



# CHEL TENHAM

## BOROUGH COUNCIL

### Notice of a meeting of Licensing Committee

Friday, 10 April 2015  
2.00 pm

Council Chamber - Municipal Offices

Membership	
<b>Councillors:</b>	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Andrew Chard, Garth Barnes, Wendy Flynn, Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton, Jon Walklett and Helena McCloskey (Reserve)

The Council has a substitution process and any substitutions will be announced at the meeting

### Agenda

1.	<b>APOLOGIES</b> Councillor Barnes	
2.	<b>DECLARATIONS OF INTEREST</b>	
3.	<b>PUBLIC QUESTIONS</b> These must be received no later than 12 noon on the fourth working day before the date of the meeting	
4.	<b>MINUTES OF MEETING HELD ON 6 MARCH 2015</b>	(Pages 3 - 8)
5.	<b>REVIEW OF HACKNEY CARRIAGE DRIVER'S LICENCE</b> Mr Mozir Choudhury – HCD404	(Pages 9 - 14)
6.	<b>LOCAL GOVERNMENT ACT 1972 - EXEMPT INFORMATION</b> That in accordance with Section 100A(4) Local Government Act 1972 the public be excluded from the meeting for the remaining items of business as it is likely that, in view of the nature of the business to be transacted or the nature of the proceedings, if members of the public are present there will be disclosed to them exempt information as defined in paragraph 1, 2 and 7, part 1 Schedule 12A (as amended) Local Government Act 1972, namely:  Information relating to any individual,  Information which is likely to reveal the identity of an	

		individual,  Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	
7.		<b>RENEWAL OF PRIVATE HIRE DRIVER APPLICATION</b>	(Pages 15 - 18)
8.		<b>BRIEFING NOTE</b> Licensing up-date	(Pages 19 - 22)
9.		<b>ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION</b>	
10.		<b>DATE OF NEXT MEETING</b> 1 May 2015	

**Contact Officer:** Annette Wight, Democracy Assistant, 01242 264130  
**Email:** [democratic.services@cheltenham.gov.uk](mailto:democratic.services@cheltenham.gov.uk)

**Licensing Committee**

**Friday, 6th March, 2015**

**2.00 - 3.10 pm**

<b>Attendees</b>	
<b>Councillors:</b>	Roger Whyborn (Chair), Diggory Seacome (Vice-Chair), Adam Lillywhite, Anne Regan, Rob Reid, Pat Thornton, Jon Walklett, Tim Harman (Reserve) and Helena McCloskey (Reserve)
<b>Also in attendance:</b>	Vikki Fennell and Phil Cooper

**Minutes**

**1. APOLOGIES**

Apologies had been received from Councillor Barnes and Councillor Chard. Councillor McCloskey was in attendance as substitute for Councillor Barnes and Councillor Harman as substitute for Councillor Chard.

**2. DECLARATIONS OF INTEREST**

Councillor Walklett declared an interest in agenda item 5, the application for tables and chairs outside Turtle Bay, having been invited to the opening launch.

With regard to agenda item 6, the application for a street trading consent by Mr Bambas Shaouna, Councillors Regan and Lillywhite declared an interest being ward councillors for the areas being discussed, and Councillor Whyborn declared a personal and prejudicial interest as he knew the applicant and had had financial dealings with him.

**3. PUBLIC QUESTIONS**

There were no public questions.

**4. MINUTES OF MEETING HELD ON 6 FEBRUARY 2015**

The minutes of the Licensing Committee held on 6 February 2015 were approved and signed as a true record.

**5. APPLICATION TO PLACE TABLES AND CHAIRS ON THE HIGHWAY - TURTLE BAY, 20-26 PITTVILLE STREET**

The Licensing Officer, Phil Cooper, introduced the report concerning an application received from Mr Brynn Macek of Fusion Design and Architecture in respect of Turtle Bay (a new bar and restaurant), 20-26 Pittville Street, seeking permission to place 10 tables and 30 chairs on the highway outside the premises from 11.30 am to midnight Sunday to Thursday and 11.30 am to 1 am on Friday and Saturday. He informed members that the applicants had sent their apologies and that they knew the application would be determined in their absence.

Appendix A to the report showed photographs of the furniture, Appendix B showed a plan of how the tables and chairs would be positioned and Appendix C showed the location of the premises.

