



Hinckley & Bosworth Borough Council

Forward timetable of consultation and decision making

Finance and Performance Scrutiny 17 January 2022

Wards affected: All

Review of the services of gambling, alcohol, taxi & scrap metal licensing; tattooists & body piercing registration

Report of Director Environment & Planning

1. Purpose of report

- 1.1 To report on the activities of the Environmental Health Service regarding the services of gambling, alcohol, taxi, & scrap metal licensing; tattooists & body piercing registration

2. Recommendation

- 2.1 Note the report

3. Background to the report

With the number of service areas reviewed this report has been set out with the main body highlighting the performance parameters for each license/ registration under review. More detailed commentary of the scope, processing and detail on that licence/ registration has been set out within the relevant appendices for that license / registration.

3.1 The Gambling Act 2005 Performance Parameters

- 3.1.1 Under the provisions of the Gambling Act 2005 Hinckley & Bosworth Borough Council is the Licensing Authority for the administration and enforcement of 'gambling', defined as betting, gaming and participating in a lottery. As the licensing authority Hinckley and Bosworth Borough Council is responsible for issuing premises licenses to casinos, betting offices, race tracks, bingo clubs, adult gaming facilities and family entertainment centres where children are

allowed. The local authority also issue permits for gaming machines and small society lotteries.

3.1.2 The table below shows the current Licences issued by the Council.

Licence Type	Current Licences
Gaming Machine (Pub auto entitlement)	72
Premises Licence	6
Alcohol licence Gaming Machine Permits	7
Club Machine Gaming Permits	14
Small Society Lotteries	134
Total	233

3.1.3 Pro-active compliance inspections are carried out to all the gambling premises in the borough. The table below details the Gambling Licensing Inspections carried out over the past 3 years with a reduction in activity seen in 2020/21 due to the Covid pandemic:

Compliance Inspections	2018/19	2019/20	2020/21
Gaming Machines in Public Houses	50	30	11
Gaming Machine in Clubs	6	8	1
Premises licence compliance checks	5	6	1
Total Inspections	61	44	13

3.1.4 The table below shows the service costs over the last three financial years.

Financial Year	Budget	Actual	Variance
2018/2019	7,164	8,767	-1,603
2019/2020	4,040	5,220	-1,180
2020/2021	6,670	8,545	-1,875

3.1.5 The table below shows the income for all permits and licences for 2020/21 with the final row showing the total net expenditure for the service as reflected in the table above.

Gambling Act Income	Budget	Actual	Variance
Lottery Licence Fees	-3670	-2960	-710
Alcohol licence Gaming Machine Permit	-1150	-350	-350
Prize Gaming Permit	-50	0	-50
Club Gaming Permit	-100	0	-100
Premises Licence Fees	-2000	-1850	-150
Club Machine Gaming Permit	-300	-650	350
Revenue Income 2021	-7270	-5810	-1460
Net Expenditure	6,670	8,545	-1,875

3.1.6 The overall cost of the service to the Council in 2020/21 was £1,875, marginally more than previous years and likely a reflection on the effects of the Covid pandemic, as some licences were not renewed. As these fees are statutory, there is no scope to increase them to cover any potential losses.

3.2 Taxi Licensing Performance Parameters

3.2.1 Taxi and Private Hire Vehicle (PHV) licensing in England and Wales is undertaken by the licensing authority (Hinckley and Bosworth Borough Council), with the aim of ensuring the public travel in safe, well maintained vehicles driven by competent drivers, as well as providing a fair and reasonable service for the taxi and PHV trade.

3.2.2 The Table Below shows the current licences issued by the service as at 31 October 2021.

Licence Type	Current Licences
Hackney Carriage Driver	132
Private Hire Driver	32
Private Hire Operator	20
Private Hire Vehicle	41
Hackney Carriage Vehicle	88

Total	314
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It has been noted that the pandemic has had an effect on the taxi trade, many drivers have left the local trade and have not renewed their licences. Two private hire businesses went bankrupt and a number of drivers decided to retire.

3.2.3 Licensing Officers respond to complaints of service and carry out proactive inspections of vehicles as demonstrated by the table below showing the number of times taxi rank inspections were undertaken, numbers of proposed new vehicles checked before applications made, numbers of applications determined by committee and complaints received .The reduction in activity seen in 2020/21 was due to the Covid pandemic.

Hackney Carriage & Private Hire Licensing	2018/2019
Service Requests	5
Licensing Hearings	2
Taxi Rank Inspections	12
Vehicle inspections at Hub	14
Hackney Carriage & Private Hire Licensing	2019/2020
Service Requests	8
Licensing Hearings	1
Taxi Rank Inspections	10
Vehicle inspections at Hub	15
Hackney Carriage & Private Hire Licensing	2020/2021
Service Requests	10
Licensing Hearings	0
Taxi Rank Inspections	1
Vehicle inspections at Hub	2

3.2.4 The table below shows the total service costs for the last three financial years.

Financial Year	Budget	Actual	Variance
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2018/2019	9,590	11,861	-2,271
2019/2020	14,097	16,905	-2,808
2020/2021	29,020	36,186	-7,166

3.2.5 We aim to set fees to cover costs and are mindful of the impact any increase has on the trade and the table below shows license fee income for this service in 2020/21. The final row of the table shows the total net expenditure for the service as reflected in table above.

Taxi Licensing Income	Budget	Actual	Variance
Licence Fees (Driver & DBS check)	-10,710	-1,277	-9,433
Licence Fees (Hackney Vehicle)	-14,990	-17,179	2,189
Licence Fees (Private Hire Operator)	-500	-1760	1,260
Licence Fees (Private Hire Vehicle)	-8,400	-5,620	-2,780
Revenue Income 2021	-34,600	-25,836	-8,764
Net Expenditure	29,020	36,186	-7,166

3.2.6 The overall cost of the service to the Council in 2020/21 was £7,166 and was a significant increase in costs on previous years due to a reduction in income for taxi licensing for drivers during 2020/21. The reduction in income is due to several factors but mainly due the fact that during the Covid pandemic many taxis and private hire drivers surrendered their licences and some businesses have deferred renewals to when things pick up. There have also been no new driver applications during this period in comparison to other years.

3.3 Licensing Act 2005 Performance Parameters

3.3.1 A number of different licenses are issued by the Licensing Authority (Hinckley and Bosworth Borough Council) under the Licensing Act 2005. The table below shows the main licences and permits that we issue.

Main Licence Types – LA 2003	Current Licences
Premises Licence	385
Club Premises Certificate	29
Personal Licence	1488

Total	1902
Total Temporary Event Notices (TEN) Issued	3019

3.3.2 The service carry out a number of pro-active and reactive inspections each year under the Licensing Act 2005 as well as assisting in determining applications by sub-committee and responding to service requests regarding complaints. The table below illustrates these activities over the past 3 years with a reduction in activity seen in 2020/21 due to the Covid pandemic.

Licensing Act 2003	2018/2019	2019/2020	2020/2021
Pro-active premises inspections	228	226	31
Re-active premises inspections	15	10	1
Total	243	183	31
Licensing Inspections in Rural Areas	54	63	2
Service Requests	12	10	8
Applications Heard by Sub-Committee	4	8	0

3.3.3 The table below shows the total service costs for previous three financial years.

Financial Year	Budget	Actual	Variance
2018/2019	45,230	66,519	-21,289
2019/2020	79,760	76,680	1,080
2020/2021	85,630	91,363	-5,733

3.3.4 Licence fees under the Licensing Act 2005 are set nationally under statute, the table below shows the income for all permits and licences for 2020/21.

Licensing Act 2003	Budget	Actual	Variance
Premises Licence Fees	-66,510	-68,005	1,495
Personal Licence Fees	-3,000	-2,055	-945
Temporary Event Notice	-3,000	-609	-2,391
Revenue Income 2021	-72,510	-70,669	-1,841

Net Expenditure	85,630	91,363	-5,733
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3.1.5 The overall cost of this service to the Council was £5,733 in 2020/21 with the main loss of Licensing Act 2003 income being a result of the significant reduction in temporary event notices due to the fact that occasional events have mainly been prohibited under the Covid-19 restrictions and a lack of interest from people wanting to enter the sector due to uncertainty. Many pubs, cafes and bars have had to remain closed or had restricted opening. Licensing Fees are also statutory and therefore there is no scope for increasing income to cover costs.

3.4.1 Scrap Metal Dealers Act 2013 Performance Parameters

The table below shows the type and number of scrap metal dealers licences that are currently active in the Borough.

Main Licence Types	Current Licences
Scrap Metal Site licence	9
Scrap Metal Collectors Licence	3
Total	12

3.4.2 The service carry out a number of pro-active and reactive inspections each year as seen in the table below with a reduction in activity seen in 2020/21 due to the Covid pandemic

Scrap Metal Dealers Act 2013	2018/2019	2019/2020	2020/2021
Pro-active site inspections	7	4	1
Re-active site inspections	2	3	1
Total	9	7	2

3.4.3 Unlike other licensing service areas there is no expenditure cost centre for Scrap Metal Licenses. At the time of the legislation coming into force it was reasoned that officers would spend a small percentage of their time working on this area of licensing and that it did not justify its own cost centre with associated salary, transport, supplies and services and central and admin expenditure costs.

The table below shows the income for the last two financial years with 2019/20 being the year when the majority of licence holders renewed their three year licences.

