 Licensing Act 2003 - Application for a Review of a Premises Licence in respect of The Talisman, Wildtree Avenue, Wolverhampton WV10 8LL

In Attendance

For the premises

Mr John Coen – Partner, Weightmans LLP – Counsel on behalf of the Premises Licence Holder

Mr Steve Nation – Premises Licence Holder

Mr Peter Thacker – Designated Premises Supervisor

Responsible Authority

PC Mitch Harvey – West Midlands Police

Ms Jo Till – Environmental Health (Commercial)

The Chair, Councillor Alan Bolshaw, introduced the parties and outlined the purpose of and the procedure to be followed at the meeting.

Rob Edge, Section Leader (Licensing) outlined the report submitted to the meeting, which had been circulated to the parties in advance. An expedited review had been held on 9 March 2016 to determine the interim steps to be applied to the premises licence pending a full review hearing. The Licensing Sub-Committee had resolved to suspend the premises licence as the interim step. Mr Edge stated that in addition to the report, the current premises licence was attached as Appendix 1, a location plan was provided as Appendix 2, Appendix 3 contained the expedited review application, and representations from the Licensing Authority and Environmental Health (Commercial) were provided in Appendices 4 and 5 respectively.

At this point, the Counsel for the Premises Licence Holder, Mr Coen, sought clarification on whether the documentation that he had submitted in accordance of the requirements of Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005 had been received. It was confirmed that this, together with documentation provided by West Midlands Police, had been circulated to the Sub-Committee. Furthermore, petitions and other supportive documents had been submitted by the local community, although it was noted these had been received after the expiry of the representation period.

PC Harvey outlined the review application, as contained in Appendix 3 to the report. He drew attention to the police operation on 4 March 2016, instigated on the basis of intelligence received, and at which a warrant had been executed in accordance with S23 of the Misuse of Drugs Act. Those persons present at the premises had been searched and detained, with four persons being arrested (including two members of staff from The Talisman) and one person being issued with a street caution. The Sub-Committee was reminded of the items seized during the operation. These were two cardboard boxes containing herbal cannabis, a large rock of cocaine, digital weighing scales, two sealed bags containing cocaine, one sealed bag of cannabis, and a number of discarded and empty bags that had contained these substances that were found on the floor in the bar and male toilets. PC Harvey asserted that it was believed a criminal culture had established itself at The Talisman and was unchallenged owing to the ill health of the Designated Premises Holder (DPS), Mr Peter Thacker. The police were satisfied that Mr Thacker was no longer capable of being the DPS and upholding the licensing objectives so that the premises was rendered vulnerable to criminal elements. Therefore, West Midlands Police's recommendations were that the Sub-Committee should consider the implementation of the proposed conditions to The Talisman's licence and the removal of Mr Thacker as the DPS.

Having heard the representations from the Police, questions were invited. PC Harvey responded to questions from the Sub-Committee and other parties as follows:

- With reference to Councillor Bolshaw's question on whether the incident represented an aberration or was part of a longer-term trend, PC Harvey stated that Mr Thacker had been a good influence on the pub but ill health had reduced his involvement. Moreover, other members of The Talisman's staff had been weak and had not challenged individuals and behaviour when necessary. Accordingly, a DPS with a more robust character was required.
- Further to a question from Councillor Inston on the time period over which intelligence had been amassed, PC Harvey recounted that it had been

gathered over 18 months but the volume of intelligence had increased significantly over the previous seven to eight months.

- In responding to Councillor Bolshaw's question of whether the situation at The Talisman was salvageable, PC Harvey stated that it was provided there was partnership working between Punch Taverns, the staff of The Talisman and the Police. He added that several individuals had been responsible for the present situation and that as part of any conditions to be agreed, these persons should be banned from The Talisman.
- In considered Councillor Inston's enquiry as to whether the problems had been affected by an influx of problematic customers owing to the closure of other pubs and venues in the area, PC Harvey confirmed that this was not the case. He noted that several criminal gangs were operating in Wolverhampton but that in the case of The Talisman, it was a localised matter.
- Following Mr Coen's question, on whether anyone had been witnessed smoking at the premises during the Police operation on 4 March 2016, PC Harvey stated that no one had been found in the physical act of smoking.
- Having regard to Mr Coen's question on whether any persons present at The Talisman on 4 March 2016 had been found to be engaged in drug dealing activity, PC Harvey confirmed that they had not.
- Mr Coen referred to the discovery by the Police of cannabis in one of the bedrooms at the premises, the ownership of this drug being denied by Mr Thacker. He advised that the identity of a third party allegedly connected with this matter had become known to the Police recently. PC Harvey confirmed to the Sub-Committee that whilst these details were now known via a solicitor, Mr Thacker remained on bail and the matter was still being progressed.
- Following some discussion of the conditions recommended by the Police and the necessity of changing the DPS, PC Harvey concurred with Mr Coen that these measures would assist in the process of restoring The Talisman's standing, and he emphasised the importance of engagement with the Police to ensure this.

At this juncture, Mr Coen commenced making his representations and expressed gratitude to the officers of West Midlands Police for their assistance and engagement. He reminded the Sub-Committee that during Mr Thacker's 21 year tenure as the DPS of The Talisman there had been few occasions for the Police to visit the premises, with the last being 12 years previously. Furthermore, until now there had been no issues to necessitate a review hearing. Mr Coen noted that he had reviewed Punch Tavern's records, including the previous correspondence with the Licensing Authority in relation to The Talisman, and stated that he was reassured by this.

Mr Coen referred to Mr Thacker's recent ill health, as he had been diagnosed with prostate cancer, and the impact of this on his capacity to fulfil the role of DPS. The Sub-Committee was informed that Mr Thacker had agreed to cease being DPS for The Talisman, at least for a period of time. Steps had been taken to appoint a replacement DPS but the Police had reservations concerning the background of the person initially considered. A further person had been identified and the Police were satisfied with their credentials to perform the duties of DPS at The Talisman.

The measures necessary to ensure adherence to the licensing objectives were outlined by Mr Coen. These were contained in the representations from West

Midlands Police, which had been circulated to the Sub-Committee prior to the meeting. These included improvements to the CCTV system and a requirement to have at least one member of staff on duty at all times, thereby ensuring that should the Police require video footage, it could be provided efficiently. Improved signage would be installed and physical changes to the premises to improve security and prevent unauthorised persons accessing the upstairs residential area would be undertaken. Compliance with Challenge 25, the keeping of a log book and a refusals book and the appropriate training of staff would also be undertaken by Punch Taverns.

Mr Coen speculated that having regard to the finding of the discarded self-seal bags containing drugs and similar empty bags, as had been found by the Police at The Talisman, it would be possible to find such items in many other venues. He emphasised that there had been no visible drug-dealing activity at The Talisman at the time of the Police operation on 4 March 2016.