The Officer informed members that no objections had been received from nearby businesses or members of the public. However, objections had been received from the council's planning enforcement officer, health and safety officer and environmental health (noise control) officer. Their objections related to the amount of space available at the location and the potential for noise disturbance if the tables and chairs were being used after 11pm.

The Officer advised that members having considered all the relevant matters needed to decide whether to approve the application, to refuse the application or to modify the quantity of furniture and / or the times applied for.

In answer to a question from a member, the Officer re-confirmed that the time the chairs stayed out till could be altered. In view of this Councillor Thornton proposed that the tables and chairs stayed out until 11pm Sunday to Thursday and 11.30pm on Friday and Saturday. Councillor Walklett seconded this. Another councillor proposed midnight on Friday and Saturday.

A Councillor asked the Officer whether there were plans for more trees to be planted in the tree pit outside the premises. The Officer said he was not aware of any such plans, but as Highways had been consulted on the application and did not comment, he assumed there were no such plans.

Members expressed concern about the distances between the tables and chairs and the various obstacles on the paved area and the lack of information on the canvas barriers or planters that would be used. Many felt the distance measured should be from the barrier to the obstacles and not from the tables and also felt it was unclear whether the barriers would fence off all the tables and chairs. The chairman advised that the applicant was not proposing barriers along the whole length, as this would make the entire width too narrow. The Officer confirmed that details about the canvas barriers had not been specified as yet, but would have to conform to the standard policy. One member proposed refusing the application on lack of information on the barriers and tables and chairs.

Concern was expressed by many members on the layout of the tables and chairs and the impact it would have on other street users and several combinations on the number of tables and chairs were suggested, including no tables at all opposite obstacles. It was felt that chairs would be moved from the tables of four to the tables of two, thus reducing the minimum prescribed clearance distance of 1.8m, especially on the paved areas near the obstacles. One member commented that there was no service walkway and thus waiting staff would be on the pavement and also creating more footfall through the main entrance. There was concern also about the volume of footfall near the dropped kerb on the corner of a busy road by the entrance to the premises and thus felt that a table for 4 was not appropriate at this point either.

The Chairman reminded members that the recommended 1.8m minimum clearance distance was advised as good practice to ensure safety and physical space for passing, but that local variations of 1.5m could be acceptable.

In general, members welcomed this relaxed café culture addition on the edge of the shopping area and its added value to this part of the town and the night time economy. However they were mindful of how busy this street was with traffic and footfall and the noise impact to local residents.

It was agreed that 30 chairs was too many and that 2 chairs to a table the entire length of the proposed area was reasonable.

An amendment was therefore proposed by Councillor Whyborn and seconded by Councillor Seacome to allow 10 tables with 2 chairs per table in a single row width along the side of the premises, subject to the canvas barriers being inspected and approved by Officers.

Upon a vote on this amendment, it was 7 for, 2 against.

A vote was then taken on an amendment to the times that the tables and chairs could be placed on the highway outside the premises, with the proposal that they be there from 11.30am to 11pm Sunday to Thursday and 11.30am to 11.30pm on Friday and Saturday.

Upon a vote on this further amendment, it was 8 for, 1 against.

The Chairman then referred to the recommendation in the report, subject to the above amendments, and

Upon a vote it was 6 for, 3 against.

**RESOLVED, that the application be approved subject to the amendments just passed, because the members felt the application was compatible with the current Street Scene Policy.**

### **6. APPLICATION FOR A STREET TRADING CONSENT - MR BAMBAS SHAOUNA**

The Vice Chairman took the Chair for this item as the Chairman had expressed a prejudicial interest in this agenda item.

The Licensing Officer, Phil Cooper, introduced the report concerning an application from Mr Bambas Shaouna who had applied for street trading consent for three ice cream units. The first application was for a static unit to be located on the pedestrianized area of the Promenade and no objections had been received in respect of that application. The other two applications related to mobile ice cream vans. The Officer reported that no objections to the applications had been received in principle, however objections had been received to the applicant's request to be exempted from two standard conditions which the Council applied to all mobile ice cream units.

Images of the three trading units were attached at Appendix A and a location plan of the static unit was attached at Appendix B. The applicants statement of reasons for dispensation to two of the council's standard conditions was attached at Appendix C and Appendix D showed the proposed location of where the applicant intended to trade in Pittville Park.