SMDA 2013 - Financial Year	Budget	Actual	Variance
2019/2020	0	-2240	2240
2020/2021	0	-550	550
Revenue Income 2021	0	-550	0

The reduction in income has been the result of several businesses no longer trading due to a number of factors.

3.5.1 Tattooists and Skin Piercers Performance Parameters

The table below demonstrates the number of applications processed over the past 5 years and total income generated:

Year	2017/2018	2018/19	2019/20	2020/21	2021/22*
Number of Premises Registration Applications	8	6	10	4	21
Premises Registration Fee	£130	£135	£135	£135	£135
Number of Person Registration Applications	8	7	14	5	26
Person Registration Fee	£83	£83	£88	£90.10	£90.10
Total Income from Registrations	£1,704	£1,391	£2582	£990.50	£5,177.60

*To 31 October 2021

Currently there are 83 tattooing/ skin piercing premises registered with the Council.

3.5.2 In the past 5 years to date, the service have received few complaints concerning Tattooing/ Skin Piercing premises as seen in the table below.

Year	2017/2018	2018/19	2019/20	2020/21	2021/22*
Number of Complaints received	7 (3 allegations of underage tattooing; 3 relating to hygiene practices; 1 alleging Female Genital Mutilation	1	0	0	0

*At 31 October 2021

4. Exemptions in accordance with the Access to Information procedure rules

4.1 This report is to be taken in open session

5. Financial implications [MT]

5.1 None

6. Legal implications [MR]

6.1 Set out in the report

7. Corporate Plan implications

7.1 Effective licensing and enforcement services help contribute towards the Councils priority ambitions of helping people to stay healthy and protected from harm along with encouraging growth, attracting business, improving skills and supporting regeneration.

8. Consultation

8.1 None

9. Risk implications

9.1 It is the council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

9.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

9.3 The following significant risks associated with this report/decisions were identified from this assessment. The same risks are present with or without adoption of the procedure; but a written procedure based on expert advice demonstrates a robust procedure for the enforcement of the notice.

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Reputation from negative press coverage from enforcement	Ensure enforcement carried out competently and proportionately and in accordance with Enforcement Policies	Steven Merry
Knowledge and skills of staff	Ensure adequate training given to enforcement staff	Steven Merry
Adequate staff to deal with enquiries/enforcement activities	Ensure appropriate staff resources available to deal with demands of service	Steven Merry
Legal compliance	Ensure actions in compliance with HSE/ Central Government Policy	Steven Merry

10. Knowing your community – equality and rural implications

10.1 No implications as licensing and enforcement activity is carried out consistently for all premises across the whole Borough.

11. Climate implications

11.1 It is not considered that there are no climate implications from this report.

12. Corporate implications

12.1 By submitting this report, the report author has taken the following into account:

- Community safety implications
- Environmental implications
- ICT implications
- Asset management implications
- Procurement implications
- Human resources implications
- Planning implications
- Data protection implications
- Voluntary sector

Background papers: None

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Steven Merry – Environmental Services Manager Ext 5735

Executive member: Councillor MB Cartwright

Appendix 1

Gambling Act 2005

- 1.1 The Gambling Act 2005 (the Act) consolidated and updated previous gambling legislation, creating a framework for three different types of gambling: gaming, betting and lotteries. Gambling can take the form of non-remote gambling, which takes place in a gambling premises, and remote gambling, which is typically undertaken by phone or online. The Gambling Commission enforces remote gambling.

The responsibility for regulatory activity on gambling is split between the local authority and the national regulator, the Gambling Commission. The Commission issues licences to gambling operators and individuals and issues guidance to local authorities as to how we should exercise our powers under the legislation. The Commission can impose conditions on operators, develop codes of practice and investigate claims of illegal gambling or any breaches of the requirement of the legislation.

Under the provisions of the Gambling Act 2005 Hinckley & Bosworth Borough Council is the Licensing Authority for the administration and enforcement of 'gambling', defined as betting, gaming and participating in a lottery. The licensing authority is responsible for issuing premises licenses to casinos, betting offices, race tracks, bingo clubs, adult gaming facilities and family entertainment centres where children are allowed. The local authority also issue permits for gaming machines and small society lotteries.

1.2 **The Licensing Authority and types of gambling**

Hinckley & Bosworth Borough Council is responsible for:

- setting the local framework for gambling through our statement of principles
- considering applications and issuing licences for premises where gambling takes place
- reviewing or revoking premises licences
- issuing permits
- under taking inspection and enforcement activities.

Although betting shops are the most commonly recognised gambling premises, we are responsible for overseeing gambling in many different types of business:

- betting shops
- bingo halls
- adult gaming centres
- family entertainment centres (FECs)

- casinos
- race-courses and other tracks (defined as sporting venues, e.g. football or rugby stadiums)
- alcohol licensed premises and clubs that have gaming ('fruit') machines members' clubs with gaming permits.

1.3 Inspection activity and visits

In line with the principles of better regulation, the Council, Gambling Commission and operators work together in partnership.

Hinckley & Bosworth Borough Council working with the Gambling Commission, via the Leicestershire Licensing Forum and Leicestershire Local Economic Partnership, developed a range of templates to help authorities when they visit gambling premises: www.gamblingcommission.gov.uk/for-licensingauthorities/Licensing-authority-toolkit/Premises-assessments/Premisesassessments-templates.aspx. The templates were rolled out throughout England & Wales via the Gambling Commission who encourage all authorities to make use of the templates.

The issues that licensing authorities may cover during their visits include:

- details of training policies and training undertaken by staff
- records of refusals to serve /admit on age grounds (subject to the terms of any primary authority agreements)
- records of any relevant incidents in or outside the premises, e.g. anti-social behaviour
- approach to managing self-exclusion and numbers of people currently self-excluded
- involvement/impact of any work in local schemes or partnership working with other local businesses
- reviewing paperwork relating to the purchase of games from licensed manufacturers
- interviews with staff members
- confirming that appropriate signage is in place.

There are now five betting shops and one adult gaming centre licensed by the Council.

We carry out pro-active compliance inspections to all the gambling premises in the borough. We liaise with the Gambling Commission over issues in relation to gambling premises and work closely with the commission compliance manager and we have carried out several joint visits with gambling commission and HMRC over the years.

The Licensing Officer also carries out visits to alcohol licensed premises under the Licensing Act 2003, whilst carrying out the visits we confirm that the

premises has the correct number of gaming machines in relation to its notification or permit as recorded on our register and we have given out guidance on the gaming machine code of practice to licensees.

To date there has been a high level of compliance, the only issues that have arisen on occasion is where the machines are located on the premises. We always advise that the bar staff have a clear line of sight so that they are able to monitor the machines to ensure that under 18's are not playing on them and that they are not being tampered with.

1.4 **Enforcement**

As in other areas of regulatory services, in developing our enforcement strategy, we have adopted 'better regulation' approach that recognises the requirements of the statutory regulator's code and applies the principles of proportionality and transparency, particularly in terms of consultation and engagement with businesses.

1.5 **The Policy – Statement of Principles**

Section 349 of the Gambling Act 2005 requires that the Licensing Authority prepare and publish a statement of principles every three years. The statement of principles is required to clearly place the promotion of the licensing objectives of the Act as central to its purpose. These are:

- Preventing gambling from being used as a source of crime or, being associated with crime and disorder or used to support crime;
- Ensuring gambling is conducted in a fair and open way;
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

The statement is produced in consultation with persons and bodies stipulated by the Act, these are:

- Chief Officer of Police for the authority's area;
- Persons who appear to the authority to represent the interests of gambling businesses in the area;
- Persons who appear likely to represent or have interests likely to be affected by the exercise of the authority's functions under the Act.

In determining its policy the authority must have regard to the guidance and give appropriate weight to representations made with regard to:

- Interest and expertise of person making the representation;
- The motivation of those making representations;
- How many people have expressed similar views;
- How far representations relate to matters that should be included in the policy.

The sixth edition of the Borough Council's Statement of Principles was adopted by the Council in October 2021.

1.6 Fees

Licensing fees should cover the costs of gambling licensing administration and the compliance/enforcement activity undertaken by the council. Councils have a range of licensing tools that can be used to address issues linked to gambling premises, specifically reviewing existing licences, imposing conditions or – in the most serious cases – revoking licences.

Unlike fees for alcohol licences under the Licensing Act 2003, licensing authorities have some discretion to set premises licence fees. Councils have devolved powers to set fees for premises licence applications and annual fees up to a prescribed maximum fee. The Licensing authority has delegated responsibility for setting fees to the Licensing Committee.

As with other licensing fees, we have set our fees on the basis of cost recovery, so that the income received from fees is 'as nearly as possible' equal to the cost to the authority of administering the Act.

Licensing fees will be reviewed in 2022 to ensure that income from licensing fees does not exceed the costs of administering the Act.

Licensing authorities can set fees in relation to the different types of gambling premises licence, and within each class, may set:

- an application fee
- an annual fee; as the first annual fee is payable 30 days after a licence is issued, the council has a discretion to set a lower first annual fee to reflect that checks will recently have been made as part of the application process.