Further to the discovery of alleged contraband items and non-duty alcohol, Mr Coen asserted that Mr Thacker had brought the cigarettes and tobacco back with him from holidays in Spain. It was maintained that the 60 bottles of vodka found at the premises had been purchased from Asda and that receipts were available to verify this.

Mr Coen pointed out that there was considerable strength of community feeling, underlined by a demonstration attended by 300 people that was featured in the local media coverage. He noted that no negative representations had been received from any persons residing in proximity to The Talisman.

Having heard the representations from Mr Coen, questions were invited. Responses to questions from the Sub-Committee and other parties were as follows:

- Councillor Claymore enquired why similar measures to those proposed had not been introduced previously, with Mr Coen's response being that there had not been an awareness of the problems. The Premises Licence Holder, Mr Nation, reiterated the point that Mr Thacker had been DPS for 21 years and his recent ill health had impaired his ability to deal with undesirable persons who had sought to exploit this situation. He felt that Mr Thacker was worthy of a second chance and deserved support. Mr Nation maintained that the measures under consideration would prevent The Talisman from receiving unfavourable media attention in future.
- Councillor Inston sought clarification on which of The Talisman's employees would be leaving or staying. Mr Nation confirmed that of the six members of bar staff, one had been dismissed summarily and another person was to be dismissed.
- Councillor Bolshaw articulated some reservations concerning the replacement of Mr Thacker by another DPS. He sought the reassurance that with a new DPS to be appointed, Mr Thacker would not intervene in the daily running of The Talisman, especially given his continued occupancy of the residential accommodation at the premises. Mr Coen recounted that Mr Thacker had always protested his innocence and, with a third person having come forward in connection with the cannabis found in the residential accommodation, he expected Mr Thacker to be exonerated. As the Police had not expressed

concerns about the person now proposed as DPS, and who had experience in managing several other premises successfully, Mr Coen was confident that The Talisman would operate to the required standards. Mr Thacker informed the Sub-Committee that he would not interfere in any way with the management of The Talisman and he believed that the community would be behind the new DPS. Mr Nation highlighted the possibility that Mr Thacker might retire from his role but his health prognosis suggested that he would return to fitness and be able to resume the role of DPS at some future time.

- Mr Nation pointed out that there were five persons who would be banned from The Talisman. This would include the front and rear of the premises, with the new CCTV system serving as a deterrent.
- Mr Coen indicated that the new CCTV system would come into operation by 11 April 2016. Training for employees would also be organised by the new DPS in conjunction with Punch Taverns. Mr Nation confirmed that there were in-house resources for training staff in the techniques necessary for challenging members of the public in such circumstances. Councillor Bolshaw asked whether there was an assessment aspect to this training, so that there could be some assurance that the employees had been sufficiently prepared by this training. Mr Nation remarked that this was not the case, and Councillor Bolshaw suggested that its incorporation should be considered by Punch Taverns. Further to a request from Mr Edge, Mr Nation agreed to forward a copy of the training package to the Licensing Authority in order for it to be placed on The Talisman's file.
- Mr Edge also requested that with respect to the signage to be erected at The Talisman, the proposed wording should be agreed with the Police and forwarded to the Licensing Authority. He sought confirmation of whether any of the proposed alterations to the structure of the premises would affect the plans and Mr Nation indicated that this was not the case.
- Further to a question from Councillor Inston, Mr Nation stated that it was not deemed necessary to employ staff on the door at The Talisman. This view was shared by PC Harvey, who advised that there would be regular dialogue between the new DPS and West Midlands Police.

Jo Till, Compliance Officer – Environmental Health (Commercial), informed the Sub-Committee that she had been present during the Police operation on 4 March 2016. She reported that when she entered the premises, there was a strong odour of cannabis that was suggestive that it had been smoked recently. Miss Till confirmed that a compliance questionnaire had been completed with The Talisman's bar staff and checks carried out. However, she stated that the responses from the staff had not been satisfactory, that a refusals book had not been kept and that this should be a licence condition.

Having heard the representations from Ms Till, questions were invited. Responses to questions from the Sub-Committee and other parties were as follows:

- Further to a question from Councillor Bolshaw, Ms Till emphasised the importance of The Talisman's bar staff receiving appropriate training and updating.
- Mr Coen enquired whether any of the customers on the premises at this time were underage, with Ms Till's response being that there did not appear to be any underage persons at The Talisman.

At this juncture, all parties were afforded an opportunity to make a closing statement.

4 Exclusion of press and public

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business as it involved the likely disclosure of exempt information falling within paragraph 3 of Schedule 12A to the Act relating to the business affairs of particular persons.

5 Deliberations and decision

The Sub-Committee discussed the issues which had been raised during consideration of the application.

6 Re-admission of press and public

The parties returned to the meeting and were advised of the Sub-Committee's decision as follows.

7 Announcement of decision

The parties returned to the meeting and Sarah Hardwick, Solicitor, read out the decision of the Sub-Committee as follows:

At this hearing to review the premises licence, the Licensing Sub-Committee has listened carefully to all representations made by the persons who have spoken at this hearing, has considered all the evidence presented and found the following facts:

The Sub-Committee has heard from the West Midlands Police that:

1. Following receipt of intelligence indicating that drug-dealing activity was occurring at the premises together with organised crime, a police operation took place at the premises on 4 March 2016.
2. During the operation, drugs and equipment associated with drugs were discovered on the premises and four persons were arrested.
3. As a result, the West Midlands Police applied to the Licensing Authority for an Expedited Summary Review of the premises licence, having provided a certificate under Section 53 A (1) (B) of the Licensing Act 2003, stating that the premises were associated with serious crime. The hearing took place on 9 March 2016. Due to the serious nature of the matter, the Licensing Sub-Committee determined to suspend the premises licence with immediate effect pending the full review hearing in accordance with Section 53 of the Licensing Act 2003. This is the reason that the Licensing Sub-Committee has been convened today.
4. It is now confirmed that a criminal investigation is continuing and a criminal culture had been growing at the premises due to the ill health of Mr Peter Thacker, the current Designated Premises Supervisor (DPS).

5. It is further confirmed that Mr Thacker is no longer capable of being the DPS and should be removed.
6. That conditions have been agreed between the West Midlands Police and the premises, and the Police believe the action to be taken by the Licensing Authority should be to remove Mr Thacker as DPS and attach the agreed conditions to the licence in place of those currently on the licence relating to crime and disorder.

Elaine Moreton, Licensing Authority, is not in attendance; however, the Sub-Committee are advised that she supports the position of the police.

