

Committee: Licensing Committee	Date: 10 March 2015	Classification: Unrestricted	Report No: LC 10/145	Agenda Item:
Report of: Service Head - Legal Services Originating officer(s) Agnes Adrien Team Leader – Enforcement & Litigation		Title: Update in relation to Prosecutions and Appeals - Quarters 1-3 2014/2015 Wards Affected: All		

1. **SUMMARY**

- 1.1 At its meeting on 4th June 2013, the Licensing Committee requested that regular reports should be prepared for the Licensing Committee giving details of licensing enforcement activity and specifically as to outcomes of prosecutions and appeals.
- 1.2 This report and provides details of completed licensing related prosecutions and appeals for Quarters 1 to 3 2014/2015 (April to December).

2. **RECOMMENDATIONS**

The Licensing Committee is recommended to:-

- 2.1 Consider and comment upon the information provided in the report.

3. **BACKGROUND**

3.1 The London Borough of Tower Hamlets is a Licensing Authority and amongst its functions it is required to ensure compliance with conditions imposed on Premises Licences; take action against unlicensed premises; and act as a respondent on Appeals against decisions of the Licensing Sub-committee in respect of applications that come before it.

3.2 Where the Licensing Authority takes enforcement action to ensure compliance with conditions etc. then it does so in accordance with the Council's Enforcement Policy. The Enforcement Policy provides that the Council's approach to enforcement is founded on firm but fair regulation, around the principles of:

- **raising awareness** of the law and its requirements
- **proportionality** in applying the law and securing compliance
- **consistency** of approach
- **transparency** about the actions of the Council and its officers
- **targeting** of enforcement action.

3.3 Further, as a Licensing Authority the Council has a duty under section 4 of the Licensing Act 2003 to carry out its Licensing functions with a view to promoting the Licensing Objectives and in carrying out such functions must also have regard to its own statement of licensing policy and the Licensing Guidance issued pursuant to section 182 of the Licensing Act 2003.

4. **BODY OF REPORT**

Prosecutions

4.1 In Quarters 1-3 2014/2015, there were proceedings taken against four (4) business establishments and one (1) individual Please see the results of the prosecutions below

4.3 The results of the Prosecutions are as set out below:

No.	Offences	Outcome
1.	Papodoms – 94 Brick Lane s.136(1)(a) Licensing Act 2003 (Breach of condition 1 in Annex 3 of the Premises Licence)	Guilty in absence – Fine £200, costs £300 – Victim Surcharge £20.

	1 offence under section 57(4) and 57(8) of the Licensing Act 2003 (failure to display a summary of the Premises Licence)	Guilty in absence. Fine £400 Costs £600 Victim Surcharge £40
2.	Café Bangla – 128 Brick Lane s.136(1)(a) Licensing Act 2003 and 1 offence under section 57(7) of the Licensing Act 2003	Plea of guilty before the hearing Fine £300, Costs £250 and Victim Surcharge £20
3.	Preem – 118-122 Brick Lane 2 x s.136(1)(a) Licensing Act 2003 1x offence contrary to s.57(4) Licensing Act 2003 offence of failing to keep licence at the premises in the custody of the licence holder or person nominated by him as the custodian 1x offence contrary to section 57(7) Licensing Act 2003 – offence of failing to produce premises licence to a constable or an authorised person when required	Fine £6,000, costs £729, Victim Surcharge £120
4.	Gazmend Kilokoqi s.136(1)(a) Licensing Act 2003 (Breach of condition 21 in Annex 2)	Withdrawn – written warning issued regarding conduct
5.	Zonemax Ltd 1 x s.136(1)(a) Licensing Act 2003 (Breach of condition 21 in Annex	Penalty – Cautions given for both offences

	2)	
	1 x s.57(4) and (8) –failure to keep licences at premises in the custody of licence holder or person nominated by premises holder	

Appeals

4.4 During quarters 1 to 3 2014/2015, there were four(4) Appeals that were concluded.

The Outcomes of the Appeals are set out below:

No	Outcome
1	The Appeal dismissed. Appellant did not attend. Costs of £4,215 awarded
2	The Appellant was succesful. Licence granted with the same conditions as set out in the original application Costs against the Council £27,555
3	Appellant successful. Application for costs refused.
4.	Appeal dismissed following contested hearing and revocation of Premises Licence

Two (2) were in respect of new premises licences (1) related to the grant of a time limited premises licence and the conditions and the other in respect of a

Two (2) were in respect of reviews that were conducted.