A first/annual fee for a premises licence and fees to:

- notify a change of circumstance
- apply to vary a licence
- apply to transfer a licence
- apply for a copy of a licence
- apply for reinstatement of a licence

The costs that the licensing authority includes within our licensing fees, in relation to applications are any costs associated with the licensing authority of receiving, considering and determining the application, including:

- staff costs
- overheads, IT, legal and other central support costs
- initial inspections

- the cost of hearings and appeals.

In relation to annual fees, our fees cover:

- regulatory compliance and enforcement costs for the forthcoming year (e.g. inspection, holding reviews and enforcement activity);
- the costs associated with processing the annual fee (e.g. updating computer systems, register of gambling premises licences and processing fee)
- Annualised periodic costs incurred by the licensing authority in respect of our three year licensing policy statement.

Each year have processed the premises licence annual fees; this is a predominantly administrative function. The collection of the fees has never been problematic, because the legislation allows us to revoke a licence for the non-payment of the annual fee (s193).

1.7 **Role of councillors and the licensing authority**

The licensing authority's responsibilities are delegated to the authority's licensing committee.

The licensing committee is responsible for considering and proposing the authority's gambling policy through developing the statement of principles prior to its approval by full council, and for taking decisions on specific licence applications or issues.

However, two core functions are not delegated and remain the responsibility of the full council:

- a resolution not to issue casino premises licences
- adopting the licensing statement of principles (policy)

Fee-setting has been delegated to the licensing committee.

Decision-making in respect of individual cases, whether applications for licences or relating to existing licences, may be further delegated from the licensing committee to a sub-committee, or to an officer as detailed in the Councils Statement of Principles and scheme of delegations.

1.8 **Decision making and conditions**

In circumstances where the committee or subcommittee considers specific cases, it sits as a quasi-judicial body and therefore must follow the rules of natural justice – anyone affected by a decision has a right to be heard and no one should be a judge in his own cause. All decisions should be made without 'fear or favour', however difficult they may be.

In general, the volumes of applications and cases dealt with in respect of the Act are significantly less than in relation to alcohol or taxi licensing. However, in broad terms, committees have similar options available to them when considering an application/issue relating to a gambling premises as they do in relation to alcohol licences and taxis:

- to grant a licence, with or without conditions, or refuse it
- when reviewing a licence
 - do nothing
 - introduce conditions on a premises licence
 - revoke a licence.

Licensing authorities may attach specific conditions to premises licences, in addition to the mandatory and default conditions that apply either because they are set out in the Act or in regulations made by the Secretary of State. In relation to an individual premises, they may also choose to dis-apply default conditions set out in regulations which would otherwise apply to all premises licences.

Appendix 2

Taxi Licensing Overview

- 2.1 Taxi and Private Hire Vehicle (PHV) legislation is primarily concentrated in the Town Police Clauses Act 1847 (the 1847 Act) and the Local Government (Miscellaneous Provisions) Act 1976 (the 1976 Act). The legislation provides a broad framework for the licensing of drivers, vehicles and operators, but the detail of how this is done, including standards and conditions, is the responsibility of the council ('licensing authorities'). There are a number of other Acts which also have an impact; for example the Equalities Act 2010, which places a duty on councils to take steps to meet the needs of disabled people where these are different from the needs of other people, and enables regulations to improve disabled access to taxis.

Taxi licensing legislation is widely regarded as outdated and has not adequately kept pace with developments in technology and the need to ensure passengers are protected. In 2011 the Department for Transport (DfT) invited the Law Commission to undertake a review of taxi and PHV licensing. The Commission's 2014 report included a draft Bill with a comprehensive set of proposals to completely update and replace taxi and PHV legislation, although these recommendations were not taken forward.

Five years later an independent working group put forward a number of recommendations to the Government in February 2019 for a safer and more robust system. The Government issued a response to the report accepting many of the group's recommendations as well as committing to bringing forward legislation, when time allows, to introduce national minimum standards for taxi and PHV licensing, national enforcement powers and a national licensing database.

At the current time, the Government has yet to bring forward new legislation. Instead, it has introduced new statutory taxi and private hire vehicle standards which we must adhere to.

2.2 Terminology

Taxis are referred to in legislation, regulation and common language as 'hackney carriages', 'black cabs' and 'cabs'. Private hire vehicles (PHVs) include a range of vehicles such as minicabs, executive cars, limousines and chauffeur services.

Councils are responsible for the licensing of vehicles which carry up to a maximum of eight passengers. Vehicles with a seating capacity of more than eight passenger seats, which can include some stretch limousines, are licensed by the Traffic Commissioners, who are appointed by the Transport Secretary.

One of the key differences between the vehicles is that a PHV, unlike a taxi, cannot ply for hire, which means that all journeys must be pre-booked in advance through a licensed operator.

2.3 The Councils role in Taxi Licensing

Taxi and PHV licensing in England and Wales is undertaken by the licensing authority (borough council), we have the responsibility for ensuring the public travel in safe, well maintained vehicles driven by competent drivers, as well as providing a fair and reasonable service for the taxi and PHV trade.

The delivery of our core functions in taxi and PHV licensing can be summarised as:

- Setting the local framework, which can include safeguarding standards, fares, vehicles standards or limits on vehicle numbers.
- Considering applications and safeguarding the public by issuing, reviewing, or revoking licenses.
- Undertaking inspection and enforcement activities to ensure the required standards are being maintained.

Taxi and private hire licensing is undertaken within the regulatory services of environmental health and is also combined with other licensing functions. The committee overseeing decisions is referred to as the Licensing Committee.

In providing the licensing function, the council, under the provisions of the 1976 Act, is entitled to levy fees to recover the reasonable cost associated with:

- recovering the costs of the issue and administration of drivers' licences
- the inspection of vehicles for the purposes of determining whether any such licence should be granted or renewed
- the provision of hackney carriage stands
- any administrative or other costs in connection with the control and supervision of hackney carriage and private hire vehicles.

Except for drivers' licences, the council is required to consult upon the fees it intends to levy through a public notice procedure.

There are no statutory timescales or performance measures for taxi/PHV licensing, unlike some other licensing regimes. However, we use internal performance indicators to measure the service being provided to applicants and licensees. And periodically we review of the licensing service's processes and procedures can help to improve this. Where all paperwork is in order we have succeeded in reducing the time taken to process vehicle licences down to just two working days pre-pandemic.

2.4 **Strengths and weaknesses of the current system**

The Council have a wide range of powers that can be used to regulate taxis and PHVs, protecting the public and supporting local economies; but there are also some anomalies within the existing system.

The Council have the power to attach conditions to the licences of operators, taxis (vehicles), PHVs, and PHV drivers, but not the licences of taxi drivers.

Out of area working has increased significantly partly due to new app-based models which make it easier for individuals to book a PHV that is licensed elsewhere. As well as varying driver and vehicle standards, another key issue for councils is the limited enforcement powers we have to take action against PHVs that are licensed by another authority.

First and foremost, we have no ability to stop vehicles, which leaves us only able to intervene when a vehicle is stationary, and unable to prevent it being driven off – only the police may stop a vehicle.

Secondly, we may only take action against a vehicle or driver that it has licensed, meaning that there is absolutely nothing that we can do if a vehicle or driver licensed elsewhere is operating in our area, other than complain to the ‘home’ authority. Hopefully this will be addressed in future legislation.

We are currently reviewing our taxi licensing policy that will bring together all procedures including policies on convictions, determining the ‘fit and proper’ person test, licence conditions and vehicle standards. This will help with the government’s plan to introduce more consistency in line with proposed national statutory standards and to help deliver the best possible licensing regulation. We will take account of the views of the trade, customers, and other stakeholders when establishing the policy.

2.5 **Who reaches taxi licensing decisions?**

Decision-making in respect of individual cases, whether applications for licences or where matters are brought to the attention of the council following the grant of a licence (for example breach of conditions, convictions, driving endorsements, etc.), are often made by the licensing sub-committee. This sits as a quasi-judicial body and therefore must follow the rules of natural justice – anyone affected by a decision has a right to be heard and no one should be a judge in his own cause. All decisions should be made without ‘fear or favour’, however difficult they may be.

Decision-making in some cases is also delegated to officers and is an important tool where a serious offence is committed, and immediate revocation is needed.

Both new applicants seeking licences and the holders of existing licences will have the right of appeal to the local magistrates' court if they are aggrieved by a decision of the council.

Councillors making decisions should have knowledge from member training which covers licensing procedures, hearings, the rules of natural justice, understanding the risks of child sexual exploitation, county lines and disability equality.

2.6 **Licensing authority responsibilities**

A licensing authority must not grant a taxi or PHV driver's licence unless it is satisfied that the applicant is a fit and proper person to hold such a licence. This is very different to the Licensing Act 2003 or Gambling Act 2005, where the presumption is to permit a licence application.

Properly applying the 'fit and proper' person test is essential for ensuring a robust licensing scheme that protects safety and commands the confidence of the general public.

On receiving an application, we first check the applicant's right to work. This ensures that applications are not heard where the applicant has no legal right to work in the UK and is a requirement of the Immigration Act 2016.

Once this is established, an inquiry into an applicant's fitness to be licensed includes enquiries into their medical health to a Group 2 standard (HGV Driver), a local knowledge test, and understanding of the responsibilities of a licensed driver as well as passing a driving assessment test and an enhanced criminal record check.

The licensing history of an applicant is an important factor to consider, and it will always be relevant for us to consider a previous refusal or revocation, and the reasons for that decision. Whilst every application must always be considered on its own merits, a previous decision may in many cases warrant significant weight to be given to it.