The Sub-Committee has heard from Jo Till, Environmental Health (Commercial), that:

1. When she attended the premises on 4 March 2016, there was a pungent odour of cannabis.
2. There were issues with licensing compliance.
3. Environmental Health are satisfied that if the conditions proposed by West Midlands Police are attached to the licence there will be no further concern.

The Sub-Committee has heard from the Premises Licence Holder and his legal representative that:

1. There have been issues at the premises. Regrettably, due to the ill health of Mr Thacker, who has successfully run the premises for 21 years, his authority at the premises has been undermined and management of the premises has been effected.
2. There has been considerable liaison with West Midlands Police. It is agreed that Mr Thacker should be removed as DPS. A replacement has been found, who is acceptable to the police.
3. The premises agree the conditions proposed by West Midlands Police and are implementing changes.

Based upon the above and having regard to the application and relevant representations made, the Sub-Committee has decided to remove Mr Thacker as DPS and to modify the conditions of the premises licence in accordance with Section 53 C (3) (a) of the Licensing Act 2003 in the following terms:

1. The conditions agreed between West Midlands Police and the premises attached hereto be added to the licence and the conditions under the heading 'Crime and Disorder' on the current licence should be removed.

In accordance with Section 53 C (2) (c) of the Licensing Act 2003, the interim steps put in place following the hearing on 9 March 2016 will cease to have effect from the coming into effect of the decision on review today. The decision following review does not take effect until the end of the period allowed for appeal or until disposal of the appeal.

The above action is considered appropriate and proportionate for the promotion of the prevention of crime and disorder licensing objectives.

An appeal may be made to the Magistrates' Court against the decision, by the applicant, the holder of the premises licence, or any other person who made a relevant representation within 21 days from the date of receipt of written notice of this decision.

**The Talisman, Wildtree Avenue, Low Hill, Wolverhampton, WV10 8LL
OPERATING SCHEDULE –
ADDITIONS/AMENDMENTS – SUPPLEMENT TO PREMISES LICENCE**

THE PREVENTION OF CRIME & DISORDER

- A CCTV system with recording equipment shall be installed and maintained at the premises.
- CCTV will cover entry and exit points of the premises and all areas where alcohol/money is served/taken and all areas to where public have access and the front and rear car parks of the premises.
- Images / recordings to be downloaded in a suitable format and provided to any member of a Responsible Authority upon request and without any undue delay.
- Images and recordings must be of evidential quality, must indicate the correct time and date and be kept for at least 30 days.
- All staff to be trained to use the CCTV system and at least one member of staff to be on duty, who is trained to download the systems images should any member of a Responsible Authority make a request.

An incident log must be maintained at the premises and a written record of any incident that occurs at the premises must be appropriately recorded. Where it is deemed appropriate, the incident must be reported to West Midlands Police. Incident log book to be produced to a member of a Responsible Authority upon request.

To ensure compliance with Challenge 25, a 'refusals book' will be utilised where any sale of alcohol is refused to persons who present themselves to be under

age.

New signage indicating “drug use will not be tolerated and will be reported to the Police” will be prominently displayed around the premises.

West Midlands Police can provide the premises with names of individuals who, based on intelligence and risk, will be permanently excluded from the premises. Any breaches of this exclusion, will be reported to the Police

THE PROTECTION OF CHILDREN FROM HARM

- All staff will be trained in Challenge 25; all appropriate ID checks will be undertaken by all staff to ensure no sale of alcohol is made to underage persons.
- All staff to receive training and refresher training every 6 months on their responsibilities with regard to licensing legislation. Training to be documented and shown to member of a Responsible Authority upon request.
- Acceptable forms of ID are; photo driving licence, passport or PASS approved card.

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Licensing Committee

15 June 2016

Report title	Health & Safety Statutory Plan 2016/17	
Wards affected	All	
Accountable director	Tim Johnson, Place	
Originating service	Public Protection	
Accountable employee(s)	Andy Jervis Tel Email	Head of Public Protection 01902 551261 andy.jervis@wolverhampton.gov.uk
Report to be/has been considered by	TBC	

Recommendation(s) for action or decision:

The Committee is recommended to:

Approve the proposed Health & Safety Statutory Plan 2016/17.

1.0 Purpose

- 1.1 To inform the Licensing Committee of the legal requirement to produce a Health & Safety Statutory Plan.
- 1.2 To remind Licensing Committee of the impact of the restructure of Regulatory Services in October 2014 (recently renamed Public Protection) and the reduction in resources allocated to the delivery of the Health and Safety service.
- 1.3.1 To seek Licensing Committee approval for the 2016/17 Health and Safety Statutory Plan. The proposed plan is attached at appendix A.

2.0 Background

- 2.1 The Council is responsible for protecting the health, safety and welfare of people at work in Wolverhampton and to safeguard others, principally members of the public, who may

be exposed to risks from the way that work is carried out; either in Wolverhampton, or by employers whose managerial control is based in Wolverhampton. This responsibility is shared with the Health and Safety Executive and the Care Quality Commission. The Health and Safety (Enforcing Authority) Regulations 1998 determine who is responsible for whom at what premises.

- 2.2 Traditionally Local Authorities would have delivered their responsibilities through thorough proactive inspection programmes as well as reacting to reports of near misses, accidents and complaints of poor health and safety standards. Over recent years following changes in guidance, 'LAC67/2 – Targeting Local Authority Interventions', from the HSE, proactive inspection has been reduced to only the highest risk businesses. This risk is assessed on; confidence in management, safety performance, health performance and welfare needs compliance. Other businesses would only be contacted proactively to provide advice and education. They could still receive reactive inspection following reports of near misses, accidents and complaints of poor health and safety standards.
- 2.3 The HSE provides the list of 'Activities/ Sectors for proactive inspection by LA's', only those sectors listed can be inspected and the inspection limited to the activities detailed.
- 2.4 Further, under Section 108 of the Deregulation Act 2015 the Local Authority is required to consider the promotion of economic growth when exercising regulatory functions. In particular; regulatory action is only taken when needed and any action taken must be proportionate.
- 2.5 In October 2014 Regulatory Services (recently renamed Public Protection) underwent a restructure to meet savings requirements. Fifty per cent of management and thirty three per cent of operational staff resources were lost. Also many of the most experienced staff left. This has had a significant impact on the resources available to deliver health and safety across Wolverhampton. Public Protection now allocates approximately two full time equivalent officers to health and Safety.
- 2.6 The Health and Safety Statutory Plan is a requirement under the 'National Local Authority Enforcement Code for Health and Safety at Work'. This code is mandatory guidance issued by the Health and Safety Executive under Section 18 of the Health and Safety at Work Etc. Act 1974. The Health and Safety Statutory Plan is one of two statutory service plans implemented by Public Protection. The Health and Safety Statutory Plan is a commitment to delivering the service including the resources that will be allocated and creates a standard against which the service can be audited.
- 2.7 The Health and Safety Statutory Plan for 2016/17 details resources allocated, priority areas of activity and a reduced number of proactive inspections.
- 3.0 Progress, options, discussion, etc.**
- 3.1 It is requested that the Licensing Committee approve the 2016/17 Health and Safety Statutory Plan.

