



ANNUAL PERFORMANCE REPORT OF SHOP FRONTS LICENSING AND ENFORCEMENT

**CORPORATE COMMITTEE
MEETING DATES 2018/19**

3rd June 2019

CLASSIFICATION:

Open

WARD(S) AFFECTED

All

GROUP DIRECTOR

Kim Wright, Neighbourhoods and Housing

1. INTRODUCTION AND PURPOSE

- 1.1 This report sets out the year to date performance of the shop fronts service, specifically focusing on the enforcement aspect of tables and chairs within the borough for the period 1st October 2018 - 31th March 2019.
- 1.2 The Corporate Committee has requested an update on how the Council licences and enforces its shop fronts trading within Hackney.
- 1.3 A shop front licence is the specific licence businesses need to trade goods and services outside their shop, including everything from fruit and vegetables outside convenience stores to tables and chairs outside local cafes, bars and restaurants.
- 1.4 The licensee may only sell goods that the shop is legally registered to sell (excluding alcohol, tobacco and tobacco products and refreshments).
- 1.5 Temporary and permanent shop front licence applications are available, however permanent shop front applications are only available for licenced streets. Applicants would have to hold a temporary licence for six months before they can apply for a permanent licence.
- 1.6 All applications that are considered before they can become a permanent licence holder are decided by the Council's Officer Licencing Panel (OLP) which consists of the Markets and Street Trading Manager and the Head of Service who currently meet on a monthly basis. The applicant must meet a set criteria for the OLP to sign off on a permanent licence.
- 1.7 This licensing and enforcement process, as referred to in paragraph 4.2, is managed by the Markets and Street Trading service and the shop front licence is a service that supports business growth, stimulate the local economy & employment and attract customer footfall into the borough.
- 1.8 Shop front trading within Hackney continues to grow compared to last year (17/18), At the end of the financial year 2018/19 the markets and street trading service completed the year with double digit growth across both our markets and street trading operation with the shop fronts aspect of the service delivering an increase of 18% year on year and markets 15%
- 1.9 The table below highlights the growth in live shop front licences from 2017/19 vs 2018/19:

Shop front licences	2017/18	2018/19	Overall +/-
Permanent	102	115	+13%
Temporary	157	190	+21%
Overall	259	305	+18%

*Tables & Chairs represent the highest volume of shop front licences we issue across Hackney, accounting for over 60% of our total shop front trading licences. This is also the main area for complaints and as such where enforcement action is most required.

2. RECOMMENDATION(S)

The Corporate Committee is recommended to:

- 2.1 Note the content of this annual report and level and the scope of work being carried out in relation to Shop Fronts Licensing and Enforcement.**

3. REASONS FOR DECISION

- 3.1 This report which is for noting and adheres to the requirement previously agreed by Corporate Committee to report annually on the Licensing and Enforcement of Shop Front trading.

4. BACKGROUND

- 4.1 In April 2018, the service invested £12,500 in a new Licensing system for shop fronts. This system enables Inspectors to access new and existing shop front records on the go and they have been equipped with tablet devices to complete shop front application visits on site in real time.

4.2 Policy Context

LICENSING AND ENFORCEMENT

- 4.2.1 When an application for a shop front licence arrives it is allocated to an Inspector to complete an on-site visit and assessment of the application. The officer will arrange with the proprietor to attend and complete the assessment.

The new system also includes the facility for the inspecting officer to now add a drawing to show the dimensions of the shop front directly to the account of the applicant. We originally planned by April 2019 this dimension drawing will not only appear on the account but will also appear on the licence itself, making it significantly easier and clearer for any enforcement service to highlight a breach of licencing conditions, thus creating a consistent joined up approach to enforcement.

Due to a number of technical issues within development of the new licencing system we will now deliver this style of licence by the 1st of August 2019. An example of the two page licence to be displayed can be found below.

Temporary Shop Front Trading Licence Card

Trading licence number: _____

Name of licensee: _____

Name of premises: _____

Address: _____

Postcode: _____

Shop front display/tables and chairs: _____

Special conditions attached to licence:
No advertising boards may be placed on the highway as per section 9.10 of shop front trading regulations.