Hinckley & Bosworth Borough Council as a member of the National Anti-Fraud Network (NAFN) and has access to the National Register of Taxi Licence Revocations and Refusals (NR3) which was launched in 2019, this provides a mechanism for us to record details of any taxi or PHV drivers' licence that we have refused or revoked, and allows to check new applicants against the register. The objective of NR3 is to ensure that authorities can take properly informed decisions on whether an applicant is fit and proper, in the knowledge that another authority has previously reached a negative view on the same applicant. Previously, if drivers did not disclose information about a previous revocation or refusal of a licence, there was often no way for us to find this information out.

2.7 Public protection, partnership working and information sharing

Effective partnership working between the local authority, the Driver and Vehicle Standards Agency (DVSA), police, trading standards and the local trade, is vital to ensure effective taxi and PHV regulation.

One of the reasons for joint enforcement operations with the police is that taxi licensing officers do not have powers to stop and search vehicles. Similarly, licensing officers may only take action against drivers and vehicles that they have licensed, which is why the issue of cross-border usage can be so problematic.

2.8 Environmental Issues

In 2017, the government published the UK plan for tackling roadside nitrogen dioxide concentrations followed by a supplement in 2018 (together “the plan”). The plan identified local authorities in England showing exceedances which have been required to carry out feasibility studies and if necessary, develop bespoke plans to bring roadside concentrations of nitrogen dioxide within legal limits in the shortest possible time.

The Air Quality (Taxi and Private Hire Vehicles Database) (England and Wales) Regulations 2019 were introduced which puts the onus on all licensing authorities to provide information on all vehicles operating as taxis and private hire vehicles (PHVs) registered by the authority. This information is uploaded on a weekly basis to DEFRA.

The Council receives an annual payment of £ 580.00 as payment for providing the information to help to alleviate the additional administrative burden.

New hackney carriage vehicle licence plates will be granted to vehicles that are either wheelchair accessible or ultra-low emission vehicles (ULEV). This is to:

- To promote the Equality Act 2010 as there is a shortage of wheelchair accessible vehicles in the current taxi fleet.
- The council has declared a climate emergency and so we are encouraging the local taxi trade to embrace new technology and help the borough become carbon neutral by 2030.

2.9 Upcoming Changes

The Finance Act 2021 introduced the principle of ‘conditionality’ and from April 2022 the council will also be required to undertake new tax checks. HMRC has now published information on Gov.UK to help licensees and licensing bodies to prepare for new checks. This will be a new addition to the checks

that we already have in place and it will need to be completed when people are renewing their licences to:

- drive taxis or private hire vehicles
- operate private hire vehicle businesses

We have recently written to all members of the trade and sent them guidance and factsheets on what to do and how to prepare for the changes as well as invite to a webinar that the institute of licensing have organised for all stakeholders.

Appendix 3

The Licensing Act 2003

3.1 Background

The Licensing Act 2003 (the Act) replaced earlier controls of alcohol and introduced a more permissive, flexible regime. The Act consolidated a diverse system of licences that had been separately issued for late-night refreshment and regulated entertainment. Before the Act, alcohol licences had been issued in Magistrates' courts through what was largely an administrative procedure, and licensees had to formally attend to get their licences renewed every three years.

The intention of the Act was to liberalise a previously rigid licensing system. The Act gave licensing authorities (district, unitary and metropolitan borough councils) new powers over licensed premises, as well as giving local people more of a say in licensing decisions. A fundamental, and at the time controversial, part of the new Act was the potential to extend licensing hours beyond the previous 'permitted hours', in the hope that this would bring about more of a 'cafe culture'.

The Act was widely welcomed by local authorities, licensees and the police and in many respects, the Licensing Act remains a positive model for a licensing system. It has a clear set of objectives, it allows local decision-making, it has a clear appeals process and there are opportunities for everyone affected by the licence to make comments on it.

Licensing makes a fundamental contribution to how our communities develop, live, work and relax. There is a broad spectrum of licenced premises, including off-licences, supermarkets and cafes as well as the pubs, bars and clubs that typically make up the night time economy. Research estimates that the alcohol industry contributes £46 billion a year to national income and is responsible for around 2.5 per cent of all UK employment. At a local level, a vibrant and mixed night time economy can encourage tourism, boost the local economy and contribute to shaping places where people want to live.

3.2 Licensing objectives and aims

The objective of the Licensing Act 2003 (the Act) is to provide a clear, transparent framework for making decisions about applications by individuals or businesses wishing to sell or supply alcohol, or provide certain types of regulated entertainment and late night refreshment.

The Act is administered by the borough council as the licensing authority. Under the Act, the licensing authority's responsibilities are delegated to the licensing committee. The licensing committee is responsible for considering

and proposing the authority's statement of licensing policy, and for taking decisions on specific licence applications or issues.

There are four licensing objectives which underpin the Act and which need to be taken into account and promoted throughout the licensing process. Each of these objectives is of equal weight.

The licensing objectives are:

1. the prevention of crime and disorder
2. public safety
3. the prevention of public nuisance
4. the protection of children from harm.

Licensing authorities must issue a licence, providing it is consistent with the licensing objectives and there have been no comments on the application or objections to it, which are known as representations. The Act enables scrutiny of applications both by experts, local residents and businesses who all have the opportunity to comment on an application.

There are some organisations, known as responsible authorities (RAs), which need to be notified of every application for a new premises licence, or variation of an existing licence. RAs can make representations to the council about applications where they feel there will be a negative impact on the promotion of the licensing objectives if the application were to be approved. RAs include the police, fire authority, trading standards, health and safety, environmental health, and planning amongst others.

Anyone who may be affected by an application for a new licence or variation to an existing licence can make a representation. However, in order for a representation to be deemed 'relevant' it needs to relate to the likely effect of the application on the promotion of the licensing objectives.

Section 182 of the Act required the Home Office to issue Guidance to local authorities on our functions under the Act. From the outset the Guidance has made clear that "the promotion of the four objectives is a paramount consideration at all times", but ministers have stressed that the legislation "also supports a number of key aims and purposes" which (in the latest version of the Guidance) include:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
 - giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;

- recognising the important role which licensed premises play in our local communities by minimising the regulatory burden on business, and supporting responsible premises;
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

The Guidance states that these aims “are vitally important and should be principal aims for everyone involved in licensing work”. Since it has statutory force, the aims cannot be departed from without good reason.

3.3 Licensable activities

There are a number of different activities that were brought together under the Act which are referred to in legislation as ‘licensable activities’.

Licensable activities are:

- the sale of alcohol by retail
- the supply of alcohol in qualifying members’ clubs
- the provision of regulated entertainment
- the provision of hot food and hot drink (‘late night refreshment’) to the public between 11.00 pm and 5.00 am.

The distinction between the sale and supply of alcohol is made in recognition of the fact that at a member’s club there is technically no sale taking place as members of the club already own the assets of the club, including the alcohol.

Regulated entertainment is arguably a less well known part of councils’ licensing responsibilities. To count as regulated entertainment, the activity must be provided in front of an audience for the purpose of entertaining them and must fit into one of the following categories:

- it is provided for members of the public (anybody can buy a ticket or come to the event)
- it is exclusively for members of a (private) qualifying club and their guests
- it is arranged by someone who is trying to make a profit.

There are certain forms of entertainment that are always regulated, for example entertainment provided to over 500 people (or over 1000 people for indoors sporting events), entertainment provided between 11.00 pm and 5.00 am and boxing and wrestling.

Regulated entertainment is defined as (subject to exemptions):

- live amplified and unamplified music
- recorded music
- exhibition of film
- performances of plays
- indoor sports
- boxing and wrestling.

There are however a number of activities that are exempt under the Act from needing a licence, such as the sale of alcohol in an aircraft. Reforms since the Act originally came into force in 2005 mean that a number of activities no longer need to be licensed in particular circumstances, for example the performance of live music to a limited audience. A full list of exemptions can be found in the Home Office National Guidance.

3.4 Premises

The types of premises affected by the Act include:

- Public spaces such as market squares, village greens or open fields
- Concert halls, theatres and cinemas
- Restaurants, public houses and bars
- Hotels, and some guest houses and B&Bs
- Nightclubs, casinos and bingo halls
- Canteens retailing alcohol
- Supermarkets selling alcohol
- Shops, convenience stores and garages retailing alcohol
- Non-profit making clubs
- Village, church and community halls
- Indoor sports complexes staging sports entertainments
- Outdoor venues staging boxing and wrestling entertainments
- Late night cafés and takeaways (including vehicles, vessels and movable structures).

3.5 Licences

Personal licences authorise individuals to sell or supply alcohol, or authorise the sale or supply of alcohol, for consumption on or off premises for which a relevant premises licence is in force. A personal licence is not required where the licensable activities are confined to entertainment or late night refreshment.

Premises licences set out the operating conditions relating to the use of the premises for licensable activities, in order to regulate the use of the premises in line with the licensing objectives. They will vary according to the risks individual premises present to the promotion of the four objectives. Under the previous licensing regime an applicant for a licence had to satisfy a demand test.

One of the main changes made by the Licensing Act 2003 was that this test was removed. Under the Act an application for a licence has to be granted if no one makes a relevant representation, and grounds for refusal are limited to reasons based on the licensing objectives.