4.0 Financial implications

- 4.1 The overall resource provision required to deliver the requirements of the plan fall within the City Environment portfolio.
- 4.2 The approved budget for Public Protection 2016/17 is 2.3 million, which includes the provision of the Health and Safety service. It should be recognised a wide range of other non-health and safety related services are delivered within this budgetary provision. The level of resource available for the provision of health and safety activities covered by the statutory plan is currently in the region of £100,000. [TK/24052016/K]

5.0 Legal implications

- 5.1 It is a legal requirement to produce a Health and Safety Statutory Plan.
- 5.2 Health and safety enforcement is a function which must not be the responsibility of an authority's executive. Functions under any of the "relevant statutory provisions" within the meaning of Part 1 of the Health and Safety at Work etc Act 1974, fall to the Licensing Committee to approve.
- 5.3 Under Section 18 of the Health and Safety at Work etc Act 1974 the Authority is required to make "adequate arrangements" for the enforcement of health and safety within the City. The production of an annual service plan is a mandatory requirement of the guidance to this obligation. The endorsement of the plan is the responsibility of the Licensing Committee.
- 5.4 Failure to produce or deliver the statutory plan may result in measure being taken against the authority. [[SH/26052016/O](#)]

6.0 Equalities implications

- 6.1 The Health and Safety Statutory Plan aligns the support and enforcement activities of Regulatory Services with HSE guidance, all activity is intelligence/ risk based and activity is only undertaken where necessary.
- 6.2 All regulatory activity is undertaken in accordance with the Black Country Regulators Operating Framework, previously approved by Cabinet.
- 6.3 Any prosecutions are taken in accordance with the Home Office Code for Crown Prosecutors, which includes an evidential and public interest test. The evidential test is undertaken by Legal Services and final approval for prosecution is via the Head of Service.
- 6.4 There will be no adverse equality implications.

7.0 Environmental implications

- 7.1 A significant proportion of the activities and functions undertaken are intended to protect and enhance Wolverhampton's natural, commercial and built environments.
- 7.2 Proportionate, appropriate and focussed regulation can have significant positive impacts on the environmental amenity of buildings, land and entire neighbourhoods.

8.0 Schedule of background papers

- 8.1 None.

PUBLIC PROTECTION

**HEALTH AND SAFETY
STATUTORY PLAN**

2016/17

City of Wolverhampton Council

Health and Safety Statutory Service Plan 2016 / 2017

Introduction

The Health and Safety Statutory Plan is one of two related statutory service delivery plans implemented by Public Protection. The plans formalise the statutory obligations of the different enforcement services discharged.

The Health and Safety Service Plan is a requirement of mandatory guidance issued under section 18 of The Health and Safety at Work etc. Act 1974. This plan serves as a quality assured framework for the delivery of the service.

Should you have any comments or views with respect to the plan please forward these to the Service Director for City Environment Ross Cook.

Councillor Alan Bolshaw
Chair of the Licensing Committee

Ross Cook
Service Director, City Environment

City of Wolverhampton Council

HEALTH AND SAFETY STATUTORY SERVICE PLAN 2016/2017

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City of Wolverhampton Council

Health and Safety Statutory Service Plan 2016/2017

1.0 Information on the service, Its Aims and Objectives.

Aims

1. To protect the health, safety and welfare of people at work in Wolverhampton and to safeguard others, principally members of the public, who may be exposed to risks from the way that work is carried out; either in Wolverhampton, or by employers whose managerial control is based in Wolverhampton.

2. In accordance with Health and Safety Executive (HSE) guidance, to reduce risks and protect people.

Objectives

- To maintain a balance of enforcement which achieves optimum use of resources.
- To maintain a fully trained and competent inspectorate.
- To carry out enforcement in a transparent and proportionate manner.
- To maintain liaison arrangements and The Strategic Partnership with HSE and other West Midlands Authorities through the West Midlands Health and Safety Liaison Group.
- To work in collaboration with other regulatory and 'health' agencies such as Public Health England (PHE) and the Care Quality Commission
- To adhere to guidance / direction issued by Health and Safety Executive Local Authority Liaison Committee (HELA), Health and Safety Executive, Local Authority Unit, Chartered Institute of Environmental Health and Local Government Association.
- To support the Lead Authority / Primary Authority Principle.
- To respond to complaints, requests for service, accidents, incidents/reports of ill health and dangerous occurrences.
- To make elected Councillors aware of the Statutory Plan, its contents and how the service will be discharged.
- To implement through the Public Protection Work Programme the general aims and objectives of the Statutory Plan and to discharge those particular

duties detailed within this document.

- To ensure all actions and decisions taken by officers and Councillors are done so in an open and transparent fashion and with due regard to the Council's policies on equality and the principles of fairness and natural justice.
- To promote access to the Regulatory Challenge Panel in the event of a regulatory dispute.

1.1 Service Statement

Each Service is required to produce a Service Statement. The Service Statement for Public Protection is detailed below.

Description of service

Public Protection deliver the traditionally functions of Environmental Health and Trading Standards. The service is also responsible for the wider protection of public health and property. On average we receive 25,000 requests for service in each year. In addition to dealing with complaints we carry out programmed regulation of shops and businesses in Wolverhampton.

Public Protection enforces the law through a programme of interventions (inspections) and investigations in respect of food and other commercial and industrial businesses, and the provision of information and advice to businesses, customers and other consumers.

1.2 Authority profile

Background

Authority Profile (Based on 2011 Census)

The City of Wolverhampton has a population of 249,500 comprising approximately 123,400 males and 126,100 females. The ethnic breakdown of the population is:

White British 64.5%

White Non-British 3.5%

Mixed 5.1%

Asian 18.1%

Black 6.9%

"Other" ethnicity 1.9%

95,000 individuals, including self-employed, either live in or travel to Wolverhampton for paid employment, 73,180 of which are full time workers

104,200 local people are either in paid employment or looking for work. Wolverhampton is in the 6% most deprived areas in the country and the levels of deprivation in the City continue to rise. About 30.2% (15,000) children live in poverty and life expectancy for both men and women is lower than the England average.

1.3 Links to Corporate Issues

In order to achieve continuous service improvement and strive for performance capable of achieving a sustainable future which reflects the political priorities and

values of partners within Wolverhampton, it is important that the work programme links itself visibly to the overall corporate objectives.