Schedule

Valid from: _____

Expiry date: _____

Permitted trading days: _____

Permitted trading hours: _____

Dimensions of licensed area:

Area 1	Area 2	Area 3
Length (m): _____	Length (m): _____	Length (m): _____
Width (m): _____	Width (m): _____	Width (m): _____

NOT TRANSFERABLE
Hackney Councils are not permitted to trade on the highway as per section 9.10 of shop front trading regulations. This licence is issued on the understanding that the licensee will comply with the terms and conditions of the licence and will not be liable for any breach of the terms and conditions of the licence. This licence is issued subject to (1) the provisions of The London Local Authorities Act 1993 and regulations made pursuant to Section 21 of said Act; (2) The Highways Act 1980, Section 113; (3) compliance with The Road Act 1934 and any other regulations that may apply to any other orders made hereunder; and (4) any other conditions or restrictions which are in force for the time being.

Signed: _____ Dated: _____

Authorised officer on behalf of the Director of Health and Community Services.

Temporary Shop Front Licence

Name of licensee: _____

Name of premises: _____

Address: _____

Postcode: _____

Shop front display/tables and chairs: _____

Special conditions attached to licence:
No advertising boards may be placed on the highway as per section 9.10 of shop front trading regulations.

Schedule

Trading Licence Number: _____

Valid from: _____

Expiry date: _____

Permitted trading days: _____

Permitted trading hours: _____

Dimensions of licensed area:

Area 1	Area 2	Area 3
Length (m): _____	Length (m): _____	Length (m): _____
Width (m): _____	Width (m): _____	Width (m): _____