A premises licence has effect until the licence is revoked or surrendered, but otherwise is not time limited unless the applicant requests a licence for a limited period. Under the Licensing Act 1964 as originally enacted a licence had to be renewed every year, and although this was subsequently extended to three years, the indefinite continuation of a premises licence was another significant change made by the 2003 Act.

Any person may make representations about an application for the grant of a premises licence, or about a variation or review. Most commonly these will be local residents and businesses, but there is no longer a “vicinity” test, so those living further afield but with an interest may also make representations. The responsible authorities which most commonly make representations are the police and environmental health, and the local authority itself. Such representations must concern “the likely effect of the grant ... on the promotion of the licensing objectives” or, in the case of a review, must be “relevant to one or more of the licensing objectives”—a lower test. Once the licence has been granted the same classes of persons and bodies may seek a review of the premises licence and the conditions attaching to it if problems occur which present a risk to the licensing objectives.

3.6 Role of Designated Premises Supervisor

Each licensed premises must have a DPS, the person named on the premises licence as the individual designated to supervise the premises; they must always be a personal licence holder. The DPS will be the single point of contact for responsible authorities, particularly the police and licensing authority. They also have responsibility to make sure licensable activities are carried out lawfully in the premises, although they are not required to be on the premises at all times.

There can only be one DPS in relation to each premises, although the same personal licence holder could be the DPS for several premises. The DPS may also be the, or one of the, premises licence holders.

It is a breach of a mandatory condition for alcohol to be sold without a DPS being named on the licence. There are routine procedures in place for a DPS to be replaced, for example when changing their job. A DPS may be removed following a licence review; the police may object to an incoming DPS on the grounds that they would undermine the crime prevention objective.

Premises that are run as community facilities such as village halls may apply to remove the requirement to have a DPS, making the management committee collectively responsible for the supervision of alcohol sales instead.

3.7 Club premises certificates

Club premises certificates provide authorisation for qualifying clubs to use club premises for qualifying club activities. Such clubs tend to be, for example, political clubs, sports clubs, ex-services clubs, working men's clubs and social clubs with at least 25 members. The qualifying club activities are a subset of the licensable activities: the supply of alcohol by or on behalf of a club to a member of the club, the sale by retail of alcohol by or on behalf of a club to a guest of a member for consumption on the premises, and the provision of regulated entertainment by or on behalf of a club for its members and guests.

As with premises licences, the right to make representations on the application for a club premises certificate is given to a range of persons and bodies.

3.8 Temporary event notices ("TENs")

The 2003 Act established new arrangements for the carrying on of licensable activities at occasional or temporary events. These arrangements replace the multiple systems of "occasional permissions" and "occasional licences" which applied to the old alcohol and entertainment regimes.

3.9 Reviews of licences and closure powers

The Act allows interested parties and responsible authorities to ask the licensing authority to review premises licences and certificates if problems arise in relation to a licensing objective. Licensing authorities have the power, on review of a premises licence or certificate, to suspend or revoke the licence, to exclude specific licensable activities from the licence, to modify operating conditions attaching to the licence, and to require the removal of the designated premises supervisor.

Closure Notices can be issued by a police officer of at least the rank of superintendent, or a designated Licensing Officer of a local authority, a closure notice that lasts for up to 48 hours.

When a closure notice is issued, the police or local authority must apply to the magistrates' court for a closure order. The magistrates' court must hear the application for the closure order within 48 hours and can make a closure order for a maximum period of three months. Unlike the closure notice, a closure order can prohibit access to anyone, including the landlord, owner or habitual residents.

The powers on licence reviews and closures are among the most difficult that the licensing committee have to exercise.

3.10 Early Morning Restriction Orders

Early Morning Restrictions Orders (EMROs) are powers brought in by the Police Reform and Social Responsibility Act 2011, allowing local authorities to issue a blanket ban on premises opening during a period beginning at or after midnight and ending at or before 6am. They can be applied on particular days of the week, or different time periods on different days of the week, and can be applied to the whole or any particular part of a local authority area.

3.11 Late Night Levies

The Late Night Levy (LNL) was introduced by the Police Reform and Social Responsibility Act 2011, and provides licensing authorities with the power to raise money from late-opening alcohol suppliers to go towards policing and managing the NTE. If a local authority chooses to introduce a LNL, it must be applied across the entire local authority area, although the local authority can choose the period between midnight and 6am to which it will apply.

Since their creation, only nine of 350 local authorities in England and Wales have introduced a LNL, while 13 others issued consultations about the introduction of a LNL, but did not subsequently introduce one.

Both early morning restrictions orders and the late night levy have been discussed and considered by the Licensing Committee in 2012 and 2015.

3.12 Licence Fees strengths and weaknesses of the current system

In many respects, the Licensing Act 2003 is a positive model for a licensing system. It has a clear set of objectives, it allows local decision-making, it has a clear appeals process and there are opportunities for everyone affected by a licence to make comments on it.

Used creatively, licensing can be a tool to shape the places that communities live, work and socialise in and can help manage concerns.

However, concerns were raised by councils through the LGA about some weaknesses in the Act. Firstly, that the implementation of the Act has been consistently undermined by a lack of resourcing due to the centrally-set fee system. Licensing fees, which are set nationally have remained unchanged since 2005.

Premises and club premises certificate fees are based on the rateable value of the premises. Premises with higher rateable values that are primarily being used for alcohol sales pay additional premiums as do premises with particularly large capacities (in excess of 5000 people).

Fees are also set for a range of other administrative processes under the Act, such as:

- varying a licence
- transferring a licence from one individual to another
- varying the DPS (the person named on the premises licence as the individual designated to supervise the premises)
- Notice of Interest (Usually by a third party owner of a property)
- Provisional Statement (Application based solely on plans not a physical building)
- Change of name and address
- Copy of Licence
- Theft or loss of a licence
- Interim Authority Notice (Following the death of a licence holder)
- temporary event notice (TEN).

Councils have argued that the fees underestimate the costs councils incur in overseeing the Act, and should be set locally. There have been various reviews and consultations around the localisation of fees over the last 16 years, and in 2015, the Government asked the LGA to work with it to develop an evidence base on the costs to councils of overseeing the Act.

The LGA's view is that locally set fees would re-dress the imbalance in fee incomes and whilst locally set fees might increase fees in some places, in others there may be decreases. Local fees could also benefit businesses, for example if there was a reduced annual fee.

Government has indicated that a new fee structure may be re-considered at some point in the future.

3.13 Developing the statement of licensing policy

Under the Act, licensing authorities are required to prepare a statement of licensing policy (SLP) which sets out how licensable activities will be regulated and how licensing functions will be exercised in their areas, as well as expectations of licence holders and operators. The policy can be used to identify areas where the risk of harm may be greater due to the characteristics of a particular area, and how these risks can be mitigated.

The SLP is an opportunity to take a strategic look across all of the licensable activities within your area and set out a vision for them. The decisions made can enhance an area's economy, public health, safety and cultural appeal to tourists and visitors from surrounding areas.

Getting the statement of licensing policy right is important as this guides the local authority's decision making. We must have regard to our SLP when carrying out licensing functions as the policy acts as a starting point for a

decision. Whilst we can depart from our policy when considering applications, there will need to be good reasons for doing so.

The SLP should set out how licensees can contribute to creating the evening and night time economy that the council envisages, for example encouraging certain types of applications in certain areas, for example food led businesses. It is also an opportunity to set out the context in terms of specific local issues that licensees should consider for example areas of saturation in a town centre, and how they can contribute towards positively addressing them.

The SLP takes on additional significance in the event that an applicant challenges or appeals the sub-committee's decision. At this point the Magistrates court will adopt the licensing authority's policy as if it were its' own.

3.14 Planning

The licensing and planning systems operate independently with the planning and licensing regimes involving consideration of different, albeit related, matters. Planning is the regime that is directed at development of land and the use of premises upon it. Licensing is the regime that is directed at licensable activities and responsible management of said premises upon that land. Licensing committees are not bound by decisions made by a planning committee, and vice versa. For example, a premises licence or club premises certificate cannot be refused on the grounds that they do not have planning permission. Licensing authorities are also able to specify different opening hours on the licence from those specified under planning permission. This is somewhat incongruous, but the two schemes take different matters into account when determining hours, and the more restrictive set of hours always applies.

Nevertheless, where applicants have indicated that they have also applied for planning permission or that they intend to do so, licensing officers do discuss the application with our planning service prior to determination with the aim of agreeing mutually acceptable operating hours. It is also important to note that any decision of the licensing authority on an application for a premises licence does not relieve the premises user of any requirements under planning law for appropriate planning permission where it is required. Premises operating in breach of their planning permission would be liable to prosecution under planning law.

3.15 Partnership Working (Pubwatch)

Creating a safe, vibrant and diverse night time economy is in everyone's interests and the police, council, emergency services, local businesses and the community all play a role to achieving this.

Partnership schemes involving the trade such as pubwatch is an effective network of licensees working together to combat crime, disorder, and anti-social behaviour in our towns and villages. There has been a pubwatch running in Hinckley since February 2004 which was formed by Officers in licensing, town centre manager, the local police licensing sergeant and a leading town centre publican.

Hinckley pubwatch now includes licensees from Burbage, Earl Shilton and Barwell who attend the meeting and works as a successful partnership.