The Officer advised members that the first condition that the applicant had asked to be exempted from was the prohibition to trade in Evesham Road and roads adjacent to Pittville Park. His statement at Appendix D explained this and this had attracted an objection from the council's green space manager.

The second condition that the applicant had asked to disapply related to the prohibition to trade within 75 metres of the gates of all schools and in the case of Bournside school within 100 metres. Again the applicant had submitted a statement of reasons and this had attracted objections from the council's health and safety officer and planning enforcement officer.

Members were advised that in respect of all three applications, that they needed to recommend to either approve or refuse the applications and in the case of the two mobile units, members were recommended to consider the applicant's request to disapply conditions.

The applicant Mr Shaouna and his business partner attended the meeting and were invited to speak. The Chairman wished to take the application for the static unit first.

The business partner said there was a gap in the market for an ice cream unit in the town, with only one on the High Street and none in the Promenade. He confirmed that the unit used would be identical to the one shown in the appendix and that it would be static and trade opposite Radleys on the pedestrianized part of the Promenade as shown on the location plan. He said it was an eye catching tricycle and was more appealing to members of the public than standing in a café. In reply to a question he confirmed the ice cream was Marshfield ice cream, soft scoop and that they would be offering a choice of 5 or 6 flavours. He also confirmed that he had the list of when events were on in that part of the Promenade, eg. the farmers' market, and was aware that they could not trade at those times.

The Chairman decided to take the vote on this first application on whether to grant street trading consent to the static tricycle at this point.

Upon a vote it was 7 for, 1 abstention.

**RESOLVED, that the application for street trading consent for the static unit to be located on the pedestrianized area of the Promenade be approved as members were satisfied that the application complied with the provisions of the Street Scene Policy and that the location was deemed suitable in enhancing the town's reputation as a tourist and leisure destination and in keeping with the streetscape.**

The Chairman advised members that he would take the other two applications for the vehicles trading consent and the alterations to the policy that had been requested together.

The applicant Mr Shaouna was invited to speak. He informed members that he had been in the ice cream business for 20 years and had been very popular both at the beer gardens and in Pittville Park. He explained that when he was moved on from Pittville Park where he had traded for 8 years, many people were upset and articles were in the local paper and on television. He said that

children liked ice cream from a van, rather than a hut, and he didn't see it as taking business away from the huts in Pittville Park, as market forces dictated business. He suggested that cars only moved very slowly in the area of Pittville Park where he was proposing to trade as it was on a bend and that he would even be happy to donate a certain amount of his profit towards keeping the facilities at Pittville Park. With regard to the distances from schools, Mr Shaouna felt it was wiser to be nearer a school than for children to have to cross a road and risk getting hurt.

In reply to a question from a member as to why Mr Shaouna was moved from Pittville Park, the Officer informed members that the Council changed its policy some years ago and as street trading consents have to be re-applied for annually, when Mr Shaouna re-applied the new approved conditions would have applied. Some members requested an explanation on the distance from the schools as stated in the policy, but members were reminded that that was the condition agreed by the Council at the time and was not subject to scrutiny at this meeting.

The Council's policy listed the roads where trading was not allowed and members felt if they allowed Mr Shaouna exemption then this could set a precedent. It was also pointed out to Mr Shaouna that his vans were subject to road regulations wherever he parked.

Members expressed concern about the dangers to children particularly in the vicinity of schools when a mobile ice cream van was present and the congestion with school traffic. The ward councillor for Warden Hill expressed particular concern about Mr Shaouna trading around the Bournside School area with so many children and so much traffic and asked him if he intended to park in this area. Mr Shaouna replied that he could park in the layby and that he would be happy to speak to Bournside School about this. He said that some schools were happy for him to park within the 75 metre limit and other schools allowed him to park on the premises.

Members suggested that Mr Shaouna could approach schools individually to see if he could operate within school grounds and maybe give a percentage of his takings to the relevant school.

In summing up Mr Shaouna felt there was no danger to children in where he was proposing to trade in Pittville Park and that it was more about the council wanting the business in their own huts there. With regard to parking nearer schools he felt it was safer to be nearer schools than for children to have to cross a road and that he wasn't asking for a huge change, just permission to park closer as some schools were happy with this.

