



Report No: **240/2009**

Public Agenda Item: **Yes**

Title: **Problem Premises on Probation – Red and Yellow cards. A letter from the Department for Culture, Media and Sport**

Wards Affected: **All**

To: **Licensing Committee**

On: **19 November 2009**

Key Decision: **No**

Change to Budget: **No**

Change to Policy Framework: **No**

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1. What we are trying to achieve

- 1.1 To inform Members of a letter dated 2nd September 2009 from Mr Gerry Sutcliffe MP, Minister for Sport, to the Chief Executive. The contents of which, present an approach in dealing with problem Licensed Premises by using a yellow and red card system.

2. Recommendation(s) for decision

- 2.1 **That Members note the letter but agree to continue with the existing approach to enforcement in Torbay, where warnings are issued by the Responsible Authority's within the procedures of their own enforcement policies.**

3. Key points and reasons for recommendations

- 3.1 Torbay Council received a letter dated the 2 September 2009, from Mr Gerry Sutcliffe MP. He wrote to all Local Authority Chief Executive's asking them to consider adopting a 'Yellow and Red' card approach to Licensing Reviews.
- 3.2 The purpose behind the letter was to address the concern that Local Authority's were not using the Review powers available to them under the Licensing Act 2003. This is not the case in Torbay, as there have been 11 Licensing Reviews, with another two pending over a period of the last four years.

- 3.3 The idea presented by Mr Sutcliffe, is that a 'Yellow' card which is in effect a warning, is issued at Reviews for minor offences and a 'Red' card which may lead to revocation of a Licence, is issued for more serious or secondary offences. It should be noted, however, that Torbay Council's Community Safety Enforcement Policy already addresses the intentions of this proposal and is in fact tailored to the circumstances for breaches of Premises Licence conditions and breaches of Licensing Objectives.
- 3.4 Furthermore, it could be interpreted that by the Licensing Committee giving a 'Yellow' card, some Premises would appear to be getting two 'Yellow' cards, firstly by Officers when following their own enforcement procedures and then by the Licensing Committee at a Review. This could become confusing and give problem premises more latitude in complying, which would be contrary to promoting the licensing objectives.
- 3.5 Licensing Committee's must consider each Review on its own merits and should not be drawn into a process of what sort of 'card' they should be issuing. The fact that a Premise finds itself before the Licensing Committee at a Review, demonstrates that they have already failed to meet with the standards expected of the enforcement agencies and by definition, has already past through the warning or 'Yellow' card stage.
- 3.6 It is therefore suggested that the existing procedures more than meet the requirements of effective enforcement and the recommendation is that this new scheme is not adopted.

For more detailed information on this proposal please refer to Appendix A.

Frances Hughes
Executive Head Community Safety

Appendix A – Supporting information to Report 240/2009

A1. Introduction and history

- A1.1 On the 2 September 2009 Mr Gerry Sutcliffe MP, Minister for Sport, wrote to all Local Authority Chief Executive's asking them to consider adopting a 'Yellow and Red' card approach to Licensing Reviews. The purpose behind the letter was to address the concern that Local Authority's were not using the Review powers available to them under the Licensing Act 2003. This is not the case in Torbay, as there have been 11 Reviews, with another two pending over a period of the last four years.
- A1.2 Torbay Council's Community Safety Business Unit currently follows its own Community Safety Enforcement Policy, adopted by Full Council. As such, this Policy addresses the intentions of this proposal and is in fact specifically tailored to the circumstances for any breaches of a Premises Licence conditions and any breaches of the Licensing Objectives.
- A1.3 The Community Safety Business Unit includes, the Licensing Team, Health and Safety, Trading Standards and Environmental Protection. Depending on the seriousness of any breach, Premise Licence Holder's would initially be advised about any breaches of their licence conditions or breaches of the Licensing Act 2003. If these were not resolved expediently, then the licence holder would be warned and where necessary this would be put into writing. Though this report does not include any comments from the Police, in broad terms they adopt a similar approach and believe their existing enforcement system is tailored to their requirements.
- A1.3 If a licensing breach continues, then a Review may be sought, though many of the Responsible Authority's have their own enforcement powers available to them, separate from the Licensing Act 2003. Any Review that is brought to a Licensing Committee Hearing would have to be assessed on its own merits, with a range of options available to Members. These are:
- Add conditions to the licence
 - Restriction on trading hours or removal of any licensable activity
 - Removal of the Designated Premises Supervisor
 - Suspension of the Premises Licence to facilitate the above
 - Revocation of the Premises Licence
- A1.4 The key function of the Licensing Committee is to make a decision to ensure the promotion of the four Licensing Objectives. These are
- Prevention of Crime and Disorder
 - Prevention of Public Nuisance
 - Public Safety
 - Protection of Children from Harm
- If this can be achieved by the addition of conditions, then that should be the basis for any decision. If, however the view of the Licensing Committee is that stronger measures are needed to ensure compliance, then other measures should be used.

- A1.5 It is however difficult to ascertain how a 'Yellow and Red' card approach would enhance current operational practices. In many respects the 'Yellow' card approach would be part of the initial Officer work, but equally could apply to Licensing Committee decisions that are of a less serious nature. It may be interpreted in some circumstances that two 'Yellow' cards have been issued. 'Red' cards would apply arguably only to those that are revoked.
- A1.6 In light of the difficulties that may arise from adopting such an approach, the fact that Torbay already undertakes a number of Reviews and the fact that the existing enforcement policies have served the agencies well over many years, the recommendation is not to adopt a 'Yellow and Red' card approach to Licensing Reviews at the present time.

A2. Risk assessment of preferred option

A2.1 Outline of significant key risks

There are no risks associated with this report.

A3. Options

- A3.1 To adopt a 'Yellow and Red' card approach to Licensing Reviews.
- A3.2 Not to adopt a 'Yellow and Red' card approach to Licensing Reviews, as per the Recommendation and continue with the existing, successful enforcement policy.

A4. Summary of resource implications

- A4.1 There is no resource implications for not adopting a 'Yellow and Red' card approach to Licensing Reviews. However, there will be some limited resources needed to draw up procedures should the scheme be adopted.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

- A5.1 All Licensing Act decisions should have a positive impact on equalities, environmental sustainability and crime and disorder and there is a statutory duty to promote the four licensing objectives under the Act.

A6. Consultation and Customer Focus

- A6.1 There has been no public consultation on this matter.

A7. Are there any implications for other Business Units?

- A7.1 There are no significant implications for other Business Units, though if adopted Democratic Services would need to amend their processes to include decisions and detailed reasons for each decision within the minutes of meetings.

Annexes

Appendix 1 Letter from Mr Gerry Sutcliffe dated 2 September 2009

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

None