



DERBY CITY COUNCIL

GENERAL LICENSING COMMITTEE 22 JULY 2009

Report of the Corporate Director of Environmental Services

DERBY & DERBYSHIRE LICENSING PROTOCOL

RECOMMENDATION

- 1.1 To consider the information contained in the report regarding the adoption of a formalised agreement/protocol between all relevant licensing authorities in Derby and Derbyshire.
- 1.2 To approve the adoption of the protocol.

SUPPORTING INFORMATION

- 2.1 Under the Licensing Act 2003, the licensing authority is required to promote the four licensing objectives:
 - Prevention of crime and disorder
 - Protection of public safety
 - Prevention of nuisance
 - Protection of children from harm
- 2.2 The government strongly recommends that licensing authorities establish protocols on enforcement issues.
- 2.3 The principle relationship is between the local authority's licensing team, trading standards team and the Police. It is only these bodies that have the power to prosecute for breaches of the Licensing Act.
- 2.4 The signatories of the protocol recognise the interests of the citizens and businesses and will work closely with them and partners to assist all licence holders to comply with the law whilst promoting of the four licensing objectives. A copy of the protocol is attached at Appendix 2 for information.
- 2.5 The protocol recognises the need for firm and proportionate action to be taken for those who commit serious offences or those who consistently breach the legislation.

- 2.6 It is recognised that any enforcement action taken will have regard to current codes of practice.
- 2.7 The protocol clearly establishes the roles and responsibilities of each enforcement agency.
- 2.8 Acceptance of the protocol would support and complement the recommendations made during the recent Licensing Review in March 2009 by the Committee and the Scrutiny Management Commission.

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Derby & Derbyshire Licensing Protocol

IMPLICATIONS

Financial

1. None directly arising from this report.

Legal

2. None directly arising from this report.

Personnel

3. None directly arising from this report.

Equalities Impact

4. None directly arising from this report.

Corporate objectives and priorities for change

5. The recommendation contained in this report contributes to the corporate objective of **giving excellent services and value for money.**

DERBY AND DERBYSHIRE
LICENSING ENFORCEMENT PROTOCOL

This protocol formalises the agreement between all the relevant Authorities as follows:-

Derbyshire Constabulary

Derbyshire Fire & Rescue Service

Derby City Council

South Derbyshire District Council

Derbyshire Dales District Council

High Peak Borough Council

Chesterfield Borough Council

Bolsover District Council

North East Derbyshire District Council

Amber Valley Borough Council

Erewash Borough Council

Derbyshire County Council

DERBY AND DERBYSHIRE LICENSING ENFORCEMENT PROTOCOL

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1. INTRODUCTION

1.1 Under the Licensing Act 2003, the licensing authority and the responsible authorities, as defined in the Act, are required to promote the following objectives, in relation to premises and people licensed under the Act:

- preventing crime and disorder
- protecting public safety
- preventing nuisance
- protecting children from harm

1.2 The Government strongly recommends that licensing authorities establish protocols on enforcement issues. The principal relationship that needs to be defined relates to that between Derbyshire Police; the Local Licensing Authorities; and the local authority Trading Standards Services as it is only those bodies that are charged with the powers to prosecute for breaches of the Licensing Act 2003. However, Responsible Authorities have a statutorily defined role, a role that frequently overlaps between agencies, including the ability to make representation to the Licensing Authority. The role of these agencies is also defined within this protocol. The Violence and Alcohol Licensing (VAL) Groups are seen as the best method of ensuring that information is exchanged, protocols followed and all agencies work towards gaining compliance with licensing requirements and fulfilling the objectives outlined above.

1.3 All signatories to this protocol recognise the interests of both citizens and businesses and will work closely, with partners, to assist licence holders to comply with the law and the four licensing objectives it seeks to promote. However, proportionate but firm action will be taken against those who commit serious offences or consistently break the law. Any Enforcement Action taken will be in accordance with the principles set out in the Regulators Compliance Code and the Enforcement Concordat as well as Home Office Guides to Prosecutors.

2. AIM OF THIS PROTOCOL

2.1 The aim of this protocol is to establish a model upon which all local authorities in Derby and Derbyshire can base their individual enforcement protocols with the Responsible Authorities.

