

# Review of the Enforcement of the Council's Licensing Policy

Scrutiny Management Commission

March 2009

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## **Report of the Review of the Enforcement of the Council's Licensing Policy**

### **1. Executive Summary**

1. At the full Council meeting on 15 July 2008 Councillor Hickson put forward a motion calling on the Licensing Committee to launch an urgent and major review of the Licensing Policy of the Council and to involve the relevant Overview and Scrutiny Commission in the review.
2. The Licensing Committee asked the Scrutiny Management Overview and Scrutiny Commission to carry out a review of the enforcement of the Council's Licensing Policy. The review was conducted between December 2008 and January 2009 by a working group of the Scrutiny Management Commission (SMC).
3. As part of their review the working group interviewed representatives of:
  - Derbyshire Constabulary
  - Derbyshire Fire and Rescue Service
  - Derby City Council's Environmental Health and Trading Standards Division
  - Derby City Council's Planning Control Division
  - The Derby Community Safety Partnership
4. The key points from the evidence given by the witnesses are listed in Section 7 of this report.
5. The draft report was considered and agreed by the Scrutiny Management Commission at its meeting on 3 March 2009. The Council's Principal Solicitor who advises the Licensing Committee commented on the draft recommendations and where appropriate the recommendations were amended to reflect his comments and the views of the Commission.
6. The twelve recommendations made by SMC are listed in the following section of this report.

## **2. Recommendations**

### **Recommendation 1**

7. All Derby Responsible Authorities (RAs) should use their enforcement powers promptly and effectively and in conjunction with each other to deal with breaches of licence conditions and the licensees should be made aware that this will happen.

Reasons

8. To provide for and establish more effective control of licensed premises and of their impact on the environment and people of Derby.

### **Recommendation 2**

9. That within any limitations imposed by the legislation or by the interpretation of the legislation there should be regular monthly liaison meetings between representatives of all the Derby RAs.

Reasons

10. To improve liaison between the RAs and enhance the effectiveness of Licensing Policy enforcement in Derby.

11. The information provided to the SMC working group strongly suggests that at present the licensing partners are largely working in isolation and whilst they may each be dealing appropriately with the issues that relate specifically to them, there seems to be no holistic approach to licensing policy enforcement. The recommendation is intended to:

1. Promote the regular and effective exchange of information between the licensing partners
2. To improve the licensing partners overall understanding of the licensing related issues that affect Derby
3. Facilitate the adoption of a focussed and holistic approach to the enforcement of the Council's the Licensing Policy.

### **Recommendation 3**

12. To investigate the degree to which links between the Council and the Police Licensing Teams can legitimately be strengthened and enhanced and if appropriate to develop a protocol for an improved working relationship aimed at making best use of resources and providing the most effective enforcement of the Act.

Reasons

13. Whilst recognising the need to retain clear boundaries between the two teams, to improve the working relationship of the Police and Council Licensing

Teams, to increase efficiency and effectiveness, and to make best use of limited resources.

#### **Recommendation 4**

14. An effective and workable information sharing protocol should be developed to enable the legitimate exchange of information on licensed premises between Police and the Council in its role as RA. The protocol should include procedures for the exchange all the information that can legitimately be exchanged, including if possible the issue of closure notices currently recorded on the Police 'Innkeeper' system.

Reasons

15. To improve and formalise liaison between the Police and the Council in its role as RA.

#### **Recommendation 5**

16. That the Environmental Health and Trading Standards Division make provision for Environmental Health and Trading Standards staff to work frequently and regularly outside during the times when it is known that problems at/with 'on' and 'off' licensed premises are likely to occur.

17. It is also recommended that as part of their job the Environmental Health and Trading Standards officers be tasked to inspect all types of licensed premises to:

- Investigate complaints and take action where appropriate
- Conduct under age sales investigations
- Proactively ensure compliance with Licence conditions

18. Where breaches of the legislation or License conditions are found to have occurred the Environmental Health and Trading Standards officers should report and action their findings promptly and correctly so that the appropriate action can be taken by the Licensing Committee.

Reasons

19. To ensure that:

- Environmental Health and Trading Standards staff are available when breaches of the legislation of license conditions are most are likely to occur and can therefore witness those breaches.
- To enable proactive enforcement of licensing legislation and license conditions

20. Scrutiny Management Commission has been advised of proposals intended to enhance the provision of an out of hours service by Environmental Health and Trading Standards Officers. Whilst the Commission welcomes the

improvement that the proposals should provide, members were concerned that a service which only operated during the period 0700-1900 hours would not provide a facility for the sort of enforcement which it appears is required.

### **Recommendation 6**

21. That the Trading Standards Section should implement the recommendation made in the Underage Sales Review (2004) and should work co-operatively with other neighbouring local authorities in order to provide 'new' staff and test customers for underage sales exercises.

#### **Reasons**

22. The problem of Trading Standards enforcement staff being known to Licensees was reported to the Planning and Environment Commission in 2004 when they conducted their review of underage sales. The solution recommended at that time was that Derby's Trading Standards team should work co-operatively with other neighbouring local authorities in order to provide a source of 'new' enforcement staff and test customers for underage sales exercises.

23. It is disappointing that this recommendation has not been adopted by Trading Standards and that this problem is still seen as a limiting factor in underage sales exercises.

### **Recommendation 7**

23. That the Trading Standards Team and Derbyshire Constabulary should prepare and publish a protocol that define the actions they will take as RAs in the event that a licensed premises fails a test purchase exercise.

25. The protocol should for example specify the circumstance under which a failed test purchase would result in a warning or in a request for a review of the license.

#### **Reasons**

26. The SMC working group was told that Trading Standards did not as a matter of course report failed test purchases to the Licensing Committee.

27. It is recognised that Trading Standards cannot in isolation simply report failed test purchases to the Licensing Committee. However it is suggested that there needs to be a clearly defined process which sets out the circumstances under which failed test purchases will be reported to Licensing Committee. It is considered that it would be of benefit to Licensees and the Licensing Committee to define this process.

### **Recommendation 8**

28. That a senior officer of Derbyshire Constabulary should be asked:

- a) to confirm or deny the statements made to the SMC working group by representatives of Derbyshire Constabulary about the level of alcohol related crime in Derby and the resource implications that this is presenting for the Police, and:
- b) to comment on the suggestion made by the representatives of Derbyshire Constabulary that there are just too many licensed premises
- c) to clarify whether the comments made by the Derbyshire Constabulary representatives amount to a indication on the part of the Police that they are in favour of the establishment of a Saturation Zone.

