

Gloucester City Council

COMMITTEE	: LICENSING AND ENFORCEMENT COMMITTEE CABINET BRIEFING CONSTITUTIONAL AND ELECTORAL WORKING GROUP COUNCIL
DATE	: 14 JUNE 2011 13 JULY 2011 20 JULY 2011 22 SEPTEMBER 2011
SUBJECT	: REVIEW OF THE FUNCTIONS AND STRUCTURE OF THE LICENSING AND ENFORCEMENT COMMITTEE
DECISION TYPE	: BUDGET AND POLICY FRAMEWORK
WARD	: ALL
REPORT BY	: GROUP MANAGER ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	: NONE
REFERENCE NO.	: SNR2011-11

1.0 PURPOSE OF REPORT

- 1.1 To outline the current Licensing and Enforcement Committee structure and functions and make recommendations for improving the process for customers, Members and officers.

2.0 RECOMMENDATIONS

- 2.1 It is recommended to Council that the Licensing and Enforcement Committee is restructured as outlined in paragraph 4.5 to include additional sub-committees made up of a minimum of 3 and max of 5 members for enforcement matters.
- 2.2 It is recommended to Council that where deliberations of sub-committees are held in private that the Committee Clerk and Solicitor remain with Members to record the proceedings and advise on the law and legality of decisions.
- 2.3 It is recommended to Council that all future Licensing and Enforcement meetings considering sensitive matters such as hackney carriage and private hire enforcement matters should be held in private i.e. with the exclusion of press and public but that the decisions will be announced in public and published on the Council's website.
- 2.4 It is recommended that Council agrees that the powers delegated to officers in respect of licensing functions are revised in accordance with the table in paragraph 7.2.
- 2.5 The Licensing & Enforcement Committee agrees that the timings of meetings should, at times, be flexible to ensure that no group is disadvantaged by all meetings being held at 6.30pm.

3.0 BACKGROUND

- 3.1 The Council has responsibility for a wide range of licensing matters and most of this responsibility is delegated to the Licensing and Enforcement Committee (see Part 3 of the Council's Constitution). The principal areas of licensing dealt with by the Licensing and Enforcement Committee are hackney carriage and private hire licensing and premises licensing under the Licensing Act 2003 (formerly liquor and entertainment licensing functions).

- 3.2 Where the Council is exercising its functions under the Licensing Act 2003 or Gambling Act 2005 matters such as the size of committee and the procedures to be followed are prescribed by legislation, whereas, in the area of other licensing matters, the Council has more choice about how it organises and conducts its business. There is also a greater volume of statutory guidance issued in respect of Licensing and Gambling Act matters than for other areas of licensing over which the Council has control.
- 3.3 The current arrangements for the Licensing and Enforcement Committee were introduced in 2003 to accommodate the requirements of the Licensing Act but have changed very little since then.
- 3.4 This review covers the following areas of the Licensing and Enforcement democratic process;
- The Licensing and Enforcement Committee structure.
 - The powers delegated to Licensing and Enforcement Committee, Licensing Sub-committees, Members and officers.
 - Licensing and Enforcement Committee and Licensing Sub-committee procedures.
- 3.5 The Review has taken into account the way Planning Committee (the Council's other quasi-judicial Committee) is structured and how other authorities operate, as well as comments from the hackney carriage and private hire trade and the licensed victuallers association and the experiences and views of officers.

Consequently it has been decided to undertake a review of the Committee. Some of the issues that have been raised are listed below:

- Officers are concerned that hackney carriage and private hire vehicle drivers are required to come before a committee of 13 elected Members, plus officers, when disciplinary issues need to be discussed and that this can be intimidating for drivers. Drivers attending hearings have complained that they find the large Committee intimidating.
- Enforcement hearings should be held as soon as possible after the Enforcement Officer is aware of an issue. If additional hearings are required due to the volume of cases (as was the case in late 2010) it is administratively difficult to organise additional meetings of 13 Members and this can cause delay. This delay can cause additional distress for the drivers as well as being inefficient.
- Members of the hackney carriage and private hire trade, when consulted, expressed the view that they considered it would be appropriate for smaller meetings to consider enforcement issues. They think the meetings should have a minimum of 3 Members on the panel.
- Members of the hackney carriage and private hire trade would like to see more powers delegated to officers so that matters can be dealt with without having to wait for a Committee decision.
- The hackney carriage and private hire trade have asked that consideration is given to conducting enforcement hearings in public, allowing the press and public to be present.
- The hackney carriage and private hire trade have requested that consideration is given to disclosing drivers' names on agendas, reports and minutes and not just their initials and badge number.
- The hackney carriage and private hire trade prefer evening meetings to day time ones.
- The Licensed Victuallers Association, however, would prefer to attend daytime Committee Meetings.
- 10 out of 15 District Council constitutions reviewed showed that enforcement matters were considered by sub-committees rather than the full licensing committee.
- Member deliberations for sub-committees and enforcement cases are held in private and the Solicitor and Committee Clerk are not admitted. This can result in the Solicitor being called in and out of the deliberations to advise Members. This causes delays and can appear disorganised to those attending the hearing.