2.2 The aim of an enforcement protocol is to clearly establish the roles played principally by each enforcement agency, that is:

- Local Licensing Authority
- Derbyshire Police
- Derbyshire Fire and Rescue Service
- Local Authority Pollution Control Service
- Local Authority Occupational Health and Safety Enforcement Service
- Health and Safety Executive
- Derby City and Derbyshire County Council Trading Standards
- Derby City and Derbyshire County Council Child Protection Agency
- Other enforcement agencies as appropriate (e.g. customs and excise)

2.3 The protocol seeks to establish the roles of the agencies detailed above in relation to:

- Inspecting premises for compliance with the relevant licence
- Investigating complaints regarding non-compliance
- Making representations and seeking reviews
- Initiating proceedings for offences under the Licensing Act 2003

2.4 This protocol seeks to build upon the good working relationships, which currently exists between the enforcement agencies. All parties recognise the importance of effective co-operation and liaison to ensure those with responsibilities under the Licensing Act 2003 understand and comply with the law.

2.5 In particular, this protocol should also provide for the targeting of agreed problem and high risk premises which require greater attention, while providing a lighter touch in respect of low risk premises which are well run. The 2003 Act does not require inspections to take place save at the discretion of those charged with this role. The principle of risk assessment and targeting should prevail and inspections performed as and when judged necessary. This should ensure that resources are more effectively concentrated on problem premises.

3. GUIDING PRINCIPLES FOR DECISION MAKING

3.1 The Statutory Guidance issued under section 182 of the Licensing Act makes it quite clear that offences committed by proprietors on licensed premises must be pursued by the relevant enforcement authority using primary legislation.

3.2 Whilst the Licensing Act 2003 does not distinguish clearly the lead authority either for enforcement or for making representations in respect of the four licensing objectives, it is intended that all agencies will agree the most effective way of seeking compliance through the VAL Groups. The Licensing Authority, The Police and the local weights and measures authority (ie Trading Standards Services at Derbyshire

County Council and Derby City Council) are all able to enforce some or all of the provisions of the Licensing Act.

- 3.3 Close liaison is essential to ensure consistent and transparent action by the relevant agencies as well as to ensure effective use of resources. Nothing in this protocol will preclude representation by more than one responsible authority in respect of the same or different licensing objectives, relevant to the same licensed premises. It will be advantageous for responsible authorities to support each other towards the common aim of promoting the licensing objectives. It is therefore essential that all agencies commit to sharing intelligence and operational enforcement activity.
- 3.4 As a guiding principle, the lead authority for both enforcement action and for making representation should be based on the impact the contravention or action has on the promotion of the licensing objectives, and in most cases common sense will dictate the lead authority, along the following lines:
- 3.5 In respect of instigating legal proceedings, typically the split of responsibility may be as described below:
 - Crime and Disorder: Derbyshire Police
 - Public Safety: Licensing Authority, Derbyshire Fire and Rescue Service and Trading Standards
 - Public Nuisance: Licensing Authority or Derbyshire Police
 - Protection of Children: Derbyshire Police, Licensing Authority and Trading Standards
- 3.6 In respect of making representations and seeking reviews, the split may be described as:
 - Crime and Disorder: Derbyshire Police
 - Public Safety: Local Authority Health and Safety Service, Health and Safety Executive and/or Derbyshire Fire and Rescue Service
 - Public Nuisance: Local Authority Pollution Service and/or Derbyshire Police
 - Protection of Children: Child Protection Agency
- 3.7 The table at Appendix A seeks to indicate the likely split of responsibilities and indicates which authority might lead under different situations.
- 3.8 With regard to enforcing the provisions of Section 146 and 147 (prohibiting the sale of alcohol to young people under the legal age) it is recognised that Derbyshire Constabulary are the lead agency for pubs, clubs and other 'on-license' type premises, whilst the County Council trading standards service are the lead authority with regard to shops, super-markets and other retail 'off-license' type premises. This

arrangement is intended to encourage and not preclude joint enforcement.