#### Reasons

29. At the SMC working group's evidence gathering meeting on 18 December 2008 Inspector Colin Ingley and Sergeant Neville Stocks told members that they had the impression that alcohol related crime in Derby was increasing. They also said that as the result of alcohol related issues the Police might not have sufficient resources to cover problems which arise and said that on Fridays and Saturdays it was necessary to bring in officers from other areas.

30. Inspector Ingley also suggested that there were just too many licensed premises in Derby and mentioned the Saturation Zone approach that was in the Act and had been adopted by Southampton City Council.

31. The working group considers that in view of the comments of the Police it would be helpful to know whether Derbyshire Constabulary are advocating the implementation of a Saturation Zone for Derby.

#### **Recommendation 9**

32. That wherever legally practicable and appropriate the Licensing Committee and the RAs should recommend that membership of Pubwatch is made a condition of the 'on' licenses they consider.

#### Reasons

33. To improve the exchange of information between licensees and the RAs and thereby to reduce the incidence of anti-social behaviour.

#### **Recommendation 10**

34. To investigate ways whereby the views of the Derby Community Safety Partnership and the Derby Primary Care Trust on matters relating to the licensing of premises can be made available to and taken into account by the Licensing Committee.

## Reasons

35. The SMC working group has been advised that the legislation does not enable the Council to add the Derby Community Safety Partnership and the Primary Care Trust to the list of RAs. The working group however considers that the views of these organisations would be of relevance to the Licensing Committee and strongly recommends that their views are sought and are taken into consideration by the Committee.

### **Recommendation 11**

36. Investigate what might be done to change the 'drinking culture' of Derby

## Reasons

37. Information provided to the working group has highlighted the social and health implications of Derby's 'drinking culture'. Whilst recognising the reasons for the current drinking culture and the inherent difficulties in changing it, the working group does however consider that it would be remiss of the Council to dismiss without proper consideration the possibility of changing the existing drinking culture. It is therefore recommended that the Council gives consideration to the suggestions that have been put forward by witnesses for changing the drinking culture of the City.

### **Recommendation 12**

38. That the means whereby enforcement action taken by Fire Officers is reported to the Council is examined and improved where necessary.

## Reasons

39. To address a concern expressed by the DFRS officers that the process of exchanging information could be improved at a local level and to ensure that DFRS officers fully understand their role as representatives of a RA.

## **3. Background to the Review**

40. At the full Council meeting on 15 July 2008 Councillor Hickson put forward a motion calling on the Licensing Committee to launch an urgent and major review of the Licensing Policy of the Council and to involve the relevant Overview and Scrutiny Commission in the review.

41. Councillor Hickson's motion expressed concerns about:

- The problem of binge drinking
- Extended licensing hours
- The impact on Police resources which it is suggested are stretched to the limit



- Problems of antisocial behaviour and crime caused by the excess use of alcohol
- The ability of young people to get alcohol when they should not be entitled to do so
- The poor management of some licensed premises
- The enforcement of the legislation and the suggestion that this could be more stringent.

42. In response to Councillor Hickson's motion Council resolved to call upon the General Licensing Committee to review of the Council's Licensing Policy and to involve the relevant Overview and Scrutiny Commission in its review.

43. Council's response to Councillor Hickson's motion was considered by the General Licensing Committee at their meeting on 15 October 2008.

44. Councillor Hickson attended the meeting and expanded upon the concerns that had prompted his motion to Council. At the meeting Councillor Hickson and several other members referred to the need to improve the enforcement of the Licensing Policy.

45. Having considered the matter the General Licensing Committee resolved to conduct a review of the Council's Licensing Policy and to ask the Scrutiny Management Commission (SMC) to review the enforcement of the Policy. In response to the Licensing Committees decision, the Scrutiny Management Commission confirmed that it would set up a working group comprising Councillors Graves, Webb and Khan to conduct the review.

46. This report details the findings of the review of the enforcement of the Council's Licensing Policy conducted by the SMC working group.

#### **4. Local Authority responsibilities and powers under the Licensing Act 2003**

47. The Licensing Act 2003 introduced personal and premises licenses for liquor licensing and set out clear processes for dealing with licensed premises fail to comply with their license conditions and/or that present a problem to the local community. The Act does this by identifying 'Responsible Authorities' which can take enforcement action against premises to remedy any problems that have been brought to the attention of the local authority.

48. The Licensing Act 2003 applies to the following activities:

- Retail Sale of Alcohol – (transferring the responsibilities of liquor licenses from the Licensing Justices to the Council)
- Private Members Clubs and Social Clubs
- Provision of Regulated Entertainment
- Restaurants that serve Alcohol

- Businesses offering hot food between 11.00pm and 5.00am( so-called late night refreshment)
- Hotels, guesthouses and other places that sell alcohol
- Cinemas
- Theatres and amateur dramatic groups
- Indoor Sporting Events
- Organisers of Occasional Entertainment/Events selling alcohol

49. There are currently around 800 licensed premises in the Derby City Council area and the responsible authorities which can take enforcement action comprise:

- Derbyshire Constabulary
- The Derbyshire Fire and Rescue Service
- The Derby Safeguarding Children Board
- Derby City Council's:
  - Planning Department
  - Environmental Health and Trading Standards Department's:
    - Pollution Control Service
    - Trading Standards Service
    - Food Health and Safety Unit

50. The responsible authorities, and members of the public as 'interested parties', are able to object to any new applications for premises licenses or to any applications to vary an existing premises license (for example by increasing the number of hours during which a premises is able to sell alcohol). To facilitate the objection process the person(s) responsible for the premises are required to clearly display a public notice at the premises in question for a period of 28 days when they initially apply for a license to sell alcohol, or when they apply to vary an existing license. The responsible authorities can take enforcement action against the person(s) responsible for licensed premises where a problem has been identified. These take the form of 'action plans' which are a set of measures aimed at preventing the recurrence of problems and to which the persons responsible for the premises sign up.

51. The City Council's Licensing Services, which is located within the Environmental Health and Trading Standards Department, is responsible for the administration of the Licensing Act 2003. The Service employs full time Licensing Officers who work closely with the responsible authorities and can assist them when problems arise which necessitate the review of a premises license. The Licensing Service does not however have authority under the Act to object to applications for licenses.

52. In addition to imposing an action plan a responsible authority can request that the license for a premises be reviewed, however the Licensing Service

does not have this power. As 'interested parties' members of the public can also request that a license be reviewed.