Public Protection produces two service delivery plans detailing the work of the service. They cover the work of the Food and Health and Safety services.

Approval and Review Process

The statutory Service Plans are subject to approval and scrutiny by the Head of Service, Service Director and Councillors and this will be the case with the Health and Safety Service Plan.

Progress will be monitored monthly by the Public Protection management Team.

2.0 The means by which the service is discharged

2.1 Organisational Structure

The regulating functions of the Council are discharged, either through the Executive or, in the case of matters which have a quasi-judicial footing such as licensing, the Licensing Committee. The Government has determined that matters relating to the discharge of the health and safety enforcement functions be overseen by a body other than the Executive. Within Wolverhampton this is the Licensing Committee.

2.2 Scope of the Service

In relation to health and safety Public Protection delivers;

- Programmed proactive inspections of high risk premises for health and safety purposes.
- Other interventions with dutyholders.
- Investigation of accidents arising at work within the City.
- Investigation of dangerous occurrences arising at work within the City.
- Investigation of occupational diseases arising at work within the City.
- Response to complaints/requests for service from businesses/members of the public.
- Expert assistance and advice to businesses and public.
- Support to the West Midlands Health and Safety Liaison Group.
- Commitment to the Lead Authority Partnership Scheme (LAPS) Primary Authority Partnership Scheme (PAP) and commitment to the HSE/LA Strategic Partnership and its priorities.
- Education to businesses and the public.
- The registration of premises in respect of acupuncture, cosmetic skin piercing, tattooing, electrolysis, and the operation of cooling towers.
- Representation at the Molineux Stadium Safety Advisory Group to ensure the satisfactory implementation of the General Safety Certificate.
- Representation of the enforcing authority on the Council's Events Safety Group.
- Liaison with neighbouring local authorities and other agencies such as Public Health England (PHE) on Legionella.
- Enforcement of safety certificates relating to all four regulated sports grounds in Wolverhampton.

- Enforcement of the Health Act 2006

2.3 Demands on Health and Safety Service

In accordance with the Health and Safety (Enforcing Authority) Regulations 1998, local authorities are responsible for the enforcement of health and safety in certain categories of premises. Depending upon the attendant risks associated with the work activities at these premises they are allocated a priority band. The priority band determines the frequency of inspections/ types of intervention at premises.

During 2011 a joint statement was issued by the Health and Safety Executive (HSE) and the Local Government Group. It was intended to assist LA regulators in determining the use of proactive interventions to achieve both improved health and safety outcomes for each locality and the Government's regulatory reform agenda.

Under Government reforms announced in its publication '*Good Health and Safety, Good for Everyone*', protecting people in the workplace and wider society still remains a key priority. The Government's aims for health and safety reform include reducing the inspection burden on business alongside focussing on better health and safety outcomes. Refining the intervention strategies for businesses by further improving the targeting of relevant and effective interventions and preserving inspection for higher risk premises and issues should lead to a reduced number of proactive inspections. Reducing the aggregate numbers of proactive inspections by a third across all local authorities will free up capacity for more effective outcome focussed interventions.

Priority Programme

In conjunction with the HSE priority programme, which identifies those areas of national priority within health and safety and focuses upon the areas that are most likely to bring about an improvement in standards, the programme is a 3 year initiative aimed at influencing the health of the nation by improving areas of work most likely to contribute to ill health.

Strategic Partnerships

The HSE and Local Authority Representative Bodies have recently published a Statement of Commitment which sets out the joint commitment to ensure provision of adequate standards of partnership working in order to prevent death, injury and ill health of those at work and those affected by work activities.

Accidents and Requests for Service

In addition to the programmed work the Service receives approximately 100 requests for health and safety service and approx. 120 accident /disease/ dangerous occurrence notifications a year.

2.4 Access to the Health and Safety Service

Public Protection is based at the Civic Centre in Wolverhampton City centre. The office is staffed Monday to Friday (except statutory holiday days) between the hours of 8.30 am, and 5.00 pm. The full range of services provided is accessible during these periods. However, when work activities enforced by the service are taking place outside these hours, officers will be available to fulfil required functions.

Customer Services

In August 2004, as one of the responses to the Comprehensive Performance Assessment (CPA) report, the Council created City Direct (now Customer Services), a single access point enabling customers to contact the Council via telephone or e-mail between the hours of 8am – 6pm Monday to Friday and 9am – 2pm Saturday.

Outside office hours, a work related death, major incident or dangerous occurrence will be referred to the service through the Council's emergency control room. A protocol of understanding also exists with the police, HSE and the Crown Prosecution Service in circumstances where there is a work related death.

2.5 West Midlands Health and Safety Liaison Group

The Health and Safety Executive/Local Authority Enforcement Liaison Committee (HELA) was created in 1975 to promote consistency of enforcement throughout and between Local Authorities and the Health and Safety Executive. In 1982 the Local Authority Unit (LAU) was created to specifically co-ordinate liaison between the Health and Safety Executive and Local Authorities. Part of this liaison is carried out through the creation of local liaison groups which include the HSE Local Enforcement Liaison Officer (ELO). The West Midlands Health and Safety Liaison Group (WMHSLG) is chaired by the Chief Environmental Services Officer for Birmingham C. C.

The group co-ordinates the West Midlands Metropolitan authorities approach to enforcement via the production of an annual business plan and the adoption of common practices, policies and procedures.

The group also organises regular training programmes for enforcement officers.

2.6 Investigation Skills Training

One of the cornerstones of the work of the West Midlands Health and Safety Liaison Group is the promotion of consistency throughout the West Midlands authorities by organising Investigation Skills Workshops. The authority is committed to attending at least one health and safety Investigation Skills Workshop per year.

3.0 Delivery in Accordance with Section 18 HASWA

3.1 Inspection Programme

Of the premises in Wolverhampton the Local Authority is liable for the enforcement of the Health and Safety at Work Act 1974 at approximately 2600 premises, approximately 225 fall into the priority rating bands A to B2. These represent the highest health and safety risk within the City. Many involve complex processes or dangerous equipment and plant. The inspection programme relating to these is detailed below. The remaining c.2375 category 'C' premises are a combination of low risk premises such as small shops or offices where inspection would not be an efficient use of resources and premises which are currently low risk but consist of light to medium industrial type units, where although the current occupier is low risk, the premises could accommodate different/higher risk activities.