4. LIAISON ARRANGEMENTS

- 4.1 Each enforcement agency should nominate a Liaison Officer (and a deputy) to initially be the contact point regarding any matters relating to licensed premises. Appendix B sets out the current nominations. The role of these officers will be:
- to ensure the effective exchange of information between the agencies using the 5x5x5 protocols as appropriate;
 - the consideration of the necessity for joint visits;
 - the implementation of co-ordinated actions, as necessary and as agreed between the agencies;
 - to co-ordinate the supply of evidence and information to another agency taking formal action;
 - the initial contact to discuss and liaise in the event of uncertainty over lead agency roles.
- 4.2 Each agency shall be represented at the appropriate VAL group meeting to facilitate the liaison arrangements. Where advice and guidance is to be provided to businesses or licensees, partner agencies should have regard to the lead arrangements as specified above and in Appendix A and has a responsibility to ensure that the lead agency is consulted prior to the issuing of advice and guidance to ensure the consistency of approach.
- 4.3 Section 29 (in relation to crime prevention and the apprehension of offenders) and Section 31 (in relation to Health and Safety issues) of the Data Protection Act 1998 allows for the exchange of information between relevant parties. Section 115 of the Crime and Disorder Act 1998 allows for information to be specifically exchanged between the police and the licensing authorities.
- 4.4 Parties to this may disclose information to other parties for these purposes providing that the local protocols applicable to each organisation for data protection are observed. Every request for information under the Licensing Act must be made in writing giving reasons why disclosure is necessary.
- 4.5 Information supplied must only be used of the purpose for which it is obtained, must be securely retained whilst in the possession of the responsible authority that has requested it and must be securely disposed of when no longer required. It must not be further transmitted to a third party without the consent of the original authority that supplied the information.

- 4.6 There is a clear need for good communication and liaison. In particular, where the lead authority dealing with the premises identifies the need for a 'case conference', other responsible authorities will support the lead authority to gather all views in preparation for review of licence. The lead authority will be expected to co-ordinate such case conferences.
- 4.7 Exchange of information should be conducted in a timely and accurate fashion and confirmed in writing in all cases, (written confirmation includes in electronic form).

5. PROVISION OF ADVICE AND INVESTIGATION OF COMPLAINTS

- 5.1 The signatories to this protocol recognise the value of advice and guidance to applicants and holders of licences, certificates and permissions and all encourage applicants and holders of licences, certificates and permissions to seek such advice, particularly before submitting applications for variations to existing permissions or prior to submitting a temporary event notice.
- 5.2 Each agency will endeavour to provide clear and consistent advice and guidance on those matters within the remit of that agency (determined in accordance with the guiding principles of decision making). Where information is requested on a matter outside of any agency's remit, then the contact details of the relevant agency will be passed to the applicant/licence holder. It is agreed that, through the VAL groups and existing county wide forums, Guidance Packs will be developed to facilitate consistent advice to the licensing trade in Derbyshire.
- 5.3 Partner agencies have adopted or will work towards the principles set out in the National Intelligence Model to be 'intelligence led' and to concentrate resources where they are most required to reduce harm from non-compliance with the Licensing Act requirements. On receipt of a complaint or concerns relating to licensed premises, club premises or personal licence holder, the receiving agency will:
- Action, as appropriate, if the matter is within that agency's remit.
 - Pass to the relevant agency, in accordance with the liaison arrangements, detailed above using the '5x5x5' protocols.
 - Liaise with the other agencies to establish lead responsibility, in accordance with the liaison arrangements, detailed above.
- 5.4 Each agency will have its own service standards and will respond in accordance with those standards.
- 5.5 It is acknowledged that some issues in relation to the protection of children from harm and/or underage sales will be within the remit of Trading Standards or Social Services Child Protection Agency.

6. REVIEW OF LICENCES

- 6.1 The Licensing Act 2003 permits responsible authorities to apply for a review of a premises licence or a club premises certificate.
- 6.2 In the acknowledgement that any authority may apply to the licensing authority for a premises licence or club premises certificate to be reviewed at any time, the signatories of this protocol agree to follow the guiding principles in decision making when determining the most appropriate authority to seek such a review.
- 6.3 Except in extreme cases, the responsible authority seeking a review will:
- Give an early indication to both the holders of the premises licence or club premises certificate and to the licensing authority that this is their intended course of action.
 - Liaise with other responsible authorities as necessary to ensure a co-ordinated and thorough review.
 - Seek an informal resolution to the matter with the holders of the premises licence or club premises certificate, if possible and if appropriate.
 - Be able to demonstrate, to the licensing committee hearing the application for review, that alternative approaches to dealing with the situation have been attempted, or were not appropriate.