4.0 LICENSING AND ENFORCEMENT STRUCTURE

4.1 The Constitution sets out the criteria for calling Licensing Enforcement Committees and Licensing Sub-committees on page 25 of part 3, Responsibility for Functions.

The current Committees and Sub-committees are supported by officers from the following services:

- Environmental Health and Regulatory Services – to provide technical reports and factual information in relation to Licensing and Enforcement Matters.
- Legal Services – to advise on the relevant law, the legality of the decision-making process, constitutional and procedural matters.
- Democratic Services – to organise the meeting and provide procedural advice, record minutes of the meeting and ensure smooth operation.

4.2 Deliberations by Members for decisions on hackney carriage and private hire enforcement matters and Licensing and Gambling Act hearings are currently held in private. All members of the public, applicants, responsible authorities, people making representations and officers including the Committee Clerk and Legal officer are excluded.

4.3 All the District Councils in Gloucestershire have sub-committees to deal with Licensing Act hearings as allowed by Section 9 of the Licensing Act 2003. For taxi licensing matters, some authorities make use of sub-committees whilst others consider such matters at the main Licensing Committee. The Council does have discretion to decide whether it wishes decisions on these matters to be taken by a Committee or Sub-committee.

4.4 On consideration of the issues highlighted in paragraph 3.5, officers recommend that the structure of the Licensing and Enforcement Committee is amended to create additional sub-committees of 5 members with a quorum of 3 members to hear all enforcement matters. Sub-committees will be held as and when necessary. The parent Licensing and Enforcement Committee will sit to hear policy matters and as such, the frequency of these meetings can be reduced to 4 per year.

4.5 The advantages of this are that:

- It would significantly reduce the administrative challenges to the Council.
- It is more flexible and responsive and will reduce the time taken to organise meetings.
- With smaller panels hearing the enforcement cases this will bring the environment more in line with that of the Magistrates Court and will be less intimidating for individuals attending.
- Smaller meetings are less likely to be seen as intimidating and can more easily be arranged at a time that will be convenient to all parties.
- The trade, when consulted, thought that it would be appropriate for enforcement matters to be heard by smaller committees and this addresses the comments received.
- Committees of 5 members with a quorum of 3 members will ensure that there is always a minimum of 3 members in attendance. This is in line with comments received but also gives a safety net for situations where a Member only becomes aware of a conflict of interest at the time they turn up to the hearing.

4.6 It is also recommended that current procedures are amended to allow the Committee Clerk and Solicitor to be present during deliberations. This will help to ensure that advice can be given when it appears to be needed and that the decision making process runs smoothly.

4.7 In addition whilst considering the structure for Licensing Enforcement Committee and Licensing Sub-committees consideration should be given to the timing of these meetings. Feedback from

the trade shows that whilst the Hackney Carriage and Private Hire trade prefer meetings to be held in the evening, the Licensed Victuallers Association would prefer meetings to be held during the day time. Whilst it is appreciated that it may not be possible to always accommodate all parties, it is recommended that the Committee agrees that Democratic Services will, when appropriate, continue to arrange meetings flexibly to ensure that interested parties may be represented. This will also ensure that particular groups are not disadvantaged by the timing of meetings.

5.0 COMMITTEE PROCEDURES

5.1 There are a number of procedures that apply to the Licensing and Enforcement Committee and Licensing Sub-committees. This review is an opportunity to review and update these procedures. In particular minor amendments have been made to the

- Probity in Licensing Enforcement Code of Practice,
- Procedure for a Disciplinary hearing of the Licensing and Enforcement Committee and the
- Procedure for Licensing Sub-Committees.

5.2 These documents have not been attached as the amendments are only of a minor nature and have been made under officer delegated powers.

6.0 EXCLUSION OF PRESS AND PUBLIC FOR HACKNEY CARRIAGE AND PRIVATE HIRE ENFORCEMENT MATTERS

6.1 One of the issues which Members of the Committee are keen to consider and which the hackney carriage and private hire trade have asked to be considered is, whether or not hackney carriage and private hire enforcement matters should be heard in the presence of the press and public.