The Chairman proposed to approve the application to grant street trading consent to the two mobile ice cream vans.

Upon a vote it was 8 for, 0 against.

The Chairman proposed to approve the special dispensations requested to the Council's special conditions for mobile ice cream traders.

Upon a vote it was 0 for, 8 against.

**RESOLVED**, that the applications for street trading consent for the two mobile units be approved, but that the application to disapply standard conditions in respect of the two mobile units be refused.

**7. ANY OTHER ITEMS THE CHAIRMAN DETERMINES TO BE URGENT AND WHICH REQUIRES A DECISION**

None

**8. DATE OF NEXT MEETING**

10 April 2015

Roger Whyborn  
**Chairman**



## Cheltenham Borough Council

### Licensing Committee – 10 April 2015

#### Review of Hackney Carriage Driver’s Licence

#### Mr Mozir Choudhury - HCD404

#### Report of the Licensing Officer

#### 1. Executive Summary and Recommendation

- 1.1 Mr Mozir Choudhury has held a Hackney Carriage driver’s licence with Cheltenham Borough Council since 2008.
- 1.2 In October 2014 Mr Choudhury reported to the Licensing team that he had been convicted of a driving offence, details of which are shown on the attached background papers.
- 1.3 The matter was brought before the Licensing Committee on Friday 5th December 2014. After due consideration of the facts the Committee resolved that Mr Choudhury’s Hackney Carriage driver’s licence be permitted to continue, subject to the successful completion by Mr Choudhury of the approved road safety driving test within 3 months. Minutes of that meeting are included in the background papers provided to Members.
- 1.4 Mr Choudhury has provided evidence to the Licensing team that he undertook the approved road safety driving test with the Driver Vehicle Standards Agency (DVSA) on 03 March 2015 and failed that test. A copy of the test sheet and accompanying notes are included in the background papers.
- 1.5 The DVSA driving test report shows a total of 5 faults including 2 that are marked as serious. The 2 serious faults are in the categories Highway Code / Safety and Moving Off / Safety. The remaining 3 faults are in the categories Controlled Stop, Taxi Manoeuvre and Progress / Appropriate Speed.
- 1.6 For clarification, the notes provided by DVSA to Mr Choudhury show that an applicant will pass the assessment if they make fewer than 10 faults, unless one or more of those faults is classed as serious in which case the applicant will fail.
- 1.7 In light of this Members of the Committee should be aware of the conviction and subsequent failure of the DVSA driving test because of:
  - 1.8.1 The nature of the offence; and
  - 1.8.2 The need to ensure that Mr Choudhury is judged to be a fit and proper person to hold a Hackney Carriage driver’s licence.
- 1.9 **The Committee is recommended to resolve that Mr Choudhury’s Hackney Carriage driver’s licence be:**
  - 1.9.1 **Permitted to continue with no further action taken because the Committee considers Mr Choudhury to be a fit and proper person to hold such a licence, or**
  - 1.9.2 **Revoked because the Committee considers Mr Choudhury to no longer be a fit and proper person to hold such a licence.**

**1.9.3 Subject to 1.8.2, if the Committee determines that Mr Choudhury's licence should be revoked as he is not a fit and proper person, the Committee may also consider whether that revocation should have immediate effect in the interests of public safety.**

**1.10 Implications**

1.10.1 Financial

**Contact officer: Sarah Didcote**  
**E-mail: sarah.didcote@cheltenham.gov.uk**  
**Tel no: 01242 264125**

1.10.2 Legal

There is a right of appeal against a decision to revoke a licence which, in the first instance, is to the Magistrates' Court.  
**Contact officer: Vikki Fennell**  
**E-mail: Vikki.Fennell@teWKesbury.gov.uk**  
**Tel no: 01684 272015**

**2. Background**

2.1 The Borough Council must be satisfied that the holder of a Hackney Carriage driver's licence is a fit and proper person to hold that licence (Section 59 Local Government (Miscellaneous Provisions) Act 1976).

**3. Policy Considerations**

3.1 Decision making in relation to licensing is an onerous duty, dealing with both the livelihood of the Licensee/Applicant and the risks to the safety and comfort of the public.

3.2 Each case will be decided on its own merits. The Council will always consider the full facts of the case and any mitigating or other circumstances before reaching a decision.