7. RESPONSIBILITY FOR PROSECUTIONS

- 7.1 Section 186 of the Act provides that offences under the Act may be instituted by:
- (1) a licensing authority
 - (2) by the Director of Public Prosecutions
 - (3) by a local weights and measures, (Trading Standards), authority for offences under section 146 or 147 (Sale of alcohol to children and allowing the same.)
- 7.2 It is expected that the decision of who will instigate legal proceedings will be taken in accordance with the guiding principles for decision making and in particular, national guidance on good enforcement practice.

8. NOTIFICATIONS OF PROSECUTION AND OTHER ENFORCEMENT ACTIONS

- 8.1 Notwithstanding the duty of the court in section 131 (duty to notify licensing authorities of convictions), the prosecuting authority will

inform the licensing authority of any conviction or caution under the Act, within 5 working days.

- 8.2 The relevant licensing authority for this purpose is the licensing authority that issued the licence, certificate or temporary event notice, even if that authority is not a party to this protocol.
- 8.3 In addition, all agencies will notify each partner organisation of any breaches detected of the requirements of the Licensing Act that results in the issuing of a Fixed Penalty Notice (FPN) or Simple (Formal) Caution.

8.3 The notification shall be in writing and shall state:

- the name and address of the person convicted, cautioned or issued with an FPN;
- the nature and date of the conviction, caution or FPN;
- the details of any conviction including any order under section 129 (Relevant Offence) of the Act.

9. REGISTER OF ENFORCEMENT ACTIONS

- 9.1 Each licensing authority will maintain a register of legal proceedings, simple cautions and FPN's issued to holders of licences, certificates or permissions.

10. MEDIA RELATIONS

10.1 All parties to this protocol agree when handling the media:

- To be fair to their fellow parties and maintain their integrity;
- When providing information to the public to do so honestly and fairly;
- Statements must reflect the multi-agency decision process;
- Consent of the data owner will be sought prior to release in the media.

- 10.2 The lead agency will be responsible for liaison with the media but will ensure that any other agency with an interest in the matter is kept informed of the media attention and that the response to such interest is discussed, where appropriate, prior to the issue of formal press statements.

11. TEMPORARY EVENT NOTICES

- 11.1 In response to a temporary event notice, all responsible authorities will be notified of the details by e-mail and as soon as is practicably possible of the event for information. However, it is acknowledged that only the Police can serve a counter notice and only where they are satisfied that the crime prevention objective would be undermined.
- 11.2 The environmental protection officer, health and safety officer (of the local authority or Health and Safety Executive) and/or Derbyshire Fire and Rescue Service may have concerns regarding the event, which they will seek to address through other mechanisms. It is therefore essential that all agencies seeking to address concerns in respect of a temporary event liaise closely in order that the applicant and the agencies involved can be sure that measures taken to address one agency's concerns do not adversely impact on the concerns of others. Where expedient to do so, issues relating to TENs can be addressed at the Derbyshire Licensing Forum meeting.

12. REVIEW OF THIS PROTOCOL

This protocol will be kept under review having regard to:

- Changes in legislation
- Changes in Government, LACORS or other authoritative guidance;
- Court rulings,
- Challenges or Representations made;
- Issues arising in the implementation of this protocol.

13. RESOLUTION OF DISPUTES

- 13.1 As a consequence of the strong existing partnerships, disputes are expected to be a very rare occurrence. However, in the event of a dispute where the matter cannot be resolved at the relevant VAL group in the first instance, the relevant agencies involved should call a formal meeting and try to resolve the dispute by agreement. Where agreement cannot be reached, the issue should be referred to the Safer Communities Tasking and Advisory Group for direction.