5. COMMENTS OF THE CHIEF FINANCIAL OFFICER

5.1 This report describes the Council’s licensing enforcement activity and the outcomes of prosecutions and appeals for Quarters 1 to 3 2014/2015.

5.2 There are no financial implications arising from the recommendations in this report.

6. LEGAL COMMENTS

6.1 Any legal implications are addressed in the body of the report.

7. ONE TOWER HAMLETS CONSIDERATIONS

7.1 Enforcement action that complies with the five principles expressed in the Council's enforcement policy should help to achieve the objectives of equality and personal responsibility inherent in One Tower Hamlets.

7.2 The enforcement policy should enhance Council efforts to align its enforcement action with its overall objectives disclosed in the Community Plan and other key documents such as the local area agreement and the Local Development Framework. For example, one of the key Community Plan themes is A Great Place to Live. Within this theme there are objectives such as reducing graffiti and litter. The enforcement policy makes clear the need to target enforcement action towards such perceived problems. At the same time, the enforcement policy should discourage enforcement action that is inconsistent with the Council's objectives.

7.3 The exercise of the Council's various enforcement functions consistent with the enforcement policy and its principles should also help achieve the following key Community Plan themes-

- A Safe and Cohesive Community. This means a safer place where feel safer, get on better together and difference is not seen as a threat but a core strength of the borough.
- A Great Place to Live. This reflects the aspiration that Tower Hamlets will be a place where people live in quality affordable housing, located in clean and safe neighbourhoods served by well-connected and easy to access services and community facilities.
- A Prosperous Community. This encompasses the objective that Tower Hamlets will be a place where everyone, regardless of their background and circumstances, has the aspiration and opportunity to achieve their full potential.

7.4 An equality analysis was conducted prior to approval of the revised enforcement policy by Cabinet on 3 October 2012. A further equality analysis was done on 16th September 2011 in relation to touting prosecutions. It is recognised that Enforcement action may lead to indirect discrimination in limited circumstances but prior to taking any proceedings, an assessment as to whether the case meets the two stages in the Code for Crown Prosecutors is undertaken so that there is both a realistic prospect of a conviction and that it is in the public

interest to prosecute. Further, proceedings are kept under review once initiated.

8. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 8.1 The enforcement policy seeks to target the Council's enforcement action in accordance with the Community Plan. The Community Plan contains the Council's sustainable community strategy for promoting or improving the economic, social and environmental well-being of Tower Hamlets and contributing to the achievement of sustainable development in the United Kingdom. To the extent that the enforcement policy aligns enforcement action with the Community Plan it will tend to promote sustainable action for a greener environment.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 Enforcement action carries with it a variety of inherent risks, including the potential for allegations of over- or under-enforcement, discrimination, adverse costs orders and damage to the Council's reputation. It is considered that proper adherence to the Council's policies, the Licensing Objectives, the Council's Statement of Licensing Policy and the section 182 guidance will ensure that risks are properly managed.

10. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 10.1 One (1) of the four (4) Licensing Objectives is Crime and Disorder and enforcement promotes that Licensing Objective. Enforcement will also play its part in helping to drive down crime and which in turn will reduce fear of crime and ASB levels helping to promote a healthier, happier and more cohesive community. This will have efficiency benefits for adult social care and public health costs by keeping people healthier and more active for longer.

11. EFFICIENCY STATEMENT

- 11.1 The report does not propose any direct expenditure. Rather, it is concerned with advises as to outcomes in areas in which the Council is already active. The enforcement policy seeks to ensure that enforcement action is targeted to the Council's policy objectives. This is more likely to lead to efficient enforcement action than a less-controlled enforcement effort.

12. APPENDICES

None

**Local Government Act, 1972 Section 100D (As amended)
List of “Background Papers” used in the preparation of this report**

Brief description of “background papers”	Name and telephone number of holder and address where open to inspection.
None	N/A