3.2 Priority Planning Health and Safety Inspections

Inspection Frequencies LAC 67/2

This guidance is divided in to two parts: **Part One - Risk Rating** and **Part Two - Frequency of Intervention**. The guidance requires a shift of focus in terms of interventions planning by LAs and their officers. It reflects the HSE Board's new strategy "**The Health and Safety of Great Britain: Be part of the solution**" and sets out a new approach to developing effective health and safety regulatory interventions justified by risk. This is also mirrored through the reactive intervention approach via the **Incident Selection Criteria (LAC 22/13)**. The two systems should be used in conjunction to enable enforcing authorities to focus and optimise impact in areas of greatest risk. To enable effective operation of interventions the enforcing authority should provide sufficient resources to deliver an efficient and effective service in line with the Section 18 Capacity Toolkit

New Approach

For proactive work, priority should be given to the inspection of those premises and activities that, after assessment, are rated as category 'A'. The aim of the inspection must be to improve compliance and, where significant breaches continue to exist, enforcement actions should be considered. Topic based interventions, partnership projects, joint working with other regulators, contributions to local and national policy development and other non-inspection interventions can be undertaken with premises that fall into any category. It is expected that category "C" premises would normally fall outside of any inspection-based intervention because of their low risk.

The new rating process consists of evaluating 4 different elements as they relate to a work activity. A rating value is then assigned to each of these 4 elements:

- Confidence in management
- Safety performance
- Health performance
- Welfare compliance gap.

Intervention type Table

Description	Category	Rating Score	Intervention Types
Highest Risk	A	Score of 5 or 6 on any risk	Suitable for proactive inspections until risks are adequately managed such that the premise can be re-categorised; Accident/complaint investigation
	B1	Score of 4 on any risk	Not suitable for proactive inspection but all other interventions to be considered. Accident/complaint investigation
	B2	Score of 3 on any risk	Not suitable for proactive inspection; consider the use of other interventions only where necessary based on national and local information. Accident/complaint investigation
Lowest Risk	C	No score greater than 2	Use non-inspection intervention methods/techniques Accident/complaint investigation

Lord Young, Löfstedt, Red Tape Challenge, Joint Statement of LGG and HSE

A key priority for the Coalition Government is to ease the burden of bureaucracy on business as part of the Government's goal of making Britain more growth focused. The Government is committed to transforming the way in which regulation is delivered at the frontline and an important part of the Government's deregulatory agenda is to change the culture of health and safety.

For the Government, the first step in this process of changing the culture of health and safety was the review of the operation of health and safety laws and the growth of the compensation culture - commissioned by the Prime Minister – and the subsequent publication of the report “Common Sense, Common Safety”.

In October 2010 the Government accepted all of the report's recommendations, which included measures for improving the public perception of health and safety and reducing the burden of bureaucracy on businesses. Two specific recommendations resulted in: a) Joint Health and Safety Executive (HSE), Local Government Regulation (LGR) and Food Standards Agency (FSA) guidance on “Combining Food Safety and Health and Safety Inspections.” and b) A strengthening of the Primary Authority (PA) inspection plans with an enhanced role for HSE – whereby HSE will assist the Better Regulation Delivery Office (BRDO) in the development of inspection plans; and will develop sector intervention strategies for large multi-site retailers to assist individual PAs to develop inspection plans which other Local Authorities (LAs) must follow.

In March 2011, the Minister for Employment announced the next steps in the Government's plans for the reform of the health and safety system with the publication of "Good Health and Safety, Good for Everyone".

Under the reforms protecting people in the workplace and in society remains a key priority but the focus of the health and safety regime will move to a lighter touch approach concentrating on higher risk industries and on tackling serious breaches of the rules.

As a result of this Government's reforms HSE and LAs are required to reduce the number of inspections carried out; to have greater targeting where proactive inspections continue; and to increase information provision to small businesses in a form that is both accessible and relevant to their needs.

In May 2011, Local Government Group (LGG) and HSE published joint guidance - "Reducing Proactive Inspections"

This document provided guidance for LAs to determine their proactive interventions with flexibility to deliver local and national health and safety priorities within the Government's overall policy framework

Accordingly, the frequency of intervention for 2016/ 2017 is detailed in the table below, only Category "A" rated premises will receive a proactive inspection in line with coalition policy, guidance on the decision to carry out a proactive inspection is contained below in the **LA Inspection Wolverhampton Guidelines**.

Priority Rating	Visit Frequency	No of Premises (2016/17)
A	Proactive Inspection	2
B1	Not Proactive Inspection	58
B2	Not Proactive Inspection	166
C	Other intervention strategies and reactive strategies	C2375

<u>LA</u>	<u>Inspection Wolverhampton Guidelines</u>	
	In focussing this aspect of our work on the areas of greatest risk, we will undertake a programme of interventions in those industries, and with those employers, which present significant risk. Inspection is an appropriate intervention that improves the control of the identified risk. It is important for the reasons expressed in paragraph 3 that we are in a position to both monitor and measure our numbers of inspection visits from this year onwards. To enable us to do this we will reclassify our inspections.	
I.	Inspection action following Investigation/topic visit :	
	Is any inspection undertaken immediately following an investigation (RIDDOR or complaint) or immediately following	

	a single topic visit (currently, inspection of LPG installations and where Legionella risks are uncontrolled) where the inspector judges it is necessary to further test health and safety risk management arrangements;	
II.	Inspection action of a High Risk Sector :	
	<p>This is any inspection of high risk areas inclusion for the 2016/17 plan are:</p> <ul style="list-style-type: none"> • Premises with cooling towers/evaporative condensers, risk of legionella infection. • High volume warehousing / distribution including some processing, risk of being struck by vehicle, crushing, falls from height, cutting injuries. • Large scale public events, risks due to large crowd movements. • Commercial premises cooking on solid fuel, risk of carbon monoxide poisoning. • Premises with vulnerable working conditions, (lone, night working, cash handling, eg betting shops, risk of violence to employees. 	
III.	Inspection action of a Poor Performer :	
	<p>This is an inspection undertaken as a result of intelligence indicating poor health and safety performers^{1[1]} such as Cat A premises, intelligence driven visits (e.g. Accidents, receipt of AIRs, credible complaints, intelligence from other regulators, economic opportunity, culture of recklessness – (See Annex 1). In this context, the following extract from the Ministerial statement on 21 March 2011 is relevant</p> <p>‘No industrial areas will be exempted from maintaining good standards of health and safety ‘The Employers who do not take protection of their employees etc seriously will still face intervention by HSE’</p>	
IV.	Joint Initiatives with Industry	
	Are those visits with industry to promote safe and healthy workplaces (eg, partnership with National Association of Steel Service Centers) (NASS).	
V.	Supply Chain Interventions :	
	Includes procuring services and compliance with EU law etc.	
VI.	Check Visits :	

	It is recognised that both Joint Initiatives and Supply Chain Interventions may not always involve an 'inspection'.	