APPENDIX A - Indicative split of Responsibilities and primary Enforcement Roles for Responsible Authorities

ROLE	Licensing Authority	Licensing Enforcement Officers	EHO's/HSE	EHO's responsible for Noise Control	Police	Fire Service	Planners	Trading Standards	Social Services	NOTES X = Lead Role O = Supporting Role In all cases where a joint Lead Role is indicated, an authority shall not undertake any activity that has not been notified to, and coordinated with, the other lead authorities for that role.
APPLICATIONS										
Consultee			X	X	X	X	X	X	X	Consultees may also give advice
Processing applications variations etc	X									
General Advice on applications	X		O	O	O	O		O	O	Advice may be sought about safety or occupancy levels
Advice/ Guidance – Alcohol (ON LICENCE)	X	X	O	O	X	O	O	O	O	Police lead on conditions/representations relating to underage sales.
Advice/Guidance – Alcohol (OFF LICENCE)	X	X	O	O	X	O	O	X	O	Trading Standards lead on conditions/representations relating to underage sales.
ENFORCEMENT										
UNLICENSED ACTIVITY, NON-COMPLIANCE WITH OPERATING SCHEDULE, BREACH OF CONDITIONS	O	X	O	X	X	O	O	O	O	<ul style="list-style-type: none"> This is one offence under the act There is a limit on what can be prescribed as conditions not to duplicate other legislation Prime example of breach of condition is overcrowding
GENERAL SAFETY IN VENUES DURING OPERATION	O	O	X		O	X				

ROLE	Licensing Authority	Licensing Enforcement Officers	EHO's/HSE	EHO's responsible for Noise Control	Police	Fire Service	Planners	Trading Standards	Social Services	<p>NOTES X = Lead Role O = Supporting Role</p> <p>In all cases where a joint Lead Role is indicated, an authority shall not undertake any activity that has not been notified to, and coordinated with, the other lead authorities for that role.</p>
SPECIFIC OFFENCES										
PREMISES LICENCE <ul style="list-style-type: none"> • FAILURE TO NOTIFY CHANGE OF NAME OR ADDRESS • NOTIFY A DPS THAT HE HAS BEEN REPLACED OR APPLICATION • SUPPLY LICENCE TO LA WHERE DPS HAS GIVEN NOTICE TO CEASE • NOTIFY A DPS OF AN APPLICATION FOR TRANSFER, ETC • SUPPLY THE LICENCE TO LA FOR AMENDMENT • KEEP, DISPLAY, PRODUCE LICENCE AT PREMISES 	<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>O</p>	<p></p> <p></p> <p></p> <p></p> <p></p> <p>X</p>			<p></p> <p></p> <p></p> <p></p> <p></p> <p>O</p>			<p></p> <p></p> <p></p> <p></p> <p></p> <p>O</p>		<p>Offences may be discovered during Police and Trading Standards routine enforcement activity</p>
CLUBS <ul style="list-style-type: none"> • FAILURE TO NOTIFY LA OF CHANGE OF NAME, ADDRESS, RULES, ETC 	<p>X</p>				<p>O</p>					

• SUPPLY CERTIFICATE TO LA FOR AMENDMENT	X									
• KEEP, DISPLAY, PRODUCE CERTIFICATE AT PREMISES	O	X			X					

ROLE	Licensing Authority	Licensing Enforcement Officers	EHO's/HSE	EHO's responsible for Noise Control	Police	Fire Service	Planners	Trading Standards	Social Services	NOTES X = Lead Role O = Supporting Role In all cases where a joint Lead Role is indicated, an authority shall not undertake any activity that has not been notified to, and coordinated with, the other lead authorities for that role.
Temporary Event Notices										
Failure to keep and display notice		X			X					
OBSTRUCTION										
Obstruction authorised officer		X			X					
Personal Licence Holders										
• NOTIFY LA OF CHANGE OF NAME OR ADDRESS	X	O			O					
• NOTIFY LA OF OFFENCE	X	O			O					
• NOTIFY LA OF NEW CONVICTION	X	O			O					
• SUPPLY LICENCE FOR AMENDMENT	X									
• PRODUCE LICENCE TO AUTHORISED PERSON		X			X					