53. Any request for a review of a license must be supported by evidence of a substantial breach of one or more of the following four licensing objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

54. If an application does not show substantial evidence of a breach of these objectives or is vexatious or frivolous, the review cannot be considered.

55. Applications for the review of a license are considered by a Sub Committee of the Council's General Licensing Committee. At a review hearing the Sub Committee will consider the reasons of the responsible authority or an interested party for requesting a review, and any counter argument presented by the premises license holder. Having considered the evidence the Sub Committee has a range of powers available to it. These powers include the revocation of the license.

56. Schedule 5 of the Act makes provision for appeals against the decisions of licensing authorities. Appeals are considered by the Magistrates Court which having considered the appeal may:

- Dismiss the appeal,
- Substitute for the decision appealed against any other decision which could have been made by the licensing authority,
- Remit the case to the licensing authority to dispose of it in accordance with the direction of the court, and award such costs as it thinks fit.

## **5. Objectives of the review**

57. The objectives of the Scrutiny Management Commission's review were as follows;

1. To identify those organisations which have responsibility for enforcing the Licensing policy and establish the extent of their responsibilities and the level of enforcement expected from them.
2. To determine from representatives of the relevant organisations:
  - a. What they consider to be their enforcement responsibilities
  - b. How they carry out enforcement
  - c. The extent of their recent enforcement activities in Derby
  - d. Any issues that limit or prevent them from carrying out Licensing enforcement

- e. Any changes that they consider could improve the way in which they and other relevant organisations enforce the Council's Licensing policy.
3. From consideration of the evidence to identify any deficiencies in the enforcement of the Council's Licensing Policy and where possible suggest measures to address those deficiencies.

## **6. Methodology of the review**

58. The Chair of the Council's General Licensing Committee informed the SMC working group that the Council's Licensing Policy had been revised in accordance with the model guidelines in 2007/08. The revised Licensing Policy was approved by full Council at its meeting in January 2008. The Chair of the General Licensing Committee also told the SMC working group that as part of its response to the Council motion the Committee would be conducting its own review of the Licensing Policy. The SMC working group therefore concentrated its review on an examination of the way in which the various agencies discharged their responsibilities for enforcing the Licensing Policy.

59. In the course of their review the SMC working group interviewed the following witnesses:

- Derbyshire Constabulary
- Derbyshire Fire and Rescue Service
- Derby City Council's Environmental Health and Trading Standards Division
- Derby City Council's Planning Control Division
- The Derby Community Safety Partnership

60. The evidence gathering interviews were conducted during the period December 2008 – early January 2009.

61. The full notes of each of the evidence gathering meetings can be obtained from the Co-ordination Team. What are considered to be the key points made by the witnesses have been extracted from the notes of the meetings and are tabulated in Section 7 of this report.

62. The recommendations made in Section 2 of the report are intended to address the issues identified by the working group as a consequence of their evidence gathering.

## **7. Key Points from the Evidence**

### **7.1 Key points from the Working Group's meeting with Paul Clarke – Head of Development Control and Land Searches**

PC1	Development Control is not usually aware of proposals for licensed premises until they receive notification from the applicant.
PC2	If a valid planning permission exist and there are no restrictions on the premises Development Control does nothing further after receiving the

	notification. If there are restrictions on the premises, Development Control informs the Licensing Clerk.
PC3	If the premises does not have a planning permission for the proposed use Development Control advises the applicant of the need to apply for planning permission and informs the Licensing Clerk.
PC4	The amenity of the area is considered when the planning application is assessed.
PC5	There is a standards hours planning permission of 8.00 am to 11.30 pm but this can be amended to suit particular circumstances – for example city centre premises.
PC6	Planning permission cannot be used to impose controls that other legislation can provide.
PC7	One the premises are open for business Development Control only gets involved if breaches of the conditions are brought to their attention.
PC8	The process is largely self policing and enforcement action by planning officers is reactive.
PC9	During the past year there have been no occasions when planning officers have taken action in response to a breach of planning conditions.
PC10	Breach of planning conditions is absolute and evidence of this would result in proceedings in the Magistrates Court against the persons responsible.
PC11	Compliance is usually achieved by persuasion. If planning officers think that a breach of planning conditions has occurred they advise the persons responsible. This usually has the effect of preventing further breaches or prompting an application for a variation to the planning permission.
PC12	Applications are made to the Chief Planning Officer and the Environmental Health Officer.
PC13	Planning officers do not have to make comments about the suitability of the premises as this is considered during the planning process.
PC14	Although the number of hot food shops or bars in an area can be controlled under the Local Plan, it is not possible to restrict the number of ordinary retail shops.
PC15	Conditions in respect of noise cannot be applied to existing entertainments licenses.
PC16	There has to be a valid reason for every condition that is attached to a planning permission.
PC17	The possibility of varying the opening hours of a premises depends on what is in the original planning permission. Everything hinges on the original planning permission but this is the subject of consultation.
PC18	Consultation covers the immediate neighbours and premises up to 10 metres away for activities with the potential to cause a nuisance.
PC19	The owner/applicant has to have a valid planning permission before he/she can obtain a license.
PC20	Planning applications result in either a planning permission or a refusal. Applicant can appeal if they consider the response to be unreasonable. Appeals can result in planning applications being

	granted without any conditions.
PC21	There is no control of retail use and lots of retail premises can sell alcohol.
PC22	It is unlikely that a planning permission could be imposed that would restrict the sale of alcohol as there would have to be a valid reason for imposing such a condition. A condition of this type could possibly be imposed as part of the Local Plan review but the Planning Inspector would probably remove it.
PC23	Paul Clarke thought that the planning aspect of the existing licensing process worked well.