NOT TRANSFERABLE

Markets and Street Trading Service call 020 8356 5300

THIS CARD MUST BE PROMINENTLY DISPLAYED IN PREMISES WINDOW

Produced by Hackney Design, Communications & Print • May 2011 • 1000017

Hackney

Temporary Shop Front Diagram

1.6m

1.3m

Produced by Hackney Design, Communications & Print • May 2011 • 1000017

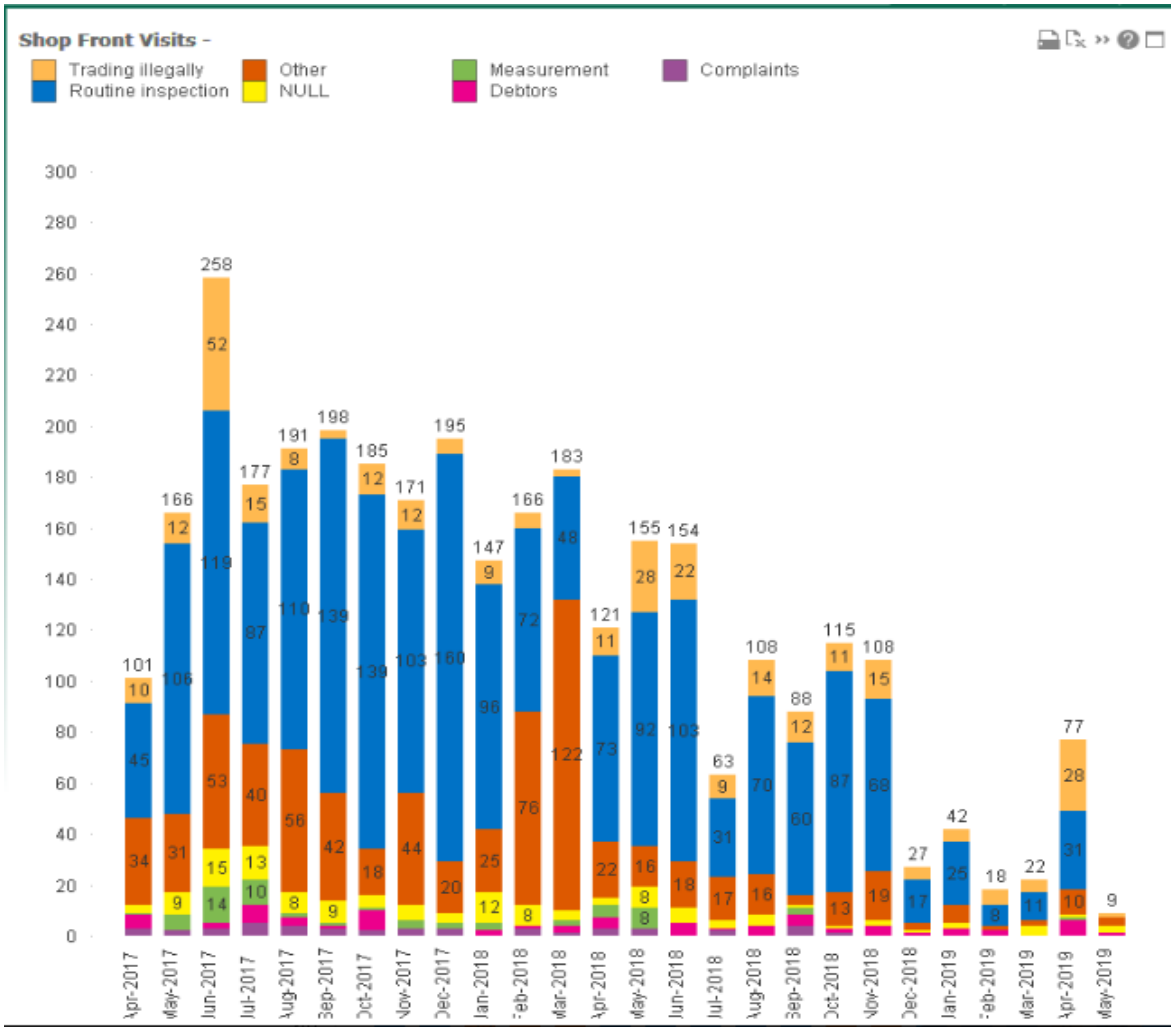
Page 1 / 2

Hackney

4.2.2 Once licensed, all shop front licensees are required to display their licence within the window of their business, ensuring it is visible at all times. Failure to do so is a breach of the terms and conditions of their licence. Initially we revisit a new licensee twice within the first month of trading and at least once a month thereafter unless we receive a complaint or intelligence to suggest non-compliance or breaches of the terms and conditions of their licence.

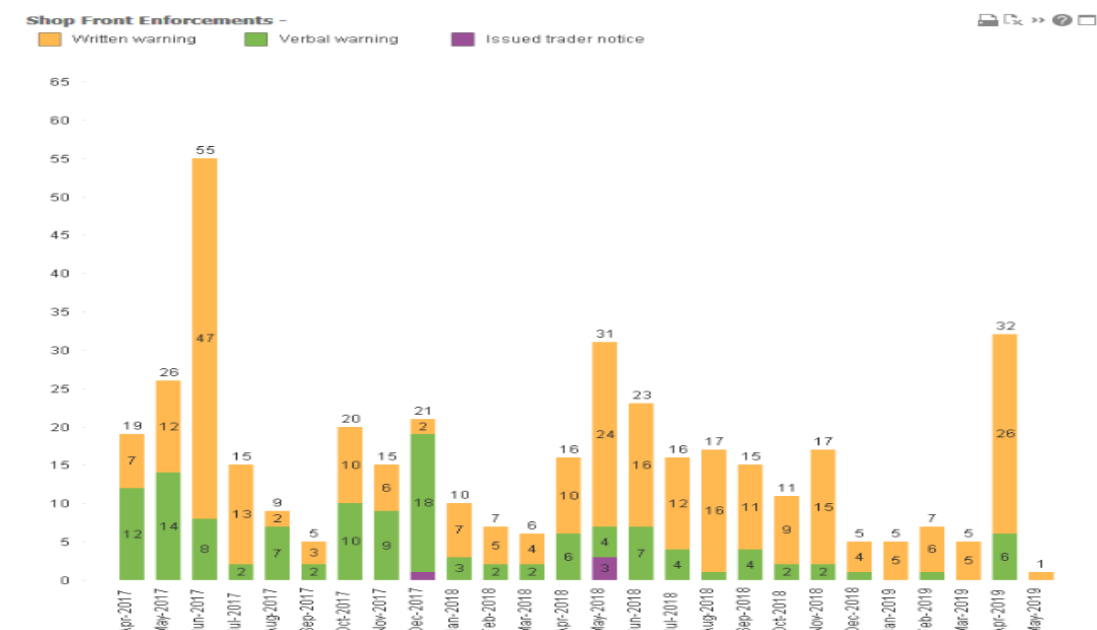
4.2.3 The Inspectors currently complete on average 190 visits per month. These visits will be for the below reasons:

- Complaints
- Debtors
- Licence Measurements
- Routine inspections
- Revisits
- Enforcement Action
- Illegal Trading



4.2.4 The current approach in dealing with any shop front licence breaches or complaints involves case management techniques and when identified proactive deployment against persistent offending premises or the persons responsible for causing the non-compliance. This has resulted in year on year increase in enforcement visits and action taken on licence breaches or complaints by 20% in 2018/19.