3.3 Priority Programme Delivery

Wolverhampton Delivery

The Priority Programme for 2016/2017 is detailed in the table below and will include the following alternate interventions over and above the programme directed work.

Programme	Hazard	Detail
Health National	Legionella	Maintain register of cooling towers and investigate notifications of legionella.
Health National	Ecoli	Duty Holder advice to council on open farms and visitor centres re E.Coli
Safety National	Being hit by moving vehicles	Carry out proactive inspection of warehouses/distribution for workplace transport safety.
Safety Local	Injury from uncontrolled movement of steel.	Distribute new steel stockholding safe working practice guide to local businesses.
Health National	Respiratory disease	Identify premises for advice and action on prevention of respiratory disease including in-store/craft bakeries, stone wholesalers.
Health National	Carbon monoxide poisoning	Identify premises for advice and action on commercial catering premises for advice on use of solid fuel cooking and the risk of carbon-monoxide poisoning.
Health Local	Asbestos	Review all asbestos works notifications, provide advice/ intervene where necessary.
Safety National	LPG	Continue to respond to and act upon LPG notifications

3.4 Complaint Response

Public Protection receives approximately 100 requests for health and safety service a year ranging from enquiries about health and safety law eg. employers/proprietors duties, through to complaints and "whistle blowers" detailing serious workplace conditions or reports of dangerous practice.

Because of the public's interpretation of the term "health and safety" the service often receives enquiries which are not relevant to the work of the division, eg. people complaining about poor workmanship or housing conditions. Invariably these complainants are given appropriate civil legal advice or referred to the correct service. These enquiries occasionally go unrecorded. Additional enquiries often come from employees for whom the HSE is the enforcing authority, these are either dealt with or, in the event of a complaint, referred to the HSE.

All requests for service are logged and coded onto the Authority (Idox) system.

Selection Criteria and Priorities

Differing responses are available to the service depending on the seriousness of the complaint. Responses may vary from giving advice/guidance over the telephone to an immediate visit by an officer.

When determining the type of response, officers have regard to:

- the potential of the circumstances to cause injury, ill health or death
- the imminence of the risk
- the number/vulnerability of the people at risk
- the history of the undertaking
- the source of the complaint
- the reliability/credibility of information received
- if anonymous, the reason given, eg worker/relative/whistleblower/neighbour
- the availability of resources, if alternative action is deemed appropriate eg defer to next visit
- any HSE priorities, formerly HELA priorities (see section 4.0)
- local issues/priorities, area initiatives
- links to other legal duties eg emergency plan/environmental protection/food safety/ sports grounds
- public perception of risk
- involvement of other agencies eg Police, Fire, Environment Agency, Primary Care Trust, Public Health England.

Response times and targets for requests for service are set out within the work programme. Serious complaints within working hours will normally be responded to immediately. Other complaints will be responded to within target times based on the

above criteria. The availability of officer resources may also be a factor in the speed of response.

3.5 Incident response

The service receives approximately 120 notifications of injuries, disease or dangerous occurrences every year for premises where the Local Authority are the enforcing authority..

Reportable incidents fall into 4 main categories:

- (i) fatalities
- (ii) a major injury to an employee eg broken large bones/amputations, blinding
- (iii) an injury to an employee which prevents them from working for more than 7 days or
- (iv) an injury to a member of the public which meant they had to be taken from the scene of the accident to a hospital for treatment.

In addition to these four main categories are reports of disease and dangerous occurrences, however these are considerably less frequent.

The requirement to report any of these incidents is moderated by the caveat of “arising out of or in connection with the work activity”. It is insufficient for an injury to merely occur on the premises. The way the **work** is being done has to have contributed to the accident. For most accidents involving employees the work activity is a contributing factor, accidents involving members of the public are less often reportable.

Reports must be sent, by the employer, to the appropriate enforcing authority within 10 days, or forthwith for major injuries or fatalities. Accidents can also be reported on line to; www.hse.gov.uk/riddor

3.6 Response Criteria and Priorities

Response times and targets for accidents reported to the service are set out within the work programme. Fatalities and major injuries will normally be responded to immediately unless it is a death from natural causes or unrelated to the work activity.

Not all accidents are investigated as the circumstances are either trivial or unforeseeable. When considering how to respond, regard is had to:

- the actual and potential severity of the event
- the seriousness of the potential breach
- the history of the undertaking

- HSE/ HELA/ local priorities
- the number/vulnerability of people at risk
- the likelihood that intervention will achieve improvement
- the relevance of the event to a wider range of premises
- the reasonable practicability of avoidance
- the foreseeability of the event
- legal factors.

More detailed instructions and quality procedures relating to accident investigations are contained within The West Midlands Health and Safety Liaison Group (WMHSLG) Operational Handbook.

3.7 Enforcement Policy

Wolverhampton and the other six West Midlands Authorities adopted a common health and safety enforcement policy in line with the Health and Safety Commission Enforcement Policy Statement in 1996.

The Policy continues to be reviewed as part of the ongoing West Midlands Health and Safety Liaison Group business plan.

3.8 The National Code, Section 18 Guidance

The Health and Safety Executive (HSE) and Local Authorities (LAs) are the principal Enforcing Authorities (EAs) for Health and Safety at Work etc Act 1974 (HSWA) in Great Britain. The primary purpose of the HSWA is to control risks from work activities. The role of the EAs is to ensure that duty holders manage and control these risks and thus prevent harm to employees and to the public.

To achieve this the HSE publishes from time to time guidance issued under Section 18 of HASWA. The most recent guidance is **National Local Authority Enforcement Code**.

3.9 Future Objectives/Action Plan

The new Section 18 Guidance is called **The National Code** and requires the Authority to go into more detail in areas such as:

- a) Clarifying the *roles and responsibilities* of business, regulators and professional bodies to ensure a shared understanding on the management of risk;
- b) Outlining the *risk-based regulatory approach* that LAs should adopt with reference to the Regulator's Compliance Code, HSE's Enforcement Policy Statement and the need to target relevant and effective interventions that focus on influencing behaviours and

improving the management of risk;

c) Setting out the need for the *training and competence* of LA H&S regulators linked to the authorisation and use of HSWA powers; and

d) Explaining the arrangements for collection and publication of LA data and peer review to give an *assurance on meeting the requirements of this Code*.

3.10 Extra-service Issues

City of Wolverhampton Council's priorities are:

- Stronger economy
- Stronger communities
- Stronger organisation

These aspirations are achieved in part through Regulatory contributions to the Council's strategic goals. This Statutory Plan makes a valuable contribution to those goals.

3.11 Lead Authority Principle

Lead Authority Partnership schemes are concerned with the maintenance of consistency, primarily with companies that are national "high street names" and therefore have a single head office within one enforcing authority but multiple premises in other enforcing authorities.