3.16 Purple Flag

Purple Flag is an accreditation process similar to the Green Flag award for parks and the Blue Flag for beaches. It leads to Purple Flag status for town & city centres that meet or surpass the standards of excellence in managing the evening and night time economy (ENTE).

It is a positive initiative that indicates an entertaining, diverse, safe and enjoyable night out throughout the UK and Ireland and now being taken up internationally.

Town centres that achieve a Purple Flag are those that are safe, diverse, vibrant, appealing, well-managed and offer a positive experience to consumers. Purple Flag is the only UK scheme focused on the ENTE that sees it in the round; both the negative impacts that need to be addressed and the potential for economic growth, increased conviviality and community enhancement.

Licensing are working together with community safety, the police and Hinckley BID and we are intending on submitting an application in 2022.

3.17 Role of councillors

Licensing committees/sub-committees

Membership of the licensing committee is prescribed within the Act, and should consist of at least 10, but no more 15 councillors we currently have 11 members in our committee. The licensing committee has delegated the majority of its responsibilities to licensing sub-committees, the sub-committees must consist of three members of the main committee in order for decisions to be made with proper authority. The sub-committee does not need political balance and can also be appointed outside of full council.

The sub-committee's primary role is to consider whether a licence application is likely to undermine one or more of the licensing objectives in the light of any relevant representations that may have been made about it. These considerations will be made at a hearing.

Licensing hearings, are convened when a sub-committee is required to consider a contested application, must be held within strict timescales which are set out in statutory regulations.

The day-to-day administration is carried out by our licensing officers and a shared environmental health administration team.

The Licensing Act 2003 (the Act) is a permissive regime. This means that licences must be granted if they have been made in accordance with statutory requirements and in the absence of any relevant representations.

3.18 Role of responsible authorities

Overview

Responsible authorities (RAs) are statutory bodies which are able to comment on applications made under the Act. They can make representations about the grant, full variation, transfer and review of premises licences as well as those for regulated entertainment which are not exempt, and can also apply for licence reviews in their own right.

The responsible authorities are:

- the licensing authority itself
- the chief officer of police
- the fire and rescue authority
- the body responsible for enforcing health and safety at work
- the local planning authority
- environmental health
- the body designated by the local authority for the prevention of children from harm
- trading standards
- the director of public health
- with regard to a vessel – the Environment Agency, the Maritime and Coastguard Agency
- Home Office Immigration Enforcement.

Police

The police are one of the primary partners in managing the licensed economy and gather considerable information about the operation of premises through their policing of the area. Consequently, the police are generally the most proactive of the responsible authorities in liaising with applicants and licence-

holders, making representations about licences and seeking reviews of licences.

In April 2017, a mandatory requirement was introduced for police forces in England and Wales to begin systematically recording alcohol-related crime. They are required to apply a 'flag' to their recorded crime data, for crimes where alcohol is perceived as an aggravating factor.

This data informs licensing and policy decisions at a local level, provided it is of sufficient quality. The police have a key role in managing the night time economy and should usually be the main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the Act may make representations with regards to any of the licensing objectives if they have evidence to support such representations.

A licensing committee must actually consider all relevant representations carefully, including crime numbers and other evidence presented by the police, as this may well include examples that do not relate to the licensable activity: several licensing decisions have been overturned on appeal as a consequence of this.

The partnership with the police extends outside of the licensing process and related enforcement and the police are a key player in Pub Watch.

We liaise with the police on almost a daily basis and now meet weekly to discuss issues over the previous seven days, we also undertake joint inspections with local police officer with licensing responsibilities.

Police officers have specific powers in the Act in relation to:

- serving a closure notice on problem premises (either within an area or specific premises) where there is crime, disorder or nuisance
- calling for a review or summary review of a licence
- objecting to the transfer of a premises licence
- objecting to a change of Designated Premises Supervisor (DPS)
- objecting to a personal licence application if the applicant has relevant current convictions or after a licensing authority has decided not to revoke a personal licence
- objecting to a temporary event notice
- exercising powers of entry to licensed premises if they suspect offences under the Act are being committed.

Public health

One of the primary reasons for including the director of public health (DPH) as a responsible authority is that public health may have access to information that is unavailable to other responsible authorities.

The role of the DPH is to help promote the health and wellbeing of the local populations they serve. This is an expansive remit that influences a wide range of circumstances, including local licensing arrangements. Similarly the licensing regime is concerned with the promotion of the licensing objectives, which collectively seek to protect the quality of life for those who live and work in the vicinity of licensed premises and those who socialise in licensed premises. This focus on the wellbeing of the wider community via licensing is an important addition to public health teams' existing work to promote the wellbeing in their localities.

Public health representations must be assessed in the same way as evidence from any other responsible authority. It can be more challenging for them to make representations as there is no specific health objective, but is entirely possible and a number of public health teams have made successful representations – either in their own right or in support of other responsible authorities.

Environmental health

Environmental health plays a significant role in addressing potential nuisance and safety issues associated with licensed premises, such as music noise, dispersal noise from patrons, intrusive odours and general safety.

Environmental health officers (EHOs) will frequently discuss conditions with applicants such as proposed sound control or mitigation measures and health and safety issues. EHOs can consider 'public nuisance' in relation to licensed premises, which is a broader and more flexible term than the specific 'statutory nuisance' in relation to unlicensed premises.

Statutory guidance warns against using the Licensing Act when other more specific legislative powers are available. The Health and Safety at Work etc. Act 1974 and food hygiene regulations therefore would be used by EHOs to secure workplace and food safety rather than licensing conditions.

Along with the police, environmental health can object to temporary event notices which other RAs are unable to do.

Trading standards

Weights and measures authorities (trading standards) have a specific duty under the Act to enforce the under-age alcohol sales provisions. They have a specific power to conduct test purchase operations and will often organise

age-related product sales training and awareness for businesses and their remit is primarily 'Off-licensed premises'.

Trading standards may issue fixed penalty notices following an under-age sale, and issue a notice preventing alcohol sales from taking place for up to seven days following two or more failed test purchases within three months.

Trading standards may also apply for reviews where there is evidence of offences on licensed premises such as copyright infringement, the sale of counterfeit cigarettes or other goods.

Fire service

Although in practise the fire service very seldom make representations, their representations on public safety grounds means licensing sub-committees have to effectively either reject the application or reject the representation.

The Regulatory Reform (Fire Safety) Order 2005 does not allow fire-safety related conditions to be applied to a licence. It can be useful to remind applicants of their duties under the Fire Safety Order, i.e. that they need to carry out a fire risk assessment and implement findings. Applicants can be signposted to the government's guidance on completing fire risk assessments.

Home Office Immigration Enforcement

Home Office Immigration Enforcement (HOIE) are the most recent addition to the list of responsible authorities following changes brought in by the Immigration Act 2016 which requires all licence holders to have the right to live and work in the UK. HOIE can make representations about the grant, full variation, transfer and review of premises licences for the sale of alcohol and/or late night refreshment, and can apply for licence reviews in their own right. They can also make representations for personal licence applications.

Licensing authority

The licensing authority administers and enforces the Act, but we can also make representations about applications or call for reviews. Crucially we act as a coordination point between the different interests associated with licensable activities and premises. The statutory guidance suggests that there should be a separation between the licensing authority officers processing an application and those acting in its role as a responsible authority intending to make representations.

3.19 Responding to issues at licensed premises

It is good practice for council officers and responsible authorities to give licensee's early warning of any concerns or issues relating to the licensing

objectives that are linked to the premises and to offer advice on the need for improvement.

A graduated approach consisting of advice, warnings, and the use of action plans or statutory notices is sometimes appropriate depending on the nature and severity of the concern.

Where there is a failure to respond to warnings or where concerns are particularly serious we can be asked to review a licence. It is important to note that the vast majority of licenced premises are responsible businesses and reviews are relatively rare, however the committee have recently heard three applications for licence reviews.

3.20 **Reviews**

A review functions as a safeguard or 'check and balance' for communities in the case where problems associated with the licensing objectives are occurring once a licence has been granted, or varied.

There are four types of reviews which licensing authorities can use depending on the circumstances relating to the request. These are:

- a standard review
- a summary/expedited review
- a review following a closure order
- a review following a compliance order made under the Immigration Act.

For the purpose of this report our focus is on the standard review which can relate to the failure to promote licensing objectives, or a breach of conditions.

A responsible authority, residents, businesses or councillors, indeed anyone may seek a review of a premises licence and, in the case of a club premises certificate, that includes the members of the club. This can be done at any point following the grant or variation of a licence or certificate.

The review process includes a 28-day consultation process to allow for public engagement. In a similar way to a hearing, any relevant material can be considered by the sub-committee and the party applying for the review has to persuade the subcommittee the licensing objectives are being undermined.

The primary purpose of a review is to act as a deterrent to prevent further breaches. It can also prevent any licensable activities which are causing concern from happening in future.

There are a range of options open to a subcommittee:

- to modify or add conditions, including reducing hours
- change management – remove the DPS

- suspend all or any of the licensable activities for up to three months
- revoke the licence.

Any of these steps needs to be shown to be appropriate and proportionate. Clearly revocation is the most serious of these and will need careful consideration. In some cases, reviews result in the modification or addition of conditions to the licence.