4.2.5 The below graph highlights the increase of enforcement visits in 2018:



4.2.6 This increase was expected and is proportionate to the number of historic or legacy enforcement issues with non-complaint businesses that are trading without a licence within the Borough. This included 5 premises where enforcement action was taken.

All 5 of these premises were prosecuted for illegally trading in 2018/19 and have resulted in the courts issuing fines to the business owners. Following on from the enforcement action that was taken 4 of these 5 premises now qualify to reapply for a shop front trading licence and have applied for a new licence and will be monitored weekly by the inspectors.

4.2.7 The current approach taken is part of a clear and robust disciplinary process implemented from April 1st 2018 which consists of:

- Verbal Warning
- Written Warning and FPN issued
- Final Written warning and FPN issued
- Revocation of licence and / or prosecution
- Right of Appeal via the Head of Service

4.2.8 The shop fronts officers are specialists in this field and are separate from the Market Inspector resource pool. They are however, currently reliant on crossover and co-working between teams within Transport for London (TFL) and the council's Enforcement Team to carry out enforcement action across the service. This is resource and workload heavy and is dependant on the availability of enforcement officers to discharge these duties on our behalf, following the removal of the delegated powers in a restructure in 2013.

4.2.9 The resolution to this issue would be to provide the markets and shop fronts service officers with the delegated powers to enforce across our markets, shop fronts and street trading sites. This will further enhance the services ability to swiftly and effectively deliver an end to end process and support our colleagues within the enforcement services without unnecessarily drawing on their resources.

RED ROUTES ENFORCEMENT

4.2.10 Red routes are managed and enforced by TfL who have a dedicated enforcement team for Shop Fronts. They are at present however, significantly understaffed and we have seen a sharp decline in visits and enforcement action on the red routes in Hackney since the end of 2017.

4.2.11 In February 2018 Officers met with TfL to discuss these concerns and an agreement was reached for the markets service and TfL to adopt a collaborative approach to enforcing on Shop Front violations across the borough of Hackney. This further enhanced our ability to police and enforce compliance to the licensee's shop front terms and conditions along with building a better working relationship with TfL.

4.2.12 Both teams now meet on a quarterly basis to review case load and collaborative enforcement actions and carry out regular joint enforcement operations.

4.2.13 TfL are currently resourced and engaged in large recruitment drive but at present they only have two officers and a manager dedicated to red route enforcement across Hackney and Tower Hamlets.

4.2.14 If we are to continue with the current enforcement across sites that sit within Hackney and the TfL jurisdiction, then the power to enforce this will need to be delegated to us from TfL and staffing transferred from TfL or the capital provided to ensure the correct volume of officers are tasked to manage and enforce accordingly.

4.3 Equality Impact Assessment

4.3.1 The Council has a legal obligation under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different groups.

4.3.2 When considering Street Trading (Shop Front Trading and Tables and Chairs) applications, only issues provided for in the London Local Authority Act 1990 (as amended), in addition to the street trading regulations will be taken into account. This will ensure a consistent approach is adopted. Under the terms of the policy, every application will be considered on its own merits.

4.3.3 There is no identified equality impact on any of the groups with protected characteristics emanating from the recommendations in this report.

