

CITY OF WOLVERHAMPTON COUNCIL	Statutory Licensing Committee 11 January 2023
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Report title	Trade with Confidence -Trading Standards and Licensing	
Wards affected	All	
Accountable director	John Roseblade, Director of City Housing and Environment	
Originating service	Licensing	
Accountable employee	Paul Dosanjh	Service Manager: Trading Standards and Licensing Act
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Report to be/has been considered by	None	

Recommendation for decision:

The Statutory Licensing Committee is recommended to:

1. Mandate that an Officer involved with providing paid for consultancy advice shall not be permitted to be involved with the processing of that application.

Recommendation for noting:

1. To note and endorse the implementation of the Licensing Consultancy and Responsible Trader Scheme under the "Trade with Confidence" banner.
2. That both of these schemes form part of the efforts of the Commercial Regulation Service to improve legal compliance through the provision of advice on a discretionary basis

1.0 Purpose

- 1.1 For the Committee to Mandate that an Officer involved with providing paid for consultancy advice shall not be permitted to be involved with the processing of that application
- 1.2 To update the Committee on the recent authorisation via an Individual Executive Decision Notice (IEDN) of two schemes under the “Trade with Confidence” banner.
 - A Licensing Consultancy scheme.
 - A Responsible Trader scheme.

2.0 Background

- 2.1 The Commercial Regulation Service already operates a series of business advice schemes on a cost recovery basis under the “Trade with Confidence”(TwC) banner. Those schemes are based around the provision of consultancy for food safety and food hygiene.
- 2.2 The Trade with Confidence services form part of the efforts of the Commercial Regulation Service to improve legal compliance through the provision of advice on a discretionary basis
- 2.3 The cost of these discretionary services is borne by the recipient and not by the Council
- 2.4 The Localism Act 2011 introduced a ‘general power of competence’, giving local authorities the legal capacity to do anything that an individual can do as long as that is not limited by the existence of any other power of the authority. Importantly, the Act also allows authorities to make a charge where it is not under a duty to provide the service and where the recipient agrees to the service being provided.
- 2.5 This report introduces a proposal to widen the scope of the TwC banner with the introduction of two new schemes:
 - A Licensing pre-application consultancy scheme which assists new applicants for licensed premises to complete their applications. The scheme will also cover the other licensing applications e.g., in relation to changes to a licence.
 - A Responsible Trader scheme which principally supports small retailers (“corner shops” and local convenience stores) around sales of age restricted products such as alcohol, tobacco, and fireworks

3.0 Proposal

Licensing consultancy

- 3.1 Licensing Services provides the administration, verification and compliance activities that ensure that alcohol licences for both establishments (premises licences) and individuals (personal licences) are properly issued, and their conditions are complied with.
- 3.2 The most involved application is the one for a new premises licence. The range of technical queries that can arise means that only experienced and trained officers can deal with these matters, but a side effect is that the Council ends up providing a very high-quality consultancy subsidised by council taxpayers. A more business-like approach will also ensure that applicants are mindful in the quality of their applications. Additionally, Officers will not be hindered from being able to carry out their other important duties by dealing with constant “to and fro” of these sorts of enquiries.
- 3.3 Licensing sub-committee hearings are often held due to poor application submissions. These often end with officers spending significant time with applicants in order to make the application acceptable in terms of meeting the licensing objectives. The cost of providing this service is outside of the statutory application fee which is set nationally.
- 3.4 The proposal is that Licensing Services provides a consultancy service which helps applicants to complete the various application forms covered by the service. For example, the service which would cover the premises application form based on the information available from the applicant would:
 - assist with completion of the statutory application forms including guidance on identifying what the appropriate control measures would need to be to fulfil the licensing objectives.
 - Provide guidance about drawing up plans to accompany the application in accordance with the relevant regulations.
 - Assist with completion of the statutory public and press notices.
 - Assist with the production of policy documents, such as a drugs policy or a challenge 25 policy.
 - Check the application to ensure it is valid and has been correctly completed.
 - Submit electronically, on the applicant’s behalf, to those that need official notification (“Responsible Authorities”) for them to comment.
 - Assist with completion of the statutory public and press notices and provide applicants with completed copies of the required press notices.
- 3.5 It would be pointed out both at the start and throughout the process that using this service does not guarantee the grant of a licence, it aims are to improve the quality of the application.

3.6 The impartiality of the licensing regime must be maintained. An officer who undertakes the consultancy work to submit the application cannot be permitted to be part of any administrative process relating to the application. There must be a strict demarcation maintained between applicant and decision maker and Members are recommended to mandate it.

Responsible Trader Scheme

3.7 The second scheme is the Responsible Trader Scheme (RTS). Our recent enforcement activity suggests that illegal sales of age restricted goods are common. Last year 52 test purchases were conducted at local shops with a failure rate of 40%. Selling age restricted products can lead to the loss of a licence, as well as prosecution with a fine and a criminal record. However, we must balance our enforcement effort with the fact that a small business caught selling alcohol to an under 18-year-old and is prosecuted and/or loses its licence-may lead to the closure of that business.

3.8 The Responsible Trader Scheme has been designed to:

- Encourage businesses to work with Trading Standards to be part of the solution rather than part of the problem.
- Empower businesses to undertake preventative action to stop underage sales.
- Provides businesses with a comprehensive system to avoid the commission of an offence in the first place, known as “due diligence.
- Provides an element of training on how to prevent underaged sales including tips on good practice to prevent underaged sales.
- Allow for annual audits to help support rising standards in our retailers.