In certain circumstances the police have the power to apply to a Magistrate's Court for a Closure Order, these should not be used lightly and should only be sought where necessary to prevent disorder. Following the making of a Closure Order the licensing authority must complete a review of the Premises Licence within 28 days. The Home Office issues separate guidance around police powers to close premises.

There have been thirteen applications for a review of a premises licence since the Act was implemented resulting in five revocations, three suspensions of premises licences, two removals of the DPS and two premises that had additional conditions added and one premises had licensable activities removed from the licence.

Summary reviews

Summary reviews can be made by the police (a police superintendent or above) where premises are associated with serious crime and/or disorder. This would typically be involving violence or money laundering. The Home Office issues guidance which includes issues to take into consideration.

Summary reviews are fast track reviews within 28 days with the power to impose interim steps within 48 hours of the application pending a full review hearing. Interim steps could be modifying conditions, ceasing the sale of alcohol, removing the DPS or suspending a licence.

These are very much a last resort and not a routine step.

Prosecution

Either before or in conjunction with a review officers may also consider using other statutory powers, including commencing a prosecution.

Prosecutions must relate to a specific breach of licence condition or specific offence under the Act with each element of the offence needing to be proved beyond reasonable doubt. Prosecutions can only be commenced by a responsible authority and must be started within 12 months of discovery of the offence.

The purpose of a prosecution is punitive and for licensing offences a review (with the threat of revocation or suspension) can often be more of a deterrent.

Range of options open to the court:

- unlimited fine
- imprisonment for up to six months (or suspended sentence)
- forfeit or suspend a personal licence where the defendant is a personal licence holder.

In practice, a case can take a significant amount of time to come to court – if there are issues with the promotion of the licensing objectives which can't be resolved amicably, then review is likely to be the most appropriate response.

Appendix 4

Scrap Metal Dealers Act 2013

4.1 Background

The Act was introduced to tackle a rise in scrap metal thefts across the whole of the U.K. The Home Office estimated that there were 100,000 reported metal theft offences in 2010/11 alone and is costing the economy up to an estimated £260 million per year. A wide range of sectors have been hit including national transport, electricity and telephone links, street furniture, memorials, commercial and residential building including churches and schools.

The Scrap Metal Dealers Act 2013 was introduced delivering much needed reform of the scrap metal sector. The Act provides effective and proportionate regulation, creating a more robust local authority run, licensing regime that will support legitimate dealers and provides the powers to effectively tackle unscrupulous operators.

The Act allows us the Council to decide who should and should not be licensed, allowing us to refuse a licence upon application or to revoke a licence at any time if we are not satisfied that the applicant is a suitable person to carry on business as a Scrap Metal Dealer. The act also creates closure powers for unscrupulous dealers who operate without a licence.

It extends the record keeping requirements placed upon scrap metal dealers and requires the verification of the people Scrap Metal Dealers are transacting with.

Finally, the 2013 Act creates a fee raising power, to allow local authorities to recover the costs stemming from administering and seeking compliance with the regime.

4.2 What is a scrap metal dealer?

The Act defines a scrap metal dealer as a person who is for the time being carrying on a business as a scrap metal dealer, whether or not authorised by a licence. It states that scrap metal includes:

- any old waste or discarded metal or metallic material and
- any product, article or assembly which is made from or contains metal and is broken, worn out or regarded by its last holder as having reached the end of its useful life.

But it does not include gold, silver; and any alloy of which 2% or more by weight is attributable to gold or silver.

4.3 Licences

In order for anyone to carry on business as a scrap metal dealer they must obtain a licence. The licence will be valid for three years and trading without a licence is a criminal offence, there are two types of licence specified in the Act.

Site licence

An individual may hold more than one licence issued by different local authorities, but may not hold more than one licence issued by any one authority.

A Site Licence authorises the licensee to carry on a business at any site in the authority's area which is identified in the licence and must:

- name the licensee;
- name the authority;
- identify all the sites in the authority's area at which the licensee is authorised to carry on business;
- name the site manager of each site; and
- state the date on which the licence is due to expire.

A site licence holder can transport scrap metal from third party businesses by arrangement from any other local authority area providing it is in the course of the business from that site.

A site licence holder cannot regularly engage in collecting waste materials old, broken, worn out or defaced articles by means of visits from door to door in the area they are licensed or elsewhere, as this would constitute carrying on a business as a mobile collector.

It would be acceptable to collect by arrangement, for instance where a motor salvage operator is asked to transport a damaged vehicle from an address to their site.

If a site licence holder uses self-employed mobile collectors to collect scrap metal which will be processed by the site, each collector will need a mobile collector's licence.

When the Act was implemented there were thirteen sites licensed in Hinckley & Bosworth Borough and now in 2021 there are nine.

Collector's licence

A Collector's Licence authorises the licensee to carry on business as a mobile collector in the authority's area only and must:

- name the licensee;

- name the authority; and
- state the date on which the licence is due to expire.

A separate collector's licence is needed for each council area that a mobile collector collects scrap metal. A mobile collector can dispose of or sell scrap metal in any local council area regardless of whether a collector's licence is held for that area.

A mobile collector will need a licence to buy or sell any scrap metal collected. Even if the material is provided free of charge, a licence is required in order to sell it on as, the definition of a scrap metal dealer in this Act includes any person who "carries on a business which consists wholly or partly in buying or selling scrap metal."

A mobile collector's licence will cover any employees working for that business. If they are not employed directly by that mobile collector's business and are self-employed, they will need their own collector's licence even if they are collecting metal from the same van as a person who has a mobile collector's licence.

Mobile collectors and site licence holders need to ensure they comply with relevant environmental legislation and regulation when carrying out their business.

In 2013 there were eighteen licensed collectors and now in 2021 there are three. The majority of collectors did not renew their licences' after 2016.

4.4 Objections to Licence Applications

The Police may object to a licence application where they believe that the applicant is not a suitable person. The local authority, having considered the Police objections and having considered all other information must decide whether we will issue a licence. If we decide not to issue a licence we must allow the applicant the right to make either oral or written representations.

In order to ensure that the application process is open and transparent all representations are heard by a 'Licensing Sub-Committee' which would be made up of three members from Licensing Committee. It is anticipated that the hearings would be managed in a similar way to Licensing Act hearings, where Members hear representations from all parties involved before making a decision.

There is a right of appeal to the Magistrate's Court against the decision to refuse a licence application, to include a condition within the licence, to revoke the licence or to vary the licence.

4.5 Application fees

In setting our fees we have taken into account:

- all the activity required with processing and granting a licence such as considering applications and assessing the suitability of the applicant
- staff costs associated with supporting the service,
- support provided by other parts of the council to the licensing team such as legal services and any other associated recharges,
- the cost of providing advice and guidance to applicants on what will be a new process
- carrying out inspections and ensuring compliance with the law
- training for staff and councillors in the requirements of the new legislation
- costs associated with consulting other agencies and bodies when considering if an applicant is a suitable person
- making and reviewing any policies in relation to the operation of the new licensing regime
- issuing the licence
- Invoicing costs
- any officer time spent providing information for inclusion in the register of dealers.

In assessing the costs of any hearings where the applicant makes oral representations to the local authority, councils will have to have regard to:

- the cost of communicating with the applicant and any representatives they have
- how much it costs to prepare and issue the notice setting out what the council proposes to do as required by paragraph 7(1) in Schedule 1
- what costs are incurred in preparing the report to the Committee
- the cost of printing and sending out the agendas, legal services costs and any legal advice the committee needs
- officer costs associated with actually running the hearing.

When looking at enforcement costs we have to bear in mind that they must be based on the principles of good regulation, and they have to be set in an open and transparent way. An important point is that the fees cannot be used to pay for enforcement action against unlicensed dealers (particularly collectors) or as an economic deterrent or to raise funds.

4.6 **Licensing Policy**

There is no statutory requirement for a local authority to have a formal Scrap Metal Dealers policy; however, it was thought beneficial to write such a policy. This was for the benefit of business owners as well as reassuring the general public and other public bodies. It also reinforces the Regulators Code when dealing with applications by promoting effective practice, and ensuring proportionate, consistent and targeted activity, whilst developing an

understanding between regulators and those we regulate. Hinckley & Bosworth Borough Council adopted the policy in May 2021.

4.7 **Compliance and Powers of Entry & Inspection**

The Local Authority can determine who should be licensed and who is not suitable and have the power to:

- refuse an application.
- revoke a licence at any time if we are not satisfied that a dealer is a suitable person to carry on a business as a scrap metal dealer.

Authorised officers have power of entry to licensed sites by giving notice to the site manager and also without giving notice where reasonable attempts to organise a mutual date have failed. We are able to investigate whether the premises is being used as a scrap metal site and must be allowed to enter and inspect the premises and records at all reasonable times.

Authorised officers have powers to close an unlicensed site trading without a licence using a closure notice. The Local Authority implements a 'stepped approach' to compliance, inspections and enforcement in relation to scrap metal dealers seeking compliance in the first instance for low level offences or breaches in line with the licensing compliance and enforcement policy. We have served two closure notices on separate sites with the most recent being in 2020.