## **7.2 Key points from the Working Group's meeting with Mike Kay – Environmental Health Manager**

MK1	The Council's legal responsibilities in respect of noise nuisance are set out in the Environmental Protection Act 1990. The Pollution Control Team responds to service requests and to complaints about noise arising from domestic premises and businesses, which include licensed premises.
MK2	The Pollution Control enforcement regime has changed since the Licensing Act 2003 came into effect. There is now no requirement for a license to include standard conditions and the onus to comply is now on the license holder.
MK3	It is up to the applicant to say how he/she will respond to any objections and ensure there is no noise nuisance.
MK4	There is a form of pre-application negotiation where the Pollution Control Officers either agree with what the applicant is proposing or set out their own proposals. Applicants can refuse what is proposed by the Pollution Control Officers and if this happens the application is referred to the Licensing Committee for determination. It is up to the Licensing Committee to decide whether or not to grant the application.
MK5	Licensing Committee members receive full training.
MK6	If premises are considered to be causing problems a responsible authority, and the pollution control team are a responsible authority, can at any time request a review of the premises license.
MK7	It is not intended that the licensing process should be used to prevent or abate noise nuisance. In the first instance primary legislation should always be used. If noise complaints are received they are investigated under statutory noise provisions.
MK8	Two reviews of licenses have been requested by the Pollution Control Team and one of those was requested in the past 18 months.
MK9	In 2007/08 there were 59 complaints about noise from licensed premises but 23 of these were about the same premises. Of the remaining 36 complaints, 28 were about loud music. It was thought that 50% of the complaints could be classified as serious.
MK10	Serious complaints do not immediately lead to a review as the Pollution Control Team first work with the licensed premises and the complainant to resolve the problem.
MK11	Currently the biggest problem is that the Council has no out of hours

	service to investigate complaints. The present system uses planned observations and noise recording equipment but officers are not available all the time and may not be able to witness some of the reported problems. Currently out of hours visits are essentially proactive.
MK12	There may be a joint role for the Police in investigating noise complaints but this will need to be explored and a procedure needs to be developed.
MK13	Four FTE equivalent Pollution Control posts are currently available to investigate complaints but the big issue is the safety of staff and Police support may be required.
MK14	If premises are causing a noise nuisance it is possible in theory for Environmental Health to close them down immediately but there would be problems in doing this. The Police have powers to close premises in special circumstances.
MK15	In dealing with noise nuisance environmental protection legislation take precedence over licensing legislation and each case is judged on individual merits.
MK16	The Licensing Committee can add conditions to a license and these can be quite specific.

### **7.3 Key points from the Working Group's meeting with Julian de Mowbray – Trading Standards Manager**

<b>Trading Standards</b>	
JM1	Enforcement of the Licensing Policy is something of a peripheral role for Trading Standards.
JM2	Trading Standards are a responsible authority but have never made any representations with regard to the granting of licenses.
JM3	Trading Standards officers have limited powers of enforcement in respect of licenses. Licensing policy is very much a second string for Trading Standards. There is a lot of Trading Standards primary legislation and officers would only resort to the use of the Licensing Policy in extreme circumstances.
JM4	Trading Standards powers cover test purchasing and sampling and sampling is the main purpose for visiting licensed premises.
JM5	Trading Standards visits to licensed premises are often associated with fair trading issues and might involve sampling to ensure the proper quality of alcohol. If Trading Standards officers visit licensed premises it is often in respect of something other than the Licensing Policy. Visits may be made to check on short measures or adulterated drinks or to investigate underage sales. No figures were provided to the C about this category of visits.
JM6	It is necessary to set up a special exercise to investigate complaints about underage sales. It is the responsibility of the licensee to make sure that the purchaser is old enough to purchase an item legally and to refuse to sell if they are not satisfied that this is the case.
JM7	The primary legislation requires the licensee to be sure the customer is old enough to buy before they sell them alcohol.

JM8	Trading Standards officers conduct 20-30 test purchase investigations. These cover all categories of age restricted item. Because to the time involved it is only possible to make a maximum of four test purchases each day.
JM9	There are a limited number of Trading Standards officers and they are known to licensees. There is a proposal to employ two additional Trading Standards officers to carry out underage sales investigations.
JM10	Underage sales exercises have shown that purchases could be made by a child in around 15% of cases. Applied to the whole city this amounts to a significant number of premises that appeared to be prepared to sell alcohol and other age restricted goods to underage customers.
JM11	Licensees found guilty of selling age restricted goods to underage customers are liable to prosecution and a fine of up to £5000. There was one such prosecution in the last year and there would normally be one or two per year in Derby.
JM12	In the past year Trading Standards received 25 complaints about licensed premises and 14 of these were about the sale of alcohol. All these complaints were investigated.
JM13	The Court process is long winded and requires accurate evidence. The vast majority of prosecutions are successful but it takes several weeks of officer time to put the prosecution file together.
JM14	More of the same resources are needed to improve the process.
JM15	If a mini market was found selling alcohol without a license Trading Standards would initially tell them to stop.
JM16	If Trading Standards did not consider the licensee to be a fit and proper person to sell alcohol, for example because they had previously taken action against them, they would make a representation but would use the primary legislation first.
JM17	Trading Standards do not currently provide the Licensing Committee with information about premises which have failed in a test purchase.
JM18	Trading Standards do not currently carry out test purchasing in public houses and night clubs. They could do this but there is a protocol with the County Council under which the Police were responsible for this aspect of underage sales. Also Trading Standards only operate from 9.00 am until 5.00 pm.
JM19	Currently there is not a lot of liaison between the Police and Trading Standards on underage sales.
JM20	So far Trading Standards have made no referrals to Licensing Committee
JM21	It was suggested that Trading Standards should make some form of regular report on licensed premises to the Licensing Committee and that it should be possible to impose extra conditions retrospectively.
<b>Food/Health and Safety</b>	
JM22	Environmental Health officers inspect around 400 food premises each year. Some of these premises will be licensed premises.
JM23	Inspections are based on food risk rather than on whether alcohol is sold on the premises.
JM24	Between April 2008 and December 2008 there were 107 complaints



	about food premises. All these complaints were investigated.
JM25	Food safety is considered to be more important than underage sales. Food safety is a statutory function whilst the policing of underage sales is not.

#### **7.4 Key points from the Working Group's meeting with meeting with representatives of Derbyshire Fire and Rescue Service**

DFRS1	Fire Officers attend the Derbyshire Group and have involvement in licensed premises at a practical level but are not particularly familiar with the Policy
DFRS2	DFRS is a responsible authority under the Act and can make representations on proposals for licensed premises. Fire Officers work to guidance that sets out the process for enforcing Fire Safety Orders.
DFRS3	When they receive an application for licensed premises Fire Officers consider whether a premises visit will be required. More time is spent on 'on' licensed premises but there are particular problems associated with 'off' licensed premises that have sleeping accommodation above the shop.
DFRS4	Previously licensed premises will have been audited in the past. For new premises or where there have been significant alterations the Fire Officers work through the Building Regulations application.
DFRS5	Since October 2006 the Fire Officers have carried out 83 audits of licensed premises.
DFRS6	The sanctions available to Fire Officers are: <ul style="list-style-type: none"> <li>• Prosecution</li> <li>• Prohibition Notice</li> <li>• Restricted Use</li> <li>• Enforcement Notices</li> <li>• Alteration Notices</li> <li>• Notification of Deficiencies</li> </ul>
DFRS7	Enforcement action taken by Fire Officers is reported to the Council's Licensing Liaison Officer. It was felt that the process of exchanging information could be improved at a local level.
DFRS8	Complaints by members of the public are followed up and the premises monitored over a period of time.
DFRS9	The Community Fire Safety Division works with the Police and other agencies to address fire risk associated with anti social behaviour.
DFRS10	The Fire Protection Team is concerned with public safety in the built environment and not with disorder issues.
DFRS11	The Fire Service liaises with other authorities and groups such as the Safer Derbyshire Partnership.
DFRS12	Fire Officers always carry out an audit when there has been even a small fire in commercial premises.
DFRS13	There is a recognised issue about the behaviour of customers who have been drinking when a fire alarm occurred.