3.3 The overriding consideration is the safety of the public. The Council has a duty to ensure so far as possible that those licensed to drive hackney carriage and private hire vehicles are suitable persons to do so, that they are safe drivers with good driving records and adequate experience, sober, courteous, mentally and physically fit, honest and not persons who would take advantage of their employment.

3.4 Some discretion may be appropriate if the offence is isolated and there are mitigating circumstances. Similarly, multiple offences or a series of offences over a period of time are likely to give greater cause for concern and may demonstrate a pattern of inappropriate behaviour which will be taken into account.

**3.5 Major Traffic Offences**

- AC10 Failing to stop after an accident
- AC20 Failing to give particulars or report an accident within 24 hours
- AC30 Undefined accident offences
- BA10 Driving while disqualified by order of court
- BA20 Attempting to drive while disqualified by order of court
- CD10 Driving without due care and attention
- CD20 Driving without reasonable consideration for other road users
- CD30 Driving without due care and attention or without reasonable consideration for other road users
- CD40 Causing death through careless driving when unfit through drink
- CD50 Causing death by careless driving when unfit through drugs
- CD60 Causing death by careless driving with alcohol level above the limit
- CD70 Causing death by careless driving then failing to supply a specimen for alcohol analysis
- CD80 Causing death by careless, or inconsiderate, driving

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CD90 Causing death by driving: unlicensed, disqualified or uninsured drivers  
DD10 Causing serious injury by dangerous driving  
DD40 Dangerous driving  
DD60 Manslaughter or culpable homicide while driving a vehicle  
DD80 Causing death by dangerous driving  
DD90 Furious driving  
DR10 Driving or attempting to drive with alcohol level above limit 63  
DR20 Driving or attempting to drive while unfit through drink  
DR30 Driving or attempting to drive then failing to supply a specimen for analysis  
DR31 Driving or attempting to drive then refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity  
DR61 Refusing to give permission for analysis of a blood sample that was taken without consent due to incapacity in circumstances other than driving or attempting to drive  
DR40 In charge of a vehicle while alcohol level above limit  
DR50 In charge of a vehicle while unfit through drink  
DR60 Failure to provide a specimen for analysis in circumstances other than driving or attempting to drive  
DR70 Failing to provide specimen for breath test  
DR80 Driving or attempting to drive when unfit through drugs  
DR90 In charge of a vehicle when unfit through drugs  
IN 10 Using a vehicle uninsured against third party risks  
LC20 Driving otherwise than in accordance with a licence  
LC30 Driving after making a false declaration about fitness when applying for a licence  
LC40 Driving a vehicle having failed to notify a disability  
LC50 Driving after a licence has been revoked or refused on medical grounds  
MS50 Motor racing on the highway  
MS60 Offences not covered by other codes (including offences relating to breach of requirements as to control of vehicle)  
MS70 Driving with uncorrected defective eyesight  
MS80 Refusing to submit to an eyesight test  
MS90 Failure to give information as to identity of driver etc  
UT50 Aggravated taking of a vehicle  
Aiding, abetting, counselling or procuring offences as coded above, but with 0 changed to 2 (e.g. IN10 becomes IN12)  
Causing or permitting offences as coded above, but with 0 changed to 4 (e.g. IN10 becomes IN14)  
Inciting offences as coded above, but with 0 changed to 6 (e.g. IN16 becomes IN16)

### 3.6 Major Traffic Offences (see above for list of offences)

An isolated conviction, without disqualification, for an offence such as dangerous driving or driving without due care and attention, will require careful consideration of the facts and will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers. However, where the conviction is within 6 months prior to the date of the application the application will normally be refused.

More than one conviction for this type of offence within the last 5 years is likely to merit refusal.

## 4. Probity in Licensing

- 4.1 Cheltenham Borough Council's Licensing Committee operates in a quasi-judicial way in determining contentious licensing applications, policy issues and related matters.