Companies that have a presence in a number of enforcing authority areas are subject to a large quantity of enforcement actions and accordingly well placed to identify inconsistencies of approach. The Lead Authority Partnership scheme was introduced in order to manage these inconsistencies of enforcement action.

Organisations wishing to enter the scheme will normally, but not always, contact the local authority in whose area the head office resides. If mutually agreeable to both parties the local authority agrees to act as Lead Authority and will co-ordinate centrally enquiries from other authorities about matters of national significance. The authority also undertakes a review of the company's safety management procedures.

Local Authorities are either active participants within a scheme or have a passive obligation to observe the scheme in respect of partner premises.

City of Wolverhampton Council operates as a partner authority with Marston's Brewery Plc and the National Association of Steel Service Centres. The authority remains committed to maintaining these relationships by providing sufficient resources to maintain at least one specialist officer to act as local liaison officer for each partner organisation.

In addition, officers will contact the local authority in appropriate circumstances, such as, where formal action is being considered or where shortcomings have been identified in the organisations policies or procedures.

3.12 Primary Authority Scheme

The Better Regulation Delivery Office (BRDO) was created on 1 April 2012 as an independent unit within the Department for Business, Innovation and Skills

BRDO is intended to support economic Regeneration and business by improving regulation in the fields of Environmental Health, Trading Standards and Fire Safety.

One of the mechanisms through which BRDO intended to deliver these benefits was through the operation of the Primary Authority Scheme.

The Primary Authority Scheme builds upon the foundation of Home and Lead Authority Schemes but places the relationship on a statutory footing. Local Authorities are obliged to enter into a Primary Authority Scheme when asked by a business. Equally if an undertaking is already in such a scheme, then the counterpart Authority must have regard to any inspection plans or guidance issued by the Primary Authority prior to taking anything but expeditious action. BRDO wishes to substitute the Lead Authority Scheme with the Primary Authority Scheme however this approach is not universally supported by Local Authorities and businesses alike. It is government policy to no longer support the Lead Authority Scheme.

4.0 Strategic Governance (HELA)

HELA meets at least twice a year and is chaired jointly by the Deputy Chief Executive of the Health and Safety Executive (HSE) and the Chair of the Local Government Regulation (LG Regulation) Health and Safety Policy Forum.

The current Chairs of HELA are Kevin Myers, HSE's Deputy Chief Executive and Colin Alborough of Rushmore Borough Council.

HELA membership comprises senior LA officers. These members represent the Local Government Association (LGA) in England, the Convention of Scottish Local Authorities (COSLA) in Scotland and the Welsh LGA (WLGA) in Wales. HELA also includes HSE officials concerned with policy development and operations.

Also represented are The Chartered Institute of Environmental Health (CIEH) and the Royal Environmental Health Institute of Scotland (REHIS).

Role of HELA

HELA's aim is to provide strategic oversight of the partnerships between HSE and local authorities, with a view to maximising effectiveness and improving health and safety outcomes.

5.0 Resources

5.1 Financial Allocation

The resources available to the service are set within the context of the agreed Medium Term Financial Strategy and comprise a proportion of those revenues allocated to Environmental Health.

The overall budgetary provision for 2016/17 for Public Protection is yet to be finalised but is in the region of £ 2.4 million.

The services resourced through this budgetary provision include:

- Food Hygiene
- Food Standards
- Health and Safety
- Public Health and Environmental Protection (relating to commercial premises)
- Infectious Disease Control
- Licensing Enforcement
- Street Scene Enforcement
- Health Act Enforcement
- Student Training

Health and Safety covers:

- Health and Safety inspection
- Accident Investigation
- Health and Safety Complaints/Advice
- Asbestos advice and enforcement
- Asbestos awareness training
- Legionella investigations
- Certification of designated Sports Grounds/ regulated stands
- Registration of premises for the purposes of acupuncture, skin piercing, electrolysis and tattooing.
- Maintenance of Lead Authority partnerships
- Consultation on Licensing and Planning matters
- Representation on City Council Safety Advisory Groups

5.2 Staffing Allocation

The strategic financial, human and service functions are undertaken through the Public Protection Management Team.

Within Public Protection (Commercial) there are currently 13 FTE posts which have varying health and safety enforcement responsibilities.

Of this, a large proportion are primarily food officers for whom health and safety enforcement only represents a small proportion of their duties (circa 15%).

A breakdown of the proportions of time spent on operational and managerial duties dedicated to health and safety is detailed below:

Job Title	No FTE	% Health and Safety	FTE
Head of Service	1.0	5%	0.05
Service Lead Commercial Group 3	1.0	30%	0.30
Service Lead Commercial Group 1	0.8	10%	0.08
Inspectors	9.1	15%	1.36
Total	11.9		1.79

5.3 Staff Development Plan/ Employee Performance Review

As part of the Council's aim to provide a services efficiently and effectively, Public Protection Management Team regularly reviews training needs to ensure all staff are trained to a level of competence appropriate to their work. This includes both managers and operational staff. Records of all training received are kept so that suitable monitoring can take place. The different ways in which training needs can be met include:-

- Internal and external training courses/events
- Regulators Development Needs Assessment (RDNA)
- Guidance for Regulators Information Point (GRIP) Tool
- Team meetings and briefings - used to disseminate information etc
- Attendance at ad hoc working groups
- "On the Job" training - as part of delegation process
- Self directed training - suitable journals and up to date information are provided
- Establishment of trainee/student placements and Student EHO training
- Cascade training
- Internal placements with other service areas or teams

An additional training programme targeting health and safety operational matters is managed by the West Midlands Health and Safety Liaison Group

In addition to the above the Service will ensure all staff participate in the regional health and safety standardisation exercise and in any organised in-house. There will also be opportunities for members of the Service to attend one-off seminars on topical issues arising during the year. Where appropriate, staff attending these seminars are required to do a cascade training session for other officers within the service.

6.0 Quality Management and Review

6.1 Enforcement Policy Review

Through the West Midlands Health and Safety Enforcement Liaison Group, the service maintains continuous review of its enforcement policy. The policy remains a standing item within the Group's annual work programme.

6.2 Prosecution Procedure

The service maintains a documented prosecution procedure which details how inspectors proceed where investigations appear to fulfil criteria which conform with Enforcement Policy considerations that would lead to an outcome of prosecution. This procedure is monitored throughout by line management, the Council's Solicitors and the Service's Legal Proceedings Panel ("Cases Panel"), decisions on interventions are also informed by the Enforcement Management Model (EMM).

6.3 Regulatory and Investigatory Powers Act (RIPA)

Public Protection has fully implemented the requirements of RIPA and arrangements for the authorisation of surveillance exercises in relevant circumstances are in place.