Appendix 5

Tattooists and Skin Piercers

5.1 It is recognised that Tattooing and body piercing have become increasingly popular and fashionable in recent years, however the practice has a well-established history. Ensuring practitioners follow safe working practices has therefore been an important enforcement service for Environmental Health for many years, ensuring protection of both clients and the practitioners themselves. Improper and unhygienic practice may result in localised skin infections at the site of the tattoo or piercing. There is also the risk of transmission of blood-borne viruses, for example Hepatitis B, Hepatitis C, Hepatitis D or HIV, which can have more serious and long term health consequences. It is therefore important that practitioners have safe working practices, and particularly that good infection control practices are followed at all times, so that both clients and practitioners are protected. It is also recognised that in the sector there are currently no nationally recognised or accredited training courses, standards for practice, agreed knowledge and skills frameworks or arrangements for monitoring and reporting of professional competence.

5.2 Legislation

The use of legislation in this area of activity is primarily to ensure that infection control arrangements are adequate and effectively carried out. Currently the only primary means of enforcing infection control arrangements is by use of registration provisions, as there is no licensing provisions for this activity available to this Council; and application of local byelaws. These are prescriptive methods with offences and penalties for noncompliance. The registration and byelaws provisions are largely concerned with setting requirements for good standards by requiring the maintenance of established hygiene controls in respect of premises, equipment, procedures and practices. However, there are additional controls contained in primary legislation that do contain provisions for the immediate prohibition of activities or persons or for the closure of premises where risk of infection can be demonstrated. The legislation relating to tattooing and skin piercing activities can therefore be broadly split into two main areas:

- Specific controls by registration of premises and people carrying out the activities, and
- General controls of activities through primary legislation that is not specific to particular activities but applies to all of them.

Specific Legislation

The Council has adopted through The Local Government (Miscellaneous Provisions) Act 1982 the requirement for the registration of both the premises and the practitioners themselves on the practices of acupuncture, tattooing, ear piercing or electrolysis, with bylaws also regulating these particular

activities for the purpose of ensuring proper infection control measures through:

- The cleanliness of premises and fittings in such premises;
- The cleanliness of persons and
- The cleansing and, so far as is appropriate, the sterilisation of instruments, materials and equipment used in connection with the practices.

The Council must issue a registration if the application has been properly made and a registration can only be refused where a person has previously had a registration cancelled by a Magistrate for a conviction for the offences of:

- Carrying on the business of acupuncture, tattooing, ear piercing or electrolysis without being registered, punishable through a fine on the Standard Scale of Level 3 currently £1,000.
- Contravening any bylaws made under the Act, punishable through a fine on the Standard Scale of Level 3 currently £1,000.
- Failing to display a copy of the registration and bylaws at the premises, punishable through a fine on the Standard Scale of Level 2 currently £500.

An exemption from the registration requirements applies to practices carried out by or under the supervision of a person who is registered as a medical practitioner. Local authority officers can be authorised to enter any premises where they have reason to believe any of the three offences above are being committed, but where entry is refused the authority of a warrant issued by a Justice of the Peace has to be obtained.

General controls

Several pieces of primary legislation imposing infection control requirements in relation to all skin piercing activities apply across the country for use by local authorities without the need for adoption.

The Health & Safety at Work etc. Act 1974 (HASWA74) applies to all persons engaged in tattooing and skin piercing activities for gain or reward. This includes peripatetic workers who carry out treatments in the client's home, although only the Health & Safety Executive have powers in relation to peripatetic workers. The Act imposes on all employers a general duty of care to ensure the health, safety and welfare of their employees and on both employers and self-employed persons a general duty of care to ensure their activities do not expose them or the general public to risks to their health or safety.

Under HASWA74 legislation businesses are also required to carry out risk assessment of those work activities that could cause harm to people and take appropriate precautions to prevent that harm arising, including infection prevention and control measures. The Control of Substances Hazardous to Health Regulations 2002 also requires specific risk assessment is carried out

for work with substances hazardous to health, including biological agents such as organisms which can cause diseases transmitted by unhygienic practices.

The requirements of HASWA74 are enforceable through improvement and prohibition notices. Improvement notices give a time limit for compliance with requirements. Prohibition notices can have the effect of immediately stopping the operations of a business or the activities of a person where imminent risk is apparent. All offences under HASWA74 are punishable by unlimited fines and prison sentences, so they provide a substantial inducement for business to comply with requirements. The use of health and safety legislation is governed by substantial amounts of regulatory guidance and approved codes of practice. However, none of this relates specifically to skin piercing and therefore, regulatory officers need to use their skills of risk assessment within an infection control setting.

There is also national legislation under the Public Health (Control of Disease) Act 1984 giving local authority powers to protect public health where voluntary cooperation to avert a health risk cannot be secured and where other methods of control are ineffective, unsuitable or disproportionate to the risk involved. Although these powers are very extensive, there are stringent criteria for their use and safeguards for people who might be affected by them. Before making use of these powers, the local authority or Justice of the Peace must be satisfied that the conditions relating to a particular threat to health are met. The criteria cover evidence of infection or contamination, assessment of the potential for significant harm to human health, risk of spread to others and necessity for action to be taken in order to reduce or remove that risk.

Age Limits and Consent

The need for limits on age, and requirements for consent, can be a controversial area because in many circumstances specific requirements have not been made in law. Consent is a complex area of law, and one that is often misunderstood by the general public, and also some skin piercing practitioners.

The Tattooing of Minors Act 1969 imposes a statutory minimum age of 18 years for permanent tattooing (except when carried out for medical reasons by a duly qualified medical practitioner or by a person working under their direction). The practitioner has a defence if they can show that they had good reason to believe that the person was over 18 years of age. The consent of a client under 18 is not a defence. The Police enforce this legislation and fines are up to Level 3 on the Standard Scale (currently £1000).

There is no statutory minimum age for any other form of skin piercing activity. Ear piercing, and nose piercing, is generally considered acceptable when carried out on a minor, even below the age of five, provided that a parent or legal guardian gives consent and is present whilst the procedure is carried out. Under the Sexual Offences Act 1956, girls and boys under the age of 16

cannot legally give consent to intimate sexual contact under any circumstances, so piercing of nipples and genitalia (for girls) or genitalia (for boys) can be regarded as an assault offence. The Female Genital Mutilation Act 2003 states that certain procedures in respect of female genitals is illegal unless carried out for medical reasons.

5.3 **Enforcement**

Applications for registration with the Council from tattooists or skin piercers can be made online or through an application form with accompanying registration fees which are reviewed each year to ensure they cover the costs of the registration process. Currently the fees, which are one off, are £ 135.00 for the premises registration and £90.10 for the person registration.

Once an application has been received arrangements are made to visit and access the premises with our primary focus on infection prevention and control during the intervention. Primarily therefore officers check on ensuring there is:

- Good cleanliness of the premises where the tattooing and/or body piercing is taking place, and of the fixtures and fittings.
- Good personal hygiene of the practitioners.
- Correct cleaning and sterilization or disposal of instruments, materials and equipment processes in place.

It is important that safe working practices are followed at all times in order to protect both the client and practitioner and therefore when conducting our interventions, Officers reference the Tattooing and body piercing guidance Toolkit produced by The Chartered Institute of Environmental Health, Public Health England, Health and Safety Executive, Tattoo and Piercing Industry Union.

Following assessment at this visit, officers will discuss their findings with the proprietor and either register the premises or suggest remedial actions, which will be checked upon before registration is given. Registration cannot be withheld, however it has been found that new operators are keen to follow and adopt good practices.

Once the series of these initial visits has concluded a risk assessment on the business is conducted, as with all premises for which the Council has the responsibility for health and safety enforcement. This risk assessment undertaken follows national guidance from the Health and Safety Executive `LAC 67/2 v6 (2017) - Setting priorities and Targeting Interventions` and evaluates a business's health and safety performance (i.e. how effective is the business at managing any risks it creates) based on four areas of assessment:

- Confidence in management
- Safety performance
- Health performance

- Welfare compliance

A resultant scoring system will categorise the business into one of four categories; A – high risk; B1 and B2 - medium risk and C – low risk.

In recent years the focus of the health and safety regime has moved to a lighter touch approach concentrating on higher risk industries and on tackling serious breaches of the rules. Consequently the Health and Safety Executive (HSE) and local authorities have reduced the number of inspections carried out; to have greater targeting where proactive inspections continue; and to increase information provision to small businesses in a form that is both accessible and relevant to their needs. Guidance produced by the HSE through their National Local Authority Enforcement Code and Local Authority Circulars 67/2 'Advice/guidance to local authorities on targeting interventions' are used each and every year to determine this council's key priorities. These codes indicate that local authorities are expected to target proactive inspections on high risk activities in specified sectors or on workplaces where intelligence suggests that risks are not being effectively managed. Previous years codes have indicated that only Category A businesses are targeted for a proactive inspection. However, inspections of other risk categorised businesses will occur if a matter of evident concern is brought to our attention through reports of accidents, complaints or other intelligence suggesting the premises requires an intervention. A revised risk rated following any additional inspections is carried out and may raise the business to an 'A' category and thereby subject to further proactive inspections until such time as the officers have confidence in the businesses performance.

5.4 Possible Future Controls

At the time of writing this report Parliament were considering a Health and Care Bill to improve the safety and regulation of aesthetic non-surgical cosmetic procedures. A proposed amendment to the Bill being debated would enable the Secretary of State to introduce a licensing scheme for non-surgical aesthetic cosmetic procedures. If the amendment was adopted in the Bill a new system should help to better regulate cosmetic practitioners, including skin piercers and tattooists, to ensure that they have appropriate qualifications, competencies and skills to practice safely.