3.9 There is a “back stop” of legal action at any stage if the trader commits an unscrupulous and deliberate breach of the law, for example making an underaged sale and providing means for the alcohol to be concealed or turning off the CCTV for the duration of the sale. That legal action may be an investigation leading to a prosecution or a review of the premises.

3.10 The purpose is to improve the operation and running of businesses in preventing underaged sales across the board (solvents, tobacco alcohol, knives) but without the threat of prosecution after a single sale or the loss of their alcohol licence. Under the “polluter pays” principle, the trader pays for the extra test purchases but does not face any legal sanctions. The charge not only contributes towards the cost of setting up the test purchase operation, but it is also the approximate cost of a fixed penalty notice that could be levied by the police in these circumstances

- 3.11 Approval to commence work on these schemes is through an Individual Executive Decision Notice (IEDN) authorised by the Cabinet Member for City Environment and Climate Change.
- 3.12 Statutory Licensing Committee will therefore remain independent from the authorisation of the scheme and so are free to consider licence applications without any conflict-of-interest considerations impinging on their decision-making role

4.0 Fees

- 4.1 It is not the intention of either scheme to make a big surplus. The two schemes would sit under the TwC umbrella and make use of its brand which is an established trader advice scheme operated by the Council's Environmental Health Officers. Much of the saving will be the reduction in the number of sub-committee hearings and officer time.
- 4.2 All of the TwC offers are additional to the standard advice provided free of charge.
- 4.3 The proposed fees are shown in the table below. However, fees for the pre application service will be a flat rate, so for a premises application we would charge £528. This is considerably cheaper than those fees charged by licensing consultants whose fees range from £700 upwards for a full premises application. For the RTS system the fees include a joining fee (which includes initial training and some display materials) and a payment for failed test purchases.

Service	Estimate Time (hours)	Officer grade	Cost VAT
Full premises application-new	8	GR06	£528.00
DPS change	1	GR06	£66.00
Full variation	3	GR06	£198.00
Temporary Event Notices	0.5	GR06	£33.00
Major event (over 499 people)	3	GR06	£198.00
Personal licence	3	GR06	£198.00
Responsible Trader Scheme			
RTS joining fee including an initial audit and staff training)	2.5	GR06	£165.00
Test Purchase (up to two tests maximum)	1.25	GR07	£96.25

- 4.4 The only realistic alternative option is to “do nothing” and carry on as usual. This is unsatisfactory because the current situation amounts to a Council subsidised consultancy service for licensing work.

- 4.5 In relation to the Responsible Trader Scheme the current “enforcement only approach” is not inclusive and it does not “reward” good traders who want to improve the operation of their businesses, it simply targets rogue operators.
- 4.6 Additionally, the ability to make these chargeable schemes will defray the cost from the Council onto the direct beneficiaries of the advice and guidance.
- 4.7 The fees are set as to be self-financing and therefore have a positive budgetary benefit. Any surplus would be ploughed back into improving the schemes.
- 4.8 The fees will be reviewed on an annual basis in line with other fees and charges.

5.0 Financial implications

- 5.1 At Cabinet (Resources) panel 16 November 2022, the Policy to Enable Cost Recovery of Enforcement Action in Licensing was approved for adoption, commencing 1 April 2023. The recommendation for decision by Cabinet (Resources) Panel included delegating authority to the Cabinet Member for City Environment and Climate Change, in consultation with the Director of City Housing and Environment, to approve the addition of future discretionary services within Commercial Regulation that will utilise the cost recovery method outlined in the policy.
- 5.2 It is proposed that fees should be reviewed on an annual basis in line with other fees and charges in accordance with the constitution. There are no direct financial implications with the recommendations of this report. However, the introduction of the Licensing Pre-application Scheme and the Responsible Trader Scheme would result in the generation of fees and charges which will be subject to separate annual reports to review fees and charges in line with the constitution.
- 5.3 This work will be undertaken within existing resources. This is upfront work which should reduce the requirements on resources later in the process. Any surplus would be utilised to improving the schemes.

[SB/19122022/R]

6.0 Legal implications

- 6.1 Legal Services are working with the accountable Officer with regards to the legal implications of the schemes. Detailed work has now commenced with drafting appropriate terms and conditions which are unique to the two schemes using the current Trade With Confidence terms, and terms obtained from other Local Authorities with similar schemes in place.
- 6.2 As part of the drafting for the terms and conditions the risk arises that the service is provided to a licensee whose application later goes on to be unsuccessful or where a trader breaches the law and they seek to rely on advice provided by the Council. The

terms and conditions will be drafted to ensure that a disclaimer is included that such services provided by the Council cannot guarantee a successful application or avoidance of breaching laws.

- 6.3 The schemes will not operate until the terms and conditions have been finalised from legal services.

[AB/20-12-2022/10]

7.0 Equalities implications

- 7.1 An equalities impact analysis has been carried out
- 7.2 There are no additional equalities implications arising out of these proposals as they apply to businesses who will benefit from them.
- 7.3 Taking advantage of the schemes does not proffer any immunity from having to comply with any legal requirements. Instead, it makes it simpler to comply with the regulatory regimes

8.0 All other Implications

- 8.1 There are no implications for climate change and the environment, Human Resources, Corporate Landlord, Health and Wellbeing and no implications that have arisen from the Covid-19 Pandemic.

9.0 Appendices

- 9.1 None

10.0 Background Papers

- 10.1 Cabinet (Resources) Panel - Wednesday, 16th November, 2022 - Policy to Enable Cost Recovery of Enforcement Action in Licensing
- 10.2 IEDN - Trade with Confidence - Trading Standards and Licensing