- 4.2 The decisions that the Committee makes are significant and weighty. The Committee operates, for the most part, under its extensive delegated powers and it, rather than any other part of the Council, actually makes the decisions. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near licensed premises and on the lives of applicants. Furthermore if the Committee makes a wrong or irrational decision this may mean that the Council will face substantial costs if there is a successful appeal against the decision or if the decision is the subject of a legal challenge from an aggrieved third party.
- 4.3 Some licensing legislation specifies procedures to be followed but in all cases human rights and natural justice considerations dictate that the Committee adheres to the following principles in that decisions must:
- Be made on the individual merits of a case.
  - Have regard to all relevant national and local guidance.
  - Be made impartially and in good faith.
  - Be made by the body that receives all the relevant information and evidence.
  - Relate to the issue or question placed before the committee.
  - Be based only on consideration of relevant and material matters.
  - Be rational and reasoned.
  - Be made in a way that does not give rise to public suspicion or mistrust.
- 4.4 Licensing Committee Members must vote in the best interests of the Borough as a whole and must not vote on the basis of local ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the members and wider policies and guidance.
- 4.5 Licensing applications must be determined on the basis of the documents and information that have been formally submitted and where all parties have had a proper opportunity to consider them.
- 4.6 Members must read and carefully consider the content of the circulated report before the meeting and they must have regard to its contents in reaching their decisions.

### **5. Licensing Comments**

- 5.1 Mr Choudhury was interviewed on 3 November 2014 about the original conviction. The interview notes are included in the background papers.
- 5.2 If Members are minded to allow Mr Choudhury's licence to continue, they should be mindful that the Council's Policy states that major traffic offences "will at the very least merit a warning as to future driving and advice on the standard expected of hackney carriage and private hire vehicle drivers".
- 5.3 The Committee has the option of adding a requirement that Mr Choudhury must successfully pass the approved road safety driving assessment test within a period of 3 months from the date of the Committee's decision, however Members will note that this option has already been exercised by the Committee and Mr Choudhury was unsuccessful in passing that test.
- 5.4 Mr Choudhury has been sent a copy of this report and invited to attend this meeting to speak in support of his application and to answer Members' questions or to be represented. In considering the application on its own merits Members should have regard to the adopted Probity Guide.
- 5.5 The Committee must be satisfied that Mr Choudhury is a fit and proper person before agreeing to the grant of a licence. The refusal recommendation is based upon the policy guidelines and public safety given the close contact that licensed drivers maintain with members of the public.

**Background papers**

**Service records**

**Details of convictions**

**Minutes of the meeting of Cheltenham Borough Council's**

**licensing committee of Friday 5<sup>th</sup> December 2014 (agenda item 6)**

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**Report Author**

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# Briefing Notes

Committee name: Licensing Committee

Date: 10 April 2015

Responsible officer: Licensing & Business  
Support Team Leader

This note contains information to keep Members informed of matters relating to the work of the Cabinet or a committee but where no decisions from Members are needed.

If Members have questions relating to matters shown, they are asked to contact the Officer indicated.

## Legislative Reform (Entertainment Licensing) Order 2014

The government will, subject to Parliamentary approval, introduce the Legislative Reform (Entertainment Licensing) Order 2014 ("2014 order") on the 6<sup>th</sup> of April 2015. The 2014 order will further deregulate certain forms of entertainment licensing law.

### 1. Trusted providers

The Government believes that local authorities and certain other trusted civil society organisations (i.e. health care providers and schools) should have greater freedom to manage their own affairs with regard to the provision of entertainment. To this extent, the 2014 order has introduced the concept of a "trusted provider" and will exempt the provision of entertainment by these "trusted providers" on their own defined premises.

### 2. Trusted providers: cross-entertainment activity exemption

Under the 2014 order, entertainment organised by, or on behalf of, a trusted provider on its own defined premises will be exempted from licensing requirements between 08:00 and 23:00, with no limitation on audience size and without further condition.

The term "on behalf of a local authority" gives local authorities freedom to host events that they sponsor but do not themselves deliver (e.g. an event organised on a local authority's behalf by a cultural trust). To be organised "on behalf of" an authority, there must be a significant relationship between the local authority and the provider of the entertainment (e.g. principal and agent).

The types of local authority premises to be covered by this exemption could include:

- Public parks and other public spaces;
- Town halls and administrative offices;
- Libraries;
- Swimming pools and leisure centres;
- Community halls; and
- Museums and galleries.

### 3. Trusted providers: 3rd party music entertainment

The 2014 order will exempt live and recorded music held on local authority, hospital, school and community premises, before audiences of no more than 500 people.

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It will mean that local authorities, schools, health care providers and those in control of community premises will determine whether to allow third parties to perform live music or play recorded music on defined premises for which they are responsible.