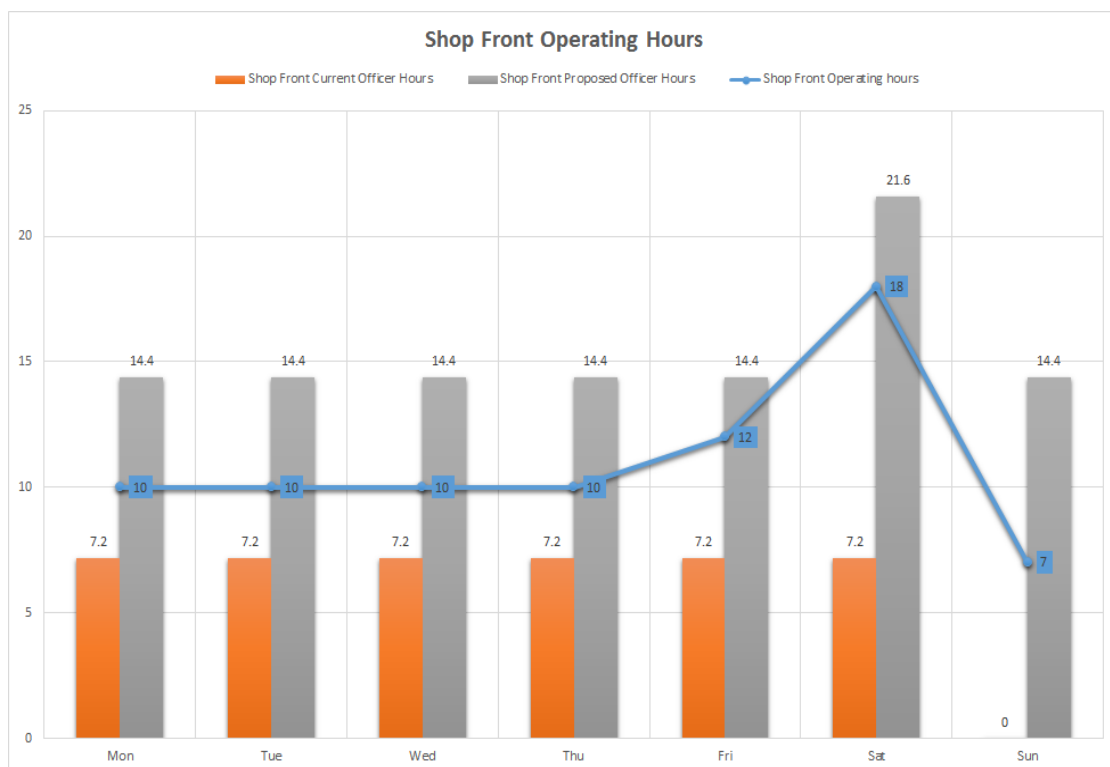
4.4 Sustainability

4.4.1 In April 2019 the Markets service restructure commenced. This will result in the creation of a bespoke Shop Front Service team as opposed to being managed out of the markets inspector resource pool.

4.4.2 At present the shop fronts resource is 1.2 FTE, to address the continuing growth in demand these proposals recommend an increase to 3.2 FTE. This resource will comprise of 1x Team Leader, 1 x Full time and 2x part time officers. The income to cover these additional staff will come from the growth in shop front licence revenue which has increased by £22,500 this year.

4.4.3 The role of a Shop Fronts Service Officer is very different to that of a market inspector. A different skill set and experience is required to deliver the revenue generating aspect, customer service, retention and end to end enforcement that is not contained within the current structure. Presently, shop front officers' duties are inadequately described within the general market inspector JD.

4.4.4 This will provide full 7 day a week coverage and significantly improve the deployment of resources to match the needs of the borough:



*Current structure does not deliver the business need

** Proposed structure will deliver the business requirements but also allow opportunity to flex up with the increased demand without need for additional recruitment.