## 7.5 Key points arising from the Working Group's meeting with officers of Derbyshire Constabulary

DC1	The Police are a statutory authority and vet applications for new licenses and licence conditions for premises. If there are no objections they take no further action, but if they do have objections they are considered at a Licensing review.
DC2	The Police have regard for the following four Licensing Act objectives: <ul style="list-style-type: none"> <li>• Crime and Disorder</li> <li>• Public Safety</li> <li>• Public Nuisance</li> <li>• Protection of Children from Harm</li> </ul>
DC3	The Police have a time limit in which to make their objections. They take into account previous convictions even if these are spent.
DC4	In the case of renewals the Police check deals with administrative issues but they are able to input at the renewal stage if there has been a problem with the premises.
DC5	There was some question about the extent to which the Police could provide the Licensing Committee with information they hold on premises. It was agreed to seek legal opinion on the sort of information that could be legitimately exchanged.
DC6	The point was made about the quality of some of the information that the Police had provided to the Licensing Committee and the need for strong evidence if the Committee was to take action.
DC7	It was suggested that better links were needed between the different agencies
DC8	The Police said there were no specific criteria for asking for a review of a license. This was a value judgement and the Police would work in Partnership with other authorities.
DC9	If a licensee does not respond to an Action Plan the Police can request a review of the license.
DC10	Membership of the Pubwatch scheme is not mandatory but the Police felt this was a good way of exchanging information. It would be possible to include a license condition requiring membership of Pubwatch and if this were done the condition could be enforced.
DC11	A Police officer said that he had the impression that alcohol related crime in Derby was increasing but he had no figures to support this.
DC12	As a result of alcohol related issues the Police may not have sufficient officers to cover problems which arise. It is necessary to provide extra officers on Fridays and Saturdays and to bring them in from other areas. The problems extend outside the city centre.
DC13	The new Act and extended opening hours have made the situation more difficult to manage with regard to Police staffing.
DC14	City centre policing is staff intensive and has a major impact on staff resources. As a result of alcohol related crime it is necessary to direct police resources away from other areas.
DC15	During the past year the Police requested two reviews and asked for lots of Action Plans.

DC16	The Police would object to the opening of a premises if it did not have CCTV.
DC17	With regard to underage drinking it was confirmed that the Police tried to do one test purchase exercise per month in Derbyshire. In a recent exercise in South Derbyshire 11 underage sales had been made out of a total of 15 test purchases. In a previous exercise 13 out of 36 had failed. Test purchases are targeted at areas where there are known to be problems.
DC18	The Police can serve closure orders where for example CCTV is not working and has not been repaired in seven days. Closure orders are recorded on the Police Innkeeper system but the Licensing Committee does not appear to be informed.
DC19	Under Sections 160 and 161 of the Act the Police have powers to close premises if the circumstances warrant it. They also have powers to close premises where violence is involved but this has never been done in Derby.
DC20	Good door staff are important and they should be properly trained and wear identification badges.
DC21	The Police have an ad hoc relationship with DFRS which works adequately. There are no problems in the working relationship that the Police have with DFRS and the City Council.
DC22	With regard to alcohol and health it was considered that most of the support offered by agencies seemed to be aimed at drugs rather than at alcohol
DC23	Improvement in the process requires support from all agencies and the need for them to work closely together to monitor premises and to close them where necessary.
DC24	A Police officer suggested that there were just too many licensed premises and mentioned the 'Saturation Zone' approach that Southampton had adopted.

#### **7.6 Key points arising from the Working Group's meeting with representatives of Derby Community Safety Partnership (DCSP)**

DCSP1	At a recent meeting of partners on licensing issues the representatives of the different partners did not appear to know each other well but all said they were working well together.
DCSP2	When presented with the health and violent crime statistics for Derby the partners were very defensive but said there was nothing they could do to improve the partnership. The impression was that partners were working well within their own silos but were not working jointly.
DCSP3	A joint Licensing Team was suggested. This would be formed from the Police and Council Licensing sections and would help overcome current resource issues. Key drivers for the approach are violent crime and antisocial behaviour
DCSP4	The current situation in Derby is due to the Licensing Act 2003 which has had an adverse impact on health. The level of alcohol related ill health is amongst the highest in the Country. The level of public drinking in Derby is also very high. There is a need to

	change the drinking culture of the City.
DCSP5	It appeared that there was support for improvements in the licensing process at high levels in the City Council but this support was not apparent at the lower levels in the organisation.
DCSP6	It was suggested that taken in isolation the Council's Licensing Policy was a tick box exercise which did not take into account process requirements or the impact of licensed premises on the community.
DCSP7	The licensing partners had their own powers but they did not appear to be co-ordinating their activities. There were examples elsewhere of the successful use of a joint approach.
DCSP8	It was suggested that the issues with the Policy were its impact and the way in which it was enforced. It was suggested that if the DCSP were made a responsible authority this would enable a joint approach.
DCSP9	The PCT could attempt to deal with alcohol related hospital admissions in isolation but this was only one side of the coin.
DCSP10	Actions proposed to improve licensing enforcement would need to take into account their effect on the City's drinking culture and leisure industry. Any that were adopted would need to have a positive impact on licensed premises. The main issues for the city was the large number of vertical drinking establishments.
DCSP11	Other local authorities had 'Saturation Policies' but these were difficult to introduce.
DCSP12	The approach should be to change the target market for city centre premises in a way that enabled licensees to maximise their profits without encouraging their customers to drink to excess. There would be a need to step away from the statutory requirements of the Act in order to establish a mature, robust and profit driven relationship with licensees.
DCSP13	There had only been one review of licensed premises in Derby in the last four years and it was not felt that the situation was so good that only one license should have been challenged.
DCSP14	There was a need to create an environment where licensees were aware of the risk of not complying. Currently they feel they have to compete with each other for customers.
DCSP15	It would be sensible to take the PCT and DCSP's views into account. There was a facility in the Act to enable other bodies to become responsible authorities.
DCSP16	Trading Standards only work 9-5, a joint approach with the Police could improve enforcement in this sector.
DCSP17	In respect of violent crime Derby is 18.1% higher than the national average. The sub section for malicious wounding is 24% higher and violence by women is also increasing. In respect of hospital admissions for alcohol related harm, Derby is related 34 <sup>th</sup> worst of the 354 local authorities on this indicator (NI39) and has the second highest rate in the East Midlands.
DCSP18	There is a strong drinking culture in Derby and initiatives need to be aimed at adults as well as young people.