6.2 A small minority of authorities consider such matters in public (e.g. Cheltenham BC), whilst the majority of others (e.g. Cotswold DC, Exeter City Council, Tewkesbury Borough Council,) hold theirs in private.

6.3 Consideration needs to be given to the interests of the individuals who are the subject of the hearing and the wider public interest, which will include that of the hackney carriage and private hire trade. In addition, the Council needs to ensure transparency about its actions and consider the well being of the general public. Therefore, it is recommended that the Committee continues to hold enforcement hearings in private but that the decisions are announced in public and published on the Council's website.

6.4 This approach will ensure that inappropriate information is not disclosed and the Council will be much less likely to breach data protection or human rights legislation. It will also ensure that Members have access to all the information that they require to make their decision, that they will not be pressured by the presence of others in the public gallery, for example the press, members of the public, or members of the hackney carriage and private hire trade. However, by presenting the committee's decisions in public and publishing them on the City Council website there will be transparency to the process and this also takes account of some of the comments received and listed in paragraph 3.5.

7.0 DELEGATED POWERS

7.1 The Licensing and Enforcement Committee have a range of powers and have delegated a number to officers. The delegated powers are set out in the Constitution.

7.2 We have reviewed our delegation of powers to reduce the burden on Committee Members and allow Officers to deal with clear-cut matters more efficiently. The table outlines the changes recommended by officers to address comments received.

CURRENT POSITION	PROPOSED CHANGES
Urgent, Sensitive and contentious matters are dealt with by the Director of Services and Neighbourhoods in consultation with the Cabinet Portfolio holder/Leader or deputy Leader.	Urgent, Sensitive and contentious matters are dealt with by the Group Manager of Env. Health and Regulatory Services in consultation with the Director of Services and Neighbourhoods.
Determination of Licensing Fees by L&E Committee and CD(Services & Neighbourhoods)	Determination of Licensing Fees by Food and Licensing Service Manger in consultation with Financial Services Manager.

7.3 Officers delegation for functions will be divided further through Officer delegated powers and Officer Authorisations.

8.0 CONCLUSIONS

8.1 By adopting the recommendations as outlined above the Licensing and Enforcement Committee process will be more efficient and fit for purpose and will better meet the needs of its customers. This will give greater clarity to the process and enforcement decisions will be reached more rapidly.

8.2 That the contents of this report are noted and that the recommendations detailed in paragraphs 2.1 to 2.5 are agreed.

9.0 FINANCIAL IMPLICATIONS

9.1 Minimal costs will be incurred by the change in committee approach (facilitation of additional meetings). This will be met through the current licensing budgets.

10.0 LEGAL IMPLICATIONS

10.1 These are set out within the main body of the report.

11.0 RISK MANAGEMENT IMPLICATIONS

11.1 There are no high risks associated with this report.

12.0 PEOPLE IMPACT ASSESSMENT (PIA):

Please ensure you complete this section even if a PIA is not required.

Is a PIA required?	Yes	No	Explanation: If the recommendations in this report are adopted there will be no negative impact.
		X	
Has an initial PIA screening been completed?	Yes	No	Explanation: PIA screening shows that existing procedures could result in negative impact. However the proposals and recommendations of the report have been made to address these issues and consequently if fully adopted there will be no negative impact.
	X		

Has a full PIA been completed?	Yes	No	Explanation: No there is no negative impact arising from this report.
		X	
Is the PIA available?	Yes	No	Explanation: PIA has been signed off.
	X		
Has the PIA identified any negative impacts on any protected characteristic or community cohesion?	Yes*	No	*Please ensure PIA is available
		X	

Any Further Relevant Information:

12.1 By adopting the recommendations in this report the arrangements for the Licensing Enforcement Committee and Licensing Sub-committees will not have any adverse impact on any particular groups for either customers or staff. Not adopting the recommendations contained in this report could result in discrimination and breach of the Data Protection Act.

13.0 OTHER CORPORATE IMPLICATIONS (this may include Community Safety, Environmental, Staffing, Trade Union)

Community Safety & Staffing implications are covered in the report.

Background Papers : Probity in Licensing Enforcement – Code of Practice
 Gloucester City Council Constitution 2011
 Gloucester City Council Procedure for Hackney Carriage and Private Hire Disciplinary Hearing.
 Gloucester City Council Procedure for Licensing Sub Committee

Published Papers : Licensing Act 2003
 Gambling Act 2005
 Human Rights Act 1998
 Data Protection Act 1998

Person to Contact : Gill Ragon or Sue Mullins
 Tel: 396321
 E-mail: gill.ragon@gloucester.gov.uk