- 4.4.5 In order to maximise the operational management and income generation from our shop front service, this restructure will introduce role specific job descriptions for these posts and separate this function from the market inspector deployment pool due to the significant differences in competency and behaviours required to execute each role successfully.
- 4.4.6 To further improve compliance from licence holders and act swiftly on breaches the restructure will allow shop front officers the delegated powers of enforcement and facilitate them in case managing the end to end process internally, rather than passing on cases to external services.
- 4.4.7 Developments of the Shop Fronts Service will continue over the next 12 months and will involve introducing a number of changes that will see improvements in how we operate and enforce our shop fronts service such as the ability to issue on the spot Fixed Penalty notices through the newly developed enforcement app on the Officers mobile devices.
- 4.4.8 We originally planned in November 2018 to commence consultations on our Shop Fronts fees and Charges where we will propose changes to the current fees and charges from a banding system to a pay by square metre system. This will help support local businesses and the local economy by reducing fees for smaller business and ensuring costs of shop front trading are more proportionate to the size of space that is being used to trade from. This has been postponed until completion of the restructure in August 2019.
- 4.4.9 At the same time as the fees and charges consultation, we will also be consulting on a specific shop front terms and conditions document. Currently shop fronts licensees are issued with the street trading terms and conditions and the tables and chairs terms and conditions and are licensed according to these terms and conditions.
- 4.4.10 The new Terms and Conditions will include new sections and changes to existing terms such as:
- **Oversaturation Policy** as we currently do not legislate for oversaturation of specific commodities trading form shop fronts like we do in markets which is leading to overpopulation of the same commodities on the same highstreets and not offering value for money or variety for the public.
 - **Mobile Kiosk Policy** as these kiosks are popping up across the borough and are becoming a hotspot for illegal activity and crime.
 - **Commercial Park lets** currently not licenced and the bough has no way of enforcing the upkeep of these. We have created a licence and will add terms and conditions to facilitate the commercial use of these across the borough.
 - **Planters** are being used more and more by licenced premises who have permanent tables and chairs but here are no current guidance on upkeep or enforcement of in the current terms and conditions.

- **A Board Policy**, Re-stating the council's A board policy which is in line with TfL's zero tolerance approach of enforcement.
- **Tables and Chairs**, Update the current policy document to ensure it adds more clarity and in line with current legislation document as the last changes to this were made in 2008.

4.5 Consultations

There are no consultation issues emanating from the recommendations in the report.

4.6 Risk Assessment

4.6.1 It is important that the London Borough of Hackney adopts a robust and accountable regulatory regime in relation to street trading. It needs to ensure that the risk of non-compliance and the regulatory burden to both the Council and the licence holders is minimised.

4.6.2 There are no risk assessment issues emanating from the recommendations in the report.

5. COMMENTS OF THE GROUP DIRECTOR OF FINANCE AND CORPORATE RESOURCES

There are no direct financial implications emanating from the recommendations in the report.

6. COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE SERVICES

6.1 Street Trading in the Borough is controlled under the provisions of the London Local Authorities Act 1990 (as amended) ("the Act").

6.2 Under section 24(1) and (9) of the Act, if the Council consider that street trading should be licenced in their area they may pass a resolution designating any street within the borough as a "licensed street" for which a street trading licence is required to trade and rescind any designation of a street as a licence street.

6.3 Under section 25 of the Act, the Council is responsible for granting, renewing, varying or revoking all street trading licences.

6.4 Under section 27(3) of the Act, the Council may make regulations prescribing standard conditions which they may attach to the licence on the occasion of its grant or renewal of the same for the proper management and regulation of street trading within the London Borough of Hackney.

6.5 Under section 30 of the Act, any person aggrieved by the refusal by the Council to grant or renew a licence has the right to appeal to the Magistrates' Court at

any time before the expiration of the period of 21 days beginning with the date upon which notification in writing is given of the refusal or decision.

- 6.6 Section 32 of the Act sets out the council's ability to charge fees and also the basis as to the level fees that can be set.
- 6.7 Section 34 and 38 of the Act provides that the Council's may prosecute in respect of breaches of conditions on a street trading licence and/or illegal street trading, respectively.
- 6.8 The licensing of market and street trading under the 1990 Act is a Council function which has been delegated to the Corporate Director of Neighbourhoods and Housing to exercise.
- 6.9 There are no further legal or proprietary implications arising from this report.

APPENDICES

Appendix 1 is a copy of the current Street Trading Shop Front Trading and Tables and Chairs Regulations

BACKGROUND PAPERS

None

Report Author	Daniel O'Sullivan Markets and Street Trading Service Area Manager Daniel.o'sullivan@hackney.gov.uk 0208 356 5981
Comments of the Group Director of Finance and Corporate Resources	Nurur Rahman Group accountant Nurur.rahman@hackney.gov.uk 0208 356 2018
Comments of the Director of Legal and Governance Services	Amanda Nauth Solicitor for Licensing & Corporate amanda.nauth@hackney.gov.uk 020 8356 6295 6345