DCSP19	The worst premises referred to in the Alcohol Harm Reduction Strategy are vertical drinking premises, but one of them won the 'Best Bar None' award last year.
DCSP20	Vertical drinking establishments could be displaced by diversification. The current numbers were only sustainable because of the students who use them.
DCSP21	The Licensing Policy is correct but problems are caused by its application and lack of resources.
DCSP22	There is a need for regular monthly meetings between authorities but there had been none since September 2008.

63. Appendix A of this report contains a 'Summary of the Profile of Alcohol Related Harm for Derby provided to the working group by the DCSP representatives.

## **8. Summary of the information provided to the Working Group**

64. The information provided to the working group by the witnesses who gave evidence to the review highlighted a number of significant issues which can be summarised as follows:

1. There was a general consensus that the Council's Licensing Policy was sound. This was not unexpected as the Policy was only recently reviewed and is based on the model guidelines.
2. The representatives of the individual agencies which gave evidence to the working group were each fully aware of their role within the licensing process and had in place procedures to ensure that they discharged their duties in a manner they considered to be appropriate.
3. Although there was some exchange of information between the different agencies, each agency seemed to be working largely on its own. Communication between different agencies was limited to the minimum needed to discharge their responsibilities.
4. It appeared that no attempt had been made to establish any significant level of co-operative inter agency working or to exchange more information than that which was legally required by the act.
5. The lack of co-operative working meant that the Licensing Committee was not kept fully informed of developments that might have had a bearing on the way in which it dealt with Licensing applications or the renewal of licenses.
6. From comments made to the working group it appeared that both the Police and the City Council were hampered in their licensing enforcement work by a lack of resources.
7. The Police acknowledged that since the Act came into effect there had been an increase in the number of alcohol related issues and there had been a significant impact on their staffing resources. However the Police had only requested two licence reviews.
8. At the time the EHTS representatives were interviewed the Council's Pollution Control Team had no out-of-hours service for investigating complaints about licensed premises. They did carry out some out-of-hours observations but these were pre-planned and not responsive.

9. The City Council's Environmental Health and Trading Standards Division was also hampered by a lack of a responsive out of hours service for investigating complaints about licensed premises or for pursuing the issue of under age sales from 'off' licensed premises. However it seemed that they had made no attempt to improve this aspect of their work, either by co-operation with the Police or with other local authorities.
10. It also appeared that Trading Standards viewed the investigation of underage sales as of lesser importance than their traditional 'weights and measures' role.
11. Although the Police and the Council's Planning and Environmental Health and Trading Standards Officers seemed aware that there were significant behavioural problems associated with the large number of licensed premises in Derby, they seemed content to approach those problems purely in terms of the straightforward application of the legislation. There was an awareness that other local authorities had taken a different approach but when asked how the situation could be improved the answer for Derby seemed to be 'more of the same'.
12. Only the representatives of the Derby Community Safety Partnership told the working group that they thought there were problems with what Derby was doing and with what was consequently happening in the City, and only they suggested that a change to current practices was needed.
13. Evidence provided to the working group by the DCSP representatives seemed to confirm that excessive drinking in Derby was having, or had the potential to have, significant adverse anti social behaviour and health effects.
14. It was reported to the working group that meetings of an established inter-agency group did not take place regularly and that when they did occur, the representatives of the different agencies were 'defensive of their lack of progress'.

## **9. Additional information**

65. The following additional information supplements the information provided to the working group by the witnesses.

### **9.1 Impact of the Licensing Act on anti-social behaviour**

66. The working group was told by the Police Officers who gave evidence that they were of the view there had been an increase in alcohol related crime in Derby since the new Licensing Act came into effect. The Police Officers did not have figures to justify their view, but a recent Daily Telegraph article reported that figures obtained under the Freedom of Information Act from 35 of the 43 Police Forces in England and Wales showed that public order offences had increased by 136% over the four years to April 2008. The article reported that around half of these offences were alcohol related and that dealing with them was taking police officers away from other front line duties.

67. Figures in the report suggest that in the year ending April 2008 a total of 161,431 Penalty Notices for Disorder were issued compared with 68,342 in 2004/05.

68. A spokesperson for the Department of Culture, Media and Sport which supervises the licensing laws is reported as having said 'Recent evaluation of the Licensing Act has shown it has not led to an increase in crime and disorder', but the Home Office is said to have reported a 25% increase in violent crime between 3.00 am and 6.00 am.

## **9.2 Health implications of the Licensing Act**

69. A recent BBC article on a study carried out by Birmingham and Bath Universities reported that 'Health campaigns warning of the dangers of alcohol were being ignored by many young people who saw binge drinking as acceptable. This study which was funded by the Economic and Social Research Council concluded that young people did not see their own drinking cultures which took a negative stance. Professor Christian Griffin who led the research team suggested that there was a need to stop demonising and making generalisations about young people and their drinking and that there was a need to listen to and incorporate their views and perspectives.

70. The charity Alcohol Concern criticised JD Wetherspoon's initiative to reduce the price of some beers sold in their 713 public houses to £0.99/pint. They said that by reducing the price of these beers to 1989 levels Wetherspoons could cause more people to drink excessively and so end up in hospital. Alcohol Concern said that the rate of alcohol related hospital admissions was rising rapidly and that treating alcohol related diseases was costing the NHS £2.7bn/year.

## **10. Conclusions**

71. From the information considered by the working group it has been concluded that:

1. The Licensing Policy is sound and fit for purpose.
2. The partner agencies understand their respective roles under the Licensing Act.
3. The Licensing Act has had a significant and adverse effect on the level of antisocial behaviour in Derby
4. The Licensing Act has probably made worse the already high level of drinking in Derby and this in turn is having an adverse effect on the health of the population
5. Enforcement of the Policy by the Council is limited by a lack of resources and in the case of Trading Standards by a concentration on other aspects of their work and an apparent unwillingness to change.
6. The Police seem to be concentrating on dealing with the effects of the Licensing Act rather than on taking proactive action to limit those effects.