The cross exemption described in paragraph 4 will apply to a performance of live music or the playing of recorded music taking place between 08:00 - 23:00, where that performance is organised by, or on behalf of, a local authority, health care provider or school proprietor on defined premises.

The exemption set out in this paragraph will allow local authorities, health care providers and school proprietors to permit third parties to perform live music or play recorded music on their own defined premises. It is for these “trusted providers” to determine whether, or not, they wish to make their premises available for music entertainment by another party and on what terms they deem it appropriate.

### **4. Community premises: music entertainment**

For community premises, the 2014 order will exempt live and recorded music activities at community premises between 08:00 - 23:00 and before audiences of no more than 500 people, but only if those premises are not authorised by a premises licence to be used for the supply of alcohol on the premises.

The definition of community premises is: premises that are or form part of a church hall, chapel hall or other similar building or a village hall, parish hall, community hall or other similar building.

### **5. Live music**

In October 2012, the Live Music Act (“LMA”) came into force deregulating, in part, the performance of live amplified and unamplified music. The LMA removed, amongst others, the licensing requirement for amplified live music taking place between 08:00 - 23:00 before audiences of no more than 200 persons on relevant licensed premises authorised to supply alcohol for consumption on those premises.

The 2014 order increases the audience limit set out by the LMA from 200 to 500 for relevant alcohol licensed premises and workplaces.

### **6. Travelling circus**

This measure will exempt travelling circuses from entertainment licensing for a performance of live music, the playing of recorded music, the performance of a play or a dance, or an indoor sporting event, in each case with no audience size restriction.

### **More Information**

The Department for Culture, Media & Sport have issued draft guidance to local authorities and is available on their website at <https://www.gov.uk/government/publications/working-draft-of-a-revision-to-chapter-15-of-the-amended-guidance-issued-under-section-182-of-the-licensing-act-2003>.

The 2014 order is available on the gov.uk website at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328490/Entertainment\\_Licensing\\_Legislative\\_Reform\\_Order.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/328490/Entertainment_Licensing_Legislative_Reform_Order.pdf).

## Public Health & Licensing

There has been a request from the committee to brief Members on the interaction of public health and licensing in the context of decision making.

Members will be aware that, in the context of alcohol licensing, the council is under statutory obligation to promote the four licensing objectives:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm.

Although the government have indicated that they may include public health as a 5<sup>th</sup> licensing objective that has not happened yet, although the Public Health authority is now a responsible authority and they are sent copies of applications for comment.

As a result, public health related data and/or representations cannot be taken into account by the council when determining applications.

For a representation to be relevant, it must, amongst others, relate to at least one of the licensing objectives and provide evidence of the effect on the promotion of the licensing objectives the operation of the premises will have.

The difficulty with public health data or evidence is that it is hard, in most cases, for it to be sufficiently narrow to be relevant to an individual premises. This is not to say that public health data cannot be used in objecting to some types of applications. For example, where the operation of a premises results in a high number of alcohol related A&E admission, this could be relevant information for a representation.

However licensing policy engagement with public health is much more effective because policy context is much broader than individual applications.

The LGA has produced an informative briefing entitled *Public health and alcohol licensing in England* that Members may find helpful to read too. It is available on the LGA's website.

### Locally set fees – Licensing Act 2003

Following a public consultation in 2014 proposing to amend the Licensing Act to allow local authorities to determine their own locally set fees for alcohol/entertainment/late night refreshment licensing, the Home Office has now published its response.

Disappointingly, the outcome of the consultation is that the Home Office has decided not to proceed with the locally set fees proposal. This means that local authorities will continue to charge centrally set fees based on the individual premises' non-domestic rateable value.

The centrally set fees have not changed since 2005 and, as a consequence, no longer cover the council's costs associated with the administration of its licensing functions under the 2003 Act, essentially requiring the tax payer to subsidise the function.

Although the Government has said it will not proceed with the proposal, it has not completely closed the door on this. The Home Office said that it was unable to get a clear picture of local authority costs from the consultation feedback and therefore was not in a position to determine the details of the proposed new fees regime or predict its consequences with confidence.

It did however say that they will invite the Local Government Association to provide better evidence of licensing authorities' costs which suggests that it may revisit the ability for councils to set their own fees in the future.

Officers will update Members again on any further developments with regards to this.

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