ROLE	Licensing Authority	Licensing Enforcement Officers	EHO's/HSE	EHO's responsible for Noise Control	Police	Fire Service	Planners	Trading Standards	Social Services	NOTES X = Lead Role O = Supporting Role For areas where a joint lead roles are identified, the respective agencies will jointly plan, communicate and co-ordinate any agreed enforcement activity on a case-by-case basis.
General Offences										
<ul style="list-style-type: none"> Unauthorized exposure of alcohol for sale 	O				X					
<ul style="list-style-type: none"> Possession of alcohol intended for sale 	O	O			X					
<ul style="list-style-type: none"> Allowing disorderly conduct 	O				X					
<ul style="list-style-type: none"> Selling alcohol to person who is drunk 	O				X					
<ul style="list-style-type: none"> Obtaining alcohol for person who is drunk 	O				X					
<ul style="list-style-type: none"> Drunk person entering or refusing to leave licensed premises 	O				X					
<ul style="list-style-type: none"> Smuggled goods 					X			O		HM Revenue and Customs would lead on any enforcement activity and co-ordinate any joint enforcement action with police / L.A.
<ul style="list-style-type: none"> Unaccompanied Children 	O	O			X				O	Police lead on routine enforcement activity (including advice)

• Sale Of Alcohol to Children – OFF LICENCES (Includes s.147A)	0	0		0		X	0	Trading Standards lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with police/LA.
• Sale Of Alcohol to Children – ON LICENCES (Includes s.147A)	0	0		X		0	0	Police lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with Trading Standards/LA.
• Allowing sale Of Alcohol to Children – OFF LICENCES	0	0		0		X	0	Trading Standards lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with police/LA.
• Allowing sale Of Alcohol to Children – ON LICENCES	0	0		X		0	0	Police lead on routine enforcement activity (including advice)
• Sale Liqueur Confectionery to children	0	0		0		X	0	Trading Standards lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with police/LA.
• Purchase by or on behalf of children OFF LICENCES	0	0		0		X	0	Trading Standards lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with police/LA.
• Purchase by or on behalf of children ON LICENCES	0	0		X		0	0	Police lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with Trading Standards/LA.
• Consumption By Children	0	0		X				Police lead on routine enforcement activity (including advice)
• Delivering to Children	0	0		X				Police lead on routine enforcement activity (including advice)
• Unsupervised Sales to Children – OFF LICENCES	0	0		0		X		Trading Standards lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with police/LA.
• Unsupervised Sales to Children – ON LICENCES	0	0		X				Police lead on routine enforcement activity (including advice)

<ul style="list-style-type: none"> • Confiscation of Sealed Containers • Sale of alcohol from moving vehicle • BREACH OF PROHIBITION ON TRAIN • FALSE STATEMENT IN APPLICATION 	0	0			X			0	<p>Police lead on routine enforcement activity (including advice) and co-ordinate any joint enforcement action with Trading Standards/LA. Potential for joint Police/Trading Standards special enforcement projects.</p>
CLOSURE ORDERS									
Breach of closure Orders	X				X			X	May be imposed under s.147A by Trading Standards

RESPONDING TO COMPLAINTS										
UNLICENSED ACTIVITY	X	X			O					
ALCOHOL RELATED COMPLAINTS	O	O			X			O		
COMPLAINTS RELATING TO CRIME AND DISORDER	O	O			X					
COMPLAINTS RELATING TO NOISE AND DISTURBANCE BUT NOT OCCURRING AT PRESENT TIME	O			X						
COMPLAINTS RELATING TO ONGOING NOISE AND DISTURBANCE	O	O		X	O					
COMPLAINT RELATING TO PUBLIC SAFETY	O	O	X		O					
UNDERAGE SALES – NOT PREMISES SPECIFIC	O	O			O			X		All complaints/intelligence passed to Trading Standards to coordinate any necessary action.
COMPLAINTS RELATING TO UNDERAGE DRINKING - OFF LICENCES	O	O			O			X		All complaints/intelligence passed to Trading Standards to coordinate any necessary action.
COMPLAINTS RELATING TO UNDERAGE DRINKING – ON LICENCES	O	O			X			O		All complaints/intelligence passed to Police to coordinate any necessary action.