7. There appears to be a limited exchange of information between the partner agencies
8. Each of the licensing agencies appears to be working on their own, and there is no real evidence of any effective co-operative working between the agencies.

72. The recommendations in Section 2 are intended to address these conclusions.

73. The Scrutiny Management Commission wishes to acknowledge the support and assistance provided to the working group by Constitutional Services Officer Jody Shelton whose detailed knowledge of the Licensing process has proved very valuable.

DRR 16 March 2009.



## Appendix A

### Summary of Profile of Alcohol Related Harm for Derby (compiled from the Local Alcohol Profiles for England)

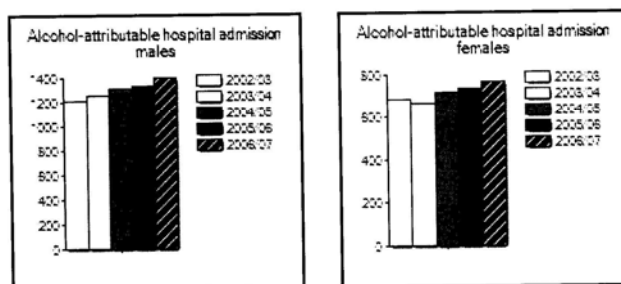
The Local Alcohol Profiles for England were updated on December 18<sup>th</sup> 2008. The profiles, produced by North West Public Health Observatory, measure 23 alcohol-related harm indicators at local authority and PCT level. This summary is to list the key results for the Derby area of the new findings.

In summary, the key points are:

- Derby has significantly higher rates of alcohol-attributable and alcohol-specific admissions for both sexes than the national average, and rates for both men and women have been increasing in recent years.
- Although alcohol-related recorded crime continues to fall in the city, there was an increase in the rates of alcohol-related violent crimes and alcohol-related sexual offences in 2007/08 compared to 2006/07. Derby has significantly higher rates of alcohol-related recorded crime, alcohol-related violent crimes and alcohol-related sexual offences than the national average.
- The rate of alcohol-specific admissions of under-18s is significantly lower than the national average, although it is slightly above the East Midlands average.
- Alcohol-attributable mortality in the city in 2006 was higher for both men and women than in 2004 and 2005 and is above the national and regional average for both sexes. There may be particular cause for concern regarding men, as Derby was just outside the worst 25% nationally for alcohol-attributable mortality and mortality from chronic liver disease for males.

### Admissions

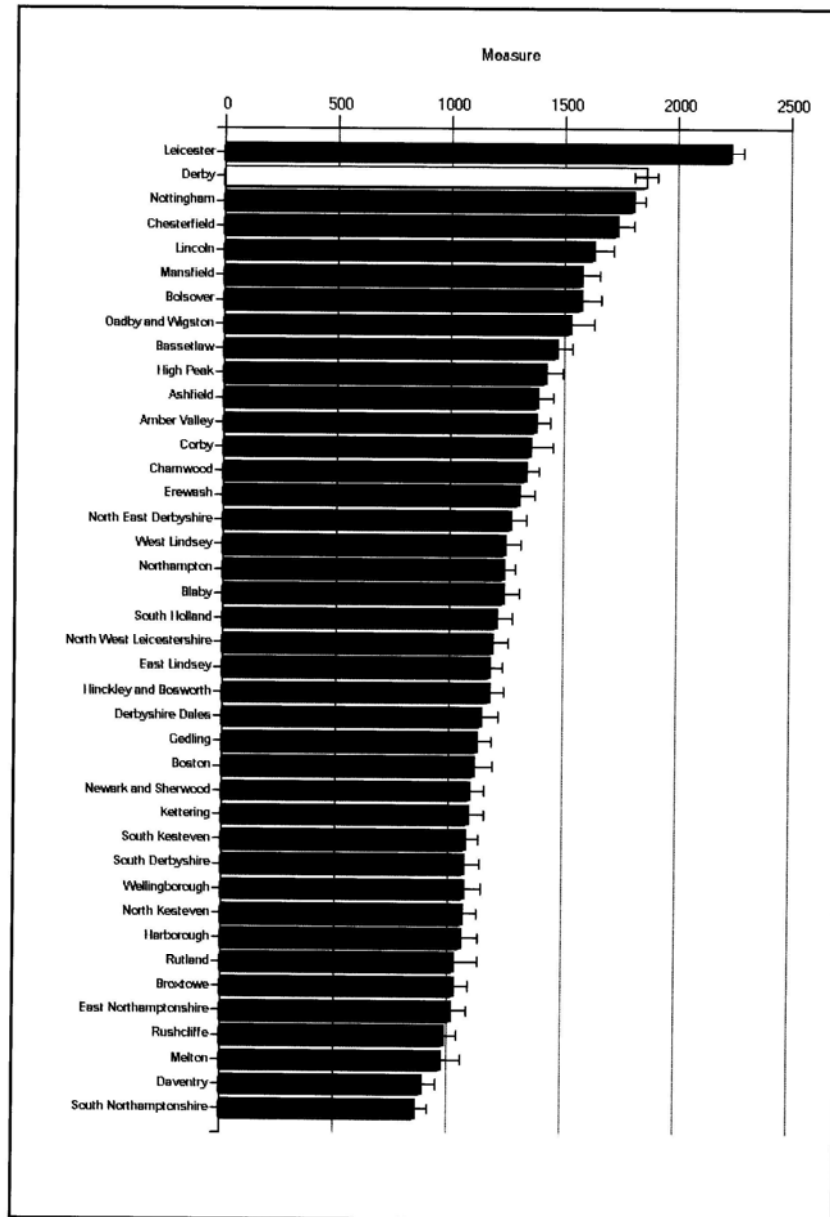
In 2006/07, Derby had **significantly higher** rates for alcohol-attributable and alcohol-specific hospital admissions<sup>1</sup> for both sexes than the national average, and ranked in the lowest quartile nationally for all four indicators. These were also considerably above the average rates for the East Midlands – Derby ranked among the lowest six local authorities in the region (of 40 LAs) for all four indicators. The rate of alcohol-attributable hospital admissions in the city increased for the third consecutive year among women, and at least the fourth consecutive year among men – the graphs below show standardised rates per 1,000 for the past five years:



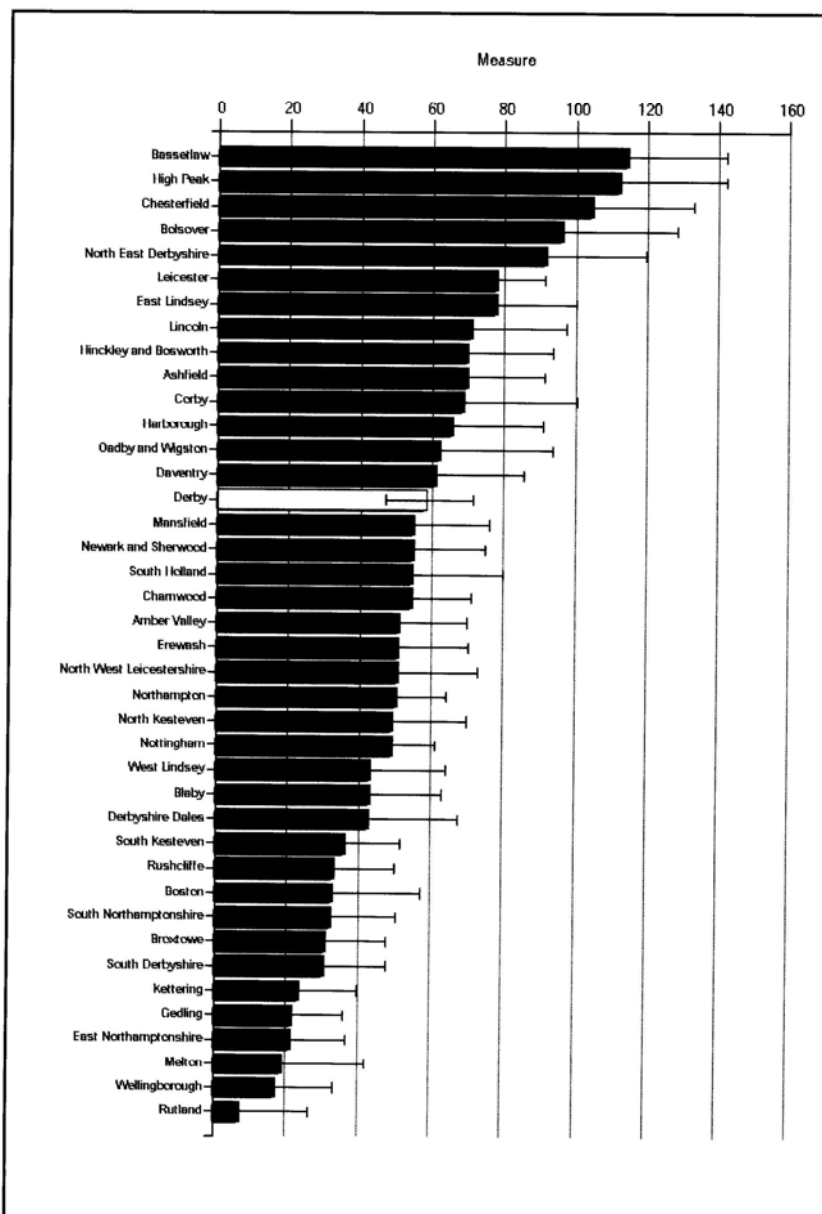
Using the government's NI39 indicator for hospital admissions for alcohol-related harm in 2006/07, Derby also had a **significantly higher** rate than the England average. Derby LA was ranked 34<sup>th</sup>

<sup>1</sup> See <http://www.nwph.net/nwpho/publications/forms/disform.aspx?ID=186> for latest alcohol-attributable fractions used. 'Alcohol-specific' rates are limited to only those admissions with a fraction of 1.

worst nationally of 354 local authorities on this indicator. The graph below shows directly standardised rates per 100,000 people for the NI39 indicator in the East Midlands, showing that Derby has the second highest rate in the region:

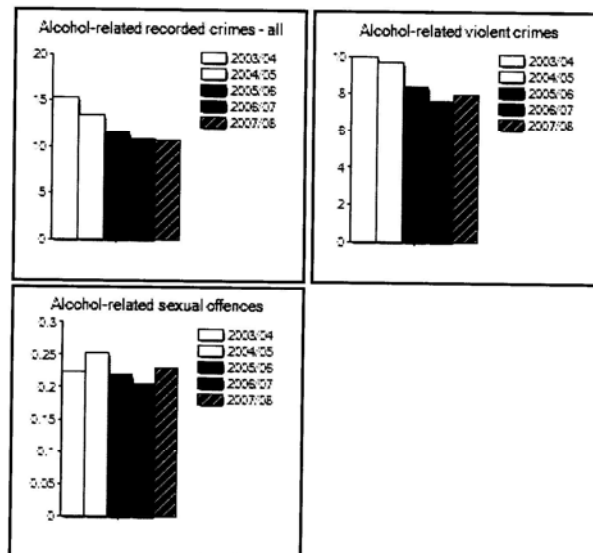


However, Derby had a **significantly lower** rate of alcohol-specific admissions for under-18s compared to the national average. There were 93 recorded alcohol-specific admissions of under-18s in Derby between April 2004 and March 2007. The rate was, however, slightly above the regional average – the following graph shows the crude rates per 1,000 of alcohol-specific attendances of under-18s over this time period in the East Midlands:



### Alcohol-related crime

Derby also had a **significantly higher** crude rate for alcohol-related recorded crime in 2007/08 than the national average, as well as **significantly higher** rates for alcohol-related violent crimes and alcohol-related sexual offences. The rate of alcohol-related recorded crimes fell in Derby for at least the fourth consecutive year (to 10.7 per 1,000 population), but following similar falls in recent years the crude rates of alcohol-related violent crimes and alcohol-related sexual offences in Derby increased on 2006/07 figures. For the sexual offences indicator, Derby ranked 14<sup>th</sup> worst nationally (of 354 local authorities). The graphs below show the crude rates per 1,000 persons in each category:



### Alcohol-related mortality

On the indicators relating to months of life lost due to alcohol and alcohol-specific mortality, Derby scored similarly to the national and regional averages, with no statistically significant differences between rates in Derby and the national average, although for men Derby scored poorly compared to the regional average. However, rates of mortality from chronic liver disease and alcohol-attributable mortality rates were above the East Midlands average for both sexes, and Derby rated particularly poorly on these indicators for men – just outside the worst 25% of local authorities nationally. The graphs below show that the standardised rate of alcohol-attributable mortality per 1,000 in Derby in 2006 increased on 2005 and were also above 2004 levels, for both men and women: